

Oberon Local Environmental Plan 1998

[1998-138]



New South Wales

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New South Wales

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Oberon Local Environmental Plan 1998



New South Wales

Part 1 Preliminary

1 Name of plan

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

2 Aims, objectives etc

The general aims of this plan are:

- (a) to recognise and promote the Oberon local government area as a desirable and viable place to visit and in which to live and to invest, and
- (b) to encourage the proper management, development and conservation of natural and built resources within the Oberon local government area by protecting, enhancing or conserving:
 - (i) prime crop and pasture land, and
 - (ii) timber, minerals, soil, water and other natural resources, and
 - (iii) areas of significance for nature conservation, and
 - (iv) areas of high scenic or recreational value, and
 - (v) places and buildings of heritage significance, including archaeological and Aboriginal relics and places, and
 - (vi) water catchment areas, and
- (c) to replace planning controls, as they applied to rural land before this plan commenced, with a local environmental plan to help facilitate growth and development of the Oberon local government area in a manner which is consistent with the aims stated in paragraphs (a) and (b) and which:
 - (i) minimises the cost to the community of fragmented and isolated development of rural 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
- (d) to encourage tourism in the Oberon local government area in a manner which is consistent with the aims stated in paragraphs (a) and (b), and
- (e) to encourage agriculture (including forestry) and protect the agricultural base of the Oberon local government area.

3 Land to which plan applies

This plan applies to all land within the Oberon local government area, as shown on the map, with boundaries as indicated on the map, but does not apply to the land subject to *Oberon Local Environmental Plan No 9* or *10*.

4 Relationship to other environmental planning instruments

Interim Development Order No 1—Shire of Oberon and all other local environmental plans and deemed environmental planning instruments that applied to the land to which this plan applies immediately before the appointed day, are repealed, except to the extent they apply to the land subject to *Oberon Local Environmental Plans Nos 9* and *10*.

5 Adoption of Model Provisions

The *Environmental Planning and Assessment Model Provisions 1980* are adopted for the purposes of this plan except for:

- (a) the definitions of **agriculture**, **arterial road**, **commercial premises**, **forestry** and **map** in clause 4 (1), and
- (b) clauses 15, 29, 31, 32 (c), 33 and 34.

6 Definitions

(1) In this plan:

agriculture includes horticulture and the use of land for any purpose of husbandry, the keeping or breeding of livestock, poultry or bees, the growing of fruit or vegetables, and the like.

animal boarding or training establishment means a place for the commercial boarding, breeding, keeping or training of animals, and includes a riding school and a veterinary clinic.

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

archaeological site means a heritage item identified in Part 1 of Schedule 2 as an

archaeological site.

arterial road means an existing road indicated on the map by heavy broken black lines.

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

commercial premises means a building or place used as an office or for other business or commercial purposes, but (in Part 2) does not include a building or place specifically defined for the purposes of this plan, or a building or place to the extent that it is subjected to a land use so specifically defined.

Council means the Oberon Council.

demolish a heritage item or a building, work, relic, tree or place within a heritage conservation area means wholly or partly destroy or dismantle the heritage item or building, work, relic, tree or place.

environmentally sensitive land means land:

- (a) that is identified as rural land capability Class VII or VIII on a map prepared by or on behalf of the Department of Land and Water Conservation, or
- (b) that has a slope or gradient in excess of 1 vertical in 3 horizontal, or
- (c) that is within, or within 100 metres of, the bed or bank of a dam, river, stream, creek or other water body listed in Schedule 1.

flood liable land means land shown diagonally hatched with black lines on the map.

forestry includes arboriculture, silviculture, forest protection, the cutting, dressing and preparation, otherwise than in a saw mill or woodchipper, not including a portable saw mill, of wood and other forest products and the establishment of roads required for the removal of wood and forest products and for forest protection.

heritage conservation area means land indicated as such an area on the map and described in Part 3 of Schedule 2.

heritage item means a building, work, relic, tree or place (which may or may not be situated on or within land that is a heritage conservation area) referred to in Schedule 2 and shown numbered on the map.

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

hydrological catchment has the same meaning as in [Drinking Water Catchments Regional Environmental Plan No 1](#).

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

- (a) a feed lot, or
- (b) a piggery, or
- (c) a poultry farm, or
- (d) fish farming (which may consist of or include farming of crustaceans and oysters),

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

original holding means:

- (a) except as provided by paragraph (b), the land comprised in a lot, portion or parcel of land that existed at 8 May 1996, or
- (b) if, at 8 May 1996, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land, the land comprised in all of those lots, portions or parcels whether or not it has subsequently been consolidated or subdivided,

excluding any allotment with an area of less than 40 hectares that is the subject of a consent for a dwelling or subdivision granted before the appointed day in accordance with clause 11 or 12 (1) of *Interim Development Order No 1—Shire of Oberon*.

potential archaeological site means a site known to the Council to have archaeological potential, even if it is not identified on the map as a heritage item.

