

Deniliquin Local Environmental Plan 1997 (1998 EPI 197)

[1998-197]



New South Wales

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New South Wales

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Deniliquin Local Environmental Plan 1997 (1998 EPI 197)



New South Wales

Part 1 Preliminary

1 Name of plan

This plan is *Deniliquin Local Environmental Plan 1997*.

2 Aims, objectives etc

The general aims of this plan are—

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts, and
- (a) to encourage the proper management, development and conservation of natural and other resources within the local government area of Deniliquin by protecting, enhancing or conserving—
 - (i) places and buildings of archaeological or heritage significance, including Aboriginal relics and places, and
 - (ii) timber, minerals, soil, water and other natural resources, and
 - (iii) areas of significance for nature conservation, and
 - (iv) areas of high scenic or recreational value, and
- (b) to replace the existing planning controls with a single local environmental plan to help facilitate growth and development of the area of Deniliquin 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, and
 - (ii) facilitates the efficient and effective delivery of amenities and services, and
 - (iii) facilitates a range of residential and employment opportunities in accordance with demand, and

(iv) ensures that the efficiency of arterial roads is not adversely affected by development on adjacent land, and

(v) provides for orderly development of tourist activities.

3 Land to which plan applies

This plan applies to all land within the local government area of Deniliquin.

4 Relationship to other environmental planning instruments

(1) This plan repeals—

(a) *Deniliquin Local Environmental Plan 1989*, and

(b) such other 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.

(2) This plan does not affect the provisions of [Murray Regional Environmental Plan No 2—Riverine Land](#) as they apply to the local government area of Deniliquin.

5 Definitions

(1) In this plan—

agriculture means—

(a) horticulture, or

(b) the use of land for any purpose of animal husbandry, the keeping or breeding of livestock (otherwise than by use of an intensive livestock keeping establishment), poultry or bees, and the growing of vegetables, cereals, fibre crops and the like, or

(c) works of a related nature (including on-farm storages) carried out in accordance with guidelines in the documents titled: “Berriquin Land & Water Management Plan, Final Draft”, dated April 1995; “Cadell Land & Water Management Plan, Final Draft”, dated August 1995; and “Denimein Land & Water Management Plan, Final Draft”, dated August 1995, copies of which are available from the office of the Council, being works specified in a farm management plan that has been approved by Murray Irrigation Limited as complying with those guidelines.

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 used 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.

archaeological site means land identified as such a site on the map.

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

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

conservation area means the land marked “Conservation Area” shown on the map.

Council means the Council of Deniliquin.

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.

existing holding means—

- (a) except as provided by paragraph (b)—the area of a lot, portion or parcel of land as it was at 28 March 1969, or
- (b) where, at 28 March 1969, 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 Planning Map means the [Deniliquin Local Environmental Plan 1997 Flood Planning Map](#).

heritage item means a building, work, relic, tree or place described in Schedule 1.

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

home occupation means an occupation carried on in a dwelling-house or in a dwelling in a residential flat building by the permanent residents of the dwelling-house or dwelling which does not involve—

- (a) the registration of the building under the [Factories, Shops and Industries Act 1962](#), or
- (b) the employment of persons other than those residents, or

- (c) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil or otherwise,
- (d) the display of goods, whether in a window or otherwise, or
- (e) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on the dwelling-house or dwelling to indicate the name and occupation of the residents).

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

integrated housing 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 purpose of breeding, boarding or nurturing by a feeding method other than natural grazing, and includes—

- (a) feed lots, and
- (b) piggeries, and
- (c) poultry farms, and
- (d) fish farms (including farms for 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 feed lots operated during periods of declared drought, or at times of other natural disasters, such as fire or flood.

recreation area means—

- (a) a children's playground, or
- (b) an area used for sporting activities or sporting facilities, or
- (c) an area used to provide facilities for recreational activities which promote the physical, cultural or intellectual welfare of persons within the community, being facilities provided by—

- (i) a public authority, or
- (ii) a body of persons associated for the purposes of the physical, cultural or intellectual welfare of persons within the community,

but does not include a racecourse or a showground.

relic means any deposit, object or material evidence (including human remains) relating to—

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

the map means the map marked “*Deniliquin Local Environmental Plan 1997*”, as amended by the maps (or 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.

Deniliquin Local Environmental Plan 1997 (Amendment No 2)

the river means the Edward River and its tributaries and associated waterways (including related anabranches, creeks, lagoons, lakes and billabongs).

tree includes sapling, shrub and scrub.

