

# Chapter 8:

## Rural & Other Land Uses



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Title Page: The picture on the title page is of the Emirates One& Only Wolgan Valley & Wolgan Valley Escarpment (Source: Destination NSW - <https://www.visitnsw.com/destinations/blue-mountains/lithgow-area/lithgow>).

## 8.1. Introduction

### 8.1.1. Application of this Chapter

This chapter of the DCP applies to **development applications** for a wide range of 'other' land uses that are permissible with consent, most of which occur in **rural and/or environmental zones**. Please note that rural residential uses are covered in DCP *Chapter 6 – Residential Development*.

### 8.1.2. Overarching Objectives

The objectives for this Chapter are to encourage suitable development in appropriate locations that:

- O1. Contribute to economic growth and employment opportunities within the Local Government Area (LGA).
- O2. Capitalise on existing development and maximise the efficient use of public infrastructure.
- O3. Demonstrate good site planning, layout, functionality and amenity for users.
- O4. Conserve and enhance the historic, architectural and aesthetic character of urban and rural areas (particularly in relation to **heritage items** and **heritage conservation areas**).
- O5. Respond to, reinforce, and sensitively relate to the natural environment and avoid or minimise the impacts of natural hazards.
- O6. Reinforce, complement and enhance the desirable visual and landscape character of the street or the rural landscape setting.
- O7. Integrate with and transition to neighbouring zones/lots/buildings.
- O8. Preserve neighbourhood amenity and safety.

### 8.1.3. Others Relevant Chapters of this DCP

Please remember that this Chapter of the DCP is unlikely to contain ALL of the relevant controls for your development. Please see DCP *Chapter 1 – Introduction & Administration* to review the Section on *How to Use this DCP* including the *Structure of the DCP* (see table below) to determine what other Chapters may be relevant to your development.

**IF YOU ARE UNSURE, PLEASE DISCUSS THIS WITH COUNCIL STAFF PRIOR TO LODGING YOUR APPLICATION.**

We also recommend that you seek a **Planning Certificate** from Council that will detail most of the significant constraints or affectations on the property as different Chapters/Sections of this DCP are relevant where these affectations exist.

*The DCP has the following Chapters:*

<b>Chapter 1:</b>	Introduction & Administration
<b>Chapter 2:</b>	Site Requirements
<b>Chapter 3:</b>	Natural Environment & Hazards
<b>Chapter 4:</b>	Heritage & Cultural Conservation
<b>Chapter 5:</b>	Subdivision & Roads
<b>Chapter 6:</b>	Residential Development
<b>Chapter 7</b>	Commercial, Community & Industrial Development (including Advertising/ Signage for all relevant land uses)
<b>Chapter 8:</b>	Rural & Other Land Uses ( <b>THIS CHAPTER</b> )
<b>Chapter 9:</b>	Location Specific Controls

**8.1.4. Exempt & Complying Development**

Please note that [State Environment Planning Policy \(Exempt and Complying Development Codes\) 2008 \(Codes SEPP\)](#) may permit certain development set out in that policy without requiring a **development application** to Council if it complies with the requirements of the **Codes SEPP**. Please discuss this with Council or visit the [NSW Government Planning Portal](#).

## 8.2. Tourist Development (Rural & Environmental Zones)

There is a range of **tourism development** (a collective definition that includes **tourist and visitor accommodation**, other accommodation types, and related tourist facilities that may be permitted with consent in **rural and/or environmental zones** ('rural areas') including:

### **TOURIST & VISITOR ACCOMMODATION**

**Tourist and visitor accommodation** is defined in **LLEP2014** to mean 'a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

but does not include: (f) camping grounds, or (g) caravan parks, or (h) eco-tourist facilities.

**Bed and breakfast accommodation** means an existing dwelling in which temporary or short-term accommodation is provided on a commercial basis by the permanent residents of the dwelling and where:

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

See Clause 5.4 of **LLEP2014** for controls relating to the number of bedrooms.

**Farm stay accommodation** means a building or place that provides temporary or short-term accommodation to paying guests on a working farm as a secondary business to primary production.

See Clause 5.4 of **LLEP2014** for controls relating to the number of bedrooms.

### **OTHER ACCOMMODATION TYPES**

**Camping ground** means an area of land that has access to communal amenities and on which campervans or tents, annexes or other similar portable and lightweight temporary shelters are, or are to be, installed, erected or placed for short term use, but does not include a caravan park.

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

**Eco-tourist facility** means a building or place that:

- (a) provides temporary or short-term accommodation to visitors on a commercial basis, and
- (b) is located in or adjacent to an area with special ecological or cultural features, and
- (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

It may include facilities that are used to provide information or education to visitors and to exhibit or display items. **Note:** See Clause 5.13 of **LLEP2014** for requirements in relation to the granting of development consent for eco-tourist facilities.

This Section only applies to these types of development in rural and environmental zones (where permitted with consent – see table below). In urban zones these types of development need to address DCP Chapter 7 – Commercial, Community & Industrial Development & Advertising/ Signage.

**Objective(s)**

To ensure that all **tourist development** in **rural and/or environmental zones** is encouraged where:

- O1. It addresses site planning requirements set out in *Chapter 2 – Site Requirements* including, but not limited to, avoiding or mitigating against any potential land use conflicts with neighbouring properties (including the 'Right to Farm') and the natural environment and/or hazards;
- O2. It results in an appropriate building density consistent with the land and its setting, and retains and protects productive agricultural use of land and environmental values;
- O3. It encourages suitable access to and appreciation of the environmental and/or cultural values of the **Lithgow Local Government Area (LGA)** whilst protecting and enhancing those values;
- O3. It encourages sustainable design and energy/water consumption.

**Control(s)****8.2.1. Tourist Development**

All **Tourist Development** in **rural and/or environmental zones** (including **tourist and visitor accommodation**) addresses the following (where relevant):

- 1) **Operations/Management: Tourist development** provides a **Management Plan** that address the operational and management requirements including, but not limited to:
  - a) Maximum capacity of people;
  - b) Range of facilities offered including meals and entertainment;
  - c) Management and booking system;
  - d) Vehicle access, traffic and parking impacts and requirements;
  - e) Disabled accessibility and parking (as required);
  - f) Environmental impacts, natural hazards & safe refuge or evacuation routes;
  - g) Drinking water provision & safety;
  - h) Food preparation and safety (if required) (see DCP *Section 7.4.9 Food Premises*);
  - i) Wastewater (effluent) management;
  - j) Solid waste management;
  - k) Electricity provision (grid or solar power);
  - l) Fire safety and smoke detector systems (if required).
- 2) **Land Use Conflict: Tourist development:**
  - a) Is integrated with, but does not impact significantly on, the agricultural use of the land and/or rural industries on the site and/or adjacent sites.
  - b) It is setback from property boundaries to avoid and/or minimise potential for conflicts and allow adjacent primary production land to be used for a wide range of agricultural activities.
  - c) It considers site planning of any proposed or existing building to maintain a reasonable level of acoustic and visual privacy and views for dwellings on adjoining properties.

- d) It provides minimum setbacks of 20m to boundaries (or 100m to dwelling(s) on adjoining land, whichever is greater) unless the applicant can justify smaller setbacks will have no impact on adjoining land (existing or future) agricultural uses.
- 3) **Character: Tourist development** addresses and is consistent with the zone objectives and the rural and landscape character of the area by minimising visual impacts and integrating with the topography and landscape. It specifically addresses the requirements of *DCP Section 2.2 Site Analysis, Local Character & Context*, especially (if relevant) *Section 2.2.4 – Visually Prominent Sites*.
- 4) **Environment: Tourist development** minimises impacts on the natural environment and avoids or mitigates any natural hazards such as flooding or bushfire and provides suitable 2WD all year access and safe emergency egress.