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 Council and a copy of which is deposited in the office of that Department, as Class 1, Class 2 or Class 3, or as land of merit 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 and pasture land for the purposes of this plan.

recreation area means:

- (a) a children's playground, or
- (b) an area used for sporting activities or sporting facilities, or
- (c) an area used to provide facilities for recreational activities which promote the physical, cultural 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 purposes of the physical, cultural 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 Oberon local government area, not being Aboriginal habitation, which is more than 50 years old, or
- (b) Aboriginal habitation of the Oberon local government area whether before or after occupation by persons of non-Aboriginal extraction.

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 "*Oberon Local Environmental Plan 1998*" as amended by the maps (or specified sheet of maps) marked as follows:

Editorial note—

The amending maps are not necessarily listed in the order of gazettal. Information about the order of gazettal can be determined by referring to the Historical notes at the end of the plan.

- (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.
- (3) Where, because of the scale of the map or for any other reason, there is a dispute as to whether land has been correctly identified on the map as being flood liable land, land below the 1 in 100 year flood frequency level is, for the purposes of this plan, taken to be flood liable land.

7 Who determines development applications

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

Part 2 Zones

8 Zones indicated on the map

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

Zone No 1 (a) (Rural 'A' Zone)—edged heavy black and lettered "1 (a)".

Zone No 1 (c) (Rural 'C' Zone)—edged heavy black and lettered "1 (c)".

Zone No 1 (d) (Non Urban 'D' Zone)—edged heavy black and lettered "1 (d)".

Zone No 2 (v) (Village Zone)—edged heavy black and lettered "2 (v)".

Zone No 8 (National Parks Zone)—edged heavy black and lettered "8".

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 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 within which the development is proposed to be carried out.

Table

Zone No 1 (a) (Rural 'A' Zone)

1 Objectives of Zone

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

- (a) protecting, enhancing and conserving:

- (i) agricultural land in a manner which sustains its efficient and effective agricultural production potential, and
 - (ii) soil stability, by controlling and locating development in accordance with land capability, and
 - (iii) forests of existing and potential commercial value for timber production, and
 - (iv) valuable deposits of minerals, coal, petroleum and extractive materials, by controlling the location of development in order to ensure the efficient extraction of those deposits, and
 - (v) trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is likely to control land degradation or is significant to scenic amenity or the natural wildlife habitat, and
 - (vi) water resources, including groundwater, for use in the public interest, preventing the pollution of water supply catchments and water storage, and
 - (vii) areas of significance for nature conservation, including areas with rare plants, wetlands and significant habitats, and
 - (viii) items of archaeological or heritage significance, including Aboriginal relics and places, and
- (b) preventing the unjustified development of prime crop and pasture land otherwise than for the purpose of 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) providing land for rural small holdings development and for other non-agricultural uses in accordance with demand for that development and in a manner which has the least adverse impact on prime crop and pasture land, and
 - (f) controlling and locating dwelling-house development to provide buffers

from adjoining agricultural land in order to provide adequate environmental safeguards to the inhabitants and not prejudice future agricultural activity in the near vicinity.

2 Without Development Consent

Development for the purpose of:

agriculture (other than building work and intensive livestock keeping establishments); forestry.

3 Only with Development Consent

Development not included in item 2 or 4.

4 Prohibited

Development for the purpose of:

bulk stores; commercial premises; motor showrooms; residential flat buildings or shops (other than general stores); sales rooms or showrooms.

Zone No 1 (c) (Rural 'C' Zone)

1 Objectives of Zone

The objectives of this zone are:

- (a) to promote the sustainable development of land identified as suitable for rural small holding purposes, and
- (b) to ensure that allotments created for use for rural small holdings are of an area, and subject to arrangements, that:
 - (i) enable the provision of an adequate water supply, and
 - (ii) enable effective disposal of domestic waste, and
 - (iii) minimise the creation of traffic hazards, and
 - (iv) do not contribute to pollution of water supply catchments, and
 - (v) are in accordance with the need for that development, and
 - (vi) do not unduly interfere with the efficient and effective agricultural use of adjacent land, and

- (vii) 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 of significant benefit to scenic amenity or natural wildlife habitats or is likely to control land degradation or is necessary for the maintenance of the quality and quantity of surface water and groundwater resources, and
- (d) to ensure that development is carried out in a way that is sensitive to the environmental characteristics of the land, and
- (e) to minimise the cost to the community of providing, extending and maintaining public amenities and services, and
- (f) to control and locate dwelling-house development to provide buffers from adjoining agricultural land in order to provide adequate environmental safeguards to the inhabitants and not prejudice future agricultural activity in the near vicinity, and
- (g) to allow development for the purpose of a range of land uses which are compatible with the environmental capabilities of the land and which are unlikely to adversely affect land or other development in the vicinity or create demands for service infrastructure that will not be available, and
- (h) to protect water quality.

2 Without Development Consent

Development for the purpose of:

agriculture (other than building work and intensive livestock keeping establishments).

3 Only with Development Consent

Development not included in item 2 or 4.

4 Prohibited

Development for the purpose of:

animal boarding or training establishments; boarding-houses; bulk stores; caravan parks; commercial premises; extractive industries; hotels;

industries (other than home industries); intensive livestock keeping establishments; institutions; junk yards; liquid fuel depots; mines; motels; motor showrooms; offensive or hazardous industries; refreshment rooms; residential flat buildings; sawmills; service stations; shops (other than general stores not exceeding 100 square metres in gross floor area); stock and sale yards; transport terminals; warehouses.

