

# Wellington Local Environment Plan 1995 (2000 EPI 149)

[2000-149]



New South Wales

## Status Information

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### Provisions in force

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

### Authorisation

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# Wellington Local Environment Plan 1995 (2000 EPI 149)



New South Wales

## Part 1 Preliminary

### 1 Name of plan

This plan may be cited as *Wellington Local Environment Plan 1995*.

### 2 Aims

The general aims of this plan are:

- (a) to rationalise, and to consolidate into a single instrument, the various environmental planning controls previously applicable to the Wellington Council area by:
  - (i) correcting zoning anomalies, and
  - (ii) removing redundant provisions and replacing them with provisions that are now standard, and
- (b) to widen the scope of permissible land uses so as to reduce the necessity for preparation of amending local environmental plans with respect to individual development proposals, and
- (c) to maintain the opportunity for public involvement and participation in environmental planning and assessment, by providing a framework to support development control plans which will regulate development in any land use zone by:
  - (i) restricting the carrying out of a kind of development to a specified area within the zone, or
  - (ii) fixing standards or specifying requirements in respect of any aspect of that development,to supplement the broad controls in this plan.

### 3 Objectives

The particular objectives of this plan are, within respect to:

- (a) **COMMERCE**—to contribute to the continued economic productivity and further development of the Wellington Council area,
- (b) **AGRICULTURE**—to support and maintain the continued viability of agricultural development in rural areas by protecting or preserving prime crop and pasture land, and by encouraging diversity within the industry,
- (c) **TRANSPORT**—to maintain the arterial road system and railway and airport to provide an efficient traffic network for the movement of goods and people,
- (d) **TOURISM**—to encourage tourism as a contributor to the economy of the Wellington Council area,
- (e) **INDUSTRY**—to increase employment opportunities,
- (f) **PUBLIC FACILITIES AND SERVICES**—to support the economic and efficient provision of public facilities and services by way of equitable cost sharing arrangements,
- (g) **ADMINISTRATION**—to decrease the number of land use zones and increase the flexibility of zoning provisions so as to widen the discretion available to the Council, while maintaining suitable separation between residential and non-residential uses,
- (h) **SOCIAL FACILITIES**—to aid the provision and shared use of community services and facilities,
- (i) **SCENIC PROTECTION**—to promote a high standard of visual amenity in all of the Wellington Council area by imposing environmental controls,
- (j) **CONSERVATION**—to recognise the value of heritage items and natural elements of the environment and to protect the environment from degradation by unnecessary demolition or unsympathetic development, and
- (k) **RESIDENTIAL**—to ensure that the range of densities and development permissible in residential areas, including villages, is compatible with the residential and rural environment and that the housing needs of the community are met within these constraints.

#### **4 Land to which plan applies**

This plan applies to the land within the Wellington Council area as shown on the map, with the boundaries as indicated on the map.

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

(1) This plan repeals the following environmental planning instruments:

- (a) *Wellington Local Environmental Plan 1987*, and
- (b) such other deemed environmental planning instruments and local environmental

plans as, immediately before the appointed day, applied to the land to which this plan applies.

- (2) This plan amends *Cabonne Local Environmental Plan 1991* by inserting at the end of clause 3 the following subclause:

(2) This plan does not apply to Portion 109 of the Parish of Buckenbah.

## 6 Definitions

- (1) In this plan:

**animal boarding or training establishment** means a place at which the commercial boarding, breeding, keeping, maintaining, receiving or training of horses, dogs, cats or other animals is carried on and includes riding schools and the like.

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

**bushfire hazard reduction** means the reduction or modification of fuel by burning, chemical, mechanical or manual means.

**caravan park** means land used as sites for moveable dwellings, including tents and caravans or other vehicles used for temporary accommodation and holiday cabins and includes any kiosk or other similar facility situated on the land.

**classified road** means a main or arterial road listed in Schedule 2.

**community centre** means a building or place owned or controlled by a public authority and used to provide facilities comprising or relating to any one or more of the following:

- (a) a public library,
- (b) public health services,
- (c) rest rooms,
- (d) meeting rooms,
- (e) indoor recreation,
- (f) child minding facilities, or
- (g) any other like place of facility.

**conservation area** means land shown edged with a broken, thick black line and marked "Conservation Area" on the map.

**Council** means the Wellington 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.

**environmental protection area** means:

- (a) land identified as Agricultural Land Suitability Class 5 on a map prepared by or on behalf of the Director-General of the Department of Agriculture and deposited in the office of the Council,
- (b) land identified as Rural Land Capability Classes VII and VIII on a map prepared by the Soil Conservation Service and deposited in the office of the Council,
- (c) land which has a slope or gradient in excess of 1 in 3, including land identified as “Protected Land” under the *Soil Conservation Act 1938* and shown on a map deposited in the office of the Council, or
- (d) land within, or within 20 metres of, the bed or bank of a prescribed stream, as listed in the publication “Restrictions on the removal of trees on NSW watercourses” available from the Department of Land and Water Conservation.

