



New South Wales

Oberon Local Environmental Plan 1998 (Amendment No 4)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (DUB0108025/PC)

FRANK SARTOR, M.P.,
Minister for Planning

2007 No 177

Clause 1 Oberon Local Environmental Plan 1998 (Amendment No 4)

Oberon Local Environmental Plan 1998 (Amendment No 4)

under the

Environmental Planning and Assessment Act 1979

1 Name of plan

This plan is *Oberon Local Environmental Plan 1998 (Amendment No 4)*.

2 Aims of plan

- (1) This plan aims, as a consequence of the transfer (by amalgamation) of certain land from the former local government area of Evans to the local government area of Oberon:
 - (a) to rezone so much of the land in the local government area of Oberon as is within Zone No 1 (a) Rural “A” under *Interim Development Order No 1—Shire of Evans (the IDO)* to a new Zone No 1 (e) (Rural ‘E’ Zone) under *Oberon Local Environmental Plan 1998 (the 1998 plan)*, and
 - (b) to rezone so much of the land in the local government area of Oberon as is within Zone No 2 Village or Township under the IDO to Zone No 2 (v) (Village Zone) under the 1998 plan, and
 - (c) to provide development controls for the new Zone No 1 (e), and to amend consequentially certain provisions of the 1998 plan in relation to land within that zone and Zone No 1 (a) (Rural ‘A’ Zone).
- (2) This plan also aims to amend the 1998 plan:
 - (a) to update references to the adoption date of relevant parts of *Oberon Development Control Plan 2001* relating to exempt and complying development, and subdivision as a consequence of recent amendments to that plan by Oberon Council, and
 - (b) to insert a provision relating to replacement dwellings, and
 - (c) to replace the provision relating to bushfire hazards, and
 - (d) to effect minor law revision.

3 Land to which plan applies

This plan applies to all land within the local government area of Oberon, as shown edged heavy black on Sheets 1–3 of the map marked “Oberon Local Environmental Plan 1998 (Amendment No 4)” deposited in the office of the Oberon Council, being such of the land within the local government area of Oberon as was subject to *Interim Development Order No 1—Shire of Evans* immediately before the commencement of this plan.

4 Amendment of Interim Development Order No 1—Shire of Evans

Interim Development Order No 1—Shire of Evans is amended as set out in Schedule 1.

5 Amendment of Oberon Local Environmental Plan 1998

Oberon Local Environmental Plan 1998 is amended as set out in Schedule 2.

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Schedule 1 Amendment of Interim Development Order No 1—Shire of Evans

**Schedule 1 Amendment of Interim Development
Order No 1—Shire of Evans**

(Clause 4)

[1] Clause 1 Citation and application

Insert after clause 1 (2):

- (3) This order does not apply to land in the local government area of Bathurst Regional or Oberon.

[2] Clause 2 Interpretation

Omit the definition of *council* from clause 2 (1). Insert instead:

council means the Lithgow City Council.

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(Clause 5)

[1] Clause 6 Definitions

Insert in appropriate order in clause 6 (1):

DCP 2001 means *Oberon Development Control Plan 2001*, as adopted by the Council on 12 December 2006.

[2] Clause 6 (1), definition of “the map”

Insert in appropriate order:

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[3] Clause 6 (4)

Insert after clause 6 (3):

(4) Notes in this plan do not form part of this plan.

[4] Clause 8 Zones indicated on the map

Insert in appropriate order:

Zone No 1 (e) (Rural ‘E’ Zone)—edged heavy black and lettered “1 (e)”.

[5] Clause 9 Zone objectives and development control table

Omit “otherwise than for the purpose of agriculture” from item 1 (b) of the matter relating to Zone No 1 (a) in the Table to the clause.

Insert instead “for purposes other than agriculture”.

[6] Clause 9, Table

Omit “residential flat buildings or shops (other than general stores); sales rooms or showrooms.” from item 4 of the matter relating to Zone No 1 (a).

Insert instead “residential flat buildings; sales rooms or showrooms; shops (other than general stores).”.

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[7] Clause 9, Table

Insert in appropriate order:

Zone No 1 (e) (Rural 'E' Zone)

1 Objectives of Zone

The objectives of this zone are to promote the proper management and utilisation of resources by:

- (a) protecting, enhancing and conserving:
 - (i) agricultural land in a manner which sustains its efficient and effective agricultural production potential, and
 - (ii) soil stability, by controlling and locating development in accordance with land capability, and
 - (iii) forests of existing and potential commercial value for timber production, and
 - (iv) valuable deposits of minerals, coal, petroleum and extractive materials, by controlling the location of development in order to ensure the efficient extraction of those deposits, and
 - (v) trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is likely to control land degradation or is significant to scenic amenity or the natural wildlife habitat, and
 - (vi) water resources, including groundwater, for use in the public interest, preventing the pollution of water supply catchments and water storage, and
 - (vii) areas of significance for nature conservation, including areas with rare plants, wetlands and significant habitats, and
 - (viii) items of archaeological or heritage significance, including Aboriginal relics and places, and

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- (b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture, and
 - (c) facilitating farm adjustments, and
 - (d) minimising the cost to the community of:
 - (i) fragmented and isolated development of rural land, and
 - (ii) providing, extending and maintaining public amenities and services, and
 - (e) controlling and locating dwelling-house development to provide buffers from adjoining agricultural land in order to provide adequate environmental safeguards to the inhabitants and not prejudice future agricultural activity in the near vicinity.

