

# *Richmond Valley Development Control Plan 2015*

## **Part I. Other Considerations**

This Chapter is a compilation of subject based development controls. Many of these Chapters are referenced throughout the DCP and have been provided here to embellish those subjects with additional detail.

This Chapter contains:

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# *Richmond Valley Development Control Plan 2015*

## **Part I-1. Environmental Heritage**

This DCP applies to all land within the Richmond Valley Local Government Area.

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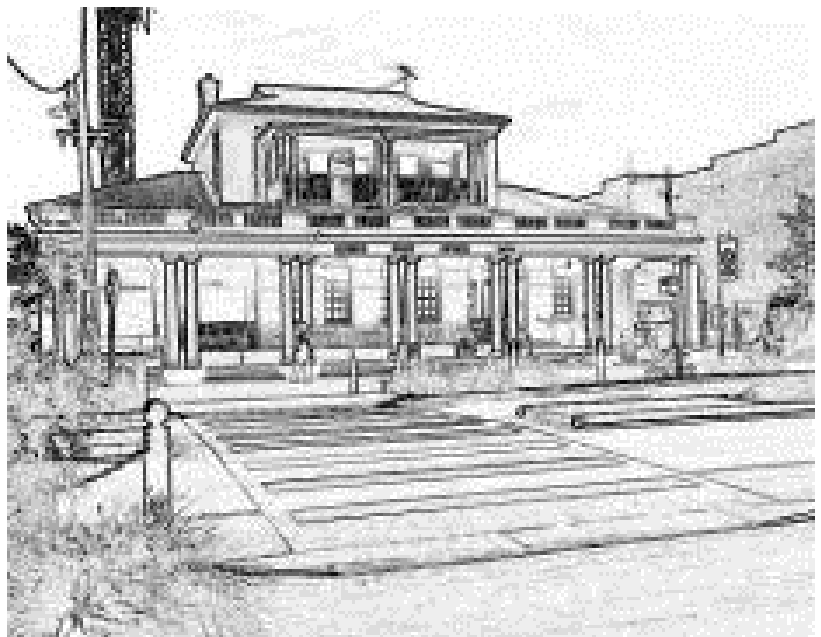
Amendments:  
Nil

This Chapter provides information and guidance for heritage conservation within the Richmond Valley Council area. It is acknowledged that heritage takes many forms and incorporates both Aboriginal cultural heritage and post European settlement heritage.

Council aims through this Chapter to protect, conserve and enhance places with heritage significance being places of:

- Ø historic,
- Ø scientific,
- Ø cultural,
- Ø social,
- Ø archaeological,
- Ø architectural,
- Ø natural,
- Ø aesthetic and
- Ø spiritual value,

for the benefit of its community and future generations, and to ensure that any alterations and changes are sympathetic to the heritage significance of these items or places.



### **I-1.1 General Objectives**

The general objectives of this Chapter are to:

- (1) recognise the heritage of Richmond Valley Council area.
- (2) provide guidance on the implementation of the heritage provisions of the *Richmond Valley LEP 2012*.
- (3) recognise the people of the Bundjalung Nation as the first inhabitants of this area and acknowledge the area is rich in cultural heritage.
- (4) acknowledge the Due Diligence Code of Conduct for the Protection of Aboriginal Objects and encourage all applicants and land owners to follow these guidelines.

### **I-1.2 Richmond Valley Local Environmental Plan 2012**

#### **Objectives**

- (1) to outline the heritage provisions of the *Richmond Valley LEP 2012* (the LEP).

#### **Controls**

- (1) Clause 5.10 of the LEP contains Heritage Conservation provisions.

The clause generally requires consent to demolish, move, or alter heritage items or items within a conservation area, however there are nominated exceptions. These points are explained further in this Chapter.

Schedule 5 and the Heritage Map identify heritage items and conservation areas under the LEP. Data collected from Heritage Studies is maintained by Council and available to the public on-line from the NSW Office of Environment and Heritage's website at:

<http://www.environment.nsw.gov.au/heritageapp/heritagesearch.aspx>

**Note.** Search for Local Government Area = "Richmond Valley Council".

- (2) Furthermore the clause provides special consideration of Aboriginal places of heritage significance and archaeological sites.

#### **Where Development Consent is Required**

- (3) Development consent is required to:
  - (a) demolish or move, or alter the exterior of any:
    - Ø heritage item, or
    - Ø Aboriginal object, or
    - Ø building, work, relic or tree within a heritage conservation area.

**Note.** Alter includes, in the case of a building, making changes to its detail, fabric, finish or appearance. For example - this might include changing the exterior colour scheme.
  - (b) make structural changes to the interior of a heritage building.
  - (c) make non-structural changes to the interior of a heritage building where the interior has been specified within Schedule 5.
  - (d) disturb or excavate an archaeological site where it is likely that a relic will be discovered, exposed, moved, damaged or destroyed.

- (e) disturb or excavate an Aboriginal place of heritage significance.
- (f) erect a building on land:
  - Ø containing a heritage item, or
  - Ø that is within a conservation area, or
  - Ø on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.
- (g) subdivide land:
  - Ø containing a heritage item, or
  - Ø that is within a conservation area, or
  - Ø on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

### Where Development Consent is Not Required

- (4) Development consent under clause 5.10 is not required if:
  - (a) Council has responded in writing, to the applicant's notification of the proposal, and indicated that it is satisfied that the proposed development:
    - Ø is of a minor nature, or
    - Ø is for the maintenance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or a building, work, relic, tree or place within a conservation area, and
    - Ø would not adversely affect the heritage item, Aboriginal object, Aboriginal place, archaeological site or a building, work, relic, tree or place within a conservation area.
  - Note.** See Appendix I-1.1 for an Exceptions Application Form.
  - (b) the development or work is consistent with Local Site Specific Exemptions adopted for a specific item, place or area.
  - (c) the development is within a cemetery or burial ground to:
    - Ø create new graves or monuments, or
    - Ø excavate or disturb land for the purpose of conserving or repairing a monument or grave marker, and
    - Ø there will be no disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance.
  - (d) it involves removal of a tree or other vegetation that Council is satisfied is a risk to human life or property.
  - (e) is exempt development.

### Assessment of heritage significance

- (5) Prior to granting development consent, consideration is required of the effect of the proposed development on the heritage significance of the item or area. To assist with this assessment, additional information may be required in the form of a Heritage Impact Statement, a Heritage Conservation Management Plan, or a Heritage Management Document.
- (6) A Heritage Impact Statement prepared by a qualified heritage consultant will be required for significant alterations to heritage items, including demolition.

### **I-1.3 General Heritage Principles**

#### **Objective**

- (1) to outline the hierarchy of statutory heritage provisions.

#### **Controls**

##### **Heritage Legislation**

- (1) Heritage is protected and managed by various levels of government under a number of State and Federal Acts, as well as international conventions and treaties.

The majority of heritage items in the Richmond Valley Council area are listed at a local level. These items are assessed by Council and subject to the controls in clause 5.10 of the LEP, and this DCP. A few items are listed at the State level and need to obtain necessary approvals for works through the *Heritage Act 1977*, via the NSW State Government.

Underpinning all heritage conservation is the ICOMOS Burra Charter which is a set of heritage conservation principles which are adopted by governments and practitioners Australia wide. These include the following main principles:

- Ø Understand the place before you propose work;
- Ø Assess Significance;
- Ø Prepare a statement of significance;

Also other conservation broad principles:

- Ø Develop policy and options;
- Ø If proposing changes, avoid areas of high and moderate significance and make changes in areas of low significance;
- Ø DAMANBALAP—Do As Much As Necessary But As Little As Possible;
- Ø Repair rather than Replace; and
- Ø Make alterations reversible where possible.

##### **Heritage Studies**

- (2) The list of heritage items in Schedule 5 of the LEP is supported by community based heritage studies which were completed by Council in 2004 and 2007 (being the *Copmanhurst Community Based Heritage Study*, and *Richmond Valley Community Based Heritage Study*, respective). The final study reports are available on the Heritage Study web page.

Data collected from Heritage Studies is maintained by Council and available to the public on-line from the NSW Office of Environment and Heritage's website at:

<http://www.environment.nsw.gov.au/heritageapp/heritagesearch.aspx>

## **I-1.4 General Heritage Maintenance – When do I need consent?**

### **Objectives**

- (1) to encourage ongoing maintenance of heritage fabric.
- (2) to protect heritage fabric from unsympathetic alterations.

### **Controls**

- (1) Maintaining heritage items is the most practical way to protect the significance and history of a building, work, relic or place.

Generally speaking, the cost of maintenance increases exponentially the longer it is delayed.

Common maintenance tasks are:

- Ø It is essential to keep a building dry and waterproof.
  - Ø It is a priority to stabilise a building, even where more extensive restoration is not proposed until a later date.
  - Ø Keep trees and branches pruned and clear of roofs and walls.
  - Ø Ensure roof and site drainage systems are dispersing away from the edge of the building. Check condition of gutters, drainpipes and drains regularly and keep clear of debris.
  - Ø Regular monitoring of walls and cladding for structural soundness and protection from water, wind, dust and vermin.
  - Ø Weed and prune plants, and repair significant garden structures.
  - Ø Regularly check and repair broken fencing.
  - Ø Maintain adequate under floor ventilation.
- (2) Council offers incentives for the maintenance of heritage items through an annual heritage grants program.

Further details are contained in Section I-1.9.

**Note.** Heritage listings apply to the curtilage, or surrounds, of the listing which will include outbuildings, sheds, trees, and fences. Most listings apply to the entire property and not just the residence or main building.

### **Exempt and Complying Development**

- (3) There is a certain amount of small scale development that can be undertaken as exempt development in relation to heritage items and heritage conservation areas. Refer to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Richmond Valley Council is registered with the NSW Planning and Environment's *Electronic Housing Code* (EHC), which is a web based search engine that can identify if exempt or complying development can be undertaken on an identified property. The EHC can be accessed at:

<http://www.onegov.nsw.gov.au/new/agencies/ehc>

Outside the exempt codes, the LEP requires consent for alterations to fabric, finish and appearance. Re-roofing, repainting and fencing etc. will therefore require prior consent from Council for local items. State listed items can make similar exemption applications through the NSW Heritage Office.

## Minor Works and Maintenance

- (4) Most maintenance and works of a minor nature can be handled through a written request.

Appendix I-1.1 contains an Exceptions Application Form for minor works or maintenance (no fee), but application can also be done by lodging a letter or email.

**Note.** Approval is required to be in writing from Council prior to work commencing.

## Residential Fences Around Heritage Items and in Conservation Areas

- (5) All fences require consent on any boundary of a heritage item.
- Ø Front fences, if any, should be based on historical research and appropriate to the age and style of the heritage item.
  - Ø Fences are not to exceed a height of 1.2 metres forward of the front building line setback.
  - Ø Side and rear boundary fences should be constructed in a traditional manner using traditional timber or other sympathetic materials.
  - Ø Colorbond or sheet metal fences are not an appropriate treatment for the setting of a heritage item or conservation area, and will not be supported.

## Solar Panels

- (6) Photovoltaic panels may be installed as exempt development onto heritage items (State and local) or in a heritage conservation area, under clause 30 of *State Environmental Planning Policy (Infrastructure) 2007*, but only where (and not limited to):
- Ø the system is not attached to any wall or roof of a building facing a primary road frontage,
  - Ø the system does not protrude more than 0.5m from any building to which it is attached, and
  - Ø the system is limited to no more than 10kW.

## **I-1.5 Demolition or Relocation of Heritage**

### Objectives

- (1) to avoid or prevent demolition or relocation of heritage items.
- (2) to only consider demolition or relocation as a last resort.

### Controls

- (1) Demolition or relocation of heritage items is generally not supported.
- (2) All alternative solutions should be thoroughly explored before electing to pursue such options.
- (3) Council will require a Development Application to demolish or relocate heritage items. The application must be accompanied by a Heritage Impact Statement prepared by a suitably qualified heritage consultant, and include detailed plans for future development.



**Note.** Heritage listings apply to the item and its curtilage, or surrounds. This will include outbuildings, sheds, trees, and fences. Most listings apply to the entire property and not just the residence or main building. Data sheets are available on-line for each listing.

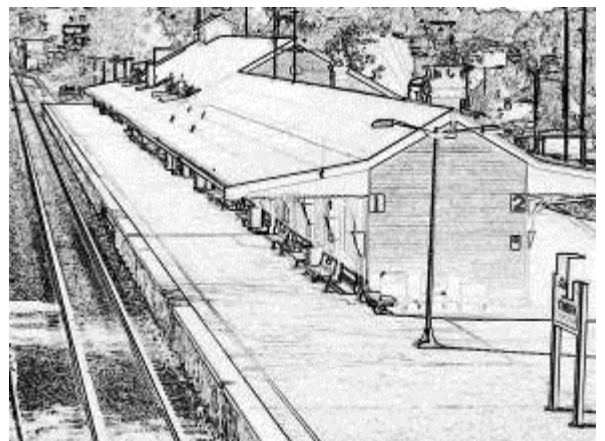
## **I-1.6 Alterations and additions to heritage items**

### **Objectives**

- (1) Protect heritage significance by minimising impacts on the significant elements of heritage items.
- (2) Encourage alterations and additions which are sympathetic to the item's significant features and which will not compromise heritage significance.
- (3) Ensure that alterations and additions respect the scale, form and massing of the existing item.

### **Controls**

- (1) Avoid changes to elevations which are visible to public streetscapes and locate new work to the rear or, behind the original built section.
- (2) Design new work to respect the scale, form, massing and style of the existing building, and not visually dominate or overwhelm the scale of the original building.
- (3) Ensure the original roof line or characteristic roof elements are to remain identifiable and not be dwarfed by the new works.
- (4) Retain chimneys and significant roof elements such as gables and finials where present.
- (5) Ensure that the new work is complementary but can be subtly distinguished without direct copying.
- (6) Complement the details and materials of the original roof including ridge height and slopes without compromising the ability to interpret the original form.
- (7) New materials are to be compatible with the existing finishes. Materials can differentiate new work from original building sections where appropriate, for example by the use of weatherboards where the original building is brick or by the use of "transitional" materials between old and new.
- (8) Retain front verandahs. Reinstating verandahs, and removing intrusive changes is encouraged, particularly where there is physical and/ or historic evidence.
- (9) Avoid cumulative additions and alterations which overwhelm the scale and integrity of the original building.



## New Garages and Sheds

- (10) The following principles should be adopted in relation to new outbuildings:
- ∅ The size of the shed or outbuilding should not dominate the site or adversely affect the setting of the heritage item or conservation areas.
  - ∅ Locate the building to retain as much garden and space around the original and shadow lines.
  - ∅ Use an uncoloured building where possible.
  - ∅ Minimise intrusion of driveways through rear garden spaces.
  - ∅ Use a roof pitch of approximately 15-20 degrees to give a more traditional appearance compared to low flat roofs.
  - ∅ Use a barge roll and fascia with an overhanging eave of 300mm to create a traditional appearance metal roof in relation to similar traditional weatherboard and iron buildings.
  - ∅ Use a material which harmonises with the main building. Metal cladding in a C profile which resembles horizontal weatherboard appearance, or cement traditional profiled weatherboards, are low maintenance options which look good in proximity to traditional timber weatherboard dwellings.
  - ∅ Do not dominate the facade with more than 2 garage doors to the street.
  - ∅ Use a ribbon strip concrete driveway to minimise hard surfacing of driveway areas in the setting of a heritage item.
  - ∅ If windows are proposed ensure that they are proportioned in keeping with the main building, eg. vertically rather than horizontally.

### **I-1.7 Materials, finishes and colours**

#### Objectives

- (1) to ensure appropriate materials, finishes and colours are used which are suitable to the period of a building.

#### Controls

- (1) Materials for repairs and maintenance should match as closely as possible to the original. Materials for new works such as extensions should be compatible and complementary to the original, but do not need to match exactly. Eg. a weatherboard extension may be suitable at the rear of an original sandstone brick house in keeping with outbuildings which were generally of a more lightweight nature.
- (2) Colour schemes are to reflect the period and detail of the property.
- (3) Painting or rendering face brick is generally not supported because it extremely difficult, if not impossible, to return to its original brick.

## I-1.8 Adaptive reuse of heritage items

### Objectives

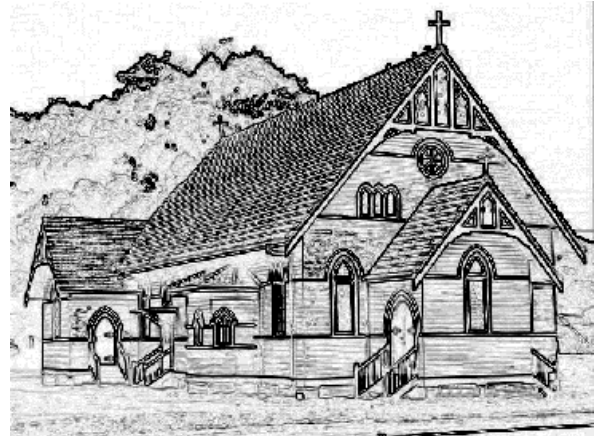
- (1) Encourage heritage items to be used for purposes appropriate to their heritage significance.

### Controls

- (1) Adaptive reuse of heritage buildings can provide the necessary viability for the continued use and maintenance of heritage buildings. Accommodating the new use should involve minimal change to significant fabric in order to protect heritage significance.

Elements or artefacts from the original use (where present) may be required to be retained to assist interpretation. Eg. retain machinery in situ.

- (2) The adaptive reuse of a heritage item should minimise alterations or interference with significant fabric. The changes should enable the continued interpretation of the original use.
- (3) Ensure that new services are sympathetically installed especially where upgrading is required to satisfy fire or BCA requirements.



## I-1.9 Heritage Incentives

### Objectives

- (1) to outline Richmond Valley Council's Heritage incentives policy.

### Controls

- (1) In order to encourage proactive conservation and management of heritage assets in the Richmond Valley Local Government Area, owners of Heritage Items or items within a Heritage Conservation Area shall be offered a number of incentives for the management of heritage. These incentives include:

- Ø free advice from a qualified Heritage Advisor.
- Ø financial assistance through the local heritage grants program.
- Ø reduction in fees for certain types of development applications.
- Ø granting consent for the use of a heritage building, or land containing an item, for a purpose that might otherwise not be permitted by the *Richmond Valley LEP 2012*.

### Waiving of prescribed Development Application fees

- (2) Development Application fees (not including any applicable advertising fee, archiving fee, or the like) will be waived for proposals pertaining to restoration and conservation works which require a formal development consent, and are outside the minor works provisions of clause 5.10(3).

Council's CEO has the discretion to waive Development Application fees in relation to scheduled Heritage Items or items within a Heritage Conservation Area.

## Heritage Advice

- (3) Council receives funding from the Heritage Branch which partly funds the engagement of the services of a qualified Heritage Advisor. One of the key roles of the Heritage Advisor is to provide comment and recommendations in relation to development proposals. Owners and prospective purchasers are encouraged to use Council's free Heritage Advisory service at an early stage of considering and development or alterations, prior to formal plan preparation.



In addition, the Heritage Advisor is available to provide free pre-lodgement advice in relation to proposed alterations/additions and infill development for properties which are heritage listed. The Heritage Advisor is also able to provide free advice regarding suitable management strategies, such as Conservation Management Plan preparation, for properties of heritage significance to achieve best heritage outcomes.

## Local Heritage Assistance Fund

- (4) Each year Council offers owners of Heritage listed properties an opportunity to apply for small grants to assist with the conservation or reinstatement of heritage fabric. This program is partially funded by the Heritage Branch. Grant rounds are generally announced each March/April for funding of projects in the following financial year. To be eligible, the project must have a current heritage listing within the Richmond Valley Council area.

The ongoing provision of the Local Heritage Assistance Fund will be subject to budget provision being made from year to year.

## Additional permitted uses may be considered

- (5) Clause 5.10(10) of the LEP provides an opportunity for Council to grant development consent for proposals that would not otherwise be permitted by the *Richmond Valley LEP 2012*. Eg. a church to residential or commercial cafe/antique shop, art gallery, or tourist use.

Before Council can grant consent to such incentives it must be satisfied that:

- Ø conservation of the heritage item or Aboriginal Place of heritage significance is facilitated.
- Ø the proposal is in accordance with a heritage management document approved by Council.
- Ø consent would require all necessary conservation work identified within the heritage management document to be carried out.
- Ø the proposal would not adversely affect the heritage significance of the item, including its setting.

- Ø the proposed development would not adversely impact on the amenity of the surrounding area.

**(6) Process for Approving a Heritage Management Document containing Additional Development Incentives**

Approval of a Heritage Management Document containing incentives for development that would be otherwise prohibited by the *Richmond Valley LEP 2012* or this DCP must only be granted where the following procedures have been followed. This is to ensure the process is transparent, and that heritage significance and conservation outcomes justify the development incentives being sought.

- Ø the Heritage Management Document must be advertised and notified for a minimum period of 21 days.
- Ø the Heritage Management Document must be reported to Council, along with a summary of submissions received, and detail:
  - § the incentives proposed and how they depart from the standards contained within the LEP and/or DCP.
  - § the conservation measures proposed to be undertaken to justify the development incentives.
  - § an evaluation of whether the heritage significance and conservation measures proposed justify proposed development incentives.

**(7) Types of Development Incentives that may/may not be considered**

Examples of the types of incentives that may be considered are:

- Ø Erection of an additional dwelling on rural land where the heritage item is a dwelling and will be restored and maintained on the land.
- Ø Slightly higher densities for residential flat buildings.

Examples of the types of incentives that would not be supported:

- Ø Rural subdivision below minimum lot size so as to create additional lots with dwelling opportunities.

## **I-1.10 Development in the vicinity of a heritage item**

### **Objectives**

- (1) Encourage development in the vicinity of a heritage item to be designed and sited to protect the significance of the heritage item.

### **Controls**

- (1) Development in the vicinity of a heritage item can have an impact upon the heritage significance of the item, in particular through impacting its setting. Determining whether a property is within the setting of a heritage item is a necessary component of the site analysis for proposals. Advice from Council's Heritage Advisor may be required to determine this. The analysis should consider historical property boundaries, significant vegetation and landscaping, archaeological features, and significant views.

- (a) The adaptive reuse of a heritage item is to minimise alterations or interference.
- (b) Alterations and additions to buildings and structures, and new development are to be designed to respect and compliment the heritage item in terms of building envelope, proportions, materials, colours, finishes and building street alignment.
- (c) Development in the vicinity of a heritage item is to minimise the impact on the setting of the item by:
  - Ø Providing an adequate area around the heritage item to allow its interpretation.
  - Ø Providing an adequate area around the heritage item to allow its interpretation.
  - Ø Retaining original or significant landscaping associated with the heritage item.
  - Ø Protecting and allowing the interpretation of archaeological features associated with the heritage item.
  - Ø Retaining and respecting significant views to and from the heritage item.

### **I-1.11 Development in the Casino Central Business District Conservation Area**

#### **Objectives**

- (1) Retain original intact shop fronts, and any remaining evidence of original shopfronts.
- (2) Encourage reinstatement of traditional features and sympathetic new work.
- (3) Encourage use of traditional colour schemes based on the period of the building.
- (4) Encourage signs that complement, rather than dominate, the architectural characteristics of the building.
- (5) Prevent proliferation of signs on buildings.
- (6) Encourage infill development and the replacement of non-contributory buildings, see Figure F9.1, to reflect the historic character of the precinct and capturing nearby characteristics of contributory buildings.
- (7) Do not locate service elements (solar panels, solar heating, antennas, satellite dishes, air conditioning units and the like) where they are visible from the street.

#### **Controls**

- (1) The Casino Central Business District Conservation Area extends along Barker and Walker Streets Casino, see Figure I-1.1. This commercial precinct comprises buildings from the Victorian, Edwardian and Inter War periods. While most shopfronts at ground level have been altered, the above awning period detail has in the main been retained.

Important considerations for future proposals are sympathetic facade treatments, signage and colour schemes. Council has detailed guidelines for

alterations and additions, and colour schemes for buildings from a Main Street Study conducted by the former Casino Council in 1992.

### **Facade treatment**

- (2) Retain original elements and features, especially facades above awning level, of contributory buildings and heritage listed items (see Figure I-1.1).
- (3) Encourage reinstatement of front verandahs and awnings based on historic information.
- (4) Where original shopfronts, verandahs or awnings have been altered, their replacement should be based on historic information and/or the interpretation of period details.
- (5) Additional storeys can be considered if:
  - Ø set at least 10 metres back from road frontage(s).
  - Ø the design and materials used for the extensions minimise detrimental impact on contributory building facades.
- (6) Service elements (solar panels, solar heating, antennas, satellite dishes, air conditioning units and the like) are to be placed to the rear of the properties or on rear outbuildings, preferably so they are not visible from Barker or Walker Streets.
- (7) Rendering or painting face brick is not supported.

### **Infill development**

- (8) Infill development should:
  - Ø Design infill and replacement buildings are to reflect the general historic character of the precinct and capture characteristic elements from contributory buildings and heritage items in the vicinity, see Figure I-1.1.
  - Ø Maintain a two storey building height at the street frontage. This two storey height restriction may be relaxed where such construction is setback 10 metres from road frontages. Refer to facade treatment above.
  - Ø Where sites are amalgamated, use articulation to reflect the former subdivision pattern.
  - Ø Maintain a balance of solid areas over voids—Large areas of plate glass curtain walls are generally not suitable and may not be supported.
  - Ø Use awnings and verandahs to reduce the bulk and scale of buildings.
  - Ø Use of articulation in facades such as string courses, cornices, pilasters and other features that break up the scale of facades is encouraged.

### **Signage**

- (9) Signage should:
  - Ø Painting of facades in bold, primary, vivid, intense or neon colours is not supported.
  - Ø Corporate identify should be expressed through limited area of signage in appropriate locations, however, Corporate colours may also need to be amended as a requirement of consent, to a more subtle version of the standard colour palette in order to be sympathetic to the values of the Heritage Conservation Area or Heritage Item context.



Figure I-1.1 Boundary of the Casino Central Business District Conservation Area and identification of contributory buildings.

### Local Site Specific Exemptions from Requiring Consent

- (9) An applicant may request that Council review the need for development consent, under Clause 5.10(3) of the LEP. Council needs to be satisfied that the proposed development is of a minor nature or is for maintenance and will not adversely affect heritage significance.

This process can be simple, reflecting minor one-off proposals, or complex, capturing a number of minor works or recurrent works at the site. It is for the purposes of the later that Council and the Owner of a property may enter into an agreement, known as a *Local Site Specific Exemption*, to exclude certain identified works from requiring development consent.

#### (10) What should be included in a Local Site Specific Exemption

Such an agreement should include:

- ∅ a description of the works covered by the Local Site Specific Exemption,
- ∅ conditions that must be employed to enable the exceptions to be used,



- Ø a description of the land to which the agreement applies,
- Ø a statement of heritage significance, and
- Ø a period of time after which the agreement will expire.

**(11) Agreement runs with the land**

Once an agreement has been endorsed it will run with the land. This means a new owner of that property is not required to enter into a new agreement for them to be used.

**(12) Withdrawal of Agreement**

Council or the Owner may at any time withdraw support to a *Local Site Specific Exemption*. Such a withdrawal needs to be in writing and is effective immediately. Where it is Council that withdraws its support for an agreement it shall identify the reasons in its written notice.

## **I-1.12 Aboriginal Cultural Heritage**

### **Objectives**

- (1) To outline planning regulations as related to the management and protection of Aboriginal Cultural Heritage.
- (2) To outline Council expectations when undertaking Due Diligence assessment of Cultural Heritage.

### **Controls**

- (1) Richmond Valley Council acknowledges the peoples of the Bundjalung Nation as the traditional custodians of this region. These traditional owners include the people of the Banjalang, Birihnbal, Galibal, Nyangbal and Wiyabal tribes who engaged in a rich and complex ritual life with language, customs, spirituality and law – the heart of which was connection to country.

Aboriginal cultural heritage consists of places and items that are of significance to Aboriginal people because of their traditions, observances, lore, customs, beliefs and history. It provides evidence of the lives and existence of Aboriginal people before European settlement through to the present. Aboriginal cultural heritage is dynamic and may comprise physical (tangible) or non-physical (intangible) elements. It includes things made and used in traditional societies, such as stone tools, art sites and ceremonial or burial grounds. It also includes more contemporary and/or historical elements such as old mission buildings, massacre sites and cemeteries. Tangible heritage is situated in a broader cultural landscape and needs to be considered in that context and in a holistic manner.

While a number of sites of Aboriginal archaeological and heritage significance are known and have been recorded within the Richmond Valley LGA, specific surveys for Aboriginal objects have not been done over much of the area. Therefore, there is potential for Aboriginal cultural heritage to exist in many locations even though they have not been formally recorded.

## Aboriginal Heritage and the LEP

- (2) Clause 5.10(8) of the Richmond Valley LEP requires development consent to carry out development within an Aboriginal place of heritage significance. The dictionary defines an Aboriginal place of heritage significance as land identified in an Aboriginal heritage study adopted by Council. At this point Council has not undertaken an Aboriginal heritage study. It is a high priority within Council's Community Strategic Plan but subject to resourcing. As such, and for the purposes of the LEP, clause 5.10(8) will be ineffective until such time as a Study has been prepared, undergone community consultation, been accepted by the Aboriginal community and adopted by Council.

## Aboriginal Heritage and the National Parks and Wildlife Act

- (3) The *National Parks and Wildlife Act 1974* (NPW Act), administered by the Office of Environment and Heritage (OEH), is the primary legislation for the protection of some aspects of Aboriginal cultural heritage in New South Wales.

Part 6 of the NPW Act provides specific protection for Aboriginal objects and declared Aboriginal places by establishing offences of harm. There are a number of defences and exemptions to the offence of harming an Aboriginal object or Aboriginal place. One of the defences is that the harm was carried out under an Aboriginal Heritage Impact Permit (AHIP)

### (4) Aboriginal objects

Aboriginal objects are physical evidence of the use of an area by Aboriginal people. They can also be referred to as 'Aboriginal sites', 'relics' or 'cultural material'.

Aboriginal objects include:

- ∅ physical objects, such as stone tools, Aboriginal-built fences and stockyards, scarred trees and the remains of fringe camps
- ∅ material deposited on the land, such as middens
- ∅ the ancestral remains of Aboriginal people.
- ∅ Handicrafts made by Aboriginal people for sale are not 'Aboriginal objects' under the NPW Act.

### (5) Aboriginal places

The NPW Act can also protect areas of land that have no Aboriginal objects, that is, they may have no physical evidence of Aboriginal occupation or use. These areas can be declared 'Aboriginal places'.

The Minister can declare an area to be an 'Aboriginal place' if the Minister believes that the place is or was of special significance to Aboriginal culture. An area can have spiritual, natural resource usage, historical, social, educational or other type of significance.

### (6) Aboriginal Heritage Information Management System (AHIMS) Database

OEH keeps a register of notified Aboriginal objects and declared Aboriginal places in NSW. The register is called the Aboriginal Heritage Information Management System (AHIMS).

You can search AHIMS to discover if an Aboriginal object has been recorded, or an Aboriginal place declared, on a parcel of land. Or use the AHIMS Web Service (AWS) to carry out an internet-based search for information about

recorded Aboriginal objects, gazetted Aboriginal places and features of significance.

Please note that surveys for Aboriginal objects have not been done in many parts of NSW. Aboriginal objects may exist on a parcel of land even though they have not been recorded in AHIMS.

If you discover something you believe should be registered as an Aboriginal object, contact the Aboriginal Heritage Information Unit.

**(7) Due Diligence**

Anyone who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they later harm an object.

The *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*, can be used by individuals or organisations who are contemplating undertaking activities which could harm Aboriginal objects. This code will provide a process whereby a reasonable determination can be made as to whether or not Aboriginal objects will be harmed by an activity, whether further investigation is warranted and whether the activity requires an AHIP application.

Due diligence may also be exercised by complying with industry-specific codes of practice that have been adopted under the *National Parks and Wildlife Regulation 2009*.

For further information of undertaking a Due Diligence assessment refer to the Code. A copy of the Code can be downloaded from the Office of Environment and Heritage website at:

<http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>

**(8) Aboriginal Heritage Impact Permit (AHIP)**

An Aboriginal Heritage Impact Permit (AHIP) is the statutory instrument that OEHL issues under section 90 of the *National Parks and Wildlife Act 1974* to manage harm or potential harm to Aboriginal objects and places.

When administering its statutory functions under Part 6 of the NPW Act, OEHL requires proponents to consult with Aboriginal people about the Aboriginal cultural heritage values of Aboriginal objects and/or places within the proposed project area.

For the purposes of these requirements community consultation must be undertaken in accordance with the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*. This guideline establishes a process for the open and honest communication between the proponent and Aboriginal people who have cultural heritage knowledge relevant to the proposed project area.

**(9) Integrated Development**

Any development requiring an AHIP is integrated development under section 91 of the EP&A Act. As such the applicant is required to tick the appropriate box on the development application form and submit the required information for the issue of an AHIP. The application is then referred to the Office of Environment and Heritage for their general terms of approval.

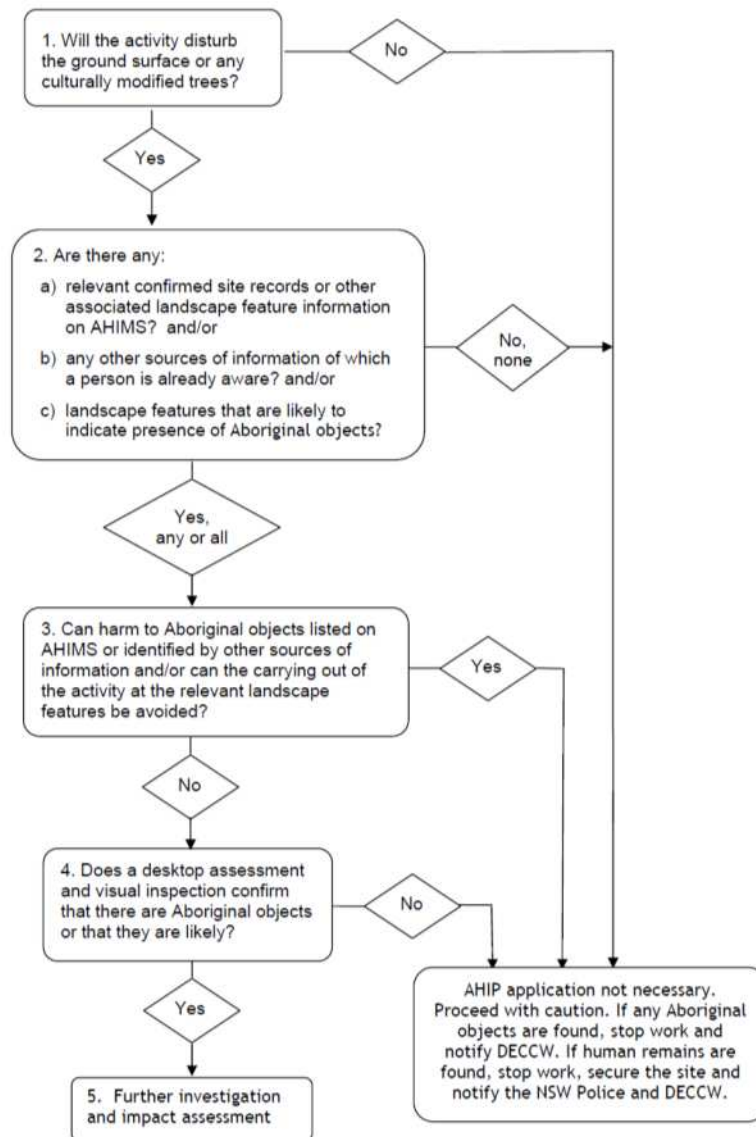



Figure I-1.2 The Generic Due Diligence Process (extracted from *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (2010))

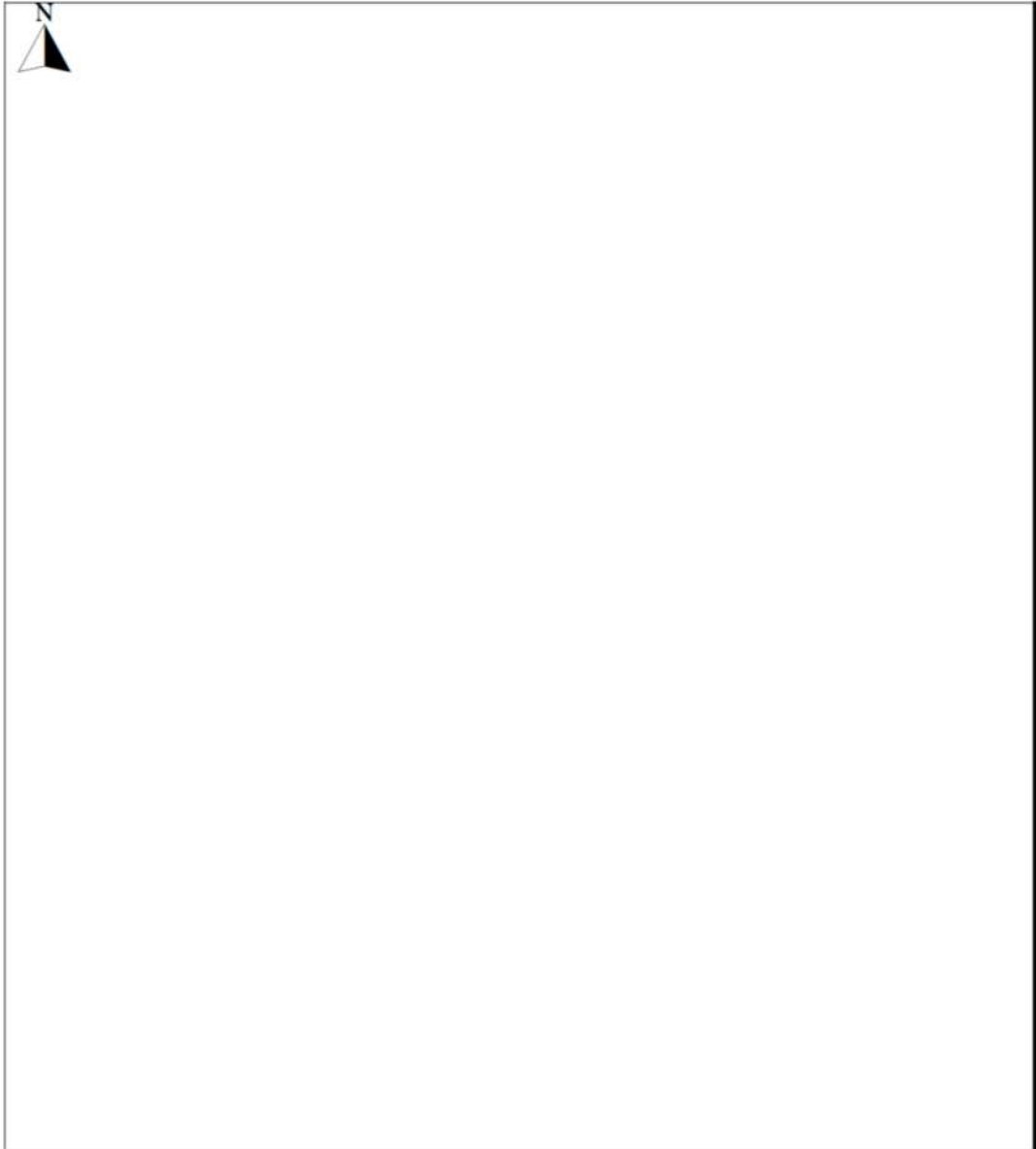
## Appendix I-1.1 – Application Form—Minor Works or Maintenance Exceptions

 <p>Richmond Valley Council</p>	<p><i>Richmond Valley Local Environmental Plan 2012</i></p>
<h3>Minor Works or Maintenance to a Heritage Item or Within a Heritage Conservation Area</h3> <h2>EXCEPTIONS APPLICATION FORM</h2>	
<p>Clause 5.10(3) of the <i>Richmond Valley Local Environmental Plan 2012</i></p>	
<p><b>OWNER'S DETAILS</b></p>	
<p>NAME:</p>	<input type="text"/>
<p>ADDRESS:</p>	<input type="text"/>
<p>TOWN:</p>	<p>POSTCODE: <input type="text"/></p>
<p>DAYTIME PHONE NUMBER:</p>	<input type="text"/>
<p>EMAIL ADDRESS:</p>	<input type="text"/>
<p><b>PROPERTY DETAILS &amp; ADDRESS</b></p>	
<p>STREET &amp; NUMBER:</p>	<input type="text"/>
<p>LOCALITY:</p>	<input type="text"/>
<p>LOT &amp; DEPOSITED PLAN(s) (DP) (the property(ies) can also be identified on The Map)</p>	<input type="text"/>
<p><b>HERITAGE STATUS</b></p>	
<p><input type="checkbox"/> Heritage Item – Local Listing</p>	<p><input type="checkbox"/> Within a Heritage Conservation Area</p>
<p><input type="checkbox"/> Heritage Item – State Listing</p>	
<p><b>THE PROPOSAL</b></p>	
<p>PROPOSED WORKS: (Describe the work being undertaken, to which an exception to development consent is being sought under clause 5.10(3) of the LEP).</p> <p><b>Note.</b> Only maintenance work or work of a minor nature can be excepted, and only where it will not adversely affect the heritage significance of the item, place, object, site or area.</p>	<input type="text"/>
<p>Clause 5.10(3) Application Form – Minor Works or Maintenance to a Heritage Item or Within a Heritage Conservation Area (2015)</p>	

### SKETCH OF THE LAND

WHERE ARE THE WORKS PROPOSED ON THE LAND?

(Sketch a map showing where the works will be undertaken on the land. Additional maps, site plans etc. can be attached. Distances to identifiable features, such as boundaries, creeks, buildings etc., should be included)



Owner  
Signature(s)

Date

Date

Clause 5.10(3) Application Form – Minor Works or Maintenance to a Heritage Item or Within a Heritage Conservation Area (2015)



**Richmond Valley Local Environmental Plan 2012**

**Minor Works or Maintenance to a  
Heritage Item or Within a Heritage  
Conservation Area  
FACT SHEET  
EXCEPTIONS APPLICATION FORM**

Clause 5.10(3) of the *Richmond Valley Local Environmental Plan 2012*

Clause 5.10(3) of the *Richmond Valley Local Environmental Plan 2012* provides exception to requiring development consent for minor works or maintenance of heritage items. The clause provides:

**(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.

This form can be used to submit details of minor works or maintenance that are proposed to be carried. Please note that work should not commence until a written reply has been received from Council. The types of minor work that might be excepted from development consent include (but are not limited to):

- replacing fences (like for like)
- repainting buildings (need to include a copy of colour patches and photos showing how the colour scheme will be applied)
- letterboxes
- replacing guttering (using same or similar gutter profile)
- replacing rooves
- restumping buildings
- removing trees (although removing significant trees will require a development consent)

Council provides a free Heritage Advisory service to assist owners of heritage on the best ways to maintain their property. Site visits can be arranged with Council's Heritage Advisor when she visits the Council area on the first Tuesday of every other month (Feb, Apr, Jun, Aug, Oct, Dec).

Contact Council on (02) 66600300 or by email at [council@richmondvalley.nsw.gov.au](mailto:council@richmondvalley.nsw.gov.au) for additional information or to make an appointment.





# *Richmond Valley Development Control Plan 2015*

## **Part I-2. Development In, On, Over or Under a Public Road**

This DCP applies to all land within the Richmond Valley Local Government Area.

Date adopted by Council:  
22 December 2015

Effective Date:  
4 January 2016

Amendments:  
Nil

The term public road is defined within the *Roads Act 1993* and applies to public lands declared by reservation to be road. Public roads therefore form a network of corridors that provide access for the conveyance of vehicular, pedestrian, and stock traffic throughout the landscape. Public roads may be:

- ∅ formed—containing constructed and maintained carriageway, or
- ∅ unformed—there has never been a constructed and maintained carriageway—these are commonly known “paper roads”.