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

(2) In this plan—

- (a) 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 injuring of a tree, and
- (b) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for the purpose, and
- (c) a reference to a map is a reference to a map deposited in the office of the Council, and
- (d) 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.

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

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

6 Adoption of Model Provisions

The *Environmental Planning and Assessment Model Provisions 1980*, except for—

(a) the definitions of **agriculture**, **arterial road**, **home occupation** and **map**, and

(b) clauses 29 and 34,

are adopted for the purposes of this plan.

7 Consent authority

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

Part 2 Zones

8 Zones indicated on the map

For the purposes of this plan, land to which this plan applies is within a zone specified below if the land is shown on the map in the manner specified below 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 (f) (Rural (Forests) Zone)—edged heavy black and lettered “1 (f)”.

Zone No 2 (Urban Zone)—edged heavy black and lettered “2”.

Zone No 6 (Open Space Zone)—edged heavy black and lettered “6”.

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, development (if any) which—

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

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

(c) is prohibited,

is specified under the headings “Without development consent”, “Only with

development consent” and “Prohibited”, respectively, appearing in the matter relating to the zone.

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

Table

Zone No 1 (a) (General Rural Zone)

1 Objectives of zone

The objective of this zone is to promote the proper management and utilisation of resources by—

- (a) protecting, enhancing and conserving—
- (i) agricultural land in a manner which sustains its efficient and effective agricultural production potential, and
 - (ii) soil stability, by controlling and locating development in accordance with soil capability, and
 - (iii) trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is significant to scenic amenity, recreation or natural wildlife habitat or is likely to control land degradation, and
 - (iv) water resources for use in the public interest, and
 - (v) areas of significance for nature and geological conservation, including areas with rare plants, wetlands and significant habitat, and
 - (vi) places and buildings of archaeological or heritage significance, including Aboriginal relics and places, and
- (b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture, and
- (c) facilitating farm adjustments, and
- (d) minimising the cost to the community of—
- (i) fragmented and isolated development of rural land, and
 - (ii) providing, extending and maintaining public amenities and services.

2 Without development consent

Development for the purpose of—
agriculture.

3 Only with development consent

Any development other than development included in item 2 or 4.

4 Prohibited

Development for the purpose of—
motor showrooms; residential flat buildings; shops (other than general stores not exceeding 200 square metres in gross floor area).

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

1 Objectives of zone

The objective of this zone is to promote the development of land identified as suitable for—

- (a) rural residential or hobby farm development, or
- (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 adversely affect land or development in the vicinity, or
- (c) the creation of small holdings to allow an attractive rural lifestyle on land that is not prime crop and pasture land.

2 Without development consent

Development for the purpose of—
agriculture.

3 Only with development consent

Any development other than development included in item 2 or 4.

4 Prohibited

Development for the purpose of—

boarding-houses; caravan parks; commercial premises; hotels; motels; motor showrooms; residential flat buildings; road transport terminals; shops (other than general stores not exceeding 200 square metres in gross floor area).

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

1 Objectives of zone

The objective of this zone is to permit the continuation and expansion of forestry and development for the purpose of associated land uses.

2 Without development consent

Development for the purpose of—

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

3 Only with development consent

Nil.

4 Prohibited

Any development other than development included in item 2.

Zone No 2 (Urban Zone)

1 Objectives of zone

The objective of this zone is to promote development in Deniliquin in a manner which is compatible with its urban function.

2 Without development consent

Nil.

3 Only with development consent

Any development other than development included in item 4.

4 Prohibited

Development for the purpose of—

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

Zone No 6 (Open Space Zone)

1 Objectives of zone

The objectives of this zone are—

- (a) to ensure there is provision of adequate open space areas to meet the needs of all residents and provide opportunities to enhance the total environmental quality of the local government area of Deniliquin, and
- (b) to identify land which is owned by the Council or which will be dedicated to the Council for open space or public recreation purposes as a condition of development consent or subdivision approval.

2 Without development consent

Development for the purpose of—

bushfire hazard reduction work; gardening; landscaping.

3 Only with development consent

Development for the purpose of—

conservation works; forestry; recreation facilities.

4 Prohibited

Any development other than development included in item 2 or 3.

Part 3 Special provisions

10 General considerations for development within rural zones

- (1) The Council must, before granting an application for consent to carry out development on land within Zone No 1 (a) or 1 (c) take into consideration the effect (if any) of the carrying out of that development on—
 - (a) vegetation, land capability (including soil resources and soil stability) and water resources (including the quality and stability of watercourse and ground water storage), and
 - (b) 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
 - (c) the cost of providing, extending and maintaining public amenities and services to the site of the proposed development.

