

Dumaresq Local Environmental Plan No 1 (1985 EPI 229)

[1985-229]



New South Wales

Status Information

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**

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New South Wales

Contents

Part 1 Preliminary	5
1 Name of plan	5
2 Land to which plan applies	5
3 Relationship to other environmental planning instruments	5
4 Aims, objectives etc.....	5
5 Model Provisions	6
6 Interpretation	6
7 Consent authority	9
Part 2 General restrictions on development of land	9
8 Zones indicated on the map	9
9 Zone objectives and development control table.....	10
Part 3 Special provisions	17
Division 1 Subdivision of land	17
10 Subdivisions—Zones Nos 1 (a), 1 (b), 1 (c) and 7 (a)	17
11 Rural-residential subdivision.....	20
12 Subdivision—Zone No 2 (v)	22
12A Subdivision—Zone No 4 (a)	22
Division 2 Erection of buildings	22
13 Dwelling-houses—Zones Nos 1 (a), 1 (b), 1 (c) and 7 (a)	22

14 (Repealed)	24
15 Industrial development—Zones Nos 1 (a), 1 (b), 1 (c), 7 (a) and 10 (a)	24
16 Development in Zone No 6 (a)	24
17 Development—Zone No 7 (a)	24
17A Development near the Armidale Airport.....	25
18 Sound insulation of buildings near aerodromes.....	25
19 Development in the vicinity of the Armidale waste water treatment facility	26
20 Setbacks—Zones Nos 1 (b) and 7 (a)	26
21 Hotels, motels, caravan parks	27
Division 3 Conservation of items of environmental heritage.....	27
22 Items of the environmental heritage	27
23 Conservation incentive relating to heritage items.....	28
24 Heritage Council to be given prior notice of demolition consent.....	29
25 Advertising of heritage applications	29
26 Development in the vicinity of an item of the environmental heritage	29
27 Environmental Heritage Advisory Committee.....	29
Division 4 Miscellaneous.....	30
28 Dedication and contribution	30
29 Acquisition of land within Zones Nos 9 (a) or 9 (b)	30
30 Accommodation of itinerant workers.....	30
31 Community use of school sites etc.....	31
32 Suspension of certain laws etc	31
33 Bus depots.....	31
34 Development of land at Lot 3, DP 545842.....	32
35 Development near zone boundaries.....	32
36 Development for certain additional purposes.....	32
37 Eastlink transmission line through State Forests requires consent.....	33
38 Exempt and complying development	33
39 (Repealed)	33
40 Development of land at Lot 1 DP 34471, Lots 1, 192, 494, 554, 555 and 767 DP 66672, Lot 2 DP 569410 and Lots 41, 42 and 43 DP 755808	33

Schedule 1 Public amenities and services requiring contributions from developers

..... 34

Schedule 2 Items of the environmental heritage..... 34

Schedule 3 Development for certain additional purposes..... 35

Dumaresq Local Environmental Plan No 1 (1985 EPI 229)



New South Wales

Part 1 Preliminary

1 Name of plan

This plan may be cited as *Dumaresq Local Environmental Plan No 1*.

2 Land to which plan applies

This plan applies to all land situated in the Shire of Dumaresq.

3 Relationship to other environmental planning instruments

This plan repeals *Interim Development Order No 1—Shire of Dumaresq*.

4 Aims, objectives etc

(1) The aims of this plan are:

- (a) to provide a mechanism for the management, development and conservation of land within the Shire of Dumaresq,
- (b) to modernise the planning controls for the Shire of Dumaresq in accordance with current practices and the *Environmental Planning and Assessment Act 1979*,
- (c) to provide for the physical, social and economic development of the Shire of Dumaresq,
- (d) to provide for a variety of small rural allotments without restricting the growth of the City of Armidale or the viability of agricultural pursuits,
- (e) to provide areas for industries that cannot be accommodated within the City of Armidale,
- (f) to restrict development in certain areas which would hinder or restrain the future growth of Armidale, destroy the rural character of Armidale or which is otherwise unsuitable due to flooding, steep slopes, or other such factors affecting the land in those areas, and

(g) to conserve and enhance the environmental heritage of the Shire.

(2) The objectives of this plan are set out in the table to clause 9.

5 Model Provisions

The *Environmental Planning and Assessment Model Provisions 1980*, except the definition of **map** in clause 4 (1) and clauses 29, 32 and 36, are adopted for the purposes of this plan.

6 Interpretation

(1) In this plan, except in so far as the context or subject-matter otherwise indicates or requires:

advertisement means any sign, notice, device or representation that advertises or promotes any goods, services or events, and any structure or vessel that is principally designed for, or that is used for, the display of that advertisement, but does not include:

- (a) a business identification sign, or
- (b) a building identification sign, or
- (c) signage the display of which is exempt development, or
- (d) a sign on a vehicle, or
- (e) a traffic sign or traffic control facility.

airport buffer zone means the area within one kilometre of the Armidale Airport and the airport reservation, as shown by cross hatching on the map.

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

building identification sign means a sign that identifies or names a building, and that may include the name of a business or building, the street number of a building, the nature of the business carried on in the building and a logo or other symbol that identifies the business, but that does not include general advertising of products, goods or services.

business identification sign means a sign that indicates no more than the following:

- (a) the name of the person carrying on business at the premises at which the sign is displayed,
- (b) the business carried on by the person at the premises at which the sign is displayed,

(c) the address of the premises,

(d) a logo or other symbol that identifies the business.

class 1 land means land marked “1” on the map entitled “*Shire of Dumaresq Agricultural Suitability*” dated September 1990, identified as the map to which this definition relates and referred to in this subclause as the **agricultural suitability map**.

class 2 land means land marked “2” shown on the agricultural suitability map.

class 3 land means land marked “3” shown on the agricultural suitability map.

council means the Armidale Dumaresq Council.

