

# Brewarrina Local Environmental Plan 2000

[2000-372]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Repeal**

The plan was repealed by cl 1.8 (1) of the [Brewarrina Local Environmental Plan 2012 \(611\)](#) (LW 7.12.2012) with effect from 7.12.2012.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Brewarrina Local Environmental Plan 2000



New South Wales

## Part 1 Preliminary

### 1 Name of plan

This plan is *Brewarrina Local Environmental Plan 2000*.

### 2 Aims, objectives etc

The general aims of this plan are:

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

- (i) minimises the cost to the community of fragmented and isolated development of 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 and redevelopment,
  - (v) ensures that the efficiency of arterial roads is not adversely affected by development on adjacent land,
  - (vi) encourages a mix of land use types where such uses are compatible, and
  - (vii) provides for orderly development of tourist activity,
- (d) to provide flexible planning controls to assist the Council and other consent authorities in their administration of planning,
- (e) to provide suitably zoned land so as:
- (i) to increase employment opportunities through the efficient management of resources, including the expansion of the tourist industry,
  - (ii) to provide opportunities for industrial development, employment, and economic and enterprise growth,
  - (iii) to provide for minor expansion of township areas to meet future urban growth needs, and
  - (iv) to minimise conflict due to inappropriate land uses adjoining on one another,
- (f) to facilitate a reasonable standard of development,
- (g) to encourage a built environment and amenity which is attractive to visitors, residents and investors,
- (h) to maintain and enhance the town of Brewarrina as a major urban, administrative and service centre within the local government area, and
- (i) to promote the villages of Goodooga, Gongolgon, Weilmoringle and Angledool as rural service communities.

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

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

#### 4 Relationship to other environmental planning instruments

- (1) This plan repeals *Interim Development Order No 1—Shire of Brewarrina*, and such other local environmental plans and deemed environmental planning instruments as applied to the land to which this plan applies immediately before the appointed day.
- (2) This plan amends *Western Division Regional Environmental Plan No 1—Extractive Industries* by omitting from Schedule 1 the matter “*Interim Development Order No 1—Shire of Brewarrina*” and by inserting instead the matter “*Brewarrina Local Environmental Plan 2000*”.
- (3) This plan amends *State Environmental Planning Policy No 4—Development Without Consent* by inserting the following words in alphabetical order in Schedule 2 (Land excepted from clauses 6–10):

Brewarrina local government area

#### 5 Interpretation

- (1) In this plan:

**aerial spraying** means the application by spraying or otherwise of any substance onto land, water, crops, pastures or vegetation from any aeroplane, helicopter or crop duster, but does not include the application or spraying of water or fire retardant onto a bushfire, scrub fire or wildfire under the supervision of a fire fighting authority or the application or spraying of any substance onto land authorised by a public authority for the benefit of the public health.

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

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

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

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

**arterial road** means any existing road indicated on the landuse map as such by a distinctive marking or a classified road within the meaning of the *Roads Act 1993*.

**artificial water body** means any constructed waterway, canal, inlet, bay, channel, dam, pond or lake, but does not include a dry detention basin or other structure or

work that is only intended to hold water intermittently.

**bed and breakfast** means a dwelling that:

- (a) provides temporary overnight accommodation for travellers, and
- (b) offers at least breakfast for guests, and
- (c) does not contain facilities in rooms for the preparation of meals by guests, and
- (d) is not used for the permanent or long-term accommodation of any persons other than those, and the family of those, who operate and manage the facility and who would normally reside on the land.

**boarding house** includes a house let in lodgings or a hostel (but not a motel):

- (a) where accommodation, meals and laundry facilities in return for payment may be or are provided to the resident, and
- (b) which is not licensed to sell liquor within the meaning of the [Liquor Act 1982](#).

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

**bulk store** means a building or place used for the bulk storage of goods, where the goods stored or to be stored are not required for use in a shop or commercial premises on the same parcel of land or on adjoining land in the same ownership.

**bushfire hazard reduction** means the reduction or modification (by controlled burning or by mechanical, chemical or manual means) of material that constitutes a bushfire hazard.

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

**commercial premises** means a building or place used as an office or for a business or commercial purpose, but (in the Table to clause 9) does not include a building or place elsewhere specifically defined in this clause.

**community land** means land classified or reclassified as community land within the meaning of the [Local Government Act 1993](#).

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

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



Council pounds.

**dual occupancy** means two dwellings on a single allotment of land.

**dwelling** means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile.

**dwelling house** means a building containing one but not more than one dwelling.

**ecologically sustainable development** means development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs (as derived from the “Brundtland Report” (1990) on Environment and Development). The principles of ecological sustainability are set out in Schedule 3.

**environmentally sensitive land** means land that is within Zone No 1 (a) or 1 (c) and that:

- (a) is identified in Schedule 5, or
- (b) is within 200 metres of any river, Tarrion Creek, Cato Creek or Marra Creek or 20 metres of any other creek, defined natural watercourse, lake, swamp, wetland or water body (whether containing water or not), or
- (c) is shown as environmentally sensitive land on a map deposited at the offices of the Council, or
- (d) is, in the opinion of the Council, important for the conservation and protection of:
  - (i) native vegetation, or
  - (ii) protected and threatened species, populations and ecological communities and their habitat (including corridors), or
  - (iii) Aboriginal cultural heritage,and, in the opinion of the Council, has natural, ecological or cultural significance.

**existing holding** means:

- (a) except as provided by paragraph (b), the area of a holding, lot, lease, portion or parcel of land as it was at 14 May 1971, or
- (b) if, as at the appointed day, a person owned or leased two or more adjoining holdings, lots, leases, portions or parcels of land, the combined area of those lots, leases, portions or parcels as they were at 14 May 1971.

**farm building** means a hayshed, stockyard, machinery shed, storage shed, pumphouse, shearing shed, outbuilding, utility installation, or the like.

**flood liable land** means land liable to be flood inundated at or below the probable maximum flood event or land determined by geomorphological or hydrological methods to be subject to a probable maximum flood.

**general store** means a shop which:

- (a) trades principally in the retail sale of groceries, take-away foods, smallgoods and household items and services, and
- (b) may sell petroleum products if it is more than 10 kilometres from a service station, and
- (c) may be attached to or form part of a dwelling, and
- (d) does not have an area devoted to retailing that exceeds 75 square metres, and
- (e) is not located closer than 400 metres to another such shop or Zone No 2 (t).

**group housing** means three or more dwellings (whether or not attached) located on one allotment of land (whether or not the dwellings are strata subdivided), but does not include residential accommodation provided in accordance with [State Environmental Planning Policy No 5—Housing for Older People or People with a Disability](#).