Zone No 1 (d) (Non Urban 'D' Zone)

1 Objectives of Zone

The objectives of this zone are:

- (a) to zone the land within the Jenolan Caves Reserve within which development for the purpose of the accommodation and related needs of the visitors to the Reserve and facilities for the management of the Reserve may be carried out, and
- (b) to ensure that such development occurs in a manner that maintains and enhances the scenic quality, the ecological and geological systems and the heritage significance of the land within the zone and its environs.

2 Without Development Consent

No development.

3 Only with Development Consent

Development for the purpose of:

facilities for the management of the Jenolan Caves Reserve; facilities for tourist accommodation and related needs of visitors to the Jenolan Caves Reserve with associated car and coach parking; roads; tourist transportation; utility installations.

4 Prohibited

Any development not included in item 3.

Zone No 2 (v) (Village Zone)

1 Objectives of Zone

The objectives of this zone are:

- (a) to promote sustainable development of existing villages in a manner

which is compatible with their urban function, and

- (b) to maintain the rural atmosphere of the villages, and
- (c) to prevent pollution of water supply catchments, water quality in water storage and all streams.

2 Without development consent

No development.

3 Only with Development Consent

Development not included in item 4.

4 Prohibited

Development for the purpose of:

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

Zone No 8 (National Parks Zone)

1 Objectives of Zone

The objectives of this zone are:

- (a) to identify national parks, nature reserves, State recreation areas and other land dedicated or reserved under the *National Parks and Wildlife Act 1974*, and
- (b) to conserve the scenic and environmental amenity of the land within the zone, and
- (c) to preserve existing natural areas, Aboriginal sites and historic sites, while allowing compatible development, and
- (d) to protect and conserve water resources, including groundwater, for use in the public interest, and to prevent the pollution of water supply catchments and water storage.

2 Without Development Consent

Development authorised by or under the *National Parks and Wildlife Act 1974*.

3 Only with Development Consent

Development for the purpose of:
utility installations.

4 Prohibited

Development not included in item 2 or 3.

Part 3 Special provisions

10 General considerations for development within rural zones

- (1) The Council must not consent to development on land within Zone No 1 (a) or 1 (c) unless it has taken into consideration, if relevant, the effect of the carrying out of the proposed development on:
 - (a) the present use of the land, the 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 from known or prospective areas of valuable deposits of minerals, coal, petroleum, sand, gravel or other extractive minerals, and
 - (d) the protection of areas of significance for nature conservation or of high scenic or recreational value, and items of archaeological or heritage significance, including Aboriginal relics and places, and
 - (e) the cost of providing, extending and maintaining public amenities and services to the site of the proposed development, and
 - (f) the future expansion of settlements in the locality.
- (2) As well as the matters referred to in subclause (1), the Council must take into consideration the relationship of the development to development on adjoining land and on other land in the locality.
- (3) Subclause (1) does not apply to development, being:
 - (a) an addition to a building or work, or
 - (b) development ancillary to a land use for the purpose of which development may be carried out without the consent of the Council, or

- (c) the erection of a dwelling-house on an allotment of land created for the purpose of a dwelling-house in accordance with this plan.

10A What is exempt and complying development?

- (1) Development of minimal environmental impact listed as exempt development in *Oberon Council Development Control Plan—Exempt Development* as adopted by the Council on 11 February 2003 is **exempt development**, despite any other provision of this plan.
- (2) Development listed as complying development in *Oberon Council Development Control Plan—Complying Development* as adopted by the Council on 21 September 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 *Oberon Council Development Control Plan—Exempt Development* as adopted by the Council on 11 February 2003 and *Oberon Council Development Control Plan—Complying Development* as adopted by the Council on 21 September 1999.
- (4) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in *Oberon Council Development Control Plan—Complying Development* adopted by the Council, as in force when the certificate is issued.

11 Subdivision of land generally

- (1) A person must not subdivide land to which this plan applies except with the consent of the Council.
- (2) The Council must not consent to the subdivision of land within Zone No 1 (a) or 1 (c) unless it has obtained all 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 appropriate location of any such dwelling, and

- (d) whether any allotment to be created has an existing dwelling-house and the location of any such dwelling-house.