**Bushfire:** *Tourist facilities in rural areas will often be located on or near bushland settings with an associated bushfire risk. If located on bushfire prone land, the application will require a Bushfire Assessment to address the relevant requirements in DCP Chapter 3.2 Bush Fire Prone Land and demonstrate any required **asset protection zones (APZs)** will not result in significant impacts to existing significant vegetation.*

*Tourist facilities may be assessed as a Special Fire Protection Purpose under the Rural Fires Act 1997. They may require substantial evidence relating to emergency bushfire protection and/or evacuation – including the potential for suitably protected bush fire refuge(s) in the event bushfire cuts access roads.*

**Flooding:** *When the facility is located near a watercourse or on land that is known/likely to be affected by flooding, Council may require a Flood Study to demonstrate the tourist development is located at or above the **Flood Planning Level** (1:100 Annual Recurrence Interval (ARI)/ 1% Annual Exceedance Probability (AEP) flood level plus 500mm freeboard) (see DCP Chapter 3.5 Flood Prone Land).*

### 8.2.2. Tourist & Visitor Accommodation

In addition to the controls above, all **Tourist and Visitor Accommodation** (including **Bed and Breakfast** and **Farm Stay Accommodation**) in **rural and/or environmental zones** addresses the following (where relevant):

- 1) **Capacity:** Must not exceed the capacity/ number of bedrooms set out in *Clause 5.4 of LLEP2014*.
- 2) **Lot Size (Bed & Breakfast):** As a bed and breakfast requires use of an existing dwelling in accordance with the definition of '**bed and breakfast accommodation**' (see above), a dwelling is permissible on the land taking into account the minimum lot size and *Clause 4.2A of LLEP2014*.
- 3) **Primary Production (Farm Stay):** In accordance with the definition of '**farm stay accommodation**' (see above), the applicant demonstrates:
  - a) That the subject land is used as 'a working farm'; and
  - b) That the accommodation business is 'secondary' to the primary production role of the land.  
This does not necessarily mean that the farm produces more gross or net income than the accommodation business, but that it needs to be the primary use of the majority of the land. Some records of recent agriculture-related income and expenses may be required.
- 4) **Signage Plan(s):** There is a limit of 4m<sup>2</sup> of signage on the property near any public road in addition to building identification and navigation signage. Please see *DCP Section 7.6 Advertising & Signage* requirements for additional requirements.

### 8.2.3. Adaptive Re-Use of Existing Rural Buildings

Adaptive re-use of existing farm buildings (or other rural buildings) for **tourist and visitor accommodation** or tourist facilities may be considered if:

- a) The proposal is a use permitted with consent in the relevant land use zone;
- b) The farm buildings to be adapted are no longer required for agricultural use;
- c) There are no significant impacts on any existing or likely future agricultural activities, operations or management;
- d) Domestic laundry facilities are not provided in these buildings such that they could be used as residential accommodation;
- e) They cannot be later converted to a dwelling or used for long-term residential use without development consent (if permissible);
- f) A preliminary site contamination investigation is provided to demonstrate the site is suitable for the proposed use in accordance with *DCP Section 3.4 Land & Soils*.



## 8.2.4. Eco-Tourist Facilities & Larger Rural Tourist Developments

**LLEP2014** Clause 5.13 - Eco-tourist facilities sets out the requirements for these specialist forms of tourist and visitor accommodation and ancillary uses.

It is important to note that there are significant challenges to defining a **tourist development** as an **eco-tourist facility** and there may be a higher standard required from a proposal compared to other **tourist and visitor accommodation** uses, particularly in **rural and environmental zones**.

This is in part due to the fact that eco-tourist facilities are permitted in **rural and environmental zones** potentially on land where a dwelling (and therefore some **tourist and visitor accommodation**) is prohibited. Applicants cannot define a small-scale tourist development as an **eco-tourist facility** as a means to achieve a prohibited use.

The requirements in **LLEP2014** Clause 5.13 - Eco-tourist facilities are set out in detail in that clause, but summarised here to clarify Council and the community's expectations. An applicant needs to demonstrate:

- a) A connection between the proposed development and the ecological, environmental and cultural values of the site or area, and
- b) The development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment, and
- c) The development will enhance an appreciation of the environmental and cultural values of the site or area, and
- d) The development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and native flora and fauna will be minimal, and
- e) The site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment, and
- f) Waste generation during construction and operation will be avoided and that any waste will be appropriately removed, and
- g) The development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours, materials and landscaping with local native flora, and
- h) Any infrastructure services to the site will be provided without significant modification to the environment, and
- i) Any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design, and
- j) The development will not adversely affect the agricultural productivity of adjoining land, and
- k) The following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:
  - i) measures to remove any threat of serious or irreversible environmental damage,
  - ii) the maintenance (or regeneration where necessary) of habitats,
  - iii) efficient and minimal energy and water use and waste output,
  - iv) mechanisms for monitoring and reviewing the effect of the development on the natural environment,
  - v) maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control.

Satisfying the requirements of *Clause 5.13(3) of LLEP2014* requires the following to be addressed in detail in the application:

- 1) **Values:** The protection/enhancement of the environmental and/or cultural values relied upon:
  - a) Must be clearly set out in the application and more than just:
    - i) a rural or landscape setting; or
    - ii) significant vegetated area; or
    - iii) an area with potential archaeology or cultural association.
  - b) Must be a dominant aspect of the development proposal and not ancillary to the provision of tourist and visitor accommodation or other tourist facilities.
  - c) Should be locally or regionally significant.
  - d) Do not necessarily need to be on the subject land but ideally are within five (5) kilometres' drive of the subject land (e.g., adjacent National Park).
  - e) Must be demonstrated through a significant component of information, education and interpretation of these values. This is unlikely to be met by limited signage or education/engagement by property managers. It requires significant investment in dedicated spaces and/or buildings for education and/or a clear program and activities that are clearly linked to the local environmental or cultural values.
  - f) Should not single out one environmental or cultural aspect for protection and enhancement whilst having significant impacts on other key values of the land. There needs to be a holistic approach to the land character, values and cultural history and associations.
- 2) **Land Use Conflict & Hazards:** In addition to the requirements of DCP *Section 7.5.1 – Tourist Development* above, the applicant addresses the following:
  - a) That the land size is sufficient to maintain significant buffers to adjacent agriculture and/or environmental land. Generally, a minimum of 10 hectares of land is required to accommodate a substantial eco-tourist facility and allow for 50-100m buffers to adjacent land but this may be varied with significant justification.
  - b) May be required to provide a **Land Use Conflict Risk Assessment (LUCRA)** in accordance with NSW Government guidelines (see *Department of Primary Industries website*).
- 3) **Sustainability:** The **Eco-Tourist Facility** will also have a greater onus:
  - a) To protect and enhance existing significant trees and vegetation including:
    - i) Proposed site planning and buildings demonstrate that all reasonable efforts have been made to retain, protect and enhance significant vegetation and minimise impacts;
    - ii) Where there are unavoidable impacts, significant off-set planting and regeneration programs may be required;
    - iii) A **Landscape Plan** is likely to be required demonstrating use of native and endemic species and drought tolerant species;
    - iv) A **Vegetation Management Plan** or **Biodiversity Conservation Management Plan** may be required to support environmental repair and enhancement of the property.
  - b) To protect existing sensitive water resources including:
    - i) Demonstration of appropriate setbacks from watercourses and drainage corridors;
    - ii) Additional requirements to minimise erosion and control sediment entering watercourses;
    - iii) Avoiding or minimising reliance on groundwater by including rainwater harvesting;