**flood liable land** means land shown edged with a fine blue dotted line on the map.

**grazing** means breeding, growing, keeping and feeding sheep, cattle, horses or other grass feeding stock on pasture land.

**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) described in Schedule 1.

**holding** means:

- (a) except as provided by paragraph (b)—the area of a lot, portion or parcel of land as it was as at 26 June 1987, or
- (b) where, as at 26 June 1987, a person owned two or more adjoining or adjacent lots, portions or parcels of land, the combined area of those lots, portions or parcels as they were at that date.

**intensive agricultural pursuits** means horticulture, including market gardening, mushroom growing, fruit growing, flower growing, lucerne growing, vineyards and similar pursuits.

**intensive livestock keeping** means a building or place in which or at which livestock are held for the purpose of nurturing wholly by a feeding method other than natural grazing (such as by use of a feed lot or the intensive production of fish or crustaceans in tanks, ponds, dams and the like), but does not include:

- (a) the keeping of livestock or poultry intended solely for the personal consumption or enjoyment of the owner or occupier of the land, or
- (b) short term feeding or feed lots operated during periods of drought declaration.

**irrigation area** means an irrigation area within the meaning of the *Irrigation Act 1912*.

**land degradation** means soil erosion, involving the loss of productive capacity, stream turbidity and siltation, decline and loss of native vegetation or adverse changes in vegetative balance, salinisation of the soil and streams, and includes the deleterious effects on land of pesticides and fertilisers.

**noxious plants** means plants declared under the *Noxious Weeds Act 1993* to be noxious plants throughout the whole of the State or the Wellington Council area and, in relation to a part of the land to which this plan applies, includes any plants so declared in relation to that part.

**prescribed streams** means those rivers, creeks, effluents or lakes to which section 26D of the *Water Act 1912* applied immediately before its repeal.

**prime crop and pasture lands** means land:

- (a) identified as Class 1, Class 2 or Class 3 or as land of merit for special agricultural uses on a map prepared by or on behalf of the Director-General of the Department of Agriculture before the commencement of this plan and deposited in the office of the Council,
- (b) identified as Class 1, Class 2 or Class 3 or as land of special agricultural use on a map prepared after the commencement of this plan by or on behalf of the Director-General of the Department of Agriculture, marked "*Agricultural Land Classification Map*" and deposited in the office of the Council, or
- (c) which the Director-General of the Department of Agriculture has certified in writing to the Council to be prime crop and pasture land for the purposes of this plan and is identified on a map deposited in the office of the Council.

**protected land** means land within a catchment area shown as generally having a surface the slope of which is in excess of 18 degrees from the horizontal on a map prepared under section 21B (1) of the *Soil Conservation Act 1938*.

**recreation area** means:

- (a) a children's playground,
- (b) an area used for sporting activities or sporting facilities,
- (c) an area used by the Council to provide recreational facilities for the physical,



cultural or intellectual welfare of the community, or

- (d) an area used by a body of persons associated together for the purpose of the physical, cultural or intellectual welfare of the community to provide recreational facilities for those purposes,

but does not include racecourses and showgrounds.

**relic** means any deposit, object or material evidence relating to settlement of the Wellington Council area which is more than fifty years old.

**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, which may consist of or include changes that involve the repair or the painting, plastering or other decoration of the outside of the building.

**stock and sale yard** means stock saleyard.

**the map** means the map marked “*Wellington Local Environment Plan 1995*”, as amended by the maps, or 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.

*Wellington Local Environmental Plan 1995 (Amendment No 2)*

(2) A reference in this plan:

- (a) to a building or place used for a purpose includes a reference to a building or place intended to be used for the purpose,
- (b) to a map is a reference to a map deposited in the office of the Council, and
- (c) to land within a zone specified in the Table to clause 10 is a reference to land shown on the map in the manner indicated in clause 9 as the means of identifying land of the zone so specified.

## **7 Adoption of Model Provisions**

The *Environmental Planning and Assessment Model Provisions 1980* are adopted for the purpose of this plan, except for the definitions of **arterial road**, **map** and **stock and saleyard** in clause 4 (1).

## **8 Consent authority**

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

## **Part 2 General restrictions on development**

### **9 Zones indicated on the 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 map in the manner specified below in relation to that zone:

Zone Number 1 (a) (Rural)—uncoloured and lettered “1 (a)”.

Zone Number 1 (a1) (Intensive Agriculture)—edged mid brown and lettered “1 (a1)”.

Zone Number 1 (c) (Rural Small Holdings)—edged light brown and lettered “1 (c)”.

Zone Number 2 (a) (Residential)—edged mid red and lettered “2 (a)”.

Zone Number 2 (v) (Village)—edged dark red and lettered “2 (v)”.

Zone Number 3 (Business)—edged light blue and lettered “3”.

Zone Number 4 (Industrial)—edged mid grey and lettered “4”.