A public road may also be leased:

- ∅ as an enclosure permit—where an unformed road is leased to an adjoining property owner and is often fenced into the property;
- ∅ for commercial purposes—such as alfresco dining, footpath trading, roadside vending; and
- ∅ for encroachments of structures—such as awnings over the footpath, or gantries to carry services from one side of the road to the other.

All works and activities within public roads need the consent of the owner. They may also require development consent and/or some other approval, such as under the *Roads Act 1993*, or *Local Government Act 1993*. It is the purpose of this Chapter to explain the minimum standards for construction in, on, over or under a public road and to identify Council's consent or approval requirements.

## **I-2.1 General Objectives**

The general objectives of this Chapter are to:

- (1) identify development standards for various types of construction where erected in, on, over or under a public road.
- (2) outline Council's administrative requirements for the erection of structures in, on, over or under a public road.
- (3) identify Council requirements for kerbside trading.

## **I-2.2 Roads Authority**

### **Objective**

- (1) To identify the Roads Authority for roads of particular classification or status and whom is responsible for regulating various kerbside and in road activities.

### **Controls**

- (1) Public road reserves consist of public land, so they are available for the entire community to use for access whether formed, unformed, or leased. They are however also owned and controlled by either Council or the Department of Lands, depending upon how they were originally created and whether they have been dedicated.

Generally the rule of thumb for ownership of a public road is:

- ∅ unformed—normally Crown lands being owned and controlled by the Department of Lands, while
- ∅ formed—most often dedicated under the care and control of the local council.

This rule of thumb isn't correct in all cases so the status of a particular public road reserve should be checked with Council or the Department of Lands prior to undertaking any works or activities.

### **(2) Classified Roads**

Classified Roads are defined within the *Roads Act 1993* and include freeways, highways and main roads. The following roads within Richmond Valley Council's area are Classified Roads:

- ∅ Pacific Highway,
- ∅ Bruxner Highway,
- ∅ Summerland Way,
- ∅ Casino-Coraki Road
- ∅ Coraki-Woodburn Road, and
- ∅ Woodburn-Evans Head Road
- ∅ Bentley Road (Lismore-Kyogle)

The *Roads Act 1993* declares that the land on which a Classified Road is situated is owned by the local roads authority (council), but the road infrastructure constructed within the public road reserve may be owned and controlled by NSW Roads and Maritime. As such works and activities within a Classified Road will require owner consent from the local council, but concurrence will also be required from NSW Roads and Maritime to

access/intersect the road infrastructure, or to do works that may impact upon the functionality and safety of the road infrastructure.

**(3) Roads Act Approvals**

All works and structures to be carried out or erected within a public road require approval under section 138 of the *Roads Act 1993*. This includes works in, on, over or under a public road. Such approvals are required from the appropriate roads authority, being either Council, Roads and Maritime Services, or the Crown, depending on the road ownership and whether it is a Classified Road.

## **I-2.3 Structures in, on, over or under a Public Road**

### **Objective**

- (1) To establish the minimum requirements for private/commercial structures to be erected in, on, over or under a public road.

### **Controls**

#### ***Roads Act 1993***

- (1) As a general rule all construction in a road reserve requires Section 138 Approval under the Roads Act.

Consideration will be given to the following when determining such applications.

#### **Projections for protection from the sun or for decoration**

- (2) Projections designed or intended as protection from the sun, and projections of a decorative nature such as cornices, eaves, sills, mullions and architraves, may project beyond the alignment of a public road if the road reserve is not less than 12.2 metres wide and the projections:
  - (a) extend not more than 450 mm beyond the road alignment,
  - (b) are at least 2600 mm above the pathway level of the road over which they project (including any fittings, fixtures, advertisements or the like),
  - (c) are no closer than 600 mm to any kerb and gutter, table drain or carriageway located within the road reserve, and
  - (d) are constructed of masonry, reinforced concrete or other approved fire-resisting material.

#### **Sunblind canopies, sun louvres and the like**

- (3) Sunblind canopies, sun louvres and the like may project beyond the alignment of a public road and the projections:
  - (a) in their fully open position, extend not more than 450 mm beyond the road alignment,
  - (b) are at least 2600 mm above the pathway level of the road over which they project (including any fittings, fixtures, advertisements or the like),
  - (c) do not extend any closer than 600 mm to any kerb and gutter, table drain or carriageway located within the road reserve, and
  - (d) are constructed of approved non-combustible material throughout.

### **Footings under public roads**

- (4) Footings may project beyond the road alignment to the extent of not more than:
- (a) 450 mm—if the projecting parts are more than 1350 mm below pathway level at the road alignment, and
  - (b) 750 mm—if the projecting parts are more than 3000 mm below pathway level at the road alignment,
- but in no case may the projections extend under the carriageway of the road.

### **Traps on sewerage service pipes**

- (5) Traps on sewerage service pipes must not be installed in a public road.

### **Pipes and services**

- (6) Pipes and services must not project beyond the road alignment, except as provided.

Rainwater heads may project not more than 450 mm and rainwater downpipes may project not more than 150 mm above a height of 2700 mm above the pathway level.

In the case of an existing building, the council may consent to the projection of essential service pipes.

### **Flagpoles**

- (7) Flagpoles may project beyond the road alignment if:
- ∅ no part of a pole, or a flag suspended from it, shall be located within 3600 mm of the pathway level of the road below the pole,
  - ∅ it does not project over the carriageway of the road, and
  - ∅ no interference with public services is caused.
  - ∅

### **Construction of projections**

- (8) Projections beyond the road alignment are to be constructed so that they may be removed at any time after their erection without causing the building, of which they are part, to be structurally unsafe, and without causing a reduction in the required fire-resistance rating of any structural member of the building.

### **Awnings or Verandahs over roads**

- (9) The council may require that any or all awnings or verandahs proposed to be erected over a public road be of a cantilever type.

### **(10) Cantilevered awnings or verandahs**

The width of a cantilever awning or verandah that extends beyond a road alignment, from the alignment of the road to the outside edge of the fascia plate is to be at least 600 mm less than the width of the footway over which it is to be erected. However, the decorative treatment on the fascia plate of any such awning may project for a distance not exceeding 75 mm.

The maximum width of a cantilever awning that extends beyond the road alignment must not exceed 3660 mm.

No part of the awning or verandah (including any fittings, fixtures, advertisements or the like) shall be less than 2600 mm above the pathway level of the road over which it projects.

Refer to Figure I-2.1 for details of canterlever awnings and verandahs.

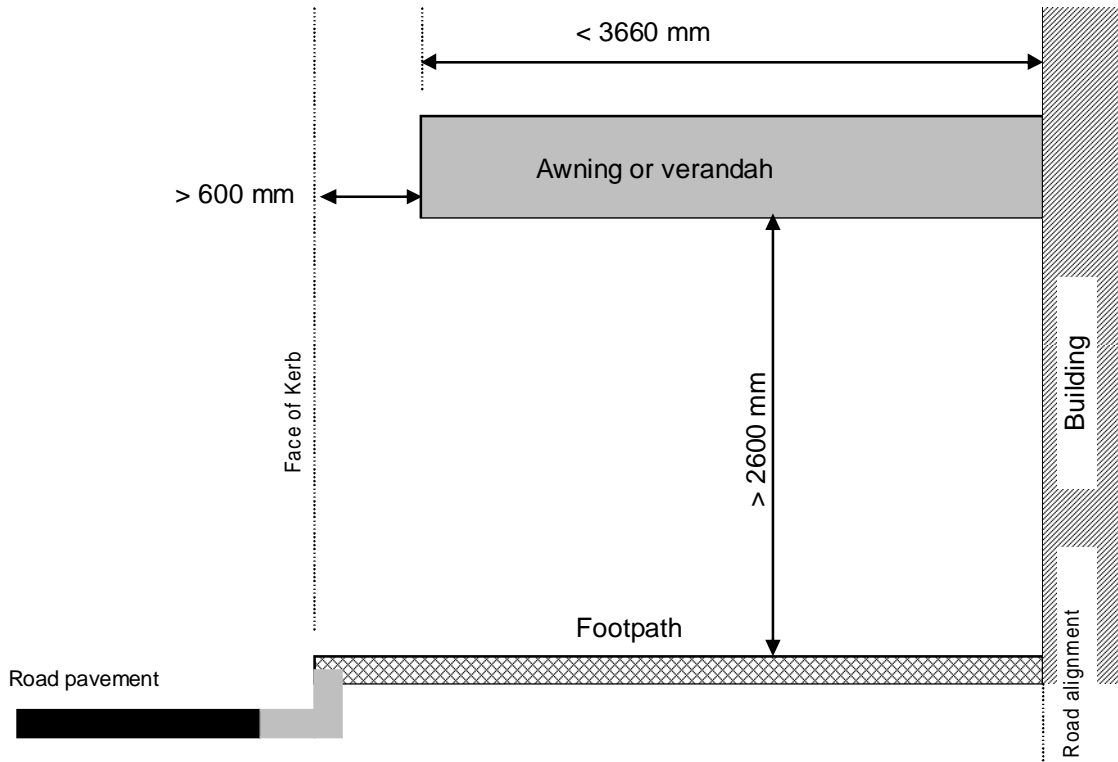


Figure I-2.1 Typical elevation view of development standards for canterlever awnings or verandahs over public roads.

**(11) Awnings or verandahs supported by posts**

The width of an awning or verandah that extends beyond a road alignment, from the alignment of the road to the outside edge of the fascia plate, is to be at least 600 mm less than the width of the footway over which it is to be erected. However, the decorative treatment on the fascia plate of any such awning may project for a distance not exceeding 75 mm.

No part of the awning or verandah (including any fittings, fixtures, advertisements or the like) shall be less than 2600 mm above the pathway level of the road over which it projects.

The supporting posts of the awning or verandah must maintain a minimum clearance of 2500 metres from the road alignment and be setback at least 1100 mm from the face of kerb.

Refer to Figure I-2.2 for details of awnings and verandahs supported by posts.

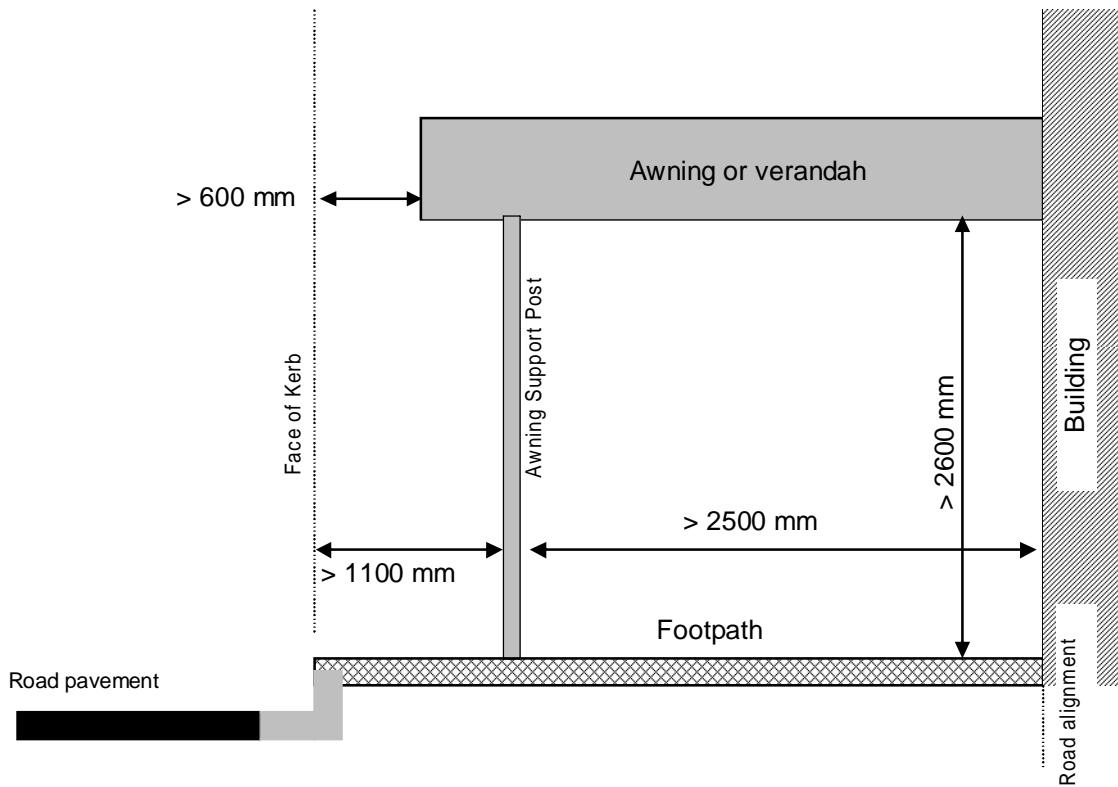


Figure I-2.2 Typical elevation view of development standards for awnings or verandahs supported by posts over public roads.

## I-2.4 Footway activities, Kerbside dining, and other trading

### Objective

- (1) Outline Council's requirements and expectations for Footway Activities, kerbside dining and other trading.
- (2) To protect the public health and safety of the community with the siting and design of footway activities, kerbside dining and other trading, and the construction of structures.

### Controls

- (1) Footway activities consist of street trading, street stalls and fundraising activities from within a public road.

While acknowledging the importance of footway activities, Council must be mindful that footpaths are available for everyone to use and it is critical that it is understood that commercial use of public space is a privilege not a right.

The essential key to an effective accessible pedestrian system throughout shopping precincts is the development and maintenance of a continuous accessible path of travel. This should extend out from the road alignment, the road reserve boundary shared with the adjacent properties, to provide a consistent footpath environment inclusive of the needs of the community, including older persons or people with a disability. In order to achieve this, any street furniture, signs, traders, activities or displays should be located

towards the kerbside not along the road alignment. This is consistent with best practice guidelines issued by the Human Rights and Equal Opportunity Commission.

### **Suitable and Unsuitable Locations**

- (2) Footway activities may be approved in all Richmond Valley Council public roads under the control and/or management of Council, where local conditions are favourable for their operation.

Footway activities are not permitted in areas where there exists high to very high pedestrian use or other public uses, such as adjacent to taxi ranks, bus stops, loading zones, fire hydrants, within potentially hazardous locations such as on street corners or an unprotected elevated location, or outside emergency exits.

The location of landscaping, trees, artwork, street furniture and other public infrastructure, as well as the width of the street and footpath, may preclude the establishment of footway activities. Furthermore, such things as *Alcohol Free Zones* will restrict the capacity of an activity to sell or enable the consumption of alcohol within a public road.

Another consideration will be *Crime Prevention Through Environmental Design* (CPTED) which provides guidelines on the siting of development but also how it should be designed to reduce the potential for crime. See Chapter I-10 for further details.

### **Activities to be located within Trading Zone**

- (3) All street trading activities, street stalls and other fundraising activities should be located within the "Trading Zone" as depicted within Figure I-2.3.

Exceptions to this requirement may be extended for kerbside dining or alfresco dining where the trading zone is proposed to be extended beyond the gutter/road carriageway as part of the development application, or in areas with low pedestrian activity.

### **Pedestrian Zone to be Clear of Obstructions**

- (4) All footway activities, commercial trading or other uses of footpaths, must retain a clear pedestrian zone that is free of obstructions so as to maintain a safe and efficient passageway.

The recommended minimum width of the pedestrian zone shall be 1.8 metres, measured from the road alignment (the front boundary adjacent to the public road) or shopfront into the road reserve, refer to Figure I-2.3.

### **Kerbside Dining**

- (5) Kerbside dining will require approval under section 125 of the *Roads Act 1993*, Development consent under the EP&A Act, and where permanent structures are proposed, a section 138 approval under the *Roads Act 1993*.

The following matter will be considered by Council when determining any consent or approval for kerbside dining:

**(a) Kerbside dining to be located adjacent to primary food premises**

A kerbside dining area shall only be permitted where there is an existing or proposed food premises within the building located immediately adjacent to the proposed kerbside dining area.

**(d) Safety/crash protection**

A kerbside dining area is not permitted in a position which, in the opinion of Council, compromises the safety of any users or the kerbside area or will create conflict between pedestrians, vehicles and diners.

Crash protection barriers and/or clearance areas from the kerb must be provided when additional protection for diners is required. These requirements will be determined by Council depending upon the type of road which the proposal fronts, existing car parking arrangements, location of existing services, the condition of the existing footpath and the like.

In the event a crash protection barrier is required by Council, certification from a suitably qualified professional shall be submitted demonstrating the barrier has been designed and constructed so as to maximise safety of diners and vehicle occupants.

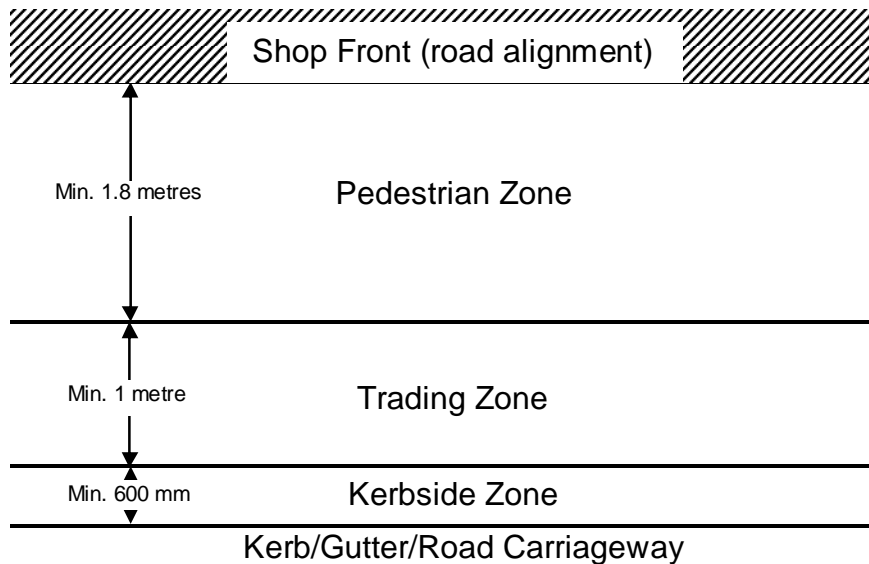


Figure I-2.3 Minimum dimensions for pedestrian zone, trading zone and setback from kerb (birds eye view).

**Policies and Requirements**

(6) Council has several Policies/Procedures relating to Structures and Kerbside Dining on Council owned and controlled land/roads. These being:

- Ø Operational Procedure No. 15.5 – Structures Encroaching Over Land which is Owned or Controlled by Council (Authorised 14 July 2015).
- Ø Council Policy No 15.1 – Kerbside Dining (Adopted by Council on 23 June 2015).
- Ø Operational Procedure 15.1 – Kerbside Dining (Authorised 21 April 2015)

**(7) Leases and licences**

Council may authorise footway activities, kerbside dining, or structural encroachments (such as shop front awnings) within a public road subject to a lease or licence agreement.



Such leases or licensing will be done in accordance with section 125 &/or 138 of the *Roads Act 1993*.

Council may adopt a Policy in regard to the workings of such leases or licenses. However, generally speaking, a licence will be required to undertake footway activities using moveable furnishings and fixtures, while a lease may be required if the fixtures and furnishings are permanent. Notwithstanding, such arrangements will be at the discretion of Council.

**(8) Public Liability and Professional Indemnity**

Council requires that all activities in, on, over or under public roads, or within public places generally, require its authorisation but also relevant consents and approvals prior to commencement.

The person or organisation conducting the activity shall is required to hold current public liability insurance, workers compensation insurance, and professional indemnity insurance, with copies of certificates of currency to be periodically submitted to Council.

**Note.** The insurances will need to show the footway activity/kerbside dining as a coverage on the policies. Public Liability insurance cover of \$20,000,000 is the current minimum requirement.

**(9) Periodic Inspection of Structures**

Any private structures constructed in, on, over or under a public road must be maintained to a safe standard at all times by the owner of the premises to which it is connected.

Council may require such structures to be covered by a lease or licence and it may be a requirement for such to be periodically inspected and certified by a suitably qualified professional.

Council may adopt a policy in regards to the leasing or licensing of such premises and for periodic inspections.

To minimise Council's Public Liability exposure for such structures over the public road, it will require registration of a Positive Covenant over the adjacent privately owned land.

**(10) Development application requirements**

Where development consent is required for kerbside trading, or for a structure in, on, over or under a public road, the application should contain:

- Ø a completed development application form accompanied by the relevant fee and per Council's Revenue Policy.
- Ø Consent for the lodgement of the development application will be required from the owner (usually Council), and the owner of the adjoining premises within which the principal business is operated.
- Ø site plans identifying the relevant areas in relationship to the applicant's premises.
- Ø plans of the proposed kerbside dining area, whether it be for a permanent structure, or a moveable area including the location of all structure, street furniture, bollards, barriers, walls, tables and the like.
- Ø a plan identifying any proposed landscaping.

- ∅ consideration of the condition and grade of the footpath and whether any improvements to the footpath are required, and any potential loss of car parking as a result of the proposal.
- ∅ for larger scale developments, artist impressions, sketches and elevations of the proposed dining area may be required.
- ∅ an assessment regarding the impact that the dining area will have upon vehicular movements and pedestrian movements, particularly for the visually impaired, disabled and elderly.
- ∅ details of the premises seeking approval for kerbside dining such as hours of operation, service of alcohol etc.
- ∅ where necessary, an assessment of the proposed development in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).
- ∅ All plans supplied must be to scale, and clearly identify furniture and other structures, include dimensions for such things as the pedestrian zone, trading zone and kerbside zone, and identify the location of the principal premises.

In granting development consent, Council may impose conditions requiring:

- ∅ the dining facilities to be moveable in nature.
- ∅ the facility may only be operated at certain specified times.
- ∅ the consent is subject to having a current lease or licence arrangement with Council.
- ∅ whether the consumption of alcohol will be permitted in the kerbside dining area.

# *Richmond Valley Development Control Plan 2015*

## **Part I-3. Setbacks and Building Height**

This DCP applies to all land within the Richmond Valley Local Government Area.

Date adopted by Council:  
22 December 2015

Effective Date:  
4 January 2016

Amendments:  
Nil

Included in this Chapter are:

- Front Building Line Setbacks
- Side and Rear Boundary Setbacks
- Foreshore Building Lines
- Building Height Plane

This Chapter contains development restrictions resulting from the establishment of setbacks for development from road frontages, side and rear boundaries and foreshores. It also includes restrictions on building heights resulting from the LEP Height of Buildings Map, and the establishment of a Building Height Plane (BHP).

Setback restrictions are used:

- Ø to ensure that development is sympathetic with the character of the locality,
- Ø to enable sufficient space for landscaping,
- Ø as a transition between development and the public domain,
- Ø for fire protection, and
- Ø to minimise land use conflict.

Building height restrictions and the building height plane are used to:

- Ø restrict the scale of development, and
- Ø reduce the impact of development on adjoining properties from overshadowing, loss of privacy, and bulk and scale.

### I-3.1 General Objectives

The general objectives of this Chapter are to:

- (1) adopt consistent front building line setbacks throughout the LGA that provide for streetscape and neighbourhood amenity, while having regard to physical constraints as may occur.
- (2) adopt minimum side and rear boundary setbacks having regard to neighbourhood amenity, height, design and scale of proposed development, and the *Building Code of Australia* ("BCA").
- (3) adopt a foreshore building line to setback development fronting waterways so as to ensure that it will not impact on natural foreshore processes or affect the significance and amenity of the area.
- (4) establish a building height plane to minimise the impact of development upon neighbouring sites from taller construction.

### I-3.2 Setback Types

#### Objective

- (1) to identify the various types of setback required by this DCP.

#### Controls

- (1) Setbacks are parts of land within which development is not permitted to be constructed or established. This DCP defines a number of setback types these being:
  - Ø Front Building Line Setbacks (also known as the Building Line),
  - Ø Side and Rear Boundary Setbacks, and
  - Ø Foreshore Building Line Setbacks (also referred to as the Foreshore Building Line).

### I-3.3 Front Building Line Setbacks

#### Objective

- (1) to establish minimum front building line setbacks for development types.
- (2) to provide for safe vehicle egress from properties.
- (3) to accommodate future road widening, bushfire hazard separates and heritage into the minimum setback standard
- (4) retain sufficient land forward of the building line for landscaping and creation of attractive streetscapes.

#### Controls

- (1) Front Building Line Setbacks are measured from the boundary with a road alignment.

**Note.** *Road alignment* means those boundaries of an allotment that immediately adjoin a public road, whether that public road is formed or unformed.
- (2) The distance of the setback is the lesser of the following:
  - (a) the distance defined within Table I-3.1, or
  - (b) the distance defined by measuring to the forward most part of an existing building on the land, including: walls; decks; staircases; posts; columns; patios; coping; and the like, but not eaves.

**Note.** For the purposes of defining setbacks in this DCP, the term building excludes structures such as fences, screens, retaining walls, letterboxes etc.

### Variations to Front Building Line Setbacks—Residential Development

- (3) Variations to the Front Building Line Setbacks established within Table I-3.1 may be granted for residential development where:
- (a) where the property has more than one frontage to a road alignment (dual road frontage)—refer to I-3.3(4) Dual Road Frontages; or
  - (b) where residential buildings on adjoining properties are located forward of the building line—refer to I-3.3(9) Regard to Immediately Adjoining Buildings; or
  - (c) the variation consists of an Articulation Zone—refer to I-3.3(12) Articulation Zone Variation.

#### (4) Dual Road Frontages

Residential development on land having frontage to more than 1 road alignment (dual road frontage), whether those roads are formed or unformed, may request a Front Building Line Setback variation of up to 50% for the secondary frontages.

**Note.** For the purposes of this variation, at least one frontage will be treated as a Primary Frontage.

- (5) A variation may only be granted on the secondary frontages where:
- (a) the development is for residential development,
  - (b) it can be demonstrated that the neighbourhood amenity will not be affected by the variation,
  - (c) all existing and proposed structures on the property conform to the minimum building line setbacks contained within Table I-3.1 for the Primary Frontage(s), and
  - (d) the frontage is not subject to identified road widening.

**Note.** a building line variation to more than one frontage may be rejected.

- (6) Council will determine on merits whether a frontage is primary or secondary have consideration of such things as:
- (a) width of road reserves—Narrow roads and laneways are preferred as secondary frontages.
  - (b) orientation of development (existing and new)—Development orientated towards a road alignment will generally be considered the Primary Frontage, and
  - (c) the relative length of the frontages—Generally the shortest frontage is the Primary Frontage.

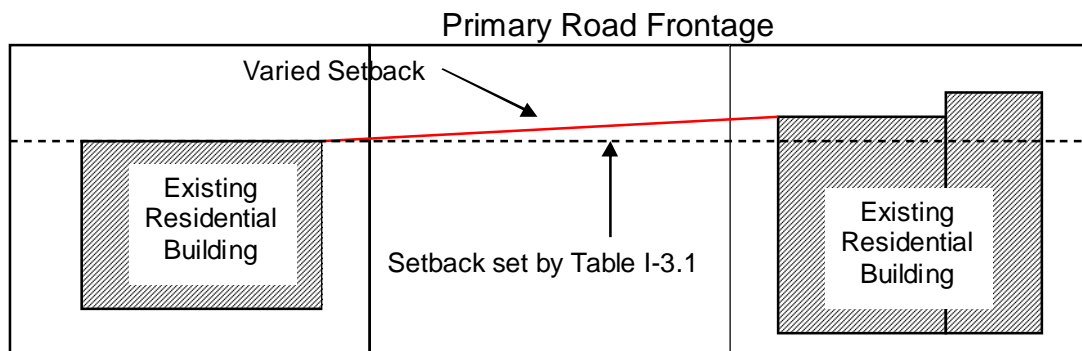
- (7) Narrow roads, usually having a road reserve width less than 6 metres, may be treated as a side or rear boundary for the purposes of setbacks.

**Note.** It will be at Council's discretion to determine what constitutes a narrow road and whether such frontages will be treated as a side or rear boundary.

Table I-3.1 Minimum Front Building Line Setbacks

Zone	Development Types	Minimum Front Building Line Setbacks
R1 General Residential	All development	Ø 6 metres, and Ø garages and sheds must be 1.0 metre behind the building line (see note <sup>1</sup> re: roller door openings)
RU5 Village	Residential accommodation	Ø 6 metres Ø garages and sheds must be 1.0 metre behind the building line (see note <sup>1</sup> re: roller door openings)
	Commercial premises within commercial precinct (being Richmond Terrace, Coraki; and River Street, Woodburn)	Ø Zero
	All Other Land Uses	Ø 6 metres
RU1 Primary Production, R5 Large Lot Residential, and E3 Environmental Management	Residential accommodation	Ø 15 metres—where fronting a local sealed road Ø 50 metres—where fronting a local unsealed road Ø 20 metres—where fronting a Classified Road
	All other development	Ø 20 metres
B1 Neighbourhood Centre	All development	Ø 6 metres
B2 Local Centre	Shop top housing	Ø Zero—where located above ground floor commercial development, else Ø 6 metres
	All other development	Ø Zero
B3 Commercial Core	Shop top housing	Ø Zero—where located above ground floor commercial development, else Ø 6 metres <b>Note.</b> Refer to Heritage Conservation Area considerations.
	All other development	Ø Zero <b>Note.</b> Refer to Heritage Conservation Area considerations.
IN1 General Industry	All development	Ø 6 metres
Other Zones	All development	Ø As per nearest adjoining zone.
<p><b>Note.</b> For the purposes of this table external wall includes decks, staircases, posts, columns, patios, and coping, but excludes eaves.</p> <p><b>Note</b> <sup>1</sup>. Vehicular access opening of garages and sheds must be a minimum of 5.5 metres from the boundary with a road alignment.</p>		

- (8) Vehicular access to the land will be prohibited across side or rear boundaries.
- (9) **Regard to Immediately Adjoining Buildings**  
Variation to the front building line setback may be granted where development on an immediately adjoining property is forward of the identified setbacks contained within Table I-3.1.
- (10) Such a variation shall only be granted where:
- (a) the variation is to a primary frontage,
  - (b) the existing front building lines on adjoining properties, being used to justify this variation, are not facing towards secondary frontages,
  - (c) the development is for residential purposes,
  - (d) the adjoining properties have been developed for residential development (not commercial or industrial).
- (11) To establish the variation, a straight line shall be drawn between the forward most building elements on the adjoining properties, excluding any building elements considered to be an articulation zone variation. This line shall be the new front building line setback. See Figure I-3.2.



**Figure I-3.2 Defining a Front building line Setback Variation based upon adjoining development. (Line drawn between forward most elements on adjoining properties will become the new building line)**

**Note.** Variation excludes consideration of that part of a structure erected within an articulation zone.

**(12) Articulation Zone Variation**

An Articulation Zone is a part of the development that is permitted to be constructed up to 1.5 metres forward of the front building line setback defined in Table I-3.1.

- (13) The Articulation Zone aims to encourage architectural relief along the front of residential development.
- (14) The Articulation Zone shall have a maximum area of 7 m<sup>2</sup> forward of the Front Building Line Setback.

**Variations to Front Building Line Setbacks—Commercial considerations**

- (15) Pedestrian areas should be accommodated into commercial developments having a zero front building line setback.

### Heritage Conservation Area considerations

- (16) Development within the Casino CBD Heritage Conservation Area is required to be setback 10 metres for that part of the development above the height of the existing facade.
- (17) This setback is to provide for retention of existing facades while accommodating additional storeys outside the conservation area (10 metres deep measured from the front boundaries along Barker and Walker Streets).
- (18) By setting back such additions, and incorporating design considerations (refer to Chapter I-1.11), there should be minimal impact on the streetscape of the conservation area.

### Bush fire APZ considerations

- (19) Land within or adjoining a bushfire hazard may require larger setbacks than the minimums provided within this Chapter. *Planning for Bushfire Protection* (2006) should be consulted. All Asset Protection Zones should be contained within the boundaries of the land and therefore represent the minimum setback, unless a larger setback is required by this Chapter or a development specific Chapter of this DCP.
- (20) Alternative solutions involving reduced Asset Protection Zones may be considered on merit but will be subject to approval by the NSW Rural Fire Service.

### Roads subject to Widening

- (21) Notwithstanding any other provision of this Chapter, the Front Building Line Setback to a road subject to widening shall be increased by width of land to be resumed by the widening.
- (22) In the case of:
  - (a) Lane Widening proposed in Chapter I-15 of this DCP—the setback shall be increased by 3 metres to accommodate the proposed widening,
  - (b) land identified as *Classified Road (SP2)* on the *Richmond Valley LEP 2012 Land Reservation Acquisition Map*—the setback shall increase by the width of identified resumption.

## **I-3.4 Side and Rear Boundary Setbacks**

### Objective

- (1) to establish minimum side and rear boundary setbacks for development types.
- (2) to recognise the setback requirements of the Building Code of Australia, particularly for fire protection.
- (3) to protect streetscape by maintaining minimum separate between buildings.
- (4) to allow access to rear yard space, provide opportunities for cross ventilation and solar access.
- (5) to create opportunities for residential open space.

### Controls

- (1) Side & Rear Boundary Setbacks are measured from property boundaries that adjoin neighbouring properties (that are not roads or waterways).



(2) The distance of the side and rear setback is defined within Table I-3.2.

**Table I-3.2 Minimum Side and Rear Boundary Setbacks**

Zone	Development Types	Minimum Side and Rear Setbacks
R1 General Residential	Dwellings houses Dual occupancy Secondary dwellings	Ø 900 mm to external wall. <b>Note.</b> Structures must remain beneath the Building Height Plane <sup>2</sup>
	Other Residential accommodation	Ø 2.5 metres to side, and Ø 3 metres to rear, for external walls. <b>Note.</b> Structures must remain beneath the Building Height Plane <sup>2</sup>
	All development >3 storeys	Ø 6 metres
	Other development <sup>1</sup>	Ø Consider on merits, or Ø As required in a specific Chapter of this DCP.
RU5 Village	Dwellings houses Dual occupancy Secondary dwellings	Ø 900 mm to external wall. <b>Note.</b> Structure must remain beneath the Building Height Plane <sup>2</sup>
	Other Residential accommodation	Ø 2.5 metres to side, and Ø 3 metres to rear, for external walls. <b>Note.</b> Structures must remain beneath the Building Height Plane <sup>2</sup>
	Commercial premises <sup>1</sup>	Ø Zero
	Other development <sup>1</sup>	Ø 900 mm to external wall, or Ø Consider on merits, or Ø As required in a specific Chapter of this DCP <b>Note.</b> Structure must remain beneath the Building Height Plane <sup>2</sup>
RU1 Primary Production	All development	Ø 5 metres <b>Note.</b> Setback may need to be greater to accommodate a Bushfire Asset Protection Zone within the boundaries of the property <sup>2</sup>
E3 Environmental Management	All development <sup>1</sup>	Ø As per RU1
R5 Large Lot Residential	All development	Ø 5 metres <b>Note.</b> Setback may need to be greater to accommodate a Bushfire Asset Protection Zone within the boundaries of the property <sup>2</sup>

Zone	Development Types	Minimum Side and Rear Setbacks
B1 Neighbourhood Centre	Commercial Premises <sup>1</sup>	Ø Zero
	All other development <sup>1</sup>	Ø 900 mm to external wall, or Ø 675 mm to eave. <b>Note.</b> Structure must remain beneath the Building Height Plane <sup>2</sup>
B2 Local Centre	All development <sup>1</sup>	Ø Zero
B3 Commercial Core	Commercial Premises <4 storeys <sup>1</sup>	Ø Zero
	Commercial Premises >3 storeys <sup>1</sup>	Ø Zero—for that part of development below 4 storeys Ø 6 metres setback—for any part of the development above 3 storeys
	All other development <4 storeys <sup>1</sup>	Ø Zero—for that part of development below 3 storeys and within 20 metres of road alignment. Ø Structure to remain beneath the Building Height Plane for that part of the development above 2 storeys. <sup>2</sup>
	All other development >3 storeys	Ø 6 metres setback
IN1 General Industry	Adjoining residential land uses <sup>1</sup>	Ø 900 mm setback
	All other development <sup>1</sup>	Ø Zero
Other Zones	All development <sup>1</sup>	Ø Consider on merit
<p><b>Note.</b> For the purposes of this table external wall includes decks, staircases, posts, columns, patios, coping, but excludes eaves.</p> <p><b>Note<sup>1</sup>.</b> The Building Code of Australia may require the Class of building to incorporate special fire protection measures into the construction to achieve the minimum setbacks contained within Table I-3.2.</p> <p><b>Note<sup>2</sup>.</b> Side and rear boundary setbacks may need to increase to achieve minimum Asset Protection Zones (APZ) within bushfire prone areas, or to keep the development below the Building Height Plane.</p>		

### Outbuildings may Encroach into Side and Rear Boundary Setbacks

- (3) Ancillary structures, such as an outbuilding (sheds, carports, lawn lockers), retaining walls, etc., may be granted consent within the prescribed side or rear boundary setbacks, but consideration should be given to:
- whether the structure will encroach beyond the Building Height Plane—and the potential impacts of overshadowing, loss of privacy, loss of amenity that this may cause to adjoining properties,
  - whether similar structures exist on the immediately adjoining property,
  - the need for access to services or maintenance of the structure,

- (d) the cumulative impact of this encroachment having regard to any previous encroachments,
- (e) impacts upon the amenity of the locality,
- (f) the location of easements and services, and
- (g) compliance with BCA.

### Bush Fire APZ Considerations

- (4) Land within or adjoining a bushfire hazard may require larger setbacks than the minimums provided within this Chapter. *Planning for Bushfire Protection* (2006) should be consulted. The Asset Protection Zone should be contained within the boundaries of the land and therefore represent the minimum setback, unless a larger setback is required by this Chapter or a development specific Chapter of this DCP.
- (5) Alternative solutions involving reduced Asset Protection Zones may be considered on merit but will be subject to approval by the NSW Rural Fire Service.

## I-3.5 Foreshore Building Line Setbacks

### Objective

- (1) to establish building line setbacks from foreshores to ensure that development does not impact on riparian zones, habitat, wildlife corridors, and amenity.

### Controls

- (1) The Foreshore Building Line Setback shall apply to all land fronting rivers, creeks, streams, waterways, or estuaries having a:
  - Ø W1 Natural Waterways, or
  - Ø W2 Recreational Waterways,
 zoning under the *Richmond Valley LEP 2012*.
- (2) The minimum foreshore building line setback for development shall be:

Zone	Minimum Foreshore Building Line Setback
R1 General Residential RU5 Village IN1 General Industry	Ø 15 metres
All other zones	Ø 40 metres

- (3) The setback shall be measured from:
  - Ø the mean high water mark—where the waterway is tidal, or
  - Ø the shoreline—where the waterway is non-tidal.

**Note.** For the purposes of this Chapter, where there is difficulty defining the shoreline it will be taken as the bottom of the waterway's embankment.

### Exceptions to the Foreshore Building Line

- (4) Exceptions to the Foreshore Building Line may be granted for that part of a development involving structures such as boat sheds, boat ramps, moorings, jetties or the like, but only where it can be demonstrated that:

- (a) the development will have minimal significance to the stability of the bank,
- (b) the development will involve minimal clearing of riparian vegetation,
- (c) the development will not impact upon the amenity of the foreshore area,
- (d) the development can be safely located within a high velocity floodway (if applicable), and
- (e) it is essential for the development to be located close to the foreshore.

**Note.** Regard must also be had to the heads of consideration contained within Clause 6.8 - Riparian Land and Watercourses of the *Richmond Valley LEP 2012*.

### **Controlled Activities within 40 metres of Waterfront Land**

- (5) Section 91(2) of the *Water Management Act 2000* requires approval to undertake controlled activities, being the:

- ∅ erection of a building or the carrying out of a work,
- ∅ removal of material or vegetation from land,
- ∅ deposition of material on land, or
- ∅ carrying out of any other activity that effects the quantity or flow of water in a water source,

within waterfront land.

Waterfront land is defined in that Act as land between the bed of any river, lake, estuary, and a line drawn parallel to, and 40 metres from, the highest bank, the shore, or mean high water mark, respectively.

- (6) A Development Application requiring a controlled activity approval is Integrated Development pursuant to Section 91 of the EP&A Act.

## **I-3.6 Building Line Setback Variations**

### **Objective**

- (1) to provide a mechanism for assessing variations to building line setbacks.
- (2) to ensure that consideration is given to the potential impacts of development on adjoining neighbours and public open space.

### **Controls**

- (1) Setback variations, beyond those identified in Chapter I-3.3 & I-3.4, may be sought by application submitted with a Development Application.
- (2) Variations may only be granted to a setback designated within Tables I-3.1 and I-3.2.
- (3) Consideration will be given to the following when assessing an application for a setback variation:
  - (a) Likely effect on adjoining owners, including impact on views to and from the land, overshadowing, privacy, noise, drainage, and the like,
  - (b) Compatibility with existing streetscape, and
  - (c) How the objectives of this Chapter may be satisfied by allowing the variation.

- (4) Applications seeking variations greater than 10% of the standard to be varied will be subject to concurrence of the Manager of Assessment Environment & Regulation or their successor.

### **I-3.7 Development Standards—Building Height Plane**

#### **Objective**

- (1) to establish a building height plane to minimise the impact of development upon neighbouring sites from taller construction.
- (2) to ensure buildings are setback progressively from the side and rear boundary as building height increases so that buildings do not unduly affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy, or unreasonably obstructing views.
- (3) to ensure that occupants of residential accommodation have the opportunity to enjoy the optimum use of winter sunlight.
- (4) to enhance opportunities for solar access to both the development site and adjoining properties.
- (5) to achieve varied and interesting streetscapes, compatible with bulk, scale and character of the area.

#### **Controls**

- (1) A Building Height Plane shall apply to side & rear boundary setbacks, where nominated in Table I-3.2.
- (2) The building height plane is an imaginary ceiling projected above a development site under which all construction must be located.
- (3) The plane is defined by projecting a surface upward over the subject land, at an angle of 45 degrees commencing at a point 2 metres above the natural ground level at the side & rear boundaries. Refer to Figure I-3.3.
- (4) For the purposes of defining the Building Height Plane, secondary frontages will be considered as a side or rear boundary.
- (5) **Development >3 Storeys**  
The Building Height Plane shall only apply to development up to and including 3 storeys. That part of development above 3 storeys shall be setback a minimum of 6 metres from the side and rear boundaries. This standard may be varied by application.
- (6) **Exceptions to compliance with the Building Height Plane**  
The Building Height Plane may be varied in the following circumstances:
  - (a) Eaves and gutters—up to a maximum of 700 mm from the external wall of the development.
  - (b) Open form or translucent balustrading.
  - (c) Climate control measures—of a minor scale and which do not affect the objectives of this section.
  - (d) Buildings on slopes >8°—encroachments may be permit along the north and east elevation of the wall length where the elevation that encroaches is not more than 6.5 metres in height, measured from the

existing ground level to the wall/eave junction (springing point), and the encroachment is at least 1200 mm from the side or rear boundary.

- (e) On land affected by a Flood Planning Level—the Building Height Plane will be measured from the 1 in 100 year flood level instead of the natural ground level.

**Note.** Shadow cast onto adjoining land must be considered where this exemption applies.

- (f) Single storey outbuildings (maximum 2.9 metre wall height) with a gable end roof or similar roof design—may encroach on the Building Height Plane where; the wall length of the encroaching elevation is no longer than 10 metres and the roof slope of the encroachment is 25° or less.
- (g) Exempt development as defined in the Codes SEPP 2008.