- iv) High quality/low-impact/ tested & certified on-site effluent management systems.
  - c) To protect existing sensitive land areas including:
    - i) Avoiding steep lands or development that involves significant cut and/or fill;
    - ii) Minimising access roads and infrastructure impacts through clustering of buildings and consolidation of access roads and infrastructure;
    - iii) Minimising the impact on the land and its soils.
  - d) To minimise impacts from lighting on dark night sky and adjacent development by minimising lighting and light-spill.
  - e) To demonstrate significantly reduced energy and water consumption by including:
    - i) Report(s) that address *Section J* of the **National Construction Code (NCC)** (where required);
    - ii) Water efficiency – Council may require evidence relating to the minimum *Water Efficiency Labelling and Standards (WELS)* or water rating of all water using appliances and fixtures (see [www.waterrating.gov.au](http://www.waterrating.gov.au));
    - iii) Water re-use and recycling may be required for non-potable connections such as garden irrigation and toilets;
    - iv) Energy efficiency – Council may require evidence relating to the minimum energy efficiency of all energy using appliances, lighting and fixtures (see [www.energy.gov.au](http://www.energy.gov.au)).
    - v) Buildings demonstrate that they have addressed passive solar design principles to minimise energy consumption for heating and cooling;
    - vi) Renewable energy sources are utilised, where possible.
  - f) To demonstrate significant reductions in material usage, solid waste production, and increased re-use and recycling in accordance with waste minimisation and recycling guidelines.
- 4) **Management:** The application provides an **Operational Management Plan** explaining the proposed operations and management of the facility (beyond that required by DCP *Section 8.2.1 – Tourist Development* above) as follows:
- a) The application addresses the requirements of, and achieve accreditation under, *ISO14000 – Environmental Management Systems*. This is a range of standards that help organisation to:
    - i) minimise how their operations (processes, etc.) negatively affect the environment;
    - ii) comply with applicable laws, regulations, and other environmentally oriented requirements; and
    - iii) continually improve in the above.

They may require substantial additional management systems including, but not limited to: audits, communications, labelling, life-cycle analysis, and addressing environmental challenges such as climate change. It should only be addressed by a suitably qualified person;
  - b) A **Soil & Water Management Plan** is submitted with the proposal;
  - c) A **Waste Management Plan** is submitted with the proposal with recycling forming part of the plan (even if a Council run recycling pick-up service is not available).

### 8.2.5. Private Camping Grounds in Rural Areas

*This Section is concerned with private camping ground that are used on a regular basis for commercial camping. It is not concerned with camping on properties by owners and their friends that is not commercial in nature or with irregular low-impact camping.*

*Camping grounds are largely regulated under the Local Government Act 1993 and Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. Caravan Parks may also be addressed by other State Environmental Planning Policies.*

Camping grounds (that are not **eco-tourist facilities**) will need:

- 1) To address the requirements of DCP *Section 7.5.1 – Tourist Development* above.
- 2) To demonstrate the land size is sufficient to maintain significant buffers to adjacent agriculture and/or environmental land, as follows:
  - a) Generally, a minimum of 10 hectares of land is required to accommodate a substantial camping ground and allow for >100m buffers to adjacent land but this may be varied with significant justification.
  - b) Council may require a **Land Use Conflict Risk Assessment (LUCRA)** in accordance with NSW Government guidelines (see Department of Primary Industries website).
- 3) To provide a **Site Plan** and/or **Landscape Plan** that breaks up or conceals consolidated or larger camping areas.

### 8.2.6. Short-Term Rental Accommodation (STRA)

**Short-term rental accommodation** means the commercial use of an existing dwelling, either wholly or partially, for the purposes of short-term accommodation, but does not include tourist and visitor accommodation.

The NSW Government has passed legislation in August 2019 for new planning pathways for **Short-Term Rental Accommodation (STRA)** that will be permissible in all zones in which 'dwellings' are permissible. Traditionally, an STRA has been an 'ancillary use' to a dwelling.

This new land use definition is likely to be added to **LLEP2014**. STRAs usually utilise existing or permitted dwellings. It is expected that the new planning instruments will introduce both 'exempt' and 'complying' approval pathways for STRA that meet certain criteria but will not permit any alterations or additions to existing dwellings. Where an STRA is unable to meet those criteria then a development application will need to be lodged with Council.

Council is seeking to balance the economic and social benefits of permitting STRAs across a wide-variety of zones including increasing tourist accommodation options, contributing to household and farm income, and wider tourism benefits - whilst minimising impacts on the environment, neighbouring properties, and other tourist and visitor accommodation that sometimes have more regulation and costs.

**Short-Term Rental Accommodation (STRA)** applications address the following:

- 1) **Capacity:** The maximum number of guests permitted in an **STRA** in an **Urban Area** is two (2) people per bedroom and six (6) bedrooms (i.e., maximum of up to twelve (12) beds/people excluding babies).
- 2) **Hosts/Maximum Nights:** Hosts are not required to live on the Site (and there is no maximum number of nights a property can be used as an **STRA**, but each property has a Property Manager that is contactable at all times with their details clearly shown at the **STRA**.
- 3) **Existing Dwellings:**
  - a) Adaptive re-use of existing dwellings is encouraged for STRAs where they are in appropriate and accessible locations.
  - b) New **STRAs** are not permitted where there is not an existing dwelling and/or a new dwelling is not permitted.
  - c) Adaptive re-use of other existing buildings or creation of new buildings for STRAs is only permissible where a **dwelling** is permitted (sometimes in the form of a '**dual occupancy**' or '**secondary dwelling**') or there is an existing approved '**tourist and visitor accommodation**' use on the subject land.
- 4) **Signage:** Each STRA can have:
  - a) One (1) business identification sign located on the property near the entrance from the public road; and
  - b) One (1) sign on the relevant building; and
  - c) Navigation signs (that do not cause signage clutter) along driveways (if required).

See DCP *Chapter 7.6 Advertising & Signage* for additional requirements.
- 5) **Code of Conduct:** All **STRAs** will need to adopt, comply with and provide a signed **Code of Conduct** to Council as set out by the NSW Government and addressing **STRA** policy and procedures. The **Code of Conduct** will apply to hosts, guests, online booking platforms and letting agents.
- 6) **Noise: STRAs** demonstrate that they can minimise or mitigate noise impacts on neighbouring properties and where there may be impacts, noise can be limited in accordance with the *Protection of the Environment Operations (Noise Control) Regulation 2017*.
- 7) **Bushfire: STRAs** will be required to address the relevant bushfire planning controls in accordance with the Fire Safety Standard set out in the **EP&A Regulations** (where applicable) and they may be a *Special Fire Protection Purpose* under the **Rural Fires Act**.
- 8) **Fire Alarms/Lighting:**
  - a) A smoke alarm will be installed in each bedroom and each smoke alarm interconnected where there is more than one alarm (or in accordance with the **National Construction Code/RFS** requirements).
  - b) A lighting system will be installed in hallways that is activated by the smoke alarm system.

## 8.3. Retail & Business (Rural & Environmental Zones)

There are a range of 'other' quasi-retail/business activities (sometimes tourism related) in rural and environmental zones ('rural areas') that may be permitted with consent including:

**Cellar door premises** means a building or place that is used to sell wine by retail and that is situated on land on which there is a commercial vineyard, and where most of the wine offered for sale is produced in a winery situated on that land or is produced predominantly from grapes grown in the surrounding area.

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

- (a) the employment of more than 2 persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or
- (c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter, or
- (d) the exhibition of any signage (other than a business identification sign), or
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building,

but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises. See Clause 5.4 of LLEP2014 for controls relating to the floor area used for a home business.