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

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

**holding** means one or more adjacent allotments which were in the one ownership as at the appointed day.

**home business** means a business undertaken by the permanent residents of a dwelling, where no more than three others are also employed.

**home industry** means an industry carried on in a building (other than a dwelling house or a dwelling in a residential flat building) under the following circumstances:

- (a) the building does not occupy a floor space exceeding 50 square metres and is erected within the curtilage of the dwelling house or residential flat building resided in by the person carrying on the industry or on adjoining land owned by that resident, and
- (b) the industry does not:
  - (i) interfere with the amenity of the locality 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, or

- (ii) involve exposure to view from any adjacent premises or from any public place of any unsightly matter, or
- (iii) require the provision of any essential service main of a greater capacity than that available in the locality.

**home occupation** means an occupation carried out in a dwelling by the permanent residents of the dwelling, which does not involve:

- (a) the registration of the building under the *Factories, Shops and Industries Act 1962*, or the licensing of the premises under the *Dangerous Goods Act 1975*, 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, or
- (d) the display of goods, whether in a window or otherwise, or
- (e) the exhibition of any notice or advertisement (other than a notice of advertisement exhibited on that dwelling to indicate the name and occupation of the resident), or
- (f) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail.

**hospital** means a building or place (other than an institution) used for the purpose of providing professional health care services (such as preventative or convalescent care, diagnosis, medical or surgical treatment, care for people with developmental disabilities, psychiatric care or counselling and services provided by health care professionals) to people admitted as in-patients (whether or not out-patients are also cared for or treated there), and includes:

- (a) ancillary facilities for the accommodation of nurses or other health care workers, ancillary shops or restaurants and ancillary accommodation for persons receiving health care or for their visitors, and
- (b) facilities situated in the building or at the place and used for educational or research purposes, whether or not they are used only by hospital staff or health care workers and whether or not any such use is a commercial use,

and includes a building or place that is used exclusively as a day surgery or day procedure centre, but does not include health consulting rooms or a medical centre.

**industry** means:

- (a) any manufacturing process within the meaning of the *Factories, Shops and*

*Industries Act 1962*, or

- (b) the breaking up or dismantling of any goods or any article for trade, sale or gain or as ancillary to any business,

but does not include an extractive industry.

**intensive agriculture** means:

- (a) the use of a site predominantly for the cultivation by irrigation of fruit, vegetable crops, flower crops, pasture or fodder, or like crops which rely on irrigation, or
- (b) the commercial keeping or breeding (or both) of livestock which are substantially dependent on high quality forage produced from the land, such as horse studs or similar enterprises,

but does not include the use of animal establishments or artificial water bodies, aquaculture, cotton farming, the use of intensive livestock keeping establishments or large scale earthworks or turf farming.

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

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

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

**junkyard** means land used for the collection, storage, abandonment or sale of scrap metals, wastepaper, rags, bottles or other scrap metals or goods or used for the collecting, dismantling, storage, salvaging or abandonment of automobiles or other vehicles or machinery or for the sale of their parts.

**landforming** including land shaping means earthworks associated with agriculture such as the process of adjusting or altering the natural formation or surface of land such as the construction of levees, drains and channels.

**landuse map** means the set of maps marked “Brewarrina Local Environmental Plan 2000”, as amended by the 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.

**light industry** means an industry, not being an offensive or hazardous industry, in which the processes carried on, the transportation involved or the machinery or materials used do not interfere with the amenity or the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste paper, waste products, grit or oil or otherwise, but does not include an extractive industry.

**liquid fuel depot** means a depot or place used for the bulk storage for the wholesale distribution of petrol, oil, petroleum or other flammable liquid.

**materials recycling facility** means a building or place used for collecting, dismantling, storing or recycling of second-hand or scrap materials for the purpose of resale, reuse or transfer.

**mine** (or other excavation) means any place, open cut, shaft, tunnel, pit, drive, level or (other excavation), drift, gutter, lead, vein, lode, or reef on, in or by which any operation is carried on for or in connection with the purpose of obtaining any metal or mineral by any method and any place on which any produce of the mine is stacked, stored, crushed or otherwise treated, but does not include a quarry.

**mortuary** means premises that are used for the preparation and storage of corpses pending their interment or cremation. It may contain rooms for the conducting of funeral services and includes a funeral parlour.

**multiple occupancy** means multiple dwellings on the same allotment with shared facilities and resources under a scheme for collective management of the allotment. The dwellings are not held under strata title or any other form of separate land title, in a manner that involves separate legal rights to parts of the land through other means such as agreements, dealings, company shares, trusts or time-sharing arrangements.

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

**operational land** means land classified or reclassified as operational land within the meaning of the [Local Government Act 1993](#).

**parcel** means a piece of land with a separate land title.

**place of public worship** means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

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

so identified.

**real estate sign** means an advertisement indicating that the property at which it is displayed is for sale, lease or rent, or has been sold or let.

**recreation area** means:

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

but does not include a racecourse or a showground.

**residential accommodation** comprises the following forms of housing:

- (a) dwelling houses,
- (b) dual occupancies,
- (c) bed and breakfasts, where no more than two rooms of the dwelling are utilised for guest accommodation,
- (d) boarding houses,
- (e) permanent group homes each of which:
  - (i) contains less than 5 bedrooms, or
  - (ii) is occupied at the same time by fewer residents (including resident staff, if any) than is equal to the number calculated by multiplying the number of bedrooms in it by 2,
- (f) multiple occupancies.

**residential flat building** means a building containing two or more dwellings.

**relic** means:

- (a) any deposit, object or material evidence (including human remains) relating to the use or settlement of the local government area of Brewarrina, not being Aboriginal habitation, which is more than 50 years old, or

(b) an Aboriginal relic, which means any deposit, object or material evidence (not being a handicraft made for sale) relating to indigenous and non-European habitation of New South Wales, being habitation either prior to or concurrent with the occupation of that area by persons of European extraction, and includes Aboriginal remains.

**retail plant nursery** means a building or place used for both the growing and retail selling of plants, whether or not ancillary products are sold there.

**river** means the Bogan River, the Narran River, the Birrie River, the Culgoa River, the Bokhara River, the Barwon River and the Darling River.

**roadside stall** means a building or place not exceeding 20 square metres in floor space or area, respectively, where only primary products produced on the property on which the building or place is situated are exposed or offered for sale or sold by retail.

**rural workers' dwelling** means a dwelling which is on land on which there is already erected a dwelling and which is occupied by persons engaged in a rural occupation on that land.

