

# Bourke Local Environmental Plan 1998

[1998-706]



New South Wales

## Status Information

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New South Wales

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# Bourke Local Environmental Plan 1998



New South Wales

## Part 1 Preliminary

### 1 Name of plan

This plan may be cited as *Bourke Local Environmental Plan 1998*.

### 2 Aims, objectives etc

The general aims of this plan are:

- (a) to encourage the proper management, development and conservation of natural and other resources within the local government area of Bourke by protecting, enhancing and conserving:
  - (i) prime crop and pasture land, and
  - (ii) timber, minerals, soil, water and other natural resources, and
  - (iii) places and areas of significance for nature conservation, including habitat of threatened species, populations and ecological communities and areas of native vegetation, and
  - (iv) features and places of high scenic or recreational value, and
  - (v) places and buildings of archaeological or heritage significance, including Aboriginal relics and places, and
- (b) to improve the attractiveness and civic image of Bourke and surrounding villages by:
  - (i) improving the appearance and facilities in open space areas, and
  - (ii) improving the streetscape throughout the township, villages and entrances, and
- (c) to facilitate growth and development of the local government area of Bourke in a manner which is consistent with the aims specified in paragraph (a) and which:
  - (i) minimises the cost to the community of fragmented and isolated development of land, and

- (ii) facilitates the efficient and effective delivery of amenities and services, and
  - (iii) facilitates a range of residential and employment opportunities in accordance with demand, and
  - (iv) facilitates farm adjustments, and
  - (v) ensures that the efficiency of arterial roads is not adversely affected by development on adjacent land, and
  - (vi) encourages a mix of land use types where such uses are compatible, and
- (d) to provide flexible planning controls to assist the Council in its administration of planning, and
- (e) to provide suitably zoned land so as:
- (i) to encourage the relocation of inappropriate industrial activities away from residential areas, and
  - (ii) to provide opportunities for industrial development, employment, and economic and enterprise growth, and
  - (iii) to separate transport-related activities from township and residential areas, and
  - (iv) to provide for minor expansion of township areas to meet future urban growth needs, and
  - (v) to minimise conflict due to inappropriate land uses adjoining each other, and
- (f) to facilitate a reasonable standard of development, and
- (g) to encourage a built environment and amenity which is attractive to visitors, residents and investors.

### **3 Land to which plan applies**

This plan applies to all land within the local government area of Bourke as shown on the land use map, with the boundaries indicated on that map.

### **4 Relationship to other environmental planning instruments**

- (1) *Interim Development Order No 1—Shire of Darling*, and such other local environmental plans and deemed environmental planning instruments as applied to the land to which this plan applies immediately before the appointed day, are repealed.
- (2) *Western Division Regional Environmental Plan No 1—Extractive Industries* is amended as set out in clause 5.

## 5 Amendment of **Western Division Regional Environmental Plan No 1—Extractive Industries**

This plan amends *Western Division Regional Environmental Plan No 1—Extractive Industries* by omitting from Schedule 1 the words “*Interim Development Order No 1—Shire of Darling*” and by inserting instead (in alphabetical order) the words “*Bourke Local Environmental Plan 1998*”.

## 6 Definitions

(1) In this plan:

**aerial spraying** means the application or spraying of any substance on to land, water, crops, pastures or vegetation from any aeroplane, helicopter or cropduster, but does not include the application or spraying of water or fire retardant on to a bushfire, scrubfire or wildfire under the supervision of a fire fighting authority or the application or spraying on to land of any substance authorised by a public authority to be used in that way for the benefit of public health.

**agriculture** means horticulture or the use of land for any purpose of husbandry, the keeping or breeding of livestock (otherwise than by use of an intensive livestock keeping establishment), poultry or bees, and the growing of fruit, vegetables, cereals, fibre crops and the like.

**alter** a heritage item means make structural changes to the outside of the heritage item or make non-structural changes to the detail, fabric, finish or appearance of the outside of the heritage item (not including the repair or maintenance of the existing detail, fabric, finish or appearance of the outside of the heritage item).

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

**archaeological site** means a site identified in Part 1 of Schedule 4.

**arterial road** means an existing arterial road indicated on the land use map or a classified road within the meaning of the *Roads Act 1993*.

**artificial water body** means any constructed waterway, canal, inlet, bay, channel, dam, pond or lake, but does not include a dry detention basin or other structure or work that is only intended to hold water intermittently.

**brothel** means premises in or at which a sexual service comprising vaginal, anal or oral intercourse or masturbation is provided for fee or other reward.

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

**Council** means the Council of the local government area of Bourke.

**demolish** a heritage item means damage, deface, destroy, pull down or remove the heritage item in whole or in part.

**dog boarding and training establishment** means a building or place at which more than 2 dogs are kept for fee or other reward or more than 2 dogs are kept for training, racing or coursing, but does not include a building or place at which dogs are kept only to be used for farming purposes on land that is used for agriculture.

**dwelling-house** means a building containing one, but not more than one, dwelling, but does not include a caravan or other moveable dwelling having a gross floor area of 30 square metres or less.

**environmentally sensitive land** means land within Zone No 1 (a) or 1 (c) that has natural, ecological or cultural significance, being land:

- (a) identified in Schedule 6, or
- (b) within 200 metres of or part of any river, creek, defined natural watercourse, lake, swamp, wetland or water body (whether containing water or not), or
- (c) that, in the opinion of the Council, is important for the conservation and protection of:
  - (i) native vegetation, or
  - (ii) protected and threatened species, populations and ecological communities and their habitats (including corridors), or
  - (iii) Aboriginal cultural heritage,and is shown on the map prepared by the Council for the purposes of this definition.

**existing holding** means:

- (a) except as provided by paragraph (b), the area of a lot, portion or parcel of land as it was at 22 January 1996, or
- (b) if, as at 22 January 1996, a person owned or leased two or more adjoining lots, portions or parcels of land, the combined area of those lots, portions or parcels as they were at 22 January 1996.