**Home industry** means a dwelling (or a building ancillary to a dwelling) used by one or more permanent residents of the dwelling to carry out an industrial activity that does not involve any of the following:

- (a) the employment of more than 2 persons other than those residents,
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise,
- (c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter,
- (d) the exhibition of any signage (other than a business identification sign),
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building,

but does not include bed and breakfast accommodation or sex services premises.

See Clause 5.4 of LLEP2014 for controls relating to the floor area used for a home industry.

**Plant nursery** means a building or place the principal purpose of which is the retail sale of plants that are grown or propagated on site or on an adjacent site. It may include the on-site sale of any such plants by wholesale and, if ancillary to the principal purpose for which the building or place is used, the sale of landscape and gardening supplies and equipment and the storage of these items.

**Roadside stall** means a place or temporary structure used for the retail sale of agricultural produce or hand-crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property. See Clause 5.4 of LLEP2014 for controls relating to the gross floor area of roadside stalls.

This definition/section does not cover mobile stalls and sale of produce/goods on or adjacent to a public road. You may require a Section 68 application to Council for these uses.

**Rural supplies** means a building or place used for the display, sale or hire of stock feeds, grains, seed, fertilizers, veterinary supplies and other goods or materials used in farming and primary industry production.

### Objective(s)

- O1. To allow limited retail activities to occur in rural and environmental zone(s) that are related to the rural activities, produce and needs in these areas but do not significantly undermine retail and business activity in nearby town or village centres.
- O2. To promote locally grown produce and hand-crafted goods.
- O3. To ensure that any retail activities are located on private land, provide safe access and egress from the nearest public road, and have sufficient parking to avoid any significant conflicts with traffic and safety on the adjacent public road.
- O4. To ensure that rural retail activity avoids or minimises/mitigates any significant impacts on adjacent sensitive uses including dwellings and does not impact on the 'right-to-farm' and agricultural activities.
- O5. The design of any retail activity (including signage) should be in keeping with the rural and landscape character of the area and not dominate the public road frontage.

### Control(s)

For any retail or business-like activity in a rural or environmental zone(s):

- 1) The building or place used for the activity is located on the holding from which the produce originates and sited wholly within its boundaries.
- 2) The building design is in keeping with the rural character.
- 3) All activities selling produce for human consumption comply with the requirements of the *Australia New Zealand Food Standards Code* and will be kept clean and tidy at all times.
- 4) They are located in a manner that allows safe turning in and out of the property.
- 5) All parking is on-site (off any road reserve).
- 6) Any proposed signage is kept to a minimum and complies with the requirements in DCP *Section 7.5 - Advertising & Signage* and *SEPP 64 – Advertising and Signage*. One (1) designed advertising sign within the property boundary provides effective identification of the roadside stall.
- 7) The requirements of **TfNSW** (former **Roads and Maritime Services**) are complied with where the roadside stall is adjacent to or requires access from a **classified road**.

## 8.4. Temporary Use of Land & Markets/Events

Temporary use of land or events with **temporary structures** are a form of 'development' and, as such, may require development consent in accordance with State Environmental Planning Policy (Temporary Structures) 2007, **LLEP2014** (Clause 2.8), & this DCP.

Temporary use of land is permitted with consent in any zone. Even if a development consent is not required, Council may still require notification of the event details and procedures well in advance of the event and may be required to provide other approvals.

Major events have the potential to attract a large number of people, increased vehicle and pedestrian traffic, temporary structures and buildings, and potentially cause impacts such as noise, light, dust and traffic. They require safe access/egress/parking; safe pedestrian areas; food catering; toilets and amenities; recycling and waste management, emergency support, risk management, and much more.

This Section does not require the lodgement of development applications for regular use of approved entertainment venues or spaces.

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

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

### Objective(s)

To ensure that **temporary use of land / events**:

O1. Address the requirements of **LLEP2014** Clause 2.8 – Temporary use of land ensuring:

- a) The temporary use will not prejudice the subsequent carrying out of development on the land in accordance with **LLEP2014** and any other applicable environmental planning instrument; and
- b) The temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood; and
- c) The temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land; and
- d) At the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

O2. Have adequate plans/strategies in place to adequately address:

- a) public safety, health, risk and security contingencies; and
- b) access, traffic & parking strategies; and
- c) bushfire and/or natural hazard strategies.



### Control(s)

If Council requires an application for a temporary use of land / event then an **Event Application** addresses the following information (either in the **Statement of Environmental Effects** or in a separate report):

- 1) **Site Plan** providing the location of all structures, to scale with distances to boundaries, and any other relevant items to the application;
- 2) **Description and plans** addressing the following:
  - a) Description of event;
  - b) Date and times of event opening and closing & daily schedules;
  - c) Event promotion, ticketing, and capacity;
  - d) Any temporary buildings or structures;
  - e) Date and times of set up/removal and hours of operation;
  - f) Details of music, amplification or other potential noise emissions;
  - g) Alcohol licensing and requirements;
  - h) Lighting and signage;
  - i) Details of food sold/served/provided, including premises setup;
  - j) Details of parking, including owner's permission if off-site;
  - k) Details of amenities e.g., water, toilets and sewerage management;
  - l) Details of waste management including general garbage and recycling;
  - m) Power & water supply;
  - n) Site selection.
- 3) An assessment of any potential **environmental impacts** that may arise from the event including, but not limited to, vegetation removal, pedestrian and vehicle impacts, noise and odours, lights & fireworks, erosion and sediment control, signage etc.;
- 4) **Risk Assessment** including emergency and security protocols that may include (where relevant) illegal drug use and alcohol abuse, removal of event patrons, liquor licencing emergency medical attention, unruly social behaviour, evacuation contingencies, bushfire, flooding & other emergency evacuation plans, and bad weather contingencies etc.;
- 5) **Noise mitigation** measures including an assessment of the nearest residences and the likely noise levels and other likely impacts at the boundary of the property holding the event;
- 6) Review of traffic issues or **Traffic Assessment/Plan** that review the provision of parking, road access for 2WD vehicles, public transport availability, emergency access provision, disabled access provision, dust suppression measures on public roads and at the venue, and emergency escape routes (e.g., in a bushfire situation);
- 7) Relevant **insurance** documents if the event is located on Council/Crown land, for example, public liability;
- 8) **Site Plans** for all food stalls;

- 9) **Signage Plans** for all event signage;
- 10) Internal **layout plan** to scale for large (floor area >50m<sup>2</sup>) tents, stages and platforms:
- a) Details of compliance with **National Construction Code (NCC)** – particularly with regards to structural adequacy, egress and fire safety;
  - b) Documentation that specifies the live/dead loads that the temporary structure is designed to meet;
  - c) A list of any proposed fire safety measures to be provided in connection with the use of the temporary structure,
  - d) Documentation describing any accredited building product or system sought to be relied on for the purposes of Section 79C(4) of the Act;
  - e) Copies of any compliance certificates to be relied on.
- 11) **Consultation** may be required with:
- a) **Emergency services** such as the NSW Ambulance Service, Rural Fires Service; NSW Police; Roads and Maritime Services - where these services may be used or form part of an emergency response for the event or where permits are required; and/or
  - b) **Key stakeholders** such as Workcover, electricity authority, bus and taxi companies, security personnel, local businesses etc. where staffing and support services may be required.
- 12) **Other Approvals** that may be required:
- a) Road closures will require approval under *Section 138 of the Roads Act 1993* from Council;
  - b) Events involving sale of liquor require an approved licence from the *Office of Liquor Gaming and Racing* and may be subject to approval of NSW Policy and Council;
  - c) Events involving fireworks require approvals from *NSW WorkSafe Authority*;
  - d) Events involving **Amusement Devices** require separate approval under *Section 68 of the Local Government Act 1993* (that can be addressed at the same time as the **Development Application**).

