

Bingara Local Environmental Plan 1994

[1994-486]



New South Wales

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New South Wales

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New South Wales

Part 1 Preliminary

1 Name of plan

This plan may be cited as *Bingara Local Environmental Plan 1994*.

2 Aims, objectives etc

The general aims of this plan are:

- (a) To encourage the proper management, development and conservation of natural and man-made resources within Bingara by protecting, enhancing or conserving:
 - (i) prime crop and pasture land,
 - (ii) timber, mineral, soil, water and other natural resources,
 - (iii) areas of significance for nature conservation,
 - (iv) areas of high scenic or recreational value, and
 - (v) places and buildings of archaeological or heritage significance, including Aboriginal relics and places, and
- (b) To replace the existing planning controls with a single local environmental plan to help facilitate growth and development with the aims specified in paragraph (a) and which:
 - (i) minimises the cost to the community of fragmented and isolated development of rural land, and
 - (ii) encourages a range of living environments and economic opportunities in accordance with the demand for those environments and opportunities.

3 Land to which plan applies

This plan applies to all land within the area of Bingara as shown on the map, with the boundaries as indicated on the map.

4 Relationship to other environmental planning instruments

Bingara Local Environmental Plan No 1, in so far as immediately before the appointed day it applied to the land to which this plan applies, is repealed.

5 Interpretation

(1) In this plan:

alter, in relation to a heritage item, means:

- (a) make structural changes to the outside of the heritage item, or
- (b) make non-structural changes to the detail, fabric finish or appearance of the outside of the heritage item, not including changes resulting from maintenance of the existing detail, fabric, finish or appearance of the outside of the heritage item.

animal boarding or training establishment means a building or place used for the purpose of keeping, maintaining, receiving or training animals for purposes other than agriculture and includes riding schools, kennels and the like.

appointed day means the day upon which this plan takes effect.

arterial road means the Main Road 63 as shown on the map.

caravan park means land used as a site for moveable dwellings, including tents and caravans or other vehicles used for temporary or permanent accommodation.

Council means the Council of Bingara.

demolition, in relation to a heritage item, means the damaging, defacing, destruction, pulling down or removal of the heritage item in whole or in part.

existing holding means:

- (a) the area of a lot, portion or parcel of land as it was at the appointed day, or
- (b) if, as at the appointed day, a person owned two or more adjoining or adjacent lots, portions or parcels of land, the combined area of those lots, portions or parcels as they were at the appointed day.

floodway means land capable of carrying the main body of floodwaters.

flood liable land means:

- (a) land indicated as flood liable on the Town of Bingara Flood Prone Map, and
- (b) land that would be inundated by the 1 in 100 year flood, as determined by the Council.

heritage item means a building, work, relic, tree or place of heritage significance to

the area of Bingara as described in Schedule 1.

heritage significance means historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance to the area of Bingara.

intensive agriculture means market gardening, mushroom growing, fruit growing, flower growing, intensive livestock keeping or like pursuits.

intensive livestock keeping establishment means a building or place in which or upon which cattle, sheep, goats, poultry or other livestock are held for the purpose of nuturing by a feeding method other than natural grazing and, without limiting the generality of the foregoing, includes:

- (a) feed lots,
- (b) piggeries,
- (c) poultry farms, and
- (d) fish farming (including crustaceans),

but does not include an animal boarding or training establishment or land used for the keeping of livestock or poultry intended solely for personal consumption or enjoyment by the owner or occupier of the land.

maintenance means the continuous protective care of the existing detail, fabric, finish or appearance of the outside of heritage item.

prime crop and pasture land means:

- (a) land within an area identified on a map prepared by or on behalf of the Department of Conservation and Land Management, a copy of which is held in the Office of the Council, as Class I, Class II or Class III or Class IV land, or
- (b) land which is notified by the Director General of the Department of Agriculture by notice published in The Gazette as prime crop land for the purpose of this plan.

recreation area means:

- (a) a children's playground,
- (b) a site used to provide facilities for recreation activities or sporting activities,
- (c) a site used by the Council to provide recreational facilities for the physical, cultural or intellectual welfare of the community, or
- (d) a site used by a body of persons associated for the purpose of the physical, cultural or intellectual welfare of the community to provide recreational facilities for those purposes,

but does not include a racecourse or a showground.

relic means any deposit, object or material evidence (terrestrial or underwater) relating to the use or settlement of the area of Bingara which is 50 or more years old.

the map means the set of maps marked “*Bingara Local Environmental Plan 1994*” numbered “Sheet 1” and “Sheet 2”, as amended by the maps (or specified sheets of the maps) marked as follows:

tree includes saplings, shrubs and scrub but does not include any plant that is a noxious weed within the meaning of the [Noxious Weeds Act 1993](#).

vacant means devoid of dwellings.

(2) A reference in this plan:

- (a) to a building or place used for a purpose includes a reference to a building or place intended to be used for that purpose,
- (b) to a map is a reference to a map deposited in the office of the Council, and
- (c) to land within a zone specified in the Table to Clause 9 is a reference to land shown on the map in the manner indicated in Clause 8 as the means of identifying land of the zone so specified.

6 Adoption of Model Provisions

The [Environmental Planning and Assessment Model Provisions 1980](#), except for:

- (a) the definitions of **arterial road** and **map** in Clause 4 (1), and
 - (b) Clauses 13, 15, 17, 18, 20, 21, 22, 23, 24, 27, 28, 29, 32 and 34,
- are adopted for the purposes of this plan.

7 Consent authority

The Council shall be the consent authority for the purposes of this plan.

Part 2 Zones

8 Zones indicated on the map

For the purposes of this plan, land to which this plan applies shall be within a zone specified hereunder if the land is shown on the map in the manner specified hereunder in relation to that zone.

Zone No 1 (a) (General Rural)—edged heavy black and lettered “1 (a)”.

Zone No 2 (v) (Village)—edged heavy black and lettered “2V”.

Zone No 8 (a) (Existing National Parks and Nature Reserves)—edged heavy black and lettered “8 (a)”.

9 Zone objectives and development control table

- (1) The objectives of a zone are set out in the Table to this Clause under the heading “Objectives of Zone” appearing in the matter relating to the zone.
- (2) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this Clause, the purposes (if any) for which:
 - (a) development may be carried out without development consent,
 - (b) development may be carried out only with development consent, and
 - (c) development is prohibited,are specified under the headings “Without Development Consent”, “Only with Development Consent” and “Prohibited”, respectively, appearing in the matter relating to the zone.
- (3) Except as otherwise provided by this plan, the Council shall not grant consent to the carrying out of development on land to which this plan applies unless the Council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Table

Zone No 1 (a) (General Rural)

1 Objectives of Zone

The objective of this zone is 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,
 - (ii) soil stability by controlling and locating development in accordance with soil capability,
 - (iii) forests of existing and potential commercial value for timber production,
 - (iv) valuable deposits of minerals, coal, petroleum and extractive materials by controlling the location of development for other purposes in order to ensure the efficient extraction of those deposits,

- (v) trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is significant to scenic amenity or natural wildlife habitat or is likely to control land degradation,
 - (vi) water resources for use in the public interest,
 - (vii) areas of significance for nature conservation, including areas with rare plants, wetlands and significant habitat, and
 - (viii) places and buildings of archaeological or heritage significance, including Aboriginal relics and places,
- (b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture,
 - (c) facilitating farm adjustments,
 - (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,
 - (e) providing land for future urban development, for rural residential development and for development for other non-agricultural purposes, in accordance with the need for that development, and
 - (f) providing areas for the establishment of intensive agricultural pursuits and intensive livestock keeping establishments.

2 Without Development Consent

Agriculture (other than ancillary dwellings and intensive livestock keeping establishments); forestry (other than ancillary dwellings and pine plantations).

3 Only with Development Consent

Any purpose other than a purpose included in Item 2.

4 Prohibited

Nil.