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

- (1) The Council may consent to the creation of an allotment within Zone No 1 (a) with an area of not less than 2 hectares that the Council considers will be used for the purpose of agriculture.
- (2) The Council must not consent to the creation of an allotment within Zone No 1 (a) or 1 (c) if the allotment has an area of less than 2 hectares and there is a dwelling-house on the allotment.
- (3) The Council may consent to the excision of one (but not more than one) allotment on which a dwelling-house stands from an original holding within Zone No 1 (a) if:
 - (a) that dwelling-house was lawfully erected on that land on or before the appointed day, and
 - (b) the size of the original holding on which the dwelling-house is erected is not less than 40 hectares, and
 - (c) the Council is satisfied that the remainder of the holding will be used for the purpose of agriculture, and
 - (d) the application is made by the owner of the allotment to be excised and on which the dwelling stands and the Council is satisfied that the applicant will retain ownership of, and live in retirement on, the allotment for a period of not less than 2 years following the date of consent.
- (4) If an original holding is to be subdivided in accordance with subclause (3), the allotment to be excised and on which the dwelling-house stands must have an area of not less than 2 hectares and not more than 10 hectares.
- (5) The dwelling-house referred to in subclause (4) is to be:
 - (a) not less than 150 metres from the boundary of any adjoining lot which is being used for an agricultural activity, if that lot is prime crop and pasture land, unless a buffer between the dwelling and the boundary of that lot is provided in accordance with the provisions of *Development Control Plan No 4—Part B, Subdivisions*, or
 - (b) not less than 50 metres from the boundary of any adjoining lot that is not prime crop and pasture land, unless a buffer is provided between the dwelling and the boundary of that lot in accordance with the provisions of *Development Control Plan No 4—Part B, Subdivisions*.
- (6) If the allotment excised is within or has a boundary adjoining or adjacent to the water body of Oberon or Ben Chifley Dam or any other water body specified in Schedule 1,

consent must not be granted for:

- (a) development within 100 metres of the water body, or
 - (b) septic effluent disposal within 200 metres of the water body unless geotechnical and hydrogeomorphological reports satisfy the Council that the land can sustain safe disposal within this area to the satisfaction of the Council.
- (7) Before granting a consent for such a subdivision, the Council must take into account the objectives of this plan, the objectives of Zone No 1 (a) or 1 (c) (as the case may require) and clause 10.
- (8) Clauses 13 and 14 do not apply to the excision of an allotment under this clause and an allotment excised under this clause is to be disregarded when applying clause 13 or 14 to determine whether or not other allotments may be created.

13 Subdivision for the purpose of dwelling-houses in Zone No 1 (a)

- (1) The Council may consent to the excision of an allotment that the Council considers will be used for the purpose of a dwelling-house from an original holding within Zone No 1 (a) only if:
- (a) the original holding has an area of not less than 40 hectares after excluding the area of the allotment to be excised, and
 - (b) the allotment to be excised has an area of not less than 2 hectares, and
 - (c) any such allotment created does not compromise the viability of prime crop and pasture land, and
 - (d) excision of the allotment, in the opinion of the Council, will not adversely affect the existing and potential capability of the remainder of the original holding and adjacent land to produce food or fibre or to be used for other agricultural purposes and any subsequent development on the excised allotment is unlikely to have the effect of creating a demand for uneconomic provision of services by the Council, and
 - (e) the lot is physically suitable for on-site disposal of domestic wastewater, and
 - (f) one, but not more than one, dwelling-house may be erected on a parcel of land within Zone No 1 (a), except as is provided otherwise by this Part.
- (2) Nothing in subclause (1) prevents the erection of a dwelling-house on a parcel of land on which a dwelling-house already exists where the use of the existing dwelling-house ceases or it is demolished on occupation of the subsequent dwelling-house commencing.

14 Maximum number of allotments to be created from land in Zone No 1 (a)

- (1) The Council may consent to the creation of allotments that the Council considers will be used for the purpose of a dwelling-house from an original holding within Zone No 1 (a) only if the number of lots does not exceed the number specified in relation to the size of the original holding as set out in the following Table:

Table

Maximum number of excised allotments	Lot size of original holding (in hectares)
0	less than 42
1	42 or over but less than 80
2	80 or over but less than 160
3	160 or over but less than 320
4	320 or over but less than 640
5	640 or over but less than 1280
6	1280 or over

- (2) The Council must not grant such a consent unless at least one of the lots that the Council is satisfied will be used for the purpose of a dwelling-house is 40 hectares or more in area and once the maximum number of lots permitted to be excised under clause 13 and this clause have been reached, any and all remaining lots, portions and parcels will be consolidated into one allotment.
- (3) If a maximum number of more than 2 excised allotments may be created under this clause from an original holding and the holding is subdivided so as to create fewer than that maximum number, this clause does not prevent the subsequent excision of no more than the remainder of the maximum number of allotments that may have been excised from the former original holding.
- (4) If the maximum number of lots allowable is not taken up by the initial subdivision that excises allotments to be used for the purpose of dwelling-houses in accordance with subclause (1), subsequent subdivisions may only excise lots from the largest lot resulting from the staged subdivision.
- (5) Any allotment created under clause 16 that the Council is satisfied is to be used for a dwelling house is to be counted for the purpose of determining the maximum number of lots that may be excised in accordance with this clause.

15 Subdivision for the purpose of dwelling-houses in Zone No 1 (c)

- (1) The Council must not consent to the subdivision of land within Zone No 1 (c) unless the area of each allotment intended to be created primarily for the purpose of a

dwelling-house has an area of 2 hectares or more.

- (2) The Council must not grant consent to the subdivision of land within Zone No 1 (c) 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 of the allotments proposed 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
 - (d) where a reticulated sewerage service is not available, whether each allotment to be created by the subdivision is suitable for on-site disposal of domestic wastewater.