Zone Number 5 (a) [Special Uses (Public Purposes)]—edged light yellow and lettered “5 (a)”.

Zone Number 5 (b) [Special Uses (Railway)]—edged mid purple and lettered “5 (b)”.

Zone Number 6 (Open Space)—edged mid green and lettered “6”.

Zone Number 7 (Environmental Protection)—edged light green and lettered “7”.

### **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 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) which:
  - (a) may be carried out without development consent,
  - (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 should 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 Number 1 (a) (Rural)**

### **1 Objectives of zone**

The objectives of this zone are:

- (a) to enable the continuation of traditional forms of rural land use and occupation,
- (b) to maintain land having potential for agricultural production in units which are suitable for a range and variety of agricultural land uses,
- (c) to encourage other forms of development which are associated with rural activity, or which support the tourism objective listed in clause 3,
- (d) to ensure that the type and intensity of development is appropriate in relation to the characteristics of the land, the rural environment and the costs of providing public services and amenities,
- (e) to conserve prime crop and pasture land by ensuring that:
  - (i) it is not used for non-agricultural purposes, and
  - (ii) any allotment created for agricultural purposes is suitable for that purpose,
- (f) to protect or conserve:
  - (i) soil stability by controlling the location of development in accordance with soil capability,
  - (ii) forests of commercial value for timber production,
  - (iii) valuable deposits of mineral, coal, petroleum and extractive materials by controlling the location of development to enable efficient extraction of these deposits,
  - (iv) vegetation in environmentally sensitive areas where the conservation of the vegetation is likely to reduce land degradation,

- (v) water resources for use in the public interest,
- (vi) areas of significance for nature conservation, including areas of rare plants, wetlands and significant habitat, and
- (vii) places and buildings of archaeological or heritage significance, including Aboriginal relics and places, and

(g) to facilitate farm adjustments.

## **2 Without development consent**

Development for the purpose of:

agriculture (other than intensive livestock keeping).

Exempt development.

## **3 Only with development consent**

Development other than that included in Item 2 or 4.

## **4 Prohibited**

Development for the purpose of:

boarding houses; manufactured home estates; motor showrooms; residential flat buildings; shops (other than general stores).

## **Zone Number 1 (a1) (Intensive Agriculture)**

### **1 Objectives of zone**

The objectives of this zone are:

- (a) to conserve prime crop and pasture land for a range of intensive agricultural pursuits and other agricultural industries,
- (b) to ensure that development of land in the zone which is liable to flooding is carried out in a manner appropriate to the flood hazard, and
- (c) to accommodate complementary development on land within the zone which is not subject to flooding and not agriculturally productive.

### **2 Without development consent**

Development for the purpose of:

agriculture (other than intensive livestock keeping).

Exempt development.

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

Development other than that included in Item 2 or 4.

### **4 Prohibited**

Development for the purpose of:

animal boarding and training establishments; boarding houses; bulk stores; car repair stations; clubs; commercial premises; dwelling houses (other than those ancillary to an agricultural land use); health care professionals' offices; industries (other than home or rural industries); liquid fuel depots; manufactured home estates; motor showrooms; places of public assembly; places of public worship; professional consulting rooms; recreation establishments; recreation facilities; refreshment rooms; residential flat buildings; sawmills; service stations; shops; stock and sale yards; transport terminals.

## **Zone Number 1 (c) (Rural Small Holdings)**

### **1 Objectives of zone**

The objectives of this zone are:

- (a) to permit rural residential development within a minimum lot size of 4,000 square metres having regard to the provision of services to an acceptable standard and environmental conservation, and
- (b) to enable other forms of development to be carried out on land within the zone if they are in keeping with the character of the locality and they are compatible with existing or likely future small holdings or hobby farms.

### **2 Without development consent**

Development for the purpose of:

agriculture (other than intensive livestock keeping).

Exempt development.

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

Development other than that included in Item 2 or 4.

### **4 Prohibited**

Development for the purpose of:

advertising structures; animal boarding and training establishments; boarding houses; bulk stores; car repair stations; commercial premises; extractive industries; hotels; intensive livestock keeping (excluding intensive production of fish or crustaceans in tanks, ponds, dams and the like); junk yards; liquid fuel depots; manufactured home estates; motels; motor showrooms; offensive or hazardous industries; places of assembly; refreshment rooms; residential flat buildings; sawmills; service stations; shops; stock and sale yards; tourist facilities; transport terminals; warehouses.

## **Zone Number 2 (a) (Residential)**

### **1 Objectives of zone**

The objectives of this zone are:

- (a) to maintain and provide areas of a residential character while enabling non-residential development which can service the needs of the precinct, and
- (b) to ensure that development does not place demands on services beyond the level reasonably required for residential use.

### **2 Without development consent**

Exempt development.

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

Development other than that included in Item 2 or 4.