## 8.5. Agricultural Activities & Rural Industry

**Extensive agriculture** means any of the following:

- (a) the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,
- (b) the grazing of livestock (other than pigs and poultry) for commercial purposes on living grasses and other plants on the land as their primary source of dietary requirements, and any supplementary or emergency feeding, or temporary agistment or housing for weaning, dipping, tagging or similar husbandry purposes, of the livestock,
- (c) bee keeping,
- (d) a dairy (pasture-based) where the animals generally feed by grazing on living grasses and other plants on the land as their primary source of dietary requirements, and any supplementary or emergency feeding, or temporary agistment or housing for weaning, dipping, tagging or similar husbandry purposes, of the animals.

Extensive agriculture is generally permissible without consent in all rural and environmental zones (except Zone RU5 Village).

**Farm building** means a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling.

**Intensive livestock agriculture** means the keeping or breeding, for commercial purposes, of cattle, poultry, pigs, goats, horses, sheep or other livestock, and includes any of the following: (a) dairies (restricted), (b) feedlots, (c) pig farms, (d) poultry farms, but does not include extensive agriculture, aquaculture or the operation of facilities for drought or similar emergency relief.

**Intensive plant agriculture** means any of the following: (a) the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops), (b) horticulture, (c) turf farming, (d) viticulture.

**Rural industry** means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following: (a) agricultural produce industries, (b) livestock processing industries, (c) composting facilities and works (including the production of mushroom substrate), (d) sawmill or log processing works, (e) stock and sale yards, (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.

See **LLEP2014** for definitions of the detailed types listed above.

### 8.5.1. Intensive (Plant & Livestock) Agriculture

#### Objective(s)

- O1. To promote intensive agricultural development in appropriate locations.
- O2. To minimise potential impacts upon surrounding properties and the environment.
- O3. To ensure intensive agriculture has sufficient secure water supplies to meet the needs of the development, whilst minimising impacts on surface and ground-water systems.
- O4. To manage potential solid and liquid waste-water from intensive agriculture to protect the natural environment and water systems.

**Control(s)**

- 1) **Guidelines:** Relevant industry guidelines (see list below) are followed in the design of intensive agricultural developments and will form an important part of Council's assessment of proposed developments.

*Refer to the NSW Department of Primary Industries document, preparing a development application for intensive agriculture in NSW when preparing a **Development Application (DA)**.*

- 2) **Site Selection:** Applications demonstrate that the subject site is capable of supporting the proposed intensive agriculture use and any ancillary development including, but not limited to:
- Lot size for efficient and profitable agricultural development and to support all required development, infrastructure and water and waste management; and buffers;
  - Suitable, reliable water resources (taking into account climate variability/change);
  - Suitable soil resources and slope of land/drainage;
  - Land use conflict risks;
  - Additional sustainability factors (economic and environmental).
- 3) **Land Use Conflict:** Separation of intensive agricultural developments from existing off-farm dwellings (or other **sensitive land uses**) may require a **Site (Analysis) Plan** and a **Land Use Conflict Risk Assessment (LUCRA)** in accordance with NSW Government Guidelines that addresses all potential impacts as well as site planning requirements in DCP *Chapter 2 – Site Requirements*, particularly DCP *Section 2.12 Amenity/Buffers for Sensitive Uses*.
- 4) **Environmental Impact:** Applications are accompanied by any relevant environmental assessment reports (in accordance with Council's **DA Guide**) prepared by a suitably qualified practitioner considering the environmental standards of the NSW Government. Consideration is given to amelioration techniques and the location of existing **sensitive land uses** and environmental conditions that may affect those impacts.

*It may also be relevant to consider other NSW Government legislation/policies including, but not limited to:*

- Environmental Planning & Assessment Act 1979 which sets out thresholds and regulations for 'designated development' which includes, amongst others, some forms of intensive agriculture;*
- Protection of the Environment Operations Act 1997 including licensing under Schedule 1;*
- State Environmental Planning Policy (Rural Lands) 2008 ('SEPP Rural Lands') which sets out Subdivision and Planning Principles for the development of rural lands; and*
- State Environmental Planning Policy No.30 (Intensive Agriculture) ('SEPP Intensive Ag.') which, amongst other matters, sets sizes for cattle feedlots or piggeries which require development consent;*
- Central West & Orana Regional Plan;*
- Mapping of agricultural lands including, but not limited to: important agricultural lands; biophysical strategic agricultural lands; and soil types etc.*

*In addition, the Department of Primary Industries (DPI) has created relevant guidelines for the agricultural component including, but not limited to:*

- DPI (2006) Preparing a development application for intensive agriculture in NSW;*
- Factsheet (December 2011) Preparing intensive plant agriculture development applications;*
- Factsheet (December 2011) Assessing intensive plant agriculture developments;*
- Planning for turf farms;*

- 5) *Factsheet (October 2011) Land Use Conflict Risk Assessment (LUCRA) Guide;*
- 6) *DPI (2007) Living and working in rural areas;*
- 7) *DPI (2005) Guidelines for the development of controlled environment horticulture;*
- 8) *Primefact 144 (2006) Sustainable Horticulture;*
- 9) *Better site selection for meat poultry developments;*
- 10) *Agricultural Impact Statement technical notes; and*
- 11) *Other water related guidelines referred to in the above documents.*

## 8.5.2. Rural Industry

### Objective(s)

- O1. To promote rural industry development in appropriate locations.
- O2. To minimise potential impacts upon surrounding properties and the environment.
- O3. To ensure rural industry is located with suitable access and connections to major transport links to minimise transport costs to markets and minimise impacts on local and regional infrastructure.
- O4. To ensure rural industry has sufficient secure water and energy supplies to meet the needs of the development, whilst minimising impacts on surface and ground-water systems and local electricity infrastructure.
- O5. To manage potential solid and liquid waste from rural industry to protect the natural environment and water systems.

### Control(s)

- 1) **Site Selection:** Applications demonstrate that the subject site is capable of supporting the proposed rural industry and any ancillary development including, but not limited to:
  - a) Location with proximity and access to agricultural produce and transport systems;
  - b) Lot size for efficient and profitable development and to support all required development, infrastructure and water and waste management; and buffers;
  - c) Suitable, reliable water resources (taking into account climate variability/change);
  - d) Suitable, reliable energy resources (depending on the needs of the development);
  - e) Land use conflict risks;
  - f) Additional sustainability factors (economic and environmental).
- 2) **Land Use Conflict:** Separation of rural industry from existing off-farm dwellings (or other **sensitive land uses**) may require a **Site (Analysis) Plan** and a **Land Use Conflict Risk Assessment (LUCRA)** in accordance with NSW Government Guidelines that addresses all potential impacts as well as site planning requirements in DCP *Chapter 2 – Site Requirements*, particularly DCP *Section 2.12 Amenity/Buffers for Sensitive Uses*.
- 3) **Environmental Impact:** Applications are accompanied by any relevant environmental assessment reports (in accordance with Council's **DA Guide**) *prepared* by a suitably qualified practitioner considering the environmental standards of the NSW Government. Consideration is given to amelioration techniques and the location of existing **sensitive land uses** and environmental conditions that may affect those impacts.

### 8.5.3. Farm Buildings & Ancillary Structures

Many farm buildings and ancillary structures may be either exempt or complying development under the **Code SEPP** and not require a **development application**.

This Section does not relate to garages or carports ancillary to a dwelling or buildings that are ancillary to animal boarding or training establishments or rural industries.

Farm buildings & sheds are a class 10a (non-habitable) building under the **National Construction Code (NCC)** and cannot be used as a dwelling without approval from Council.

Generally, installation of a toilet, wash basin and/or shower in an outbuilding would NOT make these a 'habitable' room or dwelling. However, if a kitchen, bathroom and laundry are provided this would be considered a 'dwelling' and can only be approved if it meets the relevant controls.