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

Height Limitation Plan means the plan entitled “*Height Limitation Plan*” approved by the Commonwealth Civil Aviation Authority and held in the office of the council.

hydro-electricity works means works used for the generation of electricity by water flow using gravity as the motive power through the turbine.

item of the environmental heritage means those buildings, works, relics or places of historic, scientific, cultural, social, architectural, archaeological, natural or aesthetic significance for the Shire of Dumaresq:

(a) described in Schedule 2, or

(b) identified in a development control plan.

landfill means land used for the purpose of disposing of waste to fill the land.

landing area means an area of ground suitable for the take-off and landing of aeroplanes and associated aeroplane operations.

Obstacle Limitation Surface Plan means the plan entitled “*Obstacle Limitation Surface Plan*” approved by the Commonwealth Civil Aviation Authority and held in the office of the council.

recreation area means:

(a) a children’s playground,

(b) an area used for sporting activities or sporting facilities,

(c) an area used by the council to provide recreational facilities for the physical, cultural or intellectual welfare of the community, and

- (d) an area used by a body of persons associated together for the purposes of the physical, cultural or intellectual welfare of the community to provide recreational facilities for those purposes, but does not include racecourses and showgrounds.

relic means any deposit, object or material evidence relating to the settlement (including aboriginal habitation) prior to 1 January 1900 of the area of the council.

renovation, in relation to a building or work, means:

- (a) the making of structural changes to the inside or outside of the building or work,
or
- (b) the making of non-structural changes to the fabric or appearance of the outside of the building or work, including changes that involve the repair or the painting, plastering or other decoration of the outside of the building or work.

the map means the map marked “*Dumaresq Local Environmental Plan No 7*”, as amended by the maps (or if any sheets of maps are specified, by the specified sheets of the maps) marked as follows:

Dumaresq Local Environmental Plan No 9

Dumaresq Local Environmental Plan No 15

the relevant complying development DCP provisions means the provisions of Part 2 of Volume A of the document titled *Local Approvals Policy/Development Control Plan 1999*, as adopted by the council on 23 August 1999 and renamed on 25 September 2000, as those provisions have been amended on the following dates:

15 December 2003

the relevant exempt development DCP provisions means the provisions of Part 1 of Volume A of the document titled *Local Approvals Policy/Development Control Plan 1999*, as adopted by the council on 23 August 1999 and renamed on 25 September 2000, as those provisions have been amended on the following dates:

15 December 2003

waste water treatment facility buffer zone means the area within 900 metres of a point on the eastern boundary of portion 77, Parish of Armidale, County of Sandon, 100 metres north of the south-eastern corner of that portion as shown by stippling on the map.

- (2) In this plan, except in so far as the context or subject-matter otherwise indicates or requires, a reference:
- (a) to a building or place used for a purpose includes a reference to a building or place intended to be used for the 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 clause 8 is a reference to land shown on the map in the manner indicated in that clause as the means of identifying land of the zone specified.

7 Consent authority

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

Part 2 General restrictions on development of land

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 Zone)—coloured light brown, edged black and lettered “1 (a)”.

Zone No 1 (b) (Rural (Arterial Road Frontage) Zone)—coloured light brown, edged black and lettered “1 (b)”.

Zone No 1 (c) (Rural (Small Holdings) Zone)—coloured light brown, edged black and lettered “1 (c)”.

Zone No 1 (f) (Rural (Forests) Zone)—coloured light brown, edged black and lettered “1 (f)”.

Zone No 2 (v) (Village Zone)—uncoloured, edged black and lettered “2 (v)”.

Zone No 4 (a) (General Industrial Zone)—coloured purple, edged black and lettered “4 (a)”.

Zone No 5 (a) (Special Uses “A” Zone)—coloured yellow, edged black and lettered “5 (a)”.

Zone No 5 (b) (Special Uses “B” Zone)—coloured blue purple, edged black and lettered “5 (b)”.

Zone No 6 (a) (Open Space (Existing Recreation) Zone)—coloured dark green, edged black and lettered “6 (a)”.

Zone No 7 (a) (Environment Protection (Scenic) Zone)—coloured orange, edged black and lettered “7 (a)”.

Zone No 8 (a) (Existing Parks and Nature Reserves Zone)—uncoloured, edged black and dark green and lettered “8 (a)”.

Zone No 9 (a) (Reservations (Special Uses) Zone)—coloured yellow, edged black and dark green and lettered “9 (a)”.

Zone No 9 (b) (Reservations (Arterial Roads) Zone)—black and white bands between broken black lines.

Zone No 10 (a) (Airport Development)—coloured yellow with red hatching, edged black and lettered “10 (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 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 Zone)

1 Objectives of zone

The objectives of this zone are:

- (a) to encourage agriculture and agricultural related land uses,
- (b) to remove restrictions placed on agricultural enterprises except in relation to the intensive keeping of animals, which requires the council’s consent,
- (c) to allow development for the purpose of landfill in locations considered appropriate by the council.

2 Without development consent

Agriculture (other than pig keeping establishments, poultry farming establishments or feed lots); forestry.

3 Only with development consent

Any purpose other than a purpose included in Item 2 or 4.

4 Prohibited

Boarding houses; motor showrooms; residential flat buildings; shops other than general stores; taverns.

Zone No 1 (b) (Rural (Arterial Road Frontage) Zone)

1 Objectives of zone

The objective of this zone is to allow agriculture and related land uses while restricting the establishment of inappropriate traffic-generating uses along main road frontages.

2 Without development consent

Agriculture (other than pig keeping establishments, poultry farming establishments or feed lots); forestry.

3 Only with development consent

Any purpose other than a purpose included in Item 2 or 4.

4 Prohibited

Boarding houses; bulk stores; car repair stations; commercial premises; junk yards; landfill; liquid fuel depots; motor showrooms; offensive or hazardous industries; residential flat buildings; roadside stalls; shops having direct access to a main or arterial road; taverns; timber yards; transport terminals; warehouses.

Zone No 1 (c) (Rural (Small Holdings) Zone)

1 Objectives of zone

The objective of this zone is to retain prime agricultural land while making provision for rural-residential development in appropriate locations.

2 Without development consent

Agriculture (other than pig-keeping establishments, poultry farming establishments or feed lots); forestry.