**farm building** means a hay shed, stock and sale yard, machinery shed, shearing shed, outbuilding or the like.

**flood liable land** means land identified by the Council as being flooded by the 1% flood event and indicated as such on the land use map.

**heritage item** means a building, work, relic or place specified in Schedule 1.



**heritage significance** means historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance.

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

- (a) feed lots, and
- (b) piggeries, and
- (c) poultry farms, and
- (d) places used for fish farming (including the farming of crustaceans and oysters),

but does not include land having an area of at least 600 square metres used for the keeping of up to 20 head of poultry intended solely for the personal consumption or enjoyment by the owner or occupier of the land.

**landforming** means works associated with agriculture that involve the process of adjusting or altering the natural formation or surface of land, and includes the construction of levees, drains, channels and dams.

**land use map** means the set of sheets comprising the map marked “*Bourke Local Environmental Plan 1998*”, as amended by the maps (or the specified sheets of the maps) marked as follows:

**native vegetation** means vegetation that is indigenous to the State, including trees, shrubs, understorey and native grasslands.

**nature conservation area** means an area described in Schedule 5.

**potential archaeological site** means a site identified in Part 2 of Schedule 4, and includes a site known to the Council to have archaeological potential even if it is not so identified.

**prime crop and pasture land** means land within an area identified on a map prepared by or on behalf of the Director-General of the Department of Agriculture, deposited in the office of the Department of Agriculture and a copy of which is deposited in the office of the Council, as Class 1, Class 2 or Class 3 or as land meant for special agricultural uses, but does not include land which the Director-General of that Department has notified the Council in writing is not prime crop or pasture land for the purposes of this plan.

**recreational area** means:

- (a) a children’s playground, and

- (b) an area used for sporting activities or sporting facilities, and
- (c) an area used to provide facilities for recreational activities which promote the physical, social or intellectual welfare of persons within the community, being facilities provided by:
  - (i) a public authority, or
  - (ii) a body of persons associated for the purpose of the physical, social or intellectual welfare of persons within the community,

but does not include a racecourse or a showground.

**relic** means any deposit, object or material evidence (which may consist of human remains) relating to:

- (a) the use or settlement of the local government area of Bourke, not being Aboriginal habitation, which is more than 50 years old, or
- (b) Aboriginal habitation of the area of Bourke whether before or after its occupation by persons of European extraction, not being a handicraft made for sale.

**river** includes:

- (a) a stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream, or
- (b) an affluent, confluent, branch or other stream of water into or from which a stream referred to in paragraph (a) flows.

**threatened plant species** means a plant species specified in Part 1 or 4 of Schedule 1 or in Schedule 2 to the *Threatened Species Conservation Act 1995*.

**tree** includes a sapling or a shrub, but does not include any plant declared under any Act or regulation to be a noxious plant or weed throughout the whole of the State or the local government area of Bourke.

(2) In this plan:

- (a) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for the purpose, and
- (b) a reference to a map is a reference to a map deposited in the office of the Council and available for inspection during office hours.

(3) The list of contents of this plan is not part of this plan.

(4) Clause 29 of the *Environmental Planning and Assessment (Savings and Transitional)*

*Regulation 1998* applies to this plan as if this plan had commenced before 1 July 1998, despite any other provision of this plan.

## 7 Adoption of Model Provisions

- (1) The *Environmental Planning and Assessment Model Provisions 1980*, except for:
  - (a) the definitions of **arterial road**, **dwelling-house** and **map** in clause 4 (1), and
  - (b) item 7 of Schedule 1,are adopted for the purposes of this plan.
- (2) In addition to the exceptions made by subclause (1), nothing in this plan restricts or prohibits or enables the consent authority to restrict or prohibit:
  - (a) the carrying out of works or other development by or on behalf of a public authority for the purposes of the provision or development or maintenance of recreational areas, recreation facilities, landscaping or gardening, and
  - (b) the carrying out of works by or on behalf of the Bush Fire Co-ordinating Committee for the purposes of bushfire hazard reduction.

## 8 Consent authority

The Council is the consent authority for the purposes of this plan.

## Part 2 Zones

### 9 Zones indicated on the land use map

For the purposes of this plan, land to which this plan applies is within a zone specified below if the land is shown on the land use map in the manner specified below in relation to the zone:

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

Zone No 1 (c) (Rural Small Holdings Zone)—edged heavy black and lettered “1 (c)”,

Zone No 2 (v) (Village Settlement Zone)—edged heavy black and lettered “2 (v)”,

Zone No 2 (t) (Township Zone)—edged heavy black and lettered “2 (t)”,

Zone No 3 (c) (Local Business Zone)—edged heavy black and lettered “3 (c)”,

Zone No 4 (a) (Local Industrial Zone)—edged heavy black and lettered “4 (a)”,

Zone No 5 (a) (Special Uses Zone)—edged heavy black and lettered “5 (a)”.

## **10 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 the 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 development (if any) that:
  - (a) may be carried out without development consent, and
  - (b) may be carried out only with development consent, and
  - (c) is prohibited,is 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 must 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 in which the development is proposed to be carried out.

Table

### **Zone No 1 (a) (Rural Zone)**

#### **1 Objectives of the zone**

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

where the conservation of the vegetation is significant to scenic amenity, recreation and protected and threatened species, populations and ecological communities or their habitats (including corridors) or is likely to control land degradation, and

- (vi) water resources for use in the public interest, and
- (vii) areas of significance for nature conservation, including areas with rare, threatened and protected plant species, populations and ecological communities (including native grasslands), wetlands and significant wildlife habitats and corridors, and
- (viii) heritage items and items of archaeological significance, and
- (b) preventing the unjustified development of prime crop and pasture land for land uses other than agriculture, and
- (c) facilitating farm adjustments, and
- (d) minimising the cost to the community of:
  - (i) fragmented and isolated development of rural land, and
  - (ii) providing, extending and maintaining public amenities and services, and
- (e) restricting the type and scale of development in areas likely to be inundated by a 1 in 100 year flood to that which is compatible with the anticipated risk to life and property and to allow such development only where it is unlikely:
  - (i) to significantly reduce the capacity of a flood plain as a temporary storage of flood waters during the passage of a flood, or
  - (ii) to lead to a significant increase in flood damage.