**service station** means a building or place used for the fuelling of motor vehicles involving the sale by retail of petrol, oil and other petroleum products, whether or not the building or place is also used for any one or more of the following purposes:

- (a) the sale by retail of spare parts and accessories for motor vehicles,
- (b) washing and greasing of motor vehicles,
- (c) installation of accessories,
- (d) repairing and servicing of motor vehicles involving the use of hand tools (other than repairing and servicing which involves top overhaul of motors, body building, panel beating, spray painting, or suspension, transmission or chassis restoration).

**shop** means a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but (in the Table to clause 9) does not include a building or place elsewhere specifically defined in this clause, or a building or place used for a purpose elsewhere specifically defined in this clause.

**solid waste facilities** is a self-contained waste disposal site for putrescible waste from a rural dwelling.

**telecommunications facility** means a building, structure, work or place (such as a radio mast, tower, earth station, cable, satellite dish or the like) used specifically for transmitting, receiving or passing on signals, but does not include a domestic structure.

**temporary sign** means an advertisement of a temporary nature which:

- (a) announces any local event of a religious, educational, cultural, political, social or recreational character or relates to any temporary matter in connection with such an event, and
- (b) is not displayed earlier than 20 days before the day on which the event is to take place and is removed within 14 days after the event.

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

**tourist facility** means an establishment providing for holiday accommodation or recreation and may include a boatshed, boat handling facilities, camping ground, caravan park, holiday cabins, hotel, houseboat, marina, motel, playground, refreshment room, water sport facilities or a club used in conjunction with any tourist activities.

**transport depot** means a building or place used for the parking or servicing of motor powered or motor drawn vehicles used in connection with a passenger transport undertaking, business, industry or shop.

**transport terminal** means a building or place used as an airline terminal, a road transport terminal, a bus station or a bus depot.

**threatened flora or fauna species** means a species specified in Part 1 or 4 of Schedule 1 or in Schedule 2 to the [Threatened Species Conservation Act 1995](#).

**tree** includes a live sapling or a shrub of a perennial plant species with a single or multi-stem configuration that has a growth height greater than 1.2 metres, but does not include any plant declared by or under an Act to be a noxious weed throughout the whole of the State or the local government area of Brewarrina.

**vehicle body repair workshop** means a building or place used for the repair of vehicles, involving body painting, panel beating or spray painting.

**veterinary hospital** means a building or place used for diagnosing or surgically or medically treating animals, whether or not animals are kept on the premises for the purpose of treatment and may include related laboratory facilities.

**warehouse** means a building or place used for the storage of goods, merchandise or materials pending their sale and distribution to persons engaged in the retail trade.

**waste depot** means land on which, as the principal use of the land, materials such as earth, soil, excavated earth material, demolition material or non-putrescible matter are placed as filling.

(2) In this plan:

- (a) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for the purpose, and



(b) a reference to a map is a reference to a map deposited in the office of the Council and available for inspection during office hours.

(3) Notes in this plan and the list of contents 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 in clause 4 (1) of those Provisions of terms defined in clause 5 (1) of this plan, and

(b) clause 7 of Schedule 1,

are adopted for the purposes of this plan.

(2) For the purpose of this plan, the *Environmental Planning and Assessment Model Provisions 1980* are to be read as if Schedule 1 included the following:

(a) The carrying out of works or other development by or on behalf of a public authority for the purposes of the provision or development or maintenance of recreation areas, recreation facilities, landscaping or gardening.

(b) The carrying out of works by or on behalf of the NSW Rural Fire Service for the purposes of bushfire hazard reduction.

## **7 Consent authority**

The Council is the consent authority for the purposes of this plan, subject to the Act.

## **Part 2 Zones**

### **8 Zones indicated on the landuse 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 landuse map in the manner specified below in relation to the zone:

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

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

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

Zone No 8 (a) (National Park Zone)—edged heavy black and lettered “8 (a)”.

### **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 the Zone” appearing in the matter relating to the zone.

- (2) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause, the development (if any) that:
- (a) may be carried out without development consent,
  - (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, consent must not be granted to the carrying out of development on land to which this plan applies unless the consent authority is of the opinion that the carrying out of the development is consistent with the objectives of the zone in which the development is proposed to be carried out.

Table

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

### **1 Objectives of the Zone**

The objective of 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,
  - (ii) soil stability by controlling and locating development in accordance with soil and land capability,
  - (iii) forests of existing and potential commercial value for timber production,
  - (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 native vegetation in environmentally sensitive areas where the conservation of the trees and vegetation is significant to scenic amenity, recreation and protected and threatened species, populations or ecological communities or their habitats (including critical habitat and wildlife corridors) 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, threatened and protected plant species, populations and communities (including native grasslands), wetlands and significant habitat and wildlife corridors, and
  - (viii) heritage items and items of archaeological significance,
- (b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture,
  - (c) facilitating farm adjustments and redevelopment,
  - (d) minimising the cost to the community of:
    - (i) fragmented and isolated development of rural land, and
    - (ii) providing, extending and maintaining public amenities and services, and
  - (e) restricting the type and scale of development in areas likely to be inundated by a 1-in-100 year flood to that which is compatible with the anticipated risk to life and property and to allow such development only where it is unlikely:
    - (i) to significantly reduce the capacity of a flood plain as a temporary storage of floodwaters, during the passage of a flood, or
    - (ii) to lead to a significant increase in flood damage.

## **2 Without development consent**

Development for the purpose of:

agriculture (other than chemical wash down facilities, intensive livestock keeping establishments and all forms of irrigated development); farm buildings; forestry (other than pine plantations).

Exempt development.

### **Note—**

See clause 10 and *Development Control Plan No 1*.

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

Any development not included in item 2 or 4.

### **4 Prohibited**

Development for the purpose of:

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

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

### **1 Objectives of the Zone**

The objectives of this zone are:

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

environmental capability of the land and the amenity of the area, and

- (e) to allow for light industrial and service uses which are compatible with adjacent land uses and are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for residential use.

## **2 Without development consent**

Development for the purpose of:

agriculture (other than chemical wash down facilities, intensive livestock keeping establishments and all forms of irrigated development); farm buildings.

Exempt development.

### **Note—**

See clause 10 and *Development Control Plan No 1*.

## **3 Only with development consent**

Any development not included in item 2 or 4.

## **4 Prohibited**

Development for the purpose of:

boarding houses; brothels; extractive industries (other than flood protection and community infrastructure purposes); hotels; institutions; intensive livestock keeping establishments; junkyards; liquid fuel depots; mines; motels; motor showrooms; offensive or hazardous industries; residential flat buildings; sawmills; shops (other than general stores); stock and sale yards; waste depots.