Regardless, any building requiring a sewerage/waste-water connection will require an approval from Council. A **floor plan**/internal arrangement may be required.

See also DCP Section 6.7.2 Temporary Accommodation & Section 6.7.3 Conversion/Use of Non-Habitable Buildings.

#### Objective(s)

- O1. To ensure that farm buildings & ancillary structures are of a size, height & bulk that is suited to the site area & minimise the visual impact of larger buildings on rural & landscape character.
- O2. To minimise impacts on the landscape and rural/scenic character, particularly for Visually Prominent Site(s).

#### Control(s)

- 1) **Use:** Any application clearly nominates the use for any farm building or ancillary structure and cannot be used for residential purposes without approval.
- 2) **Building Height:** The maximum ridge height above **ground level (existing)** is:
  - a) Farm building - 10m;
  - b) Outbuilding or garage/carport – 6.0m with a maximum wall height of 4.2m.
- 3) **Location & Setbacks:** Demonstrate that any one (1) proposed farm building(s) (other than stock holding yards, grain silos and grain bunkers) meet the following table:

Land Area	Max. Building Area/ Footprint (m <sup>2</sup> )	Front Setback from Primary Road Frontage (m)	Side/Rear Setback (m)
<2,000m <sup>2</sup>	80	Behind any existing dwelling or 10m (whichever is greater)	On merits/NCC
2,000m <sup>2</sup> to 1ha	110		3m
1ha to <2ha	270	15m	5m
2ha to <4ha	325	20m	10m
4ha to <40ha	450	20m	10m to boundary or 50m from adjoining dwelling (whichever is greater)
40ha to <100ha	600	20m	
>100ha	1,200	50m	

*The maximum building area is the cumulative total of the enclosed floor area and does not include verandahs, awnings or the like that are open on two or more sides.*

*Any variation to the maximum building area will have to be justified in terms of the use of the building and its link to the agricultural needs of the land as well as its visual impact.*

4) **Cumulative Building Area:** The cumulative building area/footprint of all farm buildings (other than grain bunkers) on any landholding and does not exceed:

Land Area	Max. Building Area/ Footprint (m <sup>2</sup> )
<4ha	2.5% of the lot
4ha to <10ha	1,000
10ha to <100ha	2,000
>100ha	4,000

5) **Visual Impact:** Applications demonstrate that the proposed development will:

- a) Address the objectives of *DCP Section 2.2.4 Visually Prominent Sites* (where applicable);
- b) Address *DCP Chapter 4 – Heritage & Cultural Conservation* (where applicable);
- c) Provide details of building height above **ground level (existing)** and lengths/dimensions and minimise bulk/scale as required by the proposed building use;
- d) Provide details of building materials and colours that reduce the visibility of the building(s) and are consistent with the rural or landscape setting;
- e) Try to cluster buildings together to minimise additional access and other infrastructure requirements.
- f) Shipping containers comply with *DCP Section 6.7.8 Shipping Containers*.

6) **Use & Layout/Design:** Applications are required to:

- a) Apply for a use of the building that is linked to the permissible agricultural or residential activities on the land;
- b) Provide plans showing the layout and fit-out in accordance with the **National Construction Code (NCC)**;
- c) Provide details of any associated vehicle parking and manoeuvring areas;
- d) Address any storage of hazardous materials or chemicals.

7) **Environmental Impact:** Applications are required to:

- a) Address the relevant requirements in *DCP Chapter 2 – Site Requirements*;
- b) Minimise the removal of significant native vegetation and provide buffers to environmentally sensitive areas and watercourses;
- c) Minimise the amount of cut/fill required to support the building(s) and associated area(s);
- d) Minimise impacts from natural hazards.

#### 8.5.4. Farm Dams

The following is summarised from the WaterNSW website - <https://www.waternsw.com.au/customer-service/water-licensing/basic-water-rights/harvestable-rights-dams>.

Rural landholders in NSW can build dams on minor streams and capture 10 per cent of the average regional rainfall run-off on land in the Central and Eastern Divisions. The maximum harvestable right dam capacity (MHRDC) is the total dam capacity allowed under the harvestable right for your property and takes into account rainfall and variations in rainfall pattern. The Harvestable Rights Orders are published in the [NSW Government Gazette 40 dated 31 March 2006](#) (pages 1628 to 1631).

If you want to construct a dam that is larger than the MHRDC, you will need to licence the volume of water that exceeds the MHRDC. You will also need to hold an approval for a dam which exceeds the MHRDC.

When building a dam, it is important that the appropriate approval or licence has been obtained if this is required. Make sure that the dam is carefully located so it is effective, safe and has minimal impacts on neighbours and the environment. You will also need to ensure construction of the dam meets any other legal requirements, such as local council regulations, or consents from government agencies.

Also ensure that during all stages of construction you provide adequate erosion control and minimise disturbance to waterways, areas of native vegetation, sites of cultural significance and avoid disturbing acid sulphate soils in coastal areas.

Under the Fisheries Management Act 1994, any new dam or modification to an existing dam may require the owner to provide for fish passage.

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## 8.6. Animal Boarding or Training Establishments

This Section applies to facilities that have significant numbers of animals and would not be defined as **intensive livestock agriculture** but may be defined as follows:

**animal boarding or training establishment** 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.

**veterinary hospital** means a building or place used for diagnosing or surgically or medically treating animals, whether or not animals are kept on the premises for the purpose of treatment.

### Objective(s)

To ensure that all animal boarding or training establishments and veterinary hospitals in **rural and environmental zone(s)**:

- O1. Consider site selection to minimise potential conflict with adjoining land uses;
- O2. Implement best practice with regards to design and management; and
- O3. Avoid and/or minimise the impacts on the natural environment and rural landscape and amenity.

### Control(s)

- 1) Noise levels from the premises are not to exceed the relevant noise levels set out in the *EPA Noise Policy for Industry 2017, as amended*) and may require a **Noise Assessment** from a suitably qualified acoustic engineer.

*Whilst animal boarding and training establishments are not a listed Scheduled Activity under Schedule 1 of the POEO Act, the EPA Noise Policy for Industry 2017 is still a relevant guideline.*

- 2) No parts of the establishment will be permitted within 200 metres of the property boundary or 500m of the nearest dwelling house (or suitable distance determined by a **Noise Assessment**).
- 3) Establishments provide a **Business & Management Plan** that addresses the relevant industry guidelines for the design of these facilities including mechanisms to manage noise etc including, but not limited to: *NSW Department of Primary Industries document, NSW Animal Welfare Code of Practice No.5 – Dogs and Cats in animal boarding establishments*.
- 4) Establishments demonstrate there is an adequate water supply and adequate methods for disposal of solid and liquid wastes so these will not impact on adjacent properties or watercourses/ground-water systems. An **Effluent Study** may be required.
- 5) Council may require a **Sediment & Soil Erosion Plan** if an establishment is located near a watercourse or environmentally sensitive area and is likely to result in significant topsoil disturbance from animals.

### Relevant Policies

- *Protection of the Environment Operations Act 1997;*
- *Prevention of Cruelty to Animals Act 1979;*
- *Companion Animals Act 1988;*
- *NSW Department of Primary Industries document, NSW Animal Welfare Code of Practice No.5 – Dogs and Cats in animal boarding establishments.*

## 8.7. Mining & Extractive Industries

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

**Extractive material** means sand, soil, gravel, rock or similar substances that are not minerals within the meaning of the [Mining Act 1992](#).

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

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

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

This section should be read in conjunction with:

- Schedule 3 of the Environmental Planning and Assessment Regulation 2000 with respect to Designated Development – Extractive Industries;
- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007;
- State Environmental Planning Policy (Major Projects) 2005.