Zone No 2 (v) (Village)

1 Objectives of Zone

The objective of this zone is to promote development in the town of Bingara in a manner which is compatible with its urban function.

2 Without Development Consent

Nil.

3 Only with Development Consent

Any purpose other than a purpose included in Item 4.

4 Prohibited

Extractive industries; institutions; intensive livestock keeping establishments; junk yards; mines; offensive or hazardous industries.

Zone No 8 (a) (Existing National Parks and Nature Reserves)

1 Objectives of Zone

The objective of this zone is to permit national parks and nature reserves for conservation, recreational and educational purposes under the [National Parks and Wildlife Act 1974](#).

2 Without Development Consent

Any purpose authorised by the [National Parks and Wildlife Act 1974](#).

3 Only with Development Consent

Nil.

4 Prohibited

Any purpose other than a purpose specified in Item 2.

Part 3 Special provisions

10 General considerations for development within rural zone

- (1) The Council shall not consent to an application to carry out development on land within Zone No 1 (a) unless it has taken into consideration, if relevant, the effect of the carrying out of that development on:
 - (a) the present use of the land, the potential use of the land for the purposes of agriculture and the potential of any of the land which is prime crop and pasture

land for sustained agricultural production,

- (b) vegetation, timber production, land capability (including soil resources stability) and water resources (including the quantity and stability of water courses and ground water storage and riparian rights),
 - (c) the future recovery from known or prospective areas of valuable deposits of minerals, coal, petroleum, sand, gravel or other extractive materials,
 - (d) the protection of areas of significance for nature conservation or of high scenic or recreational value, and places and buildings of archaeological or heritage significance, including Aboriginal relics and places,
 - (e) the cost of providing, extending and maintaining public amenities and services to the site of the development, and
 - (f) future expansion of settlements in the locality.
- (2) As well as the matters referred to in subclause (1), the Council shall take into consideration the effect of the development on adjoining land and on other land in the locality.
- (3) Subclause (1) does not apply to development being:
- (a) an addition to a building or work,
 - (b) development ancillary to a purpose for which consent has been given under this plan, or
 - (c) the erection of a dwelling-house on an allotment of land that the Council is satisfied was created in accordance with this plan for the purpose of a dwelling.

11 Subdivision of land generally

- (1) A person shall not subdivide land to which this plan applies except with the consent of the Council.
- (2) The Council shall not consent to an application to subdivide land within Zone No 1 (a) unless it has obtained all relevant information in relation to, and has made an assessment of:
 - (a) the primary purpose for which each allotment to be created by the subdivision is intended to be used,
 - (b) whether any allotment to be created by the subdivision is intended to be used primarily for the purpose of agriculture, and
 - (c) whether a dwelling is intended to be erected on any allotment to be created by the subdivision and the approximate location of any such dwelling.

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

- (1) This clause applies to land within Zone No 1 (a).
- (2) The Council may consent to the creation of an allotment of any area if the Council is satisfied it will be used for the purpose of agriculture only.
- (3) The Council shall not consent to the creation of an allotment that the Council is satisfied will be used for the purpose of agriculture if the allotment has an area of less than 200 hectares and there is a dwelling on the allotment.
- (4) Notwithstanding subclause (3), the Council may consent to a subdivision excising one but not more than one allotment of an area greater than 1 hectare that the Council is satisfied will be used for the purpose of agriculture from an existing holding and on which a dwelling stands if that dwelling was lawfully erected on that land on or before the appointed day.

13 Subdivision for the purpose of dwellings in Zone No 1 (a)

The Council shall not consent to the creation of an allotment within Zone No 1 (a) which it is satisfied will be used for the purpose of a dwelling-house unless the allotment has an area of not less than 200 hectares.