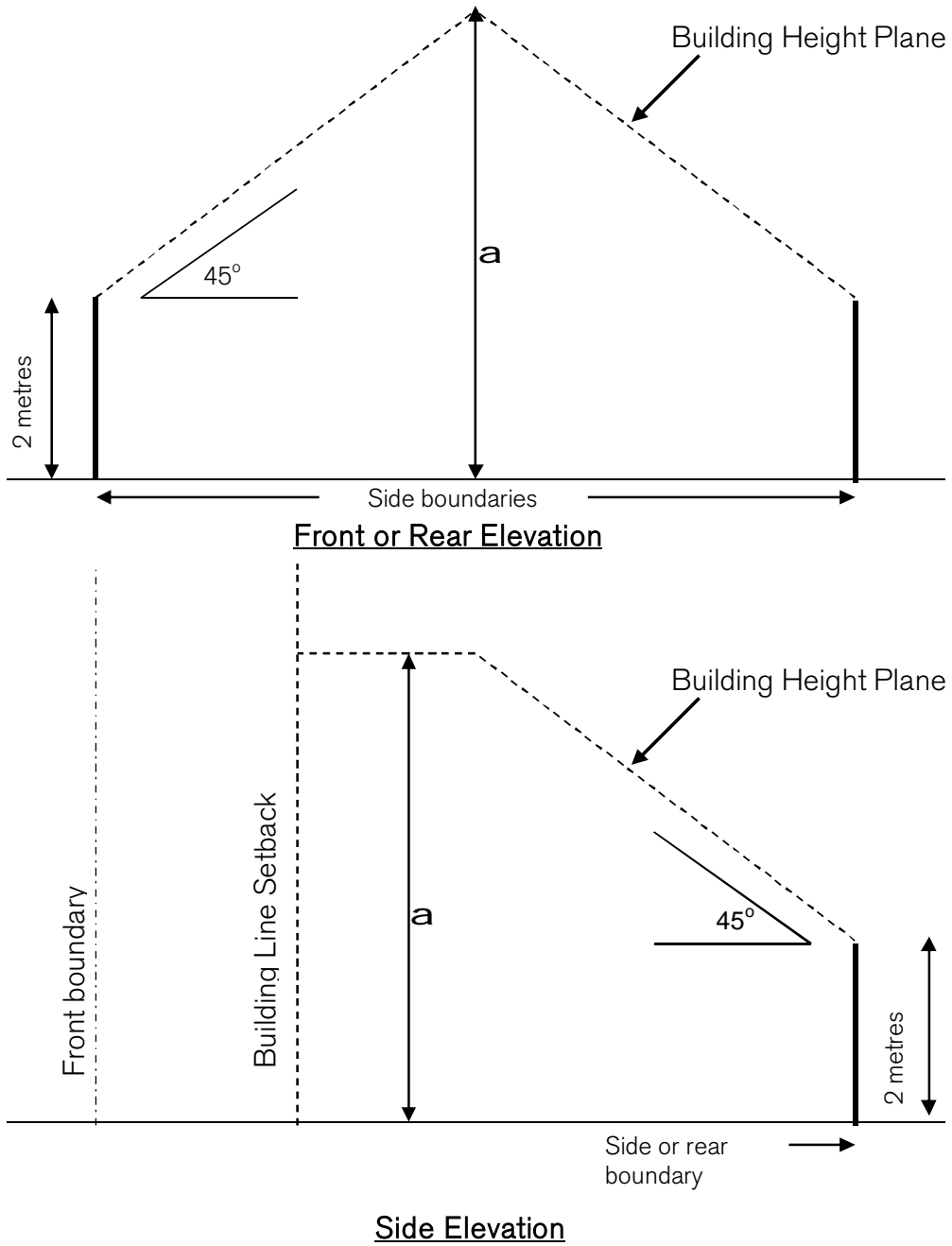
### **I-3.8 Building Height Plane Variations**

#### **Objective**

- (1) to provide a mechanism for assessing variations to the Building Height Plane.
- (2) to ensure that consideration is given to the potential impacts of development on adjoining neighbours and public open space.

#### **Controls**

- (1) Building Height Plane variations, beyond those identified in Chapter I-3.7, may be sought by application submitted with a Development Application.
- (2) Consideration will be given to the following when assessing an application for a variation:
  - (a) Likely effect on adjoining owners (including public open space), including impact on views to and from the land, overshadowing, solar access, privacy, noise, drainage, and the like,
  - (b) Compatibility with existing streetscape, and
  - (c) How the objectives of this Chapter may be satisfied by allowing the variation.
- (4) Applications will be subject to concurrence of the Manager of Assessment Environment & Regulation or their successor.



**Note.** "a" represents the maximum height determined by either the LEP Height of Buildings Map, or the point of convergence of building height plans, whichever is the lesser.)

**Figure I-3.3 Building Height Plane**





# ***Richmond Valley Development Control Plan 2015***

## **Part I-4. Car Parking Provisions**

This DCP applies to all land within the Richmond Valley Local Government Area.

Date adopted by Council:  
22 December 2015

Effective Date:  
4 January 2016

Amendments:  
Nil

Access to public transport in regional areas is often minimal with the car being the most practical alternative. It is therefore important to consider the car in the planning of development and public spaces to ensure access is reasonably available to customers and employees, and the streetscape remains attractive to users.

This DCP balances the provision of sufficient parking to meet demand, close to desired destinations and in an orderly manner, while not being too excessive so as to stifle development opportunities or be unattractive.

Parking will be required by development based upon estimated demand for different land use types, however, the DCP incorporates opportunities to be flexible where alternative parking strategies, parking rates and solutions can be demonstrated. This flexibility includes consideration of a locality's unique circumstances—For example, Evans Head is a coastal community with a large seasonal population of tourists that are generally active. While there is ample car parking in the CBD during the off-season, the season population swell creates a parking shortfall. One strategy to address this shortfall could be to encourage more pedestrian and cycling to the CBD by diverting resources away from new car parking and towards an improved pathway network.

### **I-4.1 General Objectives**

The general objectives of this Chapter are to:

- (1) facilitate an appropriate level of car parking to cater for a mix of development types.
- (2) establish a flat rate of car parking for developments within business zones.
- (3) provide for the adequate design of car parks, manoeuvring areas and road access.
- (4) minimise the visual impact of car parking.
- (5) allow for the unique aspects of a locality to be considered when a variation to parking, or a Voluntary VPA is proposed.

### **I-4.2 On-site Parking**

#### **Objective**

- (1) to provide for an appropriate level of on-site car parking to cater for the demand of development types.

#### **Controls**

- (1) On-site car parking is required to be provided at the rates established in the *Section I-4.4 General Car Parking Rates* for:
  - (a) new development,
  - (b) additional gross floor area—within an existing development, and
  - (c) a change of use—where the new use has a higher demand for car parking.

### **I-4.3 General Car Parking Rates**

#### **Objective**

- (1) to establish the minimum car parking rates to cater for a variety of development types.

#### **Controls**

- (1) Table I-4.1 contains the minimum on-site car parking requirements for a variety of development types.
- (3) When a proposal contains different development types, the car parking required for each type shall be calculated and added together.
- (2) The total number of car parking spaces calculated for a development should be rounded up to the nearest whole number.

**Table I-4.1 Minimum On-site Car Parking Requirements for Development**

Land Use	Parking Rate*
<b>Residential Accommodation</b>	
Dwelling House	2 per dwelling (at least 1 to be located behind the building line. The second space may be stack parked between the dwelling and front boundary)
Dual Occupancy	1 per dwelling, plus 1 visitor space; or 2 per dwelling (where the development will be Torrens Title subdivided)(1 space per dwelling may be stack parked)
Secondary Dwelling	As per dwelling house for Primary Dwelling – no additional parking required for Secondary Dwelling
Residential Flats and Multi-dwelling Housing	1 per dwelling (< 150 m <sup>2</sup> GFA), plus 1.5 per dwelling (>= 150 m <sup>2</sup> GFA), plus 1 visitor space per 4 dwellings
Shop Top Housing (excluding any commercial GFA)	1 per dwelling, plus 1 visitor space per 10 dwellings Note. conversion of existing GFA, in a Business zone, to shop top housing will not require additional parking
Group Homes	1 per 10 beds, plus 1 per 2 supervisors or carers
Seniors Housing	1 per 3 units, plus 1 per 5 beds (excluding units), plus 1 per employee
Residential Care Facility	1 per 10 beds, plus 1 per 2 employees, plus 1 ambulance bay
<b>Tourist and Visitor Accommodation</b>	
Backpackers Accommodation	1 per 3 beds, plus 1 visitor space per 5 beds; or 1 per room, plus 1 visitor space per 5 rooms (Whichever is the greater)
Bed and Breakfast Accommodation	1 per guest bedroom, plus 1 for permanent residents of dwelling
Hotel or Motel Accommodation	1 per unit, plus 1 for management, plus 1 visitor space per 20 units, plus parking for a function room/restaurant/bar (if provided)

Land Use	Parking Rate*
Serviced Apartments	1 per unit (< 150 m <sup>2</sup> GFA), and 1.5 per unit (>= 150 m <sup>2</sup> GFA), and 1 visitor space per 10 units
Caravan Parks Camping Grounds	1 per site (to be accommodated within the site), plus 1 visitor space per 10 long term sites, plus 1 visitor space per 20 short term sites
<b>Commercial Development</b>	
Zone B1, B2 or B3 – Change of Use of existing GFA to another use (including to shop top housing)	No additional parking will be required. No loss of existing parking will be permitted.
Commercial premises - Office Premises - Retail Premises - Business Premises	1 per 30 m <sup>2</sup> of GFA (<= 1000m <sup>2</sup> ), or 1 per 40 m <sup>2</sup> of GFA (> 1000m <sup>2</sup> )
Pub/Hotel Premises Restaurants or Cafes Function Centres	1 per 30 m <sup>2</sup> of GFA (<= 1000m <sup>2</sup> ), or 1 per 40m <sup>2</sup> of GFA (> 1000m <sup>2</sup> )
Take Away Food and Drink Premises	1 per 30 m <sup>2</sup> of GFA (including external dining areas), plus where a drive thru is provided—2 waiting bays, plus queuing area for 10 cars
Kiosks	1 per 40 m <sup>2</sup> of GFA
Restricted Premises	1 per 30 m <sup>2</sup> of GFA (<= 1000m <sup>2</sup> ), or 1 per 40 m <sup>2</sup> of GFA (> 1000m <sup>2</sup> )
Sex Service Premises	1.5 per working room
Garden Centres Landscaping Material Supplies Plant Nurseries Rural Supplies Timber Yards Wrecking Yards	1 per 200 m <sup>2</sup> of display area (internal and external)
Vehicle Sales or Hire Premises	1 per 100 m <sup>2</sup> of showroom area
Amusement Centres	1 per 25 m <sup>2</sup> of GFA
Service Stations including convenience store	1 per fuel pump, plus 1 per 100 m <sup>2</sup> of GFA (Additional parking to be provided if a vehicle repair station is included)
Highway Service Centres	2 per fuel pump, plus 1 per 50 m <sup>2</sup> of GFA

Land Use	Parking Rate*
Roadside Stalls	3 spaces with sufficient area for vehicles to manoeuvre and exit the land in a forward direction.
<b>Industrial Development</b>	
Vehicle repair stations	4 per hoist & workbay
Body Repair Stations	2 per hoist & workbay
General (Light) Industry	1 per 50 m <sup>2</sup> of GFA
Bulky goods premises Warehouse or distribution centre	1 per 300 m <sup>2</sup> of GFA
Waste or Resource Management Facility	1 per employee
Storage Sheds	Adequate manoeuvring areas (trailer and vehicles) with isles wide enough for 2 vehicles to pass safely
Depot Truck Depot Transport Depot	Sufficient off-street employee and visitor parking to satisfy peak demand, plus 1 truck space for each vehicle present at the time of peak vehicle accumulation.
Rural Industries	1 per 50 m <sup>2</sup> of GFA
<b>Other Development Types</b>	
Health Consulting Rooms Medical Centre	2 per consult room & surgery, or 2 per Practitioner, (Whichever is the greater)
Hospital	1 per 3 beds, plus 1 per Practitioner, plus 1 per 2 employees, plus 1 ambulance bay (<=50 beds), or 2 ambulance bays (>50 beds))
Educational Establishment	Primary (including infants, preschool and kinder)- 1 per teacher, plus 1 per 12 students  Secondary – 1 per teacher, plus 1 per 10 students  Tertiary – 2 per teacher, plus 1 per 10 students

Land Use	Parking Rate*
Veterinary Hospitals	1 per 40 m <sup>2</sup> of GFA
Places of Public Worship	1 per 10 m <sup>2</sup> of assembly area
Entertainment Facilities	1 per 40 m <sup>2</sup> of GFA, or 1 per 10 seats, (Whichever is the greater)
<b>Recreation Facilities</b>	
Squash courts Tennis courts	3 per court
Bowling Alleys	3 per lane
Bowling greens	30 for first green, plus 15 for each additional green
Gymnasium	1 per 30 m <sup>2</sup> of GFA
Recreation Facilities (Major)	DOM
Recreation Facilities (Outdoor)	DOM
<p><b>Notes.</b></p> <ul style="list-style-type: none"> <li>• Car Parking requirements for other uses shall be determined based upon considering it as a comparable use to those listed, or to be determined on merit.</li> <li>• In all instances a merit consideration may override the rate listed based upon exceptional circumstance and thorough justification.</li> <li>• GFA = Gross Floor Area</li> <li>• DOM = Determine on Merit</li> <li>• Reference to the number of employees is reference to the peak number of employees on duty at any one time.</li> <li>• Practitioner means a health care professional, but excludes nursing staff unless they are providing medical advice in the absence of a doctor at the facility.</li> </ul>	

## I-4.4 Exceptions to General Car Parking Requirements

### Objective

- (1) to provide flexibility in how car parking is provided by development.
- (2) to provide guidance on what should be considered when considering a car parking variation.
- (3) to authorise variations to car parking development standards by delegation.

### Controls

- (1) Council may agree to alternative car parking arrangements for development as provided in this section.

- (2) Support for a car parking reduction shall only be given where:
  - (a) it is supported by a parking study demonstrating the minimum car parking rates of this DCP are unreasonable for the proposed development having regard to the circumstances of the case; and
  - (b) the short fall in car parking will not significantly impact on the community.
- (3) Notwithstanding subclause (2), Council may support a car parking reduction if it considers a development will have a significant community interest.
- (4) Car parking may be provided off-site where Council is satisfied with an alternative arrange to provide the parking elsewhere in the vicinity of the development.
- (5) Council's Chief Executive Officer (CEO), or his sub-delegate(s), is authorised to accept car parking variations.

### **I-4.5 Consideration of Streetscape**

#### **Objective**

- (1) to ensure that car parking does not impact on the amenity of a locality or the streetscape.

#### **Controls**

- (1) Large commercial car parks should be located behind buildings so that shops and offices can open onto the street.
- (2) Industrial sites may locate car park forward of the building line where there is at least a 1 metre wide strip of landscaping provided along the property frontage to soften the visual impact of the hard stand surface.
- (3) Car parking areas should be screened from public places or contain elements that will soften its impact on the streetscape.

### **I-4.6 Car parking construction and design**

#### **Objective**

- (1) to ensure that car parks, manoeuvring areas, loading bays, and road access is functional and safe.

#### **Controls**

- (1) A vehicle parking, manoeuvring, and access plan is to be submitted to Council for approval. The Plan should:
  - (a) show delineated car parking spaces, including those designated as disabled spaces, and loading bays.
  - (b) clearly show where access to the property is proposed and detailing manoeuvring area(s) and the direction of traffic flow.
  - (c) be designed to meet the relevant Australian Standards (ie. *AS2890 – Parking facilities*).
  - (d) demonstrate compliance with any Council design standards for driveways, parking, and/or manoeuvring (unless an Australian Standard applies).

- (e) contain specifications for the construction of entrance/exits to public roads, including line-of-sight distances for exiting vehicles.
- (f) show how underground car parking will be ventilated.
- (2) All works required to be undertaken, including those on public land, must be funded by the Applicant/Owner of the development, unless other arrangements have been made such as through a VPA.
- (3) Council reserves the right to determine whether the placement of an access onto a public road is suitable and safe.
- (4) Car parking spaces should be constructed of a hard stand surface, and be clearly delineated.

### **I-4.7 Additional Developer Contribution in Lieu of Providing Car Parking**

#### **Objective**

- (1) to provide a mechanism for Council to accept developer contributions in lieu of providing car parking.

#### **Controls**

- (1) Council may consider accepting additional developer contributions in lieu of providing car parking by a development.
- (2) The additional developer contributions must be authorised through a Voluntary VPA (VPA) process, under Section 93F of the *Environmental Planning and Assessment Act 1979*, and will be in addition to any Section 94A Contributions that may also apply to the development.
- (2) It will be at Council's discretion if it will accept these additional developer contributions (and the VPA), and only in the following circumstances:
  - (a) where Council is satisfied that there will not be a significant impact associated with the parking not being provided by the development.
  - (b) that any infrastructure or facilities to be provided by the additional developer contributions will be available for use by the public and that there will be expectations that they be reserved for the sole use of the development and its staff/clients/customers.
  - (c) that there be no expectations placed on Council to use the additional developer contributions expeditiously to coincide with construction of the development.
- (3) Notwithstanding Section 93F of the Act, a VPA must establish:
  - (a) the amount of any payment, description of land to be dedicated, and/or the nature of any public benefit, that is to be provided by the developer to Council;
  - (b) when the payment, dedication, or public benefit is/are required to be made to Council (usually prior to issue of Construction Certificate);
  - (c) how and when the money, land, and/or public benefit should be used by Council.



- (4) The value of additional developer contributions shall be based upon:
  - (a) the equivalent cost of constructing the shortfall in car parking, excluding the land component; or
  - (b) a valuation per car parking space as provided within Council's Revenue Policy.
- (5) The VPA should include an indexation of the additional developer contributions to CPI.
- (6) A VPA should be based upon the template contained in this Chapter at Appendix I-4.1 & I-4.2.



## Appendix I-4.1 Template Voluntary Planning Agreement—Explanatory Note

Richmond  
Valley  
Council



### Voluntary Planning Agreement (VPA) for the Provision of Contributions in Lieu of Car Parking

#### Explanatory Note

<<Insert Address of development—Legal  
Description>>

#### INTRODUCTION

This Explanatory Note has been prepared in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000*.

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Voluntary Planning Agreement (VPA) between the parties under s93F of the *Environmental Planning & Assessment Act 1979* (EP&A Act).

#### 1 PARTIES TO THE VPA

The parties to the VPA are:

- (1) Richmond Valley Council (**Council**); and
- (2) <<Insert Name of Developer>> (**Developer**).

#### 2 DESCRIPTION OF THE SUBJECT LAND

The land to which the VPA relates is set out in the table below.

Legal Description	Location
<<Insert legal description>>	<<Insert address and locality>>

#### 3 DESCRIPTION OF THE PROPOSED DEVELOPMENT

The VPA relates to a proposed **development** of the land that includes <<Insert description of the development>>.

#### 4 SUMMARY OF OBJECTS, NATURE AND EFFECT OF THE VPA

The objective of the VPA is to ensure the development adequately contributes to provision of public car parking in the vicinity of the development, and/or provides a public benefit to the community as an off-set to providing for car parking within the development<<Delete irrelevant passage>>.

The contributions to be provided by the Developer under the VPA are described in the table below.

<b>Description of Contributions</b>
<p>The total car parking spaces required by this development is &lt;&lt;Insert number of spaces&gt;&gt;. The development proposes to provide for &lt;&lt;insert number of spaces to be provided by the development&gt;&gt; car parking spaces with a shortfall of &lt;&lt;Insert number of shortfall spaces&gt;&gt; spaces to be addressed by a VPA.</p> <p><u>Monetary Contribution</u>&lt;&lt;Include where a Monetary Contribution if proposed&gt;&gt;</p> <p>Contribution per parking spaces as determined by Council is \$&lt;&lt;Insert agreed value per space&gt;&gt;.</p> <p>The total Contribution to be made is &lt;&lt;Insert number of shortfall spaces&gt;&gt;x \$&lt;&lt;Insert agreed value per space&gt;&gt; = \$&lt;&lt;Insert total monetary contribution&gt;&gt;.</p> <p>The Monetary Contribution will be used by Council &lt;&lt;Insert description of how Council plans to spend the money and when&gt;&gt; .</p> <p><u>Dedication of Land</u>&lt;&lt;Include where Land is to be Dedicated&gt;&gt;</p> <p>The Developer will dedicate land, described as &lt;&lt;Insert Legal Description, address, locality and any other details to identify the land&gt;&gt;, to Council at no charge to the Council in lieu of the &lt;&lt;Insert the number of shortfall&gt;&gt; space shortfall.</p> <p>The land will be used by Council for the purpose of &lt;&lt;Insert a description of the purpose the land will be used for&gt;&gt;.</p> <p>Once dedicated the land will be Classified under the <i>Local Government Act 1993</i> (LG Act) as &lt;&lt;Insert whether the land will be Classified as <u>Operational Land</u> or <u>Community Land</u>&gt;&gt; .</p> <p><u>Public Benefit</u>&lt;&lt;Include where a Public Benefit is proposed&gt;&gt;</p> <p>The Developer will undertake to &lt;&lt;Insert description of the Public Benefit that will be undertaken by the Developer in lieu of providing the shortfall in car parking&gt;&gt; as a public benefit to off-set the car parking shortfall.</p>
<p><b>Note.</b> A VPA may include a combination of Monetary Contributions, Dedication of Land, and Public Benefit to address the shortfall in car parking.</p>

## **5 ASSESSMENT OF THE MERITS OF THE VPA**

### **5.1 The planning purposes served by the VPA**

In accordance with section 93F(2) of the EP&A Act, the VPA promotes the following public purpose:

- (1) the provision of public amenities and public services; and
- (2) the monitoring of the planning impacts of development of the Land.

### **5.2 How the VPA promotes the public interest**

In accordance with the objects of the EP&A Act, the VPA promotes the public interest in the following manner:

- (1) The proper management, development and conservation of land.
- (2) The promotion and co-ordination of the orderly and economic use and development of land by ensuring that the layout and design of car parks function effectively and safely.
- (3) The VPA will not preclude the public being provided with the opportunity for involvement and participation in development assessment. The public have been provided the opportunity to be involved with the development assessment and are invited to make comment on the VPA, particularly with regard to the public interest.
- (4) The provision monetary contributions, and/or the dedication of land, and/or the undertaking of a public benefit, will off-set the provision of car parking by the development and assist Council to provide appropriate infrastructure and services to the community which will be funded/part funded by the developer. All services provided can be used by the public generally, and will not be reserved for use by the development.

### **5.3 How the VPA promotes the objectives of the *Local Government Act 1993* (LG Act)**

The VPA is consistent with the following purposes of the LG Act:

- (1) to give councils the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and the wider public; and
- (2) To give councils a role in the management, improvement and development of the resources of their areas.

### **5.4 How the VPA promotes the elements of Council's charter**

The VPA promotes a number of elements of Council's Charter under section 8 of the LG Act, as follows:

- (1) the exhibition of the VPA facilitates the involvement of members of the public, while council staff were involved in the development of the VPA;

- (2) this explanatory note is prepared for the purposes of keeping the local community and the State government (and through it, the wider community) informed about its activities;
- (3) the VPA makes it clear that Council has a statutory role as consent authority for development and that the VPA is not intended to unlawfully influence the exercise of its regulatory functions, ensuring that Council will act consistently and without bias, particularly where an activity of the Council is affected;
- (4) to provide adequate car parking, or an alternative public benefit to offset a shortfall in car parking, for the public within the Richmond Valley Local Government Area and ensuring that appropriate services for the community are managed efficiently and effectively;
- (5) to have regard to the long term and cumulative effects of its planning decisions by achieving a balance between parking requirements, visual aesthetics, pedestrian safety including people with a disability; and
- (6) to have regard to the effects of its planning decisions by ensuring that the layout and design of car parks function efficiently and safely.

## Appendix I-4.2 Template Voluntary Planning Agreement

Richmond  
Valley  
Council



### DRAFT VOLUNTARY PLANNING AGREEMENT

Under section 93F of the *Environmental Planning and Assessment Act*  
1979

<<ADDRESS FOR LAND>>

THE COUNCIL OF RICHMOND VALLEY

AND

<<DEVELOPER>>

Richmond Valley Council  
Locked Bag 10  
CASINO NSW 2470

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## VOLUNTARY PLANNING AGREEMENT

DATED <<Insert day>> day of <<Insert Month>> 20<<Insert Year>>

### PARTIES

1. RICHMOND VALLEY COUNCIL (ABN 54 145 907 009) of corner of Walker Street and Graham Place, CASINO, New South Wales (Council); and
2. <<Insert Developer Identify (include ABN)>> of <<Insert address>> (Developer).

### BACKGROUND

- A. The Developer is the owner of the Land.
- B. On <<Insert date>> the Developer lodged (or authorised to be lodged, as the case may be) the Development Application (<<Insert DA number>>) with the Council to carry out the Development on the Land.
- C. On <<Insert date>>, the Council granted the Development Consent.

### OPERATIVE PROVISIONS

#### 1 VOLUNTARY PLANNING AGREEMENT UNDER THE ACT

The parties agree that this **agreement** is a Voluntary Planning Agreement (VPA) governed by Part 4 of the Act.

#### 2 SCOPE AND APPLICATION OF THIS AGREEMENT

- (a) This Agreement binds the parties and applies to the Land on which the Development is to be carried out. This Agreement does not include and does **not** in any way reduce or satisfy the Developer's obligations to pay monies under:
  - (i) section 94 or 94A of the Act; or
  - (ii) any other statute or instrument that may apply to the land or to the development application.
- (b) For the purposes of section 93F(3)(d) of the Act, the parties expressly agree that this VPA does not exclude the operation of section 94 or 94A of the Act, and conditions may be imposed in respect of the contributions identified in (a) to (b) inclusive.
- (c) For the purposes of section 93F(3)(e) of the Act, the parties expressly agree that the Developer's Contributions to be provided under this VPA are not to be taken into consideration when determining the Developer's obligations to pay monies under section 94 or 94A of the Act.

#### 3 OPERATION OF THIS AGREEMENT

This Agreement takes effect on the date of this Agreement after execution by both parties.

## 4 DEFINITIONS AND INTERPRETATION

### 4.1 Definitions

In this Agreement, the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under that Act.

**Construction Certificate** has the same meaning as set out in the Act.

**Council's Representative** means the person specified in Item 2 of Schedule 1 who is duly authorised to give approval under this Agreement or such other person as may be nominated by the person occupying the role of Council's Chief Executive Officer (CEO) from time to time.

**Council Works** means the works of the general nature described in Schedule 2 to be completed by the Council and includes any application fees, advertising fees, design development costs, tendering costs, tender assessment costs, public consultation costs, and any other consultancy costs (such as architectural, heritage, planning, traffic, engineering, drafting or any other advice), land acquisition costs, survey costs, construction costs, relating to the design and implementation of the Council Works.

**Dealing** means selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

**Dedicated land** means the land identified for Land Dedication.

**Development** means the proposal of the general nature set out in Item 4 of Schedule 1 to be completed by the Developer in accordance with the Development Consent.

**Development Application** means the development application identified in Item 4 of Schedule 1 and includes all plans, reports models, photomontages, material boards (as amended/supplemented) submitted to the consent authority prior to the determination of that Development Application.

**Development Consent** means the consent granted by the Council to the Development Application for the Development identified in Item 4 of Schedule 1 and includes all modifications made under section 96 of the Act.

**Developer's Contribution** means a Monetary Contribution, Land Dedication or Public Purpose.

**Developer's Works** means the work identified in Schedule 3, as refined and developed in accordance with this Agreement.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Land** means the land identified in Item 3 of Schedule 1, comprising the land the subject of the Development Application.

**Land Dedication** means the dedicated land set out in Item 5 of Schedule 1 to be transferred by the Developer to the Council in accordance with this Agreement.

**Monetary Contribution** means the amount set out in Item 5 of Schedule 1 (indexed in accordance with clause 5.2) to be paid by the Developer to the Council in

accordance with this Agreement.

**Occupation Certificate** has the same meaning as in the Act.

**Public Purpose** means the Developer's Works set out in Item 5 of Schedule 1 to be undertaken by the Developer on behalf of the Council in accordance with this Agreement.

**Party** means a party to this agreement, and includes their successors and assigns.

#### **4.2 Interpretation**

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) a reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally.
- (c) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (f) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular.
- (g) references to the word 'include' or 'including' are to be construed without limitation.
- (h) a reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (i) any schedules and attachments form part of this Agreement.
- (j) a word defined in the Act has the same meaning in this Agreement.

## **5 PAYMENT OF MONETARY CONTRIBUTION**

### **5.1 Payment of the Monetary Contribution**

The Developer agrees:

- (a) to:
  - (i) pay the Monetary Contribution, indexed in accordance with clause 5.2;
  - (ii) transfer the dedicated land; and
  - (iii) provide or undertake the Public Purpose,  
as set out in Item 5 of Schedule 1, before the release of any Construction Certificate for any part of the Development;

- (b) to provide a Bank Guarantee for the amount of the Developer's Contribution on or before execution of this Agreement which will be exchanged for the Developer's Contribution before issue of the Construction Certificate.

A Monetary Contribution shall be paid in cash or by unendorsed Bank Cheque.

## 5.2 Indexation

On the date of payment, a Monetary Contribution will be adjusted to a revised amount derived by applying the following formula:

$$\text{Monetary Contribution at Time of Payment} = C \times \frac{CPI1}{CPI2}$$

where:

- C** is the original amount Monetary Contribution (as identified in Item 5 of Schedule 1 of this Voluntary Planning Agreement);
- CPI2** is the index number for the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics at the time of payment; and
- CPI1** is the index number for the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics and applicable for the quarter at the date of granting Development Consent.

## 5.3 Application

The parties agree that the:

- (a) payment of a Monetary Contribution for the purposes of the Council Works;
- (b) the transfer of the dedicated land;
- (c) the completion of the Developer's Works,

is/are intended to comprise the public benefit under this Agreement. The Council will, in its sole discretion,

- (d) expend an amount equivalent to the Monetary Contribution on the Council Works,
- (e) use the dedicated land for the intended purpose (unless it has first undertaken community consultation to change the intended purpose), and/or
- (f) certify completion of the Developer's Works.

## 5.4 No Trust

The parties expressly acknowledge and agree that nothing in this Agreement will be read or construed as creating any form of trust arrangement, or fiduciary duty as and between the Developer and the Council. Without limiting any other part of this Agreement, the Council is not obliged or required to separately account for, or in any manner trace, the Developer's Contribution at the request of or for the benefit of the Developer.

## 5.5 Expenditure by the Council

The parties expressly agree that the expenditure of an amount equal to or greater than the Monetary Contribution upon the Council Works will be full and conclusive proof of the proper application of the Monetary Contribution. Without limiting clause 5.4, the Developer may not make or bring any claim or action of any nature relating to:

- (a) the design, sequencing, or final form of the Council Works, including any areas

or elements (as the case may be) deleted from the scope of the Council Works; or

- (b) the reasonableness of any cost incurred in the performance of the Council Works.

### **5.6 Use of Dedicated Land**

The parties expressly agree that the transfer to Council of the Dedicated Land will be full and conclusive proof of the proper application of the Land Dedication. Without limiting clause 5.4, the Developer may not make or bring any claim or action of any nature relating to the design, sequencing, or use of the dedicated land, including any changes to the use of the land.

## **6 REGISTRATION OF AGREEMENT**

### **6.1 Registration of Agreement**

- (a) The Developer warrants that it is the registered owner of the Land.
- (b) The Developer warrants that it has obtained all consents to the registration of this Agreement on the title to the land as are necessary and in particular the consent of any mortgagee or Lessee registered on the Certificate of Title to the land.
- (c) The Developer must on execution of this Agreement produce to the Council together with this Agreement for execution by the Council:
  - (i) the written consent of all persons who have an interest in the Land, including any mortgagee and Lessee, confirming their consent to the registration of this Agreement on the title of the Land;
  - (ii) A copy of the Production Ticket as evidence that the mortgagee / Developer (as the case may be) has produced the Certificate of Title to Land & Property Information (LPI) for the purpose of Council registering the Agreement on the title of the Land; and
  - (iii) A bank cheque for the relevant registration fees made payable to LPI.
- (d) The Developer must promptly comply with any requisitions that may be raised with regard to registration of the Agreement from LPI.
- (e) Subject to clause 6.1(b), the Council will lodge this Agreement for its registration on the title of the Land.
- (f) The Council will notify the Developer following registration of the Agreement on the title of the Land and forward a copy of the Agreement to the Developer.

### **6.2 Caveat**

The Developer acknowledges and agrees that:

- (a) When this Agreement is executed by the owner of the Land the Council is deemed to have acquired and the owner has deemed to have granted an equitable estate in interest in the Land for the purpose of section 74F(1) of the *Real Property Act 1900* and consequently the Council has a sufficient interest in the Land in respect of which to lodge a caveat over the Land to register that interest; and

- (b) It will not object to the Council lodging a caveat on the relevant folio of the register for the Land nor will it seek to remove any caveat registered by the Council.

### **6.3 Consent of Mortgagee**

The Developer warrants to the Council that it has obtained and is in possession of a written consent from the mortgagee in which the mortgagee consents to:

- (a) the Developer entering into and performing its obligations under this Agreement and the lodgement of a caveat by the Council notifying its interest in the relevant folio of the register for the Land under the *Real Property Act 1900* and agrees that;
- (b) it will only exercise its rights under any mortgage, charge, lien, trust, power or retention of deposit arrangement in relation to the Land subject to the rights of Council and promptly upon request lodge at Land & Property information the relevant Certificate(s) of Title to enable registration of this Agreement under the *Real Property Act* in the relevant folios of the register of the Land.

### **6.4 Removal of Registration of the Agreement and Caveat**

After the whole of the Developer's Contribution has been completed or supplied (as the case may be) the Council will execute any form and supply such other information reasonably required to remove the Agreement and the caveat from the title to the land.

## **7 DISPUTE RESOLUTION**

### **7.1 Reference to Dispute**

If a dispute arises between the parties in relation to this Agreement, then either party may seek to resolve in accordance with this clause 7.

### **7.2 Notice of Dispute**

The party wishing to commence dispute resolution processes must notify the other in writing of:

- (a) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve matter other than by way of this clause 7;
- (b) the intent to involve this clause 7;
- (c) (if practicable) the outcomes which the notifying party wishes to achieve;
- (d) any material impact which the dispute has upon the completion of the Developer's Works.

The contents of a notice issued under the clause 7.2 are deemed to be confidential. The party issuing the notice may (but is not obliged) to assert legal professional privilege in respect of the contents.

### **7.3 Principals of Parties to Meet**

The principals of the parties (and in the case of the Council, the principal may include the person acting the role of Chief Executive Officer, or such other person as is nominated by the person holding that role in writing) must promptly (and in any event within 14 days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve the dispute during the course of that meeting;
- (b) agree that further material, expert opinion, or consideration is needed to effectively resolve the dispute (in which event the parties will in good faith agree to a timetable for resolution);
- (c) agree that the parties are unlikely to resolve the dispute and in good faith agree to a form of alternative dispute resolution (including expert determination, arbitration, or mediation) which is appropriate for the resolution of the relevant dispute.

#### **7.4 Neither Party May Constrain**

If:

- (a) at least one meeting has been held in accordance with clause 7.3; and
- (b) the parties have been unable to reach an outcome identified in 7.3(a) to (c); and
- (c) either of the parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 7.3;

then that party may, by 14 days notice in writing to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause 7 does not of itself amount to a breach of the Agreement.

## **8 NOTICES**

### **8.1 Service of Notice**

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out in Item 6 of Schedule 1 or (if such delivery is not accepted) then to the registered office or principal place of business of the Party.
- (b) faxed to that Party at its fax number set out in Item 6 of Schedule 1.

### **8.2 Change of Address**

If a Party gives the other Party 10 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

### **8.3 Time of Service of Notice**

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address.
- (b) if it is sent by post, 3 business days after it is posted.
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

#### 8.4 Service after hours, on Weekends and Holidays

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

### 9 APPROVALS AND CONSENT

Except as otherwise set out in this Agreement, a party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

### 10 ASSIGNMENT AND DEALINGS

#### 10.1 Dealings with Land

- (a) Subject to clause 10.1(b), the Developer must not have any Dealings with the Land unless the Developer first informs the proposed assignee, purchaser or other party (the **Incoming Party**) of this Agreement and provides the Incoming Party with a copy of this Agreement and transfers the obligations of this Agreement to that party.
- (b) If the Incoming Party is acquiring:
  - (i) an interest in the Land as a purchaser of one or more lots in a strata scheme, (whether or not the plan has, at the date of exchange, been registered at Land and Property Information NSW), or
  - (ii) is acquiring a lease on or more parts of the building upon the Land that does not form part of the Development;

then the Developer may create that interest without providing that party with a copy of this Agreement or requiring that party to enter into an Agreement with the Council and the interest so created will not be in breach of this Agreement.

### 11 COSTS

#### 11.1 Legal and Administrative Costs

The Developer must pay all reasonable legal and administrative costs and expenses in relation to:

- (a) the negotiation, preparation and execution of this Agreement; and
- (b) any enforcement of the rights under this Agreement;

and the Council may claim monies in payment of the legal and administrative costs from the Developer as a debt due and owing.

#### 11.2 Stamp Duty

The Developer is liable for and must pay all stamp duty (including any fine or penalty) on or relating to this Agreement.



**12 ENTIRE AGREEMENT**

This Agreement sets out the whole agreement of the Parties in respect of the subject matter. There are no other agreements, warranties or undertakings.

**13 FURTHER ACTS**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

**14 GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that State.

**15 NO FETTER**

Nothing in this Agreement will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, or fettering in any way the exercise of any statutory discretion or duty.

**16 REPRESENTATIONS AND WARRANTIES**

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

**17 SEVERABILITY**

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

**18 MODIFICATION**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.

**19 WAIVER**

The fact that a Party does not do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or

as an implied waiver of that obligation or breach in relation to any other occasion.

## 20 GST

- 20.1 In this clause terms used have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (the **GST Act**).
- 20.2 If a party to this Agreement (the **Supplier**) makes a supply under or in connection with this Agreement and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.
- 20.3 If this Agreement requires a party to pay for, or reimburse any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.
- 20.4 Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Agreement.
- 20.5 Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Agreement are GST exclusive.

## 21 EXPLANATORY NOTE

The Explanatory Note must not be used to assist in construing this deed.

**SCHEDULE 1 - REFERENCE SCHEDULE**

Item	Name	Description
1	Developer's Name Developer's ACN Developer's Address	<<identify name>> <<identify ACN (if applicable)>> <<identify address>>
2	Council's Representative	<<identify name>>
3	Land	<<identify Land>>
4	Development (Development Application No.)	<<insert brief description>> <<insert Development Application number>>
5	Monetary Contribution  Land Dedication  Public Purpose (Developer's Works)	\$ <<insert amount, where relevant>>  <<identify Dedicated Land, where relevant>>  <<identify the Developer's Work, where relevant, and further describe in Schedule 3>>
6	Notices  <b>Council</b> Attention Address  Fax Number  <b>Developer</b> Attention Address Fax Number	Chief Executive Officer Cnr Walker Street and Graham Place Locked Bag 10 CASINO NSW 2470 02 66601300  <<identify name>> <<identify address>> <<identify number>>

**SCHEDULE 2 - COUNCIL'S WORKS**

**Area of Council's Works**

Council is to perform public domain works of the nature set out in this Schedule.

**Nature of Works**

*<<Insert description of proposed works>>*

**SCHEDULE 3 - DEVELOPER'S WORKS**

*<<Use either of the following as is relevant>>*

The parties acknowledge and agree the Developer is **not** required to perform works to the public domain in satisfaction of this Agreement.

Nothing in this Agreement will be read or construed as in any way reducing, or derogating from, the obligations to perform works in accordance with the Development Consent.

*or*

The parties acknowledge and agree the Developer is required to perform work to the public domain in satisfaction of this Agreement.

**Nature of Developer's Works**

*<<Insert description of proposed Developer's Works>>*

EXECUTED as an Agreement by:

RICHMOND VALLEY COUNCIL )  
(ABN 54 145 907 009) )

\_\_\_\_\_  
Chief Executive Officer (signature):

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor (signature):

\_\_\_\_\_  
Witness

<<Identify Developer name and )  
(ABN)>> in accordance with section )  
127 of the Corporations Law: )  
)  
)

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Full Name (printed):

\_\_\_\_\_  
Full Name (Printed):

\_\_\_\_\_  
Position:

\_\_\_\_\_  
Position:

# ***Richmond Valley Development Control Plan 2015***

## **Part I-5. Landscaping Guidelines**

This DCP applies to all land within the Richmond Valley Local Government Area.

**Date adopted by Council:**  
22 December 2015

**Effective Date:**  
4 January 2016

**Amendments:**  
Nil

These guidelines are included within the DCP to assist proponents in providing landscaping where required as part of the development proposed. It is recommended that larger developments engage the services of a professional landscape designer/architect as part of the overall design consideration of the development as a whole.

Landscaping allows for the built environment to blend more successfully with the natural environment and contributes to streetscape amenity for all to enjoy. Streets devoid of vegetation provide no shade and fail to soften harsh and contrasting solid construction elements found within streetscapes. The landscaping requirement for new residential development helps to ensure important elements and liveability are incorporated to preserve existing streetscapes. Landscaping promotes more vibrant and liveable streetscapes as well as improving water quality and providing cooling shade.

## **I-5.1 General Objectives**

Landscaping serves to provide a number of important development objectives within Richmond Valley. Good landscaping provided in conjunction with new development;

- (1) Facilitates the integration of proposed development into the surrounding streetscape or rural environ;
- (2) Presents a new development favourably and introduces the proposal into a neighbourhood in a manner which will promote acceptance;
- (3) Contributes to native flora and supporting fauna (both urban and rural) in the environ in which the development is proposed and furthers Environmentally Sustainable Development principles;
- (4) Integrates an important component of inter-allotment design by providing essential infiltration areas, as necessary for achieving Water Sensitive Urban Design (WSUD) principles;
- (5) Embellishes a new development aesthetically and softens the impact visually of individual components, and the overall design as a whole; and
- (6) Provides essential leisure and recreational opportunities as part of the development, promoting health and wellbeing of residents and employees.

## **I-5.2 Landscaping Principles**

### **Open Space**

- (1) The provision of Open Space provides a feeling of functionality and liveability. Development put before Council must be able to demonstrate that adequate open space and landscaping for each of the dwellings provides good functionality and a liveable environment for all intended inhabitants.

Open Space includes Landscape Open Space and Private Open Space.

It is a requirement that all Residential Development include a component of Open Space. In particular at least 25m<sup>2</sup> of Private Space – should be provided for each dwelling within a development, to enable equitable division of area per unit.

### **Landscaping/Landscape Open Space**

- (2) The Landscape Open Space is the area of pervious surfaces. It includes gardens and lawns as well as gravel or similar surfaced areas that allow infiltration. Landscape open space is required to be:
  - (a) At least 10% of the area of the lot, inclusive of
  - (b) a lawn and/or garden area being at least 50% of the area forward of the building line (between the dwelling(s) and the road boundary).

It is a requirement that landscaping provision provides adequate softening of the development, particularly from the front (and secondary) street aspect(s). Particular consideration shall be made to designing the landscaped areas for minimal ongoing maintenance requirements whilst providing good screening and privacy.