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

- (1) The Council must not consent to the subdivision of land within Zone No 1 (a) if the Council is satisfied that any allotment to be created by the subdivision will not be used primarily for the purpose of agriculture or a dwelling-house unless, in the opinion of the Council:
 - (a) the land is not prime crop and pasture land, and
 - (b) the area of each allotment to be created by the subdivision is appropriate, having regard to the purpose for which it is being created.
- (2) Nothing in subclause (1) prevents the Council from granting consent to the subdivision of land to create an allotment to be used otherwise than for the purpose of agriculture or a dwelling-house if the Council is satisfied that:
 - (a) use of the allotment will involve the supply of goods or services for which there is a demand in the locality, and
 - (b) 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.
- (3) The Council must not consent to the subdivision of land within Zone No 1 (a) intended for use for the purpose of a tourist facility unless it is satisfied that the proposed development specifically meets the aims of this plan and no preferable alternative site exists within Zone No 2 (v).
- (4) Such a subdivision that creates any allotment the Council is satisfied is to be used for a dwelling-house affects the maximum number of allotments allowed to be excised

from the original holding by clause 14.

17 Subdivision for the purpose of dwelling-houses on land in Zone No 2 (v)

- (1) A person must not subdivide land within Zone No 2 (v) to create an allotment that the Council is satisfied is intended to be used for the purpose of a dwelling-house unless:
- (a) the allotment has an area of 600 square metres or more and will be connected to the Council's reticulated sewerage service, or
 - (b) where no such sewerage service is available, the allotment has an area of 2,000 square metres or more, the allotment is physically suitable for the on-site disposal of domestic wastewater and the opinions of the Environment Protection Authority and Department of Health about the suitability of the land for on-site disposal of domestic wastewater have been obtained and taken into consideration before consent was granted for the subdivision.

18 Dwelling-houses in Zone No 1 (a)

- (1) A person must not erect a dwelling-house on vacant land within Zone No 1 (a) unless:
- (a) the land comprises:
 - (i) an original holding that has not been subdivided (unless only under *State Environmental Planning Policy No 4—Development Without Consent*), or
 - (ii) the largest part, portion, lot or aggregation of them, remaining from an original holding following the excision of a part, portion or lot from the original holding, or
 - (iii) an allotment created in accordance with clauses 13 and 14, or
 - (iv) an allotment in a subdivision for the purpose of a dwelling where consent for the subdivision was granted before the appointed day and which has not lapsed, and
 - (b) the dwelling is not erected within, or within 100 metres of the high water mark of, a water body listed in Schedule 1 and:
 - (i) is not less than 150 metres from the boundary of any adjoining lot which is being used for an agricultural activity, if that lot is prime crop and pasture land, unless a buffer between the dwelling and the boundary of that lot is provided in accordance with the provisions of *Development Control Plan No 4—Part B, Subdivisions*, or
 - (ii) is not less than 50 metres from the boundary of any adjoining lot that is not prime crop and pasture land, unless a buffer is provided between the dwelling and the boundary of that lot in accordance with the provisions of *Development Control Plan No 4—Part B, Subdivisions*, and

- (c) septic effluent disposal from the dwelling is not within 200 metres of the high water mark of a water body listed in Schedule 1, unless geotechnical and hydrogeomorphological reports satisfy the Council that the land can sustain safe disposal within this area.

(2) In this clause, ***vacant land*** means land on which no dwelling-house is erected.

19 Erection of dwellings in Zone No 1 (c)

The Council may consent to the erection of a dwelling-house on a parcel of land within Zone No 1 (c) if the parcel has an area of less than 2 hectares and the dwelling-house is located so it does not compromise future development in that zone.

20 Erection of additional dwelling-houses in Zone No 1 (a)

- (1) The Council may consent to the erection of not more than one additional dwelling-house on a lot, portion or parcel of land within Zone No 1 (a) where:
 - (a) a dwelling-house could be erected on the land in accordance with this plan if it was vacant, and
 - (b) no additional access to a public road is required from the land, and
 - (c) in the opinion of the Council, the dwelling-house to be erected on the land will not interfere with the current use of the land, and
 - (d) it has been demonstrated to the satisfaction of the Council that the current use of the allotment may not be fully realised without the presence on that land of an additional dwelling-house.
- (2) Such a consent must not be granted for a dwelling-house unless:
 - (a) the dwelling is not erected within, or within 100 metres of the high water mark of, a water body listed in Schedule 1, and:
 - (i) is not less than 150 metres from the boundary of any adjoining lot which is being used for an agricultural activity, if that lot is prime crop and pasture land, unless a buffer between the dwelling and the boundary of that lot is provided in accordance with the provisions of *Development Control Plan No 4—Part B, Subdivisions*, or
 - (ii) is not less than 50 metres from the boundary of any adjoining lot that is not prime crop and pasture land, unless a buffer is provided between the dwelling and the boundary of that lot in accordance with the provisions of *Development Control Plan No 4—Part B, Subdivisions*, and
 - (b) septic effluent disposal from the dwelling is not within 200 metres of the high water mark of a water body listed in Schedule 1, unless geotechnical and

hydrogeomorphological reports satisfy the Council that the land can sustain safe disposal within this area.