14 Subdivision for other purposes in Zone No 1 (a)

- (1) The Council shall not consent to an application to subdivide land within Zone No 1 (a) if the Council is satisfied that any allotment to be created by the subdivision is to be used primarily for purposes other than agriculture or a dwelling unless, in the opinion of the Council:
 - (a) none of the land the subject of the application is prime crop and pasture land, and
 - (b) the area of each allotment to be created by the subdivision is appropriate having regard to the purpose for which it is being created.
- (2) Nothing in subclause (1) prevents the Council from granting consent to an application to subdivide land to create an allotment the Council is satisfied is to be used for a purpose other than agriculture or a dwelling if the Council is satisfied that:
 - (a) the purpose for which the allotment is to be used involves the supply of goods or services for which there is a demand in the locality,
 - (b) no other available land in the locality could reasonably be used for that purpose, and
 - (c) the level of demand for goods or services which are to be supplied from the allotment and the extent to which that allotment is proposed to be used to meet that demand justifies the creation of the allotment notwithstanding its agriculture

value.

15 Subdivision for intensive agricultural pursuits in Zone No 1 (a)

The Council shall not consent to an application to subdivide land within Zone No 1 (a) where the Council is satisfied that any allotment to be created is to be used primarily for the purpose of intensive agriculture unless, in the opinion of the Council:

- (a) each allotment to be created for that purpose will be capable of sustaining a range of intensive agriculture,
- (b) sufficient area is available for the accommodation and disposal of any wastes created by the proposed use,
- (c) an adequate water supply is available to service the proposed use, and
- (d) the Council has referred the application to the Director-General of the Department of Agriculture and has taken into consideration any advice received within 28 days of the date of referral.

16 Residential use of rural land

- (1) This clause applies to land within Zone No 1 (a) other than prime crop and pasture land.
- (2) Notwithstanding clause 13, the Council may consent to the subdivision of land to which this clause applies and the erection of a dwelling-house on each allotment created provided that each allotment will have an area of not less than 2 hectares and that the Council is satisfied that the land will be used primarily for residential purposes.
- (3) The Council shall not consent to the subdivision of land as referred to in subclause (2) unless it is satisfied that:
 - (a) the land is within a reasonable distance of a range of social services and facilities,
 - (b) the land has reasonable all weather access to a township of 200 people or more,
 - (c) the land is not subject to significant environmental hazards, such as flooding, bushfire hazards, landslip, subsidence or any other environmental risk, and
 - (d) the proposed site of the dwelling to be erected on the land:
 - (i) has an adequate water supply for fire fighting and domestic uses, and
 - (ii) has adequate provision for the on-site disposal of effluent without detriment to the environment.
- (4) The Council shall advise the Director of Planning on an annual basis of the number

and location of the lots created under this clause. The Council shall not grant consent as referred to in this clause to the creation of more than 20 allotments per calendar year throughout the area of Bingara.

17 Subdivision of land in Zone No 2 (v)

The Council shall not consent to a subdivision of land within Zone No 2 (v) to create an allotment which the Council is satisfied will be used for the purpose of a dwelling-house unless the allotment created is, in the opinion of the Council, suitable for the purpose having regard to the need for adequate disposal of sewage.

18 Dwellings in Zone No 1 (a)

The Council shall not consent to the erection of a dwelling on vacant land within Zone No 1 (a) unless:

- (a) the land has an area of 200 hectares or more, or
 - (b) the land comprises:
 - (i) an existing holding,
 - (ii) an allotment that the Council is satisfied was created in accordance with this plan for a purpose other than agriculture,
 - (iii) an allotment created in accordance with a consent granted before the appointed day, being an allotment on which a dwelling could have been erected immediately before that day, or
 - (iv) an allotment created in accordance with Clause 15 for the purpose of intensive agriculture.
- (2) The Council shall not consent to the erection of a dwelling as referred to in subclause (1) unless:
- (a) adequate arrangements have been made for the provision of vehicular access to the site of the proposed dwelling,
 - (b) the erection of the proposed dwelling will not create or increase ribbon development along a main or arterial road, and
 - (c) adequate public utility services will be available to the land.

