

# Wakool Local Environmental Plan 1992

[1992-528]



New South Wales

## Status Information

### Currency of version

Historical version for 9 March 2012 to 3 May 2012 (accessed 24 December 2024 at 16:51)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Authorisation

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File last modified 9 March 2012

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New South Wales

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# Wakool Local Environmental Plan 1992



New South Wales

## Part 1 Preliminary

### 1 Name of plan

This plan may be cited as *Wakool Local Environmental Plan 1992*.

### 2 Aims, objectives etc

The general aims of this plan are:

- (a) to encourage the proper management, development and conservation of natural and man-made resources within the Shire of Wakool by protecting, enhancing or conserving:
  - (i) prime crop and pasture land,
  - (ii) timber, minerals, soil, water and other natural resources,
  - (iii) areas of significance for nature conservation,
  - (iv) areas of high scenic or recreational value,
  - (v) places and buildings or archaeological or heritage significance, including aboriginal relics and places,
  - (vi) the bed and banks of the Edward, Murray, Murrumbidgee, Niemur and Wakool Rivers, and
  - (vii) the waterways and associated wetlands for their fish and fish habitat values, and
- (b) to replace the existing planning controls with a single local environmental plan to help facilitate growth and development of the Shire of Wakool in a manner which is consistent with the aims specified in paragraph (a) and which:
  - (i) minimises the cost to the community of fragmented and isolated development of rural land,
  - (ii) facilitates the efficient and effective delivery of amenities and services,

- (iii) facilitates a range of residential and employment opportunities in accordance with demand,
- (iv) facilitates farm adjustments,
- (v) ensures that the efficiency of arterial roads is not adversely affected by development on adjacent land, and
- (vi) provides for orderly development of tourist activities.

### 3 Land to which plan applies

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

### 4 Relationship to other environmental planning instruments

This plan repeals:

- (a) *Interim Development Order No 1—Shire of Wakool*, and
- (b) such local environmental plans and other deemed environmental planning instruments as, immediately before the appointed day, applied to the land to which this plan applies, but only to the extent to which they so applied.

### 5 Definitions

(1) In this plan:

**alter**, in relation to a heritage item or to a building or work within a conservation area, means:

- (a) make structural changes to the outside of the heritage item, building or work, or
- (b) make non-structural changes to the detail, fabric, finish or appearance of the outside of the heritage item, building or work, but not changes that maintain the existing detail, fabric, finish or appearance of the outside of the heritage item, building or work.

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

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

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

**bank** means the limit of the bed of a river.

**bed**, in relation to a river, means the whole of the soil of the channel in which the river flows, including the portion which is alternately covered and left bare as there may be an increase or diminution in the supply of water and which is adequate to contain it at its average or mean stage without reference to extraordinary freshets in the time of flood or to extreme droughts.

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

**conservation area** means an area of heritage significance being the land shown marked "Conservation Area" on the map.

**Council** means the Council of the Shire of Wakool.

**demolition**, in relation to a heritage item or to a building or work within a conservation area, means the damaging, defacing, destruction, pulling down or removal of the heritage item, building or work, in whole or in part.

**environmentally sensitive land** means land shown horizontally hatched with black lines on the map.

**existing holding** means:

- (a) except as provided by paragraph (b)—the area of a lot, portion or parcel of land as it was at 18 November 1977, or
- (b) where, as at 18 November 1977, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land—the aggregation of those lots, portions or parcels as they were on that day.

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

**heritage item** means a building, work, relic, tree, or place of heritage significance to the Shire of Wakool described in Schedule 1.

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

**horticulture** means fruit farming and vegetable farming, and includes plant propagation, plant breeding, ornamental floriculture, landscape horticulture and turf farming.

**integrated housing development** means development that consists of:

- (a) the subdivision of land into 5 or more allotments, and
- (b) the erection of a single dwelling-house on each of the allotments created by that subdivision.

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

- (a) feed lots,
- (b) piggeries,
- (c) poultry farms, and
- (d) fish farming (including crustaceans 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, and does not include a building or place used for short term feeding or feedlots operated during periods of declared drought, or at times of other natural disasters such as fire or flood.

**large villa unit** means a dwelling which has a gross floor area of more than 85 square metres.

**medium villa unit** means a dwelling which has a gross floor area of not less than 55 square metres and not more than 85 square metres.

**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 NSW Department of Agriculture and deposited in an office of the NSW Department of Agriculture (and a copy of which is deposited in the office of the Council), as Class 1, Class 2 or Class 3 land, or as land of merit for special agricultural uses, but does not include land which the Director-General 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,
- (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 showground.

**relic** means any deposit, object or material evidence relating to the settlement of the area of the Shire of Wakool which is 50 or more years old.

**river** means the Edward River, Murray River, Murrumbidgee River, Niemur River or Wakool River or Eagle Creek or Hudson Creek.

**sandhill vegetation clearing** means any manner of destruction or removal of trees, shrubs or plants on land identified as sandhills on the map, and includes cutting, felling, chaining, rolling, ringbarking, poisoning, burning and other mechanical means of destroying or removing such vegetation, but does not include the destruction or removal of noxious weeds or plants or trees that are dead or dangerous.