## **2 Without development consent**

Development for the purpose of:

agriculture (other than intensive livestock keeping establishments and irrigated agriculture); farm buildings; forestry (other than pine plantations).

### **3 Only with development consent**

Any development not included in item 2 or 4.

### **4 Prohibited**

Development for the purpose of:

brothels; motor showrooms; residential flat buildings; shops (other than general stores).

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

### **1 Objectives of the zone**

The objectives of the zone are:

- (a) to promote development of land identified as suitable for rural residential or hobby farm purposes:
  - (i) in accordance with the need for that development, and
  - (ii) in a manner which does not unduly interfere with the efficient and effective agricultural use of adjacent land, and
  - (iii) in a manner which does not result in undue inefficiency in the provision of services and facilities, and
- (b) to provide a range and mixture of allotment sizes:
  - (i) to meet various individual needs, and
  - (ii) to ensure that the density of development carried out is compatible with land capability (including soil resources and soil stability), natural constraints and hazards of the land, and
- (c) to conserve trees and other natural vegetation where the conservation of the vegetation is significant to retain scenic amenity or natural habitat or is likely to control land degradation, and
- (d) to enable a range of light industrial and business land uses to be carried out in association with the rural residential or hobby farm use of the land where those industrial or business uses are compatible with the environmental capability of the land and the amenity of the area.

## **2 Without development consent**

Development for the purpose of:

agriculture (other than intensive livestock keeping establishments and irrigated agriculture); farm buildings.

## **3 Only with development consent**

Any development not included in item 2 or 4.

## **4 Prohibited**

Development for the purpose of:

boarding-houses; brothels; caravan parks; commercial premises; extractive industries; hotels; institutions; intensive livestock keeping establishments; junk yards; liquid fuel depots; mines; motels; motor showrooms; offensive or hazardous industries; refreshment rooms; residential flat buildings; sawmills; shops (other than general stores); stock and sale yards.

### **Zone No 2 (v) (Village Settlement Zone)**

#### **1 Objectives of the zone**

The objectives of the zone are:

- (a) to promote development of existing towns and villages which is compatible with their rural service function, and
- (b) to preserve the low-key scale of activities and general residential character of village areas, and
- (c) to allow for non-residential uses which are compatible with adjacent land uses.

#### **2 Without development consent**

No development.

#### **3 Only with development consent**

Any development not included in item 2 or 4.

#### **4 Prohibited**

Development for the purpose of:

brothels; extractive industries; intensive livestock keeping establishments; mines; offensive or hazardous industries.

### **Zone No 2 (t) (Township Zone)**

#### **1 Objectives of the zone**

The objectives of the zone are:

- (a) to promote development in existing towns which is compatible with their rural service function, and
- (b) to preserve the general residential character and amenity of township areas, and
- (c) to allow for non-residential uses which are compatible with adjacent land uses and are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for residential use, and
- (d) to facilitate the provision of a range of residential accommodation appropriate to the diverse needs of the community, and
- (e) to facilitate the relocation of industrial and transport-related activities to more appropriate zones, and
- (f) to encourage tourist-related activities to establish in appropriate locations, and
- (g) to conserve and protect heritage items and the natural environment.

#### **2 Without development consent**

No development.

#### **3 Only with development consent**

Any development not included in item 2 or 4.

#### **4 Prohibited**

Development for the purpose of:



brothels; bulk stores; extractive industries; intensive livestock keeping establishments; junk yards; liquid fuel depots; mines; offensive or hazardous industries; panel beating; road transport terminals; rural industries; sawmills; spray painting; stock and sale yards.

### **Zone No 3 (c) (Local Business Zone)**

#### **1 Objectives of the zone**

The objectives of the zone are:

- (a) to promote development in existing towns which is compatible with their rural service function, and
- (b) to provide a full range of personal, commercial, cultural and social services to the community in appropriate locations, while protecting the character and amenity of township areas, and
- (c) to allow for commercial and retail uses or service and retail uses which are compatible with adjacent land uses and are unlikely to adversely affect residential amenity or place demands on public utility services beyond the level reasonably required for other service, commercial and retail uses, and
- (d) to provide an attractive, compact, safe and convenient shopping and commercial precinct, and
- (e) to encourage a commercial environment that is attractive to tourists and visitors, and
- (f) to prevent activities or industries that, by reason of noise, odour or other impact, detract from the amenity of the area.

#### **2 Without development consent**

Nil.

#### **3 Only with development consent**

Any development not included in item 4.

#### **4 Prohibited**

Development for the purpose of:

extractive industries; intensive livestock keeping establishments; junk

yards; liquid fuel depots; mines; motor vehicle repairs; offensive or hazardous industries; panel beating; road transport terminals; rural industries; sawmills; spray painting; stock and sale yards.

## **Zone No 4 (a) (Local Industrial Zone)**

### **1 Objectives of the zone**

The objectives of the zone are:

- (a) to promote development in existing towns which is compatible with their rural service function, and
- (b) to preserve the small scale of activities and general residential character of township areas, and
- (c) to allow for light industrial and service uses which are compatible with adjacent land uses and are unlikely to adversely affect residential amenity or place demands on public utility services beyond the level reasonably required for residential use, and
- (d) to facilitate the provision of a range of employment opportunities appropriate to the diverse needs of the community, and
- (e) to facilitate the relocation of industrial and transport-related land uses to more appropriate land use zones.