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

### **1 Objectives of the Zone**

The objectives of this zone are:

- (a) to promote development in existing towns which is compatible with their rural service function,
- (b) to preserve the general residential character and amenity of township areas,

- (c) to allow for non-residential uses which are compatible with adjacent land uses and are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for residential use,
- (d) to facilitate the provision of a range of residential accommodation appropriate to the diverse needs of the community,
- (e) to facilitate the relocation of industrial and transport-related activities to more appropriate zones,
- (f) to encourage tourist-related activities to establish in appropriate locations,
- (g) to conserve and protect heritage items and the natural environment,
- (h) to provide a full range of personal, commercial, cultural and social services to the community in appropriate locations while protecting the character and amenity of township areas,
- (i) to allow for commercial and retail uses or service and retail uses which are compatible with adjacent land uses and are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for service, commercial and retail use,
- (j) to provide an attractive, compact, safe and convenient shopping and commercial precinct,
- (k) to encourage a commercial environment that is attractive to tourists and visitors,
- (l) to prevent activities or industry that, by reason of noise, odour or other impact, detract from the amenity of the area,
- (m) to allow for light industrial and service uses which are compatible with adjacent land uses and are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for residential use,
- (n) to facilitate the provision of a range of employment opportunities appropriate to the diverse needs of the community.

## **2 Without development consent**

Development for the purpose of:

home occupations.

Exempt development.

### **Note—**

See clause 10 and *Development Control Plan No 1*.

## **3 Only with development consent**

Any development not included in item 2 or 4.

## **4 Prohibited**

Development for the purpose of:

brothels; extractive industries (other than for the provision of flood protection and community infrastructure); intensive livestock keeping establishments; mines; offensive or hazardous industries; waste depots.

## **Zone No 8 (a) (National Park Zone)**

### **1 Objectives of the Zone**

The objectives of this zone are:

- (a) to identify land which is reserved or dedicated under the *National Parks and Wildlife Act 1974*,
- (b) to allow for the management and appropriate use of that land as provided for in the *National Parks and Wildlife Act 1974*.

### **2 Without development consent**

Any land use authorised by or under the *National Parks and Wildlife Act 1974* and any land use incidental or ancillary to such a land use.

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

Nil.

### **4 Prohibited**

Any development not included in item 2.

## Part 3 Special provisions

### Division 1 Exempt and complying development

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

- (1) Development of minimal environmental impact listed as exempt development in *Development Control Plan No 1*, as adopted by the Council on 17 December 1999, is **exempt development**, despite any other provision of this plan.
- (2) Development listed as complying development in *Development Control Plan No 1*, as adopted by the Council on 17 December 1999, is **complying development** if:
  - (a) it is local development of a kind that can be carried out with consent on the land on which it is proposed, and
  - (b) it is not an existing use, as defined in section 106 of the Act.
- (3) Development is exempt or complying development only if it complies with the development standards and other requirements applied to the development by *Development Control Plan No 1*, as adopted by the Council on 17 December 1999.
- (4) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in *Development Control Plan No 1*, adopted by the Council, as in force when the certificate is issued.

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

- (1) The consent authority must, before consenting to an application to carry out development on land within Zone No 1 (a), make an assessment of the impact of the carrying out of that development on:
  - (a) the present and potential use of the land for the purpose of agriculture and the potential of any land which is prime crop and pasture land for sustained agricultural production,
  - (b) vegetation, timber production, land capability (including soil resources and soil stability) and water resources (including the quality and stability of watercourses and ground water storage and riparian rights),
  - (c) the protection of areas of significance for nature conservation or of high scenic or recreational value,
  - (d) the protection of places and buildings of heritage significance,
  - (e) the cost of providing, extending and maintaining public amenities and services to the site of the proposed development,
  - (f) any future expansion of settlement in the locality,



(g) the availability, cost and practicability of constructed road access within a dedicated road reserve to the site of the proposed development, and

(h) the potential for flooding of the land.

(2) Before granting consent, the consent authority must take into consideration the relationship of the proposed development to adjoining land and development (including land uses) in the locality.

## **Division 2 Subdivision**

### **12 Subdivision of land generally**

(1) Land to which this plan applies shall not be subdivided without development consent.

(2) Consent must not be granted to an application to subdivide land within Zone No 1 (a) or 1 (c) unless the consent authority has obtained all of the relevant information in relation to, and made an assessment of:

(a) the primary purpose for which each allotment to be created by the subdivision is intended to be used,

(b) whether any allotment to be created by the subdivision is intended to be used primarily for the purpose of agriculture,

(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,

(d) whether a constructed road access within a dedicated road reserve will be available to all allotments to be created by the subdivision,

(e) the provision of services including the collection and storage of stormwater,

(f) whether a licence under the [Water Act 1912](#) relating to the land to be subdivided and authorising the construction and use of a work on the land for the purpose of irrigation (or stock and domestic or industrial use) will be available at the time of the subdivision and will ensure that irrigation (or a stock and domestic or industrial supply of water) will be available for each allotment to be created,

(g) vegetation, timber production, land capability (including soil resources and soil stability) and water resources (including the quality and stability of watercourses and ground water storage), and

(h) how areas of significance for nature conservation or of high scenic or recreational value should be protected.

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

(1) This clause applies to land within Zone No 1 (a).

- (2) Consent may be granted to the creation of an allotment of any area that the consent authority is satisfied is intended to be used for the purpose of agriculture.
- (3) Consent must not be granted to the creation of an allotment which will have an area of less than 2 000 hectares (in the case of land to be used for an agricultural use) or 10 hectares (in the case of land to be used for horticultural or viticultural uses) if there is a dwelling house on the allotment.
- (4) Before granting consent to an application for subdivision of land for the purposes of agriculture, the consent authority must consider the following:
  - (a) the effect on the existing and potential capability of the land and adjacent land to produce food or fibre or to be used for other agricultural purposes,
  - (b) whether access to any proposed allotment can be provided by way of constructed access within a dedicated road reserve to an existing dedicated road reserve,
  - (c) the effect of a proposed use on adjoining existing development,
  - (d) the effect of the proposed use on the natural environment, including water resources,
  - (e) vegetation, timber production, land capability (including soil resources and soil stability) and water resources (including the quality and stability of watercourses and ground water storage and riparian rights),
  - (f) the protection of areas of significance for nature conservation or of high scenic or recreational value.

**Note—**

Clause 9 of the [State Environmental Planning Policy \(Rural Lands\) 2008](#) enables subdivision of lots smaller than allowed by this plan for the purposes of primary production.