### **4 Prohibited**

Development for the purpose of:

advertisements; advertising structures; animal boarding and training establishments; bulk stores; car repair stations; commercial premises (other than exhibition homes); gas holders; generating works; hotels;

industries (other than home industries); institutions; intensive livestock keeping; junk yards; liquid fuel depots; mines; motels; motor showrooms; places of public assembly; refreshment rooms; retail plant nurseries; roadside stalls; sawmills; service stations; stock and sale yards; transport terminals; warehouses.

## **Zone Number 2 (v) (Village)**

### **1 Objectives of zone**

The objectives of this zone are to recognise existing villages and to enable future development appropriate to their function and character.

### **2 Without development consent**

Exempt development.

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

Development other than that included in Item 4.

### **4 Prohibited**

Development for the purpose of:

institutions; intensive livestock keeping; mines; offensive and hazardous industries.

## **Zone Number 3 (Business)**

### **1 Objectives of zone**

The objective of this zone is to provide for commercial development to serve the needs of the surrounding land.

### **2 Without development consent**

Exempt development.

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

Development other than that included in Item 4.

### **4 Prohibited**

Development for the purpose of:

amusement parks; animal boarding and training establishments;

boarding houses; caravan parks; detached dwellings; extractive industries; gas holders; generating works; industries (other than light industries); institutions; intensive livestock keeping; junk yards; liquid fuel depots; mines; roadside stalls; sawmilling; stock and sale yards; timber yards; transport terminals (other than airline terminals or bus stations); warehouses.

## **Zone Number 4 (Industrial)**

### **1 Objectives of zone**

The objective of this zone is to provide for a wide range of industrial purposes together with associated commercial development.

### **2 Without development consent**

Exempt development.

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

Development other than that included in Item 4.

### **4 Prohibited**

Development for the purpose of:

boarding houses; caravan parks; dwellings; educational establishments; extractive industries; hospitals; institutions; mines; motels; offensive or hazardous industries; places of assembly; roadside stalls.

## **Zone Number 5 (a) [Special Uses (Public Purposes)]**

### **1 Objectives of zone**

The objective of this zone is to provide for public facilities on publicly owned land.

### **2 Without development consent**

Exempt development.

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

Development for the purpose of:

any public land use, including any land uses ordinarily incidental or subsidiary to public land uses; any land uses which produce revenue



intended to be used for public purposes; utility installations.

#### **4 Prohibited**

Development other than that included in Item 3.

### **Zone Number 5 (b) [Special Uses (Railway)]**

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

The objectives of this zone are to recognise railway land and to provide for appropriate operational and associated development.

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

Development for the purpose of railways.

Exempt development.

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

Development other than that included in Item 2.

#### **4 Prohibited**

Nil.

### **Zone Number 6 (Open Space)**

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

The objective of this zone is to encourage the effective and efficient management of open space, including national parks, nature reserves, public and Crown land.

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

Development for the purpose of:

any land use authorised under the [National Parks and Wildlife Act 1974](#); drainage; landscaping, gardening and bushfire hazard reduction.

Exempt development.

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

Development for the purpose of:

agriculture, including grazing; buildings used for landscaping, gardening or bushfire hazard reduction; racecourses; recreation areas; roads; showgrounds; utility installations (other than gas holders or generating works).

#### **4 Prohibited**

Development other than that included in Item 2 or 3.

### **Zone Number 7 (Environmental Protection)**

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

The objective of this zone is to ensure that development is carried out in a manner which protects, enhances and does not adversely affect the environmental qualities of the land.

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

Development for the purpose of:

grazing.

Exempt development.

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

Development other than that included in Item 2 or 4.

#### **4 Prohibited**

Development for the purpose of:

advertisements; advertising structures; boarding houses; car repair stations; clubs; commercial premises; industries (other than home industries); intensive livestock keeping; junk yards; liquid fuel depots; manufactured home estates; motor showrooms; recreation vehicle areas; residential flat buildings; service stations; shops (other than general stores); stock and sale yards; transport terminals; warehouses.

### **Part 3 Special provisions**

#### **11 Heads of consideration**

- (1) The Council shall not consent to development of land within Zone Number 1 (a) or 1 (a1) unless it has made an assessment of:

- (a) the purpose for which the land is intended to be used, and whether a dwelling should be erected on that land,
  - (b) the effect of the proposed development on the present and potential agricultural use of the land and of land in the vicinity,
  - (c) the effect of the proposed development on vegetation, timber production, soil resources and soil stability, ground water storage and riparian rights, and the aquatic and recreational value of the land and of land in the vicinity,
  - (d) the effect of the proposed development on the water quality of water courses in the vicinity,
  - (e) the effect of the proposed development on future expansion of settlements in the vicinity,
  - (f) the future recovery, from known or prospective areas, of valuable deposits of minerals, coal, petroleum, sand, gravel or other extractive materials,
  - (g) the protection of areas of significance for nature conservation or of high scenic or recreational value and places and buildings of archaeological or heritage significance, including Aboriginal relics and places, and
  - (h) the cost of providing, extending and maintaining public amenities and services to the site of the development and to land in the vicinity.
- (2) Subclause (1) does not apply to:
- (a) an addition to a building or work,
  - (b) development ancillary to a use to which land may be put with the consent of the Council under this plan, or
  - (c) the erection of a dwelling house on an allotment of land created in accordance with this plan for the purpose of a dwelling.

