

# Berrigan Local Environmental Plan 1992

[1992-423]



New South Wales

## Status Information

### Currency of version

Repealed version for 10 December 2010 to 3 October 2013 (accessed 18 July 2024 at 3:32)

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

### Provisions in force

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

### Notes—

- **Repeal**

The plan was repealed by cl 1.8 (1) of the *Berrigan Local Environmental Plan 2013 (587)* (LW 4.10.2013) with effect from 4.10.2013.

### 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](#).

File last modified 4 October 2013

# Berrigan Local Environmental Plan 1992



New South Wales

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# Berrigan Local Environmental Plan 1992



New South Wales

## Part 1 Preliminary

### 1 Name of plan

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

### 2 Aims, objectives etc

The general aims of this plan are:

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

with demand,

- (iv) facilitates farm adjustments,
- (v) ensures that the efficiency of arterial roads is not adversely affected by development on adjacent land, and
- (vi) provides for the orderly development of tourist activities.

### 3 Land to which plan applies

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

### 4 Relationship to other environmental planning instruments

This plan repeals:

- (a) *Interim Development Order No 1—Shire of Berrigan*,
- (b) Berrigan Local Environmental Plans Nos 1–5, 8 and 10, and
- (c) such other deemed environmental planning instruments and local environmental plans as, immediately before the appointed day, applied to land to which this plan applies, but only to the extent that they applied to that land.

### 5 Definitions

(1) In this plan:

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

- (a) the making of structural changes to the outside of the heritage item, building or work, or
- (b) the making of non-structural changes to the detail, fabric, finish or appearance of the outside of the heritage item, building or work,

but does not include the maintenance of the existing detail, fabric, finish or appearance of the outside of the heritage item, building or work.

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

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

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

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

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

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

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

**Council** means the Council of the Shire of Berrigan.

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

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

**existing holding** means:

- (a) except as provided by paragraph (b)—the area of a lot, portion or parcel of land as it was as at the 7 July 1975, or
- (b) where, as at the 7 July 1975, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land—the aggregation of those lots, portions or parcels as they were on that day.

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

**Height Limitation Plan** means the map marked "*Height Limitation Plan*", being a map of land around the Tocumwal aerodrome.

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

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

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

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

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

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

- (a) feed lots,
- (b) piggeries,
- (c) poultry farms, and
- (d) fish farms (including farms cultivating crustaceans and oysters),

but does not include an animal boarding or training establishment or land used for the keeping of fish, livestock or poultry intended solely for personal consumption or enjoyment by the owner or occupier of the land, and does not include short term feeding or feed lots operated during periods of declared drought, or at times of other natural disasters such as fire or flood.

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

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

**Obstacle Limitation Plan** means the map marked "*Obstacle Limitation Surface Plan*", being a map of land around the Tocumwal aerodrome.

**prime crop and pasture land** means land within an area identified, on a map prepared by or on behalf of the Director-General of the NSW Department of Agriculture and deposited in an office of the NSW Department of Agriculture (and a copy of which is deposited in the office of the Council), as Class 1, Class 2 or Class 3 land, or as land of merit for special agricultural uses, but does not include land which the Director-General has notified the Council in writing is not prime crop and pasture land for the purposes of this plan.

**recreation area** means

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

physical, cultural or intellectual welfare of persons within the community, being facilities provided by:

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

but does not include a racecourse or a showground.

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

**river** means the River Murray.

**sandhill vegetation clearing** means any manner of destruction or removal of trees, shrubs or plants on a sand dune formation, being a formation not less than 2 metres above the surrounding terrain and comprising loose sandmount sand, and includes cutting, felling, chaining, rolling, ringbarking, poisoning, burning or other mechanical means, but does not include the destruction or removal of noxious weeds or plants or trees that are dead or dangerous.

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

**the map** means the map marked “*Berrigan Local Environmental Plan 1992*”, as amended by the maps (or, if sheets of the maps are specified, by the specified sheets of the maps) marked as follows:

**Editorial note—**

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

*Berrigan Local Environmental Plan 1992 (Amendment No 1)*

*Berrigan Local Environmental Plan 1992 (Amendment No 2)—*Sheets 1 and 2

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

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

*Berrigan Local Environmental Plan 1992 (Amendment No 7)*

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

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



**wetland** means land, if any, identified as wetland on the map.

- (2) In this plan, a reference to the destruction of a tree is a reference to the ringbarking, cutting down, felling, poisoning, topping, lopping, removing or other destruction of or injury to a tree.
- (3) In this plan:
  - (a) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for the purpose,
  - (b) a reference to a map or a copy of a map is a reference to a map or a copy of a map deposited in the office of the Council, and
  - (c) a reference to land within a zone specified in the Table to clause 9 is a reference to land shown on the map in the manner identified in clause 8 as the means of identifying land of the zone so specified.
- (4) Notes in this plan do not form part of this plan.