3 Only with development consent

Any purpose other than a purpose included in Item 2 or 4.

4 Prohibited

Boarding houses; landfill; landing areas; motor showrooms; residential flat buildings; shops (other than general stores); taverns.

Zone No 1 (f) (Rural (Forests) Zone)

1 Objectives of zone

The objective of this zone is to preserve the existing forests by prohibiting any development other than forestry.

2 Without development consent

Forestry.

3 Only with development consent

Mines.

4 Prohibited

Any purpose other than a purpose included in Item 2 or 3.

Zone No 2 (v) (Village Zone)

1 Objectives of zone

The objective of this zone is to limit development of land to uses that are compatible with residential environments while allowing for the physical, social and economic development of the village area.

2 Without development consent

Nil.

3 Only with development consent

Any purpose other than a purpose included in Item 4.

4 Prohibited

Advertisements; institutions; junk yards; landfill; mines; offensive or hazardous industries.

Zone No 4 (a) (General Industrial Zone)

1 Objectives of zone

The objective of this zone is to cater for industries that cannot be accommodated within the City of Armidale because of their size or requirement to be isolated from other buildings but not to cater for normal service type industries which can be located in industrial areas within the City of Armidale.

2 Without development consent

Nil.

3 Only with development consent

Any purpose other than a purpose included in Item 4.

4 Prohibited

Boarding houses; caravan parks; clubs; drive-in theatres; dwelling-houses and residential buildings (other than those used in conjunction with industry situated on the land on which the industry is conducted); educational establishments; extractive industries; hospitals; hotels; institutions; junk yards; landfill; mines; motels; motor showrooms; places of assembly; places of public worship; professional consulting rooms; residential flat buildings; roadside stalls; shops; stock and sale yards.

Zone No 5 (a) (Special Uses "A" Zone)

1 Objectives of zone

The objective of this zone is to restrict development of the land to the use for which it is presently being used.

2 Without development consent

Nil.

3 Only with development consent

The particular purpose indicated by black lettering on the map.

4 Prohibited

Any purpose other than a purpose included in Item 3.

Zone No 5 (b) (Special Uses “B” Zone)

1 Objectives of zone

The objective of this zone is to restrict the use of land currently used for railway purposes.

2 Without development consent

Railways.

3 Only with development consent

Nil.

4 Prohibited

Any purpose other than a purpose which is included in Item 2.

Zone No 6 (a) (Open Space (Existing Recreation) Zone)

1 Objectives of zone

The objective of this zone is to provide for both active and passive recreational activities.

2 Without development consent

Nil.

3 Only with development consent

Building identification signs; business identification signs; racecourses; recreation areas; showgrounds.

4 Prohibited

Any purpose other than a purpose included in Item 3.

Zone No 7 (a) (Environment Protection (Scenic) Zone)

1 Objectives of zone

The objectives of this zone are to conserve and enhance the ecological, visual, recreational and management values of the hills and ridges whilst allowing carefully controlled rural subdivision to occur.

2 Without development consent

Agriculture (other than pig keeping establishments, poultry farming establishments, feed lots or land clearing).

3 Only with development consent

Any purpose other than a purpose included in Item 2 or 4.

4 Prohibited

Advertisements; boarding houses; bulk stores; car repair stations; commercial premises; junk yards; landfill; landing areas; liquid fuel depots; motor showrooms; offensive or hazardous industries; residential flat buildings; roadside stalls; shops; taverns; timber yards; transport terminals; warehouses.

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

1 Objectives of zone

The objective of this zone is to ensure the preservation of those areas which possess environmental qualities which make them suitable for a national park or nature reserve.

2 Without development consent

Aboriginal areas; historic sites; national parks; nature reserves; State recreation areas.

3 Only with development consent

Nil.

4 Prohibited

Any purpose other than a purpose included in Item 2.

Zone No 9 (a) (Reservations (Special Uses) Zone)

1 Objectives of zone

The objective of this zone is to restrict development on land which will be required for future community facilities.

2 Without development consent

Nil.

3 Only with development consent

The particular purpose indicated by black lettering on the map and any purpose ordinarily incidental or subsidiary to that purpose; drainage; open space; roads; utility installations (other than gas holders or generating works).

4 Prohibited

Any purpose other than a purpose included in Item 3.

Zone No 9 (b) (Reservations (Arterial Roads) Zone)

1 Objectives of zone

The objective of this zone is to restrict development on land which will be required for future arterial roads.

2 Without development consent

Arterial roads; arterial road widening.

3 Only with development consent

Drainage; utility installations (other than gas holders or generating works).

4 Prohibited

Any purpose other than a purpose included in Item 2 or 3.

Zone No 10 (a) (Airport Development Zone)

1 Objectives of zone

The objectives of this zone are:

- (a) to provide for development of the airport and related industries and for activities which complement the airport, and

(b) to prevent ribbon development by preventing any new direct access to the New England Highway.

2 Without development consent

Nil.

3 Only with development consent

Any purpose other than a purpose included in item 4.

4 Prohibited

Car repair stations; junk yards; landfill; mines; motor showrooms; residential buildings (other than those directly related to paragraph (a) of the objectives of the zone); roadside stalls; timber yards.

Part 3 Special provisions

Division 1 Subdivision of land

10 Subdivisions—Zones Nos 1 (a), 1 (b), 1 (c) and 7 (a)

(1) This clause applies to land within Zone No 1 (a), 1 (b), 1 (c) or 7 (a).

(2) In this clause:

existing holding means:

(a) except as provided by paragraph (b), a holding comprising the area of a lot, portion or parcel of land as it was at 26 July 1974, or

(b) where, as at the appointed day, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land, a holding comprising the aggregation of the areas of those lots, portions or parcels as they were as at 26 July 1974.

(3) Land to which this clause applies shall not be subdivided without the consent of the council.