### **2 Without development consent**

Nil.

### **3 Only with development consent**

Any development not included in item 4.

### **4 Prohibited**

Development for the purpose of:

extractive industries; intensive livestock keeping establishments; mines; offensive or hazardous industries; stock and sale yards.

## **Zone No 5 (a) (Special Uses Zone)**

### **1 Objectives of the zone**

The objectives of the zone are:

- (a) to cater for the provision of a full range of community and public facilities, and
- (b) to allow a full range of activities and facilities associated with leisure, sports and recreation, and
- (c) to facilitate the continued viability and expansion of air transport facilities and related activities at the Bourke Airport.

## **2 Without development consent**

Nil.

## **3 Only with development consent**

The particular land use indicated by black lettering on the land use map and any development ordinarily incidental or ancillary to that land use.

## **4 Prohibited**

Any development not included in item 3.

# **Part 3 Special provisions**

## **10A What is exempt and complying development?**

- (1) Development of minimal environmental impact listed as exempt development in *Development Control Plan No 13* as adopted by the Council on 13 December 1999 is **exempt development**, despite any other provision of this plan.
- (2) Development listed as complying development in *Development Control Plan No 13* adopted by the Council on 13 December 1999 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 *Development Control Plan No 13* as adopted by the Council on 13 December 1999.
- (4) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in *Development Control Plan No 13* adopted by the Council, as in force when the certificate is issued.

## **11 General considerations for development in Zone No 1 (a)**

- (1) The Council must not consent to the carrying out of development in Zone No 1 (a) unless it has taken into consideration, if relevant, the effect of carrying out that development on:
  - (a) the present and potential use of the land for the purpose of agriculture and the potential of any land which is prime crop and pasture land for sustained agricultural production, and
  - (b) vegetation, timber production, land capability (including soil resources and soil stability) and water resources (including the quality and stability of water courses and ground water storage and riparian rights), and
  - (c) the future recovery of known or prospective valuable deposits of minerals, coal, petroleum, sand, gravel or other extractive materials, and
  - (d) the protection of areas of significance for nature conservation or of high scenic or recreational value, and
  - (e) the protection of places and buildings of heritage significance, and
  - (f) the cost of providing, extending and maintaining public amenities and services to the site of the proposed development, and
  - (g) any future expansion of settlement in the locality, and
  - (h) the availability, cost and practicability of constructed road access within a dedicated road reserve to the site of the proposed development, and
  - (i) the potential for flooding of the land.
- (2) In addition to the matters listed in subclause (1), the Council must take into consideration the relationship of the proposed development to adjoining land and land uses in the locality.

## **12 Subdivision of land generally**

- (1) Land to which this plan applies must not be subdivided without the consent of the Council.
- (2) The Council must not consent to a subdivision of land within Zone No 1 (a) or 1 (c) unless it has obtained all of the relevant information in relation to, and made an assessment of:
  - (a) the primary purpose for which each allotment to be created by the subdivision is intended to be used, and
  - (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, and
- (d) the availability of constructed road access within a dedicated road reserve to all allotments to be created by the subdivision, and
- (e) the provision of services, including the collection and storage of stormwater.

**13 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 that the Council is satisfied is intended to be used for the purpose of agriculture.
- (3) Before granting consent for a subdivision of land for the purpose of agriculture, the Council must consider the following:
  - (a) if any of the proposed allotments will have an area of less than 2 000 hectares (in the case of a proposed agricultural use) or 20 hectares (in the case of a proposed horticultural or viticultural use)—comments from the Department of Agriculture in relation to the size of the allotments proposed for the intended agricultural, horticultural or viticultural land use, and
  - (b) the effect on the existing and potential capability of the land and adjacent land to produce food or fibre or to be used for other agricultural purposes, and
  - (c) whether access to any proposed allotment can be provided by way of constructed access within a dedicated road reserve to an existing dedicated road reserve, and
  - (d) the effect of the proposed use on adjoining existing development, and
  - (e) the effect of the proposed use on the natural environment, including water resources.

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

The Council may consent to excision of an allotment that the Council is satisfied will be used for the purpose of a dwelling-house from an existing holding within Zone No 1 (a), but only if:

- (a) the allotment excised will have an area of not less than 1 hectare and not more than 10 hectares, and
- (b) sufficient area is available on the allotment for the proper treatment and disposal of liquid wastes to the satisfaction of the Council and in accordance with any appropriate Australian Standard, and

- (c) the excision of the allotment is unlikely to affect adversely the existing and potential capability of the land and adjacent land to produce food or fibre or to be used for other agricultural purposes, and
- (d) the excised allotment will not be comprised of prime crop and pasture land, and
- (e) the allotment will be provided with a constructed road access within a dedicated road reserve.

**15 Subdivision for other purposes in Zone No 1 (a)**

- (1) The Council must not consent to an application to subdivide land within Zone No 1 (a) if any allotment to be created by the subdivision will, in the opinion of the Council, be used primarily for a purpose 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 and the layout of each lot.
- (2) Nothing in subclause (1) prevents the Council from granting consent to an application to subdivide land that will, in the opinion of the Council, 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 proposed to be used involves the supply of goods or services for which there is a demand in the locality, and
  - (b) no other land in the locality could reasonably be used for the purpose, and
  - (c) the level of demand for the 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 despite its agricultural value, and
  - (d) constructed road access will be provided within a dedicated road reserve to all proposed allotments, and
  - (e) the land is capable of supporting the proposed use without adversely affecting the environment of the site or surrounding areas.