**14 (Repealed)**

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

- (1) Consent must not be granted to an application to subdivide land within Zone No 1 (a) if any allotment to be created by the subdivision will, in the opinion of the consent authority, be used primarily for purposes other than agriculture or a dwelling unless, in the opinion of the consent authority:
  - (a) none of the land the subject of the application is prime crop and pasture land, and
  - (b) the area of each allotment to be created by the subdivision is appropriate having regard to the purpose for which it is being created and the layout of each lot.
- (2) Nothing in subclause (1) prevents consent from being granted to an application to subdivide land that will, in the opinion of the consent authority, be used for a purpose

other than agriculture or a dwelling, if the consent authority is satisfied that:

- (a) the purpose for which the allotment is proposed to be used involves the supply of goods or services for which there is a demand in the locality,
- (b) no other land in the locality could reasonably be used for the purpose,
- (c) the level of demand for the goods and services which are to be supplied from the allotment and the extent to which that allotment is proposed to be used to meet that demand justifies the creation of the allotment notwithstanding its agricultural value,
- (d) constructed road access will be provided within a dedicated road reserve to all proposed allotments,
- (e) the land is capable of supporting the use without adversely affecting the environment of the site or surrounding areas,
- (f) the effect of the proposed subdivision on vegetation, timber production, land capability (including soil resources and soil stability) and water resources (including the quality and stability of watercourses and ground water storage and riparian rights) has been considered, and
- (g) the effect of the proposed subdivision on the protection of areas of significance for nature conservation or of high scenic or recreational value has been considered.

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

- (1) Consent must not be granted to an application to subdivide land within Zone No 1 (c) unless the area of each allotment intended, in the opinion of the consent authority, to be created for the purpose of a dwelling house has an area of 1 hectare or more at Brewarrina, Goodooga and Gongolgon and of 4 000 square metres or more at Angledool.
- (2) Consent must not be granted to any such subdivision of land unless the consent authority has taken into consideration:
  - (a) the land capability (including soil resources and soil stability), natural constraints and hazards of the land to be subdivided in relation to the density and layout of the allotments to be created,
  - (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 the physical suitability for on-site disposal of wastes,
  - (d) the availability or feasibility of a constructed road access within a dedicated road

reserve,

- (e) the availability of power and a water supply,
- (f) vegetation, timber production, land capability (including soil resources and soil stability) and water resources (including the quality and stability of watercourses and ground water storage and riparian rights), and
- (g) the protection of areas of significance for nature conservation or of high scenic or recreational value.

#### **17 Subdivision for the purpose of dwellings in Zone No 2 (t)**

- (1) Consent must not be granted to an application to subdivide land within Zone No 2 (t) unless the area of each allotment that the consent authority is satisfied will be used for the purpose of a dwelling house will have an area of:
  - (a) at least 450 square metres, where reticulated sewerage is available, or
  - (b) at least 2 500 square metres at Brewarrina and Goodooga, or at least 4 000 square metres at Angledool, where reticulated sewerage is not available, unless in the opinion of the consent authority the allotment, although it is smaller, can contain a dwelling and has sufficient open space to enable the proper treatment and disposal of liquid wastes in a waste treatment system.
- (2) Consent must not be granted to an application to subdivide land within Zone No 2 (t) unless each allotment to be created by the subdivision will be provided with constructed road access to a dedicated road reserve.

### **Division 3 Dwellings**

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

- (1) A person shall not erect a dwelling on vacant land within Zone No 1 (a) unless:
  - (a) the land has an area of:
    - (i) 10 hectares or more, where the consent authority is satisfied that the land is and will continue to be used for horticulture or viticulture, or
    - (ii) 2 000 hectares or more, if the consent authority is not so satisfied, or
  - (b) the land comprises:
    - (i) an allotment created under this plan otherwise than for the purpose of agriculture, or
    - (ii) an allotment created in accordance with a consent granted before the appointed day, being an allotment on which a dwelling house could have been

lawfully erected immediately before the appointed day, or

(iii) an existing holding.

- (2) On vacant land within Zone No 1 (a), a person may erect a dwelling house without consent provided the dwelling is set back at least 500 metres from a road boundary or adjoining allotment boundary and is not on environmentally sensitive land, and the allotment concerned has an area of 2 000 hectares or more and its use is primarily for the purpose of agriculture.
- (3) Subclause (2) applies only in cases where the allotment has a constructed road access provided within a dedicated road reserve.
- (4) In this clause, **vacant land** means land on which no dwelling is erected.

#### **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 Residential flat buildings (parking provisions)**

- (1) A residential flat building (other than units for aged persons) shall not be erected or used unless provision is made within the site for:
  - (a) at least one parking space of not less than 5.4 metres by 2.4 metres for each dwelling within the building, and
  - (b) proper vehicular access to the parking space.
- (2) In the case of units for aged persons, there shall be provided so many vehicular parking spaces, of not less than 5.4 metres by 2.4 metres, as the consent authority may require, having regard to the location of the building in relation to public transport and the availability of alternative car parking facilities, but so that there shall be provided not less than 2 such spaces for every 10 dwellings.

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

A person shall not erect a dwelling house on land within Zone No 1 (c) unless:

- (a) the land has an area of 1 hectare or more at Brewarrina, Goodooga and Gongolgon and 4 000 square metres or more at Angledool, or use of the land for a dwelling house site is allowed as an existing use, and

- (b) the dwelling house is 10 metres or more from any land within Zone No 1 (a), and
- (c) each allotment is provided with a safe and practicable constructed access to a dedicated road reserve.

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

- (1) Consent may be granted to the erection of 1 additional dwelling on land within Zone No 1 (a) or 1 (c) (or to the alteration of an existing dwelling to create 2 dwellings) where:
  - (a) a dwelling could be erected on the land in accordance with this plan if the land were vacant, and
  - (b) no additional access to a public road is required from the land, and
  - (c) the site of the dwelling and its curtilage is not prime crop and pasture land, and
  - (d) separate ownership of the proposed dwelling could only be achieved by subdivision of the land, and
  - (e) in the opinion of the consent authority, the dwelling will not interfere with the purpose for which the land is being used, and
  - (f) adequate provision is made for the provision of electricity, a water supply and effluent disposal, and
  - (g) erection of the dwelling will not result in a ratio of more than one dwelling per 2 000 hectares in Zone No 1 (a), exclusive of itinerant workers' quarters.
- (2) Consent must not be granted to the subdivision of the land on which an additional dwelling is erected in pursuance of this clause, except in accordance with other provisions of this plan.