19 Erection of additional dwellings in Zone No 1 (a) and 2 (V)

- (1) The Council may consent to the erection of one additional dwelling on land within Zone No 1 (a) or 2 (V) (or the alteration of an existing dwelling to create 2 dwellings) if:
- (a) a dwelling could be erected on the land in accordance with Clause 18 where the

land is within Zone No 1 (a),

(b) no additional access to a public road is required from the land,

(c) separate ownership of the proposed dwelling can only be achieved by a subdivision of the land,

(d) in the opinion of the Council, the additional dwelling will not interfere with the purpose for which the land is being used, and

(e) in the case of land within Zone No 1 (a), the land is not prime crop and pasture land.

(2) The Council shall not consent to the subdivision of land on which one additional dwelling is erected or created in pursuance of this clause except in accordance with this plan.

20 Rural workers' dwelling

Nothing in this plan shall prevent a person, with the consent of the Council, from erecting additional dwellings on land which is within Zone No 1 (a) and is not vacant, if:

(a) it is satisfied that the needs of existing agriculture genuinely require that rural workers reside on the land,

(b) the additional dwellings are located where they will not impair the suitability of the land for agriculture,

(c) any other rural workers' dwellings on the holding are being used by persons substantially engaged in agricultural employment on that land, and

(d) the rural workers are employed by the owner of the land.

21 Applications that must be advertised

(1) The provisions of sections 84 (except subsection (1) (b)), 85, 87 (1) and 90 of the Act apply to and in respect of development for the purposes of the following in the same way as those provisions apply to and in respect of designated development:

(a) boarding houses,

(b) hotels,

(c) motels,

(d) residential flat buildings.

(2) Clause 27 provides for the advertisement of certain development applications relating to certain heritage items.

22 Development along arterial roads

- (1) The Council shall not consent to an application to carry out development on land which has frontage to an arterial road unless:
 - (a) access to that land is provided by a road other than the arterial road, wherever practicable, and
 - (b) in the opinion of the Council, the safety and efficiency of the arterial road will not be adversely affected by:
 - (i) the design of the access to the site of the proposed development,
 - (ii) the emission of smoke or dust from the proposed development, or
 - (iii) the nature, volume or frequency of vehicles using the arterial road to gain access to the site of the proposed development.
- (2) The Council shall not consent to the development of land within Zone No 1 (a) for a purpose of anything listed in Schedule 2 if the site of a building, work, place or land use resulting from the Development will have direct access to:
 - (a) an arterial road, or
 - (b) a road connecting an arterial road, if the access to that road is within 90 metres (measured along the road alignment of the connecting road) of the alignment of the arterial road.

23 Flood liable land

A person shall not erect a building or carry out a work for any purpose on flood liable land except with the consent of the Council.

24 Land subject to bushfire hazards

The Council shall not grant consent to the subdivision of land or to the erection of a building on land which is subject to bushfire hazards by reason of the vegetation on the land or on any adjacent land unless, in the opinion of the Council:

- (a) adequate provision is made for access for fire fighting vehicles,
- (b) adequate safeguards are adopted in the form of fire breaks, reserves and fire radiation zones, and
- (c) adequate water supplies are available for fire fighting purposes.

25 Heritage items

- (1) A person must not, in respect of a building, work, relic, tree or place that is a heritage item:

- (a) demolish or alter the building or work,
- (b) damage or move the relic,
- (c) excavate for the purpose of exposing the relic,
- (d) damage or despoil the place or tree,
- (e) erect a building on or subdivide land on which the building, work or relic is situated or that comprises the place, or
- (f) damage any tree on land on which the building, work or relic is situated or on the land which comprises the place,

except with the consent of the Council.

- (2) The Council shall not grant a consent required by subclause (1) unless it has taken into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the item and any stylistic or horticultural features of its setting.

26 Development in the vicinity of heritage items

The Council shall not grant consent to an application to carry out development on land in the vicinity of a heritage item unless it has made an assessment of the effect the carrying out of that development will have on the heritage significance of the item and its setting.

27 Heritage advertisements and notifications

- (1) Except as provided by this clause, the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of:
 - (a) the demolition of a heritage item, and
 - (b) the use of a building or land referred to in Clause 28 for purpose which, but for that Clause, would be prohibited under this plan,

in the same way as those provisions apply to and in respect of designated development.