**small villa unit** means a dwelling which has a gross floor area of less than 55 square metres.

**the map** means the map, marked “*Wakool Local Environmental Plan 1992*”, as amended by the maps (or, if sheets of maps are specified, by the specified sheets 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.

*Wakool Local Environmental Plan 1992 Amendment No (2)*

*Wakool Local Environmental Plan 1992 (Amendment No 3)*

*Wakool Local Environmental Plan 1992 (Amendment No 5)*

*Wakool Local Environmental Plan 1992 (Amendment No 6)*

**tree** includes sapling, shrub and scrub.

**villa unit** means a dwelling within a single storey building which has within its curtilage pedestrian access and open space at ground level for the exclusive use of the occupants of the dwelling.

**wetland** means land which forms a shallow water body when inundated cyclically, intermittently or permanently, being such inundation which determines the type and productivity of soils and the plant and animal communities.

- (2) In this plan, a reference to the destruction of a tree is a reference to the ringbarking, cutting down, felling, poisoning, topping, lopping, removing or otherwise destroying or injury of a tree.
- (3) 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,



(b) a reference to a map is a reference to a map deposited in the office of the Council, and

(c) a reference to land within a zone specified in the Table to clause 9 is a reference to land shown on the map in the manner identified in clause 8 as the means of identifying land of the zone so specified.

(4) Notes in this plan do not form part of this plan.

## **6 Adoption of Model Provisions**

(1) The *Environmental Planning and Assessment Model Provisions 1980*, except for:

(a) the definitions of **arterial road** and **map** in clause 4 (1), and

(b) clauses 29 and 34,

are adopted for the purposes of this plan.

## **7 Consent authority**

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

## **Part 2 Zones**

### **8 Zones indicated on the map**

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

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

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

Zone No 1 (d) (Future (Urban) Zone)—edged heavy black and lettered “1 (d)”.

Zone No 1 (f) (Rural (Forests) Zone)—black and white with heavy black edging and lettered “1 (f)”.

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

### **9 Zone objectives and development control table**

(1) The objectives of a zone are set out in the Table to this clause under the heading “Objectives of zone” appearing in the matter relating to the zone.

(2) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause, the purposes (if any) for which:

(a) development may be carried out without development consent,

(b) development may be carried out only with development consent, and

(c) development is prohibited,

are specified under the headings “Without development consent”, “Only with development consent” and “Prohibited”, respectively, appearing in the matter relating to the zone.

- (3) Except as otherwise provided by this plan, the Council shall not grant consent to the carrying out of development on land to which this plan applies unless the Council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Table

## **Zone No 1 (a) (General Rural 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,
- (ii) soil stability by controlling and locating development in accordance with soil capability,
- (iii) forests of existing and potential commercial value for timber production and of other value,
- (iv) valuable deposits of minerals, coal, petroleum and extractive materials by controlling the location of development for other purposes in order to ensure the efficient extraction of those deposits,
- (v) trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is significant to scenic amenity, recreation or wildlife habitat or is likely to control land degradation,
- (vi) water resources for use in the public interest,
- (vii) areas of significance for nature conservation, including areas with rare plants, wetlands and significant habitat, and
- (viii) places and buildings of archaeological or heritage significance,

including the protection of aboriginal relics and places,

- (b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture,
- (c) facilitating farm adjustments,
- (d) minimising the cost to the community of:
  - (i) fragmented and isolated development of rural land, and
  - (ii) providing, extending and maintaining public amenities and services, and
- (e) providing land for future urban development, for rural residential development and for development for other non-agricultural purposes, in accordance with the need for that development.

## **2 Without development consent**

Agriculture (other than ancillary dwellings, animal boarding and training establishments, intensive livestock keeping establishments and sandhill vegetation clearing); forestry (other than ancillary dwellings and pine plantations).

## **3 Only with development consent**

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

## **4 Prohibited**

Integrated housing development; motor showrooms; residential flat buildings; shops (other than general stores not exceeding 200 square metres in gross floor area); villa units.

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

### **1 Objectives of zone**

The objectives of this zone are to promote the development of land identified as suitable for:

- (a) rural residential or hobby farm development,
- (b) a range of industrial, storage or intensive livestock keeping purposes which are compatible with the environmental capabilities of the land and

which are unlikely to affect land or development in the vicinity adversely,  
or

(c) the creation of small holdings to allow and attractive rural lifestyle on land that is not prime crop and pasture land.

## **2 Without development consent**

Agriculture (other than ancillary dwellings, animal boarding and training establishments and intensive livestock keeping establishments).

## **3 Only with development consent**

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

## **4 Prohibited**

Boarding houses; caravan parks; commercial premises; hotels; integrated housing development; motels; motor showrooms; refreshment rooms; residential flat buildings; shops (other than general stores not exceeding 200 square metres in gross floor area); villa units.