(4) The council may consent to an application to subdivide land to which this clause applies if each separate allotment of land to be created by the subdivision will have:

(a) where the allotment will front a main road, a frontage to that road of not less than 400 metres, and

(b) a ratio of depth to frontage satisfactory to the council having regard to the purpose for which the allotment is or is intended to be used, and

(c) in the case of land within Zone No 1 (a) or 1 (b), an area of not less than 200

hectares, and

(d) in the case of land within Zone No 1 (c), an area of not less than 40 hectares, and in the case of land within Zone No 7 (a):

(i) an area of not less than 40 hectares, or

(ii) an area of not less than 4 hectares, if the land is identified on the map marked "*Dumaresq Local Environmental Plan No 9*".

(5)

(a) The council may consent to an application to subdivide land within Zone No 1 (a), 1 (b) or 1 (c) for the purpose of creating an allotment of less than 200 hectares but not less than 2 hectares if the council is satisfied that:

(i) the allotment is intended to be used for the purpose of specialised or intensive agriculture, and is of a size capable of being used for that purpose,

(ii) creation of the allotment will not adversely affect the agricultural viability or potential of the residue of the land subdivided and the residue is capable of economically supporting an agricultural use of a type common in the locality,

(iii) the proposed use to which the allotment will be put is economically viable, having regard to the size and layout of the allotment,

(iv) an adequate water supply is available, or can be made available to the proposed allotment and is of a suitable capacity for the proposed use,

(v) adequate all-weather vehicular access is available, or can be made available, to the allotment,

(vi) the proposed use will not adversely affect the amenity of the land surrounding the proposed allotment, and

(vii) where the allotment will have a frontage to a main or arterial road, the frontage to that road will be not less than 200 metres.

(b) In determining an application to subdivide land pursuant to this subclause, the council may require supporting evidence to demonstrate the economic viability of the proposed use and the advice of the Director-General of the Department of Agriculture.

(5A) The council shall not consent to a subdivision of land identified on the map marked "*Dumaresq Local Environmental Plan No 9*" where the consent would result in the total number of allotments of land within zones Nos 1 (c) and 7 (a) that have an area of less than 40 hectares exceeding the number specified by the council and agreed to by the Director.

- (6) The council may grant consent to an application to subdivide land within Zone No 1 (a), 1 (b), 1 (c) or 7 (a) so as to create an allotment of less than 200 hectares if the council is satisfied that:
- (a) the allotment is intended to be used for a purpose (other than agriculture or a dwelling-house) for which it may be used without or with development consent,
 - (b) the ratio of depth to frontage of the allotment is satisfactory having regard to the purpose for which the allotment is intended to be used, and
 - (c) where the allotment will have a frontage to a main road or arterial road, the frontage will be not less than 200 metres.
- (7) The council may consent to an application to subdivide land to which this clause applies for the purpose of creating one (but not more than one) allotment from an existing holding having an area of not less than 40 hectares and on which a dwelling-house stands if that dwelling-house was legally erected on that land on or before the day on which *Dumaresq Local Environmental Plan No 7* took effect and if the council is satisfied that:
- (a) the allotment to be created and on which the dwelling-house will stand will have an area of not less than 1 hectare and not more than 4 hectares,
 - (a1) the existing holding has been in continual ownership of members of the same family since 26 July 1974,
 - (b) creation of the allotment will not adversely affect the agricultural viability or potential of the residue of the land subdivided and the residue is capable of economically supporting an agricultural use of a type common in the locality,
 - (c) adequate all-weather vehicular access is available, or can be made available, to both allotments, and
 - (d) where the allotment will have a frontage to a main or arterial road, the frontage to that road will be not less than 200 metres.
- (8)
- (a) Notwithstanding the provisions of this clause, the council may consent to an application to subdivide land for the purpose of transferring land to an adjoining landowner where the subdivision will not result in creation of any additional allotments.
 - (b) In considering whether to grant consent pursuant to this subclause the council shall take into consideration the effect of the subdivision on the agricultural use or potential agricultural use of the land.
- (9) The council shall not grant consent in respect of an application to subdivide land to

which this clause applies so as to create an allotment other than an allotment referred to in subclause (4), (5), (6), (7) or (8).

11 Rural-residential subdivision

- (1) This clause applies to land within Zone No 1 (c).
- (2) Land to which this clause applies shall not be subdivided without the consent of the council.
- (3) Notwithstanding the provisions of clause 10, the council may consent to an application to subdivide land to which this clause applies for the purpose of creating allotments of less than 40 hectares but not less than 1.2 hectares.
- (4) The council shall not consent to an application to subdivide land to which this clause applies unless:
 - (a) the land the subject of the application has an area of not less than 15 hectares,
 - (b) the total number of allotments to be created by the subdivision is not less than 5,
 - (c) the average area of the allotments to be created by the subdivision is not less than 2 hectares,
 - (d) not more than one third by number of the allotments in the subdivision are less than 2 hectares,
 - (e) the land is provided with a reticulated water supply or some other system that is acceptable to the council,
 - (f) adequate public utility services are available to the land,
 - (g) there is no means of vehicular access from a main or arterial road to any allotment to be created by the subdivision,
 - (h) the land is not within the airport or waste water treatment facility buffer zones,
 - (i) the land is not flood prone or subject to significant storm water runoff, and
 - (j) a soil erosion and sediment control plan which satisfies the Soil Conservation Branch of the Department of Conservation and Land Management is provided to the council,
 - (k) the land is not class 1 land or class 2 land, and
 - (l) the land is not class 3 land, except where the Council, after having consulted the Director-General of the Department of Agriculture, has certified that the land is not of merit for agricultural uses.