- (2) The Council shall not grant consent to an application to demolish a heritage item unless:
 - (a) the Council has notified the Heritage Council of its intention to grant consent, and
 - (b) the Council has taken into consideration any comment made on the application by the Heritage Council within 28 days of the date of notification.
- (3) This Clause does not apply to the partial demolition of a heritage item if, in the opinion of the Council, the partial demolition will be of a minor nature and will not

adversely affect the heritage significance of the heritage item in relation to the environmental heritage of the land to which this plan applies.

28 Conservation incentives

- (1) Nothing in this plan prevents the Council from granting consent to an application for consent to the use, for any purpose, of a building that is a heritage item or the land on which the building is erected, if it is satisfied that:
 - (a) the proposed use would have little or no adverse effect on the amenity of the area, and
 - (b) conservation of the building depends on the Council granting consent as provided by this Clause.
- (2) When considering an application for consent to erect a building on land on which there is situated a building which is a heritage item, the Council may:
 - (a) for the purpose of determining the floor space ratio, and
 - (b) for the purpose of determining the number of parking spaces to be provided on the site,

exclude from its calculation of the floor space of the buildings erected on the land the floor space of the item, but only if the Council is satisfied that the conservation of the building depends on the Council making that exclusion.

29 Aboriginal and archaeological sites

Where the Council has received an application to carry out development on land which, in the opinion of the Council, comprises a potential archaeological site or is of potential archaeological significance, the Council may not grant consent unless:

- (a) the Council has considered an assessment of the archaeological potential of the site or place and the impact of the proposed development on the significance of any relic or place, and
- (b) in the case of a site or place that is identified as being of archaeological significance in an environmental planning instrument, the Council has considered a conservation plan which includes an assessment of how the proposed development would affect the conservation of the site or place, and
- (c) in the case where the significance of a European site would be disturbed or the site would be excavated any necessary excavation permit has been obtained by the applicant under the [Heritage Act 1977](#), and
- (d) the Director General of National Parks and Wildlife has been notified of the proposal in so far as it relates to Aboriginal relics and the Council has considered any matters

raised by National Parks and Wildlife Service within 28 days of the date of notification.

30 Access roads

A person, other than the Council, shall not construct a road which has access to a public road except with the consent of the Council.

Schedule 1 Heritage items

(Clause 5)

- 1 Bingara District Historical Society (formerly Salter's Inn) 16-18 Maitland Street, Bingara (Lot 5, Section 29)
- 2 Court House, 24 Maitland Street, Bingara (Lot 25, DP45284)
- 3 Area near "Windsor" (Site of Myall Creek Massacre) Part Portion 30-33, 130-144, Parish Durham, County Murchison
- 4 Two Bridges over Gwydir River/Halls Creek in township of Bingara
- 5 Stamper Battery at All Nations Hill
Portion 288, Parish Bingara (south end of Hill Street)
- 6 Chinese Cemetery at Upper Bingara—Part Portion 23, Parish Macintyre, County Murchison
- 7 European Cemetery—part Crown land, Parish Macintyre at south boundary of Portion 23 at Gouron Creek
- 8 Former Police Station/Residence in 32 Finch Street, Lot 22, Section 38.

Schedule 2 Access to arterial road

(Clause 22 (2))

- 1 Bulk stores
- 2 Caravan parks
- 3 Car Repair Stations
- 4 Clubs
- 5 Commercial Premises
- 6 Educational Establishments
- 7 Hospitals
- 8 Hotels
- 9 Industries (other than home or rural industries)

- 10 Institutions
- 11 Junk Yards
- 12 Liquid Fuel Depots
- 13 Mines
- 14 Motels
- 15 Places of Public Assembly
- 16 Places of Public Worship
- 17 Recreation Establishments
- 18 Recreation Facilities
- 19 Refreshment Rooms
- 20 Retail Plant Nurseries
- 21 Roadside Stalls
- 22 Saw Mills
- 23 Service Stations
- 24 Stock and Sales Yards
- 25 Transport Terminals
- 26 Warehouses