- (3) Nothing in subclause (1) prevents the Council from granting consent to the erection of one or more dwelling-houses on land within Zone No 1 (a), where the buildings to be erected are intended to be used as a tourist facility (including buildings used in association with, ancillary to, or supportive of, tourist development) if the Council is satisfied that:
- (a) the buildings to be erected (including buildings used in association with, ancillary to, or supportive of, the tourist development) will be available for use as a tourist facility only, and
 - (b) the design and form of the development, including the number, scale and bulk of buildings and their relationship with each other, are compatible with the maintenance of a rural character in the locality, and
 - (c) the overall tourist development conforms with the aims of this plan and there are no preferable locations to that proposed.
- (4) The Council must not consent to a subdivision of land that creates a separate land title for an additional dwelling-house erected in pursuance of this clause.

21 Dwelling-houses in Zone No 1 (c) or 2 (v)

- (1) Except as provided by clause 22, only one dwelling-house may be erected on an allotment of land within Zone No 1 (c) or 2 (v) where that allotment of land has been created in accordance with this plan.
- (2) Despite subclause (1), the Council may consent to the erection of a dwelling-house on land within Zone No 1 (c) or 2 (v) where the land comprises an allotment lawfully created before the appointed day.

22 Conversion of buildings and creation of dual occupancies

- (1) This clause applies to land within Zone No 2 (v).
- (2) A person may, with the consent of the Council, alter, add to, or add, a dwelling-house on land to which this clause applies so as to create 2 dwellings on the land.
- (3) The Council must not grant consent as referred to in subclause (2) unless:
- (a) the area of the allotment on which the two dwellings will be is not less than 600 square metres, and
 - (b) the floor space ratio of the 2 dwellings will be no greater than 0.5:1 or the floor space ratio of the original dwelling-house, whichever is the greater in area, and
 - (c) arrangements satisfactory to the Council have been made for the provision of a

water supply to each dwelling and for the disposal of sewage and stormwater drainage from each building.

23 Development that must be advertised

Pursuant to section 30 (4) of the Act, the provisions of sections 84 (with the exception of subsection (1) (b)), 85, 86, 87 (1) and 90 of the Act apply to and in respect of development specified in Schedule 3 in the same way as those provisions apply to and in respect of designated development.

24 Development restricted along arterial roads

- (1) The Council shall not consent to an application to carry out development on land which has frontage to an arterial road unless, in the opinion of the Council, the safety and efficiency of the arterial road will not be adversely affected.
- (2) The Council shall not consent to development specified in Schedule 4 on land within Zone No 1 (a) or 1 (c) if the development will require the provision of direct access to:
 - (a) an arterial road, or
 - (b) a road connecting with an arterial road, if the access to that road is within 90 metres (measured along the road alignment of the connecting road) of the alignment of the arterial road.

25 Access

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

26 Development by the Forestry Commission

- (1) Nothing in this plan prevents the Forestry Commission from carrying out development for the purpose of forestry on land within Zone No 1 (a) that is managed by, or under the control of, the Forestry Commission.
- (2) The reference in subclause (1) to the carrying out of development for the purpose of forestry includes a reference to the winning of extractive material by the Forestry Commission for the purpose of road construction.

27 Environmentally sensitive land and destruction of trees

- (1) A person must not, except with the consent of the Council, carry out development for any purpose on environmentally sensitive land, unless as a normal incident of an agricultural use of the land.
- (2) The Council must not consent to the carrying out of development on environmentally sensitive land if, in the opinion of the Council, the carrying out of the development will degrade the environment by way of:

- (a) denudation of the land, or
 - (b) generating uncontrolled flow of water across the land, or
 - (c) generating uncontrolled disposal of animal, vegetable or chemical waste products on the land, or
 - (d) soil erosion or sedimentation, or
 - (e) surface water or ground water pollution.
- (3) Without limiting the generality of subclause (2), a person must not carry out development on environmentally sensitive land for the purpose of:
- (a) intensive livestock keeping establishments, or
 - (b) junk yards, or
 - (c) liquid fuel depots, or
 - (d) offensive or hazardous industries, or
 - (e) sawmills, or
 - (f) stock and sale yards.

28 Flood liable land

- (1) A person must not carry out any development on or subdivide flood liable land except with the consent of the Council.
- (2) This clause does not apply to minor extensions to a dwelling-house where the total area of such extensions carried out since the appointed day is less than 30 square metres.

29 Land subject to bushfire hazards

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

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

30 Bed and breakfast establishments

Development for the purpose of providing bed and breakfast is prohibited unless the

dwelling-house in which it is carried out:

- (a) is connected to a reticulated sewerage system, or
- (b) is located on an allotment on which the Council is satisfied (by a geotechnical or water balance assessment) that disposal of waste water within the boundaries of the allotment is feasible.

31 Contaminated land

Despite any other provision of this plan, the Council may consent to development of land that the Environment Protection Authority has advised the Council is contaminated, or potentially contaminated, only if the development includes measures to deal with the remediation of the land.