#### **11A What is exempt and complying development?**

- (1) Development of minimal environmental impact listed as exempt development in *Wellington Development Control Plan No 1* as adopted by the Council on 23 February 2000 is **exempt development**, despite any other provision of this plan.
- (2) Development listed as complying development in *Wellington Development Control Plan No 1* as adopted by the Council on 23 February 2000 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 *Wellington Development Control Plan No 1* as adopted by the Council on 23 February 2000.
- (4) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in *Wellington Development Control Plan No 1* adopted by the Council, as in force when the certificate is issued.

## **12 Subdivision of land generally**

A person shall not subdivide land to which this plan applies except with the consent of the Council.

## **13 Subdivision of land within Zone No 1 (a)**

- (1) This clause applies to land within Zone Number 1 (a).
- (2) Subject to subclause (3), the Council may consent to the creation of an allotment of any area for a land use supported by the zone objectives.
- (3) The Council shall not grant consent to the creation of an allotment it is satisfied will be used for the purpose of agriculture if the allotment has an area of less than 400 hectares and there is a dwelling on that allotment.
- (4) Despite subclause (3), the Council may consent to the excision of one but not more than one allotment it is satisfied will be used for the purpose of agriculture from a holding on which a dwelling stands if that dwelling was lawfully erected on that land on or before the appointed day.
- (5) The Council may consent to the excision of an allotment it is satisfied will be used for the purpose of a dwelling house from a holding within Zone Number 1 (a) only if:
  - (a) the allotment will have an area of not less than 4000 square metres but not more than is reasonably required for the appropriate location of buildings,
  - (b) the holding from which the allotment is excised has an area of not less than 40 hectares,
  - (c) the creation of the allotment is unlikely to adversely affect the existing and potential capability of the land and adjacent land to produce food or fibre,
  - (d) the area of the residue of the land from which the allotment is excised is not less than 38 hectares, and
  - (e) the allotment to be created and any subsequent development on it is unlikely to have the effect of creating a demand for uneconomic provision of services by the

Council.

- (6) The total number of allotments of the type referred to in subclause (5) that may be excised by subdivision from a holding in accordance with that subclause shall not exceed:
  - (a) nil, where the holding is less than 40 hectares,
  - (b) one, where the holding has an area equal to or greater than 40 hectares but less than 200 hectares,
  - (c) two, where the holding has an area equal to or greater than 200 hectares but less than 400 hectares, or
  - (d) two, plus one for every 200 hectares over 400 hectares, where the holding has an area equal to or greater than 400 hectares, provided the maximum number of allotments to be excised does not exceed 4.
- (7) Subject to subclause (8), the Council shall not consent to a subdivision of land within Zone Number 1 (a) where any allotment to be created by the subdivision is to be used otherwise than for the purpose of 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.
- (8) Nothing in subclause (7) prevents the Council from granting consent to a subdivision of land to create an allotment it is satisfied will be used otherwise than for the purpose of agriculture or a dwelling where the Council is satisfied:
  - (a) the purpose for which the allotment is to be used involves the supply of goods or services for which there is a demand in the locality,
  - (b) no other land in the locality could reasonably be used for that 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.

#### **14 Subdivision of land within Zone No 1 (a1)**

- (1) The Council shall not consent to the subdivision of land within Zone Number 1 (a1), unless it is satisfied that:
  - (a) the allotment to be created is intended to be used for the purpose of intensive agriculture and is capable of being used for a range of intensive agricultural uses,

- (b) an irrigation licence is available to service the intensive agricultural use of the land, and
  - (c) the soil, topography, drainage, and other physical characteristics of the land are suitable for the proposed intensive agricultural use.
- (2) The Council shall refer copies of all development applications in relation to land within Zone Number 1 (a1) to the Regional Director of Agriculture for the area where the land is situated with a request for comment and, in determining that application, shall take into account any comments received by the Council within 21 days of the Council's request for comments, or such longer period as the Council allows.
- (3) The Council may refer an application to subdivide land within Zone Number 1 (a1) to the Soil Conservation Service, the Department of Land and Water Conservation or any other expert body with a request for comment and, in determining that application, shall take into account any comments received by the Council within 21 days of the Council's request for comments, or such longer period as the Council allows.