- (5) In considering whether to grant consent to a subdivision pursuant to this clause the council shall have regard to:
- (a) whether reticulated water services are able to be provided to the land and, if unavailable, the capacity of the land to provide an adequate domestic water supply,
 - (b) the ability of the land to accommodate septic disposal of household waste,
 - (c) the standard and capacity of public roads serving the land and the likely volume of traffic to be generated as a consequence of the density of the subdivision and the means available to improve roads to a standard appropriate to the level of traffic likely to be generated,
 - (d) the availability of other utility services and social services and the likely demand for those services and the cost of their provision,
 - (e) the likely impact the subdivision and subsequent building development will have on the land, particularly in relation to potential soil erosion and land degradation and the need for the developer to supply the council with a soil erosion and sediment control plan,
 - (f) the nature and topography of the land as related to the density of subdivision and land capability,
 - (g) the need to maintain a semi-rural character in the area,
 - (h) the potential of the land for agricultural production and the effect of the subdivision on the agricultural potential and whether the proposal might unduly fragment or isolate agricultural land or might lead to conflict with agricultural operations on surrounding land,
 - (i) the effect of the development on the future expansion of urban areas either in Dumaresq Shire or Armidale City,
 - (j) the risk of bushfire damage to the development or surrounding land,
 - (k) the effect of the development on any sources of extractive material or the likely conflict between the development and existing or potential extractive industry development,
 - (l) the probability of there being Aboriginal deposits on the land, and
 - (m) the previous use of the land and the likelihood of any residual contamination from that previous usage.
- (6) The council shall not consent to an application for consent to a subdivision referred to in this clause where that consent would result in the total number of allotments

created under this clause exceeding the number specified by the council and agreed to by the Director.

- (7) The council is not to consent under this clause to a development application for consent to subdivide land within Zone No 1 (c) if the application is made after the commencement of *Dumaresq Local Environmental Plan No 14*.

12 Subdivision—Zone No 2 (v)

- (1) This clause applies to land within Zone No 2 (v).
- (2) Land to which this clause applies shall not be subdivided without the consent of the council.
- (3) The council shall not consent to an application to subdivide land to which this clause applies unless each separate allotment to be created by the subdivision will have an area of not less than 1000 square metres.

12A Subdivision—Zone No 4 (a)

- (1) This clause applies to land within Zone No 4 (a).
- (2) Land to which this clause applies shall not be subdivided without the consent of the council.
- (3) The council shall not consent to an application for consent to subdivide land to which this clause applies unless it is satisfied that:
 - (a) there will be no vehicular access from a main or arterial road to any allotment to be created by the subdivision, and
 - (b) the standard and capacity of public roads serving the land are satisfactory having regard to the likely volume of traffic to be generated as a consequence of the density of the subdivision, or means are available to improve roads to a standard appropriate to the level of traffic likely to be generated.

Division 2 Erection of buildings

13 Dwelling-houses—Zones Nos 1 (a), 1 (b), 1 (c) and 7 (a)

- (1) This clause applies to land within Zone No 1 (a), 1 (b), 1 (c) or 7 (a).
- (2) A dwelling-house may, with the consent of the council, be erected on land to which this clause applies if the land:
 - (a) has an area of not less than 40 hectares if it is in Zone No 1 (c) or 7 (a),
 - (a1) has an area of not less than 200 hectares if it is in Zone No 1 (a) or 1 (b), or
 - (a2) has an area of not less than 4 hectares if it is in Zone No 7 (a) and is identified on

the map marked “*Dumaresq Local Environmental Plan No 9*”,

- (b) comprises the whole of an existing holding within the meaning of clause 10 (2) (or such an existing holding affected only by a subdivision made on or after the appointed day for one or more of the purposes referred to in clause 6 of *State Environmental Planning Policy No 4—Development Without Consent*) which is less than 200 hectares and on which no dwelling-house is erected and the council is satisfied that:
 - (i) there will be adequate vehicular access to the dwelling-house,
 - (ii) the erection of the dwelling-house will not create or increase ribbon development along a main road, and
 - (iii) adequate utility services are or will be available to the existing holding,
 - (c) is an allotment referred to in clause 10 (5) and the council is satisfied that the dwelling-house is ancillary or subsidiary to the present or intended development or use of the land for the purpose of agriculture, or
 - (d) is an allotment lawfully created before the date on which *Dumaresq Local Environmental Plan No 7* took effect, being an allotment on which a dwelling-house could have been erected because of the provisions of Dumaresq Local Environmental Plan No 1, 2, 3, 4, 5 or 6, or
 - (e) is an allotment created under clause 11.
- (3) Notwithstanding subclause (2), the council may consent to the erection of more than one dwelling-house on land to which this clause applies if the council is satisfied that:
- (a) each additional dwelling-house will be occupied by a person employed or engaged by the owner of the land in the use of the land for the purposes of agriculture, and
 - (b) the existing vehicular access from the land to public roads is adequate or that satisfactory access will be provided.
- (4) Notwithstanding subclause (2), a dwelling-house may, with the consent of the council, be erected on an allotment of land to which this clause applies on which another dwelling-house is erected if the firstmentioned dwelling-house is intended to wholly replace the secondmentioned dwelling-house.
- (5) Notwithstanding subclause (2), a dual occupancy may, with the consent of the council, be erected on an allotment of land to which this clause applies.
- (6) For the purposes of subclause (5), **dual occupancy** means:
- (a) in the case of a single allotment of land that cannot be subdivided pursuant to Division 1, two attached dwellings on the single allotment of land, and

- (b) in the case of a single allotment of land that can be subdivided pursuant to Division 1, two dwellings (whether attached or detached) on the single allotment.

14 (Repealed)

15 Industrial development—Zones Nos 1 (a), 1 (b), 1 (c), 7 (a) and 10 (a)

- (1) This clause applies to land within Zone No 1 (a), 1 (b), 1 (c), 7 (a) or 10 (a).
- (2) The council shall not consent to the carrying out of development on land to which this clause applies for industrial purposes unless it is satisfied that:
 - (a) the development could not reasonably be located in Zone No 4 (a) by reason of its proximity to other development or specific needs related to that site, and
 - (b) there are adequate utility services available for that industry.

16 Development in Zone No 6 (a)

The council shall not consent to the carrying out of development on land within Zone No 6 (a), being land owned or controlled by the council, unless the council has made an assessment of:

- (a) the need for the proposed development on that land,
- (b) the impact of the proposed development on the existing or likely future use of the land, and
- (c) the need to retain the land for its existing or likely future use.