Table I-5.1 Minimum Landscaping Requirements

Zone	Landscaping Requirement
Residential Development	<p>(i) <b>R1 and RU5 – General Residential</b>                      A minimum of 3 (three) native shrubs or trees (preferably endemic to the area) with minimum mature height of 3 metres shall be included in the front setback of the development. Each additional 15 m<sup>2</sup> shall provide 1 (one) additional native tree, shrub or sedge. A garden bed area of minimum 8 metre square shall be constructed and bordered using stone, timber, or coloured textured cement providing a garden bed to accommodation vegetation and shall be mulched to a minimum 35mm depth. Suitable grass shall be established within the front setback and within any rear private open space area.</p> <p>(ii) <b>R5 – Large Lot Residential, E3 and RU1 – Rural</b>                      Where the frontage to any road is less than 50 metres, a minimum of 3 (three) native shrubs or trees per 120 m<sup>2</sup>. Each additional 30 m<sup>2</sup> shall provide 1 (one) additional native tree, shrub or sedge. A 15 metre square area for garden bed purposes (as described above), shall be provided within the curtilage of each dwelling house and a minimum grassed area of 4x6 m<sup>2</sup> provided for open space purposes. The bordering of the grassed area shall be stone, timber or coloured textured cement.</p>

**(3) Avoiding unsafe or burdensome Vegetation in Landscaping**

The following developments should avoid inappropriate vegetation types to circumvent hazard to infrastructure, property and life:

- ∅ **Dry vegetation types** should be avoided particularly within Bushfire Prone areas where wet sclerophyll species should be utilised (species more likely to be found in rainforest and other moister areas) with low ignition and even fire suppressing properties. The inclusion of wet species may pose some added burden concerning ongoing maintenance, however the added protection and shade will be appreciated by residents in the long term. Incorporation of such species should include water retaining measures to ensure the landscaped area does not excessively dry out. Stormwater overflow must be directed to stormwater infrastructure (in most urban areas) however initial flows should be directed onto areas of landscaping.
- ∅ **Excessively large and difficult to manage vegetation** poses risk to life as well as ongoing maintenance issues. Excessively fast growing and large species require regular maintenance to avoid creating dangers from concealment of dangers or storm/falling limb damage.

**(4) Provision of vegetation with flora and/or fauna value to further Environmentally Sustainable Development**

The most significant environmental impact resulting from nearly all development in both urban and rural areas is the resultant reduction of flora

and habitat important for sustaining fauna. In the process of accommodating landscaping for visual amenity purposes, it is also desirable to advance environmental and in particular ecological outcome as part of the process. In particular, wherever possible, existing vegetation should be retained on the site to be developed and the landscaping plan incorporated to augment the natural landscaping already provided.

### **I-5.3 Landscaping Design Considerations**

#### **Incorporate Native Flora which is regionally or even locally endemic**

- (1) Completely avoid any species which is considered a noxious or environmental weed.

Incorporate as many locally endemic species as possible.

Utilise species which have been included within the suggested species list at the end of this chapter.

#### **Hazards and Safety**

- (2) Appropriate planning of landscaping can avoid creating future hazards or safety issues. Consider the following:

∅ In **fire prone areas** utilise only species which are considered fire retardant and generate little dry debris.

∅ Do not use excessively **large species** within close proximity to the development where there is a risk of storm or falling limb damage.

∅ Do not plant species **close to buildings or infrastructure** which are known to cause damage. Although the following tree species listed in Table I-5.2 are predominantly exotic and unlikely to be preferred species for landscaping and garden purposes, care should be taken to avoid propagating these species within the vicinity of sewer/water pipes, or other susceptible materials such as paving, On-site Sewage Management Systems, subterranean wiring, etc.

- (3) **Crime Prevention Through Environmental Design (CPTED) principles**

Chapter I-10 contains detail concerning CPTED provisions.

∅ Avoid landscaping which obscures natural surveillance.

∅ As with 'blind corners' or general concealed areas, the large size of certain vegetation obstructs visibility and makes people feel uneasy and unsafe. Perceiving that something may be 'behind those bushes' can discourage genuine use of a space.

∅ Avoid medium height vegetation with concentrated top to bottom foliage. Plants such as low hedges and shrubs (1 to 1.2m high), creepers, ground covers or high canopied vegetation are good for natural surveillance.

∅ Trees with dense low growth foliage should be spaced or have the crown raised to avoid a continuous barrier.

∅ Use low ground cover or high canopied trees, clean trunked to a height of 2m around children's play areas, car parks and along pedestrian pathways

∅ Avoid vegetation that conceals the building entrance from the street.

Table I-5.2 Species list of plants with a high danger of root intrusion

Botanical Name	Common Name	Risk of Root Intrusion
<i>Cinnamomum camphora</i>	Camphor Laurel	Extreme
<i>Ficus species</i>	Fig Trees & Rubber Plants	Extreme
<i>Populus species</i>	Poplars	Extreme
<i>Salix species</i>	Willows	Extreme
<i>Erythrina species</i>	Coral Trees	Very High
<i>Eucalyptus species</i>	Large Gum Trees	Very High
<i>Jacaranda mimosifolia</i>	Jacarandas	Very High
<i>Liquidambar styraciflua</i>	Liquidambas	Very High
<i>Araucaria species</i>	Norfolk Is. & Bunya Pines	Very High
<i>Brachychiton acerifolium</i>	Illawarra Flame Tree	Very High
<i>Casuarina species</i>	Casuarinas	Very High
<i>Melia azedarach</i>	Australian White Cedar	Very High
<i>Pinus species</i>	Pine Trees	Very High
<i>Platanus acerifolia</i>	Plane Tree	Very High
<i>Schinus molle</i>	Pepper Tree	Very High
<i>Ulmus species</i>	Elms	Very High
<i>Bougainvillea species</i>	Bougainvilleas	High
<i>Cortaderia selloana</i>	Pampas Grass	High
<i>Grevillea robusta</i>	Silky Oak	High
<i>Ilex species</i>	Hollies	High
<i>Lagunaria patersonii</i>	Norfolk Island Hibiscus	High
<i>Ligustrum species</i>	Privets	High
<i>Magnolia species</i>	Magnolias	High
<i>Nerium oleander</i>	Oleanders	High
<i>Phoenix canariensis</i>	Canary Island Date Palm	High
<i>Phyllostachus species</i>	Bamboos	High
<i>Toxicodendron species</i>	Rhus Trees	High
<i>Lophostemon confetus</i>	Brush Box, Tristania	High
<i>Wisteria species</i>	Wisteria	High

**(4) Additional CPTED Principles relating to Residential Development design**

- Ø Landscaping can be an effective way of controlling/directing movement in an area. Depending on the intention, it can either restrict or encourage people to access a particular area.
- Ø Vegetation can be used as barriers to deter unauthorised access. Avoid large trees/shrubs and buildings works that could enable an intruder to gain access to the dwelling or to neighbouring dwellings. Prickly plants can be used as effective barriers. Species include bougainvilleas, roses, succulents, and berberis species.
- Ø Large trees, carports, skillion extensions, fences, and downpipes in situations can provide a means of access into yards or up to second storey windows or balconies.

## Infiltration and Evaporation Considerations

- (5) Areas of Landscaping should be provided in such a way as to direct internal overland stormwaters to landscaping areas for infiltration.
- Ø **Urban Areas** - Initial stormwater should be directed toward and onto landscaping areas, however once saturation is reached the on-flow must be directed toward stormwater infrastructure in urban areas where this infrastructure is provided. High regard should be incorporated within the design for Water Sensitive Urban Design (WSUD) and Chapter I9 should be consulted for detail concerning WSUD principles.
  - Ø **Rural Areas** – Landscaping should carefully be selected within proximity to On-site Sewage Management Systems as shadowing and root infiltration may dramatically affect the efficiency with which these systems safely treat effluent. Plantings of only extremely shallow rooting plants and grasses may only be considered on evaporative trenches and near other essential components of OSSMS. The landscape designer must be aware of where all components of the OSSMS system are located and design the landscaping appropriately.
    - § In some cases, (secondary or tertiary) treated effluent may be applied to correctly designed and located landscaping,
    - § Stormwater overflow from roof catchment systems should be directed onto landscaped areas designed for infiltration and reduction of erosive scouring (with the inclusion of a retention component where appropriate).

Table I-5.3 Groundcovers (Scramblers, climbers – rockeries)

Botanical Name	Common Name
<i>Actinotus helianthi</i>	Sydney Flannel Flower
<i>Alocasia brisbanensis</i>	Cunjevoi
<i>Alpinia coerulea</i>	Native Ginger
<i>Austromyrtus dulcis</i>	Midgenberry
<i>Brachyscome multifida</i>	Native Daisy
<i>Carpobrotus glaucescens</i>	Pigface
<i>Correa alba</i>	White Correa
<i>Dendrobium sp.</i>	Orchids
<i>Dianella caerulea</i>	Blue Flax Lily
<i>Dianella revoluta</i>	Black Anther Flax Lily
<i>Eriostemon myoporoides</i>	Wax Flower
<i>Helichrysum rupicola</i>	Paper daisy
<i>Hibbertia scandens</i>	Twining Guinea Flower
<i>Lobelia trigonocaulis</i>	Forest Lobelia
<i>Lomandra hystrix</i>	Small Mat Rush
<i>Lomandra longifolia</i>	Longleaf Mat Rush
<i>Viola hederacea</i>	Native Violet
<i>Acacia prostrate species</i>	Wattles
<i>Anigozanthos species</i>	Kangaroo Paw
<i>Banksia species</i>	Banksia

Botanical Name	Common Name
<i>Blandfordia sp</i>	Christmas Bells
<i>Boronia floribunda</i>	Pale Pink Boronia
<i>Boronia serrulata</i>	Native Rose
<i>Callistemon prostrate species</i>	Bottle-brush
<i>Carex species</i>	Native sedge
<i>Crinum pedunculatum</i>	Swamp Lily
<i>Curcuma australasica</i>	Cape York Lily
<i>Dampiera diversifolia</i>	Dampiera
<i>Eremophila prostrate species</i>	Emu Bush
<i>Goodenia varia</i>	Goodenia
<i>Grevillea species</i>	Grevillea
<i>Melaleuca pulchella</i>	Claw Honey Myrtle Flower
<i>Myoporum parvifolium</i>	Creeping Boobiella
<i>Oplismenus aemulus</i>	Basket Grass
<i>Orthosiphon aristatus</i>	Cats Whiskers
<i>Patersonia sericea</i>	Native Iris
<i>Persoonia species</i>	Geebung
<i>Pimelea glauca</i>	Rice Flower
<i>Pollia crispata</i>	Pollia
<i>Pratia pedunculata</i>	Pratia
<i>Pseuderanthemum variabile</i>	Pastel Flower
<i>Rulingia hermanniifolia</i>	Rulingia
<i>Scaevola humilis</i>	Fan Flower
<i>Tripladenia cunninghamii</i>	Kreysigia
<i>Xerochrysum bracteata</i>	Paper Daisy, Everlasting

Table I-5.4 Native Shrubs – Plants growing to a maximum height of 2-3 metres

Botanical Name	Common Name
<i>Acacia longifolia</i>	Sydney Golden Wattle
<i>Baeckea linifolia</i>	Swamp Baeckea
<i>Banksia ericifolia</i>	Heath Leafed Banksia
<i>Banksia robur</i>	Swamp Banksia
<i>Bauera rubioides</i>	River Dog Rose
<i>Boronia species</i>	Boronia
<i>Callicarpa pedunculata</i>	Velvet Leaf
<i>Callistemon 'Little John'</i>	Callistemon
<i>Coprosma hirtella</i>	Looking Glass Plant
<i>Darwinia citriodora</i>	Lemon-scented Darwinia
<i>Dillwynia retorta</i>	Egg and Bacon
<i>Dodonaea triquetra</i>	Hopbush
<i>Doryanthes palmeri</i>	Spear Lily
<i>Eremophila species</i>	Emu Bush
<i>Eriostemon australasius</i>	Pink Wax Flower

Botanical Name	Common Name
<i>Eupomatia laurina</i>	Native Bolwarra or Guava
<i>Gompholobium virgatum</i>	Yellow Wedge Pea
<i>Graptophyllum excelsum</i>	Scarlet Fuchsia
<i>Grevillea species</i>	Grevillea
<i>Hakea species</i>	Hakea
<i>Hibiscus heterophyllus</i>	Native Rosella
<i>Hibiscus splendens</i>	Native Hibiscus
<i>Isopogon anemonifolius</i>	Drumstick
<i>Kunzea capitata</i>	Pink Kunzea
<i>Leptospermum petersonii</i>	Lemon-scented Tea Tree
<i>Leptospermum species</i>	Tea Trees
<i>Melastoma affine</i>	Blue Tongue
<i>Oxylobium robustum</i>	Golden Shaggy Pea
<i>Ozothamnus diosmifolius</i>	Rice, Sago or Pill Flower
<i>Pittosporum revolutum</i>	Hairy Pittosporum
<i>Ricinocarpos pinifolius</i>	Wedding Bush
<i>Thryptomene paynei</i>	Thryptomene
<i>Westringea fruticosa</i>	Coastal Rosemary
<i>Baeckea species</i>	Baeckea
<i>Boronia species</i>	Boronia
<i>Callisternon species</i>	Bottlebrushes
<i>Grevillea species</i>	Grevillea
<i>Hakea species</i>	Hakea
<i>Hovea species</i>	Hovea
<i>Isopogon anemonifolius</i>	Drumstick
<i>Kunzea ambigua</i>	Tick Bush
<i>Leptospermum 'Pink Cascade'</i>	Tea-tree
<i>Leptospermum 'Pacific Beauty'</i>	Tea-tree
<i>Leptospermum species</i>	Tea trees
<i>Leucopogon species</i>	Bearded Heath
<i>Melaleuca species</i>	Paper Bark
<i>Prostanthera species</i>	Mint Bushes
<i>Pultanea species</i>	Bacon and Eggs
<i>Rhododendron lochiaie</i>	Australian Rhododendron
<i>Syzygium australe cultivars</i>	Dwarf Lilly Pilly
<i>Syzygium species</i>	Lill Pillies
<i>Xanthorrhoea species</i>	Grass Trees
<i>Zieria species</i>	

Table I-5.5 Small trees – trees suitable for the average size urban block

Botanical Name	Common Name
<i>Acacia elata</i>	Cedar Wattle
<i>Acmena smithii</i>	Lilly Pilly
<i>Acronychia imperforata</i>	Coastal Apple
<i>Alectryon conaceus</i>	Beach Alectryon
<i>Allocasuarina littoralis</i>	Black She Oak
<i>Archirhodomyrtus beckleri</i>	Rose Myrtle
<i>Austromyrtus bidwillii</i>	Python Tree
<i>Backhousia citriodora</i>	Lemon Scented Ironwood
<i>Banksia serrata</i>	Old Man Banksia
<i>Brachychiton acerifolius</i>	(Illawarra) Flame Tree
<i>Brachychiton discolor</i>	Lace Bark Tree
<i>Callicoma serratifolia</i>	Callicoma
<i>Callistemon salignus</i>	Weeping Bottle brush
<i>Cassine australis</i>	Red Olive Plum
<i>Cryptocarya laevigata</i>	Glossy Laurel
<i>Cupaniopsis anacardioides</i>	Coastal Tuckeroo
<i>Elaeocarpus reticulatus</i>	Blueberry Ash
<i>Euodia elleryana</i>	Pink Euodia
<i>Euodia micrococca</i>	White Euodia
<i>Ficus fraseri</i>	Sandpaper Fig
<i>Glochidion sumatranum</i>	Umbrella Cheese Tree
<i>Hakea salicifolia</i>	Willow Hakea
<i>Harpullia pendula</i>	Tulipwood
<i>Hymenosporum flavum</i>	Native Frangipani
<i>Lophostemon confertus</i>	Brush Box
<i>Macaranga tanarius</i>	Macaranga
<i>Melaleuca leucadendra</i>	
<i>Melaleuca quinquenervia</i>	Broad-leaved Paperbark
<i>Pandanus tectorius</i>	Pandanus, Screw Pine
<i>Persoonia species</i>	Geebung
<i>Phebalium squameum</i>	Satinwood, Silver Leaf
<i>Pittosporum rhombifolium</i>	Hollywood/Coastal Daphne
<i>Polyscias elegans</i>	Celerywood
<i>Randia benthamiana</i>	Native Gardenia
<i>Rhadamnia rubescens</i>	Scrub Turpentine
<i>Sarcopteryx stipata</i>	Steelwood
<i>Stenocarpus sinuatus</i>	Fire-wheel tree
<i>Sterculia quadrifida</i>	Peanut Tree
<i>Synoum glandulosum</i>	Scentless Rosewood
<i>Syzygium australe</i>	Brush Cherry
<i>Syzygium olesum</i>	Blue Lilly Pilly
<i>Syzygium paniculatum</i>	Magenta Lilly Pilly
<i>Tristaniopsis laurina</i>	Water Gum
<i>Trochocarpa laurina</i>	Tree Heath
<i>Waterhousea floribunda</i>	Weeping Lilly Pilly

Botanical Name	Common Name
<i>Agonis flexuosa</i>	Willow Peppermint
<i>Alloxylon flammeum</i>	Queensland Tree Waratah
<i>Banksia species</i>	Banksias
<i>Buckinghamia celsissima</i>	Ivory Curl Flower Tree
<i>Ceratopetalum qummiferum</i>	NSW Christmas Bush
<i>Dodonea species</i>	Hop bushes
<i>Eyodiella muelleri</i>	Little Evodia
<i>Eucalyptus species</i>	Dwarf grafted Eucalyptus
<i>Leptospermum species</i>	Tea Trees
<i>Melastoma affine</i>	Native Lasiandra
<i>Waterhousea unipunctata</i>	Roly Poly Satin Ash
<i>Xenthostemon sp</i>	Golden Penda (Hybrids)

Table I-5.6 Palms, Ferns, Cycads and Palm Lillies

Botanical Name	Common Name
<i>Archontophoenix cunning</i>	Bangalow Palm
<i>Adiantum aethiopicum</i>	Common Maidenhair Fern
<i>Adiantum formosum</i>	Giant Maidenhair Fern
<i>Asplenium australasicum</i>	Birds Nest Fern
<i>Blechnum indicum</i>	Swamp Water Fern
<i>Cordyline rubra</i>	Palm Lily - Cordyline
<i>Cordyline stricta</i>	Palm Lily - Cordyline
<i>Cyathea cooperi</i>	Straw Tree Fern
<i>Cyathea australis</i>	Rough Tree Fern
<i>Doodia aspera</i>	Rasp Fern
<i>Lepidozamia peroffskyana</i>	Shining Burrawang (Cycad)
<i>Linospadix monostachya</i>	Walking Stick Palm
<i>Platynerium sp.</i>	Elkhorn/Staghorn
<i>Todea barbara</i>	King Fern
<i>Wodyetia bifurcata</i>	Foxtail Palm



# *Richmond Valley Development Control Plan 2015*

## **Part I-6. Animal Boarding and Training Establishments**

This DCP applies to all land within the Richmond Valley Local Government Area.

Date adopted by Council:  
22 December 2015

Effective Date:  
4 January 2016

Amendments:  
Nil

Animal Boarding or Training Establishments are permissible in areas designated by the following zones:

- Ø RU1 Primary Production
- Ø IN1 General Industry
- Ø RE1 Public Recreation
- Ø RE2 Private Recreation
- Ø E3 Environmental Management

Such development is prohibited in all other zones.

By definition, *Animal Boarding or Training Establishments* are places used for the breeding, boarding, training, keeping or caring of animals (other than for the agistment of horses), for commercial purposes.

The keeping of animals for agricultural purposes is separately defined as '*Intensive livestock agriculture*' by the Standard LEP and covered by Chapter H-3 in the DCP.

This Chapter will designate the maximum number of animals that may be kept, breed, trained, boarded or cared for before being considered commercial in nature, and therefore, requiring development consent to operate.

For the purposes of this chapter, 'keep' or 'kept' also includes the breeding, boarding, training or caring for animals.

## I-6.1 General Objectives

The general objectives of this Chapter are to:

- (1) define what is considered to be an Animal Boarding and Training Establishments for the purposes of the *Richmond Valley LEP 2012*.
- (2) determining the maximum number of animals that may be kept before an establishment is considered to be commercial in nature and therefore an Animal Boarding and Training Establishment.
- (3) guide what information will be required to support an application for an Animal Boarding and Training Establishment.
- (4) provide controls to protect urban and rural amenity.
- (5) provide adequate design considerations to avoid unacceptable adverse impacts to a locality.

## I-6.2 What are Animal Boarding and Training Establishments?

### Objective

- (1) define *Animal Boarding and Training Establishments* in the context of the *Richmond Valley LEP 2012*.

### Controls

- (1) The Richmond Valley LEP 2012 is a Standard Instrument LEP. The dictionary to the Standard Instrument LEP defines:  
*Animal boarding and training establishments means a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses), and includes any associated riding school or ancillary veterinary hospital.*
- (2) Animal Boarding and training establishments are prohibited in all zones except:
  - Ø RU1 Primary Production
  - Ø IN1 General Industry
  - Ø RE1 Public Recreation
  - Ø RE2 Private Recreation
  - Ø E3 Environmental Management
- (3) Development consent is required to operate an Animal Boarding and training establishment, unless it is identified as exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and another Environmental Planning Instrument.

### I-6.3 Non-Commercial Keeping of Animals

#### Objective

- (1) to establish when the keeping of animals is considered to be an Animal Boarding and Training Establishment,
- (2) to have regard to the likely impacts on a location of keeping animals when considering if it will be commercial in nature, and therefore, an Animal Boarding and Training Establishment,
- (3) to recognise that keeping of any number of animals for commercial purposes will be an Animal Boarding and Training Establishment.

#### Controls

- (1) Table I-6.1 sets the maximum number of animals that may be kept at a property before it is considered to be commercial in nature and therefore an Animal Boarding and Training Establishment.
- (2) Notwithstanding, premises operating on a commercial basis will be considered to be Animal Boarding and Training Establishments irrespective of the number of animals kept and the standards contained within the Table.
- (3) If Council considers the keeping of animals at or below the levels contained in the Table will still impact upon the amenity of a locality, it may determine that the premises is an Animal Boarding and Training Establishment.

**Table I-6.1 Maximum number of animals that may be kept before being considered Commercial and therefore an Animal Boarding and Training Establishment**

Zone	Number of Animals Kept
R1 – General Residential RU5 – Village	<p>The maximum number of animals (excluding offspring to 3 months of age) that may be kept on a property and any specific requirements are:</p> <ol style="list-style-type: none"> <li>(a) for dogs—5;</li> <li>(b) for cats—5;</li> <li>(c) for fowl and poultry—10, and must not include a rooster;</li> <li>(d) for bees—1 hive, and the Beekeeper must be registered;</li> <li>(e) for sheep, goats, pigs or horses—1; and</li> <li>(f) for all other animals—a maximum number appropriate to the location, breed and temperament of the animals so as not to interfere with the amenity of the area;</li> </ol> <p>No more than 2 types of animals being kept at the maximum number set per property.</p>
R5 – Large Lot Residential	<p>The maximum number of animals (excluding offspring to 3 months of age) that may be kept on a property and any specific requirements are:</p> <ol style="list-style-type: none"> <li>(a) for dogs—5;</li> <li>(b) for cats—5;</li> <li>(c) for fowl and poultry—20;</li> <li>(d) for bees—2 hives, and the Beekeeper must be registered; and</li> <li>(e) for all other animals—a maximum number appropriate to the location, breed and temperament of the animals so as not to interfere with the amenity of the area;</li> </ol> <p>No more than 2 types of animals being kept at the maximum number set per property.</p>

Zone	Number of Animals Kept
RU1 – Primary Production E3 – Environmental Management	<p>The maximum number of animals (excluding offspring to 3 months of age, and working dogs as per <i>Companion Animals Act 1998</i>), that may be kept on a property, and any specific requirements are:</p> <p>(a) for dogs—5;</p> <p>(b) for cats—5; and</p> <p>(c) for all other animals—a maximum number appropriate to the location, breed and temperament of the animals so as not to interfere with the amenity of the area;</p> <p>No more than 2 types of animals being kept at the maximum number set per property.</p>
Other Zones	Maximum number to be determined on merits having consideration to the Zone, characteristics of the location, the breed and temperament of the animals, so as not to interfere with the amenity of the area.
<p><b>Note.</b> The keeping of other types of animals or the erection of their shelters may be provided for under <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>. Examples 'Animal shelters', 'Aviaries', and 'Fowl and poultry houses'.</p>	

## I-6.4 Development Application requirements

### Objective

- (1) to assist with the appropriate siting of Animal Boarding and Training Establishments.
- (2) to assist with the preparation and presentation of information to accompany a development application.

### Controls

- (1) All Animal Boarding and Training Establishments require Development Consent to operate.  
All development applications must be accompanied by a Statement of Environmental Effects which, at a very minimum, must address the requirements identified in subsection (3).

### Areas where Intensive Animal Establishments are unlikely to be supported

- (2) Council is unlikely to support the establishment of Animal Boarding and Training Establishments in the following locations:
  - ∅ Proximity to established residential, rural residential developments and to future residential or rural residential developments as delineated within Urban or Rural Land Use Strategies prepared for Richmond Valley
  - ∅ Proximity to either approved, established and operating forms of intensive animal establishments.
  - ∅ In addition, Council cannot support the establishment of Intensive Animal Establishments where cumulative developments may present an increased amenity risk. The establishment of boarding and training establishments on adjoining or close sites will be considered and ultimately determined on a merit basis with the onus strongly on the

applicant to demonstrate through detailed analysis why additional establishments will not be a risk.

### Development Application Requirements

(3) A Development Application for an Animal Boarding and Training Establishment must include but not necessarily be limited to the following detail within a Statement of Environmental Effects:

- (a) **Odour** - Odour Modelling Report prepared by a suitably qualified person which outlines the extent of impacts of any odours both from the proposed land use and any cumulative impacts due to any existing land uses which may already emit offensive odours. Such report is to be prepared with regard for likely climatic and prevailing conditions. The Odour Report is also to submit operational procedures to further mitigate any impacts and to identify the extent of reduction based upon these practices.
- (b) **Noise** - A Noise Impact Report prepared by a suitably qualified person which outlines the extent of impacts of noise from the proposed use including the full extent and activities to be operating on site and also the activities associated with the proposal including the type and numbers of traffic which will be generated by the land use. The Report is also to make recommendations for the mitigation of any noise impacts and is to identify the extent of noise reduction as a result of these measures being implemented. *Section I-7 – Noise Impact Assessment (NIA)* provides additional detail as to what is required for the preparation of a detailed application involving NIA.
- (c) **Traffic and Road Haulage** - A Traffic Report is required to be submitted and must be prepared by a suitably qualified person, detailing, but not necessarily limited to:
  - Ø the types and numbers of traffic to be generated by the proposal;
  - Ø details of the existing condition, widths, depths of pavement and its suitability or otherwise for the carriage of transport to be associated with the land use;
  - Ø proposed upgrading to be undertaken by the applicant including location(s) of width or depth of pavement, sealing of pavement and extension of stormwater pipes or culverts along the route(s).
  - Ø Detailed plans showing where access to the property is proposed and adequate manoeuvring area(s) are provided to ensure visiting vehicles enter and exit the property in a forward motion. Car parking is to be provided wholly within the property for a minimum of three vehicles, however more may be required based upon detail supplied as to staffing numbers and operational procedures.
- (d) **Access** - Entrance/exit-way(s) to the local road network must be constructed to Council specification and provide suitable line-of-sight distance for exiting vehicles. As a guide, around 150 metres is required to safely de-accelerate and pull off the road in a 100km an hour speed zone. In all instances, Council reserves the right to determine whether the placement and access is suitable and safe. All works required to be undertaken must be financed by the owner of the property or proponent

of the development, including any works proposed on the road reserve verge.

- (e) **Statement of Environmental Effects** - The Statement of Environmental Effects (SEE) accompanying the application is required to describe in detail all aspects of the operation of the establishment which may then be transcribed into a Management Plan for the land use.
- (f) **Environmental Management Plan** - An Environmental Management Plan shall be prepared for the operation of the animal establishment detailing, but not necessarily limited to the following matters:
- Ø Treatment and disposal of litter and effluent;
  - Ø Odour Management;
  - Ø Noise Management;
  - Ø Biosecurity measures for the control and quarantine of exotic, endemic or emergency diseases;
  - Ø Disposal of dead animals;
  - Ø Food Storage and Vermin control;
  - Ø Erosion control measures;
  - Ø Water and Drainage management;
  - Ø Chemicals and Fuel storage;
  - Ø Complaints register;
  - Ø Guidelines for the Operation, e.g. Greyhound Racing Control Board;
  - Ø Water storage and harvesting methods; and
  - Ø Dust and air-borne particulate matter management.
- (g) **On-Site Sewage Management** - The preparation and review of On-Site Sewage Effluent Disposal for these forms of land use is to be undertaken in accordance with Council's On-Site Sewage and Wastewater Strategy and associated guidelines. Further effluent treatment methods and devices may be required for solids disposal and it is recommended pre-lodgement discussions be held with Council to confirm the treatment level and technique.
- (h) **Land Use Conflict Risk Assessment (LUCRA)** - A LUCRA component to provide a site specific conflict risk assessment relevant to the location and sensitivity of adjacent, adjoining and nearby landuses to ultimately determine the feasibility of the establishment in the location proposed and any required management response to potential conflicts. Section I-11 addresses the requirements of a LUCRA in detail and should be referenced comprehensively for this component of the application.

### Public Exhibition and Consultation

- (4) The Public Exhibition and any required consultation shall be conducted in accordance with DCP *Part J – Notification and Advertising of Development* and generally requires a minimum 14 day exhibition period.

## Site Suitability

- (5) The suitability of the site for the purpose of accommodating an Animal Establishment will be assessed during the application process. Particular attention should be made, but not limited to, the following site suitability specifications so as to minimise poor site choices and wasted resources.
- (a) **Large and isolated rural allotment** so as to provide ample distance between sensitive receivers in respect to noise, odour and biohazard 'buffer' requirements.
  - (b) **Adequate access** so as to provide ample entry turnout and line-of-sight distance relevant to the intended vehicular type and numbers proposed for the use of the property. The local road network from the larger arterial roads must be of a suitable width, grade and condition to be able to adequately support the intended establishment. The proponent may be required to upgrade the road (and any associated works) to a condition suitable and/or pay contributions for use of the local road network based upon the assessment of Council.
  - (c) **Relatively Flood and Bushfire Free.**
  - (d) **Relatively free of other Environmental Constraints** – in particular those indicated within a Natural Resource Sensitivity map and associated provisions (see *Chapter H-4 – Natural Resource Sensitivity* for further detail and requirements).





# ***Richmond Valley Development Control Plan 2015***

## **Part I-7. Noise Impact Assessment**

This DCP applies to all land within the Richmond Valley Local Government Area.

**Date adopted by Council:**  
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Nil

Environmental noise emitted from a premise or land-use can impact negatively upon neighbours, or even entire neighbourhoods. It can affect the health and wellbeing of individuals and community as a whole. In NSW, laws have been enacted to enforce noise reduction and protect people from resultant annoying and harmful effects.

Although Council has authority to regulate noise impacts if verified offensive noise complaints are received, it is more practical to ensure offensive noise impacts are prevented through initial intelligent design. Operational procedures should also be instigated to minimise noise at the time when the land-use is established or when significant changes are proposed.

This section of the DCP provides guidance and examples where noise impact assessment is required as part of a comprehensive development application. Noise impact assessment is generally required to be an integral component of a development application (DA) where the proposed development and/or associated activity may potentially impact neighbouring properties and public land. The provisions within this section of the DCP particularly seek to protect noise-sensitive land uses from any negative impacts resulting from any proposed development.

## **I-7.1 Objectives**

The objectives of this Chapter are to:

- (1) Provide examples of development types that require Noise Impact Assessment (NIA) as an integral part of an application for the development.
- (2) Describe the level of detail required to satisfy qualitative and quantitative assessment of noise impacts within an application or proposal. Effective NIA requires accurate deduction of all potential and likely noise impacts upon adjoining land uses and the community as a whole.
- (3) Establish conditions and procedures to be applied to any relevant approval for development/proposals in order to offset possible negative resulting noise impacts. Conditions may apply to any aspect of the proposed development, including building design & materials, operational procedures (particularly hours of operation), and/or any combination of operation and construction controls as a result of the findings of the NIA. Precautionary measures are required to be anticipated by the proponent which may then be conditioned on any consent Council may grant. Conditions may be imposed by Council with some negotiation possible with the offsetting of major impacts, however it will be required the proponent suggest mediating measures within the NIA.
- (4) Provide mechanisms for avoiding the creation of 'offensive noise' through development control initiated through the approval process.
- (5) Provide for any additional advertising and notification procedures for the development application process in relation to noise matters.

## **I-7.2 Definition of Noise**

**Noise-sensitive land uses** include all that are residential, institutional, public and recreation in nature. Examples include (but are not limited to) campgrounds, hospitals, places of worship, schools, day care facilities, long-term care facilities, libraries, auditoriums, community centres, offices, conference rooms, reading rooms, hotels, motels and some parts of retail stores.

**Noise** may be generated as a direct consequence of the operation of a development and involves sound impacts from:

- Ø machinery of any kind
- Ø vehicles within the site (forklifts, trucks reversing, loading, etc)
- Ø any ancillary operation noise

**Indirect noise generation** may also be required to be assessed and may include:

- Ø pedestrian and/or vehicle movements to and from the site of the development, with particular attention to the times of day or night these movements may occur. Pedestrian movement may involve intoxicated patrons which will have a greater influence on the amount of noise potentially generated from the development.
- Ø security or fire alarms, night access facilities, security personnel movements, etc

### **I-7.3 Legislative Provisions**

- (1) Although there is no specific provisions concerning Noise Impact Assessment within the *Richmond Valley Local Environmental Plan 2012* (the LEP), noise impact considerations are included within the overall aims and objectives of the Plan.

Section 79C of the *Environmental Planning and Assessment Act 1979* also requires that when determining a development application, a consent authority must take into consideration the likely social impacts of that development in the locality.

Richmond Valley Council (RVC) has a statutory obligation to consider noise impacts when determining development proposals. Applicants may be required to provide noise assessment within application details, when deemed necessary in the opinion of Council and/or the assessing officer.

Noise assessment is an important tool to accurately assess the potential impact of a proposal or application for development on surrounding land uses and the locality. Although this section of the DCP is most relevant for development applications from private firms or individuals, it may also be a useful resource for authorities (including Council) as to where to what degree of Noise Impact Assessment (NIA) should be incorporated into proposals and application.

Extract from *Protection of the Environment Operations Act 1997*

#### Definition of Offensive Noise

**Offensive noise** means noise:

- (a) that, by reason of its level, nature, character or quality, or the time at which it is made or any other circumstances:
- (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
  - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- (b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in any other circumstances prescribed by the regulations.

### **I-7.4 Determining What Noise Impact Assessment is required**

#### **Is a Noise Impact Statement required?**

- (1) The question as to whether the proposal will require a degree of Noise Impact Assessment can be answered by responding in the affirmative to any one or more of the following;
- Ø Does the proposal involve a land-use which is likely to generate noise contrary to the majority of existing surrounding land-uses?
  - Ø Is the use one which might be considered to ordinarily generate some form of noise as a consequence of a consent being granted?

- Ø Will the proposal likely give rise to an increase in noise within the locality, either directly or indirectly through traffic movements, pedestrian access, operational equipment noise, etc?
- Ø Is the proposal likely to impact upon neighbourhood amenity and/or community meeting places (including pedestrian commuting conduits, parklands, etc) through the direct or indirect emission of noise?

The majority of development proposals will only require suitable comment regarding potential noise impacts within or as part of the Statement of Environmental Effects (SEE) accompanying a formal application. Full Noise Impact Assessment (NIA) is required for more comprehensive proposals which are likely to have larger potential noise impact upon neighbourhoods and localities.

The main distinction in the levels of NIA invoked below is the depth and range of reporting required within the proposal application. Section 3.4 outlines the detail required for various levels of Noise Impact Assessment which may be attributed to the development types listed below.

There is a high likelihood that most larger scale developments and proposals will require comprehensive noise reporting or assessment, in many cases these developments may also be 'designated' and require multiple additional approvals or concurrence from State and/or Commonwealth agencies.

### **The responsibility of the proponent**

- (2) It is the proponent's responsibility to ensure appropriate measures have been incorporated into the development design and that all applicable sound level criteria are met (subject to approval and review) for the extent and life of the development. The proponent's responsibilities also involve the following:
- Ø Determining feasibility of the project including constraints applicable before any project action or construction commitment is made;
  - Ø Ensuring all noise generating criteria likely to be associated with the development are included within the assessment provided and an acceptance that additional costs are likely to be borne by the proponent if the noise report is inadequate;
  - Ø Assessing all outdoor and indoor acoustical environments; measurements and readings must be supplied and extrapolated using commonly accepted and contemporaneous units and criteria;
  - Ø Ensuring that the required control measures are incorporated in the development.

### **Determine What Level of Noise Impact Assessment is Required**

- (3) There are 3 levels of Noise Impact Assessment. The appropriate level of assessment is dependent upon the nature of the development. Use the following guidelines to determine what level of assessment is required:
- (a) **High degree NIA**
- Development types which will require an extensive and comprehensive degree of Noise Impact Assessment accompanying the application:
- Ø Developments likely to generate noise and/or vibration impacts which could potentially significantly impact receivers within the vicinity and locality, such as:

- § animal boarding and/or training establishments (particularly dog & cat) – see Chapter I-6 for further detail of other requirements
- § Any proposed use involving the operation of more than four (4) mechanical vehicles such as automobiles, motorbikes, go-carts, jet skis or similar at one time.
- § extractive industries of any kind (quarrying) which involve heavy machinery use which are within 500 metres of any residential development, particularly involving noise generation of any kind (directly or indirectly) outside of usual operating hours (see below). Quarries which involve blasting and/or crushing require comprehensive noise assessment and are generally considered to significantly affect residences within 1000 metres.
- § industries, whether urban or rural utilising machinery use (within 100 and 750 metres of residential development respectively) involving noise generation of any kind (directly or indirectly) particularly when outside of usual operating hours (see below for details of usual operating hours)
- Ø Any other proposed noise emitting development situated within 50 metres (in an urban area) or 350 metres (within a rural area) of noise sensitive land-uses. If after-hours operation is proposed the trigger is within 100 metres (urban) or 750 metres (rural) of noise sensitive land-uses (standard hours given below).
- Ø Pubs, clubs and discothèques, etc (registered clubs) or any other music generating development (such as rehearsal rooms/halls, venues)
- Ø Late or very early hour premises such as Service Stations and fast or other food premises within 100 metres of residents; Depots, Entertainment Facilities, Function Centres, and any other similar premise.
- Ø Any other development Council's Planning or Environmental Health Officers interpret to likely present comparable noise impacts to those listed above.

**(b) Moderate degree NIA required**

Development types which will require a reasonable and comprehensive degree of Noise Impact Assessment accompanying the application:

- Ø Developments, such as:
  - § Larger retail complexes, Neighbourhood Shops (late or early hours),
  - § industries, whether rural or urban which involve machinery use (within 1000 and 200 metres of sensitive land-use respectively) involving noise generation of any kind (directly or indirectly) outside of usual operating hours (see below for details of usual operating hours),
  - § Childcare (caring for in excess of 15 children) within 50 metres of residential or other noise sensitive land-use (nslu).

- § Places of Public Worship and public assembly,
- § Recreation facilities (indoor and outdoor, inc. water),
- § Schools (exceeding 15 pupils under 18 years),
- § passenger transport facilities within 100m of a sensitive land-use,
- § developments involving wind, water, or other means of harnessing energy from the environment turbines which make noise in the process.
- Ø Group Homes (transitional and permanent), Boarding Houses, Hostels and the like.
- Ø Forms of Tourist Development which involve transitory guest accommodation catering for in excess of 10 guests, such as backpacker accommodation, which are within 200 metres of noise-sensitive land-uses.
- Ø Expansion or change of a non-conforming 'existing' or 'continuing' use (lesser NIA may be sufficient if noise impacts are negligible, subject to Council's consensus).
- Ø Home occupations, business or industry which intends to involve any form of noise generating machinery and is situated adjacent or adjoining other residential development or any other noise-sensitive land-use.
- Ø Larger Urban Industries and Rural Industries with over 15 employees.
- Ø Amusement Centres and Entertainment Facilities.
- Ø Places of Public Worship (between 20 - 30 worshippers - high degree NIA required above if within 100 metres of a sensitive land-use).
- Ø Seniors Housing and Residential Care Facilities (to be assessed as a sensitive receiver based upon existing land-uses within the vicinity).
- Ø Any other development that Council's Planning Officers interpret to likely present comparable social impacts to those listed above. This may include any development listed as requiring a high degree of NIA in I-7.3(3)(a) above with less perceived potential impacts.

**(c) Low degree NIA required**

Circumstances where a Noise Impact statement is sufficient - Development types which require low degree of Noise Impact Assessment accompanying the application:

- Ø Developments such as:
  - § Small retail complexes
  - § Medical Centres,
  - § Urban Industries and small rural industries within suitable setting
  - § Educational Establishments

§ Child Care Centres

- Ø Expansion or change of a non-conforming 'existing' or 'continuing' use.
- Ø Places of Public Worship (less than 20 worshipers).
- Ø Any other development Council's Planning Officers interpret to likely present comparable low degree of noise impact to those listed above. This may include any development listed as requiring a moderate degree of NIA in I-7.4(3)(b) above with reduced potential impacts, with Council's concurrence.

## **I-7.5 Design Standards and Noise Impact Assessment**

### **Main Considerations - Checklist for all levels of NIA**

- (1) The applicant will be required to address noise impacts of the proposal within the Statement of Environmental Effects (SEE) or any Environmental Impact Assessment accompanying the application, with care to address the following main considerations:
  - Ø An indication of the type and duration of all potential noise events likely to be generated from the land, and not just a direct result of the land use proposed. Examples of direct and indirect noise generation are given above (in the preamble). All anticipated noise sources shall be included within an exhaustive itinerary.
  - Ø A comprehensive list of all adjoining land uses and comment as to the compatibility of the proposal with those land uses existing, with particular attention to noise issues.
  - Ø Any suggestions by the proponent as to operational and/or design implementation which might lessen the impact of noise sourced from the development.
  - Ø Any required or suggested advertising and/or consultation with neighbours and key stakeholders.

### **Standard hours of operation for any noise generating development**

- (2) The standard hours of operation for noise generating development are equivalent to the normal hours of unrestricted business operation. It cannot be assumed operation within these hours is acceptable if the noise generated is considered to be in excess of that which would ordinarily be expected to be experienced.
  - (a) **Operating Hours:**
    - Monday to Friday: 7 a.m. until 6 p.m.
    - Saturday: 8 a.m. until 1 p.m.
    - Sundays and Public Holidays: No Operations.
  - (b) **Unloading, pick-ups and deliveries:**
    - Monday to Friday: 8 a.m. until 5 p.m.
    - Saturday: 9 a.m. until 12 noon

Sundays and Public Holidays: No Operations.

Any development proposed to operate outside of the Standard Hours of Operation should be treated as a higher impact development requiring a higher level of noise assessment. 24 hour operation will almost certainly require the highest level of noise assessment.

### **Minimum Requirements for a Noise Impact Assessment**

(3) Chapter I-7.4(3) provides a guide to determining what level of Noise Impact Assessment is required for development types. The following guide provides the minimum requirements for preparing the Noise Impact Assessment based on the level required:

**(a) High level SIA**

Minimum Requirements for Noise Impact Assessment as per development stipulated within Section I-7.4(3)(a):

- Ø A comprehensive report shall be provided detailing any inconsistencies with nearby existing land uses and the use proposed. Each adjoining land-use should be addressed individually with a comprehensive summary supplied to outline all noise impacts and considerations. The NIA must provide a detailed response as to whether any of the main considerations within I-7.4(1) relate to the proposal or the location. If an affirmative response to any I-7.4(1) consideration is recorded, the applicant must provide detail as to how negative impact will be mitigated and measures incorporated into the design and/or operating procedure of the development to alleviate all noise impacts.
- Ø The NIA shall outline all potential impacts upon adjoining land-uses and key stakeholders. A report shall be comprehensive and prepared by a suitably qualified acoustic engineer with particular reference to best practice principles and other contemporary studies (see subsection (4) below).
- Ø The NIA is required to outline all potential impacts upon adjoining land-uses and key stakeholders identified as a result of a comprehensive scoping component of the assessment. The acoustic engineer is required to address all impacted receivers and as well as suggesting ongoing monitoring measures to improve upon existing land-use operation and reporting procedures. Representative contact details should be made readily available to any member of the effected public to record and respond to offensive noise events. The operating procedures of the development shall incorporate monitoring and response procedures which will ensure ongoing noise level compliance.
- Ø The NIA shall incorporate a record of consultation with immediate neighbouring land-uses and key stakeholders. Comments and issues raised should be documented preferably written and signed 'letterhead' with responses from the applicant as to how the issues raised support the development, or suggest mitigating



measures which may be incorporated to lessen the impact of the issue raised.