**15 Subdivision of land within Zone No 1 (c)**

- (1) The Council shall not consent to a subdivision of land within Zone Number 1 (c) unless:
- (a) the area of each allotment to be created will not be less than 4000 square metres, and
  - (b) where any allotment to be created has a frontage of less than 200 metres to a main or arterial road, access to the allotment is provided from a road, other than a main or arterial road.
- (2) The Council shall not consent to a subdivision of land within Zone Number 1 (c) unless it has made an assessment of:
- (a) the nature and topography of the land to be subdivided as related to the density of the allotments proposed to be created,
  - (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, having regard to:
    - (i) the purpose to which the allotment is intended to be put,
    - (ii) the provision on the allotment for on-site disposal of wastes, and
    - (iii) the economic provision of services.
- (3) The Council shall refer an application to subdivide land within Zone Number 1 (c) to the Regional Director of Agriculture and the Soil Conservation Service with a request

for comment, and, in determining that application, shall take into account any comments received by the Council within 21 days of the Council's request for comment, or such longer period as the Council allows.

#### **16 Subdivision of land within Zone No 7**

The Council shall not consent to a subdivision of land within Zone Number 7.

#### **17 Erection of dwellings within rural zones**

- (1) Except on vacant land within Zone Number 1 (a) having an area of not less than 400 hectares, a person shall not erect a dwelling house on land to which this plan applies without the consent of the Council.
- (2) The Council shall not consent to the erection of a dwelling house on land within Zone Number 1 (a1) unless it is satisfied that the dwelling house will be ancillary to the agricultural use of that land.
- (3) Subject to subclause (4), a person shall not erect a dwelling house on vacant land within Zone Number 1 (a) having an area of less than 400 hectares unless the land consists of:
  - (a) a holding, or
  - (b) an allotment created in accordance with this plan for the purpose of erecting a dwelling house or carrying out development for a permissible land use other than agriculture, or
  - (c) an allotment created in accordance with a consent granted before the appointed day, being an allotment on which a dwelling house could have been erected immediately before the appointed day.
- (4) The Council may consent to the erection of a dwelling house on land within Zone Number 1 (a) only where:
  - (a) the use of the dwelling house will be ancillary to the use of the land for a permissible land use other than agriculture, and
  - (b) the Council is satisfied that:
    - (i) the land could not reasonably be used for that other land use without the erection of the dwelling house, and
    - (ii) the dwelling house is to be located so as to minimise any adverse effect on the use of the land for that other land use.
- (5) A person shall not erect a dwelling house on land subject to a geophysical hazard without the consent of Council. This subclause applies only to land identified as subject to a geophysical hazard on the map.

## **18 Erection of additional dwellings**

- (1) A person shall not erect more than one dwelling on land to which this plan applies without the consent of the Council.
- (2) The Council shall not consent to the erection of more than one dwelling on an allotment (other than the alteration of an existing dwelling to create two dwellings) unless:
  - (a) a dwelling house may be erected on that land, in accordance with:
    - (i) clause 17, where the land is within Zone Number 1 (a), or 1 (a1), or
    - (ii) clause 10, where the land is within any other zone,
  - (b) no additional vehicular access to a classified road is made,
  - (c) the land on which the additional dwelling house is to be erected is not the subject of a separate land title,
  - (d) the Council is satisfied that the dwelling to be erected on the land will not interfere with the land use to which the land is put, and
  - (e) the Council is satisfied that the land use to which the allotment is put may not be fully realised without the presence on that land of an additional residence.
- (3) The Council shall not consent to the erection of one or more dwellings pursuant to subclause (2) where the dwelling or dwellings to be erected is or are intended to be used for temporary or holiday accommodation only, unless the Council is satisfied that:
  - (a) the dwellings to be erected will be available for use for temporary or holiday accommodation only, and
  - (b) the form of the development, including the number, scale and bulk of buildings and their relationship with each other, is compatible with the maintenance of a rural character in the locality.
- (4) Nothing in clause 10 shall limit or restrict the discretion of the Council to consent to the alteration of or addition to a dwelling house so as to create two dwellings.
- (5) The Council shall not consent to the subdivision of land on which an additional dwelling is erected in pursuance of this clause except in accordance with other provisions of this plan.

## **19 Development on classified roads**

- (1) Despite any other provision of this plan, the Council shall not consent to the development of land within Zone Number 1 (a) or 1 (c) within 400 metres of a



classified road for the purpose of:

abattoirs; bulk stores (other than wheat storage bunkers); bus depots; car repair stations; clubs; commercial premises; generating works; hospitals; hotels; institutions; junk yards; liquid fuel depots; offensive or hazardous industries; places of public assembly; places of public worship; retail plant nurseries; roadside stalls; sawmills; shops; transport terminals; warehouses,

if the development will result in the use of direct vehicular access to a classified road or to a road connecting a classified road, where the access to the connecting road is within 90 metres (measured along the road alignment of the connecting road) of the alignment of the classified road.

(2) The Council shall not consent to development on land:

- (a) having frontage to a classified road,
- (b) which otherwise relies on a classified road for its sole means of access, or
- (c) which has access to another road which intersects with a classified road, where the point of access is within 90 metres of the intersection of the other road and the classified road,

unless the Council is satisfied that:

- (d) the development by its nature or intensity, or the volume and type of traffic likely to be generated, is unlikely to constitute a traffic hazard or to materially reduce the capacity or efficiency of the classified or other road, and
- (e) access points, wherever possible, provided to a public road which is not a classified road.