### **Zone No 1 (d) (Future (Urban) Zone)**

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

The objectives of this zone are to identify land suitable for future urban use and to prevent premature development which constrains future land use options.

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

Agriculture (other than animal boarding or training establishments and intensive livestock breeding establishments).

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

Dwelling-houses and buildings ancillary to agriculture; forestry; home industries; open space; retail plant nurseries; rural industries; utility installations (other than gas holders or generating works).

#### **4 Prohibited**

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

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

## **1 Objectives of zone**

The objective of this zone is to enable the continuation and expansion of forestry and development of associated purposes.

## **2 Without development consent**

Agriculture (other than animal boarding or training establishments and intensive livestock keeping establishments); forestry.

## **3 Only with development consent**

Nil.

## **4 Prohibited**

Any purpose other than a purpose included in item 2.

### **Zone No 2 (v) (Village or Urban Zone)**

## **1 Objectives of zone**

The objective of this zone is to promote development in existing towns and villages in a manner which is compatible with their urban function.

## **2 Without development consent**

Nil.

## **3 Only with development consent**

Any purpose other than a purpose included in item 4.

## **4 Prohibited**

Extractive industries; integrated housing development; intensive livestock keeping establishments; mines; offensive and hazardous industries.

### **9A What is exempt development and complying development?**

- (1) Development of minimal environmental impact listed in Schedule 1 to *Development Control Plan No 7* as adopted by Council on 19 April 2000 is **exempt development**, despite any other provision of this plan.
- (2) Development listed in Schedule 2 to *Development Control Plan No 7* as adopted by Council on 19 April 2000 is **complying development** only if:
  - (a) it is local development of a kind that can be carried out with consent on the land

on which it is proposed, and

- (b) it is not an existing use, as defined in Section 106 of the Act.
- (3) Development is exempt or complying development only if it complies with the development standards and other requirements applied to the development by the *Development Control Plan No 7* as adopted by Council on 19 April 2000.
- (4) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in *Development Control Plan No 7* adopted by Council, as in force when the certificate is issued.

## **Part 3 Special provisions**

### **10 General considerations for development within rural zones**

- (1) The Council shall not consent to an application to carry out 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 that development on:
  - (a) the present use of the land, the potential use of the land for the purposes of agriculture and the potential of any land which is prime crop and pasture land for sustained agricultural production,
  - (b) vegetation, timber production, land capability (including soil resources and soil stability) and water resources (including the quality and stability of watercourse and ground water storage and riparian rights),
  - (c) the future extraction of known valuable deposits of minerals, coal, petroleum, sand, gravel or other extractive materials and areas considered to be prospective for these materials,
  - (d) the protection of areas of significance for nature conservation or of high scenic or recreational value, and places and buildings of archaeological or heritage significance, including Aboriginal relics and places,
  - (e) the cost of providing, extending and maintaining public amenities and services to the development,
  - (f) future expansion of settlements in the locality, and
  - (g) where the land is within Zone No 1 (a) and within 400 metres of the bank of a river, the effect of the development on the riparian lands of that river.
- (2) As well as the matters referred to in subclause (1), the Council shall 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,
  - (b) development ancillary to a purpose for which development may be carried out, with or without the consent of the Council, under this plan, or
  - (c) the erection of a dwelling-house on an allotment of land the Council is satisfied was created in accordance with this plan for the purpose of a dwelling-house.

#### **11 Subdivision of land generally**

- (1) A person shall not subdivide land to which this plan applies except with the consent of the Council.
- (2) A person who makes an application for consent to subdivide land within Zone No 1 (a), 1 (c) or 1 (d) shall, before the Council consents to the application:
  - (a) state, in relation to each allotment to be created by the subdivision, the primary purpose for which that allotment is intended to be used,
  - (b) identify any allotment which is intended to be used primarily for the purpose of agriculture,
  - (c) identify any allotment which is intended to be used primarily for the purpose of a dwelling-house,
  - (d) identify any allotment on which it is intended to erect a dwelling-house and state whether or not the dwelling-house is the primary purpose for which the allotment is being created, and
  - (e) show the approximate location of any dwelling-house erected on the land at the date of the application.
- (3) The Council shall not consent to an application to subdivide land within Zone No 1 (a), 1 (c) or 1 (d) unless the application is accompanied by the information required by subclause (2).

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

- (1) The Council may consent to the creation of an allotment of any area within Zone No 1 (a) if the Council is satisfied the allotment is intended to be used for the purposes of agriculture.
- (2) The Council shall not consent to the creation of an allotment within Zone No 1 (a) that the Council is satisfied is intended to be used for the purpose of agriculture if the allotment has an area of less than 120 hectares and there is a dwelling-house on the allotment.

- (3) Despite subclause (2), the Council may consent to the creation from an existing holding within Zone No 1 (a) on which a dwelling-house stands of one, but not more than one, allotment that the Council is satisfied is intended to be used for the purpose of agriculture and which has an area less than 120 hectares if that dwelling-house was lawfully erected on that land on or before the appointed day.