- Ø The applicant is required to provide a comprehensive analysis of all potential impacts identified as a result of in-depth analysis of the location and active/passive use of the proposal site and surrounds. All impacts should be reported alongside all impacts resulting from community & stakeholder consultation. The proponent is also required to present suggested impact minimisation of all perceived impacts.
- Ø The NIA should entail a component of community consultation, record in detail all resulting discussion and comments received, and outline how any potential negative impacts raised may be incorporated into the development design and operation. Community consultation should concentrate on immediate neighbouring land-uses and main stake-holders.

**(b) Moderate level NIA**

Minimum Requirements for Noise Impact Assessment as per development stipulated within Section I-7.4(3)(b):

- Ø A comprehensive summary as to whether there are any inconsistencies with nearby existing land uses and the use proposed. Each adjoining land-use should be addressed individually (possibly in tabulated form) and a paragraph summary supplied to outline all noise impacts and considerations. The NIA must provide a detailed response as to whether any of the main considerations within I-7.4(1) relate to the proposal or the location. If an affirmative response to any I-7.4(1) consideration is recorded, the applicant should demonstrate how negative impact may be mitigated and potentially incorporated into the design or operating procedure of the development.
- Ø The NIA shall outline all potential impacts upon adjoining land-uses and key stakeholders. A report shall be comprehensive and prepared by person or persons suitably qualified in acoustic reporting with reference to best practice principles concerning contemporary acoustic reporting. Acoustic levels recorded (both background and peak shall be provided and incorporated into reasoning within the report.
- Ø The NIA should entail a component of community consultation, record in detail all resulting discussion and comments received, and outline how any potential negative impacts raised may be incorporated into the development design and operation. Community consultation should concentrate on immediate neighbouring land-uses and main stake-holders.

**(c) Low level Noise Impact Assessment**

Minimum Requirements for where Noise Impact comment is required i.e. development stipulated within Section I-7.4(3)(c):

- Ø A statement summary as to whether there are any inconsistencies with the existing land uses and the use proposed. Each land use

should be addressed individually (possibly in tabulated form) and a statement summary supplied.

- Ø Comment should detail whether any of the main considerations above relate to the proposal or the location of the proposal. A short response to each of the questions within I-7.4(1) will suffice, in particular:
  - § Is the proposal likely to impact upon adjoining land-uses (particularly if they are noise-sensitive), neighbourhood amenity and/or community land/meeting places (including pedestrian commuting conduits, parklands, etc)?
- Ø Comment should outline the likely impacts upon adjoining land-uses and key stakeholders. Comment need not be prepared by a suitably qualified person however must address all potential impacts and suggest possible mitigating measures.
- Ø Comment does not need to entail predictive acoustic readings however should endeavour to quantitatively and qualitatively itemise all noise generating sources likely to be audible beyond the subject property boundary. In instances where the noise source is likely to generate sound which could be reasonably expected to be a nuisance, detail shall be provided as to how impact may be mitigated.

### **Guidelines and Best Practice to be adopted for Reporting**

(4) The following publications and guidelines provide the most contemporaneous Noise Impact Assessment methods at the time of writing. It is expected the noise assessment guidelines and techniques listed below (or successive guidelines) be extensively referenced and adopted for development applications requiring NIA of the type examined within this DCP chapter. This list is not comprehensive and is subject to superseding guidelines, improvements and review.

- Ø *New South Wales Industrial Noise Policy – Environmental Noise Management* – Environment Protection Authority (EPA, 2000).
- Ø Department of Environment and Conservation (NSW) – *Noise Guide for Local Government – Environmental Noise Management* (2004).
- Ø NSW Department of Planning – *Development near Rail Corridors and Busy Roads* (Interim Guidelines 2008 or later).

## **I-7.6 Advertising and Notification**

(1) Part J of this DCP concerns advertising and notification. It generally sets the requirement for advertising periods dependent upon development type.

It is considered prudent, however that the applicant begin Noise Impact Assessment very early in the preparation of the development application process. Early preparation and notification provides a means to accurately present all noise impacts to adjoining owners and the general public during the exhibition process. Monitoring directly from nearby noise-sensitive environs (including indoors) can often be the most revealing means of

collecting relevant data, and the facilitating process can be a means to make positive contact with affected individuals and stakeholders.

Early engagement can be beneficial to demonstrate the intent of the proponent to conduct an equitable assessment of the proposal's impacts. Timely and thoughtful assessment techniques can provide opportunity to demonstrate how the development might proceed with minimal noise impacts. Transparency in this process can introduce and discuss mitigating measures to reduce impacts of noise on sensitive receivers.

- (2) It is highly recommended consultation concerning noise impact be initiated and include noise impacts as a major component of discussion and education with adjoining and affected parties. It is recommended the consultation process be initiated one month before the advertising period in order to adequately inform nearby residents and tenants as to the proposal and any possible consequence.

### **I-7.7 Additional Information regarding Noise Impact Measurement, Compliance and Management**

- (1) Proposals which involve siting Noise Sensitive Development within the influence of existing or proposed noise generating operations:
  - Ø Taking all reasoning and provisions outlined within the previous sections of this DCP into account, Council will require suitable NIA included within formal application for the potentially affected proposed development. The opinion of Council is absolute in determining these matters, and includes consideration, but is not limited to, the following:
    - § Road and Rail Transport Corridors (whether existing or proposed – including instances where the infrastructure and/or planning is in place, has been initiated, or continuance is undecided,
    - § Industrial, Commercial, Extractive or Agricultural practices adopted, or likely to be adopted within the surrounding area,
    - § Any likely or prevailing environmental factors, such as wind, topography, water bodies which may project sound further, etc,
    - § Areas recognised as potential development areas, as prescribed through the zoning, DCP designation, or any State or local strategy.
  - Ø Any knowledge of the proposed increase in production in nearby noise generating developments, including likelihood of escalation of 'existing' or 'continuing' use.
- (2) **Noise Impact Assessment Compliance – Legal Considerations**
  - Ø Council may impose Noise Control Orders in relation to 'Offensive Noise' matters which attract fines for non-compliance.
  - Ø Police have the authority to issue a Noise Abatement Direction for unacceptable noise which is an offence to ignore.
  - Ø Generally, persistent noise, such as that from an engine, is not acceptable before 7.00 a.m. or after 8.00 p.m.



# ***Richmond Valley Development Control Plan 2015***

## **Part I-8. Social Impact Assessment**

This DCP applies to all land within the Richmond Valley Local Government Area.

**Date adopted by Council:**  
22 December 2015

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4 January 2016

**Amendments:**  
Nil

This section of the DCP provides guidance and examples where social impact assessment is required as part of a comprehensive development application, management plan or other form of proposal assessment. The most notable instance of where social impact assessment is required is where proposed activity and/or development is likely to potentially impact a particular social group, community section or community in entirety.

### **I-8.1 General Objectives**

The general objectives of this Chapter are to:

- (1) Provide a concise checklist to determine whether social impact assessment is required as part of a development proposal or application.
- (2) Provide for qualitative assessment of social impacts within an application or proposal accurately interpreting the possible and likely impacts upon a social sector or community as a whole. The social consideration is required to balance environmental and economic considerations and provide a balanced and integrated assessment of all impacts.
- (3) Allow for easy identification of the social constituents within a community likely to be impacted by a proposal or development. If the proposal is permitted to proceed, monitoring of possible impacts upon the identified stakeholders may take place over the lifespan of the development.
- (4) Social Impact Assessment should determine conditions and procedures which need to be followed to offset possible negative social impacts resulting from the proposal. Precautionary measures are required to be anticipated by the proponent that can then be conditioned on any consent Council may grant. Conditions may be interpreted and negotiated between Council and the proponent, however it required the proponent suggest mediating measures within the SIA. This section of the DCP should be read in conjunction with and regard for Clause 1.2 of the *Richmond Valley Local Environmental Plan 2012* (the LEP).

### **I-8.2 Statutory Requirements**

- (1) Although there is no specific provision concerning Social Impact Assessment within the *Richmond Valley Local Environmental Plan 2012* (the LEP), Social considerations are requirements of many considerations regarding impacts, and are included within the overall aims and objectives of the Plan.
- (2) Section 79C of the *Environmental Planning and Assessment Act 1979* requires that when determining a development application, a consent authority must consideration the likely social impacts of that development in the locality.
- (3) Richmond Valley Council (RVC) has a statutory obligation to consider social impacts of development proposals in determining development proposals and may therefore require applicants to provide social impact assessment as part of the application.

### **I-8.3 When is a Social Impact Assessment required?**

- (1) The question as to whether the proposal will require a Social Impact Assessment can be answered by responding in the affirmative to any one or more of the following:
  - (a) Will the proposal disadvantage or benefit any particular social group, or the locality or the community within Richmond Valley (RVC) as a whole?

- (b) Will the proposal be likely to give rise to an increase or reduction in employment opportunities in the locality?
- (c) Will the proposal be likely to give rise to an increased demand for community facilities or services within the locality, or RVC area as a whole?
- (d) Will the proposal be likely to affect the supply of, or demand for, housing within the locality or LGA?
- (e) Is the proposal likely to impact upon neighbourhood amenity and/or community meeting places (including pedestrian commuting conduits, parklands, etc)?
- (f) Is the proposal likely to create any element of security or risk for any occupants, nearby residents or passing pedestrians?

### **Social Impact Statements or Social Impact Assessment (SIA)?**

- (2) The majority of development proposals will only require suitable comment within or as part of the Statement of Environmental Effects (**SEE**) accompanying an application.

A full SIA is required for more comprehensive proposals which are likely to have larger potential impact upon social identity and cohesiveness.

The main distinction in the levels of SIA, see Section I-8.3(3), is the depth and range of social implications of the proposal.

There is a high likelihood that most larger scale developments and proposals will require comprehensive SIA, particularly those which are 'designated development' or requiring multiple additional approvals or concurrences from State and/or Commonwealth Agencies.

### **Determine What Level of Social Impact Assessment is Required**

- (3) There are 3 levels of Social Impact Assessment. The appropriate level of assessment is dependent upon the nature of the development. Use the following guidelines to determine what level of assessment is required:

**(a) High degree SIA**

Development types which will require an extensive and comprehensive degree of Social Impact Assessment accompanying the application:

- Ø Major Developments, such as:
  - § Major new retail complexes, incorporating 4 or more shops.
  - § Hospitals, Institutions, Rehabilitation Centres, and the like.
  - § Childcare (caring for in excess of 15 children).
- Ø Tourist developments, Backpacker Accommodation and other transitory guest accommodation catering for in excess of 10 guests.
- Ø Sex Service Premises and Restricted Premises.
- Ø Residential Development in excess of twelve (12) proposed dwellings on a single allotment, regardless of any strata potential.
- Ø Urban and Rural Industries employing over 20 people.
- Ø Service Stations, Depots, Entertainment Facilities, Function Centres, Registered Clubs and any other similar premise which

may propose hours after 11.00 pm from the onset of operation, or potential at any time in the future.

- Ø Any other development Council's Planning or Environmental Health Officers interpret to likely present comparable social impacts to those listed above.

**(b) Moderate degree SIA**

Development types which will require an extensive degree of Social Impact Assessment accompanying the application:

- Ø Developments, such as:
  - § Small retail complexes, Neighbourhood Shops.
  - § Medical Centres.
  - § Childcare (caring for in 7 - 15 children).
  - § Recreation facilities (indoor and outdoor, including water).
  - § Schools.
- Ø Group Homes (transitional and permanent), Boarding Houses, Hostels and the like.
- Ø Expansion or change of a non-conforming 'existing' or 'continuing' use.
- Ø Home occupation (sex services), swingers clubs, sex/lingerie party premises, and the like.
- Ø Demolition of a building with heritage significance or change of use of a building or place acknowledged to have social or heritage significance (as determined by Council).
- Ø Larger Urban Industries and Rural Industries with over 10 employees.
- Ø Amusement Centres and Entertainment Facilities.
- Ø Car Parks over 20 spaces.
- Ø Places of Public Worship.
- Ø Seniors Housing and Residential Care Facilities.
- Ø Any other development Council's Planning Officers interpret to likely present comparable social impacts to those listed above. This may include any development listed as requiring a high degree of SIA in Section I-8.3(3)(a) with reduced potential impacts.

**(c) Low degree SIA**

Circumstances where a Social Impact statement is sufficient - Development types which require low degree of Social Impact Assessment accompanying the application:

- Ø Developments, such as:
  - § Small retail complexes.
  - § Medical Centres.
  - § Urban Industries and small rural industries.
  - § Educational Establishments.



- Ø Expansion or change of a non-conforming 'existing' or 'continuing' use.
- Ø Educational Establishments.
- Ø Demolition of a building with heritage significance or change of use of a building or place acknowledged as having social or heritage significance.
- Ø Any other development Council's Planning Officers interpret to likely present comparable social impacts to those listed above. This may include any development listed as requiring a moderate degree of SIA in Section I-8.3(3)(b) with reduced potential impacts.

## **I-8.4 Design Standards and Social Impact Assessment**

### **Main Considerations - Checklist for all levels of NIA**

(1) A Social Impact Statement should at least address these main considerations:

- Ø Access and mobility (consideration of existing and proposed).
- Ø Employment impacts.
- Ø Accommodation and housing impacts.
- Ø Crime and public safety impacts (refer to the CPTED Section I-10).
- Ø Adjoining land uses and compatibility of the proposal.
- Ø Advertising and/or consultation with neighbours and key stakeholders.

#### **(a) High level SIA**

Minimum Requirements for Social Impact Assessment as per development stipulated within Section I-8.3(3)(a).

- Ø The SIA should detail whether any of the main considerations above relate to the proposal or the land location. A comprehensive response to each of the questions within I-8.3(1) will be required, and in instances where an affirmative is recorded, the applicant shall provide a mitigating solution to be incorporated into the design and/or operating procedure of the development. Particular attention to detail should be provided in response to the following criteria:
  - § Is the proposal likely to impact upon neighbourhood amenity and community meeting places (including pedestrian commuting conduits, parklands, etc)?
  - § Is the proposal likely to create any element of security or risk for any occupants, nearby residents or passing pedestrians?
- Ø The SIA is required to outline all potential impacts upon adjoining land-uses and key stakeholders after completing a comprehensive scoping component to identify all impacted stakeholders. The SIA must be prepared by a suitably qualified or specialist person and reference best practice principles and other contemporary studies.

- Ø The SIA shall incorporate a record of consultation with immediate neighbouring land-uses and key stakeholders. Comments and issues raised should be documented preferably written and signed 'letterhead' with responses from the applicant as to how the issues raised support the development, or suggest mitigating measures which may be incorporated to lessen the impact of the issue raised.
- Ø The applicant is required to provide a comprehensive analysis of all potential impacts identified as a result of in-depth analysis of the location and active/passive use of the proposal site and surrounds. All impacts should be reported alongside all impacts resulting from community & stakeholder consultation. The proponent is also required to present suggested impact minimisation of all perceived impacts.
- Ø In addition to other SIA requirements listed here, consideration should also be made regarding the following:
  - § impact upon particular social groups, such as indigenous, children, aged, ethnic, youth, persons with a disability, etc.
  - § social equity (in particular any potential for any disadvantaged groups to be displaced or further disadvantaged).
  - § whether some form of ongoing monitoring should be proposed for the early duration of the proposal, and if so, how a review of impacts can influence management practices. A conditional consent might require monitoring and review of potentially high social impact developments after a nominated period of time.
  - § a Community Focus Meeting may be appropriate to scope potential impact issues and all affected stakeholders. In exceptional circumstances it could be advantageous to hold further focus meetings as a monitoring and facilitating tool. The outcomes of successfully run Community Focus Meetings would provide Terms of Reference (TOR) for accurate predictive modelling within SIA presented alongside a development application.
  - § some degree of quantitative (statistical) analysis may be useful to demonstrate the likelihood of impacts recognised within the TOR within the SIA.

**(b) Moderate level SIA**

Minimum Requirements for Social Impact Assessment as per development stipulated within Section I-8.3(3)(b).

- Ø The SIA should detail whether any of the main considerations above relate to the proposal or the land location. A response to each of the questions within I-8.3(1) will be required, and in instances where an affirmative is recorded, the applicant should provide a response as to how any negative impact may be

mitigated and potentially incorporated into the design or operating procedure of the development.

- Ø The SIA shall outline the likely impacts upon adjoining land-uses and key stakeholders. Comment should be comprehensive and prepared by a suitably qualified or specialist person with particular reference to best practice principles and other contemporary studies.
- Ø The SIA should entail a component of community consultation, record in detail all resulting discussion and comments received, and outline how any potential negative impacts raised may be incorporated into the development design and operation. Community consultation should concentrate on immediate neighbouring land-uses and main stake-holders.
- Ø Comment should give particularly attention to any increased demand for community facilities/services within the locality or increase/ decrease in the demand or provision of accommodation (housing).

**(c) Low level SIA**

Minimum Requirements for where Social Impact comment is required i.e. development stipulated within Section I-8.3(3)(c).

- Ø Comment should detail whether any of the main considerations above relate to the proposal or the location of the proposal. A short response to each of the questions within I-8.3(1) will suffice, in particular:
  - § Is the proposal likely to impact upon neighbourhood amenity and community meeting places (including pedestrian commuting conduits, parklands, etc)?
  - § Is the proposal likely to create any element of security or risk for any occupants, nearby residents or passing pedestrians?
- Ø Comment should outline the likely impacts upon adjoining land-uses and key stakeholders. Comment may only require one or two paragraphs and is able to be prepared by a non-specialist.
- Ø Comment does not need to entail community consultation however should outline perceived impacts and any potential negative impact the development may have on the locality. In response to any potential negative impact, a response to each and a possible solution should be nominated as to how the impact may be mitigated and incorporated into the development design and operation.
- Ø Comment must outline if the proposal could likely give rise to an increased demand for community facilities or services within the locality or increase or decrease provision of accommodation (housing).



# *Richmond Valley Development Control Plan 2015*

## **Part I-9. Water Sensitive Urban Design— WSUD**

This DCP applies to all land within the Richmond Valley Local Government Area.

**Date adopted by Council:**  
22 December 2015

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4 January 2016

**Amendments:**  
Nil

Water Sensitive Urban Design, also known as **WSUD** (pronounced *wiz-ud*), is a multidisciplinary approach for integrating land use and water management (water supply, stormwater and wastewater) planning with the aim of minimising the impacts of urban development on the natural water cycle.

Many elements of WSUD are now incorporated into BASIX, Building Sustainability Index, which make it mandatory to achieve water and energy efficiency in new development.

Elements of WSUD that still prevail are:

- Ø erosion and sediment control during construction,
- Ø minimum rain water tank capacity for residential development,
- Ø stormwater management, and
- Ø aiming to maintain baseline water quality targets.

### **I-9.1. General Objectives**

The general objectives of this Chapter are to:

- (1) ensure that adequate water quality management principles are incorporated into development design and this is carried through into the construction phase.

### **I-9.2. General Principles of Waste Water Management**

- (1) The application of a number of general principles will assist development in meeting the objectives of this plan. The general principles include:
  - ∅ The waste management hierarchy;
  - ∅ The “Treatment Train”; and
  - ∅ Water Sensitive Urban Design.

#### **Waste Management Hierarchy**

- (1) The waste management hierarchy is a universally accepted principle. Although developed for waste management the principles can be applied to urban development to reduce some of the impacts from cradle (source, individual dwelling level) to grave (end of pipe, disposal). The waste management hierarchy consists of:
  - ∅ Avoid (most cost and resource efficient)
  - ∅ Reduce
  - ∅ Re-Use
  - ∅ Recycle
  - ∅ Disposal (most expensive and resource inefficient).

The waste management hierarchy can be applied to water, wastewater, stormwater quality and stormwater volumes.

#### **Treatment Train**

- (2) The “Treatment Train” is a concept for stormwater quality treatment described in the NSW EPA Managing Urban Stormwater Series.

To gain optimum stormwater quality outcomes it is desirable to combine 2 or more Stormwater Quality Devices or management approaches. This combination of treatment devices forms a stormwater treatment “train.” The Treatment Train consists of:

- ∅ Primary Level Treatment – screening of gross pollutants, sedimentation of coarse particles.
- ∅ Secondary Level Treatment – Sedimentation of finer particles, filtration.
- ∅ Tertiary Level Treatment – enhanced sedimentation and drainage, biological uptake, adsorption onto sediments.

### **I-9.3 WSUD Principles**

- (1) Figures I-9.1 & I-9.2 provide diagrammatic examples of common WSUD features utilising a source control approach. Figures I-9.3 & I-9.4 provide diagrammatic examples for WSUD approaches for larger subdivision and neighbourhood scale developments.

#### **(a) WSUD Road Design and Lot Layout Principles**

Principles of WSUD road design and layout are:

- Ø The design should promote the retention of the existing land form. Cut and fill is to be avoided and minimised where possible.
- Ø The design and layout should retain water courses.
- Ø The design should minimise stormwater runoff and peaks by avoiding the channelling and concentration of flow and making use of existing site topography, natural drainage lines, soils and vegetation to treat, detain, retain and infiltrate stormwater.
- Ø Street layout should be designed to fit the topography so as to avoid the requirements for cut and fill.
- Ø Streets are not to be constructed within natural drainage lines.
- Ø Street design and layout should take into account native vegetation.
- Ø The street layout should avoid extended street lengths running perpendicular to the slope so as to reduce runoff velocities.
- Ø Carriageway widths should be designed to minimise the amount of impermeable area but recognising that there will be a demand for which must be addressed either within the properties or on street.
- Ø Street design is to take into account the cleansing of stormwater through the use of landscaping, grass swales, filter strips, infiltration pits and oil/grit separators.
- Ø The design of the road cross section is to take into account the major stormwater runoff events whilst allowing for vehicle safety.
- Ø The piped drainage scheme should take into account possible decreased flows, where the decreases to the design events can be demonstrated through modelling or other to Council's satisfaction, as a result of the adoption of "sustainable water" measures within individual lots onsite.

#### **(b) WSUD Drainage Principles**

- Ø The trunk drainage design should be based on a system of natural watercourses and floodplains where applicable designed to mimic natural conditions and in particular natural flows as far as possible and to minimise maintenance.
- Ø These waterway corridors form the spine for the open space and habitat corridor system.
- Ø The drainage system should incorporate multiple objective open space uses where possible.
- Ø The width of the habitat corridors should be based on:

- § the width required for flood event management.
- § the width required for habitat connectivity.
- § the width required for buffer areas.
- § the width required under policy.
- Ø The natural alignment and profile of the watercourse/s is to be retained where possible.
- Ø Water and stormwater quality improvement devices such as detention ponds, constructed wetlands, gross pollutant traps, litter traps, sediment ponds should be placed off line to maintain the physical integrity and aesthetics of the creek system.
- Ø Open space planning around the trunk drainage system is to incorporate public safety with flood criteria.
- Ø Indigenous vegetation should be retained and rehabilitated.
- Ø The primary transport system should be an existing natural or designed natural style channel. Concrete channels and pipelines are to be avoided where possible.
- Ø Trunk drainage may account for reductions in certain storm events and pollutant transfer as a result of initiatives to reduce and treat stormwater at the lot level and through street design and layout but must allow for possible failure of the local upstream attenuation systems.
- Ø Stormwater outlets and discharge into bushland areas are to be fitted with energy dissipation devices and protection so as to prevent scour and erosion.
- Ø Where existing natural watercourses are being used to convey stormwater from a development, particular attention must be given to the low flow situation to maintain the existing moisture levels that the flora and fauna are accustomed to and dependent upon.



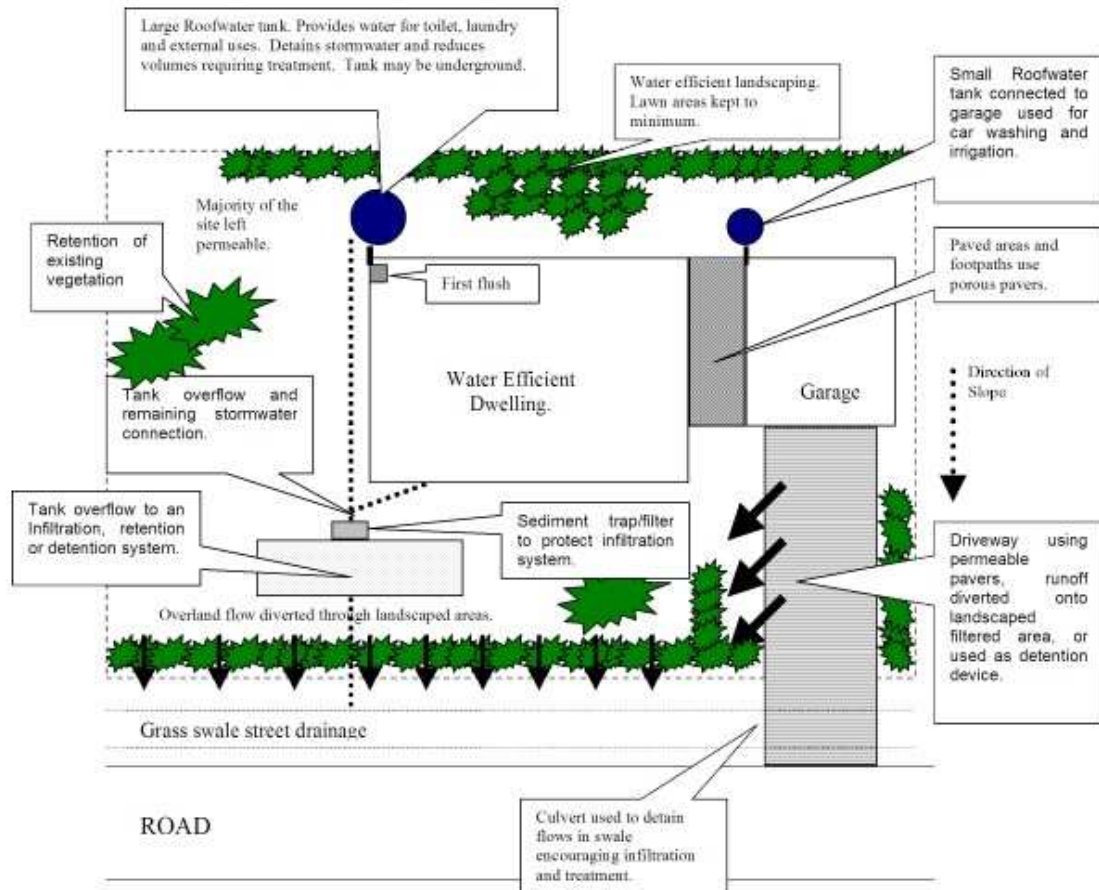


Figure I-9.1 Example of potential WSUD features applied to lot level. Diagrammatic only. Not to scale.

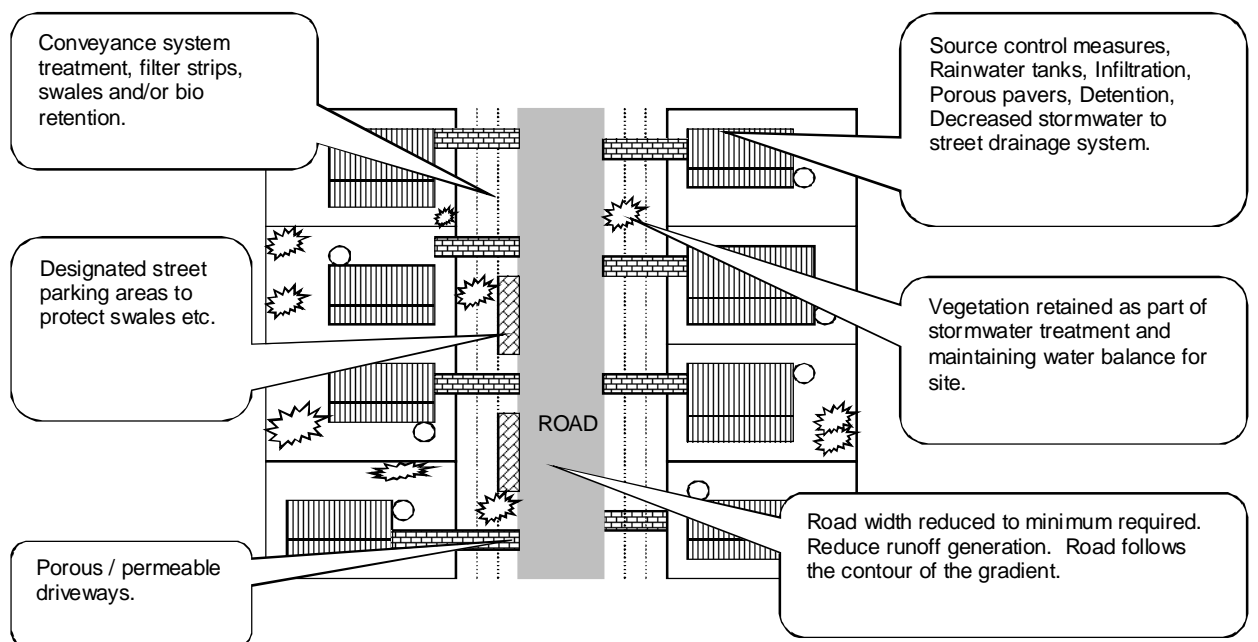


Figure I-9.2 Example of potential WSUD features in residential subdivision. Diagrammatic only. Not to scale.

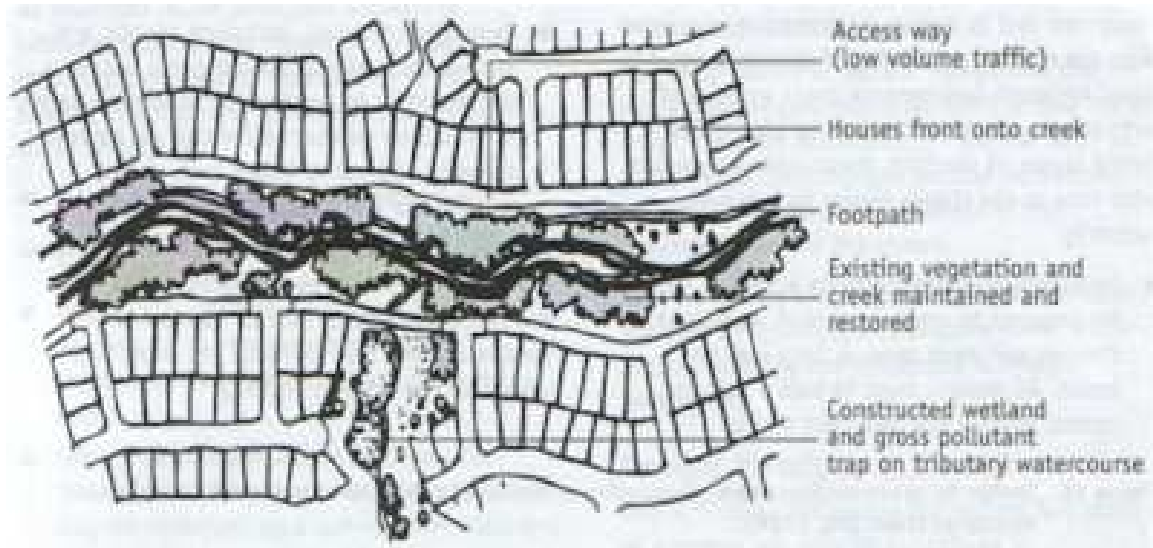


Figure I-9.3 Design for Residential area incorporating Habitat and Ecosystem Values (EPA, 1996).

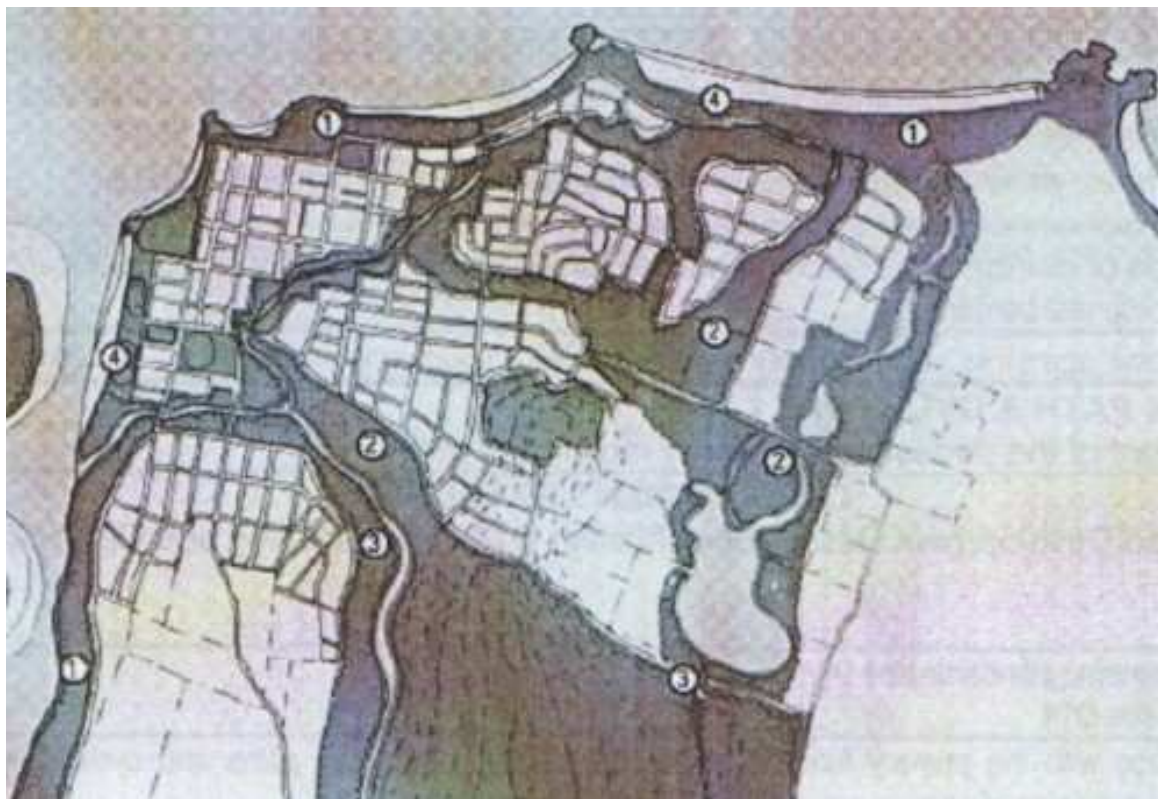


Figure I-9.4 Desirable Drainage Corridor / Open Space Planning (Taken from NSW Coastal Council Design Guidelines Discussion Paper).

**Note.** The open space provides for the protection of environmentally sensitive areas. The networks include (1) continuous foreshore access (2) wildlife corridors and habitat corridors along the creek system linking the hinterland and coastal areas (3) Riparian zones along rivers and lakes (4) Foreshore reserves along the coast.

## I-9.4. Water Quality Controls

The increase in urbanisation leads to an increase in contaminant loading into waterways. This increase results from wastewater discharge, urban stormwater, erosion, loss of natural vegetative treatment systems, and waste as a result of inefficient resource use.

Unlike wastewater, urban stormwater has not historically been treated. Urban stormwater contamination results from a number of processes including:

- ∅ Increased stormwater volumes and subsequent increased Nitrogen and Phosphorous. This results from increased impermeability, and the loss of vegetative and infiltration treatment mechanisms;
- ∅ Oils, greases and heavy metals from roads and driveways;
- ∅ Gross pollutants from leaf litter;
- ∅ Sediment from construction practices;
- ∅ Faecal contamination from sewer overflows and animals;
- ∅ Chemical contamination from spills, household fertiliser and chemical application, and inappropriate application rates;
- ∅ Litter from irresponsible disposal practice.

### Objectives

The objectives of water quality controls are to:

- (1) Protect the values and quality of receiving waters for human (commercial, recreational, aesthetic, public health) and ecological purposes.
- (2) Promote and implement stormwater quality source control.
- (3) Implement appropriate and safe stormwater quality devices for the target pollutant and site conditions.

### Controls

#### Performance Targets

- (1) Targets for stormwater quality are provided in Table I-9.1.

Table I-9.1 Stormwater Quality Targets

Contaminant	Target
Coarse Sediment (0.1 to 0.5 mm)	80% mean annual reduction from baseline
Fine particles (<0.1 mm)	50% mean annual reduction from baseline.
Total Phosphorus	45 % mean annual reduction from baseline
Total Nitrogen	45% mean annual reduction from baseline
Litter	70 % mean annual reduction from baseline
Hydrocarbons, motor fuels, oils and greases	90% mean annual reduction from baseline

## Variations to Targets

- (2) Council may vary the above targets where:
- Ø Environmental or infrastructure factors require alternate performance targets; or
  - Ø A Masterplan, Integrated Urban Water Management Plan, Stormwater Management Plan, Estuary Management Plan, Threatened Species Recovery Plan or other Council, State or Federal policy document has identified alternate performance targets.

## Policy Requirements

- (3) The following measures are required to be implemented to meet the Performance Targets and Objectives of this policy.

**(a) All Applicable development**

The Targets as specified in Table I-9.1 must be met for all applicable development covered by this policy.

All measures are required to be implemented and certified prior to the issuing of a final occupancy certificate or subdivision certificate (as applicable).

**(i) Restrictions of treatment measures in certain instances**

Council may specify alternate requirements, alternate performance targets, exclude or specify treatment measures and sizes where:

- Ø Physical site conditions in a development area such as soil permeability, slope, soil types and groundwater limit the options available.
- Ø Environmental or infrastructure factors in a development area require an alternate standard of performance to that listed in this policy.
- Ø A Masterplan, Integrated Urban Water Management Plan, Stormwater Management Plan, Water Efficiency Plan, Estuary Management Plan, Threatened Species Recovery Plan, Council policy document or other approved policy exists for an area which has specified alternate treatment measures or performance standards for the development area.
- Ø Design guidelines, as recognised by Council, indicate that the device is not suitable for the site constraints.
- Ø The device does not meet local, State or Federal government public health criteria.

**(ii) Pumps and Noise**

Where pumps are used to supply water from a collection and re-use device (eg roofwater tank, stormwater, reclaimed water) then noise mitigation measures are to be put in place to ensure that the device does not breach legislative requirements and standards.

The noise mitigation measures are to be submitted to Council prior to approval.

All connections to be undertaken by qualified plumber and electrician.

**(iii) Stormwater Quality Improvement Devices (SQID)**

The following measures apply to Stormwater Quality Improvement Devices implemented for any development:

- Ø The selection, installation and location of water quality treatment devices must take into account the ability to access, maintain and inspect the device in its operational condition by the householder, site owner, Council, private owner and/or regulatory authorities as applicable.
- Ø Natural treatment processes using filtration, infiltration and vegetation are to be adopted in preference to ‘hard’ (eg concrete pre-fabricated) treatment measures where site, operational and maintenance conditions allow.
- Ø All treatment measures are to be designed, installed and maintained in accordance with Council, or relevant authority, requirements.
- Ø All SQIDs must have an overflow to the drainage system.
- Ø SQIDs must be designed by a suitably qualified person or body approved or recognised by Council.
- Ø Subdivision scale SQIDs are to be designed and sized in recognition of any lot level stormwater treatment and runoff volume reductions in place for the development area.
- Ø Subdivision scale SQIDs are to have access points for staff and vehicles to allow maintenance and inspection. If maintenance requires heavy vehicles then access must be provided so that machinery does not become bogged.
- Ø The type of SQID selected must be compatible with the vehicle, plant and/or machinery available in the area for maintenance.
- Ø Subdivision/streetscape scale SQID's must be provided with a site plan showing access points for operation and maintenance of a type suitable for the vehicles required.
- Ø Where relevant SQID's must be retained free of landscaping and overhead lines near the SQID to operate and manoeuvre maintenance machinery.
- Ø Where relevant SQID's must have land retained near the SQID to dewater and stockpile material from de-sludging / de-silting, and vegetation harvesting maintenance if relevant for the types of SQID.
- Ø SQID's, apart from conveyance controls, are to be off line from the man-made main drainage system unless there is no other option.
- Ø SQID's are not to be located on any natural watercourse.
- Ø SQID's must be designed with the aim to blend into the surrounds and be aesthetically pleasing.

- Ø Systems are to be preferably “dry” systems (i.e. free draining system so pollutants can dry out, and therefore not stored in liquid) wherever possible. Wet sump systems are not preferred due to increased disposal and waste management costs.
- Ø An Operations and Maintenance manual is to be produced for each SQID where it will become a Council asset.
- Ø The justification for SQID selection will be required to be submitted by Council if a Stormwater Management Plan is required for the proposed development.
- Ø SQIDs which are to be handed over to Council and which cannot meet WHS criteria, such as minimising the risk of needle stick injury, enclosed space or manhandling, to Council’s satisfaction will not be approved.
- Ø The developer will be required to operate, monitor and pay for all expenses in relation to the SQID for a period of 6 months. At the end of the period the asset will be handed over to Council in its as “designed” state along with:
  - Ø Invoices for all expenses incurred in that period from operations and maintenance.
  - Ø Details of all monitoring results obtained during the six month period.
  - Ø Details of all incidents including, but not limited to OHS & R incidents, public safety incidents, defects, repairs, failure of the system and complaints received whether related to the systems performance or other.
- Ø Three (3) copies of the Operations and Maintenance manual for the device/s.

**(iv) Private SQID Requirements**

Where a SQID is not a Council asset the following additional requirements apply:

- Ø Access to the device is to be available at all reasonable times for Council or relevant authority to inspect the device.
- Ø The operator of the SQID will be required to submit to Council annual returns and a fee for the licensing of the SQID.
- Ø The annual returns will consist of:
  - § The name and address of the operator of the device.
  - § The manufacturers name, type and location of the device.
  - § The date/s maintenance was undertaken.
  - § The name of the person/company who undertook the disposal of the material.
  - § The location of the waste disposal site.
  - § An estimation on the volumes of material removed.

- § A description of the material disposed (eg wet liquid, dry material, predominately leaf litter and sand, predominately fast food waste etc).
- § Details of any amendments to the device (if applicable) and the reason for amendments.
- § Updated Operations and Maintenance manuals (if applicable).

**(b) Additions & Change of use**

The following requirements may also apply for additions and change of use:

**(i) For Development Other Than Residential Development**

If it cannot be demonstrated that a change of use or addition will not result in a significant increase to stormwater and/or pollution generation then Council may require:

- ∅ measures to be incorporated to off-set any increase in stormwater and/or pollution generation.
- ∅ a Stormwater Management Plan.

**(ii) For Residential Development**

Council may require measures to meet the requirements of a Threatened Species Recovery Plan, Integrated Urban Water Management Plan, Stormwater Management Plan, Master Plan or other Council, State or Federal policy where the addition or redevelopment may impinge upon the objectives and/or targets of that policy.

**(c) Residential Dwellings/Dual Occupancies**

The following additional requirements apply:

- ∅ Residential lots and dual occupancies must meet targets through the implementation of measures as indicated in Table I-9.2.

**(d) Subdivision, Commercial, Industrial, Tourism and Other Development to which this Policy Applies**

The following additional requirements apply:

- ∅ Development must demonstrate adherence to the objectives and targets of this policy by:
  - § Undertaking a Stormwater Management Plan where requested.
  - § Achieving water quality targets by utilising water quality treatment devices in a method consistent with the waste management hierarchy, stormwater treatment train and principles of Water Sensitive Urban Design as described in Section I-9.2 of this Chapter.
- ∅ At least 80% of the total impermeable area of a site must be treated to the targets specified.