- (2) As well as the matters referred to in subclause (1), the Council must, before granting consent, take into consideration the relationship of the development to development on adjoining land and its likely effect on other land in the locality.

10A What is exempt and complying development?

- (1) Development of minimal environmental impact listed as exempt development in *Development Control Plan No 4* as adopted by the Council on 18 August 1999 is **exempt development**, despite any other provision of this plan.
- (2) Development listed as complying development in *Development Control Plan No 4* as adopted by the Council on 18 August 1999 is **complying development** if—
 - (a) it is local development of a kind that can be carried out with consent on the land on which it is proposed, and
 - (b) it is not an existing use, as defined in section 106 of the Act.
- (3) Development is exempt or complying development only if it complies with the development standards and other requirements applied to the development by *Development Control Plan No 4* as adopted by the Council on 18 August 1999.
- (4) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in *Development Control Plan No 4* adopted by the Council, as in force when the certificate is issued.

11 Subdivision of land generally

- (1) A person must not subdivide land to which this plan applies, except with the consent of the Council.
- (2) The Council must not grant an application for consent to subdivide land unless it has obtained all relevant information in relation to, and made an assessment of—
 - (a) the primary purpose for which each allotment to be created by the subdivision is intended to be used, and
 - (b) whether any allotment to be created by the subdivision is intended to be used primarily for the purpose of agriculture, and
 - (c) whether a dwelling is intended to be erected on any allotment to be created by the subdivision, and the approximate location of any such dwelling.

12 Subdivision for the purpose of agriculture within Zone No 1 (a)

- (1) The Council may consent to the creation of an allotment of any area if the Council is satisfied that the proposed allotment will be used for the purpose of agriculture.
- (2) Despite subclause (1), the Council must not consent to the creation of such an

allotment if the proposed allotment has an area less than 40 hectares and there is already a dwelling-house on the proposed allotment.

13 Subdivision for other purposes within Zone No 1 (a)

- (1) The Council may grant an application for consent to subdivide land within Zone No 1 (a) for a purpose other than agriculture or a dwelling-house only if the Council is satisfied that—
 - (a) none of the land the subject of the application is prime crop and pasture land, and
 - (b) the area of the proposed allotment is appropriate for the proposed use, and
 - (c) the purpose for which the allotment is to be used involves the supply of goods and services for which there is a demand in the locality, and
 - (d) no other land in the locality could reasonably be used for that purpose.
- (2) Despite subclause (1), the Council may grant an application for consent to subdivide land that comprises prime crop and pasture land for a use other than agriculture or a dwelling-house only if the Council is satisfied that the level of demand for goods and services which are to be supplied from the allotment and the extent to which the allotment is proposed to be used to meet that demand justifies the creation of the allotment despite the agricultural value of the land.

14 Subdivision for the purpose of dwelling-houses within Zone No 1 (c)

- (1) The Council must not grant an application for consent to subdivide land within Zone No 1 (c) unless—
 - (a) where provision is to be made for the 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, and
 - (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 (rounded to the nearest whole number) 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 the prescribed area if it is satisfied that the allotment has adequate provision for effluent disposal.

(3) If—

- (a) land is to be provided and developed for the communal use of future owners of allotments 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 must not grant consent to the subdivision of land within Zone No 1 (c) unless it has taken into consideration—

- (a) the land capability (including soil resources and soil stability), natural constraints and hazards of the land to be subdivided, in relation to the density of the allotments proposed to be created, and
- (b) the desirability of providing a range and mixture of allotment sizes, and
- (c) whether the design of each allotment to be created by the subdivision is satisfactory for the economic provision of services, and
- (d) the physical suitability of the land for on-site disposal of wastes.

15 Subdivision of land for the purpose of a dwelling-house within Zone No 2

- (1) The Council must not grant an application for consent to subdivide land within Zone No 2 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 450 square metres or more.
- (2) Despite subclause (1), the Council may consent to a subdivision of land within Zone No 2 that creates allotments each having an area of less than 450 square metres if—
 - (a) the allotments are, in the opinion of the Council, to be used for integrated housing in accordance with clause 18, or
 - (b) the subdivision is to be carried out under the provisions of the [Community Land Development Act 1989](#).

16 Dwelling-houses within Zones Nos 1 (a) and 1 (c)

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

- (2) The Council must not consent to the erection of a dwelling-house on vacant land within Zone No 1 (a) or 1 (c) unless—
- (a) the land comprises—
 - (i) an existing holding, or
 - (ii) an allotment that was, in the opinion of the Council, created in accordance with this plan otherwise than for the purpose of 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, or
 - (b) the land has an area of not less than 40 hectares, or
 - (c) the Council considers that the dwelling-house is essential for a use of the land of a kind for which an allotment could be created in accordance with clause 13.