(3) The Council shall not consent to the subdivision of land within Zone Number 1 (a) unless each allotment to be created by the subdivision has, where the allotment has frontage to a classified road, frontage to that road of not less than 400 metres.

## 20 Clearing

- (1) In this clause, **clearing** means the removal of trees and other vegetation, but (unless the land concerned is protected land or riparian land adjoining a prescribed stream) does not include the eradication of noxious weeds from land, the cutting down on land of individual trees for farm purposes such as fencing, or the clearing of regrowth from land previously cleared for agricultural use.
- (2) The Council shall not grant consent to the clearing of land, unless it is satisfied that:
  - (a) the clearing is proposed to be carried out in a manner which minimises:
    - (i) visual and scenic impact,

- (ii) the risk of soil erosion and water pollution, and
  - (iii) the destruction of important vegetation systems and natural wildlife habitats, and
- (b) the clearing is necessary for the reasonable economic use of the land or the provision of utility services,
- or the clearing is, in the opinion of the Council, necessary to reduce the risk of bushfires.

## **21 Environmental protection areas**

- (1) A person shall not, except with the consent of the Council, erect a building or carry out works for any purpose, except grazing, on land within an environmental protection area.
- (2) The Council shall not grant consent to the carrying out of development on land within an environmental protection area, if in the opinion of the Council the carrying out of the development will degrade the environment by way of:
  - (a) likely denudation of the land,
  - (b) generating uncontrolled flow of water across the land,
  - (c) generating uncontrolled disposal of animal, vegetable or chemical waste products on the land, or
  - (d) soil erosion and sedimentation.

## **22 Flood liable land**

- (1) A person shall not erect a building or carry out works for any purpose on flood liable land or on land within a floodway, except with the consent of the Council.
- (2) The Council shall not grant consent to the carrying out of development on land that is flood liable or land within a floodway if, in the opinion of the Council, the carrying out of the development is likely:
  - (a) to impede the flow of flood waters on the land,
  - (b) to imperil the safety of persons on the land in the event of the land being inundated with flood waters,
  - (c) to aggravate the consequences of floodwaters flowing on the land with regard to erosion, siltation and the destruction of vegetation,
  - (d) to have an adverse effect on the water table of the land or of land in its immediate vicinity,

- (e) to result, in the event of a flood, in damage to buildings or works resulting from carrying out the development, or
- (f) to aggravate the consequences of flooding on other properties.

### **23 Land subject to bushfire hazards**

The Council shall not grant consent for the subdivision of, or the erection of a building on, land to which this plan applies which is subject to bushfire hazards, until it has made an assessment of:

- (a) whether adequate provision has been made for access for firefighting vehicles, fire breaks, reserves and fire radiation zones,
- (b) in the case of a subdivision of land, whether the depth of any allotments to be created by the subdivision which would adjoin a perimeter road should be enlarged,
- (c) in the case of buildings:
  - (i) whether the buildings have been sited in the manner which reduces bushfire hazard, and
  - (ii) the necessity to require fireproof building materials,
- (d) the means of access for firefighting vehicles, and
- (e) the means available to ensure that fire protection measures, including fire radiation zones and hazard reduction, are appropriately maintained.

### **24 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 does 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.

- (2) Development consent is not required by this clause if the consent authority is of the opinion that the proposed development would not adversely affect the heritage significance of the heritage item or heritage conservation area.

## **25 Conservation incentives**

- (1) The consent authority 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 consent authority 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 consent authority is satisfied that the conservation of the building depends on it making the exclusion.

## **26 Notice to the Heritage Council**

Before granting development consent to the demolishing, defacing or damaging of a heritage item, the consent authority 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.

## **27 Applications that must be advertised**

Sections 79 and 79C 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 25 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.

## **28 Community use of school facilities and sites**

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

## **29 Access**

- (1) Access to an existing public road, not being a classified road, shall not be opened without the consent of the Council, where the sight distance is less than 150 metres in either direction.
- (2) Access to a classified road shall not be opened without the consent of the Council.

## **30 Roads, drainage, recreation areas and parking**

- (1) Nothing in Part 2 prevents the Council or any other public authority carrying out 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 by a public authority for the purpose of road construction.

## **31 Development within Zone No 6**

The Council shall not consent to the carrying out of development on land within Zone Number 6, being land owned or controlled by the Council, unless consideration has been given to:

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

## **32 Development for purpose of caravan park**

A person may, with the consent of the Council, carry out development for the purpose of a

caravan park and associated facilities, as described in DA 94/99, in the Parish of Canning on Lot 51 DP 756872 and Lot 58 DP 257246 and on adjoining land down to RL 352 AHD, and the Council may grant the required consent.