17 Development—Zone No 7 (a)

- (1) This clause applies to land within Zone No 7 (a).
- (2) A person shall not demolish or erect a building or work on land to which this clause applies except with the consent of the council.
- (3) The council shall not grant consent under the Act pursuant to subclause (2) in respect of a building or work unless it has made an assessment of:
 - (a) the extent to which the carrying out of the development in accordance with the consent would affect the scenic qualities of the site or the general area,
 - (b) the pitch and form of the roof of any building to be erected, and
 - (c) whether the colour, texture, style, size and type of finish of the materials to be used on the exterior of any building to be erected are compatible with the materials used in the existing buildings on the site and in the area.
- (4) A person shall not carry out development on land to which this clause applies

involving the cutting down or lopping of live trees having a height of 3 metres or more without the consent of the council.

17A Development near the Armidale Airport

- (1) A person shall not, on land within the airport buffer zone:
 - (a) erect a building or structure of a height that exceeds the limitation specified in the Height Limitation Plan, or
 - (b) allow existing trees or vegetation to grow to a height that exceeds the height specified in the Obstacle Limitation Surface Plan, or
 - (c) carry out development for the purposes of:
 - (i) a dam or reservoir (not being a water storage dam for a Public Authority),
 - (ii) the handling or storage of grain,
 - (iii) the disposal of refuse,
 - (iv) an abattoir,
 - (v) a stock and sale yard,
 - (vi) intensive agriculture, or
 - (vii) planting trees, where clearance from natural ground level to the obstacle limitation surface is less than 40 metres,

except with the consent of the Council.

- (2) An application made for development consent to carry out any development described in subclause (1) (a) shall be referred to the Commonwealth Civil Aviation Authority for comment where a proposed building exceeds the height specified in the Obstacle Limitation Surface Plan.
- (3) In considering whether to grant consent to the development referred to in subclause (2), the council shall take into account any comment furnished by the Commonwealth Civil Aviation Authority within 28 days (or such longer period as may be agreed upon from time to time before or after the expiration of the 28 day period) after referral of the application.

18 Sound insulation of buildings near aerodromes

- (1) A person must not, without the consent of the council, erect a building on land within a 20 ANEF contour.
- (2) The council shall not grant consent to an application for consent to the erection of a building intended for human occupation on such land if the council considers that the

frequency of aircraft operation in the locality warrants measures against noise unless the council has taken into consideration the guidelines provided in AS 2021 regarding noise reduction and construction requirements.

(3) In this clause:

ANEF means Australian noise exposure forecast within the meaning of AS 2021.

20 ANEF contour means a noise exposure contour of 20 ANEF shown on a plan or plans of Armidale Airport and surrounding land prepared by the Commonwealth Civil Aviation Authority or other appropriate Commonwealth public authority, a copy of which is retained in the office of the council and available for inspection by the public during office hours.

AS 2021 means the Australian Standard AS 2021—1985(*Acoustics—Aircraft Noise Intrusion—Building Siting and Construction*) published by the Standards Association of Australia on 4 November 1985.

19 Development in the vicinity of the Armidale waste water treatment facility

A person must not erect a dwelling-house, motel or caravan park within the waste water treatment facility buffer zone.

20 Setbacks—Zones Nos 1 (b) and 7 (a)

- (1) A person shall not erect a building on land within Zone No 1 (b) or 7 (a) for a purpose specified in Column 1 of the Table to this clause:
 - (a) in the case of land having a frontage to a main or an arterial road not less than 40 metres in width, where the distance between the building and the nearest alignment of the road is less than the distance set out opposite the purpose in Column 2 of the Table, or
 - (b) in the case of land having a frontage to a main or an arterial road less than 40 metres in width, where the distance between the building and the centreline of the road is less than the distance set out opposite the purpose in Column 3 of the Table.
- (2) Notwithstanding subclause (1), a person may, with the consent of the council, erect a building for a purpose incidental to the use of land for agriculture within such lesser distance than that set out in Column 2 or 3 of the Table as the council may specify where, in the opinion of the council:
 - (a) the levels, depths or other exceptional physical conditions of the site make it necessary or expedient to do so, and
 - (b) the erection of the building will not:
 - (i) cause a traffic hazard, or

- (ii) create or tend to create ribbon development along the main or arterial road to which the site has frontage.

Table

Column 1	Column 2	Column 3
Purpose	Distance in metres from alignment	Distance in metres from centreline
Motel	45	65
Industry	30	50
Any building other than a motel or industry	18	38

21 Hotels, motels, caravan parks

A person shall not erect a hotel, motel or caravan park on land:

- (a) within Zone No 1 (a) unless the area of land is not less than 2 hectares, or
- (b) within Zone No 1 (b) or 7 (a) unless:
 - (i) the area of the land is not less than 4 hectares, and
 - (ii) where the land has frontage to a main or an arterial road, the frontage of the land to the road is not less than 200 metres.

Division 3 Conservation of items of environmental heritage

22 Items of the environmental heritage

- (1) A person shall not in respect of a building, work, relic or place that is an item of the environmental heritage:
 - (a) demolish, renovate or extend the building or work,
 - (b) damage or despoil the relic or any part of the relic,
 - (c) excavate any land for the purpose of exposing or removing the relic,
 - (d) erect a building on the land on which that building, work or relic is situated or the land which comprises that place, or
 - (e) subdivide the land on which that building, work or relic is situated or the land which comprises that place,except with the consent of the council.
- (2) The council shall not grant consent to a development application in respect of an item

of the environmental heritage unless it has made an assessment of:

- (a) the significance of the item as an item of the environmental heritage of the Shire of Dumaresq,
- (b) the extent to which the carrying out of the development in accordance with the consent would affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the item and its site,
- (c) whether the setting of the item, and in particular, whether any stylistic, horticultural or archaeological features of the setting should be retained, and
- (d) where the item is a building:
 - (i) whether the building constitutes a danger to the users or occupiers of that building or to the public,
 - (ii) the colour, texture, style, size and type of finish of any materials to be used on the exterior of the building, the effect which the use of those materials will have on the appearance of the exterior of the building and the similarity of the materials to be used to materials used in other existing buildings in its vicinity,
 - (iii) the style, size, proportion and position of openings for any windows and doors which will result from, or be affected by, the carrying out of the development, and
 - (iv) the pitch and form of the roof, if any.