17 Dual occupancy

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

- (a) no additional access to a public road will be required from the land because of the additional dwelling, and
- (b) separate ownership of the land on which the additional dwelling is located would require the lodgment of, and consent from the Council for, a separate subdivision application, and
- (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, and
- (d) in the case of land within Zone No 1 (a), the land, in the opinion of the Council, 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 16 if the land were vacant.

18 Integrated housing development within Zone No 2

- (1) This clause applies to land within Zone No 2.
- (2) Integrated housing may, with the consent of the Council, be carried out on an allotment of land within Zone No 2.
- (3) The Council must not grant consent for integrated housing on an allotment of land

within Zone No 2 unless it is satisfied that—

- (a) each proposed allotment has an area of 232 square metres or more, and
- (b) the development makes adequate provision with respect to the privacy of each proposed dwelling-house and existing dwellings in the vicinity, and
- (c) the development makes adequate provision with respect to access to natural light for each proposed dwelling-house, and
- (d) the floor space ratio of the buildings will not exceed 0.5 to 1, and
- (e) adequate arrangements will be made for the provision of water, and sewerage and drainage services, for each proposed dwelling-house, and
- (f) the design of the dwelling-houses facilitates solar access to the proposed dwellings, and
- (g) the accumulated residential density in the immediate vicinity of the proposed development is acceptable.

19 Development that must be advertised

Development specified in Schedule 2 is advertised development for the purposes of the Act.

20 Development restricted along arterial roads

The Council must not grant an application for consent to carry out development specified in Schedule 3 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, in the opinion of the Council, it is 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, or
 - (ii) the emission of smoke or dust from the proposed development, or
 - (iii) the nature, volume or frequency of vehicles using the arterial road to gain access to the proposed development.

21 Flood planning

(1) The objectives of this clause are as follows—

- (a) to minimise the flood risk to life and property associated with the use of land,
- (b) to allow development on land that is compatible with the land's flood hazard,

taking into account projected changes as a result of climate change,

(c) to avoid significant adverse impacts on flood behaviour and the environment.

(2) This clause applies to—

(a) land identified as “Flood planning area” on the [Flood Planning Map](#), and

(b) other land at or below the flood planning level.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—

(a) is compatible with the flood hazard of the land, and

(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and

(c) incorporates appropriate measures to manage risk to life from flood, and

(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and

(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

(4) A word or expression used in this clause has the same meaning as it has in the *Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.

(5) In this clause—

land at or below the flood planning level means land at or below the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.

22 Protection of heritage items, 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 conservation area, or

(b) altering a heritage item or a building, work or relic within a conservation area by making structural changes to its exterior, or

(c) altering a heritage item or a building, work or relic within a 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 conservation area.
- (2) Development consent is not required by this clause if the Council is of the opinion that the proposed development would not adversely affect the heritage significance of the conservation area.
- (3) When determining a development application required by this clause, the Council must take into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or conservation area.

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*).

23 Heritage development applications that must be advertised

The following development is identified as advertised development for the purposes of the Act—

- (a) the demolition, defacing or damaging of a heritage item or a building, work, relic, tree or place within a conservation area, and
- (b) the carrying out of any development allowed by clause 27.

24 (Repealed)

25 Development of known or potential Aboriginal heritage sites

- (1) The Council may grant consent to the carrying out of development on an archaeological site that has Aboriginal heritage significance (such as a site that is the location of an Aboriginal place or a relic, within the meaning of the [National Parks and Wildlife Act 1974](#)) or a potential archaeological site that is reasonably likely to have Aboriginal heritage significance only if—
- (a) it has considered an assessment of how the proposed development would affect the conservation of the site and any relic known or reasonably likely to be located at the site, prepared in accordance with any guidelines for the time being notified to it by the Director-General of National Parks and Wildlife, and
 - (b) except where the proposed development is integrated development, it has notified the local Aboriginal communities (in such a way as it thinks appropriate) of the development application and taken into consideration any comments received in response within 21 days after the notice was sent, and

(c) it is satisfied that any necessary consent or permission under the *National Parks and Wildlife Act 1974* has been granted.