## **22 Dual occupancy in Zone No 2 (t)**

- (1) Subject to this clause, consent may be granted to:
  - (a) the erection of 2 dwellings on a parcel of land within Zone No 2 (t) on which no dwelling exists,
  - (b) the erection of 1 additional dwelling on such a parcel, or
  - (c) the alteration of an existing dwelling to create 2 dwellings on such a parcel.
- (2) Such a consent must not be granted unless:
  - (a) where the dwellings are to be connected to the reticulated sewerage system—the land has an area greater than:

- (i) 450 square metres, where the dwellings are proposed to be attached, or
  - (ii) 650 square metres, where the dwellings are proposed to be detached, and
  - (b) where domestic liquid effluent is to be disposed of on-site—the consent authority is satisfied that liquid effluent can be disposed of on-site in an environmentally acceptable and sustainable manner, and
  - (c) the dwellings are provided with constructed access to a dedicated road reserve.
- (3) Such consent must not be granted if it would result in more than 2 dwellings existing on 1 parcel of land.

## **Division 4 Miscellaneous**

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

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

### **24 Development adjacent to a levee**

- (1) Notwithstanding any other provision in this plan, development for any purpose shall not, without development consent, be carried out on land within Zone No 1 (a) within 100 metres of a levee surrounding a township.
- (2) In considering any application for consent required by this clause, the consent authority must assess the effect of the proposed development on the stability and effectiveness of the levee and how it would affect access to a levee.

### **25 Applications that must be advertised**

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

### **26 Development along arterial roads**

- (1) Consent must not be granted to an application to carry out development on land which has frontage to an arterial road, unless:
  - (a) access to the land is provided by a road constructed within a dedicated road reserve other than the arterial road, or
  - (b) in the opinion of the consent authority, 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), (3) (Repealed)

## **27 Flood liable land**

- (1) Notwithstanding any other provision of this plan, a person shall not erect a building or carry out a work for any purpose on flood liable land, except with development consent.
- (2) The aims of this plan in relation to flood liable land are as follows:
  - (a) to minimise the adverse impact of development, visual or otherwise, through careful site planning and to ensure that adequate environmental safeguards are implemented,
  - (b) to ensure that development of flood prone land does not prejudice the proper function of flood plains or interfere with the free flow of floodwaters and that public safety is properly taken into account,
  - (c) to ensure that the floor level of those parts of a building used for human habitation are constructed at least 500mm above the highest known flood or the probable maximum flood level if known and buildings are designed to withstand the impact of flooding. The use of geomorphology is an acceptable method of determining flood level,
  - (d) to allow an area within a Council approved flood protection levee to be considered as an option by the consent authority in determining whether a dwelling may be located on flood liable land.
- (3) In assessing a development application for land on a flood plain the consent authority shall consider the following:
  - (a) the potential for interference with natural periodic flooding of the flood plain and or the distribution of floodwaters across the flood plain,
  - (b) the potential for pollution in the event of a flood, and
  - (c) the impact, including cumulative impact, of the development of flood flows.

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

The aims of this plan in relation to heritage are:

- (a) to conserve the environmental heritage of the local government area of Brewarrina,
- (b) to integrate heritage conservation into the planning and development control processes,



- (c) to provide for public involvement in the conservation of environmental heritage, and
- (d) to ensure that any development does not adversely affect the heritage significance of heritage items and their settings.

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

(1) The following development may be carried out only with development consent:

- (a) demolishing, defacing, damaging or moving a heritage item,
- (b) altering a heritage item by making structural changes to its exterior,
- (c) altering a heritage item 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,
- (d) moving a relic, or excavating land for the purpose of discovering, exposing or moving a relic,
- (e) erecting a building on, or subdividing, land on which a heritage item is located.

(2) When determining a development application required by this clause, the consent authority must take into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or relic.

### **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*).

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

- (1) The demolishing, defacing or damaging of a heritage item (and the use of a building or land referred to in clause 33 for a purpose which, but for that clause, would be prohibited by this plan) are advertised development for the purposes of the Act.
- (2) (Repealed)

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

- (1) Consent may be granted 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 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) the consent authority 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) Consent may be granted 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) the consent authority 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.

**Note—**

Development of known or potential Archaeological sites.

It is an offence under section 90 of the *National Parks and Wildlife Act 1974* to knowingly destroy, deface or damage an Aboriginal site. The onus is on the proponent of any development (or activity) to determine whether or not there are sites present and to assess whether these could be avoided. It is also important for the proponent to determine whether the area is of cultural significance to Aboriginal people. If a proposed development (or activity) will destroy, damage or deface an Aboriginal relic (within the meaning of the *National Parks and Wildlife Act 1974*) the consent authority may only grant consent to its being carried out if:

(a) the proponent has sought a section 90 “Consent to Destroy” approval from the Director-General of National Parks and Wildlife and the consent authority is satisfied that this consent has been granted, and

(b) the consent authority has considered an assessment of how the proposed development or activity would affect the conservation of the site and is satisfied that there are no suitable alternatives or alterations that would avoid destruction of the site.

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

The consent authority must take into consideration the likely effect of the proposed development on the heritage significance of a heritage item, archaeological site or potential archaeological site, and on its setting, when determining an application for

consent to carry out development on land in its vicinity.

### **33 Conservation incentives**

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

### **34 Development near aerodromes**

A person shall not, on land within 500 metres of a boundary of a property containing a runway of a licensed aerodrome:

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

except with development consent.

### **35 Environmentally sensitive land**

- (1) On environmentally sensitive land a person shall not, except with development consent:

- (a) destroy, clear or remove native vegetation or habitat of a protected or threatened species (flora and fauna), populations or ecological communities,
  - (b) erect a building, or
  - (c) clear, drain or fill a wetland or construct a levee on a wetland or construct an off-river storage artificial water body within a wetland.
- (2) Consent must not be granted to a development application required by subclause (1) unless the consent authority is satisfied that:
- (a) effective measures have been incorporated into the proposal to minimise the impact on the environmentally sensitive land after consideration of the following:
    - (i) the impact on the scientific and natural significance of the environmentally sensitive land,
    - (ii) the loss of important vegetation systems, natural wildlife habitats and corridors including that of threatened species, populations or ecological communities,
    - (iii) the risk of soil erosion or other land degradation,
    - (iv) the loss of scenic amenity,
    - (v) the risk of disturbance or destruction of Aboriginal relics or places and the impact on cultural significance, and,
  - (b) a refusal to grant consent would not constitute a danger to users or occupiers of that land or the public, and
  - (c) granting consent will not constitute contravention of the *Native Vegetation Conservation Act 1997*.
- (3) Development consent is not required for:
- (a) such clearing of land as may be reasonably necessary for the carrying out of development for the purposes of:
    - (i) a fence, being a fence of a permanent nature,
    - (ii) an access trail,
    - (iii) a cut line for stock movement,
    - (iv) a fire break,
    - (v) a road, or
    - (vi) a telephone, electricity, gas or water line, or

- (b) lopping trees to provide stock feed in times of drought, provided that the method and extent of the lopping ensures the continued survival and health of the trees, or
- (c) clearing growth of trees which are less than 3 metres high on any land which:
  - (i) was lawfully cleared before the appointed day, or
  - (ii) has been cleared in compliance with this clause, or
- (d) pruning trees for the purpose of their regeneration or ornamental shaping, or
- (e) burning undergrowth for the purposes of range land management.