2 Without Development Consent

Development for the purpose of:
agriculture (other than building work and intensive livestock keeping establishments); forestry.

3 Only with Development Consent

Development not included in item 2 or 4.

4 Prohibited

Development for the purpose of:
bulk stores; commercial premises; motor showrooms;
residential flat buildings; sales rooms or showrooms;
shops (other than general stores).

[8] Clause 10 General considerations for development within rural zones

Omit “Zone No 1 (a) or 1 (c)” from clause 10 (1).

Insert instead “Zone No 1 (a), 1 (c) or 1 (e)”.

[9] Clause 10A

Omit the clause. Insert instead:

10A Exempt and complying development

- (1) Development of minimal environmental impact listed as exempt development in Part N of DCP 2001 is *exempt development*, despite any other provision of this plan.

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- (2) Development listed as complying development in Part M of DCP 2001 is ***complying development*** if:
 - (a) it is local development of a kind that can be carried out with consent on the land on which it is proposed, and
 - (b) it is not an existing use, as defined in section 106 of the Act.
- (3) Development is exempt or complying development only if it complies with the development standards and other requirements applied to the development by Part M or N, as the case requires, of DCP 2001.
- (4) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in Part M of DCP 2001, as in force when the certificate is issued.

[10] **Clause 11 Subdivision of land generally**

Omit “Zone No 1 (a) or 1 (c)” from clause 11 (2).

Insert instead “Zone No 1 (a), 1 (c) or 1 (e)”.

[11] **Clause 12A**

Insert after clause 12:

12A Subdivision for the purpose of agriculture in Zone No 1 (e)

- (1) The Council may consent to the creation of an allotment within Zone No 1 (e) of any size if the Council considers that the land is to be used for the purposes of agriculture or forestry.
- (2) Subclause (1) does not authorise the Council to consent to the creation of an allotment with an area of less than 100 hectares if there is or will be a dwelling-house on the proposed allotment.
- (3) The Council must not grant consent under this clause unless:
 - (a) it is satisfied that legal access exists, or can be made available, between the proposed allotment and an existing public road, and
 - (b) it is satisfied, having regard to documentary evidence provided by a qualified agricultural economist, that the proposed allotment is capable of sustaining development for the purposes of agriculture or forestry.

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- (4) Before granting consent under this clause, the Council must consider the effect of creating the proposed allotment:
- (a) on the existing and potential capability of the land and adjacent land to produce food or fibre or to be used for any other agricultural purposes, and
 - (b) on any development being carried out on adjoining land, and
 - (c) on the natural environment, including water resources, and
 - (d) on vegetation, timber production, land capability (including soil resources and soil stability) and water resources (including the availability, quality and stability of watercourses and ground water storage and riparian rights), and
 - (e) on the protection of areas of significance for nature conservation or of high scenic or recreational value, and
 - (f) on the potential for land use conflict with adjoining or adjacent uses where future development on the proposed allotment is likely to inhibit or give rise to complaints about normal farming or forestry practices (such as pesticide spraying, noxious weeds and feral animal control, bushfire hazard reduction, noise, harvesting, noxious odours and the like).

[12] Clause 16

Omit the clause. Insert instead:

16 Control of subdivision for other purposes in Zone No 1 (a) or 1 (e)

- (1) Despite clauses 12, 12A, 13 and 14, the Council may consent to the creation of an allotment of any size in Zone No 1 (a) or 1 (e) if it is satisfied that:
- (a) the allotment is being or will be used for a land use (other than agriculture, forestry or a dwelling-house) permitted on the land in that zone, and
 - (b) the size of the proposed allotment and its future use will be consistent with the objectives of the zone, and
 - (c) the level of demand for any goods or services that are to be supplied from the allotment, and for any activities that are to be carried out on the allotment, and the extent to which the allotment is proposed to be used to meet that demand, justify the creation of the allotment, and
 - (d) the future use of the allotment will not result in land use conflict or degradation of natural resources, and

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- (e) the creation of the allotment is unlikely to adversely affect the existing and potential capability of the adjoining and adjacent land to be used for other permissible land uses in that zone, and
 - (f) the allotment to be created and any subsequent development on the allotment is unlikely to have the effect of creating a demand for uneconomic provision of services by the Council, and
 - (g) the land is not prime crop and pasture land.
- (2) The Council must not consent to the subdivision of land within Zone No 1 (a) or 1 (e) if it appears that the proposed allotments are intended for use for the purpose of a tourist facility unless it is satisfied that the intended use specifically meets the aims of this plan and no preferable alternative site exists within Zone No 2 (v).
- (3) This clause does not permit the creation of more allotments from an original holding within Zone No 1 (a) than the maximum number permitted by clause 14.