In the event that the proposed extractive industry is not determined as a **major project** by the Minister for Planning under State Environmental Planning Policy (Major Projects) 2005, the formal development consent for the proposal will be required to be obtained from Council, as the relevant consent authority.

In the event that the proposal is classified as a **Designated Development – Extractive Industries** under Schedule 3 of the Environmental Planning and Assessment Regulation 2000, the preparation of an **Environmental Impact Statement (EIS)** will be required instead of a **Statement of Environmental Effects (SEE)**.

Council's DA Guide provides the requirements for the preparation and submission of a Development Application and a **SEE** or **EIS** where appropriate. Alternatively, contact Council's Planning and Environmental Department.

### Objective(s)

- O1. To ensure that development does not adversely impact on areas of conservation value.
- O2. To ensure that development is designed to minimise risks associated with geotechnical hazards.
- O3. To provide an effective barrier between quarrying and mining operations and other sensitive land uses.
- O4. To maintain the character and amenity of existing rural land uses.
- O5. To facilitate mining and extractive industries in suitable locations that facilitate employment and the local economy.
- O6. To ensure development accords with best-practice operations and management.

### Control(s)

- 1) The preparation of a **traffic impact assessment report** (prepared by a suitably qualified and experienced traffic engineer) will be required and address the following (but are not limited to):
  - a) Estimated average and maximum hourly, daily and weekly truck movements, based upon the truck type and size proposed for the operation;
  - b) Proposed truck routes (for both laden and unladen trucks) and possible alternative routes or other alternative transport modes such a rail transport;
  - c) The physical condition of existing roads and / or bridges on the proposed truck routes to / from the site and any proposals to upgrade public or private roads to reduce dust and other impacts;
  - d) The traffic generation impact of both laden and unladen truck movements along the proposed truck routes to / from the site;
  - e) Potential road safety impacts upon other road users arising from the additional truck movements occurring along the proposed truck routes to / from the site; and
  - f) Assessment of sight distances for trucks entering / exiting the site and at other key intersections along the proposed truck routes to / from the site.
- 2) Applications for mining or extractive industry activities address the following matters and identify proposed mitigation measures where adverse impacts are identified:
  - a) Impact on vegetation, biodiversity & flora/fauna as a result of the development. This may require **Biodiversity Development Assessment Report** (and possibly offsets); **Flora &/or Fauna Report**; **Vegetation Management Plans** etc.
  - b) Efficient and safe movement of the extractive material from the source of supply to the end user;
  - c) Noise, dust and vibration abatement measures including any blasting or explosive use;
  - d) Visual impact assessment with particular reference to major roads, tourist routes / interest points and surrounding properties / structures;
  - e) Drainage implications including surface and groundwater impacts;
  - f) Rehabilitation of the site including materials, staging, source materials, re-contouring, replacement of topsoil, screen planting and vegetation;
  - g) Management techniques to address potential conflict with surrounding land uses and protection of environmental attributes; Any other assessment Council may require including heritage assessments, contaminated land assessments, ecological assessments and acid sulphate soil assessments.
  - h) A **Workforce Management Plan** including workforce accommodation considerations are detailed in the application for the construction and operation phases of the project.

## 8.8. Solar Energy & Wind Farms

*This Section has kindly been adapted from the Mid-Western Regional Council DCP.*

### **State Significant Development**

*Due to the high capital investment value of larger solar energy or wind farms, they may be categorised as **State Significant Development**. In these circumstances the assessment of the application is undertaken by the NSW Government. To determine if a proposal falls within this category, reference should be made to State Planning Policy (State and Regional Development 2011).*

*In the event that a proposal falls within the category of **State Significant Development** such that Council is not the approving authority, Council will request (during consultation) that consistency with this section of the Development Control Plan is still required.*

### **Exempt & Complying Development**

*Smaller-scale **electricity generating works** may also be exempt or complying development under Part 3, Division 4 of State Environmental Planning Policy (Infrastructure) 2007.*

### **Solar Energy Farms requiring a Development Application**

*All other solar farm developments require Council's consent. If so, then the placement of inverters and associated infrastructure to support the solar energy or wind farm system needs to comply with this DCP. It is highly recommended that a pre-application meeting with Council is held prior to submitting a **Development Application**.*

### **Wind Farms requiring a Development Application**

*For the purpose of the DCP, commercial wind power generation turbine(s) or towers with a peak capacity power rated output greater than 10kW require development consent and complies with the provisions of this plan. For the purposes of this DCP, commercial wind power generation includes wind power generation. Turbine(s) or towers with a peak capacity of power rated output greater than 10kW. The erection of a wind monitoring tower also requires Council's consent.*

### **Road Upgrades**

*Much of Council's road network is generally not capable of sustaining the increase in large scale construction traffic and may require substantial upgrading to accommodate construction vehicles. Appropriate bonds will be required to ensure any road damage is repaired to Council's satisfaction. Such bonds are payable prior to commencement of any works on the site. Road sealing shall be required where appropriate on unsealed public roads utilised by the proponent.*

### **Consultation with State Government Authorities**

*Proponents are advised to consult with public authorities that may have a role in assessing the Development Application. Council may also consult with those relevant public authorities during the application process.*

### **Developer Contributions**

*Council will seek to negotiate voluntary planning agreements for major solar energy farm developments in accordance with Section 7.4 of the Environmental Planning and Assessment Act 1979. However, this does not exclude application of Section 7.11 or 7.12 Developer Contributions in accordance with the relevant **Contributions Plan** in force at the time of determination.*

### **Remediation of Site at Closure**

*Council is likely to require the following conditions:*

*Within six months of the Solar Energy or Wind Farm ceasing to operate, any rights of carriageways that were created to enable maintenance to be conducted are to be extinguished by the developer and the land made good, unless otherwise agreed with the landowner.*

*Within twelve months of the Solar Energy or Wind Farm ceasing to operate, all infrastructure is to be fully dismantled and removed from the site.*

### Objective(s)

- O1. To minimise potential land use conflicts.
- O2. To ensure that there is no unreasonable interference with the comfort or use of adjoining land.
- O3. To ensure that impacts on agricultural land, businesses and tourism are appropriately considered.
- O4. To ensure road access, visual impacts, noise, health, waste, construction management and environmental constraints are identified and sufficient information is included with each development application to enable proper assessment.
- O5. To ensure that adequate provisions are made to restore developed land at the end of the life of the development.

### Control(s)

- 1) **Lodgement (for both Solar & Wind Farms):** The application is supported by a **Statement of Environmental Effects (SoEE)** or other relevant documents that address all relevant legislation and applicable policies including the following matters:
  - a) The location of the property, land contours, boundary dimensions and site area including:
    - i) Topographic map of 1:25,000 scale showing the location of the solar/wind farm;
    - ii) The route of transmission lines to the electricity grid;
    - iii) The service roads on and to the site; and
    - iv) The proximity to significant features such as main townships or villages, main roads, other solar farm developments, dwellings, environmentally and visually sensitive land, watercourses or drainage lines, crop and pasture land, forests, national parks, heritage items or conservation areas.
  - b) A **Site Plan** or plans showing the position of the proposed solar panel arrays or wind turbines, inverters, battery storages and all construction facilities from site boundaries, the land contours, native vegetation to be removed or retained, the proposed vehicular access points, the location and uses of all existing and proposed buildings, power lines, sub-station and fences on the land.
  - c) A description of the proposed solar arrays or wind turbine(s) including all relevant design details such as number, dimensions, generation capacity, overall height once mounted, rotational information and materials / colour (including for solar arrays if mirror or lenses are proposed). This may also be supported by an **Elevation Plan**; or
  - d) Management of temporary facilities, waste, numbers of contractors/employees, etc.
  - e) Details of the proposed connection to the electricity reticulation network.
  - f) A **Land Use Conflict Risk Assessment (LUCRA)** shall be prepared in accordance with the *Land Use Conflict Risk Assessment Guide* produced by the NSW Department of Primary

Industries and provide a land use description of the adjoining land and/or affected lands and landscape and assessment of the likely future impact.