(2) The Council may grant consent to the carrying out of development on an archaeological site that has non-Aboriginal heritage significance or a potential archaeological site that is reasonably likely to have non-Aboriginal heritage significance only if—

(a) it has considered an assessment of how the proposed development would affect the conservation of the site, and any relic known or reasonably likely to be located at the site, prepared in accordance with any guidelines for the time being notified to it by the Heritage Council, and

(b) (Repealed)

(c) it is satisfied that any necessary excavation permit required by the *Heritage Act 1977* has been granted.

26 Development in the vicinity of heritage items, conservation areas, archaeological sites or potential archaeological sites

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

27 Conservation incentives

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

(a) the floor space ratio, and

(b) the number of parking spaces to be provided on the site,

exclude the floor space of the building from its calculation of the floor space of all buildings erected and to be erected on the land, but only if the Council is satisfied that the conservation of the building the floor space of which is excluded depends on it

making the exclusion.

28 Community use of school facilities and sites

- (1) If land to which this plan applies is used for the purpose of an educational establishment, the site and facilities of the establishment may, with the consent of the Council, be used for the purpose of meeting rooms, public halls, public libraries, entertainment, sport or recreation or for any other community purpose, whether or not any such use is a commercial use of the land.
- (2) Nothing in this clause requires consent for the carrying out of development on any land if that development could, but for this clause, be carried out on that land without consent.

29 Advertising structures

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

30 Development for certain additional purposes

- (1) Nothing in this plan prevents a person, with the consent of the Council, from carrying out, on land described in Schedule 4 any development 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 other 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.

31 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*.

32 Development near aerodromes

- (1) A person must not, on land shown crosshatched on the map—

- (a) erect a building of a height that exceeds the limitation specified in the Height Limitation Plan held at the office of the Council, or
- (b) carry out development for the purpose of—
 - (i) a dam or reservoir, or
 - (ii) the handling or storage of grain, or
 - (iii) the disposal of refuse, or
 - (iv) a sewage treatment plant or effluent ponds, or
 - (v) an abattoir, or
 - (vi) a stockyard complex, or
 - (vii) the provision or enhancement of habitat likely to attract birds which may be a hazard to aircraft, or
- (c) carry out any other development which, as a result of the creation or disposal or waste foodstuff, could be expected to constitute an attraction to birds,

except with the consent of the Council.

- (2) An application made for development consent to carry out any development on land to which the Height Limitation Plan applies must be referred to Airservices Australia for comment where the development proposed relates to a building or proposed building that exceeds the height specified for it in the Height Limitation Plan.
- (3) In considering whether to grant consent to any development referred to in subclause (2), the Council must take into account any comments furnished by Airservices Australia within 28 days after referral of the application to it.

33 Sound insulation of buildings near aerodromes

- (1) A person must not, without the consent of the Council, erect a building on land around the aerodrome, as shown shaded on the map.
- (2) The Council must not grant consent to the erection of a building on any such land unless it is satisfied that measures will be taken—
 - (a) which accord with the provisions of the code entitled “*Acoustics—Aircraft noise intrusion—Building siting and construction*” published as AS 2021—1994 by Standards Australia in 1994, and
 - (b) which are adequate for the insulation of the building from aircraft noise.

34 Development along the river

- (1) Despite any other provision of this plan, a person must not, except with the consent of the Council—
 - (a) erect a building for any purpose on land within Zone No 1 (a) or 1 (c) within 400 metres of any bank of the river, or
 - (b) destroy any tree (otherwise than in accordance with a vegetation management plan) on land within 60 metres of any bank of the river, or
 - (c) carry out development for any purpose on land within 20 metres of any bank of the river, or
 - (d) carry out development for the purpose of—
 - (i) a canal, or
 - (ii) a marina (or pontoons, jetties, piers or other similar structures) designed to provide a 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 the river.
- (2) The Council must not consent to an application required by subclause (1) unless, in the opinion of the Council, the destruction of the trees or the development on 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, and
 - (b) the loss of scenic amenity, and
 - (c) the loss of important vegetation systems and natural wildlife habitats, including fish habitats.

35 Forestry

- (1) This clause applies to land within a State forest, timber reserve or other Crown-timber lands within the meaning of the *Forestry Act 1916*.
- (2) Despite clause 9, 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 by or under the *Forestry Act 1916*, or
 - (b) by any person, if the development is authorised by a licence or any other

authority granted or issued under that Act by the Forestry Commission.

36 Public land classification

- (1) This clause aims to identify land vested in or under the control of the Council that should be kept for use by the general public (community land) and other land which need not be retained for use by the general public (operational land).
- (2) The land specified in Schedule 5 is classified or reclassified as community land for the purposes of the *Local Government Act 1993*.
- (3) The land specified in Schedule 6 is classified or reclassified as operational land for the purposes of the *Local Government Act 1993*.