**16 Subdivision for the purpose of dwellings in Zone No 1 (c)**

- (1) The Council must not consent to an application to subdivide land within Zone No 1 (c) unless the area of each allotment intended, in the opinion of the Council, to be created for the purpose of a dwelling-house has an area of 1 hectare or more.
- (2) The Council must not grant consent to any such subdivision of land unless it has taken into consideration:

- (a) the land capability (including soil resources and soil stability), natural constraints and hazards of the land to be subdivided in relation to the density and layout of the allotments to be created, and
- (b) the desirability of providing a range and mixture of allotment sizes, and
- (c) whether the design of each allotment to be created by the subdivision is satisfactory for the economic provision of services and its physical suitability for on-site disposal of wastes, and
- (d) the availability or feasibility of a constructed road access within a dedicated road reserve, and
- (e) the availability of power and water supplies.

**17 Subdivision for the purpose of dwellings in Zones Nos 2 (v) and 2 (t)**

- (1) The Council must not consent to an application to subdivide land within Zone No 2 (v) or 2 (t) unless each allotment that the Council is satisfied will be used for the purpose of a dwelling-house has an area of:
  - (a) at least 450 square metres, where reticulated sewerage is available, or
  - (b) at least 1 000 square metres (or such lesser area as, in the opinion of the Council, can contain a dwelling and sufficient open space area to enable proper treatment and disposal in a waste treatment system of liquid wastes generated by use of the site), where reticulated sewerage is not available.
- (2) The Council must not consent to an application to subdivide land within Zone No 2 (v) or 2 (t) unless each allotment to be created by the subdivision will be provided with constructed road access to a dedicated road reserve.

**18 Dwellings in Zone No 1 (a)**

- (1) A person must not erect a dwelling on vacant land within Zone No 1 (a) unless:
  - (a) the land has an area of:
    - (i) 20 hectares or more, where the land is used primarily for horticulture or viticulture, or
    - (ii) 2 000 hectares or more, where the land is not used primarily for horticulture or viticulture, or
  - (b) the land comprises:
    - (i) an allotment created in accordance with this plan for a purpose other than agriculture, or
    - (ii) an allotment created in accordance with a consent granted before the

appointed day, being an allotment on which a dwelling-house could have been lawfully erected immediately before the appointed day, or

(iii) an existing holding.

- (2) On vacant land within Zone No 1 (a), a person may erect a dwelling-house without the consent of the Council if the dwelling is set back at least 500 metres from each road boundary and adjoining allotment boundary and the allotment concerned has an area of 2 000 hectares or more.
- (3) Subclause (2) allows the erection of a dwelling-house only in cases where the allotment has constructed road access provided within a dedicated road reserve.
- (4) In this clause, ***vacant land*** means land on which no dwelling is erected.

#### **19 Dwellings in Zone No 1 (c)**

A person must not erect a dwelling-house on an allotment of land within Zone No 1 (c) unless:

- (a) the allotment has an area of 1 hectare or more, and
- (b) the dwelling-house is 30 metres or more from any land within Zone No 1 (a), and
- (c) the allotment is provided with a safe and practicable constructed access to a dedicated road reserve.

#### **20 Erection of additional dwellings in Zones Nos 1 (a) and 1 (c)**

- (1) The Council may consent to the erection of 1 additional dwelling on land within Zone No 1 (a) or 1 (c) (or to the alteration of an existing dwelling on the land to create 2 dwellings) where:
- (a) a dwelling could be erected on the land in accordance with this plan if the land were vacant, and
- (b) no additional access to a public road is required from the land, and
- (c) the site of the dwelling and its curtilage is not prime crop and pasture land, and
- (d) separate ownership of the proposed dwelling could only be achieved by subdivision of the land, and
- (e) in the opinion of the Council, the dwelling will not interfere with the purpose for which the land is being used, and
- (f) adequate provision is made for an electricity supply, a water supply and effluent disposal.
- (2) The Council must not consent to the subdivision of the land on which an additional



dwelling is erected in pursuance of this clause except in accordance with this plan.

## **21 Dual occupancy in Zones Nos 2 (v) and 2 (t)**

- (1) Subject to this clause, the Council may consent to:
  - (a) the erection of 2 dwellings on a parcel of land within Zone No 2 (v) or 2 (t) on which no dwelling exists, or
  - (b) the erection of 1 additional dwelling on such a parcel, or
  - (c) the alteration of an existing dwelling to create 2 dwellings on such a parcel.
- (2) The Council must not grant such a consent unless:
  - (a) where the dwellings are to be connected to a reticulated sewerage system—the land has an area greater than:
    - (i) 450 square metres, where the dwellings are proposed to be attached, or
    - (ii) 650 square metres, where the dwellings are proposed to be detached, or
  - (b) where domestic liquid effluent is to be disposed of on-site—the Council is satisfied that the liquid effluent can be disposed of on-site in an environmentally acceptable and sustainable manner, and
  - (c) the dwellings are provided with constructed access to a dedicated road reserve.
- (3) The Council must not grant such a consent if it would result in more than 2 dwellings existing on 1 parcel of land.

## **22 Designated development within Zone No 1 (a)**

Despite any other provision of this plan, designated development may be carried out on land within Zone No 1 (a) only with the consent of the Council.

## **23 Development adjacent to Bourke levee**

- (1) Despite any other provision of this plan, development for any purpose must not, without the Council's consent, be carried out on land within Zone No 1 (a) that is within 500 metres of the levee surrounding Bourke township.
- (2) In considering any application for consent required by this clause, the Council must assess the effect of the proposed development on the stability and effectiveness of the levee and how it would affect access to the levee.

## **24 Development applications that must be advertised**

The provisions of sections 84, 85, 86, 87 (1) and 90 of the Act (which provide for the giving of notice, and for the making and consideration of submissions, about proposed

development) apply to and in respect of development specified in Schedule 2 in the same way as those provisions apply to and in respect of designated development.