23 Conservation incentive relating to heritage items

- (1) Nothing in this plan prevents the council from granting consent to the use for any purpose of a building that is an item of the environmental heritage or of the land on which that building is erected where the council is satisfied that:
 - (a) the 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 referred to in this subclause.
- (2) The council, when considering an application to erect a building on land upon which there is a building which is an item of the environmental heritage, may exclude from its calculation of the gross floor area of the buildings erected on the land the gross floor area of the building that is an item of the environmental heritage:
 - (a) for the purpose of determining the floorspace ratio, and
 - (b) for the purpose of determining the number of parking spaces to be provided on the site,

but only if the council is satisfied that the conservation of the building which is an item of the environmental heritage depends upon the council granting consent as referred to in this subclause.

24 Heritage Council to be given prior notice of demolition consent

Where a person makes a development application to demolish a building or work that is an item of the environmental heritage, the council shall not grant consent to that application until the council has notified the Secretary of the Heritage Council of New South Wales of its intention to do so.

25 Advertising of heritage applications

(1) Subject to subclause (2) and pursuant to section 30 (4) of the Act, 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 building or work that is an item of the environmental heritage, and
- (b) the use of a building or land referred to in clause 23 (1) for a purpose which, but for that clause, would be prohibited under this plan,

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

(2) Subclause (1) does not apply to or in respect of an application for consent to the partial demolition of a building or work where, in the opinion of the council, the partial demolition is of a minor nature and does not adversely affect the significance of the building or work as part of the environmental heritage of the Shire of Dumaresq.

(3) For the purposes of subclause (1), section 84 (4) (a) of the Act shall be construed as if the words “, the Department (where the Minister or the Director is not the consent authority)” were omitted therefrom.

26 Development in the vicinity of an item of the environmental heritage

The council shall not consent to the carrying out of development in the vicinity of an item of the environmental heritage unless it has made an assessment of the effect which the carrying out of that development will have on the historic, scientific, culture, social, archaeological, architectural, natural or aesthetic significance of the item of environmental heritage and its setting.

27 Environmental Heritage Advisory Committee

The council, in making an assessment of the matters referred to in this Division, shall consult with the Environmental Heritage Advisory Committee, being a committee appointed by the council to advise on the environmental heritage of the Shire of Dumaresq.

Division 4 Miscellaneous

28 Dedication and contribution

As a consequence of the carrying out of development in accordance with this plan (as in force at the time the development is carried out), this plan identifies a likely increased demand for public amenities and public services as specified in Schedule 1 and stipulates that dedication or a contribution under section 94 (1) of the Act, or both, may be required as a condition of any consent to that development.

29 Acquisition of land within Zones Nos 9 (a) or 9 (b)

(1) The owner of any land within:

(a) Zone No 9 (a), or

(b) Zone No 9 (b),

may by notice in writing require,

(c) the council, or

(d) The Commissioner for Main Roads,

respectively, to acquire that land.

(2) Subject to subclause (3), on receipt of a notice referred to in subclause (1), the public authority concerned shall acquire the land to which the notice relates.

(3) Development may be carried out on land which is within a zone referred to in subclause (1) for any purpose, with the consent of the council, until that land is acquired by the public authority concerned.

(4) The council shall not grant consent as referred to in subclause (3) to the development of land to be acquired by the Commissioner for Main Roads unless it obtains the concurrence of the Commissioner.

(5) In considering whether to grant concurrence under subclause (4), the Commissioner for Main Roads shall take into consideration:

(a) the effect of the proposed development on the costs of acquisition,

(b) the imminence of acquisition, and

(c) the costs, if any, associated with the reinstatement of the land for the purposes for which development will be carried out on the land after acquisition.

30 Accommodation of itinerant workers

Nothing in this plan prevents a person, with the consent of the council, from using any

land for the purpose of a construction camp or to house itinerant workers.

31 Community use of school sites etc

- (1) This clause applies to all land where development for the purposes of schools, colleges or other educational establishments may be carried out.
- (2) Notwithstanding any other provision of this plan, the council may consent to:
 - (a) the community use of the facilities and sites of schools, colleges and other educational establishments,
 - (b) the commercial operation of those facilities and sites, and
 - (c) the carrying out of development for community purposes on land used for the purposes of schools, colleges or other educational establishments, whether or not the development is ancillary to any such purpose.

32 Suspension of certain laws etc

- (1) For the purpose of enabling development to be carried out in accordance with this plan (as in force at the time the development is carried out) or in accordance with a consent granted under the Act:
 - (a) section 314 (1) (c) of, and Schedule 7 to, the *Local Government Act 1919*, and
 - (b) any agreement, covenant or instrument imposing restrictions on the carrying out of development on land to which this plan applies,to the extent necessary to serve that purpose, shall not apply to the development.
- (2) pursuant to section 28 of the Act, before the making of this plan:
 - (a) the Governor approved of subclause (1), and
 - (b) the Minister for the time being administering the provisions of the *Local Government Act 1919*, referred to in that subclause concurred in writing in the recommendation for approval of the Governor of that subclause.

33 Bus depots

- (1) Nothing in this plan prevents a person, with the consent of the council, from using lot 1, DP 200277, as a bus depot.
- (2) The council shall not grant consent under this clause for the carrying out of development for the purposes of a bus depot to service, repair or garage more than 3 buses.
- (3) Development shall not be carried out under this clause unless the location and construction of the entrance to the allotment referred to in subclause (1) has been

approved by the Commissioner for Main Roads.