37 Exceptions to development standards

- (1) The objectives of this clause are as follows—
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
 - (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone No 1 (a) (General Rural Zone), Zone No 1 (c) (Rural Small Holdings Zone) or Zone No 1 (f) (Rural (Forests) Zone) if—
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated.

38 Demolition requires development consent

The demolition of a building or work may be carried out only with development consent.

Note—

If the demolition of a building or work is identified in an applicable environmental planning instrument, such as this plan or [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#), as exempt development, the Act enables it to be carried out without development consent.

39 Temporary use of land

- (1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.
- (2) Despite any other provision of this plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.
- (3) Development consent must not be granted unless the consent authority is satisfied that—
 - (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this plan and any other applicable environmental planning instrument, and
 - (b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and
 - (c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and
 - (d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.
- (4) Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.
- (5) Subclause (3)(d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).

40 Conversion of fire alarms

- (1) This clause applies to a fire alarm system that can be monitored by Fire and Rescue NSW or by a private service provider.
- (2) The following development may be carried out, but only with development consent—
 - (a) converting a fire alarm system from connection with the alarm monitoring system of Fire and Rescue NSW to connection with the alarm monitoring system of a private service provider,
 - (b) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with the alarm monitoring system of another private service provider,

- (c) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with a different alarm monitoring system of the same private service provider.
- (3) Development to which subclause (2) applies is complying development if it consists only of—
 - (a) internal alterations to a building, or
 - (b) internal alterations to a building together with the mounting of an antenna, and any support structure, on an external wall or roof of a building so as to occupy a space of not more than 450mm × 100mm × 100mm.
- (4) A complying development certificate for any such complying development is subject to a condition that any building work may only be carried out between 7.00 am and 6.00 pm on Monday to Friday and between 7.00 am and 5.00 pm on Saturday, and must not be carried out on a Sunday or a public holiday.
- (5) In this clause—

private service provider means a person or body that has entered into an agreement that is in force with Fire and Rescue NSW to monitor fire alarm systems.

41 Standards that cannot be used to refuse consent—playing and performing music

- (1) The consent authority must not refuse consent to development in relation to licensed premises on the following grounds—
 - (a) the playing or performance of music, including the following—
 - (i) the genre of music played or performed, or
 - (ii) whether the music played or performed is live or amplified, or
 - (iii) whether the music played or performed is original music, or
 - (iv) the number of musicians or live entertainment acts playing or performing, or
 - (v) the type of instruments played,
 - (b) whether dancing occurs,
 - (c) the presence or use of a dance floor or another area ordinarily used for dancing,
 - (d) the direction in which a stage for players or performers faces,
 - (e) the decoration to be used, including, for example, mirror balls, or lighting used by players or performers.
- (2) The consent authority must not refuse consent to development in relation to licensed

premises on the grounds of noise caused by the playing or performance of music, if the consent authority is satisfied the noise may be managed and minimised to an acceptable level.

(3) In this clause—

licensed premises has the same meaning as in the *Liquor Act 2007*.

Schedule 1 Heritage items

(Clause 5 (1))

- 1 Police Station, 399–401 Charlotte Street
- 2 Town Hall, 170–178 Cressy Street
- 3 Former Bank, 190–196 Cressy Street
- 4 Globe Hotel, 198–204 Cressy Street
- 5 Shops, 206–208 Cressy Street
- 6 Shops, 210–212 Cressy Street
- 7 Shops, 214–232 Cressy Street
- 8 State Bank, 217 Cressy Street
- 9 ANZ Bank, 229 Cressy Street
- 10 Westpac Bank, 233 Cressy Street
- 11 Commonwealth Bank, 241 Cressy Street
- 12 Shops, 293–295 Cressy Street
- 13 Sydney House, 303 Cressy Street
- 14 Shops, 305–309 Cressy Street
- 15 St Pauls Church, Cressy Street
- 16 St Pauls Sunday School, Cressy Street
- 17 Waring Garden, Bandstand and Pavilion, Cressy Street
- 18 Community Centre, 108 End Street
- 19 Burchfields Garage, 112 End Street
- 20 Shop, 115 End Street
- 21 Exchange Hotel, 116 End Street