**Note—**

Clause 9 of the *State Environmental Planning Policy (Rural Lands) 2008* also enables the subdivision of lots for the purposes of primary production.

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

- (1) The Council shall not consent to an application to subdivide land within Zone No 1 (a) if any allotment to be created by the subdivision is, in the opinion of the Council, intended to be used primarily for purposes other than agriculture or a dwelling-house 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 intended to be used.
- (2) Nothing in subclause (1) prevents the Council from granting consent to an application to subdivide land within Zone No 1 (a) to create an allotment that, in the opinion of the Council, is intended to be used for a purpose other than agriculture or a dwelling-house if the Council is satisfied that:
- (a) the purpose for which the allotment is intended 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 intended to be used to meet that demand justifies the creation of the allotment notwithstanding its agricultural value.

**14 (Repealed)**

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

- (1) The Council shall not consent to an application to subdivide land within Zone No 1 (c) unless:
- (a) where provision is to be made for off-site disposal of sewage, the area of each allotment to be created as a result of the subdivision is not less than 5 000 square metres, and



- (b) where no provision is to be made for off-site disposal of sewage:
- (i) each allotment to be created as a result of the subdivision has an area of not less than 5 000 square metres with the average area of the resultant lots being not less than 1 hectare,
  - (ii) arrangements satisfactory to the Council have been made for the provision of a permanent water supply to that land, and
  - (iii) the number of allotments having an area of less than 1 hectare which will be created as a result of the subdivision is not more than 65 per cent of the maximum number of allotments which could be created from that land without contravening subparagraph (i).
- (2) Nothing in subclause (1) (b) (i) prevents the Council from consenting to the subdivision of land within Zone No 1 (c) so as to create an allotment having an area of less than 5 000 square metres if it is satisfied that the allotment has adequate provision for effluent disposal.
- (3) If:
- (a) land to be provided and developed for the communal use of future owners of allotments is created by a subdivision referred to in subclause (1), and
  - (b) the Council is satisfied that the resultant development will enhance the amenity of the locality,
- the area of that land may be included in calculating the average lot size of that subdivision.
- (4) The Council shall 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,
  - (b) the desirability of providing a range and mixture of allotment sizes,
  - (c) whether the design of each allotment to be created by the subdivision is satisfactory for the economic provision of services, and
  - (d) the physical suitability of the land for on-site disposal of wastes, and
  - (e) the principles set out in Part 2 of *Murray Regional Environmental Plan No 2—Riverine Land*.
- (5) The Council shall not consent to the carrying out of development for the purpose of a dwelling-house in an allotment created within Zone No 1 (c) if that dwelling-house is

located less than 150 metres from the boundary of land within Zone No 1 (a) unless, in the opinion of the Council, the development will not be adversely affected by the use of adjoining lands for agriculture.

- (6) The Council may consent to the subdivision of, or the carrying out of other development on, land within Zone No 1 (c) only if the Council is satisfied that:
  - (a) measures will be taken to protect water quality by reducing nutrient accessions to any river, and
  - (b) measures will be taken to prevent degradation of existing vegetation and fauna habitat, and
  - (c) new native vegetation will be allowed to grow so as to minimise any disturbance to wildlife and aquatic habitat and to protect any river banks from erosion, and
  - (d) scenic, rural river character and habitat values will be protected, and
  - (e) appropriate fire protection measures will be taken and maintained (including creating and maintaining fire radiation zones), and
  - (f) the dwelling-house will be located at a sufficient distance from the edge of any tree and habitat preservation area (as identified on the map) to allow the matters stated in the preceding paragraphs to be achieved.
- (7) For the purpose of satisfying itself of the matter referred to in subclause (6) (a) in relation to the erection of a dwelling-house on land within Zone No 1 (c) within 100 metres of a river, the Council must consider a plan that shows how the site is to be landscaped.
- (8) The Council may consent to subdivision of land within Zone No 1 (c) to create allotments to be connected to a reticulated water supply only if the Council is satisfied that reticulated sewerage is also to be provided to those allotments.

#### **16 Subdivision of land in Zone No 1 (d)**

The Council may consent to the subdivision of land within Zone No 1 (d) if each allotment created by the subdivision is not less than 2 hectares in area and the Council is satisfied that the subdivision will complement future urban development.

#### **17 Subdivision of land in Zone No 2 (v)**

- (1) The Council shall not consent to an application to subdivide land within Zone No 2 (v) to create an allotment that, in the opinion of the Council, is intended to be used for the purpose of a dwelling-house unless the allotment has an area of 550 square metres or more.
- (2) Despite subclause (1), Council may consent to a subdivision of land within Zone No 2

(v) that creates allotments having an area of less than 550 square metres if the allotments are, in the opinion of the Council, to be used for the erection of villa units in accordance with clause 20.