**Table I-9.2 Compliance Requirements for Residential Lots/Dual Occupancies: Water Quality**

Impermeable area	Requirements
Roof area	<p>One or more of the following must be installed:</p> <ul style="list-style-type: none"> <li>∅ Roof water or stormwater tank at least 5,000 L per dwelling harvestable volume capturing at least 50 % of roof area; and/or</li> <li>∅ Infiltration Device/s with upstream sediment filter capturing at least 80% of total dwelling roof area; and/or</li> <li>∅ Bio retention device with upstream sediment filter capturing at least 80% of total dwelling roof area; or</li> <li>∅ Other treatment measure where it can be demonstrated by the proponent to the satisfaction of Council that the Objectives and Performance targets of this section are met.</li> </ul> <p><b>Note.</b> Council may specify treatment measures or restrict the treatment measures available in certain areas.</p>
<p>Driveways where the impermeable paved surface inside the property boundary exceeds 30 m<sup>2</sup>. This applies to lots under 800 m<sup>2</sup> only. There are no requirements for lots &gt; 800 m<sup>2</sup></p>	<p>One or more of the following must be installed:</p> <ul style="list-style-type: none"> <li>∅ At least 80% of total impermeable area diverted to either                             <ul style="list-style-type: none"> <li>w infiltration device/s with upstream sediment filter; and/or</li> <li>w bio retention device/s with upstream sediment filter; and/or</li> <li>w grassed / vegetated filter strip; and/or</li> <li>w stormwater tanks with upstream sediment filter.</li> </ul> </li> <li>∅ Other treatment measure where it can be demonstrated by the proponent to the satisfaction of Council that the Objectives and Performance targets of this section are met.</li> </ul> <p><b>Note.</b> Council may specify treatment measures or restrict the treatment measures available in certain areas.</p>

### **I-9.5 Stormwater Generation**

Urban development results in significant increase to the level of impermeability and subsequently massive increases in the volumes of stormwater being generated and stormwater peaks. The creation of hard surfaces also increases stormwater velocities. These increases result in:

- ∅ Increases in erosion as a result of peaks, velocities and increases in the number of bank full events.
- ∅ Increases in nuisance flooding, flash flooding, property damage and risk to public safety.
- ∅ Increase contaminant loading due to increased runoff volumes and replacement of vegetated filters with concrete systems.



- ∅ Aquatic biodiversity decline as communities become disrupted as a result of frequent and elevated stormwater pulse events.
- ∅ Increased demand for drainage infrastructure and treatment devices.

**Objectives**

The objectives of element are to:

- (1) To maintain the sites mean stormwater volumes, peak flow rates, and runoff event frequency as near as reasonable to sites original characteristics.
- (2) To reduce flooding, property damage, and risk to public safety to downstream areas as a result of increased impermeability, increase runoff volume and changes to drainage line upstream.
- (3) To protect receiving environments from the impacts of changes to stormwater characteristics.

**Controls**

**Performance Targets**

- (1) Performance requirements for stormwater volumes and drainage are provided in Table I-9.3

**Table I-9.3 Stormwater Targets**

Element	Target
Peak flowrates (m3/s)	The following targets apply: <ul style="list-style-type: none"> <li>∅ Flowrates at any point are not to increase during storms for the 2 and 5 year ARI event; or</li> <li>∅ As specified within specific drainage sub catchment policy recognised by Council; or</li> <li>∅ As specified within Council standards.</li> </ul>
Mean annual stormwater post development volumes (ML/yr).	The following targets apply <ul style="list-style-type: none"> <li>∅ Mean annual stormwater volumes reduced by at least 10 % from baseline; or</li> <li>∅ As specified within specific drainage sub catchment policy recognised by Council; or</li> <li>∅ As specified within Council standards.</li> </ul>

**Variations to Targets**

- (2) Council may vary those targets from above where:
  - ∅ Environmental or infrastructure factors require alternate performance targets; or
  - ∅ A Masterplan, Integrated Urban Water Management Plan, Stormwater Management Plan, Estuary Management Plan, Threatened Species

Recovery Plan or other council, State or Federal policy document has identified alternate performance targets.

## Policy Requirements

(3) The following measures are required to be implemented to meet the Performance Targets and Objectives of this policy.

### (a) All Applicable Development

The Targets, as specified in I-9.3, must be met for all applicable development covered by this policy.

All measures are required to be implemented and certified prior to the issuing of a final occupancy certificate or Subdivision certificate (as applicable).

The selection, installation and location treatment devices must take into account the ability to access, maintain and inspect the device in its operational condition by the householder, site owner and/or regulatory authorities as applicable.

All treatment measures are to be designed, installed and maintained in accordance with Council, or relevant authority, requirements.

### (i) Restrictions of treatment measures in certain instances

Council may specify alternate requirements, alternate performance targets, exclude or specify treatment measures where:

- Ø Physical site conditions in a development area such as soil permeability, slope, soil types and groundwater limit the options available.
- Ø Environmental or infrastructure factors in a development area require an alternate standard of performance to that listed in this policy.
- Ø A Masterplan, Integrated Urban Water Management Plan, Stormwater Management Plan, Water Efficiency Plan, Estuary Management Plan, Threatened Species Recovery Plan, Council policy document or other approved policy exists for an area which has specified alternate treatment measures or performance standards for the development area.
- Ø Design guidelines, as recognised by Council, indicate that the device is not suitable for the site constraints.
- Ø The device does not meet local, State or Federal government public health criteria.

### (ii) Pumps and Noise

Where pumps are used to supply water from a collection and re-use device (eg roofwater tank, stormwater, reclaimed water) then noise mitigation measures are to be put in place to ensure that the device does not breach legislative requirements and standards.

The noise mitigation measures are to be submitted to Council prior to approval.

All connections to be undertaken by qualified plumber and electrician.

**(b) Additions & Change of use**

The following additional requirements may apply for additions and change of use:

**(i) For Development Other Than Residential Development**

If it cannot be demonstrated that a change of use or addition will not result in a significant increase to stormwater and/or pollution generation then Council may require:

Ø measures to be incorporated to off-set any increase in stormwater and/or pollution generation.

Ø a Stormwater Management Plan.

**(ii) For Residential Development**

Council may require measures to meet the requirements of a Threatened Species Recovery Plan, Integrated Urban Water Management Plan, Stormwater Management Plan or other Council, State or Federal policy where the addition or redevelopment may impinge upon the objectives and/or targets of that policy.

**(c) Residential Development (Individual dwellings, duplexes and units)**

The following additional requirements apply:

Ø Residential lots and duplexes must meet targets through the implementation of measures as indicated in Table I-9.4.

Ø Larger residential development may be required to undertake a Stormwater Management Plan and demonstrate compliance with the targets of this element.

**(d) Subdivision, Commercial, Industrial, Tourism and Other Development to which this Policy Applies**

The following additional requirements apply:

Ø A Stormwater Management Plan may be required to be submitted.

Ø Development must demonstrate adherence to the objectives and targets of this policy by reducing stormwater volumes, peaks and velocities in a method consistent with the waste management hierarchy and principles of Water Sensitive Urban Design as described in section I-9.3.

Ø The harvesting of stormwater and roof water for non-potable uses should be used where possible as a method of reducing stormwater volumes, reducing stormwater peaks, reducing stormwater contaminants, and conserving potable water supplies.

Ø Infiltration and detention should be encouraged within the design. Measures may include, but are not limited to:

§ Hard areas such as roads and streetscape parking areas can be designed so as to detain stormwater to decrease flow peaks.

Table I-9.4 Stormwater Compliance Requirements for Residential Lot/Duplex

Impermeable area	Requirements
Roof area	<p>One or more of the following must be installed:</p> <ul style="list-style-type: none"> <li>Ø Roof water or stormwater tank at least 5,000 litres harvestable volume capturing at least 50% of roof area; and/or</li> <li>Ø Infiltration Device/s with upstream sediment filter capturing at least 80% of total dwelling roof area; and/or</li> <li>Ø Bio retention device with upstream sediment filter capturing at least 80% of total dwelling roof area; or</li> <li>Ø Other treatment measure where it can be demonstrated by the proponent to the satisfaction of Council that the Objectives and Performance targets of this section are met.</li> </ul> <p><b>Note.</b> Council may specify treatment measures or restrict the treatment measures available in certain areas.</p>
Driveways where the impermeable paved surface inside the property boundary exceeds 30m <sup>2</sup> . This applies to lots under 800m <sup>2</sup> only. There are no requirements for lots > 800m <sup>2</sup>	<p>One or more of the following must be installed:</p> <ul style="list-style-type: none"> <li>Ø At least 80% of total impermeable area diverted to either <ul style="list-style-type: none"> <li>w infiltration device/s with upstream sediment filter; and/or</li> <li>w bio retention device/s with upstream sediment filter; and/or</li> <li>w grassed / vegetated filter strip; and/or</li> <li>w stormwater tanks with upstream sediment filter.</li> </ul> </li> <li>Ø Other treatment measure where it can be demonstrated by the proponent to the satisfaction of Council that the Objectives and Performance targets of this section are met.</li> </ul> <p><b>Note.</b> Council may specify treatment measures or restrict the treatment measures available in certain areas.</p>

§ Open space areas, such as parks and landscaped areas, should be provided with a dual function to infiltrate and detain stormwater whilst incorporating public safety considerations.

§ The sites natural infiltration and detention features should be utilised where practical. This includes retaining key vegetation features to slow down water movement.

§ Infiltration and detention should be used in the conveyance system where possible.

§ Using driveways and culverts as check dams may slow down stormwater in the conveyance system and encourage infiltration.

Ø Infiltration, retention and detention system should be designed with dual purpose where possible. When implementing dual purpose adequate controls and signage must be provided to protect public safety. Examples of dual purpose include, but are not limited to:

§ Sports fields and detention areas.

- § Landscaping and infiltration areas, detention, retention ponds.
- § Car park areas and detention.
- § Open space, parkland and infiltration, detention areas and ponds.
- Ø The creation of impermeable area and increases to stormwater generation should be reduced as much as practical. Measures may include, but are not limited to:
  - § Road widths should be kept to the minimum required by Council specifications.
  - § Porous/ permeable pavers should be used where site conditions allow for pedestrian, light vehicles traffic areas, street car parking and footpaths.
  - § Using natural drainage designs and existing site features instead of piped and concreted drainage features where site conditions allow.
  - § Develop a train of stormwater treatment from the lot level to street system to discharge from the development.
- Ø Increases to stormwater velocities via concentration and channelling of flow should be avoided as much as practical. Measures may include, but are not limited to:
  - § Allowing stormwater to sheet flow over vegetated filter strips to encourage infiltration, decrease velocities and treatment before entry into the conveyance system.
  - § Use natural drainage designs and existing site features instead of piped and concreted drainage features, where site conditions allow, reducing stormwater velocities and encouraging infiltration.
  - § Streets should be designed so that they run parallel to the gradient of slopes where practical. Having long sections of street running directly down a slope should be avoided where practical.
- Ø Significant topographical features, vegetation features and natural drainage features should be retained where possible.
- Ø Energy dissipaters should be provided at the outlets from all formed drainage systems where an outlet exits to a water body, dunal system, bushland, area of erosive soils, bio retention device, grass swale, infiltration area, wetland, vegetated filter strip or other easily disturbed environment.

## **I-9.6 Riparian areas, Habitat corridors, Vegetation and Landform**

- (1) One of the key features of Water Sensitive Urban Design is to retain existing vegetation and landform features. This assists in reducing the impacts of flooding in urban areas by providing storage. Vegetation corridors assist in infiltrating, detaining and treating stormwater, maintaining water balance and providing aesthetics. Riparian vegetation in particular plays a crucial role in treating overland flow. The retention of vegetation along waterways and maintenance of habitat corridors is critical to maintaining biodiversity. Providing links allows flora and fauna to move through area's preventing localised extinctions.

The maintenance of an area's landform is also important. Cut and fill at the lot level increases soil disturbance and increases the likelihood of erosion and sedimentation. Alteration of the sites topography also results in changes to overland flow paths, increases the risk of nuisance flooding to downstream and neighbouring properties, and in a worse case may contribute to destabilising an area.

### **(2) Objectives**

The objectives of element are to:

- Ø To maintain habitat connectivity for critical areas and species.
- Ø To reduce declines in biodiversity.
- Ø To maintain vegetation this may assist in treating stormwater and providing habitat.
- Ø To undertake revegetation in a manner so as to maintain habitat connectivity.
- Ø To reduce erosion and sedimentation as a result of site destabilisation from cut and fill.
- Ø To reduce flooding, property damage, and risk to public safety to downstream areas as a result of changes to drainage pathways or land slippage.

### **Performance Targets**

- (3) Performance requirements for vegetation and landform are provided in Table I-9.5.

### **Variations to Targets**

- (4) Council may vary those targets from above where:
- Ø Environmental or infrastructure factors require alternate performance targets; or
  - Ø A Masterplan, Estuary Management Plan, Stormwater Management Plan, Integrated Urban Water Management Plan, Threatened Species Recovery Plan or other Council, State or Federal policy document has identified alternate performance targets.

**Table I-9.5 Riparian Vegetation, Habitat Corridor and Landform Target**

Aspect	Target	
Riparian vegetation buffer zones	The following targets apply:	
	Upstream catchment area (ha) of drainage line, creek, stream or river	Buffer distance (m) either side of high bank
	< 100ha	nil
	> 100ha and < 500ha	10m
	> 500ha and < 1,000ha	20m
	> 1,000ha and < 5,000ha	30m
	> 5,000ha and < 10,000ha	40m
	> 10,000ha	50m
	Environmentally Sensitive	50m or as defined within an approved plan or recognised study for an area
Wetland buffer zones	50m buffer from the high water mark of any wetland	
Littoral Rainforest buffer zones	50m buffer from any littoral rainforest	
Habitat corridor buffer zones	Vegetation corridors maintained in accordance with an approved plan or policy for the area	
Landform	Cut and fill limited to 2m in total for individual lots	

### Policy Requirements

- (5) The following measures are required to be implemented to meet the Performance Targets and Objectives of this policy.
- Ø Cut and fill is restricted to the targets of this policy.
  - Ø Buffer zones are to be left undisturbed in accordance with the targets of this policy.
  - Ø Where possible street and lot layout should be undertaken so that habitat is retained and connected to remnant habitat in adjoining areas outside of the immediate boundaries of the proposed development.
  - Ø Vegetation and topography should be retained along the sites natural drainage lines to a width of at least 5m either side of the mean water mark.
  - Ø Council may require reinstatement of riparian vegetation where identified by an existing policy, approved masterplan, estuary management plan, threatened species recovery plan, or in or neighbouring an environmentally sensitive area.

- ∅ Species selection for landscaping and vegetation reinstatement should be locally endemic species and ideally utilising seed stock from the area.
- ∅ The retention or reinstatement of vegetation and provision habitat connectivity should be undertaken with dual purpose such as park space, detention / infiltration basins, water treatment (filter strip) as appropriate.
- ∅ Landscaping and vegetation reinstatement should be undertaken to provide habitat connectivity with remnant vegetation in adjoining areas, outside the boundaries of the development area, where possible.

## **I-9.7 Construction, Erosion and Sediment Control**

- (1) The construction/building phase can deliver significant impacts on the environment predominantly through the physical removal of vegetation and disturbance of soil. Of-site environmental impacts may also result due to the inappropriate storage of machinery, materials and waste products. Compaction of infiltration areas may result due to vehicles traversing an area. Streambank and/or habitat disturbance may result with the inappropriate removal of vegetation and failure to prevent access to easily disturbed areas. The staging and planning of construction and building works is imperative for successful sediment and erosion control and site rehabilitation.
- (2) **Objectives**
  - ∅ To protect water quality from impacts during the construction phase.
  - ∅ To protect key vegetation during the construction phase.
  - ∅ To protect the site's natural properties, such as soil permeability, from compaction.
  - ∅ To ensure construction waste is managed appropriately.
  - ∅ To stage ground disturbance and progressively revegetate the site to reduce the area contributing sediment.

### **Performance targets**

- (3) Performance requirements are provided in Table I-9.6.

### **Variations to Targets**

- (4) Council may vary those targets from above where:
  - ∅ Environmental or infrastructure factors require alternate performance targets; or
  - ∅ A Masterplan, Integrated Urban Water Management Plan, or other Council, State or Federal policy document has identified alternate performance targets.



**Table I-9.6 Construction, Erosion and Sediment Control Targets**

Element	Target
Suspended Soils and Turbidity	Soil Types Type D (dispersible) and Type F (fine) ∅ Suspended Solids concentration not to exceed 50 mg/L for all 5 day rainfall totals up to the 75th percentile event. Soil Type C (Coarse) ∅ Suspended Solids not to exceed 50 mg/L for all flow events up to 50% of the 1 year ARI flow. ∅ Minimise soil erosion and discharge of sediment by the appropriate design, construction and maintenance of erosion and sediment control measures. ∅ Employ all practical measures to minimise soil erosion and the discharge of sediment in storm events exceeding the design storms specified.
Motor fuels, oils and other chemicals	∅ All motor fuels, oils and other chemicals are stored and used on site in a manner which ensures no contamination of stormwater. ∅ No incidents of visible pollution leaving the construction site.
Litter	∅ No litter placed in a position where it may be blown or washed off site. ∅ No incidents of visible pollution leaving the construction site.
Vegetation Management	∅ No incidents of damage to retained vegetation during construction. ∅ No incursion into vegetation buffer areas during construction. ∅ A staged program exists to revegetate the site.
Treatment Areas	∅ Protection of existing or planned treatment/infiltration areas such as grass swales during construction.

### Policy Requirements

(5) The following measures are required to be implemented to meet the Performance Targets and Objectives of this policy, including at the construction phase.

**(a) Erosion and Sediment Control and Soil and Water Management Plans**

- ∅ An erosion and sediment control plan is required:
  - § Where the area of disturbance is between 250m<sup>2</sup> to 2500m<sup>2</sup>.
  - § Where the area of disturbance is <250m<sup>2</sup> but the slope of the site exceeds 18°.
- ∅ A Soil and Water Management Plan is required where the area of soil disturbance >2,500m<sup>2</sup>.

**(b) Erosion and Sediment Control**

- ∅ All erosion and sediment control measures are to be installed prior to the commencement of any work, including cutting and filling.
- ∅ All sediment control measures are to be constructed to prevent sediment from leaving the site or entering downstream properties, drainage lines or watercourses.

- Ø Disturbance of the site must only occur on areas indicated in the approved plans.
  - Ø A sediment control fence must be installed at the downslope perimeter of the disturbed area to prevent sediment and other debris from leaving the site.
  - Ø Direct up slope runoff around the site, by use of a diversion bank or channels. These devices may require measures to control erosion depending on the volume of flow anticipated.
  - Ø When roof structures and piped or artificial stormwater systems are in place, discharge water is to be managed in a manner that reduces the likelihood of erosion. On completion of the roof area of a building, guttering and downpipes are to be connected to the stormwater system.
  - Ø The stormwater system must prevent sediment from being eroded from the site and deposited downstream.
  - Ø All erosion and sediment control measures are to be regularly maintained in good working order at all times and inspected for adequacy following any rainfall event.
  - Ø All disturbed areas are to be made erosion resistant by revegetation, turfing or stabilised by paving on completion of the works.
- (c) **Stockpiles, storage and waste management**
- Ø Stockpiles of erodible materials (sand, soil, spoil and vegetation) must be protected by a sediment fence or bund and temporary cover such as a tarp of vegetated if the stockpile will be stored on site for an extended period of time.
  - Ø No construction materials, building materials, fill material, chemicals, waste, bins, skips or other, are to be stored either in the gutter, footpath, drainage line or outside of the site boundary.
  - Ø Petroleum and other chemical products must be prevented from entering the stormwater system or contaminating the soil.
  - Ø Impervious bunds must be constructed around all fuel, oil or chemical storage areas with an enclosed volume large enough to contain 110% of the volume held in the largest tank.
  - Ø Waste on site is to be stored in a manner which:
    - § Prevents rainwater entry.
    - § Has stormwater diverted around it to prevent contamination of surface waters.
    - § Prevents windblown litter from escaping.
  - Ø Adequate trade waste and litter bins must be provided onsite and serviced regularly.
  - Ø Concrete wastes or washings from concrete mixers must not be deposited in any location where those wastes or washings can flow, or can be washed into any areas of retained vegetation or receiving waters.

**(d) Vehicle access**

- Ø For individual dwellings vehicular access is to be restricted to one stabilised access point. Location will be identified on the Erosion and Sediment Control Plan submitted to Council.
- Ø For larger Subdivision works vehicular access must be confined to a maximum of two locations or as agreed with Council. Such locations will be shown on the Soil and Water Management Plan or Erosion and Sediment Control Plan.
- Ø Access to construction sites of 1 hectare or more, shall be fitted with a shakedown device.
- Ø The shakedown device shall be located along the haul route, immediately before the intersection with the public road.
- Ø Regular maintenance of shake down devices is required to ensure no material is deposited on public roads.
- Ø Should material be deposited on any public street, it shall be swept up and removed before the end of that working day.
- Ø If after using shakedown device, material is still adhering to truck wheels and being deposited on public roads, a wheel washing device must be installed and used at site exit locations to ensure no further material is carted off site and deposited on public roads.
- Ø Runoff from access surfaces must be drained into an adjacent sediment trapping device before leaving the site. Where appropriate, devices to remove soil particles from vehicles must be placed at site exit locations.
- Ø On subdivision work, priority must be given to road and shoulder stabilisation based on erosion hazards.
- Ø On subdivision work newly sealed hard stand areas must be swept thoroughly after sealing/surfacing to prevent excess aggregate or gravel entering street drains.

**(e) Protection of Stormwater Treatment Areas and Existing Infrastructure**

- Ø Existing or planned stormwater treatment areas such as Infiltration, grass swale or bio filtration areas are to be clearly marked and identified as no go areas. No materials are to be stockpiled in these areas. Vehicles are not to traverse the area or be parked in the area. The site should be kept free from heavy pedestrian use to maintain infiltration properties.
- Ø The footpath or nature strip adjoining construction and building sites must not be disturbed by construction activities other than shown on the plan for:
  - § access to the site;
  - § installation of services;
  - § other works specifically approved by Council.

**(f) Vegetation Removal and Protection**

- Ø No vegetation is to be removed prior to approval of Council to start work on any stage, and not before the approved sediment control measures are in place.
- Ø Vegetation removal is to be staged to avoid the complete removal of vegetation on site, and allow the regeneration of vegetation cover.
- Ø For Subdivision works a plan must be undertaken which shows the staging of vegetation removal, vegetation retention, “no go” areas and regeneration works.
- Ø The removal or disturbance of native trees, shrubs and ground covers shall be minimised.
- Ø Vegetation which is to remain on site is to be clearly marked and fenced off. The immediate area around vegetation to be retained is to be kept free of vehicle storage, vehicle thoroughfare and material storage.
- Ø Retained vegetation and buffers must be protected by a suitable fence barrier. Fenced areas shall be clearly signposted “No Access Area”.
- Ø Where practical vegetative debris must be salvaged either as logs or woodchip for later reuse to control erosion or to rehabilitate the site. Non salvageable material, such as stumps and roots, may be removed.
- Ø Water body buffer zones are to be clearly marked and identified as no go areas. No materials are to be stockpiled in buffer zones. Vehicles are not to traverse or be parked in the buffer zone. The site should be kept free from pedestrian use.

# *Richmond Valley Development Control Plan 2015*

## **Part I-10. Crime Prevention through Environmental Design—CPTED**

This DCP applies to all land within the Richmond Valley Local Government Area.

**Date adopted by Council:**  
22 December 2015

**Effective Date:**  
4 January 2016

**Amendments:**  
Nil

Crime Prevention through Environmental Design (CPTED) utilises crime prevention strategies that focus on planning, design and structure of individual development which ultimately promote safer towns and neighbourhoods. CPTED serves to implement design and place management principles to reduce the likelihood essential crime ingredients from intersecting in the built environment; *offenders, potential victims/ targets and opportunities*. The following section of the DCP is adapted from Safer by Design guidelines provided by the NSW Police Force.

This section provides more detail than those provided elsewhere within the DCP however comprehensive guidelines should be sought from the NSW Police Force. The general principles contained here and in the publications listed below should be used to provide guidance when preparing and assessing more comprehensive developments within Richmond Valley. It is unlikely minor developments such as single dwellings and dual-occupancies will require more than those provided within the relevant DCP sections for those purposes, however larger developments will require more detailed guideline adherence and may require referral to the Police for comment.

The NSW Police assessment tools *Safer By Design Evaluation* and a *Companion to the Safer By Design Evaluation* are based upon Australian Risk Management Standard 4360:1999. The *Safer By Design Evaluation* process that identifies and quantifies crime hazards and location risk. The evaluation measures include crime likelihood (statistical probability), consequence (crime outcome), distributions of reported crime (hotspot analysis), socio-economic conditions (relative disadvantage), situational hazards and crime opportunity.

## I-10.1 General Objectives

CPTED generally tries to minimise crime opportunities by:

- (1) Maximising risks to offenders (increasing the likelihood of detection, challenge and apprehension);
- (2) Maximising the efforts required to commit crime (increasing the time, energy and resources required to commit crime);
- (3) Minimising the actual and perceived benefits of crime (removing, minimising or concealing crime attractors and rewards); and
- (4) Minimising excuse making opportunities (removing conditions that encourage/facilitate rationalisation of inappropriate behaviour).

## I-10.2 CPTED Principles

### Territorial Reinforcement

- (1) Community ownership of public space sends positive signals to the community. Places that feel owned and cared for are likely to be used, enjoyed and revisited. People who have guardianship or ownership of areas are more likely to provide effective supervision and to intervene in crime than passing strangers and criminals rarely commit crime in areas where the risk of detection and challenge are high. Effective guardians are often ordinary people who are spatially 'connected' to a place and feel an association with, or responsibility for it.

*Territorial Re-enforcement* uses actual and symbolic boundary markers, spatial legibility and environmental cues to 'connect' people with space, to encourage communal responsibility for public areas and facilities, and to communicate to people where they should/should not be and what activities are appropriate.

### Surveillance

- (2) People feel safe in public areas when they can see and interact with others, particularly people connected with that space, such as shopkeepers or adjoining residents. Criminals are often deterred from committing crime in places that are well supervised.
  - Ø Natural surveillance is achieved when normal space users can see and be seen by others. This highlights the importance of building layout, orientation and location; the strategic use of design; landscaping and lighting – it is a by-product of well-planned, well-designed and well-used space.
  - Ø Technical/mechanical surveillance is achieved through mechanical/electronic measures such as CCTV, help points and mirrored building panels. It is commonly used as a 'patch' to supervise isolated, high risk locations.
  - Ø Formal (or Organised) surveillance is achieved through the tactical positioning of guardians. An example would be the use of on-site supervisors, e.g. security guards at higher risk locations.

## Access Control

- (3) *Access control* treatments restrict, channel and encourage people and vehicles into, out of and around the development. Way-finding, desire-lines and formal/informal routes are important crime prevention considerations. Effective access control can be achieved by using physical and symbolic barriers that channel and group pedestrians into areas, therefore increasing the time and effort required for criminals to commit crime.
- ∅ *Natural access control* includes the tactical use of landforms and waterways features, design measures including building configuration; formal and informal pathways, landscaping, fencing and gardens.
  - ∅ *Technical/Mechanical access control* includes the employment of security hardware. Crime, Design and Urban Planning: From theory to Practice Formal (or Organised) access control includes on-site guardians such as employed security officers.
  - ∅ *Formal (or Organised) access control* includes on-site guardians such as employed security officers.

## Space/Activity Management

- (4) *Space/Activity Management* strategies are an important way to develop and maintain natural community control. Space management involves the formal supervision, control and care of the development. All space, even well planned and well-designed areas need to be effectively used and maintained to maximise community safety. Places that are infrequently used are commonly abused. There is a high correlation between urban decay, fear of crime and avoidance behaviour.

## **I-10.3 Design standards/controls**

### **Developments which require CPTED Principles to be applied**

- (1) This plan applies to all land in the Richmond Valley Local Government Area. Applicants are advised to contact our Development Assessment staff to clarify whether this plan will apply in their specific situation. If it does, the Statement of Environmental Effects and site analysis that accompany the development application should address this plan. A security management plan may be required to be submitted with the development application. The security management plan should set out all relevant methods to be used to prevent crime and improve safety of the development.

The following types of development proposals are required to be referred to the NSW Police Force for comment. The following list is not comprehensive, and the decision as to whether a proposed development is required to be submitted for police comment lies with the consent authority.

- ∅ Multiple units, townhouse/villa developments (20 or more)
- ∅ Mixed use developments (with 20 or more dwellings)
- ∅ New or upgraded commercial/retail developments (major work)
- ∅ New industrial complex (ie multiple industrial units)
- ∅ New or upgraded schools, child care centres and hospitals

- ∅ Railway stations
- ∅ Large sports/community facilities
- ∅ Clubs/hotels, (ie extended hours, gaming rooms)
- ∅ Service stations/convenience stores
- ∅ Unusual developments (ie arcades, brothels, amusement centres, upgrade of Department of Housing properties/estates).

The NSW Police will generally respond within 14 days of referral and the recommendations supplied will be taken into account when determining the application.

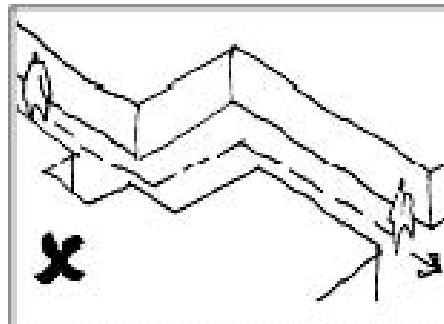
## Application of CPTED Principles

(2) Suggested application of CPTED Principles:

### (a) Natural Surveillance

Avoid Blind Corners—'Blind corners' or concealed areas make people feel uneasy and unsafe. Not knowing 'what is around the next corner' can discourage genuine users of a space to use and maximise it.

- ∅ Avoid blind corners in pathways, stairwells, hallways and car parks.
- ∅ Pathways should be direct. All barriers along pathways should be permeable (see through) including landscaping, fencing etc.
- ∅ Consider the installation of mirrors to allow users to see ahead of them and around corners.
- ∅ Install glass panels in stairwells where appropriate.



### (b) Communal/Public Areas

Provide natural surveillance for communal and public areas. This serves two main purposes:

- ∅ Makes legitimate users of a space feel safe as they 'are not alone' in a secluded area. There is always the potential for someone to 'help' if there are any problems.
- ∅ Deters illegitimate users as their presence in and misuse of the space will be rapidly noticed. A 'positive feedback' effect is created as people feel safer using the area encouraging additional use.



To achieve this:

- Ø Position active uses or habitable rooms within dwellings etc with windows adjacent to main communal/public areas (eg playgrounds, swimming pools, gardens, car parks).
- Ø Communal areas and utilities (eg laundries and garbage bays) should be located in areas where they may be naturally surveyed..
- Ø Where elevators or stairwells are provided, open style or transparent materials are encouraged on doors and/or walls of elevators/ stairwells.
- Ø Waiting areas and entries to elevators / stairwells should be close to areas of active uses, and should be visible from the building entry.
- Ø Seating should be located in areas of active uses.

**(c) Entry Points**

Provide entries which are clearly visible. Prominent entrances allow:

- Ø Natural surveillance from street,
- Ø Users to feel safe and to easily access the area,
- Ø Emergency services to access the property rapidly.

Entrances should be at prominent positions within development design, easily accessible from well-lit street areas and within areas providing natural surveillance opportunities.

Design entrances in such a way as to allow users to see in before entering.

**(d) Fencing**

Although high fences may provide privacy, they restrict natural street surveillance from potential intruders. Fencing below one meter, or open design fencing allows for adequate privacy and adequate levels of natural surveillance.

- Ø Front fences should be predominantly open in design (eg pickets and wrought iron) or low in height. A sense of privacy can be increased by light coloured fencing.
- Ø High solid front fences should have open elements above 1 metre.

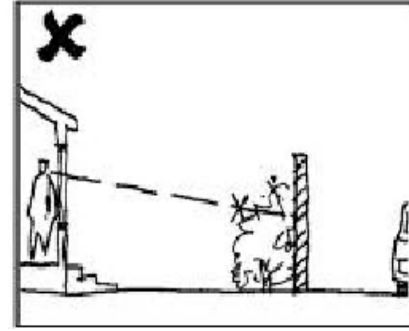
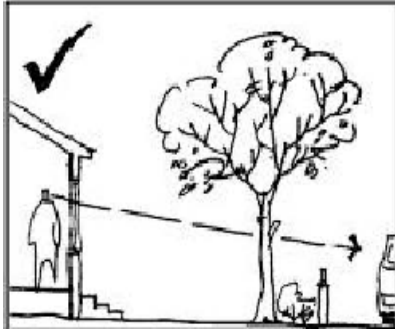
**(e) Landscaping**

Avoid landscaping which obscures natural surveillance.

As with 'blind corners' or general concealed areas, the large size of certain vegetation obstructs visibility and makes people feel uneasy and unsafe. Perceiving that something may be 'behind those bushes' can discourage genuine use of a space.

- Ø Avoid medium height vegetation with concentrated top to bottom foliage. Plants such as low hedges and shrubs (1 to 1.2m high), creepers, ground covers or high canopied vegetation are good for natural surveillance.
- Ø Trees with dense low growth foliage should be spaced or have the crown raised to avoid a continuous barrier.

- Ø Use low ground cover or high canopied trees, clean trunked to a height of 2 metres around children's play areas, car parks and along pedestrian pathways
- Ø Avoid vegetation that conceals the building entrance from the street.



**(f) Lighting**

Adequate lighting is essential in making people feel safe and in deterring illegitimate users. Good lighting design should;

- Ø Allow people to be able to see ahead progressively into areas along paths and accessways,
- Ø (ii) Encourages legitimate users to use a facility after daylight hours with the result their presence will deter potential illegitimate users,
- Ø Facilitates formal surveillance (by Police or security patrols).

Care should be taken to ensure lighting does not produce glare or dark shadows. Entrances, exits, service areas, pathways, car parks etc. should be well lit after dark when they are likely to be used.

- Ø Use diffused flood lights and/or movement sensitive lights.
- Ø Direct these lights towards access / egress routes to illuminate potential offenders, rather than towards buildings or resident observation points.
- Ø Lighting should have a wide beam of illumination, which reaches to the beam of the next light, or the perimeter of the site or area being traversed. Avoid lighting spillage onto neighbouring properties as this can cause nuisance and reduce opportunities for natural surveillance.
- Ø As a guide, the areas should be lit to enable users to identify a face 15m away.
- Ø Use energy efficient lamps /fittings /switches to save energy.

**(g) Mixed Land Uses**

Mixed land uses allow for natural surveillance of areas across a range of hours and times (ie weekday or weekend, AM or PM). To the extent that all other provisions within this DCP allow, mixed land uses offer a

way of ensuring surveillance of an area will promote increased use and security.

- Ø Locate shops and businesses on lower floors and residences on upper floors. In this way, residents can observe the businesses after hours while the residences can be observed by the businesses during business hours.
- Ø Incorporate car wash services, taxi ranks, bus shelters, kiosks and other food vendors within car parks.
- Ø Include kiosks, food vendors and restaurants within parks.
- Ø Refer to the relevant planning instruments, public land registers and Plans of Management for permissible uses within areas to promote increased surveillance and use.

**(h) Security**

Traditional security related equipment will help make a space more difficult for intruders to break into, however its overuse may impinge on adequate levels of natural surveillance.

- Ø Security grilles and security doors should be permeable (see through).
- Ø Avoid solid shutters on front windows and doors.

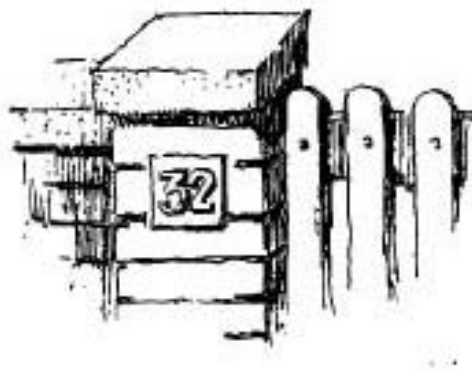
Security grilles, shutters and doors should allow natural observation of the street and be sympathetic to the architectural style of the building.

**(i) Building Identification**

Clear building identification prevents unintended access and assists persons trying to find the building - particularly emergency vehicles in an urgent situation.

- Ø Street numbers should be at least 7cm high, and positioned between 0.6m and 1.5m above ground level on the street frontage.
- Ø Street numbers should be made of durable materials, preferably reflective or luminous, and unobstructed (eg by foliage).
- Ø Location maps and directional signage should be provided for larger development.

Security grilles, shutters and doors should allow natural observation of the street and be sympathetic to the architectural style of the building.



**(j) Materials**

Use materials which reduce the opportunity for vandalism.

- Ø Strong, wear resistant laminate, impervious glazed ceramics, treated masonry products, stainless steel materials, anti-graffiti paints and clear over sprays will reduce the opportunity for vandalism. Flat or porous finishes should be avoided in areas where graffiti is likely to be a problem.
- Ø Where large walls are unavoidable, consider the use of vegetation or anti-graffiti paint. Alternatively, modulate the wall, or use dark colours to discourage graffiti on vulnerable walls.
- Ø External lighting should be vandal resistant. High mounted and/or protected lights are less susceptible to vandalism.
- Ø Communal/ street furniture should be made of hard-wearing vandal resistant materials and secured by sturdy anchor points or removed after hours.

**(k) Spaces**

Spaces should be clearly defined to express a sense of ownership and reduce illegitimate use/entry.

The definition of clear boundaries allows:

- Ø People to know when they are trespassing on private property.
- Ø Passers-by to clearly identify when someone is trespassing and illegally using the premises.
- Ø Create boundaries between public and private space.

**(l) Pride and Involvement**

A sense of community pride in a particular area will help maintain an area and will easily identify illegitimate behaviour.

**CPTED Principles relating to Residential Development design**

(3) Additional CPTED Principles that can be applied to residential development are:

**(a) Landscaping – Residential Development**

Landscaping can be an effective way of controlling/directing movement in an area. Depending on the intention, it can either restrict or encourage people to access a particular area.

- Ø Vegetation can be used as barriers to deter unauthorised access. Avoid large trees/shrubs and buildings works that could enable an intruder to gain access to the dwelling or to neighbouring dwellings. Prickly plants can be used as effective barriers. Species include bougainvilleas, roses, succulents, and berberis species.
- Ø Large trees, carports, skillion extensions, fences, and downpipes in situations can provide a means of access into yards or up to second storey windows or balconies.

**(b) Security – Residential Development**

Traditional security systems can be very effective in reducing illegitimate access. It is important however to be reasonable and not

over secure a location as this may make genuine users feel unsafe and even restrict legitimate access.

- Ø Install quality locks on external windows and doors.
- Ø Install viewers on entry doors.
- Ø If security grilles are used on windows they should be open able from inside in case of emergencies.
- Ø Ensure skylights and/or roof tiles cannot be readily removed or opened from outside.
- Ø Consider monitored alarm systems.
- Ø Provide lockable gates on side and rear access ways.
- Ø Building supervisors or security guards may be a security consideration in larger unit developments, holiday units, caravan parks, etc.
- Ø Ideally no more than two entry points to a dwelling.
- Ø Main entry doors should be fitted with a door viewer and door chain.

**(c) Ownership– Residential Development**

Research indicates that well maintained and 'cared for' properties are less likely to experience crime.

- Ø Ensure the speedy repair or cleaning of damaged or vandalised property.
- Ø Provide for the swift removal of graffiti.

**Application of CPTED Principles relative to Public Services**

- (4) ATMs, Help Points, Bicycle Storage, Public Phones, and other Public services should be located in areas of high activity.
- Ø Public services should be located in highly visible areas that are well lit.
  - Ø Locate public services away from possible places to hide, eg fire exits.
  - Ø Avoid locating public services in recesses.
  - Ø Design areas around ATM's to incorporate reflective materials so that users can observe people behind.
  - Ø Consider conflicting uses when designing public space (e.g. do not put a public phone or seat near an ATM as this provides a potential thief with an opportunity to loiter).



# ***Richmond Valley Development Control Plan 2015***

## **Part I-11. Land Use Conflict Risk Assessment— LUCRA**

This DCP applies to all land within the Richmond Valley Local Government Area.

**Date adopted by Council:**  
22 December 2015

**Effective Date:**  
4 January 2016

**Amendments:**  
Nil

A wide range of issues can constitute land use conflicts and interface issues. Conflicts may arise within Richmond Valley between agricultural (and other rural) practices [sources] and neighbouring occupants [receptors]. Managing potential instances where land use conflict might occur is most desirable before real conflict becomes realised and untenable. Rural land conflict occurs most generally between rural agricultural practices and rural residential style landowners, however these conflicts can also occur on the fringe of urban and rural areas.

Rural land use conflict issues most common on the North Coast of NSW include; absentee landholders, access, clearing, lack of co-operation, dogs, dust, poorly located dwellings, electric fences, general fence maintenance, firearms, heritage management, lighting, litter, noise, odours, pesticides, poisoning, pollution, smoke, bushfire maintenance, soil erosion, straying livestock, theft/vandalism, vegetation removal, trespass, visual amenity, water, and weed maintenance issues.

### **I-11.1 General Objectives**

The general objectives of this Chapter are:

- (1) To reduce the incidence and likelihood of land use conflict within Richmond Valley.
- (2) To introduce methods and guidelines to reduce the likelihood and manage existing land use conflict within the Local Government Area (LGA).
- (3) To reproduce current guidelines and 'buffer distances' (at the time of DCP formulation) between conflicting land uses in accordance with best practice principles (Living and Working in Rural Areas – A handbook for managing land use conflict issues on the NSW North Coast (LWRA Handbook)). 'Buffer distances' provided within this section of the DCP serve as a benchmark for proposed development within Richmond valley, with some opportunity for modification or review based upon demonstrated exceptional circumstance.
- (4) To introduce the concept of Land Use Conflict Risk Assessment (LUCRA) as part of the development assessment process. Where it is deemed necessary by the consent authority or consultant representing the applicant, a LUCRA shall be provided alongside all other reports provided to support proposed development. Land use buffers provided here and within the LWRA Handbook can be used to determine whether land use conflict risk assessment need to be addressed in detail within a formal development application.

*Living and Working in Rural Areas – A handbook for managing land use conflict issues on the NSW North Coast (LUCRA Handbook)* – is the publication from which most of the following DCP guidelines have been reproduced.

### **I-11.2 LUCRA Design principles**

- (1) A LUCRA is not an alternative to locating proposed development away from existing land-uses. The first choice for locating new development should always be outside of the buffer distance area for the proposed and neighbouring existing land-uses. A LUCRA should support the proposed siting of the new development based upon technical reasoning and measurements demonstrating land use conflict is unlikely to occur.
- (2) **Circumstances where proposed development requires a LUCRA**
  - ∅ A LUCRA is required where a proposed development for a particular land-use has a buffer distance which infringes upon nearby existing land-uses and/or development. Buffer distances of existing land uses, key environmental assets and/or development also trigger the need for LUCRA if the development proposed infringes existing land-use/development/key environmental asset buffers. Buffer distances for development types are given within Tables I-11.1, I-11.2 & I-11.3 below.
  - ∅ A LUCRA is also required if development is proposed with the vicinity of an existing landuse which, due to extraordinary circumstances deemed by the consent authority, applicant or representing consultant for the applicant, requires an increased buffer distance. In exceptional



circumstances a buffer distance may be reduced based upon accepted technical reasoning. Reduction of buffer distance could be based upon one or more of the relevant elements given below, however more commonly these elements may increase buffer distances.

**(3) Buffer distances applied to proposed and existing land uses**

- ∅ Buffer distances may vary from those stated within the DCP as the distances are based upon generic situations between proposals based on local topographic, climate, environmental and social considerations. The minimum buffer distances do not apply to existing developments that have already been approved. The conditions of consent placed on these developments form the minimum standards that these developments should achieve.
- ∅ Proponents, land owners and consultants undertaking conflict risk assessment will be required to reach consensus concerning the effort and detail should be applied to a LUCRA. The consent authority and any other involved regulatory authorities should be consulted prior to the lodgement of a formal application for a development requiring LUCRA to determine the level and direction of detail required.