32 Protection of heritage items, heritage conservation areas and relics

- (1) The following development may be carried out only with development consent:
 - (a) demolishing, defacing, damaging or moving a heritage item, or a building, work, relic, tree or place within a heritage conservation area, or
 - (b) altering a heritage item, or a building, work or relic within a heritage conservation area by making structural changes to its exterior, or
 - (c) altering a heritage item or a building, work or relic within a heritage conservation area, 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 do not adversely affect its heritage significance, or
 - (d) moving a relic, or excavating land for the purpose of discovering, exposing or moving a relic, or
 - (e) erecting a building on, or subdividing land on which a heritage item is located or which is within a heritage conservation area, or
 - (f) making structural changes to the interior of a structure specified in Part 2 of Schedule 2.
- (2) Development consent is not required by this clause if the Council is of the opinion that the proposed development would not adversely affect the heritage significance of the heritage item or heritage conservation area.
- (3) 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 heritage conservation area.
- (4) The Council must not grant consent to a development application required by this

clause until it has considered a conservation plan that assesses the impact of the proposal on the heritage significance of the item and its setting or of the heritage conservation area. A conservation plan is a document establishing the heritage significance of a heritage item or a heritage conservation area and identifying conservation policies and management mechanisms that are appropriate to enable that significance to be retained.

- (5) When considering applications for consent to the erection of a building within a heritage conservation area, the Council must make an assessment of:
- (a) the pitch and form of the roof, if any, and
 - (b) the style, size, proportion and position of the openings for windows or doors, if any, and
 - (c) whether the colour, texture, style, size and type of finish of the materials to be used on the exterior of the building are compatible with those of the materials used in existing buildings within the heritage conservation area.

33 Notice of certain heritage development applications

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 the demolishing, defacing or damaging of a heritage item or a building, work, relic, tree or place within a heritage conservation area (and to the use of a building or land referred to in clause 37 for a purpose which, but for that clause, would be prohibited by this plan) in the same way as those provisions apply to designated development.

34 Notice to the Heritage Council

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.

35 Development of known or potential archaeological sites

- (1) The Council may grant consent to the carrying out of development on an archaeological site that has Aboriginal heritage significance (such as a site that is the location of an Aboriginal place or a 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 the Director-General of its intention to do so and taken into consideration any comments received from the 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.
- (3) Subclause (2) does not apply to a work which the Council regards as being of a minor nature and which will not affect the heritage significance of the land to which this clause applies or its environs.

36 Development in the vicinity of heritage items, heritage conservation areas, 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, heritage conservation area, 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.

37 Conservation incentives

- (1) The Council may grant consent to the use, for any purpose, of a building that is a heritage item or is within a heritage conservation area, 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 or heritage conservation area or the amenity of the heritage conservation area, 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 or on land within a heritage conservation area, the Council may, for the purpose 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.

38 Roads, drainage, recreation areas and parking

- (1) Nothing in this plan requires the Council or any other public authority to obtain consent for development on land within any zone for the purpose of roads, stormwater drainage, recreation areas, landscaping, gardening, bushfire hazard reduction or parking.
- (2) The reference in subclause (1) to the carrying out of development for the purpose of roads includes a reference to the winning of extractive material within a road reserve by a public authority for the purposes of its road construction.

39 Development in Zone No 1 (d)

The Council must not grant consent to development on land within Zone No 1 (d) unless it has taken the following into consideration:

- (a) the recommendations of the Jenolan Caves Reserve Plan of Management adopted by the Minister administering the *Crown Lands Act 1989*,
- (b) the Conservation Plan for the Caves House Precinct titled "*Jenolan Caves Reserve Conservation Plan—Built Environment*" dated May 1988,
- (c) any other study or policy document or plan adopted by a relevant public authority to guide or assist the management of the Reserve and of which the Council has knowledge,
- (d) the extent to which the carrying out of the proposed development would affect the heritage significance of the land within Zone No 1 (d), including its effect on the karst system and natural habitats,
- (e) the necessity for the proposed development, and any alternative options that may be available,
- (f) the height, scale, bulk, form, location, character and materials of any proposed new building, its relationship to existing buildings, landscape elements and open spaces, and its effect on existing views and scenic qualities of the land within Zone No 1 (d),

- (g) any measure necessary to prevent erosion, land slip or subsidence during or resulting from the proposed development,
- (h) the proposed means of disposing of roof and surface run-off, waste water and sewage, including measures necessary to prevent damage to the karst and ecological systems by contamination of surface or groundwater.

40 Development of known or potential archaeological sites in Zone No 1 (d)

Where the Council has received an application to carry out development on land within Zone No 1 (d) involving excavation on a site of known or potential archaeological significance, the Council must not grant consent unless:

- (a) it has received from the applicant and considered an assessment of the known or potential archaeological significance of the site and the impact of the proposed development on the significance of any relic or place of heritage significance at or in the vicinity of the site, and
- (b) where required, an excavation permit has been obtained by the applicant under the [Heritage Act 1977](#), where the archaeological significance of a European site would be disturbed or the site would be excavated if the proposed development were to be carried out, and
- (c) the Director-General of National Parks and Wildlife and the Local Aboriginal Lands Council have been notified of the proposal, if it relates to Aboriginal relics, and the Council has considered any matters raised by those bodies within 28 days after the notice is sent.