- 22 Conargo Shire Chambers, 122 End Street
- 23 Offices, 136 End Street
- 24 Former Hotel, 142-146 End Street
- 25 Former George Street Public School, George Street
- 26 Former Headmaster's residence, George Street
- 27 Former Police Inspector's residence, 3 Macauley Street
- 28 G. Helsby Building, 35 Napier Street
- 29 Federal Hotel, 47 Napier Street
- 30 St Vincent de Paul Society Centre, corner Napier and Poictiers Streets
- 31 Deniliquin Courthouse, including fence and grounds, Poictiers Street
- 32 Water Tower, Memorial Park
- 33 Pumping station and chimney stack, Memorial Park

Schedule 2 Development which must be advertised

(Clause 19)

Development for the purpose of the following—

- (a) boarding-houses; hotels; motels; residential flat buildings,
- (b) industries (other than home industries or rural industries) in Zone No 1 (a) or 1 (c),
- (c) intensive livestock keeping establishments,
- (d) junk yards; liquid fuel depots; sawmills; stock and sale yards.

Schedule 3 Development restricted along arterial roads

(Clause 20)

Development for the purpose of—

- 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 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 30 (1))

McLeans Beach—Lot 366 Deposited Plan No 756325—Development for the purpose of a caravan park and camping ground.

Lot 4 Deposited Plan No 712729 Parish of South Deniliquin County of Townsend—Subdivision in accordance with Development Consent No 88/9 dated 17 August 1988 and erection of dwellings on the resultant lots.

Schedule 5 Community land

(Clause 36 (2))

	Location	Description	Area
1	Cnr Wyatt/Maher Streets	Lot 21, DP 26119	2 861m ²
2	Whitelock Street Offices	Lot 7, Sec 22 Res 97595	620m ²
3	Macauley Street	Lot 7, DP 255246 Res 98145	765.1m ²
4	Evans Street	Res 62917 Por 99 VN 697/1	4.373 ha
5	Wirraway Drive	Crown Res of 1863 & 1909	
6	Napier Street	Crown Res 92449	5 230m ²
7	Napier Street	Pt Res 92449	973.8m ²
8	Poictiers Street	Res 88772	3.035 ha
9	Hardinge Street	Res 77085 Sec 207	5.107 ha
10	Henry Street	Por 157	3.592 ha
11	Charlotte Street	Res 71898 Sec 2	3 575m ²
12	Charlotte Street	Res 83374 Sec 206	
13	Cressy Street	Cnr Lot Sec 208 Res 550028	2.555 ha
14	Crispe Street	Sec 405 Res 550030	1.624 ha
15	Davidson Street	Res 79140	10.12 ha
16	Edwardes Street	Res 550036	1.416 ha
17	George Street	Res 91035	23.83 ha
18	Hardinge Street	Cnr Pt Lot Sec 22	3 900m ²
19	Napier Street	Cnr Pt Lot Sec 22	2 833m ²

20	Poictiers Street	Res Sec 205 Res 550034 Res 68686	8 138m ²
21	Wellington Street	Pt Por 412 Pt Res 91035	
22	Henry Street at Edward River	Res 95477	8 140m ²
23	Hardinge Street	Sec 209 DP 758913	7 700m ²
24	Lawson Syphon	Res 40217 Por 12	9.004 ha
25	Morris Street (adj North Tennis Courts)	Res 46452 Pt Unnamed Lot	5.666 ha
26	Robertson Crescent	Lots 37 & 8 DP 235968	1 688.3m ²
27	Norris Court	Lot 36, Sec 97 DP 252070	3 169m ²
28	Johnson Crescent	Lot 36, Sec 108 DP 255831	1 374m ²
29	Laman Court	Lot 46, Sec 68 DP 243660	2 896m ²
30	Gillespie Court	Lot 25, Sec 52 DP 244440	659m ²
31	Wanderer Street (Fitzroy & Wanderer Charles & Browning)	Res 88194	8.296 ha
32	State Highway 21	Res 62951 (adj to Por 100)	
33	State Highway 20	Res 85613 (between Secs 25 & 26)	
34	Russell & Wood Streets	Res 85650 (Lot 1, Sec 202)	2 193m ²
35	Macauley Street	Res 89286 Por 409 ("Cullah" Community Centre)	920.2m ²
36	Sloane Street Edward River	Res 89724 (between Pors 114 & 115)	3 912m ²
37	State Highway 21	Res 90862 (adj Cobb Highway between Aerodrome & TSR 998)	24.08 ha