### **I-11.3 Buffers**

**(1) Types of Buffers**

Separation buffers are the most common and involve establishing a physical separation between land uses where conflict could arise. The aim of doing this is to reduce the impacts of the uses solely by distance separation, rather than by any physical means such as earthworks or vegetation planting. These can be fixed separation distances or variable.

- ∅ Fixed separation distances generally apply in the absence of evidence that an alternate lesser buffer will be effective in the circumstances.
- ∅ Variable separation distances are calculated based on the site specific circumstances given factors such as the scale of the development, risk of conflict and risk to the adjoining environment have regard to accepted procedures for assessing these risks. The odour assessment process in NSW involving stationary sources is a form of a variable buffer as it varies according to specifics of the development and the site. Biological and vegetated buffers are buffers created by vegetation planting and physical landscaping works. They are most commonly designed to reduce visual impact and reduce the potential for airborne-created conflict such as chemical spray drift and dust and can help provide environmental protection through vegetated filter strips and riparian plantings. Landscape and ecological buffers refer to the use of existing vegetation to help reduce the impacts from development. They are mostly used to protect a sensitive environment by maintaining or enhancing existing habitat and wildlife corridors.
- ∅ Property management buffers refer to the use of alternative or specialised management practices or actions at the interface between uses where the potential for conflict is high. The aim of these buffers is

to reduce the potential of conflict arising in the first place. Examples include siting cattle yards well away from a nearby residence to reduce potential nuisance issues, and adopting a specialised chemical application regime for crops close to a residence or waterways with the aim of minimising off-site impacts on neighbours and the environment.

**Table I-11.1 Recommended Minimum Buffers (metres) for Primary Production (From *Living and Working in Rural Areas – A handbook for managing land use conflict NSW North Coast*)**

		Residential areas & Urban development	Rural dwellings	Education facilities & pre-schools	Rural tourist accommodation	Watercourses & wetlands	Bores & wells	Potable water supply/catchment	Property boundary	Roads
<b>Piggeries<sup>1</sup></b>	Housing & waste storage	1000	500	1000	500	100	SSD	800	100	100
	Waste utilisation area	500	250	250	250	100	SSD	800	20	20
<b>Feedlots<sup>2</sup></b>	Yards & waste storage	1000	500	1000	1000	100	SSD	800	100	100
	Waste utilisation area	500	250	250	250	100	SSD	800	20	20
<b>Poultry<sup>3</sup></b>	Sheds & waste storage	1000	500	1000	500	100	SSD	800	100	100
	Waste utilisation area	500	250	250	250	100	SSD	800	20	20
<b>Dairies<sup>4</sup></b>	Sheds & waste storage	500	250	250	250	100	SSD	800	100	100
	Waste utilisation area	500	250	250	250	100	SSD	800	20	20
<b>Rabbits<sup>5</sup></b>	Wet shed, ponds & irrig.	300	150	150	150	100	SSD	800	50	50
	Waste utilisation area	120	60	120	60	100	SSD	800	20	20
<b>Other intensive livestock ops<sup>6</sup></b>		500	300	500	300	100	SSD	800	100	100
<b>Grazing of stock</b>		50	50	50	50	BMP	SSD	BMP	NAI	BMP
<b>Sugar cane, cropping &amp; hortic.</b>		300	200	200	200	BMP	SSD	BMP	NAI	BMP
<b>Greenhouse &amp; controlled environment horticulture<sup>7</sup></b>		200	200	200	200	50	SSD	SSD	50	50
<b>Macadamia de-husking</b>		300	300	300	300	50	SSD	SSD	50	50
<b>Forestry &amp; plantations</b>		SSD	SSD	SSD	SSD	STRC	SSD	SSD	BMP	STRC
<b>Bananas</b>		150	150	150	150	50	SSD	SSD	BMP	BMP
<b>Turf farms<sup>8</sup></b>		300	200	200	200	50	SSD	SSD	BMP	SSD
<b>Rural industries (incl. feed mills and sawmills)</b>		1000	500	500	500	100	SSD	SSD	SSD	50
<b>Abattoirs</b>		1000	1000	1000	1000	100	SSD	800	100	100
<b>Potentially hazardous or offensive industry</b>		1000	1000	1000	1000	100	SSD	800	100	100
<b>Mining, petroleum, production &amp; extractive industries</b>		500 1000*	500 1000*	500 1000*	500 1000*	SSD	SSD	SSD	SSD	SSD
* Recommended min. for operations involving blasting										

**NAI = Not an issue;**  
**SSD = Site specific determination** (no standard buffer distance applies);  
**BMP = Best management practice** to apply given site circumstances. Buffer and/or management practice should represent duty of care to the environment and the public and include measures necessary to protect bank stability, maintain riparian vegetation and protect water quality. The incorporation of best management practice measures in property and farm plans is encouraged;  
**STRC = Subject to relevant codes.**

Buffer distances represent the recommendations of the North Coast Land Use Conflict Working Group following a synthesis of existing guidelines and policy. In some cases, specific and relevant guidelines may require larger buffers or lesser buffers than those prescribed may be appropriate in the circumstances.

**Note<sup>1</sup>** Subject to environmental assessment in accordance with National *Environmental Guidelines for Piggeries* (APL 2004) and *Assessment and Management of Odour from Stationary Sources in NSW* (DEC 2006)  
**Note<sup>2</sup>** Subject to environmental assessment in accordance with *NSW Feedlot Manual*(NSW Agriculture 1997) or *A Producers Guide to Starting a Small Beef Feedlot in NSW* (NSW Agriculture, 2001) and *Assessment and Management of Odour from Stationary Sources in NSW*(DEC 2006)  
**Note<sup>3</sup>** Subject to environmental assessment in accordance with *NSW Poultry Farming Guidelines* (NSW Agriculture 1996), *NSW Meat Chicken Guidelines* (NSW Agriculture 2004), *Assessment and Management of Odour from Stationary Sources in NSW* (DEC 2006)  
**Note<sup>4</sup>** Subject to environmental assessment in accordance with *NSW Guidelines for Dairy Effluent Resource Management – Draft* (NSW Agriculture 2004), and *Assessment and Management of Odour from Stationary Sources in NSW* (DEC 2006)  
**Note<sup>5</sup>** Subject to environmental assessment in accordance with *Rabbit Farming: Planning and development control guidelines* (NSW Inter-Departmental Committee on Intensive Agriculture, 1999) and environmental assessment in accordance with *Assessment and Management of Odour from Stationary Sources in NSW* (DEC 2006)  
**Note<sup>6</sup>** Subject to environmental assessment in accordance with *Assessment and Management of Odour from Stationary Sources in NSW* (DEC 2006) and any other relevant guideline or policy  
**Note<sup>7</sup>** Subject to environmental assessment in accordance with *Guidelines for the Development of Controlled Environment Horticulture* (NSW DPI 2005)  
**Note<sup>8</sup>** Subject to environmental assessment in accordance with *Turf Farming – Guidelines for Consent Authorities in NSW* (NSW Agriculture 1996)

**Table I-11.2 Recommended minimum buffers (metres) for key environmental assets (From *Living and Working in Rural Areas – A handbook for managing land use conflict NSW North Coast*)**

	Residential areas & Urban development	Rural settlement & on-site waste systems	Education facilities & pre-schools	Rural tourist accommodation
<b>Native vegetation/habitat</b>	50	50	50	50
<b>Ecosystem &amp; wildlife corridors</b>	50	50	50	50
<b>Estuaries &amp; major waterways</b>	100	100	100	100
<b>Minor waterways</b>	50*	50*	50*	50*
<b>Wetlands</b>	100	50*	50*	50*
<b>State &amp; regionally significant farmland</b>	300	300	300	SSD
<p>* Site assessment is necessary as 50m buffer may be inadequate given groundwater, soil type, topography ad site factors.  <b>SSD = Site specific determination</b> (no standard or simple buffer distances apply).                      Buffer distances represent the recommendations of the North Coast Land Use Conflict Working Group following a synthesis of existing guidelines and policy. In some cases, specific and relevant guidelines may require larger buffers or lesser buffers than those prescribed may be appropriate in the circumstances.</p>				

(2) Other Statutory and Recommended Buffers

There are other statutory and recommended buffers that can apply to specific sites and situations. These include:

- ∅ bushfire protection buffers
- ∅ mosquito buffers
- ∅ airport buffers
- ∅ power line buffers
- ∅ rifle range buffers
- ∅ railway line buffers
- ∅ cultural heritage buffers.

(3) Other Recommended LUCRA Minimum Buffers (m) for other land uses

The following table provides some minimum (metres) buffer distances for various land uses such as Waste Facilities, Sewage Works, Dip Sites, Boarding Kennels, Stock Homes/stables and Effluent Re-use Areas.

Table I-11.3 Recommended minimum buffers (metres) for other Land Uses (From *Living and Working in Rural Areas – A handbook for managing land use conflict NSW North Coast*)

	Residential areas & Urban development	Rural settlement	Education facilities & pre-schools	Rural tourist accommodation
Waste facilities	300	300	300	300
Sewerage works	400	400	400	400
Dip sites <sup>1</sup>	200	200	200	200
Boarding kennels	500	500	500	500
Stock yards including cattle yards	200	200	200	200
Stock homes/stables <sup>2</sup>	SSD	SSD	SSD	SSD
Effluent re-use areas <sup>3</sup>	SSD	SSD	SSD	SSD
SSD = Site specific determination (no standard buffer distances apply)				
<p><b>Note<sup>1</sup></b> The Cattle Tick Dip Site Management Committee (DIPMAC) recommends a nominal 200 metre radius assessment zone around cattle dip sites. Residential development proposed within this zone should be subject to a contaminated lands assessment to determine the extent of contamination and risks posed by contamination. The assessment and any proposed remediation works must also meet the requirements of <i>State Environmental Planning Policy No 55 – Remediation of Land</i>. Urban encroachment onto working cattle dip sites is to be avoided where possible.</p> <p><b>Note<sup>2</sup></b> Subject to assessment in accordance with NSW Department of Environment and Conservation publication <i>Environmental Management on the Urban Fringe – Horse Properties on the Rural Urban Fringe, Best Practice Environmental Guide for Horses</i> (2004).</p> <p><b>Note<sup>3</sup></b> Subject to assessment in accordance with NSW Department of Environment and Conservation publication <i>Use of Effluent by Irrigation</i> (2003) or local policy as adopted by individual councils.</p>				

**(4) Site Specific Factors LUCRA should consider (LWRA Handbook)**

- Ø The nature of the land use change and development proposed. A modest land use change is likely to create a different risk of land use conflict compared to a substantial and extensive land use change.
- Ø The nature of the precinct where the land use change and development is proposed. This provides an understanding of the context of the proposed change and development and may provide some insights into the values and expectations of adjoining land owners and stakeholders.
- Ø The topography, climate and natural features of the site and broader locality which could contribute either to minimising or to exacerbating land use conflict.
- Ø The typical industries and land uses in the area where the development is proposed. This provides for a broad test of compatibility with the dominant existing land uses in the locality.
- Ø The land uses and potential land uses in the vicinity of the proposed development or new land use. Identifying and describing what's happening within a minimum 1000 metre radius of the subject land and development site help to establish the specific land uses in the locality that are most likely to have some effect on and be affected by the proposed land use or development. This description of surrounding land uses should include discrete land uses such as dwellings, schools, and public places as well as rural industry activities such as intensive animal industries, cropping, agricultural processing industries, aquaculture, mining, petroleum production and extractive industries, plantations and farm forestry.
- Ø Describe and record the main activities of the proposed land use and development as well as how regular these activities are likely to be. Note infrequent activities that are likely to create conflict with neighbouring land uses and be the source of neighbour disputes given our knowledge of issues that can be a trigger for complaints and conflict.
- Ø Describe and record the main activities of the adjoining and surrounding land uses as well as how regular these activities are, including periodic and seasonal activities that have the potential to be a source of complaint or conflict.
- Ø Compare and contrast the proposed and adjoining/surrounding land uses for incompatibility and conflict issues.



# ***Richmond Valley Development Control Plan 2015***

## **Part I-12. Context and Site Analysis**

This DCP applies to all land within the Richmond Valley Local Government Area.

**Date adopted by Council:**  
22 December 2015

**Effective Date:**  
4 January 2016

**Amendments:**  
Nil

Development that is designed in context enhances the sense of place, reinforces the role and character of localities and improves the quality of the environment for the community.

When designing a development for a site it is essential to respond to the local and broader urban context by identifying the area's defining elements. The design should be informed by this.

In order to understand this context, a site analysis should be undertaken as a first step in preparing for a development. This should identify the opportunities and constraints of the site and create a platform from which to develop a design. A site analysis demonstrates that the proposed development is the best possible solution and makes the best contribution to its surroundings.

## **I-12.1 General Objectives**

The general objectives of this Chapter are to:

- (1) improve the quality of development through better planning, design and consideration for the local community and environments.

## **I-12.2 Site Analysis**

- (1) The broader elements of a site analysis should include things such as:
  - Ø Underlying urban structure e.g. the broad land use patterns, the spatial structure
  - Ø Subdivision and street patterns
  - Ø Topography and landscape
  - Ø Public domain
  - Ø Transport and access
  - Ø Building typologies eg. detached dwellings, residential flat buildings etc
  - Ø Open space and water networks
  - Ø Cultural, archaeological and physical heritage
  - Ø Views and vistas.

These elements should be considered in relation to the site and its area, but also relative to the existing planning framework and controls.

- (2) It is important to recognise that places and communities evolve over time and anticipation of spatial change needs to be balanced with existing themes, forms and patterns which have helped establish the character of the locality.
- (3) All development applications should submit a site analysis, except development applications for the purposes of:
  - Ø Change of use
  - Ø Minor alterations and additions, and
  - Ø Swimming pools.

The degree of detail required will vary according to the nature, type and scale of the development and its surroundings. The level of detail required should be clarified with Council.

- (4) A site analysis assessment should document the key opportunities and constraints of a site and its surroundings and show how these, in conjunction with the provisions of this DCP have determined the final proposal for the site.
- (5) The site analysis may include plans, sketches, photographs and supporting written information and should include the following information:
  - (a) **Identifying Information**
    - Ø orientation
    - Ø scale and north point
    - Ø date
    - Ø Property Details
    - Ø site dimensions, property boundaries and site area



- Ø easements for drainage, services and rights of carriageway
- Ø Landform and Vegetation
- Ø spot levels and contours
- Ø differences in ground levels on site as well as between the site and adjoining properties
- Ø existing vegetation on/or affecting the site, location, height, canopy cover and species types
- Ø important views - from the site and from adjoining land
- Ø identification of any contaminated soils on the site and extent of any known landfill
- Ø landscape features - cliffs, rock outcrops, embankments, retaining walls, foreshores
- Ø soil type and depth
- Ø flood liable land, existing means of stormwater drainage, existing stormwater detention systems, flow paths, drainage easements, watercourses, channels etc;
- Ø sun and shade characteristics
- Ø prevailing winds
- Ø Access
- Ø vehicle and pedestrian access to and from the site
- Ø public roads, laneways, pathways
- Ø on corner sites, the provision of a splay corner if required by Council
- Ø driveways, parking areas, loading bays on the site and within the vicinity of the site
- Ø public transport services (particularly for affordable housing, and housing for seniors or persons with disabilities)
- Ø Existing Development
- Ø existing buildings - on the site and on adjoining land. Show location, distance from the boundary, height, current use. Include elevations showing adjacent buildings
- Ø existing neighbourhood character, including the pattern of development, built form, building materials and colours, fencing and garden styles
- Ø overshadowing of and by adjoining buildings
- Ø fence and wall locations, heights, materials
- Ø swimming pools
- Ø privacy - adjoining private open spaces, doors and windows
- Ø street frontage features - poles, trees, kerbs, footpaths, crossings, street furniture
- Ø noise, odour and light spillage sources (e.g. main roads, railway lines, sports fields, air conditioning units, pool pumps, industrial areas)

- Ø heritage and/or archaeological features (indigenous and non-indigenous) on site and in the vicinity of the site include landscapes, buildings, conservation areas, special character areas
- Ø existing advertising signs.



Figure I-12.1 Site analysis

**(b) Assessment of Proposed Development**

It is imperative that a site analysis include likely impacts of the proposed development and the measures proposed to mitigate these impacts. It should also show where the site has been unable to incorporate the opportunities and constraints of the site and the requirements of the DCP. Written and graphical explanations should be provided, for any site analysis, ultimately showing the suitability of the site for the proposed use.



# ***Richmond Valley Development Control Plan 2015***

## **Part I-13. Use of shipping containers**

The use of shipping containers for any purpose requires development consent unless the shipping containers are fully located within a building as part of an approved use, or are part of the operation of a freight transport facility or related approved activity.

This DCP applies to all land within the Richmond Valley Local Government Area.

**Date adopted by Council:**  
22 December 2015

**Effective Date:**  
4 January 2016

**Amendments:**  
Nil

### **I-13.1 General Objectives**

The general objectives of this chapter are:

- (1) to protect the amenity and/or streetscape of a locality where shipping containers are granted development consent, and
- (2) to apply development controls through guidelines for the installation of shipping containers.

### **I-13.2 Design principles**

- (1) **Permanent use of containers**
  - ∅ Containers visible from public places should not be visually intrusive when viewed from that public place or from an adjacent property;
  - ∅ Containers are to be maintained in good condition and installed in a structurally stable manner;
  - ∅ Containers are not to be located over services or utilities; and
  - ∅ The use of the container must relate directly to and be ancillary to the predominant lawful use of the property.
- (2) **Temporary use of containers**
  - ∅ Containers are located so as to minimise visual impact; and
  - ∅ Containers are used for temporary purposes for a time not exceeding six months.

### **I-13.3 Acceptable solutions**

- (1) **Permanent use of containers**
  - ∅ Containers are limited to two containers per property;
  - ∅ Containers are to be fully screened from a public place and any adjoining property;
  - ∅ Containers are not to be stacked unless fully contained within a building;
  - ∅ Containers are to be maintained free of major rust, and painted in a colour consistent with other development on the site;
  - ∅ Containers are to be installed and tied down to a concrete slab or foundation capable of supporting the combined weight of the container and contents;
  - ∅ Containers are not located within the front or side setback distances (as provided for within the relevant zone—see Chapter I3);
  - ∅ Containers are not located over water, sewer or stormwater lines, or over an easement;
  - ∅ A means must be provided whereby persons within the container can exist the container, should is be closed from outside, OR an internal alarm is to be installed and maintained and regularly tested.

(2) **Temporary use of containers**

- ∅ No more than one container is used for temporary purposes;
- ∅ The temporary purpose is not to exceed six months;
- ∅ Containers are not to be located within front or side building line setback distances (as provided for within the relevant zone—see Chapter I-3);
- ∅ Containers are to be in good condition, free of major rust and painted in a colour scheme consistent with other development on the site or surrounding lands;
- ∅ Containers are to be located so as to minimise visual intrusion to the public realm and adjoining properties;
- ∅ Containers are only to be used in conjunction with an approved use or development on the land;
- ∅ Containers are to be placed on hard-stand surfaces such as compacted gravel or the like.

**I-13.4 Alternative approaches and design suggestions**

- (1) Alternative approaches and design solutions will be considered on merit but must be consistent with the performance outcomes of this Chapter.





# ***Richmond Valley Development Control Plan 2015***

## **Part I-14. Sex Services Premises, Restricted Premises and Home Occupation (Sex Services)**

This DCP applies to all land within the Richmond Valley Local Government Area.

**Date adopted by Council:**  
22 December 2015

**Effective Date:**  
4 January 2016

**Amendments:**  
Nil

This section provides planning controls for the determination of development applications and regulation of sex services premises, restricted premises and home occupation (sex services) within the Richmond Valley Council area (RVC).

Since the decriminalisation of sex services premises in 1995, local councils have become the regulatory authority for legitimate businesses involving sex services and shops. Sex services premises and shops cannot be excluded from any council area as it would be contrary to the intent of the 1995 reforms and does not uphold guiding EP&A Act principles discriminating against legitimate land uses.

Council's responsibility in relation to 'sex services premises' centres primarily on land use planning under the *Environmental Planning and Assessment Act 1979*. Responsibility for safe health practices in the workplace rests with the NSW Department of Health, while the WorkCover Authority is the primary authority regarding occupational health and safety issues in any workplace. Sex workers and brothel owners/proprietors must comply with Section 13 of the *Public Health Act 1991*. (Information given here was current at the time of DCP creation – refer to these agencies and legislation for succeeding provisions).

It is likely that despite the controls provided here, sex services could be provided within Richmond Valley by escort or outcall services operated illegally and through means over which Council has no authority. Guidelines are provided here to manage genuine applications for legal premises, provide some guidance for the application process, and outline steps Council may take to control premises and activities operating illegally within premises.

(1) LEP Definitions

Extract from the *Richmond Valley Local Environmental Plan 2012*

Dictionary

**sex Service Premises** means a building where sex services are provided (a brothel), but does not include a 'home occupation' (sex services).

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

**home Occupation (sex services)** means the provision of sex services in a dwelling or any building ancillary to 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 signage, 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.

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

Other definitions used in this Chapter:

**Shop** and **Retail** have the same purpose as that prescribed within the LEP definitions.

**Spruikers** are persons located on the public way associated or employed by Sex Service Premises, Restricted Premises or Home Occupation (sex services) who seek to entice customers to enter the premises.

**Restricted Items** include any publication and include any film, computer game or advertisement for such which are restricted for sale to persons over the age of 18 by Commonwealth or State legislation. In addition, restricted items here include any item offered for sale or hire which are deemed to be unsuitable for persons aged less than 18 years of age due to being:

- Ø overtly violent,
- Ø pornographic or
- Ø overtly sexual, sexually suggestive, abusive and/or lewd in nature.

In addition items include those which may be deemed overtly sexual, suggestive and/or lewd in nature based upon legitimate complaints received from the general public.

**Publication** includes any written or pictorial matter as the meaning in the Commonwealth Act.

**Premises** is a general term to mean any premises described within this section requiring consent (Sex Service Premises, Restricted Premises and Home Occupation (sex services)).

## I-14.1 General Objectives

The general objectives of this section are to:

- (1) Regulate the location, operation and external appearance of sex services premises, restricted premises (sex shops) and home occupation (sex services) to minimise any potential amenity and other impacts on the community.
- (2) Provide information to proponents and the general public as to the requirements and the responsibilities of regulatory authorities involved with the establishment and operation of sex service premises, restricted premises (sex shops) and home occupation (sex service premise) within Richmond Valley.
- (3) To advise the type and quality of information required to be lodged with a development application for a sex service premise, home occupation (sex service) or restricted premises (sex shop).
- (4) Outline circumstances and procedures to be followed, under which Council may direct adherence to the guidelines set for sex related premises and provide for procedures to enable the closure of sex services premises, restricted premises and home occupation (sex services) if required.
- (5) To ensure Sex Service Premises and Sex Shops are discretely located as to not be prominent within the streetscape and community in general.
- (6) Any signage associated with development provided for within this section must be discrete and not cause offence to the general public or draw unnecessary attention to services offered by the premises or business.
- (7) To promote the occupational health, welfare and safety of workers in the sex industry by providing opportunity for legal business to be conducted subject to regulated practise.
- (8) Provide for additional advertising and notification procedures.

## I-14.2 Sex Service Premises

### Location

- (1) Where are Sex Service Premises permitted?

- (a) **Richmond Valley Local Environmental Plan 2012**

Clause 6.15 of the *Richmond Valley Local Environmental Plan 2012* (the LEP) provides for consideration of where sex service premises should be located.

Extract from the *Richmond Valley Local Environmental Plan 2012*

Clause 6.15 Location of sex services premises

- (1) The objective of this clause is to minimise land use conflicts and adverse amenity impacts by providing a reasonable level of separation between sex services premises, specified land uses and places regularly frequented by children.
- (2) In deciding whether to grant development consent for development for the purposes of sex services premises, the consent authority must consider the following:
  - (a) whether the premises will be located on land that adjoins, is directly opposite or is separated only by a local road from land:

- (i) in Zone RU5 Village, Zone R1 General Residential or Zone RE1 Public Recreation, or
- (ii) used for the purposes of a child care centre, a community facility, a school or a place of public worship,
- (b) the impact of the proposed development and its hours of operation on any place likely to be regularly frequented by children:
  - (i) that adjoins the proposed development,
  - (ii) that can be viewed from the proposed development, or
  - (iii) from which a person can view the proposed development.

**(b) Additional locational guidelines for Sex Service Premises**

In addition to the definitive LEP restrictions, this DCP provides guidance as to the location, appearance and operation of Sex Service Premises within Richmond Valley.

Ø Sex Service Premises may only be located within the following zones (in accordance with the LEP land use permissibility tables):

§ Zone B3 Commercial Core

§ Zone IN1 General Industry

In addition to the above zone restrictions, the following location limitations apply:

Ø Consent shall not be granted to development for the purpose of a Sex Service Premises unless Council is satisfied that the development will not be adjacent to, adjoin, or be within 100 metres of:

§ an educational establishment frequented by minors,

§ a child care centre or residential care facility,

§ a recreational area,

§ any other place regularly frequented by children for recreational or cultural activities,

§ a place of public worship, funeral chapel or funeral home,

§ a hospital,

§ any land zoned for residential use (exception non-residential RU5 – Village)

§ any other Sex Services Premises or where consent has been granted for such.

Exceptional design standards may provide for relaxation of the above requirements, subject to demonstrated alternate means of shielding and/or separation of the premises from nearby receivers of not less than 50 metres. Multiple Sex Service Premises will only be considered in an area if can be demonstrated that conflict will not arise and that there will not be an excessive congregation of premises leading to the creation of an undesirable precinct precluding other legitimate land-uses.

## External Appearance

- (2) Premises must be compatible with the surrounding built form in order to discretely blend into the streetscape and area. Colour selection for finishes must not be garish and detail for decorative finishes shall be subdued in nature.
- (3) Entranceways for pedestrian and vehicle access shall be well lit, however must not form a prominent feature within the streetscape. All access shall provide equitable treatment of users including disability access. A single main entrance for clientele shall be provided which is out of sight of the streetscape and the general public.
- (4) Sex workers or any sex related products shall not be displayed from any window or doorway of the premises. No signage or graphics shall be displayed on any exterior surface of the premises, apart from that prescribed within the signage section below.

## Operation Safety & Security (also see CPTED)

- (5) Sex workers or any sex related products shall not be displayed from any window or doorway of the premises. All activities, including the greeting of clientele, shall be confined to the interior of the building and shall not be visible in any way or form from the outside of the premises.
- (6) Internal Car parking areas shall be well lit, and signage visible within the premise grounds shall be subtly lit and directional in nature only.
- (7) No spruikers of any kind shall operate within the road reserve, nor any internal car parking area, or on the land outside the building.

## Car Parking

- (8) On site car parking shall be provided at the rate of 1.5 spaces per working room. (See Chapter I-4 detailing car parking provisions).  
Car parking provided shall be easy for clientele to locate.

## Signage

- (9) Signage must be strictly limited to the identification of the premises by name and/or street number (the name in itself may not be reasonably construed to be rude or offensive to the average person). One sign (or two signs on a corner allotment – one per frontage) a maximum of 0.35m<sup>2</sup> may be displayed and may be dully illuminated producing an overall luminescence per sign (measured at a distance of 400mm each not in excess of 20 candela (the intensity of one twenty (20) watt light globe measured at a 400mm distance). Additional signage not of an excessive or lewd nature may be provided within the car parking area if it cannot be viewed from adjoining streets or properties or provide excessive spillage of light.
- (10) Additionally, the following provisions must apply to signage:
  - Ø Must not contain any characters, depictions, pictures or drawings
  - Ø Must not be representative by shape and/or form other than the number of the premises.
  - Ø Must not be illuminated, flash or move in any way.

## Additional Controls

- (11) All applications shall comply with the necessary services and facilities required for Class 5/6 Buildings in accordance with the Building Code of Australia (BCA – as current, or superseded from the time of the DCP creation). It should be noted that all requirements for equitable provision of services and amenities, particularly those relating to disability access shall be provided throughout the development.
- (12) All public health requirements shall be complied with, in particular, but not limited to, the *Public Health Act 1991*. All proposed bars and food preparation areas shall comply with the NSW Food Standards Code and AS4674-2004 (current at the time of DCP – refer to any succeeding legislative requirements).
- (13) The use of the premises shall not give rise to:
  - Ø transmission of vibration to any place of different occupancy
  - Ø a sound level at any point on the boundary of a site greater than the background levels specified in Australian Standard AS 1055 – Acoustics Description and measurement of environmental noise, or
  - Ø an "offensive noise" as defined in the *Noise Control Act 1975*.

### I-14.3 Restricted Premises

- (1) Restricted premises can potentially take many forms. Restricted premises may involve hire and/or selling of any item deemed to be unsuitable for persons aged less than 18 years of age due to being:
  - Ø overtly violent,
  - Ø pornographic, or
  - Ø overtly sexual, sexually suggestive, abusive and/or lewd in nature.

In addition, items for display, sale and hire may be deemed overtly sexual, suggestive and/or lewd in nature if legitimate complaints are received from the public. Council reserves the right to determine whether premises should be deemed 'restricted' if legitimate complaints are received if steps are not taken by the business to allay public concern. Commonwealth legislation and determinations (given below in section (f) below) should generally be referenced when making a determination as to whether a premise should be deemed 'restricted'.

Often restricted premises are incorporated into existing or affiliated businesses. Examples include bookstores which might include an 'over 18's' section displaying pornographic publications, or video hire premises which might have an additional shielded section for adult movie hire. Some precautions should be taken to prevent these businesses from impacting upon sensitive members of the public.

#### Location

- (2) Restricted premises shall be located away from sensitive receivers and pedestrian movements of children. Guidelines are given below to minimise the potential for exposure of items to minors and more sensitive members of the public. At the discretion of Council, where the restricted goods area

comprises only a section of a larger business (15% or less), some relaxation of the following requirements shall be permitted dependent upon the absence of advertising and signage on any exterior of the business premise. These requirements should also be considered a guide for businesses wishing to incorporate a component into existing trade.

**(a) Richmond Valley Local Environmental Plan 2012**

- Ø Restricted Premises may only be located within the following zones (in accordance with the LEP land use permissibility tables)
  - § B3 – Commercial Core
  - § RU5 – Village

**(b) Additional locational guidelines for Restricted Premises**

In addition to the above zone restrictions, the following location limitations apply:

- Ø Consent shall not be granted to development for the purpose of a Restricted Premise unless Council is satisfied that the development will not be adjacent to, adjoin or be within 50 metres of;
  - § an educational establishment frequented by minors,
  - § a child care centre or residential care facility,
  - § a recreational area,
  - § any other place regularly frequented by children for recreational or cultural activities,
  - § a place of public worship, funeral chapel or funeral home,
  - § a hospital,
  - § any land zoned for residential use (exception non-residential RU5 – Village),
  - § any other Sex Services Premises or where consent has been granted for such.

Exceptional design standards may provide for relaxation of the above requirements, subject to demonstrated highly effective screening of the restricted premises component and/or separation of the premises from nearby receivers of not less than 25 metres. Multiple Restricted Premises will only be considered in an area if can be demonstrated that conflict will not arise and that there will not be an excessive congregation of premises leading to the creation of an undesirable precinct precluding other legitimate land-uses.

### **External Appearance**

- (3) Premises must be compatible with the surrounding built form in order to discretely blend into the streetscape and area. Colour selection for finishes must not be garish and detail for decorative finishes shall be subdued in nature.
- (4) Entranceways for pedestrian access shall be well lit, however must not form a prominent feature within the streetscape. All access shall provide equitable treatment of users including disability access.
- (5) No restricted products or products of an otherwise overtly violent, sexual or lewd nature shall be displayed from any window or doorway of the premises or in any other way that may be viewed from the street. Signage or graphics

displayed on any exterior surface of the premises may announce the nature of products for sale or hire (i.e. "adult movies") however may not be descriptive in nature (See signage section e below).

### Operation Safety & Security (see CPTED)

- (6) Employees and the owner of the premises shall be vigilant in allowing only access to areas where restricted items are on display for sale and/or hire. All advertising and display of restricted items shall be only permitted within restricted areas.
- (7) Any car parking associated with the restricted premises shall be well lit and signage visible within the premise grounds shall be subtly lit and directional in nature only.
- (8) No spruikers of any kind shall operate within the road reserve, nor any internal car parking area, or on the land outside the building.

### Car Parking

- (9) On site car parking shall be provided at the rate of one space per 30m<sup>2</sup> of Gross Floor Area (GFA) (<= 1000m<sup>2</sup>), or per 40m<sup>2</sup> of GFA (> 1000m<sup>2</sup>).  
Car parking provided shall be easy for clientele to locate.

### Signages

- (10) Signage must be limited to the identification of the premises as providing restricted items of sale and/or hire. Signage shall not be descriptive in nature and must only serve to notify items of a restrictive nature are available for sale or hire within the premises. Signage constituting the name of the business can be in accordance with normal provisions relating to 'business identification signs', however the name of the business and description of the premises to the extent it is advertised as signage may not be overtly violent, sexual or otherwise lewd in nature. In circumstances where the sale and/or hire of restricted items constitute the majority of the business, signage shall be limited to an area not exceeding 6m<sup>2</sup> of the total exterior of the premises.
- (11) Additionally, the following provisions must apply to signage:
  - Ø Signage relating to the sale or hire of restricted items (including items of an overtly violent, sexual or otherwise lewd nature) must be restricted to six metres squared (6m<sup>2</sup>) of the total exterior of the premises.
  - Ø Must not contain any characters, depictions, pictures or drawings
    - § Must not be representative by shape and/or form other than the number of the premises.
    - § Must not be illuminated, flash or move in any way

### Additional Controls and Information

- (12) Australian Commonwealth Law generally prescribes what publications may be sold and the nature of how they may be displayed and to whom.
  - Ø The *Classification (Markings for Publications) Determination 2007* (Commonwealth) prescribes the classification markings and how they are to be displayed on the covers and packaging of publications.
  - Ø Areas where restricted publications are exhibited must conform with NSW Legislation requirements (*Classification (Publications, Films and Computer Games) Enforcement Act 1995* (or any succeeding relevant



legislation)), in particular Division 2 – Restricted publication areas. Some reproductions of the requirements of this Act are referenced below.

- Ø All publications must be classified by the Classification Board before they can be sold (whether retail or wholesale) in Australia. Unclassified publications, whether locally made or imported, may not be sold in Australia (pursuant to relevant legislation). Foreign classifications are not applicable in Australia so imported restricted items need to be classified by the Australian Classification Board before being offered for sale.
- Ø In order for any premises (or part of any premises) to be a restricted publications area, the following requirements must be complied with:
  - § the premises must be so constructed that no part of the interior of the premises is visible to any person outside the premises,
  - § each entrance to the premises must be fitted with a gate or door capable of excluding persons from the interior of the premises, and the premises must be kept closed by means of any such gate or door at all times while the premises are closed to the public,
  - § the proprietor of the premises, or some other adult person appointed by the proprietor for that purpose, must remain on or near the premises, and must be in charge of the premises, at all times while the premises are open to the public,
  - § at each entrance to the premises there must be prominently displayed, so as to be able to be read from outside the premises, a notice, printed in clearly legible letters at least 15 mm in height, containing the following words:  
*"RESTRICTED PUBLICATIONS AREA – PERSONS UNDER 18 MAY NOT ENTER. MEMBERS OF THE PUBLIC ARE WARNED THAT SOME MATERIAL DISPLAYED IN THIS AREA MAY CAUSE OFFENCE."*
- Ø All public health requirements shall be complied with, in particular, but not limited to, the *Public Health Act 1991*. All proposed bars and food preparation areas shall comply with the NSW Food Standards Code and AS4674-2004 (current at the time of DCP – refer to any succeeding legislative requirements).
- Ø The use of the premises shall not give rise to:
  - § transmission of vibration to any place of different occupancy
- Ø a sound level at any point on the boundary of a site greater than the background levels specified in Australian Standard AS 1055 – Acoustics Description and measurement of environmental noise, or
- Ø an "offensive noise" as defined in the *Noise Control Act 1975*.

## **I-14.4 Home Occupation (Sex Services)**

### **Location**

(1) Where are Sex Service Premises permitted?

**(a) Richmond Valley Local Environmental Plan 2012**

Sex Service Premises may only be located within the following zones (in accordance with the LEP land use permissibility tables)

- Ø RU1 – Primary Production
- Ø B3 – Commercial Core
- Ø IN1 – General Industrial – (only for pre-existing dwellings within the industrial zone)

**(b) Additional locational guidelines for Restricted Premises**

In addition to the above zone restrictions, the following location limitations apply:

- Ø Consent shall not be granted to development for the purpose of a Home Occupation (Sex Services) unless Council is satisfied that the development will not be adjacent to, adjoin or be within 50 metres of;
  - § an educational establishment frequented by minors,
  - § a child care centre or residential care facility,
  - § a recreational area,
  - § any other place regularly frequented by children for recreational or cultural activities,
  - § a place of public worship, funeral chapel or funeral home,
  - § a hospital,
  - § any land zoned for residential use (exception non-residential RU5 – Village)
  - § any other Sex Services Premises or where consent has been granted for such.

Exceptional design standards may provide for relaxation of the above requirements, subject to demonstrated alternate means of shielding and/or separation of the premises from nearby receivers of not less than 50 metres. Multiple Sex Service Premises will only be considered in an area if can be demonstrated that conflict will not arise and that there will not be an excessive congregation of premises leading to the creation of an undesirable precinct precluding other legitimate land-uses.

### **External Appearance**

- (2) Premises must be compatible with the surrounding built form in order to discretely blend into the streetscape and area. Colour selection for finishes must not be garish and detail for decorative finishes shall be subdued in nature.
- (3) Entranceways for pedestrian and vehicle access shall be well lit, however must not form a prominent feature within the streetscape. All access shall provide equitable treatment of users including disability access. A single main entrance for clientele shall be provided which is out of sight of the streetscape and the general public.

- (4) Sex workers or any sex related products shall not be displayed from any window or doorway of the premises. No signage or graphics shall be displayed on any exterior surface of the premises, apart from that prescribed within the signage section below.

### **Operation Safety & Security (also see CPTED)**

- (5) Sex workers or any sex related products shall not be displayed from any window or doorway of the premises. All activities, including the greeting of clientele, shall be confined to the interior of the building and shall not be visible in any way or form from the outside of the premises.
- (6) Internal Car parking areas shall be well lit and signage visible within the premise grounds shall be subtly lit and directional in nature only.
- (7) No spruikers of any kind shall operate within the road reserve, nor any internal car parking area, or on the land outside the building.

### **Car Parking**

- (8) On site car parking shall be provided at the rate of 1 space per working employee of the premises. Note. This is in addition to car parking required for the residence.

Car parking provided shall be easy for clientele to locate.

### **Signage**

- (9) Signage must be strictly limited to the identification of the premises by name and/or street number (the name in itself may not be reasonably construed to be rude or offensive to the average person). One sign of a maximum of 0.35m<sup>2</sup> may be displayed and may be dully illuminated producing an overall luminescence per sign (measured at a distance of 400mm each not in excess of 20 candela (the intensity of one twenty (20) watt light globe measured at a 400mm distance).
- (10) Additionally, the following provisions must apply to signage:
- Ø Must not contain any characters, depictions, pictures or drawings
  - Ø Must not be representative by shape and/or form other than the number of the premises.
  - Ø Must not be illuminated, flash or move in any way.

### **Additional Controls – Sex Service Premises**

- (11) All applications shall comply with the necessary services and facilities required for Class 5/6 Buildings in accordance with the Building Code of Australia (BCA – as current, or superseded from the time of the DCP creation). It should be noted that all requirements for equitable provision of services and amenities, particularly those relating to disability access shall be provided throughout the development.
- (12) All public health requirements shall be complied with, in particular, but not limited to, the *Public Health Act 1991*. All proposed bars and food preparation areas shall comply with the NSW Food Standards Code and AS4674-2004 (current at the time of DCP – refer to any succeeding legislative requirements).
- (13) The use of the premises shall not give rise to:
- Ø transmission of vibration to any place of different occupancy

- ∅ a sound level at any point on the boundary of a site greater than the background levels specified in Australian Standard AS 1055 – Acoustics Description and measurement of environmental noise, or
- ∅ an "offensive noise" as defined in the *Noise Control Act 1975*.

### **I-14.5 Application (DA) Requirements**

- (1) The Requirements for Development Applications for the sensitive land-uses described within this section (Sex Service Premise, Restricted Premises and Home Occupation (Sex Services)) have some general similarities. The level of detail and effort required will vary dependent on the nature and scale of the business proposed. It shall be at Council's discretion as to the nature of detail required, however all potential sensitive receivers discussed elsewhere within this DCP section shall be clearly identified (including likely transitory pedestrian movements) and the likely impact thoroughly documented. Applicants should ensure open dialogue between the proponent and Council is maintained throughout the process.

- (2) **Social Impact Statement (SIS)** – see also Section I-8 regarding SIS

All land-uses described within this section of the DCP will require Social Impact Statement of sufficient detail to address all potential future impacts from the proposed development. Any proposed Sex Service Premises will require particularly detailed study. All potential sensitive receivers discussed elsewhere within this DCP section shall be clearly identified (including likely transitory pedestrian movements). The SIS shall be of an acceptable standard (verified by the NSW Police) prior to advertising and notification described below.

- (3) **Statement of Environmental Effects (SEE)**

The provision of a SIS shall in no way reduce the need for a Statement of Environmental Effect (SEE). The requirements of a SEE are prescribed in detail within Section I-12 of the DCP and outlined within a factsheet accompanying the Development Application documentation.

- (4) **Additional Advertising and Notification Procedures**

All land-uses described within this section of the DCP will require additional advertising and notification procedures to inform all potential impacted citizens of the development proposed. A stringent notification procedure will call upon relevant agencies, authorities and community/interest groups to provide comment regarding all potential future impacts from the proposed development. These agencies/authorities/community groups shall include, but not be limited to the following;

NSW Police (assessment considering CPTED principles)

- ∅ Identified Impacted Citizens (as per the SIS)
- ∅ Department of Human Services (f/n/a Community Services)

The applicant shall provide enough current copies of the SIS to enable distribution to all agencies and authorities to be notified.

(5) **Additional Considerations**

- Ø Disclosure of interests of all persons involved in the ownership of the proposed occupation or business described within this DCP section. Subsequent to any development consent being issued, a condition may be imposed that any initial and future ownership of the premises by an individual who has been tried and convicted of an indictable offence shall be disclosed to NSW Police and the Consent Authority.

**Note.** Whilst any record against an owner in itself cannot be considered grounds to move to shut down premises it should be considered carefully in conjunction with other matters discussed within Chapter I-14.6.

- Ø All legislative references contained throughout refer to those current at the time of the formulation of this section of the DCP. It is the responsibility of the applicant to ensure current legislative requirements are met within the application in relation to Sex Service Premises, Restricted Premises and Home Occupations (sex service), whether it is relative to alternatively named premises or legislation which could be reasonably construed to be the contemporary equivalent.

## I-14.6 Closure of Premises

- (1) An application may be made by Council to the NSW Land and Environment Court under Section 17 of the Disorderly Houses Amendment Act 1995 (DHAA) for premises not to be used as a brothel. The Act operates in addition to Council powers under the Environmental Planning and Assessment Act 1979 (EP&A) and provides for the serving of notice on a brothel operating without development consent or outside the terms of consent. Relevant sections of the abovementioned legislation have been included for reference within this section. The legislation provided was current at the time of formulation of the DCP and any possible superseding legal procedures and requirements should be investigated.

Any actions undertaken relevant to this section shall consider the fairness of the assessment process if at any time in the future complaints are received from a nearby use which was not in existence at the time of the granting of consent for the business or occupation carried out.