### **18 Dwelling-houses in Zone No 1 (a)**

- (1) In this clause, **vacant land** means land on which no dwelling-house is erected.
- (2) The Council shall not consent to the erection of a dwelling-house on vacant land within Zone No 1 (a) unless:
  - (a) the land comprises:
    - (i) an existing holding,
    - (ii) an allotment that was, in the opinion of the Council, created in accordance with this plan for a purpose other than agriculture, or
    - (iii) an allotment created in accordance with a consent granted before the appointed day, being an allotment on which a dwelling-house could have been lawfully erected immediately prior to the appointed day,
  - (b) the land has an area of not less than 500 hectares,
  - (c) the land has an area of more than 120 hectares and has the benefit of a licence under the [Water Act 1912](#) for the minimum allocation of 250 megalitres of water,
  - (d) the land has an area of more than 20 hectares and has the benefit of a licence to irrigate at least 20 hectares of horticultural crops issued under section 12 of the [Water Act 1912](#), or
  - (e) the dwelling-house is ancillary and subsidiary to the present or intended development of that land and is on the same allotment.

### **18A Dwelling entitlements on existing concessional lots**

The amendment of this plan by the [State Environmental Planning Policy \(Rural Lands\) 2008](#) does not affect any entitlement arising under a provision of this plan (as in force before that amendment) to erect a dwelling-house on a lot, if:

- (a) the lot was created before that commencement, or
- (b) development consent to the creation of the lot was applied for, or granted, before that commencement.

### **19 Erection of additional dwelling-houses in Zone No 1 (a) or 1 (c)**

- (1) The Council may consent to the erection of one additional dwelling-house on land within Zone No 1 (a) or 1 (c) (or the alteration of an existing dwelling-house to create 2 dwellings) where:

- (a) no additional access to a public road is required from the land,
  - (b) separate ownership of the land on which the additional dwelling is located would require the lodgment of, and approval by the Council of, a separate subdivision application,
  - (c) in the opinion of the Council, the dwelling to be erected or created on the land will not interfere with the purpose for which the land is being used,
  - (d) the land is not prime crop and pasture land, and
  - (e) in the case of land within Zone No 1 (a), a dwelling-house could be erected on the land in accordance with clause 18 if the land were vacant.
- (2) The Council shall not consent to the subdivision of land on which one additional dwelling-house is erected under this clause except in accordance with this plan.
- (3) The Council must not grant a consent pursuant to this clause that may result in the existence on a piece or parcel of land of more than one dwelling the erection of which was consented to pursuant to this clause.

## **20 Villa units in Zone No 2 (v)**

- (1) A person may, with the consent of the Council, carry out development for the purpose of villa units (not being integrated housing development) on land within Zone No 2 (v).
- (2) A person shall not carry out development for the purpose of a villa unit on land within Zone No 2 (v) unless:
- (a) the site area for each small, medium or large villa unit is not less than the site area specified in respect of a small, medium or large villa unit in Column 1 of the Table to this subclause, and
  - (b) there is provided in respect of each small, medium or large villa unit a landscaped area of not less than the area specified in respect of a small, medium or large villa unit in Column 2 of that Table.

### **Table**

#### **Column 1**

Minimum site area (in square metres) required for each

(a) large villa unit—330

(b) medium villa unit—240

(c) small villa unit—170

#### **Column 2**

Minimum landscaped area (in square metres) required for each

(a) large villa unit—110

(b) medium villa unit—95

(c) small villa unit—70

## **21 Development which must be advertised**

The provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development for the purposes specified in Schedule 2 in the same way as those provisions apply to and in respect of designated development.

## **22 Development along arterial roads**

- (1) The Council shall not consent to an application to carry out development on land which has frontage to an arterial road unless:
  - (a) access to that land is provided by a road other than the arterial road, wherever practicable, and
  - (b) in the opinion of the Council, the safety and efficiency of the arterial road will not be adversely affected by:
    - (i) the design of the access to the proposed development,
    - (ii) the emission of smoke or dust from the proposed development, or
    - (iii) the nature, volume or frequency of vehicles using the arterial road to gain access to the proposed development.
- (2) The Council shall not consent to the development of land within Zone No 1 (a), 1 (c) or 1 (d) for any purpose listed in Schedule 3 if the development of the land for the purpose will result in direct access from the land to:
  - (a) an arterial road, or
  - (b) a road connecting the land with an arterial road, and the access to that road is within 90 metres (measured along the road alignment of the connecting road) of the alignment of the arterial road.

## **23 Environmentally sensitive land**

- (1) A person shall not carry out development on environmentally sensitive land for the purposes of:
  - (a) intensive livestock keeping,
  - (b) junk yards,
  - (c) liquid fuel depots,
  - (d) offensive or hazardous industries,
  - (e) sawmills, or
  - (f) stock and sale yards.