## **25 Development along arterial roads**

- (1) The Council must not consent to development on land which has frontage to an arterial road, unless:
  - (a) access to the land is provided by a road constructed within a dedicated road reserve other than the arterial road, or
  - (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 proposed development, or
    - (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 proposed development.
- (2) The Council must not consent to the development of land within Zone No 1 (a) or 1 (c) for the purpose of a building, work, place or land use listed in Schedule 3 if the development of the land for that purpose will involve direct access to an arterial road other than access by use of an internally constructed road.
- (3), (4) (Repealed)

## **26 Nature conservation areas**

- (1) In a nature conservation area, a person must not, except with the consent of the Council:
  - (a) destroy a tree, shrub or grass of a species in that area, or
  - (b) destroy, clear or remove a habitat of a protected species of fauna within that area, or
  - (c) erect a building within that area, or
  - (d) clear, drain or fill a wetland or construct a levee on a wetland within that area.
- (2) The Council must not grant consent to a development application required by subclause (1) unless it is satisfied that:
  - (a) the carrying out of development in accordance with the consent will not harm the scientific, natural, aesthetic or ecological significance of the nature conservation area, and
  - (b) effective measures have been adopted to protect terrestrial and aquatic flora and

fauna from the development, and

- (c) refusal to grant consent would constitute a danger to users or occupiers of that land or to the public, and
- (d) the development is authorised under the *National Parks and Wildlife Act 1974* as evidenced by the approval to the proposed development of the Director-General of National Parks and Wildlife.

## **27 Flood liable land**

- (1) Despite any other provision of this plan, a person must not erect a building or carry out a work for any purpose on flood liable land, except with the consent of the Council.
- (2) The aims of this plan in relation to flood liable land are:
  - (a) to minimise the impact of development, visual or otherwise, through careful site planning and to ensure that adequate environmental safeguards are implemented, and
  - (b) to ensure that development of flood prone land does not prejudice the proper function of flood plains or interfere with the free flow of floodwaters and that public safety is properly taken into account, and
  - (c) to ensure that the floor level of those parts of a building used for human habitation are constructed at least 300 millimetres above the 1% flood level and that buildings are designed to withstand the impact of flooding.

## **28 Aims in relation to heritage**

The aims of this plan in relation to heritage are:

- (a) to conserve the environmental heritage of the local government area of Bourke, and
- (b) to integrate heritage conservation into the planning and development control processes, and
- (c) to provide for public involvement in the conservation of environmental heritage, and
- (d) to ensure that any development does not adversely affect the heritage significance of heritage items and their settings.

## **29 Protection of heritage items and relics**

- (1) The following development may be carried out only with development consent:
  - (a) demolishing, defacing, damaging or moving a heritage item, and
  - (b) altering a heritage item or relic by making structural changes to its exterior, and

- (c) altering a heritage item or relic by making non-structural changes to the detail, fabric, finish or appearance of its exterior, except changes resulting from any maintenance necessary for its ongoing protective care which does not adversely affect its heritage significance, and
  - (d) moving a relic, or excavating land for the purpose of discovering, exposing or moving a relic, and
  - (e) erecting a building on, or subdividing, land on which a heritage item or relic is located.
- (2) When determining a development application required by this clause, the Council must take into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or relic.

### **30 Notice of certain heritage development applications**

- (1) Sections 84, 85, 86, 87 (1) and 90 of the Act, as in force on 30 June 1998 (which provided for the giving of notice, and for the making and consideration of submissions, about proposed development) apply to the demolishing, defacing or damaging of a heritage item or relic (and to the use of a building or land referred to in clause 33 for a purpose which, but for that clause, would be prohibited by this plan) in the same way as those provisions applied to designated development.
- (2) Before granting development consent to the demolishing, defacing or damaging of a heritage item, the Council must notify the Heritage Council of its intention to do so and take into consideration any comments received from the Heritage Council within 28 days after the notice is sent.

### **31 Development of known or potential archaeological sites**

- (1) The Council may grant consent to the carrying out of development of an archaeological site that has Aboriginal heritage significance (such as a site that is the location of an Aboriginal place or relic within the meaning of the *National Parks and Wildlife Act 1974*) or a potential archaeological site that is reasonably likely to have Aboriginal heritage significance only if:
- (a) it has considered an assessment of how the proposed development would affect the conservation of the site and any relic known or reasonably likely to be located at the site prepared in accordance with any guidelines for the time being notified to it by the Director-General of National Parks and Wildlife, and
  - (b) it has notified that Director-General of its intention to do so and taken into consideration any comments received from that Director-General within 28 days after the notice was sent, and
  - (c) it is satisfied that any necessary consent or permission under the *National Parks*

*and Wildlife Act 1974* has been granted.

- (2) The Council may grant consent to the carrying out of development on an archaeological site that has non-Aboriginal heritage significance or a potential archaeological site that is reasonably likely to have non-Aboriginal heritage significance only if:
  - (a) it has considered an assessment of how the proposed development would affect the conservation of the site and any relic known or reasonably likely to be located at the site prepared in accordance with any guidelines for the time being notified to it by the Heritage Council, and
  - (b) it has notified the Heritage Council of its intention to do so and taken into consideration any comments received from the Heritage Council within 28 days after the notice was sent, and
  - (c) it is satisfied that any necessary excavation permit required by the *Heritage Act 1977* has been granted.

### **32 Development in the vicinity of heritage items, archaeological sites or potential archaeological sites**

The Council must take into consideration the likely effect of the proposed development on the heritage significance of a heritage item, archaeological site or potential archaeological site, and on its setting, when determining an application for consent to carry out development on land in its vicinity.

### **33 Conservation incentives**

- (1) The Council may grant consent to the use, for any purpose, of a building that is a heritage item or of the land on which the building is erected, even though the use would otherwise be prohibited by this plan, if it is satisfied that:
  - (a) the proposed use would not adversely affect the heritage significance of the item, and
  - (b) the conservation of the building depends on the granting of the consent.
- (2) When considering an application for consent to erect a building on land on which a heritage item is located, the Council may, for the purposes of determining:
  - (a) the floor space ratio, and
  - (b) the number of parking spaces to be provided on the site,exclude the floor space of the building from its calculation of the floor space of the buildings erected on the land, but only if the Council is satisfied that the conservation of the building depends on it making the exclusion.