## Schedule 1 Heritage items

(Clause 6 (1))

- 1 Former Church (Dripstone)
- 2 Former CBC Bank (Wellington Street, Geurie)
- 3 Lion of Waterloo Hotel (Montefiores)
- 4 Macquarie Farm (Montefiores)
- 5 Former Wards Commercial Hotel, (Gipps Street, Montefiores)
- 6 **“Dalkeith”**, formerly Inn/Post Office (Neurea)
- 7 **“Terra Bella”** (Terrabella via Geurie)
- 8 **“Goonoo”**, formerly Ganoo (Walmer)
- 9 Each building situated in Central Wellington Conservation Area as shown bounded by a thin broken black line on the map
- 10 Courthouse (Maughan Street, Wellington)
- 11 Federal Hotel (Arthur Street, Wellington)
- 12 Post Office (21 Maughan Street, Wellington)
- 13 Hotel Wellington (Arthur Street, Wellington)
- 14 Former Methodist Hall (Arthur Street, Wellington)
- 15 St Andrew’s Presbyterian Church (Arthur Street, Wellington)
- 16 Cameron Park group consisting of:
  - (a) Cenotaph
  - (b) Rotunda
  - (c) Gates
  - (d) Fountain
- 17 Former Commercial Hotel (corner Raymond Street and Warne Street, Wellington)
- 18 Masonic Hall (105 Lee Street, Wellington)
- 19 Police Station, old Goal Wall and Cells (Maughan Street, Wellington)

- 20 Former Wellington District Hospital (Maxwell Street, Wellington)
- 21 National Bank (corner Percy and Swift Streets, Wellington)
- 22 St John the Baptist Anglican Church (corner Percy and Warne Streets, Wellington)
- 23 St Patrick's Catholic Church (corner Percy and Warne Streets, Wellington)
- 24 Historical Museum, formerly Bank of N.S.W. (corner Percy and Warne Streets, Wellington)
- 25 Wellington Times Office (Percy Street, Wellington)
- 26 Baptist Church (77 Swift Street, Wellington)
- 27 Wellington Railway Bridge across the Macquarie River, 500m north of Wellington Station
- 28 **"Keston"** (Mudgee Road)
- 29 **"Camelford Park"** (Mitchell Highway)
- 30 **"Glenrock"** (Mount Arthur Road)
- 31 **"Gobolion"** (Dubbo Road)
- 32 **"Nanima"** (1.6m northwest of Wellington, Mudgee Road)
- 33 **"Warrengunyah"**, formerly "Whitewell" (off Parkes Road)
- 34 Burrendong Arboretum, Tara Road (160 ha, 25 km southeast of Wellington)
- 35 Nubrigyn Formation type locality of approx. 250 ha, located at "Canobla", 10 km southwest of Stuart Town—Defined as area bounded by lines commencing at Australian Map Grid Point 8632 "Wellington" 86056570: then direct to 85656370 on the south boundary of Portion 6, Parish of Nubrigyn; then east via that boundary and the south boundary of Portion 51 to Nubrigyn Creek: then downstream to the east boundary of Portion 53, Parish of Ironbarks: then north via that boundary to AMG Point 870655, then west to the point of commencement
- 36 Gowan Green Overfold of approx. 20 ha, 30 km south of Wellington, the right bank of the Bell River just opposite "Gowan Green" Homestead. The area is defined as that bounded by straight lines commencing on the Bell River at Australian Map Grid Points 8632—"Cumnock" 851705, then via 858698 and 85656960 to 85456975 on the Bell River; then via the river to the commencement point
- 37 New Oakleigh Carved Trees on approx. 16 ha, located 16 km southwest of Wellington and comprising Portion 56, Parish of Gundy
- 38 Limestone/Phosphate Mines—(Wellington Caves)
- 39 Former Bodangora Gold Mine—(west side of Dick Street) Bodangora, Parish of Nanima (County of Bligh. Ref 875075)
- 40 St Paul's Catholic Church, Bodangora

- 41 Stuart Town Gold Mining Area (31 km southsoutheast from Wellington)
- 42 Sandy Hollow to Maryvale Railway—(between Sandy Hollow and Maryvale)
- 43 **“East Lynne”**—(old Sydney Road)
- 44 House, (20–22 Swift Street, Wellington)
- 45 Ruins of convict Settlement—3 km south of Wellington Railway Station—just north of the old cemetery, between Curtis Street and the Rail Line
- 46 Kimbell’s Kitchen (Warne Street, Wellington)
- 47 Scabbing Flat Bridge—across the Macquarie River 3.5 km south of Geurie
- 48 Post Office (Stuart Town)
- 49 Post Office and Police Station (Geurie)
- 50 St Ignatius Convent of Mercy (Percy Street, Wellington)
- 51 Letter Receiver (corner Warne Street and Nanima Crescent, Wellington)
- 52 Letter Receiver (corner Swift and Percy Streets, Wellington)
- 53 Westpac Bank (Swift Street, Wellington)

## **Schedule 2 Classified roads**

(Clause 6 (1))

As shown by a thick broken black line on the maps: SH 7, MR 233, MR 353, MR 573, MR 206.