- g) A **Noise Assessment** demonstrating compliance with the *NSW Noise Policy for Industry 2017*, Noise Construction Guidelines and any other NSW Acts, Rules or Regulations applicable to solar or farm noise including during construction and decommissioning (e.g., DECC (2012) *NSW Wind Farm Guidelines*).
- h) A **Visual Impact Assessment** should assess:
- i) the visual impact of the project including an assessment of the development on the scenic value and character of the locality; and
  - ii) how the proposal will maintain the unique local character of the area, all significant vistas and also examine local community values towards key elements which form the identity of the area being impacted by the proposal; and
  - iii) infrastructure should be located in low visual impact locations and interconnection cables/wiring and the like should be underground.
- i) A **Construction Program** and **Environmental Management Plan** incorporating the proposed staging of the project, erosion and sedimentation controls, heavy vehicle movements, site access including all service roads, substation, underground wiring, construction phase impacts including facilities, waste disposal, staff/contractor numbers etc., weed control, farm impacts and all other works.
- j) A **Workforce Management Plan** including workforce accommodation considerations are detailed in the application for the construction and operation phases of the project.
- k) A **Traffic Assessment** that details the impact of construction vehicles on the proposed route having regard to public safety especially school bus hours and citizens' peak hour travel to work. Detailed road condition reports will be required as part of any consent.
- l) A **Flora & Fauna Assessment** (where relevant) with specific mention of migratory species potentially impacted by the development. Where the development is in close proximity to known habitats of threatened species (Flora or Fauna), early consultation with the Office of Environment and Heritage is highly recommended.
- m) A **Decommissioning & Site Restoration Plan** should be included that provides measures to remediate the land in accordance with *SEPP No 55 – Remediation of Land* along with details of appropriate disposal methods for all infrastructure.
- n) Details of **Consultation** with all State Agencies and how any feedback has been addressed (e.g., CASA for aviation safety, DPI Water for water impacts, OEH for flora and fauna impacts; AAA for aerial agriculture implications etc.).

- o) A **Statement of Heritage Impact** (where DCP *Chapter 4 – Heritage & Cultural Conservation* applies).
  - p) Additional information may be required depending upon the circumstances of the development proposal and level of detail, and accuracy provided within the development application.
- 2) **Lodgement (for Solar Farms only):**
- a) A **Preliminary Risk Screening** in accordance with *SEPP No. 33 – Hazardous and Offensive Development* shall be included, particularly if battery storage is proposed onsite. If the proposal is deemed “potentially hazardous”, a **Preliminary Hazard Analysis (PHA)** shall be prepared and submitted with mitigation measures to manage the risks including but not limited to spontaneous ignition, bushfire and electro-magnetic fields in accordance with relevant Australian Guidelines.
  - b) A **Glint and Glare Assessment**, including full details on night lighting shall be submitted with the DA.
- 3) **Lodgement (for Wind Farms only):**
- a) The **Noise Assessment** (mentioned above) shall also detail proposed monitoring program(s) for full spectrum noise testing (including low frequency sound and infrasound) to validate predicted noise impacts on neighbouring properties. The impact of The Van Den Berg effect (i.e., the effects of the wind profile at night on wind turbine sound) is also to be specified.
  - b) An **Electromagnetic Radiation Study** including interference from the wind turbines and/or transmission lines. This should include impacts on human and animal health, emergency services, RFS, Police, Ambulance etc. and local television and radio reception and other local communications.
  - c) A **Communications Study** should identify the existing status of communications and detail the proposed method of dealing with potential communication interference. The development should not detract from the reception of radio, TV, internet or other communication methods. Where necessary, it may be required to install additional services (boosters/communication towers/ re-transmission towers etc.) to maintain such services in the vicinity of the development. Where this is determined to be necessary, the work and equipment shall be at the developers cost.
- 4) **Design (Solar & Wind):** The following are included as part of the design criteria and assessment of any related **development application**:
- a) The development should be sited and carried out to minimise impacts on, or restrictions to grazing, farming, residential, tourism, business and forestry practices.

- b) The development should be carried out in a way that minimises any physical adverse effects on adjoining land and the development site, including, but not limited to:
    - i) land degradation;
    - ii) native vegetation loss;
    - iii) alteration to drainage patterns;
    - iv) pollution of surface and ground water;
    - v) spread of noxious plants and animals; and
    - vi) bushfire hazard.
  - c) The applicant should assess the cumulative impact of the development having regard to solar energy or wind farms already built and those approved but not yet constructed within 10km of the Site. Council does not favour large expanses of land being covered with solar energy or wind farms where there is significant cumulative impact.
  - d) Proposed solar farms should consider the NSW Department of Planning and Environment *Solar Energy Guidelines*, *NSW Noise Policy for Industry* and any other NSW Acts, Rules or Regulations applicable to solar energy farms.
  - e) Proposed wind farms should comply with the *NSW Wind farm Guidelines* and any other NSW Acts, Rules or Regulations applicable to wind farm noise. Note that where noise levels are found to exceed those guidelines, Council shall require remediation work and may require the cessation or decommissioning of the turbines to reduce the noise impacts on sensitive receptors such as non-related dwellings.
- 5) **Design (Solar Energy Farms):**
- a) Where the proposal is located within a 5km radius from main townships and villages, the proposal demonstrates that it will not impact on the scenic value and character of the locality.
  - b) Solar Energy Farms should not be located within 200m of any dwelling not associated with the development or from any lot upon which a dwelling may be constructed unless they can demonstrate there are no significant impacts.
  - c) Solar Energy Farms should not be located within 100m from a formed Local Public Road or 200m from a Regional or State Road. A greater distance may be required by the road authority where visual impact mitigation is necessary.
  - d) Solar Energy Farms should not be located within 10m from a non-related property boundary; existing and proposed screenings may be used to minimise visual impacts to non-related properties. However, screening is not the only preferred method of minimising visual impact. Solar arrays shall be located in positions so as to have minimal visual impact on nearby properties, especially existing dwellings and lots on which dwellings may be constructed.



6) **Design (Wind Farms):**

- a) Turbines shall not be located within 5km of any dwelling not associated with the development or from any lot upon which a dwelling may be constructed. The 5km setback proposes utilising a precautionary principle in addressing perceived visual, noise and health concerns;
- b) Turbines shall not be located within a distance two times the height of the turbine (including the tip of the blade) from a formed public road. A greater distance may be required by the road authority;
- c) Turbines shall not be located within a distance 2km from a non-related property boundary;
- d) Existing and proposed screenings may be used to minimise visual impacts to non-related properties. However, due to the height of turbines, screening is not the preferred method of minimising visual impact. Turbines shall be located in positions so as to have minimal visual impact on nearby properties, especially existing dwellings and lots on which dwellings may be constructed;
- e) Turbine locations are to be sensitive to existing related dwellings on the subject site. Noise and shadow flicker should be minimised and turbines should not be located in close proximity to existing dwellings;
- f) Turbine locations shall not surround a non-related property. Turbines shall be located with the specified setbacks from property boundaries to minimise the visual impact of the development on adjacent and nearby non-related property. Cumulative impacts, having regard to existing turbines, turbines approved but yet to be constructed, those for which a Development Application has been lodged with a planning authority and those for which written licenses have been granted to a developer for wind farm assessment purposes should be assessed.