### **34 Development near aerodromes**

A person must not, on land within 500 metres of a boundary of an allotment containing an aerodrome:

- (a) erect a building or other structure of a height greater than 10 metres, or
- (b) carry out development for the purpose of:
  - (i) a dam or reservoir (not being a water storage dam for a public authority), or
  - (ii) the handling or storage of grain, or
  - (iii) the disposal of refuse, or
  - (iv) an abattoir, or
  - (v) a stock and sale yard, or
  - (vi) intensive agriculture,

except with the consent of the Council.

### **35 Environmentally sensitive land**

- (1) On environmentally sensitive land, a person must not, except with the consent of the Council:
  - (a) destroy, clear or remove native vegetation or the habitat of a protected or threatened species, populations and ecological communities, or
  - (b) erect a building, or
  - (c) clear, drain or fill a wetland or construct a levee on a wetland.
- (2) The Council must not grant consent to a development application required by subclause (1) unless:
  - (a) it is satisfied that effective measures have been incorporated into the proposal to minimise the impact of the proposed development on the environmentally sensitive land after it has considered the following:
    - (i) the impact on the scientific and natural significance of the environmentally sensitive land,
    - (ii) the risk of loss of important vegetation systems, natural wildlife habitats and corridors, including that of threatened species, populations and ecological communities,
    - (iii) the risk of soil erosion or other land degradation,

- (iv) the loss of scenic amenity,
- (v) the risk of disturbance or destruction of Aboriginal relics or places and the impact on the cultural significance of the land,
- (b) it has considered whether or not a refusal to grant consent would result in a danger to users or occupiers of that land or the public.

(3) This clause is subject to clause 36.

### **36 Development not requiring consent**

The consent of the Council is not required for:

- (a) such clearing of land as may be reasonably necessary for the carrying out of development for the purpose of:
  - (i) a fence, being a fence of a permanent nature, or
  - (ii) an access trail, or
  - (iii) a cut line for stock movement, or
  - (iv) a fire break, or
  - (v) a road, or
  - (vi) a telephone, electricity, gas or water line, or
- (b) lopping trees to provide stock feed in times of drought, but only if the method and extent of the lopping ensures the continued survival and health of the trees, or
- (c) clearing growth of trees which are less than 3 metres high on any land which:
  - (i) was lawfully cleared before the appointed day, or
  - (ii) has been cleared in compliance with this clause, or
- (d) pruning trees for the purpose of their regeneration or ornamental shaping, or
- (e) burning undergrowth for the purpose of range land management.

### **37 Stormwater drainage**

- (1) The carrying out of a work that will result in the disposal of stormwater into any river requires the consent of the Council.
- (2) The Council may consent to a work that will result in the disposal of stormwater into a river only if the water will be subjected to measures, satisfactory to the Council, designed to reduce litter, suspended solids, nutrients and other substances that might adversely affect the river.

### **38 Roads, drainage, recreational areas and parking**

- (1) Nothing in this plan prohibits the Council from, or requires the Council to obtain its own consent for, carrying out development on land within any zone for the purpose of roads, stormwater drainage, recreational areas, landscaping, gardening, bushfire hazard reduction, amenities buildings or parking, on land that is not Crown land.
- (2) A person may, with the consent of the Council (except in the case of landscaping and gardening, which may be carried out without consent), carry out development on land within any zone for a purpose referred to in subclause (1).

### **39 Landforming**

- (1) A person must not carry out landforming on land within Zone No 1 (a) except with the consent of the Council.
- (2) The Council must not grant consent to an application to carry out landforming on land within Zone No 1 (a) unless it has made an assessment of:
  - (a) the flood liability of the land, and
  - (b) the likely effect of flooding on adjoining or other land in the locality as a result of the development of the land, and
  - (c) the risk of soil erosion and other land degradation, and
  - (d) the loss of remnant or native vegetation of the habitat of a protected or threatened species, populations and ecological communities, and
  - (e) the means of disposal of waste water, and
  - (f) the likely effect of carrying out the proposed development on the water table, and
  - (g) the likely effect of carrying out the proposed development on Aboriginal relics or places.

### **40 Aerial spraying**

- (1) Consent is required for aerial spraying for each crop cycle on land within Zone No 1 (a), except where the Council has approved an aerial spraying plan for the subject land.
- (2) Aerial spraying is prohibited in each zone other than Zone No 1 (a).

### **41 Irrigated development**

Regardless of any other provision of this plan, the Council's consent is required for:

- (a) any irrigated development, including agriculture involving irrigation, where the proposed development is to be carried out on land that has the benefit of a licence to



irrigate issued under any Act or regulation, and

(b) the construction of the irrigation system required to carry out that development.

## Schedule 1 Heritage items

(Clause 6 (1))

<b>Schedule Item No</b>	<b>Item and Address</b>	<b>Property Description</b>
1	St Ignatius Catholic School and Convent 3-7 Meek Street	Lots 1-4 Section 44 DP 758144 Lots 1-3 Section 44 DP 758144 Parish of East Bourke
2	Towers Drug Co 45 Mitchell Street	Lot 1 DP 984007 Lot 1 DP 984009 Parish of East Bourke
3	Ardsilla 5 Richard Street	Lot 31 DP 609722 Parish of East Bourke
4	Old London Bank 17 Oxley Street	Lot 6 DP 758144 Parish of East Bourke
5	Mulgowan Area Gundabooka	Gundabooka Area within a circle of radius 4 km centred at the 10,000 yard TMGP 377206 Parish of Billa Bulla
6	Darling River	Bourke
7	Toorale Homestead and Outbuildings	South-east of Bourke, off Bourke-Wilcannia Road, on Warrego River, 14 km upstream from Junction with Darling River Parish of Burry Gurry
8	Former Police Sergeant's Residence 38 Mertin Street	Lot 3 Section 15 DP 758144 Parish of East Bourke
9	North Bourke Bridge and approaches Mitchell Highway, North Bourke	Mitchell Highway Parish of East Bourke
10	Carriers Arms Hotel 71 Mitchell Street	Lot 5 Section 2 Parish of East Bourke
11	Former Courthouse and Police Station 53 Oxley Street	Lot 7 Section 2 Parish of East Bourke
12	Fitzgerald Post Office Hotel 28 Oxley Street	Lot 1 DP 514094 Section 6 Parish of East Bourke
13	Bourke Post Office Complex 47 Oxley Street	Lot 21 DP 776435 Parish of East Bourke