- (2) A person shall not, except with the consent of the Council, cause the destruction of trees on:
- (a) more than 1 hectare of environmentally sensitive land forming the whole or part of an existing holding, or
  - (b) more than 5 per cent of the area of an existing holding, where that 5 per cent comprises environmentally sensitive land,
- whichever is less.
- (3) A person shall not, except with the consent of the Council carry out development on environmentally sensitive land for the purposes of:
- (a) filling wetlands,
  - (b) draining wetlands, or
  - (c) constructing levees.
- (4) Subclause (2) does not apply to **protected land** as defined in section 21AB of the [Soil Conservation Act 1938](#).
- (5) The Council shall not consent to an application made for the purposes of subclause (2) unless, in the opinion of the Council, the destruction of trees on the land will be carried out in a manner which, in respect of that land and adjacent land, minimises:
- (a) the risk of soil erosion and other land degradation,
  - (b) the loss of scenic amenity, and
  - (c) the loss of important vegetation systems and natural wildlife habitats.

## 24 Flood liable land

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

- (2) The Council shall not grant a consent required by this clause unless it has taken into consideration:
- (a) the cumulative effect of the development on flood behaviour,
  - (b) the risk of pollution to the waterways caused by the development, and
  - (c) the availability of flood free access to the development.

## **25 Land subject to bushfire hazards**

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

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

## **26 Heritage items**

- (1) A person shall not, in respect of a building, work, relic, tree or place that is a heritage item:
- (a) demolish or alter the building or work,
  - (b) damage or move the relic,
  - (c) excavate for the purpose of exposing or removing the relic,
  - (d) damage or despoil the place or tree,
  - (e) erect a building on or subdivide land on which the building, work or relic is situated or that comprises the place, or
  - (f) damage any tree on land on which the building, work or relic is situated or on the land which comprises the place,
- except with the consent of the Council.
- (2) The Council shall not grant consent to a development application required by subclause (1) unless it has taken into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the item and any stylistic or horticultural features of its setting.

**Note—**

The website of the Heritage Branch of the Department of Planning has publications that provide guidance on assessing the impact of proposed development on the heritage significance of items (for example, *Statements of Heritage Impact*).

## **27 Development in the vicinity of heritage items**

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

## **28 Conservation areas**

- (1) A person shall not, in respect of a conservation area:
  - (a) demolish or alter a building or work within the area,
  - (b) damage or move a relic within the area,
  - (c) excavate, for the purpose of exposing or removing a relic, within the area, or
  - (d) damage or despoil a place within the area,except with the consent of the Council.
- (2) The Council shall not grant consent to a development application required by subclause (1) unless it has taken into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the conservation area.

## **29 Heritage advertisements**

- (1) Except as provided by subclause (2):
  - (a) the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of:
    - (i) the demolition of a building or work that is a heritage item, and
    - (ii) the demolition of a building or work within a conservation area,in the same way as those provisions apply to and in respect of designated development, and
  - (b) (Repealed)
- (2), (3) (Repealed)
- (4) Subclause (1) does not apply to the partial demolition of a heritage item or a building or work within a conservation area if, in the opinion of the Council, the partial demolition will be of a minor nature and will not adversely affect the heritage



significance of the heritage item, building or work in relation to the environmental heritage of the Wakool Shire.

### **30 Conservation incentives relating to heritage items**

A person may, with the consent of the Council:

- (a) use, for any purpose, a building within a conservation area or the land on which that building is erected, or
- (b) use, for any purpose, a building that is a heritage item or the land on which that building is erected, if, in the opinion of the Council:
  - (c) the use would have little or no adverse effect on the amenity of the area, and
  - (d) conservation of the building depends on the Council granting consent.

### **31 Access**

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

### **32 Development along rivers**

- (1) Despite any other provisions of this plan, a person shall not, except with the consent of the Council, on land to which this plan applies:
  - (a) erect a building for any purpose on land within Zone No 1 (a), 1 (c) or 1 (d) within 400 metres of any bank of a river,
  - (b) destroy any tree on land within 60 metres of any bank of a river,
  - (c) carry out development for any purpose on land within 20 metres of any bank of a river, or
  - (d) carry out development for the purposes of:
    - (i) a canal,
    - (ii) a marina (including pontoons, jetties, piers or other structures) designed to provide mooring or dry storage for one or more vessels used for any purpose, or
    - (iii) filling or extraction,on land comprising the bed or any bank of a river.
- (2) The Council shall not consent to an application to erect a building on land comprising:
  - (a) a bed of a river, or

(b) land within Zone No 1 (a), 1 (c) or 1 (d) and being within 100 metres of any bank of a river or as otherwise shown on the map, as being land to which this subclause applies,

unless, in the opinion of the Council, the building:

(c) is ancillary to the use of that land for the purpose of a recreation area, or

(d) is to be used for the purpose of fisheries, irrigation works (including the pumping and treatment of water for private domestic consumption), marinas or utility installations or for the servicing of vessels or sea planes.

(3) The Council shall not consent to an application required by subclause (1) unless, in the opinion of the Council, the destruction of the trees or the development of the land, and any subdivision of the land, will be carried out in a manner or have an effect which, in respect of that land and the adjacent land, minimises:

(a) the risk of soil erosion and other land degradation,

(b) the loss of scenic amenity, and

(c) the loss of important vegetation systems and natural wildlife habitats, including fish habitat values.