38	Harfleur Street	Lot 2 DP 607006 (Pt Lot 1, Sec 55)	1.883 ha
39	Ross Street	Lot 14, Sec 95 DP 235429	556.4m ²
40	Johnson Crescent	Lot 56 DP 261680	2 444m ²
41	Edward River Nth Picnic Point adj Portion 100	Res 62304 DP 756325	31 ha
42	Davidson Street	Res 79190 DP 756310	
43	Wyatt Street (Wyatt/Henry/Burton/Sloane)	Lot 47 DP 263070	2 805m ²
44	Whitelock Street	Res 98089 Lot 6, Sec 22	2 593m ²
45	Victoria Street	Lot 20, Sec 51	5 305m ²
46	Ochertyre Street	Res 150007	52 ha
47	Ochertyre Street (between Canal & Rotary Park)	Res 150008	3.5 ha
48	Decimus Street	Lot 56 DP 749636	2 928m ²
49	Hardinge Street (former MRE— Pt Gorman Park)	Lot 2 DP 791252	990m ²
50	Wyatt Street Edward River (ex Danckert) S/D 1990/6	Lot 1 DP 802784	1 831m ²
51	Harfleur Street S/D 1990/2	Lot 3 DP 803381	175.9m ²
52	Butler Street	Res 80265 (Pors 211A-366 & 370 & Beaches)	9.2 ha
53	Barham Road Ricemill	Por 397 Special Lease 68/16	3 731m ²
54	Charlotte Street	Res 96339	
55	Harfleur Street (ex Dudley)	Lot 1, Sec 57	1.01 ha
56	Lily Street	Lot 8	1.655 ha

57	Norris Court	Lot 35 DP 252070 Sec 97	2 667m ²
58	Edwardes Street	Res 550032	
59	George & Fowler Streets	Lot 1 DP 209859	791m ²
60	Crispe Street	Road Reserve	
61	Cressy Street	Cnr Lot 1, Sec 208	4 047m ²

Schedule 6 Operational land

(Clause 36 (3))

	Location	Description	Area
1	End Street	Pt Lot 6, Sec 21 9Y & Lot 1X, Sec 21	505.9m ² 710.9m ²
2	End Street	Lot 4 & Pt Lot 3, Sec 17	1 012m ²
3	Off Evans Street	Cnr Lots 1 & 2 & Pt Lot 3, Sec C DP 3483	6 804m ²
4	Hunter Street	Lot 18, Sec 46	
5	Duncan Street	Lot 1 DP 628391	590.9m ²
6	Duncan Street	Lot 1 DP 205653	
7	Duncan Street	Lot 2 DP 205653	
8	Poictiers Street	Lot B S/D, Sec 22 Pt Lot 5	
9	Poictiers/Russell Streets	Cnr Lot 2, Pt Lot 1, Sec 53	7 069m ²
10	Cressy Street	Lot 7, Sec 21	973.7m ²
11	Hardinge Street	Lot 261 DP 634603	1.473 ha
12	Hardinge Street	Lot 27 DP 756325	1 173m ²
13	Wirraway Drive		246.94 ha
14	Cressey Street	Lot 8, Sec 21	1 390m ²
15	Cressey Street	Pt Lot 9 Lot 1, Sec 21	950.4m ²
16	George Street	Lot 472 DP 46236	3 492m ²

17	Morris Street	Lot 3 DP 25008	6 197m ²
18	Hodgkins Street (rear Evans Street)	Lot 7 DP 556912	1 536.6m ²
19	Davidson Street	Lot 1 DP 634442 (ex DMR)	1 712m ²
20	George Street	Lot 6, Sec 11	1 012m ²
21	Ochertyre Street	Pors 345-8, Por 357 Res 66578 & Res 69802	48.61 ha
22	Decimus Street	Lot 19 DP 39360	1 018m ²
23	Macauley Street	Lot 2, Sec 72 DP 532951	689.2m ²
24	Hyde Street	Lot 1 DP 571929	135.4m ²
25	Hyde Street	Part closed road	1 012m ²
26	Poictiers Street	Cnr Lot 453, Sec 53	2 210m ²
27	Barham Road	Lot 491 DP 721988	26.99 ha
28	Hyde Street	Lot 21 DP 559014	69.6m ²
29	Evans Street	Lot 8 DP 556912	493.2m ²
30	Pound Street	Lot 1 DP 602921	69.1m ²
31	Hay Road	Lot 23 DP 557634	37.9m ²
32	Cressy Street	Pt Lot 17, Sec 10	202.3m ²
33	End Street		1 927m ²
34	Whitelock Street	Pt Lot 6, Sec 23	60.4m ²
35	George Street	Lot 3 DP 787397	506.4m ²
36	George Street	Lot 72 DP 804600	168.2m ²
37	George Street	Lot 83 DP 810678	319.9m ²