14	Byrock Rock Holes Cobar Road, Byrock	Department of Land and Water Conservation reference: Folios Nos: 6874-48011  Parish of Coronga
15	Iona Area—Louth	Located 32 km south-south-west of Iona Homestead and defined as 10,000 yard TMGP: 302187 Parish of Winbar
16	Nochaleche Nature Reserve Wanaaring	Department of Land and Water Conservation reference: Folios Nos:  1-756364 1-750329 2-756374 2-756370 4-750346 4-5343767649 4-9376598  Parish of Gleena, Parish of Otako, Parish of Buntiarra, Parish of Kulkyne
17	Yantabulla Mud Spring Area Yantabulla	25 ha, 1 km north of Yantabulla Portion 162 Parish of Mucruss
18	Central Australian Hotel 59 Anson Street, cnr Richard Street	Section 20 Lot 4 Parish of East Bourke
19	Surveyor MacFarlane's House 9 Church Street	Lot B Section 44 DP 2348 Parish of East Bourke
20	Davidson's Loch and Weir 4 miles below Bourke by River	Lots 1 and 2 DP 917482 Reserve No 23675 Parish of East Bourke
21	General Cemetery Gorrell Avenue	Parish of East Bourke
22	'Tara', 42 Hope Street	Lot 2 DP 904833 Parish of East Bourke
23	'Cottage', 51 Hope Street	Lot 1 DP 908013 Lot 1 DP 908014 Parish of East Bourke
24	'Cottage', 55 Hope Street	Lot 4 DP 318621 Parish of East Bourke
25	'Cottage', 54 Hope Street	Lot 2 Section 21 DP 758144 Parish of East Bourke

26	Police Station (Former Courthouse) 53 Oxley Street	Section 6 Lot 5 Parish of East Bourke
27	Former Cinema 24 Oxley Street	Lot A DP 338566 Parish of East Bourke
28	Bourke Riverside Motel 3 Mitchell Street	Lot 11 Section 23 DP 812819 Parish of East Bourke
29	'Lynwood', 2 Tudor Street	Lots 1-3 DP 309952 Parish of East Bourke
30	Water Tower 13 Wortumertie Street	Section 29 Parish of East Bourke
31	Pera Bore Site Wanaaring Road	Parish of Cooper
32	Courthouse cnr Oxley and Richard Streets	Lot 6 Section 2 Parish of East Bourke
33	Government Offices (Department of Land and Water Conservation) 21 Mitchell Street, Bourke	Lot 6 Section 85 DP 758144
34	Barringun Hotel Kidman Way, Barringun	Lot 9 Section 10

## **Schedule 2 Development applications that must be advertised**

(Clause 24)

- 1 Development for the purpose of conserving, protecting or restoring a heritage item that, in the opinion of the Council, warrants public comment.
- 2 Development for the purpose of residential flat buildings.
- 3 Aerial spraying.
- 4 Development within Zone No 1 (a) on land within 500 metres of the Bourke levee or within any other zone on land within 20 metres of the Bourke levee.
- 5 Development for the purpose of dog boarding and training establishments.
- 6 Development for the purpose of transport terminals.
- 7 Development for the purpose of brothels.
- 8 Development involving the disposal of stormwater into the Darling River.

## **Schedule 3 Development that must not have direct access to an arterial road**

(Clause 25 (2))

Development for the purpose of any of the following:

clubs  
commercial premises  
educational establishments  
hospitals  
hotels  
industries (other than home industries or rural industries)  
institutions  
junk yards  
liquid fuel depots  
mines  
places of assembly  
places of public worship  
roadside stalls  
sawmills  
stock and sale yards  
transport terminals  
warehouses

## **Schedule 4 Archaeological and potential archaeological sites**

(Clause 6 (1))

### **Part 1 Archaeological sites**

The following sites have been identified as archaeological sites:

- 1 Byrock Waterholes
- 2 Gundabooka Mountain and the immediate vicinity
- 3 Mt Oxley
- 4 Any site within the local government area of Bourke recorded on the Aboriginal Sites Register maintained by the National Parks and Wildlife Service.

### **Part 2 Potential archaeological sites**

The following sites have been identified as potential archaeological sites:

- 1 Barwon Basin—(Darling Riverine Plains)
- 2 Cobar Plateau—(Cobar Peneplain)
- 3 Any site within the local government area of Bourke under consideration for recording on the Aboriginal Sites Register maintained by the National Parks and Wildlife Service
- 4 Any site or landscape feature identified by a local Aboriginal Lands Council and notified in writing to the Council as a potential archaeological site.

## **Schedule 5 Nature conservation areas**

(Clause 6 (1))

The following sites have been identified as nature conservation areas:

- 1 Nocoleche Nature Reserve
- 2 Gundabooka National Park

## **Schedule 6 Environmentally sensitive land**

(Clause 6 (1))

The following land has been identified as environmentally sensitive land:

- 1 Land within Zone No 1 (a) and containing natural vegetation identified by the National Parks and Wildlife Service as habitat of a rare and endangered species of flora or fauna.