34 Development of land at Lot 3, DP 545842

- (1) This clause applies to the land to which *Dumaresq Local Environmental Plan No 5* applies, as shown edged heavy black on the map marked "*Dumaresq Local Environmental Plan No 5*" deposited in the office of the Council.
- (2) Subject to subclause (3), nothing in this plan prevents a person, with the consent of the Council, from carrying out development on the land to which this clause applies for the purposes of subdivision into allotments of not less than 2 hectares.
- (3) The Council shall not grant consent to development referred to in subclause (2) after the expiration of two years from the day upon which *Dumaresq Local Environmental Plan No 5* took effect or such later date as the Minister may, before the expiration of that date, notify by order published in the Gazette.
- (4) Nothing in this plan prevents a person, with the consent of the Council, from carrying out development on an allotment of land created in accordance with this clause for the purpose of the erection of a dwelling-house.

35 Development near zone boundaries

- (1) This clause applies to land which is within 100 metres of a boundary between zones.
- (2) A person may, with the consent of the council, carry out development on land to which this clause applies for any purpose for which development may be carried out in the adjoining zone on the other side of that boundary.
- (3) The council shall not grant a consent referred to in subclause (2) unless:
 - (a) the development is necessary, in the opinion of the council, due to design or fencing requirements relating to the development of land to which this plan applies, and
 - (b) an area of land, suitable in the opinion of the council, is provided elsewhere in the immediate vicinity of the development for the purposes for which the land on which that development is carried out is zoned, and
 - (c) the development is consistent with the objectives of both zones.

36 Development for certain additional purposes

- (1) Nothing in this plan prevents a person, with the consent of the council, from carrying out development on land referred to in Schedule 3 for a purpose specified in that Schedule in relation to that land, subject to such conditions, if any, as are so specified.
- (2) Subclause (1) does not affect the application, to or in respect of development to which that subclause applies, of such of the provisions of this plan as are not inconsistent

with that subclause or with a consent granted by the council in respect of the development.

(3) Clauses 15, 17, 18 and 19 of *State Environmental Planning Policy No 64—Advertising and Signage* do not apply to development for the purposes of community promotion and general advertising signage carried out on the following land in accordance with subclause (1) and the conditions specified in Schedule 3 in relation to that development:

(a) Lots 6, 22, 71 and 95, DP 755823, New England Highway (north of Sunnyside Road), and

(b) Lot 270, DP 755811, corner of New England Highway and Kia-Ora Road.

37 Eastlink transmission line through State Forests requires consent

Despite clause 9, development for the purpose of utility installations may be carried out on so much of the land in the Boorolong State Forest and Hillgrove Creek State Forest as is within Zone No 1 (f), but only with development consent.

38 Exempt and complying development

(1) Development of minimal environmental impact listed as exempt development in the relevant exempt development DCP provisions is **exempt development**, despite any other provisions of this plan.

(2) Development listed as complying development in the relevant complying development DCP provisions 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 the relevant exempt development DCP provisions or the relevant complying development DCP provisions, as the case requires.

(4) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in the relevant complying development DCP provisions adopted by the council, as in force when the certificate is issued.

39 (Repealed)

40 Development of land at Lot 1 DP 34471, Lots 1, 192, 494, 554, 555 and 767 DP 66672,

Lot 2 DP 569410 and Lots 41, 42 and 43 DP 755808

Notwithstanding any other provision of this plan:

- (a) subdivision for the purpose of erecting a dwelling on land shown hatched horizontally on the map “*Dumaresq Local Environmental Plan No 17*” is prohibited, and
- (b) nothing in this plan prevents, with Council consent, subdivision for the purpose of erecting a dwelling on land shown edged in heavy black and not hatched on the map marked “*Dumaresq Local Environmental Plan No 17*” where the number of allotments created from all of that land for that purpose is not greater than 8.

Schedule 1 Public amenities and services requiring contributions from developers

(Clause 28)

- 1 Community and recreation facilities.
- 2 Water, sewerage and drainage works.
- 3 Local open space.
- 4 Public carparks.
- 5 Embellishment of local open space and public carparks.
- 6 Roads, traffic management systems and facilities.

Schedule 2 Items of the environmental heritage

(Clauses 22-26)

- 1 Kellys Plains Church,
Kellys Plains, Armidale—portion 850, Parish of Armidale.
- 2 Moore Park Motel,
New England highway, Armidale—lot 24 DP 227113.
- 3 Palmerston homestead, stables, garden and hawthorn hedge,
Dangarsleigh Road, Armidale—Lots 192, 494, 554, 555, and 767 DP 66672 and Lot 2 DP 569410.
- 4 Saumarez Homestead, including outbuildings, gardens, grounds and driveway,
New England Highway, Armidale—portion 121, Parish of Butler.
- 5 Thalgarrah,
Rockvale Road, Armidale—portion 6, Parish of Donald.
- 6 War Memorial,
Dangarsleigh Road, Armidale—portion 107, Parish of Saumarez.
- 7 Woodpark Cottage,

Rowlands Road, Armidale—lot 1, DP 255500.

8 “Roseneath”,
Roseneath Lane, Armidale—lot 1, DP 526699.

Schedule 3 Development for certain additional purposes

(Clause 36)

Column 1	Column 2	Column 3
Land	Additional purposes	Conditions
Portions 75, 76, 113, 114, 116, 117 and 120 and part portion 119, Parish of Armidale, Grafton Road, Armidale	Stock and sale yard	—
Lots 6, 22, 71 and 95 DP 755823 New England Highway (north of Sunnyside Road)	Community promotion and general advertising sign	<ul style="list-style-type: none"> (a) Single, double-sided sign structure, and (b) not exceeding 88 square metres in advertising display area (as defined in State Environmental Planning Policy No 64—Advertising and Signage), and (c) 50% of the advertising display area related to community promotion (including tourism or regional events)
Lot 270, DP 755811, corner New England Highway and Kia-Ora Road	Community promotion and general advertising sign	<ul style="list-style-type: none"> (a) Single, double-sided sign structure, and (b) not exceeding 88 square metres in advertising display area (as defined in State Environmental Planning Policy No 64—Advertising and Signage), and (c) 50% of the advertising display area related to community promotion (including tourism or regional events)