(4) Despite any other provision of this plan, the Council must not consent to the carrying out of development on any land identified on the map as a tree and habitat preservation area other than development that is to be used for any purpose described in subclause (2) (d).

### **33 Forestry**

(1) This clause applies to land within a state forest or timber reserve within the meaning of the *Forestry Act 1916*.

(2) Notwithstanding clauses 9 and 23, development may be carried out on land to which this clause applies without development consent:

(a) by the Forestry Commission, if the development is authorised under the *Forestry Act 1916*, or

(b) by any person, if the development is authorised by an authority granted or issued by the Forestry Commission under that Act.

### **34 Advertising structures**

(1) A person shall not, except with the consent of the Council, erect an advertising structure on land to which this plan applies.

(2) The Council shall not consent to the erection of an advertising structure unless:

- (a) the advertisement on or to be placed on the structure indicates or is to indicate the purpose for which the premises on the land are to be used,
- (b) in the case of land within Zone No 1 (a), 1 (c) or 1 (d), the advertising structure is to be used for the purpose of displaying an advertisement indicating the location of tourist facilities and places of scientific, cultural, historic or scenic interest, and
- (c) the Council is satisfied that the advertising structure will not interfere with the amenity of the area.

### **35 Development for certain additional purposes**

- (1) Nothing in this plan prevents a person, with the consent of the Council, from carrying out development on land referred to in Schedule 4 for a purpose specified in relation to that land in that Schedule subject to such conditions (if any) as are so specified.
- (2) Subclause (1) does not affect the application to or in respect of development to which that subclause applies of such of the provisions of this plan as are not inconsistent with that subclause or with a consent granted by the Council in respect of any such development.

### **36 Development on travelling stock routes**

The Council must, before determining an application for consent to carry out development on land that is part of a travelling stock reserve within the meaning of the *Rural Lands Protection Act 1998*, take into consideration:

- (a) existing arrangements for use and occupation of that travelling stock reserve under Divisions 5 and 6 of Part 8 of the *Rural Lands Protection Act 1998*, and
- (b) any requirements of the Rural Lands Protection Board in which that travelling stock reserve is vested.

**Note—**

The occupation and use of travelling stock reserves is subject to reserve use and stock permit requirements under Divisions 5 and 6 of Part 8 of the *Rural Lands Protection Act 1998*.

### **37 Murray Downs development**

- (1) This clause applies to land near Swan Hill, being Portions 13, 14, 15, 26, 27, 28, and 39, and that Part of Portions 59 and 63 west of the prolongation of the eastern boundary of Portion 26, Parish of Yellymong, County of Wakool.
- (2) Notwithstanding any other provision of this plan, development may be carried out on land to which this clause applies, subject to subclause (3), with the consent of the Council, for any purpose except bulk stores, car repair stations, junk yards, liquid fuel depots, motor showrooms, industries, mines, roadside stalls, timber yards and warehouses.

- (3) Development may be carried out on land to which this clause applies without the consent of the Council for the purposes of agriculture (other than agriculture within 20 metres of the bank of the Murray River).
- (4) For the purpose of subclause (3), **agriculture** does not include the erection of a dwelling-house or subdivision.
- (5) The Council shall not consent to development on land to which this clause applies unless it has made an assessment of:
  - (a) the extent to which the carrying out of the development would affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of any part of the land that is environmentally sensitive land, and
  - (b) the degree to which the development:
    - (i) exhibits a high architectural standard,
    - (ii) is sympathetic to the existing landscape features, and
    - (iii) maintains an attractive view from the Murray River.
- (6) The Council shall not consent to the erection of a building, other than a building to be used for caravan park amenities, on land to which this clause applies below the Australian Height Datum of 69 metres above sea level:
  - (a) unless the land is protected by a levee bank constructed to the requirements of the Department of Water Resources and the floor level of the proposed building is constructed to a level not less than the Australian Height Datum of 69 metres above sea level, or
  - (b) if in the opinion of the Council, the carrying out of the development would be likely to significantly increase:
    - (i) the area of the land to be protected by a levee bank, and
    - (ii) public expenditure on flood mitigation measures.
- (7) The Council, before determining any application required by this clause for consent to carry out a subdivision or the development of land for the purpose of tourist facilities, shall consult with the Council of the City of Swan Hill and shall take into consideration any representations made by that Council in relation to the proposed development.
- (8) The Council shall not consent to the carrying out of any development on land to which this clause applies unless and until arrangements satisfactory to the Council of the City of Swan Hill have been made for the provision to such land of services of water and sewerage (where such services are provided by that Council).
- (9) A person shall not erect a building on land to which this clause applies between the

banks of the Murray River and the foreshore building line shown by a broken black line on the map and marked "foreshore building line", except for a building which, in the opinion of the Council:

- (a) is ancillary to development for the purposes of a tourist facility (other than holiday accommodation, caravan park, holiday cabins, hotel or motel), or
- (b) is for the purposes of fisheries, irrigation works including the pumping and treatment of water for private domestic consumption), marina, utility installation or the servicing of vessels or sea planes.