### **36 Stormwater drainage**

- (1) The carrying out of a work that will result in the disposal of stormwater, waste water or treated effluent into any river, stream or underlying aquifer requires development consent.
- (2) Consent may be granted to a work that will result in the disposal of stormwater into any river only if the water will be subjected to measures, satisfactory to the consent authority, designed to reduce litter and suspended solids.
- (3) Drainage of wetlands, cowals, swamps or bogs is not allowed without development consent.

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

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

### **38 Landforming**

- (1) A person shall not carry out landforming on land within Zone No 1 (a) except with development consent.
- (2) Consent must not be granted to an application to carry out landforming on land within Zone No 1 (a) unless the consent authority has made an assessment of:
  - (a) the flood liability of the land,
  - (b) the likely effect of flooding on adjoining or other land in the locality as a result of

- the development of the land,
- (c) the loss of remnant or native vegetation of protected or threatened species (flora and fauna), populations or communities,
  - (d) the means of disposal of waste water,
  - (e) the likely effect on the water table of carrying out the proposed development,
  - (f) the likely effect on Aboriginal relics or places of carrying out the proposed development,
  - (g) the effect of the passage of flood or overland flows into, within and through flood dependent environments, and
  - (h) the environmental sensitivity of the land.

### **39 Aerial spraying**

- (1) Consent is required for aerial spraying for each crop cycle on land within Zone No 1 (a) (Rural Zone) if the spraying is within 10 kilometres from land within Zone No 1 (c) or 8 (a), except where the Council has approved an aerial spraying plan for the subject land.
- (2) Aerial spraying is to be carried out as set down in the industry code of practice available from the office of the Council.
- (3) Aerial spraying is prohibited in the following zones:
  - Zone No 1 (c) (Rural Small Holdings Zone)
  - Zone No 2 (t) (Township Zone)
  - Zone No 8 (a) (National Park Zone)

### **40 Irrigated development**

Regardless of any other provision of this plan, consent is required for:

- (a) any irrigated development, including agriculture, where the proposed development is to be carried out on land that has the benefit of a licence to irrigate issued under an Act or regulation, and
- (b) the construction of the irrigation system required by the development specified in paragraph (a), including off-river storage, within wetland storage and artificial water bodies.

### **41 Services in Zone No 2 (t)**

- (1) This clause applies to land within Zone No 2 (t).

- (2) Consent must not be granted for a subdivision of land that will allow the erection of a dwelling, for the erection of a dwelling, or for the carrying out of a work likely to require the provision of water, sewerage or drainage services on any land to which this clause applies unless:
  - (a) a water supply and facilities for the removal or disposal of sewage and stormwater are available to the land, or
  - (b) arrangements satisfactory to the consent authority have been made for the provision of that supply and those facilities.

#### **42 Temporary use of land**

Regardless of any other provision of this plan, a person may carry out development on any land without development consent for any purpose for a maximum period of 28 days, whether consecutive or non-consecutive, in any one year if, in the opinion of the Council, the land use contributes to the cultural well-being of the community and does not adversely affect the amenity of the surrounding area.

#### **43 Classification and reclassification of public land**

- (1) The objective of this clause is to enable the Council, by means of this plan, to classify or reclassify public land as “operational land” or “community land” in accordance with Part 2 of Chapter 6 of the [Local Government Act 1993](#).

**Note—**

Under the [Local Government Act 1993](#), **public land** is generally land vested in or under the control of a council (other than roads, Crown reserves and commons). The classification or reclassification of public land may also be made by a resolution of the Council under section 31, 32 or 33 of the [Local Government Act 1993](#). Section 30 of that Act enables this plan to discharge trusts on which public reserves are held if the land is reclassified under this Plan as operational land.

- (2) The public land described in Part 1 and Part 2 of Schedule 6 is classified, or reclassified, as operational land for the purposes of the [Local Government Act 1993](#).
- (3) The public land described in Part 3 of Schedule 6 is classified, or reclassified, as community land for the purposes of the [Local Government Act 1993](#).
- (4) The public land described in Part 1 of Schedule 6:
  - (a) does not cease to be a public reserve to the extent (if any) that it is a public reserve, and
  - (b) continues to be affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants that affected the land before its classification, or reclassification, as operational land.
- (5) The public land described in Part 2 of Schedule 6, to the extent (if any) that it is a public reserve ceases to be a public reserve on the commencement of the relevant

classification plan and, by the operation of that plan, is discharged from all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except:

- (a) those (if any) specified for the land in Column 3 of Part 2 of Schedule 6, and
- (b) any reservations that except land out of the Crown grant relating to the land, and
- (c) reservations of minerals (within the meaning of the *Crown Lands Act 1989*).

(6) In this clause, the **relevant classification plan**, in relation to land described in Part 2 of Schedule 6, means this plan or, if the description of the land is inserted into that Part by another environmental planning instrument, that instrument.

(7) Before the relevant classification plan inserted a description of land into Part 2 of Schedule 6, the Governor approved of subclause (5) applying to the land.

## Schedule 1 Heritage items

(Clause 5)

- 1 Hospital Creek Massacre Site  
(Hospital Creek)  
(Parish of Quantambone)
- 2 Old Mission Cemetery Site  
(9 miles upstream, Barwon River, Brewarrina)  
(Parish of Cato)
- 3 Aboriginal Fisheries Site, Brewarrina  
(Doyle Street, Brewarrina)  
(Parish of Brewarrina)
- 4 Ancient Quarry Site, Brewarrina  
(Parish of Cato)
- 5 Angledool Hall  
(Lot 5, Section 7, DP 2749)  
(Parish of Ballanbillian)
- 6 Narran Lakes, Brewarrina  
(Parish of Quantambone)
- 7 Anglican Church, Brewarrina  
(Lot 1 Section 10 DP 758161)
- 8 Brewarrina Electronics  
(Lot 1 Section 5 DP 974585)
- 9 Royal Hotel, Brewarrina  
(Lot 2 DP 84215)



