



New South Wales

Wagga Wagga Local Environmental Plan 2010 (Amendment No 16)

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*.

ALAN ELDRIDGE, GENERAL MANAGER, WAGGA WAGGA CITY COUNCIL
As delegate for the Minister for Planning

Wagga Wagga Local Environmental Plan 2010 (Amendment No 16)

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is *Wagga Wagga Local Environmental Plan 2010 (Amendment No 16)*.

2 Commencement

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

3 Land to which Plan applies

This Plan applies to land to which *Wagga Wagga Local Environmental Plan 2010* applies and, in particular, to land in North Wagga Wagga, including Lots 11–23, DP 3952, Lots A, B and C, DP 380819 and Lots 26–40, DP 3952.

4 Maps

The maps adopted by *Wagga Wagga Local Environmental Plan 2010* are amended or replaced, as the case requires, by the maps approved by the Minister on the making of this Plan.

Schedule 1 Amendment of Wagga Wagga Local Environmental Plan 2010

[1] Clause 4.1A

Insert after clause 4.1:

4.1A Exceptions to minimum subdivision lot sizes for certain split zones

- (1) The objectives of this clause are as follows:
 - (a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,
 - (b) to ensure that the subdivision occurs in a manner that promotes suitable land use and development.
- (2) This clause applies to each lot (an *original lot*) that contains:
 - (a) land in a residential, business or industrial zone, and
 - (b) land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU6 Transition or Zone E2 Environmental Conservation.
- (3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the *resulting lots*) if:
 - (a) one of the resulting lots will contain:
 - (i) land in a residential, business or industrial zone that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and
 - (ii) all of the land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU6 Transition or Zone E2 Environmental Conservation that was in the original lot, and
 - (b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

[2] Clause 7.1

Omit the clause. Insert instead:

7.1 Restriction on new dwellings at North Wagga Wagga

- (1) The objective of this clause is to prevent intensified residential development on flood planning land in North Wagga Wagga and to control the replacement of, and alterations or additions to, lawfully erected dwellings on that land.
- (2) This clause applies to land identified as a “Special Site” on the North Wagga Wagga Restrictions on New Dwellings Map.
- (3) Despite any other provision of this Plan, development consent must not be granted for the erection of a new dwelling on land to which this clause applies unless the consent authority is satisfied that:
 - (a) the new dwelling is a replacement dwelling, and
 - (b) any habitable floor space contained within the replacement dwelling is above the flood planning level, and
 - (c) any non-habitable floor space below the flood planning level does not create an unreasonable risk of injury to persons or damage to property, and

- (d) adequate arrangements have been made for the demolition and removal of the dwelling it replaces.
- (4) Development consent must not be granted to a development application for the carrying out of alterations or additions to an existing dwelling on land to which this clause applies unless the consent authority is satisfied:
 - (a) that the dwelling as proposed to be altered or added to will be substantially the same as the existing dwelling, and
 - (b) if the existing dwelling does not contain habitable floor space below the flood planning level, the alterations or additions will not create any floor space below the flood planning level, and
 - (c) if the existing dwelling already contains habitable floor space below the flood planning level, the alterations or additions, when taken together with any alterations or additions for which development consent has been granted, will not result in the amount of habitable floor space below the flood planning level created by alterations or additions, exceeding 50 square metres, and
 - (d) if the alterations or additions will raise the height of the floor level of the entire dwelling, the finished floor level of the dwelling will be at or above the flood planning level.
- (5) In determining whether a dwelling as proposed to be altered or added to will be substantially the same as the existing dwelling, the consent authority must have regard to the following matters:
 - (a) the extent to which the structural elements of the existing dwelling (such as the walls, roof and slab footings) will be altered, removed or replaced by the alterations or additions,
 - (b) the extent to which the bulk and scale of the existing dwelling will be changed by the alterations or additions, including any additional amount of floor space or storeys,
 - (c) any other factors that the consent authority considers relevant.
- (6) A reference in subclause (4) (c) to development consent is a reference to a development consent granted under this Plan or *Wagga Wagga Local Environmental Plan 1985* (before its repeal), but does not include a development consent that has been surrendered or has lapsed.
- (7) In this clause:
 - flood planning level** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.
 - replacement dwelling** means a dwelling that is lawfully erected and that replaces:
 - (a) a lawfully erected dwelling on land identified as a “Special Site” on the North Wagga Wagga Restrictions on New Dwellings Map and that was in existence at the commencement of this Plan, or
 - (b) a lawfully erected dwelling that has replaced a dwelling referred to in paragraph (a).

Note. Development for the purpose of alterations or additions to which this clause applies that is exempt or complying development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (in particular, the *Housing Alterations Code* in that Policy) may be carried out as exempt or complying development in accordance with that Policy.

[3] Clauses 7.11 and 7.12

Insert after clause 7.10:

7.11 Airspace operations

- (1) The objectives of this clause are as follows:
 - (a) to provide for the effective and ongoing operation of the Wagga Wagga Airport by ensuring that such operation is not compromised by proposed development that penetrates the Obstacle Limitation Surface for that airport,
 - (b) to protect the community from undue risk from such operation.
- (2) If a development application is received and the consent authority is satisfied that the proposed development will penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for the Wagga Wagga Airport, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application.
- (3) Development consent may be granted for the development if the relevant Commonwealth body advises the consent authority that:
 - (a) the development will penetrate the Obstacle Limitation Surface but it has no objection to its construction, or
 - (b) the development will not penetrate the Obstacle Limitation Surface.
- (4) Development consent must not be granted for the development if the relevant Commonwealth body advises the consent authority that the development will penetrate the Obstacle Limitation Surface and should not be constructed.
- (5) In this clause:

relevant Commonwealth body means the Civil Aviation Safety Authority (established by the *Civil Aviation Act 1988* of the Commonwealth) or any other body, under Commonwealth legislation, that is responsible for approvals for development that penetrates the Obstacle Limitation Surface for Wagga Wagga Airport.

7.12 Development in areas subject to aircraft noise

- (1) The objectives of this clause are as follows:
 - (a) to prevent certain noise sensitive developments from being located near the Wagga Wagga Airport and its flight paths,
 - (b) to assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings,
 - (c) to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport.
- (2) This clause applies to development that:
 - (a) is on land that:
 - (i) is near the Wagga Wagga Airport, and
 - (ii) is in an ANEF contour of 20 or greater, and
 - (b) the consent authority considers is likely to be adversely affected by aircraft noise.

- (3) Before determining a development application for development to which this clause applies, the consent authority:
- (a) must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and
 - (b) must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2000, and
 - (c) must be satisfied that the development will meet AS 2021—2000 with respect to interior noise levels for the purposes of:
 - (i) if the development will be in an ANEF contour of 20 or greater—child care centres, educational establishments, entertainment facilities, hospitals, places of public worship, public administration buildings or residential accommodation, and
 - (ii) if the development will be in an ANEF contour of 25 or greater—business premises, hostels, hotel or motel accommodation, office premises or retail premises.
- (4) In this clause:
- ANEF contour*** means a noise exposure contour shown as an ANEF contour on the Noise Exposure Forecast Contour Map for the Wagga Wagga Airport prepared by the Department of the Commonwealth responsible for airports.
- AS 2021—2000*** means AS 2021—2000, *Acoustics—Aircraft noise intrusion—Building siting and construction*.