### **39 Subdivision of certain land at Barham**

- (1) This clause applies to land at Barham, being Lot 1, DP 174943 and Lot 1A, DP 385172, as shown edged heavy black and lettered "1 (c)" on the map marked "*Wakool Local Environmental Plan 1992 (Amendment No 5)*".
- (2) The Council must not consent to the subdivision of, or the carrying out of other development on, the land unless the Council is satisfied that the area identified as a tree and habitat preservation area on the map referred to in subclause (1) will be maintained as a natural riparian woodland (subject to any development allowed under clause 32 (4)).
- (3) The minimum setback for a dwelling-house from the tree and habitat preservation area on the land is 15 metres (to be measured from the eastern boundary of the tree and habitat preservation area).

### **40 Development of certain land near East Barham Road, Barham**

- (1) This clause applies to land near East Barham Road, Barham, being part of Lot 1, DP 1094360, as shown edged heavy black and lettered "V" on the map marked "*Wakool Local Environmental Plan 1992 (Amendment No 6)*".
- (2) Despite any other provision of this plan, the Council must not grant development consent to an application to subdivide the land to which this clause applies unless the Council is satisfied that each allotment to be created by the subdivision will be connected to a reticulated sewerage system and a reticulated water supply.
- (3) Despite any other provision of this plan, the Council may only grant development consent to development on land in the river front area for the following purposes:
  - (a) boat launching ramps, boat landing facilities and public moorings,
  - (b) paths for pedestrian access,
  - (c) recreation areas,
  - (d) environmental protection works (within the meaning of the standard instrument

prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*),

- (e) bush fire hazard reduction work authorised by the *Rural Fires Act 1997*,
  - (f) flood mitigation works and structures (but only after consultation with the Office of Environment and Heritage, Department of Premier and Cabinet),
  - (g) weed control that does not involve the clearing, removal or damage to native vegetation (including trees, shrubs, grass and herbaceous vegetation).
- (4) The Council must not grant development consent to development on land to which this clause applies unless the Council is satisfied that:
- (a) there will be public access not less than 5 metres wide to and directly along the bank of the Murray River within the river front area, and
  - (b) the appearance of the development, from both the Murray River and the river front area, will be compatible with the surrounding area, and
  - (c) the development is not likely to cause environmental harm, such as:
    - (i) pollution or siltation of the Murray River, or
    - (ii) an adverse effect on surrounding uses, riverine habitat, wetland areas or flora or fauna habitats, or
    - (iii) an adverse effect on drainage patterns, and
  - (d) the development will not cause visual disturbance to the riparian landscape, and
  - (e) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained.
- (5) In this clause, **river front area** means that part of the land to which this clause applies that is identified as land within the 40 metre setback on the map marked "*Wakool Local Environmental Plan 1992 (Amendment No 6)*".

## Schedule 1 Heritage items

(Clauses 5 (1), 26)

- 1 Murray Downs Homestead and Outbuildings
- 2 The Old Courthouse, and foot bridge, Moulamein
- 3 Barham War Memorial Hall, Murray Street, Barham
- 4 Speewa Ferry—Murray River
- 5 Murray Downs Homestead and environs, being that Part of Portions 13, 14, 15 and 28, Parish of

Yellymong, County of Wakool, shown as environmentally sensitive land on the map

## **Schedule 2 Development which must be advertised**

(Clause 21)

- 1 The demolition of a building or work that is a heritage item, or is within a conservation area, not being a partial demolition, which, in the opinion of the Council, is of a minor nature and does not adversely affect the significance of the building or work as part of the environmental heritage of the Shire of Wakool.
- 2 Boarding-houses; hotels; motels; residential flat buildings.
- 3 Industries (other than home industries and rural industries) in Zone No 1 (a) or 1 (c).
- 4 Intensive livestock keeping establishments.
- 5 Junk yards; liquid fuel depots; saw-mills; stock and sale yards.
- 6 Subdivision of land within Zone No 1 (c) allowed by clause 15.

## **Schedule 3 Restricted development along arterial roads**

(Clause 22)

Bulk stores  
Caravan parks  
Car repair stations  
Clubs  
Commercial premises  
Educational establishments  
Hospitals  
Hotels  
Industries (other than home or rural industries)  
Institutions  
Junk yards  
Liquid fuel depots  
Mines  
Motels  
Places of public assembly  
Places of public worship  
Recreation establishments  
Recreation facilities  
Refreshment rooms  
Retail plant nurseries  
Roadside stalls  
Sawmills  
Service stations  
Stock and sale yards  
Transport terminals  
Warehouses

## **Schedule 4 Development for certain additional purposes**

(Clause 35)

Aboriginal land, being lot 75, DP 722007, Parish of Yellymong, County of Wakool—development for Aboriginal housing and ancillary purposes.

Lot 1, DP 42544, Cedar Avenue, Parish of Moulamein, County of Wakool, as shown edged heavy black on the map marked "*Wakool Local Environmental Plan 1992 (Amendment No 1)*"—development for Aboriginal housing and ancillary purposes.