- 10 Four Mile Reserve, Brewarrina  
(4 miles upstream from Brewarrina)  
(Parish of Wellman)
- 11 Yambacoona Mountain  
(Parish of Yambacoona)
- 12 Brewarrina Hotel, Brewarrina  
(Lot C DP 318598)
- 13 Barwon Bridge, Brewarrina
- 14 Anglican Church, Angledool  
(Lot 3 Section 5 DP 2749)
- 15 Cafe Deluxe, Brewarrina  
(Lot 2 DP 85537)
- 16 Brewarrina Court House and Residence  
(Lot 2 Section 10 DP 758161)
- 17 Narran Archaeological and Mythological Site, Brewarrina  
(Parish of Quantambine)
- 18 Brigalow Aboriginal Camping Place, Brewarrina  
(Macquarie River)  
(Parish of Ballanbillian)
- 19 Denawan Aboriginal Reserve, Goodooga  
(Parish of Barbah)
- 20 Goodooga Aboriginal Reserve and Cemeteries  
(WLL 4258, Goodooga)  
(Bokhara River)  
(Parish of Coobeinder)
- 21 Birrie Cemetery, Brewarrina  
(Birrie Creek)  
(Parish of Gunnawarra)
- 22 Dwelling at 125 Bathurst Street, Brewarrina  
(Lot 9 Section 16 DP 758161)
- 23 Dwelling at 41 Doyle Street, Brewarrina  
(Lot 20 Section 17 DP 758161)
- 24 Catholic Church, Brewarrina  
(Lot 5 DP 758161)

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

(Clause 25)

- 1 Development for the purpose of conserving, protecting or restoring a heritage item that, in the opinion of the Council, warrants public comment.
- 2 Development for the purpose of residential flat buildings, boarding houses, hotels, motels.
- 3 Aerial spraying.
- 4 Development within Zone No 1 (a) on land within 500 metres of any levee or within any other zone on land within 20 metres of any levee.
- 5 Development for the purpose of dog boarding and training establishments.
- 6 Development for the purpose of transport terminals, junkyards, liquid fuel depots, sawmills, stock and sale yards.
- 7 Development for the purpose of brothels.
- 8 Development involving the disposal of stormwater directly into any river or creek.
- 9 Multiple occupancies on land within Zone No 1 (a) or 1 (c).

## **Schedule 3 Principles of ecological sustainability**

(Clause 5)

The following are principles of ecological sustainability:

### **1 The precautionary principle**

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (a) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
- (b) an assessment of the risk-weighted consequences of various options.

The principle requires decision-making to give the environment the benefit of the doubt.

### **2 Intergenerational equity**

The present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations (that is, a partnership among all of the generations that may use or expect to benefit from the

nation's resources).

### **3 Conservation of biological diversity and ecological integrity**

Conservation of biological diversity and ecological integrity should be a fundamental consideration.

### **4 Improved valuation, pricing and incentive mechanisms**

Environmental factors should be included in the valuation of assets and services:

- (a) polluter pays (that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement), and
- (b) the users of goods and services should pay prices based on the full cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any wastes, and
- (c) environmental goals having been established should be pursued in the most cost-effective way by establishing incentive structures, including market mechanisms which enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

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

(Clause 5)

### **Part 1 Archaeological sites**

The following have been identified as archaeological sites:

- 1 Any site recorded on the Aboriginal Sites Register of New South Wales maintained by the National Parks and Wildlife Service.
- 2 Any site under consideration by the National Parks and Wildlife Service for recording on the Aboriginal Sites Register of New South Wales maintained by that Service.
- 3 Any sites or landscape features identified by a Local Aboriginal Land Council and notified in writing to the Council.

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

The following areas where there is a high likelihood for Aboriginal sites to occur have been identified as potential archaeological sites:

- 1 Barwon Basin (Darling Riverine Plains).
- 2 Cobar Plateau (Cobar Peneplain).

## Schedule 5 Environmentally sensitive land

(Clause 5)

The following land has been identified as environmentally sensitive land:

Land within Zone No 1 (a) or 1 (c) and containing native vegetation identified by the National Parks and Wildlife Service that is of high conservation value and is owned or managed by the Director-General of National Parks and Wildlife.

- Narran Lake Nature Reserve
- Culgoa National Park
- Narran Lakes Ramsar Site

## Schedule 6 Classification and reclassification of public land

(Clause 43)

### Part 1 Land classified, or reclassified, as operational land—no interests changed

<b>Column 1</b>	<b>Column 2</b>
<b>Locality</b>	<b>Description</b>
Angledool	Lots 5 and 6, Sec 2, DP 2749, Angledool Environs, Henry Street
Angledool	Lots 10, 11 and 12, Sec 10, DP 2918, Petworth Street
Brewarrina	Lot 4, DP 3207, 16 Barwon Street
Brewarrina	Lot 2, DP 834798, Bathurst Street
Brewarrina	Lot 1, DP 903423, 30 Bathurst Street
Brewarrina	Lot 11, DP 731399, 47–49 Bathurst Street
Brewarrina	Lot 1, DP 662476, 91 Bathurst Street
Brewarrina	Lot 156, DP 751553, Bokhara Street
Brewarrina	Portion 9, DP 1033446, Bokhara Street
Brewarrina	Lot 1304, DP 762910, WLL 3542, Bourke Road
Brewarrina	Lot 1, DP 945055, Bourke Street
Brewarrina	Lot 2, DP 1044943, Bundabulla Street
Brewarrina	Lot 3, DP 834798, Doyle Street
Brewarrina	Lot 9, Sec 1, DP 758161, 5–7 Doyle Street
Brewarrina	Lots 3 and 4, Sec 6, DP 751553, Wilson Street

Brewarrina	Lot 8, Sec 6, DP 758161, Wilson Street
Brewarrina	Lot 2, Sec 2, DP 2802, 3 Wilson Street
Brewarrina	Lot A, DP 441773; Lot 72, DP 558846, 9-11 Young Street
Brewarrina	Lots 1 and 2, DP 545076, Bundabulla Street
Goodooga	Lots 2-8, Sec 8, DP 758459, 23-27 Adam Street
Goodooga	Lot 1, DP 189615, 40b Adam Street
Goodooga	Lot 4251, DP 46644, Goodooga Airport
Goodooga	Lots 101-103, DP 1034321, Goodooga Environs

## **Part 2 Land classified, or reclassified, as operational land—interests changed**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Locality</b>	<b>Description</b>	<b>Any trusts etc not discharged</b>

## **Part 3 Land classified, or reclassified, as community land**

<b>Column 1</b>	<b>Column 2</b>
<b>Locality</b>	<b>Description</b>