41 Development within water catchment areas (excluding the hydrological catchment)

If a development application is received for land considered by the Council to be within a water catchment area, other than the hydrological catchment, the Council must not grant consent unless it has considered the impact of the proposed development on the water quality of stored waters within the water catchment area.

42 Development within water catchment areas (including the hydrological catchment)

If a development application is received for land considered by the Council to be within a water catchment area, including the hydrological catchment, the Council must not grant consent unless it has considered the impact of the proposed development on the ecological integrity of the water catchment area.

43 Development within the hydrological catchment comprising intensive plant growing

- (1) The objective of this clause is to ensure that development with the potential to adversely impact on water quality in the hydrological catchment requires development consent.

- (2) For the purposes of this clause, **intensive plant growing** on land means market gardening, fungi growing, fruit growing, flower growing, viticulture or the like for commercial purposes, but does not include growing field crops (such as wheat, oats, oilseed or legumes) or any species of plant for pastures.
- (3) Despite clause 9 or any other provision of this plan, the consent of the Council is required for development on land within the hydrological catchment that comprises intensive plant growing.

Schedule 1 Waterbodies classified as environmentally sensitive land

(Clauses 6 (1), 12 (6), 18 (1), 20 (2))

Alicks Creek
Abercrombie River
Back Creek
Ben Chifley Dam
Brisbane Valley Creek
Browns Creek
Buckemall Creek
Campbells River
Captain Kings Creek
Chain of Ponds Creek
Coxs River
Duckmaloi River
Eight Mile Swamp Creek
Emu Valley Creek
Felled Timber Creek
Fish River Creek
Fish River
Hollanders River
Jenolan River
Kellys Creek
Kings Stockyard Creek
Kowmung River
Lake Oberon (Oberon Dam)
Lickinghole Creek
Little River
McKeons Creek
Morong Creek
Mount Creek
Native Dog Creek
Paling Yards Creek
Parliament Creek
Racecourse Creek
Retreat River
Sewells Creek
Sheep Station Creek
Sidmouth Valley Creek

Silent Creek
Snakes Valley Creek
Tea Tree Creek
Tuglow River
Werong Creek
Wisemans Creek

Schedule 2 Heritage items

(Clause 6 (1))

Part 1 Archaeological sites

List of sites	Study reference No
Jenolan Caves	—
Kanangra Boyd National Park	900
Wisemans Creek	901
Lowes Mount Road	902
Oberon Area	903

Part 2 European heritage items

List of items	Study reference No or Property description
Rowes Homestead	Lot 49 DP 728898
Limestone Bridge (near Grand Arch)	Lot 49 DP 728898
Tarana—Oberon Rail Line	202 & 602
Sidmouth Valley—O’Connell Road	Pt Lot 73 DP 757058
Phills Falls	601
Old Bathurst—Sydney Road	603
The Six Foot Track	604
Brisbane Valley Creek—Gold Diggings	Lot 85 DP 757039
Lone Grave on “Springvale”	—
Jenolan Caves House	Lot 39 DP 728898
Hazलगrove Cemetery	Pt Lot 1 DP 544230
National Australia Bank, Oberon Township	Lot 5 Sec 21 DP 2418
Ramsgate (house), Oberon Township	Pt Lot 2A Sec 21 DP 427257
Malachi Gilmore Hall—Oberon Township	Lot 6 Sec 21 DP 17887

O'Connell Hotel	Lot 1 DP 783230
O'Connell Road Store Group:	
Store	Lot 1 DP 783230
Pise Barn	Lot A DP 418324
Slab Barn	Lot A DP 418324
O'Connell Roman Catholic Church Group:	
Roman Catholic Church	Lot 1 DP 621591
School House	Lot 2 DP 621591
Post Office	Lot A DP 418324
Shop	Lot A DP 418324
Cottage	Lot A DP 418324
St Thomas' Anglican Church Group:	
St Thomas' Anglican Church	Lots 81 & 82 DP 854881 & Lot 1 DP 119280
Former Rectory	Lots 81 & 82 DP 854881 & Lot 1 DP 119280
Ruins: Pise Chapel	Lots 81 & 82 DP 854881 & Lot 1 DP 119280
Stable	Lots 81 & 82 DP 854881 & Lot 1 DP 119280
Bolton Vale, Oberon Road, O'Connell	Lots 22 DP 852574

Part 3 Heritage conservation areas

Jenolan Caves Reserve Conservation Area
O'Connell Urban Conservation Area

Schedule 3 Development which must be advertised

(Clause 23)

Development for the purpose of:

boarding-houses; hotels; industries; intensive livestock keeping establishments; junk yards; liquid fuel depots; motels; residential flat buildings; sawmills; stock and sale yards; tourist facilities.

Schedule 4 Development restricted along arterial roads

(Clause 24 (2))

Development for the purpose of:

abattoirs; bulk stores; bus depots; caravan parks; car repair stations; clubs; commercial premises; educational establishments; generating works; hospitals; hotels; industries (other than home or rural industries); institutions; junk yards; liquid fuel depots; mines; motels; offensive or hazardous

industries; places of assembly; places of public worship; recreation facilities; refreshment rooms; retail plant nurseries; roadside stalls; sawmills; service stations; shops; stock and sale yards; transport terminals; warehouses.