[13] Clause 18A

Insert after clause 18:

18A Dwelling-houses on land in Zone No 1 (e)

- (1) Despite any other provision of this plan, the Council may consent to the erection of a dwelling-house on a vacant allotment within Zone No 1 (e):
- (a) if such consent could lawfully have been given immediately before the commencement of *Oberon Local Environmental Plan 1998 (Amendment No 4)*, or
 - (b) if the allotment has been created for the purpose of a dwelling-house by a subdivision for which consent has been granted since that commencement.
- (2) Such consent may not be granted unless the Council is satisfied that:
- (a) the allotment has an area of at least 100 hectares or will be consolidated with other allotments to create a new allotment of at least 100 hectares, and
 - (b) the use of the dwelling-house will be ancillary to and necessary for use of the land for the purpose of agriculture.

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- (3) A dwelling-house:
- (a) is not to be erected within, or within 100 metres of the high water mark of, a water body listed in Schedule 1, and
 - (b) is not to be erected:
 - (i) less than 150 metres from the boundary of any adjoining allotment of prime crop and pasture land or of other land that is being used for an agricultural activity, or
 - (ii) less than 50 metres from the boundary of any adjoining allotment of land that is not prime crop and pasture land and is not being used for an agricultural activity,unless a buffer between the dwelling-house and the boundary of that allotment is provided in accordance with the provisions of Part B (Subdivision) of DCP 2001.
- (4) Septic effluent from a dwelling-house is not to be discharged within 200 metres of the high water mark of a water body listed in Schedule 1 unless geotechnical and hydrogeomorphological reports satisfy the Council that the land can sustain safe disposal within this area.
- (5) In this clause, *vacant allotment* means an allotment on which no dwelling-house is erected.

[14] Clause 20

Omit the clause. Insert instead:

20 Erection of additional dwelling-houses on land in Zone No 1 (a) or 1 (e)

- (1) Despite any other provision of this plan, the Council may consent to the erection on an allotment within Zone No 1 (a) or 1 (e) of a second dwelling-house or the alteration of an existing dwelling-house to create a second dwelling if the Council is satisfied that:
- (a) the second dwelling-house or second dwelling is to be occupied by a rural worker or a member of the landowner's family, and
 - (b) the additional dwelling-house is located on the same allotment as the existing dwelling-house and the additional dwelling-house will not be capable of being excised by way of transfer of a new or existing title, and
 - (c) no additional access to a public road is required from the allotment, and

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- (d) the allotment has an adequate area and has appropriate topography and geology to facilitate on site effluent disposal, and
 - (e) for a rural worker's dwelling, the nature of the agricultural activity being undertaken on the land requires the rural worker to be on-site as a permanent resident.
- (2) A dwelling-house:
- (a) is not to be erected within, or within 100 metres of the high water mark of, a water body listed in Schedule 1, and
 - (b) is not to be erected:
 - (i) less than 150 metres from the boundary of any adjoining allotment of prime crop and pasture land or of other land that is being used for an agricultural activity, or
 - (ii) less than 50 metres from the boundary of any adjoining allotment of land that is not prime crop and pasture land and is not being used for an agricultural activity,unless a buffer between the dwelling-house and the boundary of that allotment is provided in accordance with the provisions of Part B (Subdivision) of DCP 2001.
- (3) Septic effluent from a dwelling-house is not to be discharged within 200 metres of the high water mark of a water body listed in Schedule 1 unless geotechnical and hydrogeomorphological reports satisfy the Council that the land can sustain safe disposal within this area.
- (4) Nothing in this clause prevents the Council from granting consent to the erection on land within Zone No 1 (a) or 1 (e) of one or more dwelling-houses that are intended to be used as a tourist facility if the Council is satisfied that the proposed development specifically meets the aims of this plan.

[15] Clause 21A

Insert after clause 21:

21A Replacement dwellings

- (1) Despite any other provision of this plan, the Council may grant consent to the erection on land in any zone of a dwelling-house to replace an existing lawfully erected dwelling-house.

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- (2) Such consent may not be granted unless the Council is satisfied that the existing dwelling-house is inhabitable, or has been inhabitable within the 12 months before consent was applied for.
 - (3) Any consent granted under this clause must be granted subject to the condition that, before an occupation certificate is granted for the new dwelling-house, the old dwelling-house:
 - (a) must have been demolished, or
 - (b) must have been altered so as to be no longer usable as a dwelling, or
 - (c) must have become the subject of a consent for some purpose (other than a dwelling) for which development is permitted in the relevant zone.

[16] Clause 24 Development restricted along arterial roads

Omit “Zone No 1 (a) or 1 (c)” from clause 24 (2).

Insert instead “Zone No 1 (a), 1 (c) or 1 (e)”.

[17] Clause 26 Development by Department of Primary Industries

Omit clause 26 (1). Insert instead:

- (1) Nothing in this plan prevents the Department of Primary Industries from carrying out development for the purpose of forestry on land within Zone No 1 (a) or 1 (e).

[18] Clause 26 (2)

Omit “by the Forestry Commission”.

[19] Clause 29

Omit the clause. Insert instead:

29 Bush fire hazard reduction

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

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