(2) **Legislative Requirements**

Extract from the *Environmental Planning and Assessment Act 1979*

Section 121ZR Special provisions relating to brothel closure orders

(1) **Definitions**

In this section and section 121ZS:

**brothel closure order** means an order No 1 or No 15 under the Table to section 121B (1) to cease using premises as a brothel or in respect of the use of premises as a brothel, whether or not the order also prohibits the premises from being used for, or relates to the use of the premises for, any related sex uses.

**related sex uses** means the following:

- (a) the use of premises for the provision of sexual acts or sexual services in exchange for payment,
- (b) the use of premises for the provision of massage services (other than genuine remedial or therapeutic massage services) in exchange for payment,
- (c) the use of premises for the provision of adult entertainment involving nudity, indecent acts or sexual activity if the entertainment is provided in exchange for payment or if the entertainment is ancillary to the provision of other goods or services.

**(2) Natural justice requirements not applicable**

A person who gives a brothel closure order is not required to comply with sections 121G–121K.

**Note.** Sections 121G–121K provide, among other things, for notice of proposed orders. Sections 121L and 121N apply to brothel closure orders and provide for reasons for an order to be given to the person to whom an order is given as well as information about appeal rights.

**(3) Additional prohibitions may be included**

A brothel closure order may also prohibit the use of the premises for specified related sex uses, if the use of the premises for the specified uses is a prohibited development or a development for which development consent is required but has not been obtained.

**(4) Additional persons to whom order may be given**

In addition to any other person to whom a brothel closure order may be given, a brothel closure order may be given to any person apparently in control of or managing, or assisting in the control or management of, the brothel.

**(5) Period for compliance**

A brothel closure order must specify a period of not less than 5 working days within which the order must be complied with.

**Note.** An appeal against a brothel closure order may be made under section 121ZK.

**(6) Additional persons or bodies that may make brothel closure orders**

In addition to the persons specified by section 121B, a brothel closure order may be made by a person or body exercising planning or regulatory functions in respect of the area in which the premises are situated and authorised by the Minister to make brothel closure orders.

**(7) Defences**

It is a sufficient defence to a prosecution for an offence that arises from a failure to comply with a brothel closure order if the defendant satisfies the court that:

- (a) if the defendant is the owner of the premises, the defendant has taken all reasonable steps to evict the persons operating the brothel or using the premises for the specified related sex uses, or
- (b) in all cases, the defendant has taken all reasonable steps to prevent the use of the premises as a brothel or for the specified related sex uses.

**(8) Appeals**

Regulations may be made for or with respect to the following matters:

- (a) the conferral of jurisdiction on the Local Court with respect to appeals against brothel closure orders,
- (b) removing the right to appeal under section 121ZK if an appeal is made to the Local Court against a brothel closure order under the regulations,
- (c) the conferral of jurisdiction on the Land and Environment Court with respect to appeals from decisions of the Local Court on appeals against brothel closure orders,
- (d) the modification of provisions of the *Crimes (Appeal and Review) Act 2001* for the purposes of appeals referred to in paragraph (c).

**(9) Section prevails over Division**

This section has effect despite any other provision of this Division.

**Note.** Failure to comply with a brothel closure order is an offence (see section 125).

**Section 121ZS Enforcement of brothel closure orders by cessation of utilities**

(1) If a person fails to comply with a brothel closure order, the Local Court or the Land and Environment Court may, on the application of the person who gave the order, make an order (a utilities order) directing that a provider of water, electricity or gas to the premises concerned cease to provide those services.

(2) An order may apply to the whole or part of premises.

(3) A utilities order ceases to have effect on the date specified in the order, or 3 months after the order is made, whichever occurs first.

(4) An application for a utilities order must not be made unless not less than 7 days notice of the proposed application is given to the following persons:

- (a) any person to whom the brothel closure order was given,
- (b) any provider of water, electricity or gas to the premises who is affected by the application,
- (c) any owner or occupier of the premises.

(5) An owner or occupier of premises, or a provider of water, electricity or gas to premises, who is affected by an application for a utilities order is entitled to be heard and represented in proceedings for the order.

(6) In determining whether to make a utilities order, the court is to take into consideration the following matters:

- (a) the effects of the failure to comply with the brothel closure order,
- (b) the uses of the premises,

- (c) the impact of the order on the owner, occupier or other users of the premises,
  - (d) whether the health or safety of any person, or of the public, will be detrimentally affected by the order,
  - (e) any other matter the court thinks appropriate.
- (7) A utilities order must not be made for premises, or any part of premises, used for residential purposes.
- (8) A provider of water, electricity or gas must comply with a utilities order, despite any other law or agreement or arrangement applying to the provision of water, electricity or gas to the premises, or part of premises, concerned.
- (9) No compensation is payable to any person for any damage or other loss suffered by that person because of the making or operation of a utilities order or this section.
- (10) A provider of water, electricity or gas must not, during a period that a utilities order is in force in relation to premises, or part of premises, require payment for the provision of water, electricity or gas services to the premises or part of premises (other than services related to the implementation of the order).
- (11) The Land and Environment Court or the Local Court may make a utilities order when it determines an appeal against a brothel closure order, if subsections (4) and (5) have been complied with.

#### Section 124AB Proceedings relating to use of premises as brothel

- (1) **Application**  
This section applies to proceedings before the Court to remedy or restrain a breach of this Act in relation to the use of premises as a brothel. Subsections (5) and (6) extend to any such proceedings in relation to all brothels within the meaning of the Restricted Premises Act 1943.
- (2) **Adjournments to obtain consent only in exceptional circumstances**  
The Court may not adjourn the proceedings under section 124 (3) unless it is of the opinion that the adjournment is justified because of the exceptional circumstances of the case. The fact that it is intended to lodge a development application, or that a development application has been made, is not by itself an exceptional circumstance.
- (3) **Time for making development application limited to 10 days**  
If the Court adjourns the proceedings under section 124 (3), the proceedings must be brought back before the Court if a development application is not made within 10 working days of the adjournment.
- (4) **Only one adjournment**  
The Court may make only one adjournment under section 124 (3) of particular proceedings.
- (5) **Finding may be made on circumstantial evidence**  
In any proceedings:
- (a) the Court may rely on circumstantial evidence to find that particular premises are used as a brothel, and
  - (b) the Court may make such a finding without any direct evidence that the particular premises are used as a brothel.
- (6) However, the presence in any premises of articles or equipment that facilitate or encourage safe sex practices does not of itself constitute evidence of any kind that the premises are used as a brothel.

**Note.** Examples of circumstantial evidence include (but are not limited to) the following:

- (a) evidence relating to persons entering and leaving the premises (including number, gender and frequency) that is consistent with the use of the premises for prostitution,
- (b) evidence of appointments with persons at the premises for the purposes of prostitution that are made through the use of telephone numbers or other contact details that are publicly advertised,
- (c) evidence of information in books and accounts that is consistent with the use of the premises for prostitution,
- (d) evidence of the arrangement of, or other matters relating to, the premises, or the furniture, equipment or articles in the premises, that is consistent with the use of the premises for prostitution.

#### Extract from *Restricted Premises Act 1943*

##### Part 3 Brothels

##### Section 16 Disorderly house declaration not to be made solely on grounds that premises are a brothel

A declaration under section 3 may not be made in respect of premises solely because of either or both of the following:

- (a) the premises are a brothel,
- (b) a person having control of or managing, or taking part or assisting in the control or management of, the premises has been concerned in the control or management of other

premises which have been declared to be a disorderly house under this Act solely because those other premises were a brothel.

Section 17 Application to Land and Environment Court for premises not to be used as brothel

- (1) The Land and Environment Court may, on application by a local council, make an order that an owner or occupier of premises that are a brothel and that are situated within the area of the council is not to use or allow the use of the premises for the purpose of a brothel.
- (1A) An order under subsection (1) may also provide that the owner or occupier of the premises is not to use or allow the use of the premises for specified related sex uses.
- (1B) The Land and Environment Court may, if it makes an order under subsection (1), also make an order suspending or varying the operation, for a period not exceeding 6 months, of any development consent relating to the use of the premises for the purpose of a brothel or the use of the premises for specified related sex uses.
- (1C) An order under subsection (1B) has effect despite any provision of the *Environmental Planning and Assessment Act 1979* or any instrument made under that Act.
- (2) The local council must not make an application in relation to a brothel unless it is satisfied that it has received sufficient complaints about the brothel to warrant the making of the application.
- (2A) For the purposes of subsection (2), one complaint may be sufficient to warrant the making of an application in the case of a brothel used or likely to be used for the purposes of prostitution by 2 or more prostitutes.
- (3) The complaint or complaints must have been made by:
  - (a) residents of the area in which the brothel is situated who live in the vicinity of the brothel, or
  - (b) residents of the area in which the brothel is situated who use, or whose children use, facilities in the vicinity of the brothel, or
  - (c) occupiers of premises that are situated in the area in which the brothel is situated and in the vicinity of the brothel, or
  - (d) persons who work in the vicinity of the brothel or persons who regularly use, or whose children regularly use, facilities in the vicinity of the brothel.
- (4) The application must state the reasons why the local council is of the opinion that the operation of the brothel should cease based on one or more of the considerations referred to in subsection (5) (a), (b), (c), (d), (e) or (f).
- (5) In making an order under subsection (1) the Land and Environment Court is to take into consideration only the following:
  - (a) whether the brothel is operating near or within view from a church, hospital, school or any place regularly frequented by children for recreational or cultural activities,
  - (b) whether the operation of the brothel causes a disturbance in the neighbourhood when taking into account other brothels operating in the neighbourhood or other land use within the neighbourhood involving similar hours of operation and creating similar amounts of noise and vehicular and pedestrian traffic,
  - (c) whether sufficient off-street parking has been provided if appropriate in the circumstances,
  - (d) whether suitable access has been provided to the brothel,
  - (e) whether the operation of the brothel causes a disturbance in the neighbourhood because of its size and the number of people working in it,
  - (f) whether the operation of the brothel interferes with the amenity of the neighbourhood,
  - (g) any other matter that the Land and Environment Court considers is relevant.
- (5A) In making an order under subsection (1B), the Land and Environment Court is to take into consideration only the following:
  - (a) the likelihood that the premises will continue to be used for a brothel or will be used for related sex uses (whether or not by a person who is subject to the order under subsection (1)),
  - (b) having regard to the kinds of matters considered before granting the order under subsection (1), the effect on the amenity of the neighbourhood of any such use or uses,
  - (c) the permitted uses for the land on which the premises are situated under any applicable environmental planning instruments or approval under the *Environmental Planning and Assessment Act 1979*,
  - (d) any other matter that the Land and Environment Court considers is relevant.
- (6) This section extends to premises within an area that is not a local government area, and in that case a reference to a local council is to be read:
  - (a) in relation to Lord Howe Island—as a reference to the Lord Howe Island Board, and
  - (b) in relation to such part of the land in the Western Division of the State as is not in a local government area—as a reference to the Western Lands Commissioner, and
  - (c) in relation to any other area that is not a local government area—as a reference to the prescribed authority for the area.
- (7) In this section:



*church, hospital and school* have the same meanings as in the *Summary Offences Act 1988*.  
*development consent* has the same meaning as it has in Division 2A of Part 6 of the *Environmental Planning and Assessment Act 1979*.

*local council* includes a person or body that:

- (a) exercises planning or regulatory functions in respect of the area in which premises are situated, and
- (b) is authorised by the Minister administering the *Environmental Planning and Assessment Act 1979* to exercise the functions of a local council under this section.

#### Section 17A Evidence of use of premises as brothel

- (1) This section applies to proceedings before the Land and Environment Court on an application under section 17 for premises not to be used as a brothel.
- (2) In any proceedings to which this section applies:
  - (a) the Court may rely on circumstantial evidence to find that particular premises are used as a brothel, and
  - (b) the Court may make such a finding without any direct evidence that the particular premises are used as a brothel.
- (3) However, the presence in any premises of articles or equipment that facilitate or encourage safe sex practices does not of itself constitute evidence of any kind that the premises are used as a brothel.

Note. Examples of circumstantial evidence include (but are not limited to) the following:

- (a) evidence relating to persons entering and leaving the premises (including number, gender and frequency) that is consistent with the use of the premises for prostitution,
- (b) (Repealed)
- (c) evidence of appointments with persons at the premises for the purposes of prostitution that are made through the use of telephone numbers or other contact details that are publicly advertised,
- (d) evidence of information in books and accounts that is consistent with the use of the premises for prostitution,
- (e) evidence of the arrangement of, or other matters relating to, the premises or the furniture, equipment or articles in the premises, that is consistent with the use of the premises for prostitution.

#### Section 18 Rules of the Land and Environment Court

- (1) Rules may be made under the *Land and Environment Court Act 1979* for or with respect to any matters that by or under the provisions of this Part are required or permitted to be prescribed for carrying out or giving effect to those provisions.
- (2) Subsection (1) does not limit the rule-making powers conferred by the *Land and Environment Court Act 1979*.

### (3) Circumstances where Council will Act to Close Premises

Before initiating any process to suspend or close business trading on premises described within this section of the DCP, Council must have regard for the following:

- Ø Disruption and nuisance to the local area as a result of clientele visiting, loitering or conducting any unlawful activity in proximity to the premises.
- Ø Breach of the consent condition requiring the NSW Police Force and the Council to be notified if any person in part or whole, past or present ownership of the premises if they have been found guilty of an indictable offence (within 28 days of conviction).
- Ø Disruption and nuisance to the local area as a result of persons not visiting the premises, but shown to be loitering as a result of the existence and operation of the premises.

Council, in due consideration of any and all justified issues raised by the public, and documented incidents of antisocial and/or unlawful behaviour relating to persons visiting or loiter within the vicinity of the premises, will

make a determination based upon the probability the premises has affected or will negatively affect the social structure of the local area and/or the community.

# ***Richmond Valley Development Control Plan 2015***

## **Part I-15. Lane Widening and Access to Narrow Streets**

This DCP applies to all land within the Richmond Valley Local Government Area.

Date adopted by  
Council:  
22 December 2015

Effective Date:  
4 January 2016

Amendments:  
Nil

Many streets and lanes in the Council area are narrow with minimal road pavement construction. In their current form they present obstacles to developing land where they are required as a primary frontage for access.

To facilitate development along these streets and lanes, Council has a lane widening policy aimed at resuming land to increase the width of the road reserve so the road pavements can be widened to handle increase traffic volumes. In other instances, Council has elected not to widen lanes opting instead to change them to 'one-way' streets and to require some level of road construction to be funded by development fronting the narrow lane.

This Chapter addresses Council's requirements for lane widening and access to narrow lanes.

## I-15.1 General Objectives

The general objectives of this Chapter are to:

- (1) identify roads that may be subject to future lane widening.
- (2) identify the minimum road standards for narrow lanes to be used as primary access to development.

## I-15.2 Lane Widening

### Objective

- (1) To identify those properties that may be subject to future lane widening.
- (2) To identify a process for resuming land for lane widening.

### Controls

- (1) Those lanes identified in Figure I-15.1 will be subject to future lane widening. Council may resume a strip of land, usually about 3 metres in width, from the full frontage of the lane to be dedicated as public road.
- (2) Land may be resumed for lane widening in either of 2 ways.
  - (a) Dedication of land free of charge to Council—where land is being redeveloped and identifies the lane as a primary access frontage,
  - (b) Resumption of land and owner compensation under the *Land Acquisition (Just Terms Compensation) Act 1991*—where land is required to be resumed for lane widening and there has never been a condition of development consent requiring the land's dedication to be free of charge to Council.

### (3) Dedication of Lane Widening

The dedication of lane widening to Council free of cost will occur at either of 2 opportunities:

- (a) if the land is to be subdivided—the land will be identified on the subdivision plan “to be dedicated to Council as public road”.
- (b) for other development types—the dedication will be completed via a resumption process initiated by Council.

**Note.** The legal and surveying costs associated with resuming land (see item (3)(b)) will be the responsibility of Council.

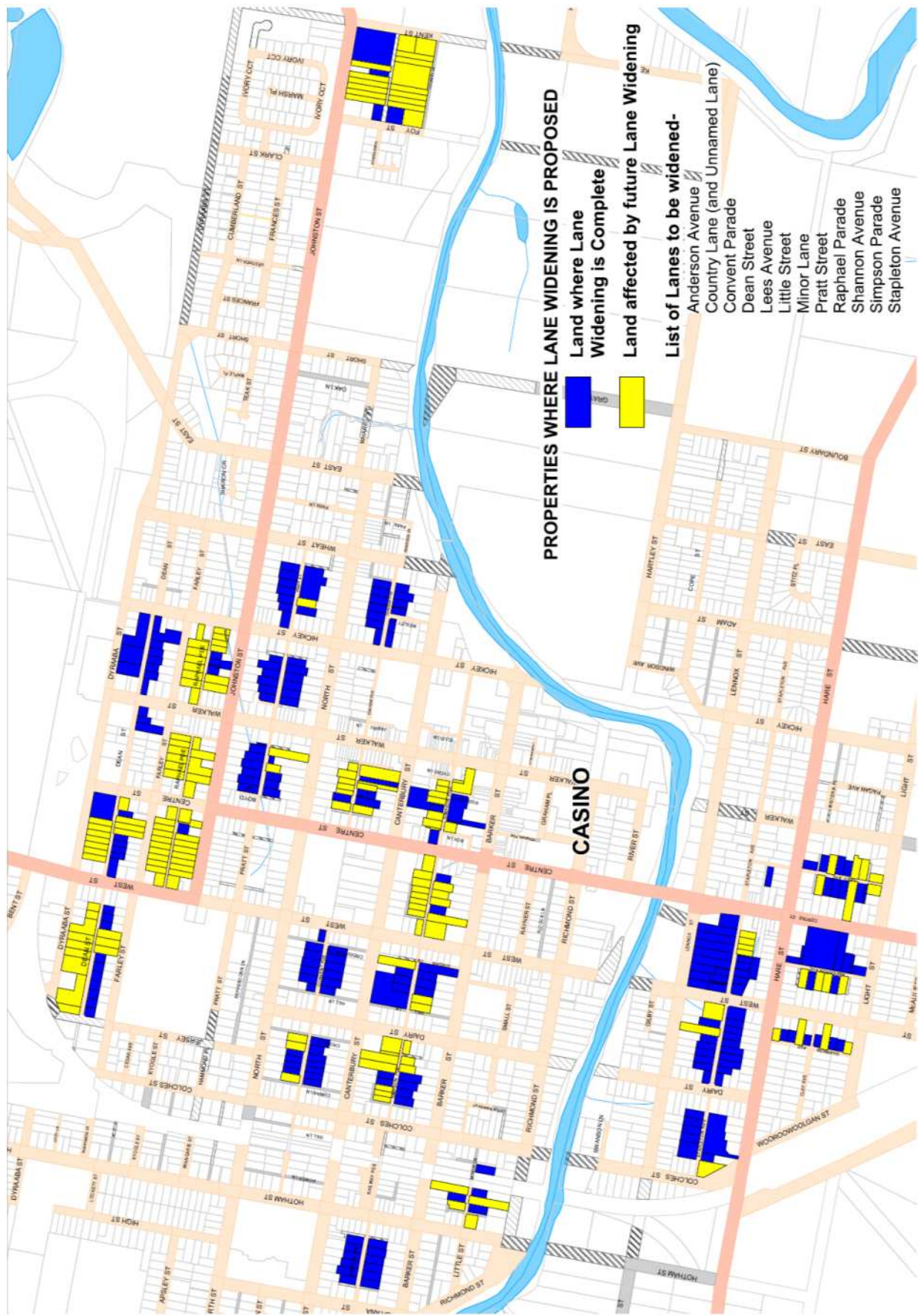


Figure I-15.1 Land (coloured yellow) and a list of lanes that may be subject to future lane widening in Casino

### **I-15.3 Development requirements when accessing narrow streets**

#### **Objective**

- (1) To ensure narrow streets are capable of handling additional road traffic from development.
- (2) To require developments to contribute towards the upgrading of narrow streets where they will be used for vehicular access to development.

#### **Controls**

- (1) For the purposes of this section, a narrow street is generally one that has a road reserve width of less than 10 metres (measured from boundary to boundary).
- (2) Council will only grant development consent to use a narrow street for vehicular access when it considers:
  - (a) the street to be safe—having regard to its design standard,
  - (b) the street to be capable of handling additional vehicular traffic, including that of future development that might arise once a narrow street has been opened to development access,
  - (c) whether the narrow street is subject to-
    - (i) future lane widening—in which case a condition of consent will require dedication of the lane widening to Council free of charge, or
    - (d) a “one-way” traffic restriction,
  - (e) the condition of the narrow street and whether the development should contribute towards pavement sealing and stormwater drainage works.
- (3) In regards to narrow street upgrading requirements, the extent of necessary infrastructure will be at the discretion of Council and subject to negotiation.

# Richmond Valley Development Control Plan 2015

## Part I-16. Historic New Italy Village Area

This DCP applies to all land within the Richmond Valley Local Government Area.

Date adopted by Council:  
22 December 2015

Effective Date:  
4 January 2016

Amendments:  
Nil

New Italy was settled by Italian migrant families in 1882. The settlement consisted of 53 selections, ranging from 40 to 120 acres, having a total area of about 3030.75 acres (1226.5ha).

In 2002 the New Italy Settlement Landscape was recognised as having State significance being:

- Ø evidence of a settlement built through the tenacity, forbearance and technical skills (esp. horticultural and architectural) of a unique group of Australian settlers, and
- Ø also significant to those displaced Italian migrants who were allowed assisted passage to Australia by Sir Henry Parkes after the ill-fated Marquis de Rays expedition of 1881.

The State significance of the area was recognised under the *Heritage Act 1977*, being represented through the State Heritage listing of 3 sites, they being:

- Ø the New Italy Museum complex (listed in August 2002),
- Ø the former School site (listed in August 2002), and
- Ø Vineyard Haven (listed in December 2004).

Additional information on the New Italy Settlement and the State Heritage listed sites can be obtained from the NSW Heritage website – [www.heritage.nsw.gov.au](http://www.heritage.nsw.gov.au).

The *Richmond Valley Council Heritage Study* (2007) also recognised the significance of the New Italy Settlement area through local listing of a number of heritage items and archaeological sites. These items were included in Schedule 5 of the LEP.

A further action resulting from the Study was the recognition that other, yet undiscovered, sites may exist within the New Italy area. To safeguard these potential items the “Historic New Italy Village Area” has been recognised in the LEP through *clause 6.4 Protection of historic New Italy village area*.

This chapter provides a methodology for undertaking and reporting preliminary assessments associated with clause 6.4 of the LEP.



Figure I-16.1 Boundaries of the Historic New Italy Village Area (also referred to as the New Italy Settlement Area)

## I-16.1 General Objectives

The general objectives of this Chapter are to:

- (1) provide for awareness of potential archaeology within the Historic New Italy Village Area by informing the community.
- (2) establish methodology to assist with undertaking a preliminary assessments to determine the likelihood of exposing, moving, damaging, or destroying archaeology, or relics.



## **I-16.2 Development Consent Required for Earthworks**

Clause 6.3 of the *Richmond Valley Local Environmental Plan 2012* requires consent to undertake earthworks. There are exceptions within this clause that applies equally throughout the Council area.

Extract from *Richmond Valley Local Environmental Plan 2012*

### Clause 6.3 Earthworks

- (1) The objectives of this clause are as follows:
  - (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,
  - (b) to allow earthworks of a minor nature without requiring separate development consent.
- (2) Development consent is required for earthworks unless:
  - (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or
  - (b) the earthworks are ancillary to other development for which development consent has been given.
- (3) Before granting development consent for earthworks, the consent authority must consider the following matters:
  - (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,
  - (b) the effect of the proposed development on the likely future use or redevelopment of the land,
  - (c) the quality of the fill or the soil to be excavated, or both,
  - (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,
  - (e) the source of any fill material and the destination of any excavated material,
  - (f) the likelihood of disturbing relics,
  - (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area,
  - (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

**Note.** The *National Parks and Wildlife Act 1974*, particularly section 86, deals with disturbing or excavating land and Aboriginal objects.

## **I-16.3 Consideration of potential heritage fabric with Earthworks**

Clause 6.4 is an extension to clause 6.3. It provides that development consent for earthworks shall not be granted unless consideration has been given to whether there is likelihood that heritage items or historic features of the New Italy historic village area will be disturbed, exposed or destroyed by the work.

In undertaking this assessment consideration must be given to any archaeological assessment or preliminary assessment that has been undertaken.

Extract from *Richmond Valley Local Environmental Plan 2012*

### Clause 6.4 Protection of historic New Italy area

- (1) The objectives of this clause are as follows:
  - (a) to protect the area known as "New Italy",
  - (b) to ensure that earthworks for which development consent is required will not have a detrimental impact on cultural or heritage items or features of the historic New Italy village area.

- (2) This clause applies to land as shown coloured blue and labelled “Historic New Italy Village Area” on the Key Sites Map.
- (3) Before granting development consent for earthworks on land to which this clause applies, the consent authority must consider the following matters:
- (a) the likelihood that the proposed development will expose, move, damage or destroy an item that may have local heritage significance,
  - (b) the outcome of any preliminary or archaeological assessment of the local heritage significance of the land (if an assessment has been carried out or has been provided by the owner).
- Note.** Clause 5.10 deals with the conservation of heritage items and relics.

## I-16.4 Heritage Act approvals

Consent under Division 9 of the *Heritage Act 1977* will be required to expose, move, damage or destroy any historic or cultural features (other than identified local heritage items within Schedule 5 of the LEP) that may be discovered, whether or not it resulted from an assessment under clause 6.4. Relevant sections of the *Heritage Act* has been extracted below.

Extract from the *Heritage Act 1977*

**Section 4 Definitions**

**harm** means:

- (a) in relation to a building or work—demolish, or
- (b) in relation to a relic or moveable object—damage, despoil, move or alter, or
- (c) in relation to a place or precinct—damage, despoil or develop the land that comprises the place or is within the precinct or damage or destroy any tree or other vegetation on, or remove any tree or other vegetation from, the place or precinct.

**item** means a place, building, work, relic, moveable object or precinct.

**relic** means any deposit, artefact, object or material evidence that:

- (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
- (b) is of State or local heritage significance.

**Division 9 Protection of certain relics**

**Section 138 Definitions**

In this Division:

**excavation permit** means an excavation permit referred to in section 139.

**historic shipwreck** has the same meaning as it has in Part 3C.

**historic shipwrecks permit** means a historic shipwrecks permit referred to in section 51.

**permit** means an excavation permit or historic shipwrecks permit.

**relic** includes a historic shipwreck.

**Section 139 Excavation permit required in certain circumstances**

- (1) 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.
- (2) A person must not disturb or excavate any land on which the person has discovered or exposed a relic except in accordance with an excavation permit.
- (3) This section does not apply to a relic that is subject to an interim heritage order made by the Minister or a listing on the State Heritage Register.
- (4) The Heritage Council may by order published in the Gazette create exceptions to this section, either unconditionally or subject to conditions, in respect of any of the following:
  - (a) any relic of a specified kind or description,
  - (b) any disturbance or excavation of a specified kind or description,
  - (c) any disturbance or excavation of land in a specified location or having specified features or attributes,

- (d) any disturbance or excavation of land in respect of which an archaeological assessment approved by the Heritage Council indicates that there is little likelihood of there being any relics in the land.
- (5) This section does not prevent a person from disturbing or excavating land in which a historic shipwreck is situated in accordance with a historic shipwrecks permit in force in respect of that shipwreck.

**Section 140 Application for permit**

- (1) A person may make an application to the Heritage Council for the issue to the person of a permit.
- (2) The application shall be in the approved form and shall be accompanied by such fee as may be prescribed.

**Section 141 Determination of application**

- (1) The Heritage Council may determine an application for a permit:
  - (a) by issuing a permit, either unconditionally or subject to such conditions as it thinks proper to impose, or
  - (b) by refusing to issue a permit.
- (2) Where the Heritage Council fails to determine an application for a permit within 21 days after the date of that application, it shall, for the purpose only of section 142, be deemed to have determined that application by refusing to issue a permit.

...

**Section 146 Notification of discovery of relic**

A person who is aware or believes that he or she has discovered or located a relic (in any circumstances, and whether or not the person has been issued with a permit) must:

- (a) within a reasonable time after he or she first becomes aware or believes that he or she has discovered or located that relic, notify the Heritage Council of the location of the relic, unless he or she believes on reasonable grounds that the Heritage Council is aware of the location of the relic, and
- (b) within the period required by the Heritage Council, furnish the Heritage Council with such information concerning the relic as the Heritage Council may reasonably require.

**Section 146A Disposition of certain relics**

- (1) As soon as practicable after a relic is obtained from an excavation carried out by the holder of a permit, the holder shall notify the Minister of the existence of the relic.
- (2) The holder shall furnish the Minister with such information concerning the relic as the Minister may reasonably require.

**Section 146B Minister may direct that relic be given to museum or other conservation body**

- (1) The Minister may, by notice in writing, direct any person:
  - (a) who is or has been the holder of a permit, or
  - (b) who, in the Minister's opinion, has obtained a historic shipwreck as a consequence of having removed the relic without a historic shipwrecks permit, in contravention of section 51, or
  - (c) who, in the Minister's opinion, has obtained a relic as a consequence of having excavated land without an excavation permit, in contravention of section 139,to deliver the relic to a specified person or body (such as a museum) who in the opinion of the Minister has the facilities and expertise to conserve the relic.
- (2) Such a direction may be given on the ground that the person has obtained the relic as a consequence of:
  - (a) having removed the relic without a historic shipwrecks permit, in contravention of section 51, or
  - (b) having excavated land without an excavation permit, in contravention of section 139, whether or not the person has been prosecuted or convicted of an offence in respect of the alleged contravention.

**Section 146C Forfeiture of certain relics**

- (1) A relic the subject of a direction under section 146B shall be forfeited to the Crown.
- (2) No compensation is payable to any person as a consequence of the forfeiture of a relic under this section.

### **I-16.5 Education**

One of the objectives of this Chapter is to inform the community of the likely presence of archaeology in the New Italy area. This can be achieved by informing the community, especially new property owners or prospective purchasers of land, that they should have regard to potential heritage in the area and take appropriate actions to avoid harming such heritage. This objective can be achieved by the:

- Ø inclusion of clause 6.4 within the *Richmond Valley LEP 2012*
- Ø inclusion of this Chapter within the *Richmond Valley DCP 2012*, and
- Ø informing the community of the LEP and DCP requirements, the reasons for them, and where they apply in section 149 Planning Certificates, and the like.

### **I-16.6 Preliminary Assessment**

Due diligence is a process where reasonable and practical steps are taken to determine whether a person's actions could, in this case, harm archaeology or relics within the New Italy Settlement Area. The Preliminary Assessment process, forms a key element of due diligence.

The preliminary assessment methodology documented in this Chapter has been designed to be simple and straight forward, while fulfilling due diligence requirements.

### **I-16.7 Items Likely to be Found**

(1) Sites discovered by a preliminary assessment are more than likely to be archaeological in nature but may include any of the following:

- Ø stone or timber lined wells
- Ø remnants of buildings
- Ø earth mounds from mud brick buildings
- Ø old fence lines
- Ø trees, orchards and/or vine plantings, or
- Ø drainage lines.

#### **(2) Notification of Discovery**

There is a statutory requirement under section 146 of the *Heritage Act 1977* to notify the NSW Heritage Branch of all relic discoveries. This notification should also be directed to Council.

Contact details:

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Office of Environment and Heritage—Heritage Branch  
3 Marist Place PARRAMATTA 2150  
Locked Bag 5020, PARRAMATTA NSW 2124  
Phone 02 98738500 Fax 02 98738599

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Richmond Valley Council  
Cnr Graham Place and Walker Street  
Locked Bag 10, CASINO NSW 2470  
Phone 02 66600300 Fax 02 66625198

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Figure I-16.2 Examples of stone lined wells



Figure I-16.3 Examples of timber lined wells



Figure I-16.4 Examples of old fence lines and timber posts



Figure I-16.5 Examples of building remnants – stumps (left) and stone foundations (right), earth mound from weathered mud bricks (centre)



Figure I-16.6 Examples of a contour drainage line

(3) **Mitigation**

The best means of protecting heritage is to mitigate against its harm. This can be as simple as:

- Ø relocating earthworks to a more suitable site, or
- Ø maintaining a buffer between the works and the item.

If mitigation of harm is not possible approval will be required to relocate, damage or destroy the item under the *Heritage Act 1977*.





## I-16.8 Preliminary Assessment Form



**Richmond Valley Local Environmental Plan 2012**  
Historic New Italy Village Area (Clause 6.4)

### PRELIMINARY ASSESSMENT

Clause 6.4 of the *Richmond Valley Local Environmental Plan 2012*

This form has been prepared to assist in the assessment of whether archaeology or relics could be harmed (exposed, moved, damaged, or destroyed) by earthworks in the Historic New Italy Village area, (the area is defined within the attached map).

This assessment can be completed by the property owner or their delegate/representative and provides a guide to the types of items likely to be discovered.

Clause 6.4 of the *Richmond Valley Local Environmental Plan 2012* requires that development consent shall not be granted for earthworks until consideration has given to whether archaeological or history fabric will be harmed (exposed, moved, damaged, or destroyed) within the Historic New Italy Village Area, see The Map. This consideration is to be based upon the outcomes of a preliminary or archaeological assessment.

If an item is discovered then consent for the earthworks would need to mitigate the impact or seek appropriate approvals under the *Heritage Act 1977* to harm archaeology or relics.



#### The Map

Clause 6.4 Preliminary Assessment Form – Historic New Italy Village Area



**Richmond Valley Local Environmental Plan 2012**  
Historic New Italy Village Area

**PRELIMINARY  
ASSESSMENT FORM**

Clause 6.4 of the *Richmond Valley Local Environmental Plan 2012*

**ASSESSORS DETAILS**

NAME:	<input type="text"/>		
ADDRESS:	<input type="text"/>		
TOWN:	<input type="text"/>	POSTCODE:	<input type="text"/>
DAYTIME PHONE NUMBER:	<input type="text"/>		
ARE YOU THE OWNER OF THE LAND?	Yes <input type="checkbox"/> No <input type="checkbox"/>		

**OWNERS DETAILS (if not the Assessor)**

NAME:	<input type="text"/>		
ADDRESS:	<input type="text"/>		
TOWN:	<input type="text"/>	POSTCODE:	<input type="text"/>
DAYTIME PHONE NUMBER:	<input type="text"/>		

**ADDRESS & PROPERTY DESCRIPTION OF PROPERTY BEING  
ASSESSED**

STREET & NUMBER:	<input type="text"/>
LOCALITY:	<input type="text"/>
LOT & DEPOSITED PLAN(s) (DP) (the property(ies) can also be identified on The Map)	<input type="text"/>

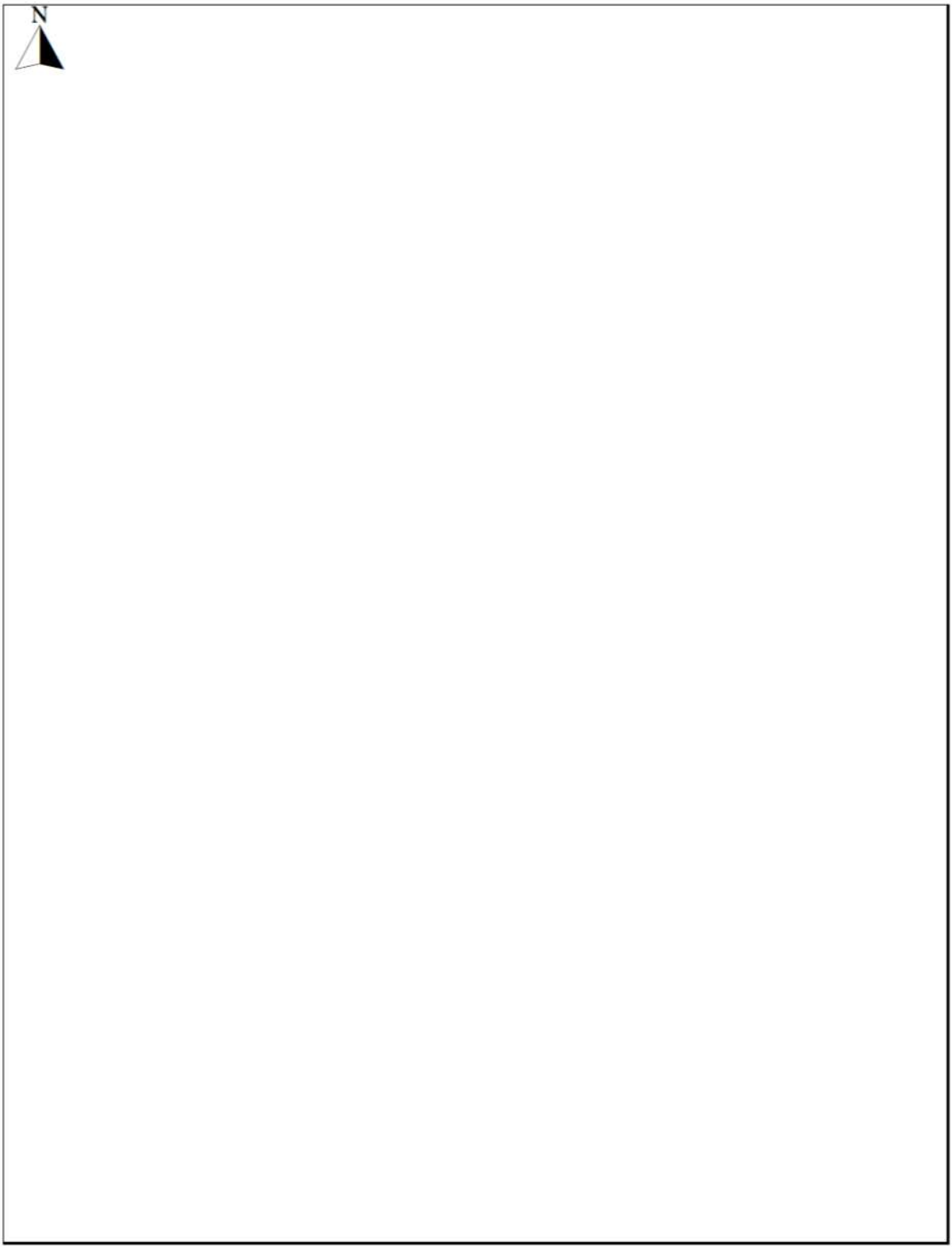
**THE PROPOSAL**

PROPOSED WORKS: (Describe the work being undertaken Examples of works that could disturb the ground include- Clearing; Levelling; Ploughing; Construction – buildings, roads, dams; Drainage; Quarrying)	<input type="text"/>
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**SKETCH OF THE LAND**

WHERE ARE THE WORKS PROPOSED ON THE LAND?

(Sketch a map showing where the works will be undertaken on the land. Additional maps, site plans etc. can be attached. Distances to identifiable features, such as boundaries, creeks, buildings etc., should be included)



A large empty rectangular box for sketching a map of the land. A north arrow is located in the top-left corner of the box.

**PRELIMINARY ASSESSMENT**

Walk around the site of proposed works. Thoroughly investigate the entire area to be worked and determine whether there are any items of archaeology or relics. Photographs of items likely to be discovered are attached to this form.

**Describe the site (tick)**

<input type="checkbox"/> Pasture (Open grazing land)	<input type="checkbox"/> Closed Forest (Heavily timbered area)
<input type="checkbox"/> Open forest (Sparsely timbered area)	<input type="checkbox"/> Regrowth (Short (<5m) thick scrub)
<input type="checkbox"/> Mixed scrub (Scattered trees, weeds, scrub and clearings)	<input type="checkbox"/> Cropping (ploughed country)
<input type="checkbox"/> Managed Area (lawn, area surround buildings, Asset Protection Zones for bush fire protection)	<input type="checkbox"/> Heavily trafficked area (roads, tracks, stock paths)
<input type="checkbox"/> Horticulture (orchard, planted forest)	<input type="checkbox"/> Other <div style="border: 1px solid black; height: 20px; width: 100%;"></div>

**Known sites within the vicinity (tick)**

Are there items recorded in the vicinity of the proposed works? This may highlight locations requiring a greater level of assessment.	Yes <input type="checkbox"/> No <input type="checkbox"/>
--	--

**Archaeology or relics discovered in the New Italy area (tick)**

Are any of the following types of items within the proposed work area?	Items Discovered
Wells – Timber lined or stone lined wells are known	Yes <input type="checkbox"/> No <input type="checkbox"/>
Remnants of Buildings – Stone foundations; hearths; rectangular mounds on the ground possibly representing remains of mud brick buildings; timber stumps	Yes <input type="checkbox"/> No <input type="checkbox"/>
Tree/Vineyard/Orchard plantings	Yes <input type="checkbox"/> No <input type="checkbox"/>
Contour drainage lines – Generally linear with a shallow channel and mounded embankment	Yes <input type="checkbox"/> No <input type="checkbox"/>
Fence lines or timber posts (with cut out for rails) – Boundary fencing, fencing around buildings, fencing of stock yards, racks for the drying of silk	Yes <input type="checkbox"/> No <input type="checkbox"/>
Other items -	Yes <input type="checkbox"/> No <input type="checkbox"/>
If "yes" to any of the above, described the items, record them (photographs), mark their location on the Sketch, and notify Council and NSW Heritage Branch. Describe the types of items discovered:	

**ADDITIONAL INFORMATION ATTACHED TO THIS ASSESSMENT (tick)**

<input type="checkbox"/> Photographs	<input type="checkbox"/> Archaeological Assessments
<input type="checkbox"/> Maps	<input type="checkbox"/> Historical background Information
<input type="checkbox"/> Sketches	<input type="checkbox"/> Other

**DECLARATION AND SIGNATURE OF ASSESSOR(S)**

- I/we, the undersigned, undertook a Preliminary Assessment within the Historic New Italy Village Area.
- I/we are aware that proposed works are to be conducted on the land to which this assessment was conducted.
- I/we are aware that it is an offence to harm (expose, move, damage, or destroy) items of archaeology or relics.
- I/we having completed the preliminary assessment: (tick one of the following)
 

<input type="checkbox"/>	am/are satisfied that there are no items within the area of proposed work site
<input type="checkbox"/>	have discovered, or are aware of, items within the proposed works site and will manage these items by avoiding any harm
<input type="checkbox"/>	have discovered, or are aware of, items within the proposed works site but harm can not be avoided. Appropriate approvals will be sought to harm the item(s).

Assessor's Signature(s)	<input style="width: 150px; height: 20px;" type="text"/>	<input style="width: 150px; height: 20px;" type="text"/>	Date	<input style="width: 80px; height: 20px;" type="text"/>
Owner's Signature(s)	<input style="width: 150px; height: 20px;" type="text"/>	<input style="width: 150px; height: 20px;" type="text"/>	Date	<input style="width: 80px; height: 20px;" type="text"/>

**WHERE TO NOW?**

- The completion of this Preliminary Assessment forms part of a property owners due diligence towards the protection of heritage.
- It is recommended that a copy of this assessment is retained for record purposes.
- Submit a copy of this Preliminary Assessment with your development application for earthworks.
- Approval under the *Heritage Act 1977* will be required where items will, or are likely, to be harmed.

**FURTHER INFORMATION/CONTACT DETAILS**

Further information can be obtained by contacting Richmond Valley Council's Town Planning Section.

Postal address:

*Locked Bag 10  
CASINO NSW 2470*

Casino Administration Office:

*Cnr Graham Place and Walker Street, CASINO*

Evans Head Office:

*25 Woodburn Street, EVANS HEAD*

Phone:

*(02) 66600300 (Casino)*

Fax:

*(02) 66601300*

Email:

[council@richmondvalley.nsw.gov.au](mailto:council@richmondvalley.nsw.gov.au)

Examples of items from New Italy



Stone lined wells



Timber lined wells



Timber stumps



Lines outline mound

Building remnants – stumps (top left), stone foundations (top right), and earth mound remnants of mud brick construction (centre)



Drain

Mound

Fence line (left), timber post (centre), contour drainage (right)