## 6 Adoption of Model Provisions

- (1) The *Environmental Planning and Assessment Model Provisions 1980*, except for:
  - (a) the definitions of **arterial road** and **map** in clause 4 (1), and
  - (b) clauses 29 and 34,are adopted for the purposes of this plan.

## 7 Consent authority

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

## Part 2 Zones

### 8 Zones indicated on the map

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

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

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

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

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

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

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

- (1) The objectives of a zone are set out in the Table to this clause under the heading “Objectives of zone” appearing in the matter relating to the zone.
- (2) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause, the purposes (if any) for which:
  - (a) development may be carried out without development consent,
  - (b) development may be carried out only with development consent, and
  - (c) development is prohibited,are specified under the headings “Without development consent”, “Only with development consent” and “Prohibited”, respectively, appearing in the matter relating to the zone.
- (3) Except as otherwise provided by this plan, the Council shall not grant consent to the carrying out of development on land to which this plan applies unless the Council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Table

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

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

The 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 capability,
  - (iii) forests of existing and potential commercial value for timber production and other values,
  - (iv) valuable deposits of minerals, coal, petroleum and extractive materials by controlling the location of development for other purposes in order to ensure the efficient extraction of those deposits,

- (v) trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is significant to scenic amenity, recreation or natural wildlife habitat or is likely to control land degradation,
  - (vi) water resources for use in the public interest,
  - (vii) areas of significance for nature conservation, including areas with rare plants, wetlands and significant wildlife habitat, and
  - (viii) places and buildings of archaeological or heritage significance, including aboriginal relics and places,
- (b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture,
  - (c) facilitating farm adjustments,
  - (d) minimising the cost to the community of:
    - (i) fragmented and isolated development of rural land, and
    - (ii) providing, extending and maintaining public amenities and services, and
  - (e) providing land for future urban development, for future rural residential development and for future development for other non-agricultural purposes, in accordance with the need for that development.

## **2 Without development consent**

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

## **3 Only with development consent**

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

## **4 Prohibited**

Integrated housing development; motor showrooms; residential flat buildings; shops (other than general stores not exceeding 100 square metres in gross floor area); villa units.

## **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 affect land or development in the vicinity adversely, 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**

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

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

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

### **4 Prohibited**

Boarding-houses; caravan parks; commercial premises; hotels; integrated housing development; motels; motor showrooms; refreshment rooms; residential flat buildings; shops (other than general stores not exceeding 100 square metres in gross floor area); villa units.

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

### **1 Objectives of zone**

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

### **2 Without development consent**

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

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

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

### **4 Prohibited**

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

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

### **1 Objectives of zone**

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

### **2 Without development consent**

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

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

Roads.

### **4 Prohibited**

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

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

### **1 Objectives of zone**

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

### **2 Without development consent**

Nil.

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

Any purpose other than a purpose included in item 4.

### **4 Prohibited**

Extractive industries; integrated housing development; intensive livestock

keeping establishments; mines; offensive and hazardous industries.

### **Part 3 Special provisions**

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

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

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

- (1) Development of minimal environmental impact listed as exempt development in *Development Control Plan No 2 Exempt and Complying Development* adopted by the Council on 15 December 1999 is **exempt development**, despite any other provision of this plan.
- (2) Development listed as complying development in *Development Control Plan No 2 Exempt and Complying Development* adopted by the Council on 15 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 2 Exempt and Complying Development* adopted by the Council on 15 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 2 Exempt and Complying Development* adopted by the Council on 15 December 1999 as in force when the certificate is issued.

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

- (1) A person shall not subdivide land to which this plan applies except with the consent of the Council.
- (2) A person who makes an application for development consent to subdivide land within Zone Nos 1 (a), 1 (c) or 1 (d) shall:
  - (a) state, in relation to each allotment created by the subdivision, the primary purpose for which that allotment is intended to be used,
  - (b) identify any allotment which is intended to be used primarily for the purpose of agriculture,
  - (c) identify any allotment which is intended to be used primarily for the purpose of a dwelling-house,
  - (d) identify any allotment on which it is intended to erect a dwelling-house and state whether or not the dwelling-house is the primary purpose for which the allotment is being created, and
  - (e) show the approximate location of any dwelling-house erected on the land at the

date of the application.

- (3) The Council shall not consent to an application to subdivide land within Zone No 1 (a), 1 (c) or 1 (d) unless the application is accompanied by the information required by subclause (2).

## **12 Subdivision for the purpose of agriculture 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) The Council shall not consent to the creation of such an allotment if the proposed allotment has an area of less than 120 hectares and there is already a dwelling-house on the proposed allotment.
- (3) Despite subclause (2), the Council may consent to the creation of one, (but not more than one,) allotment having an area of less than 120 hectares, which the Council is satisfied will be used for the purpose of agriculture, from an existing holding on which a dwelling-house stands if that dwelling-house is lawfully erected on that land on or before the appointed day.

### **Note—**

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

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

- (1) The Council shall not consent to an application to subdivide land within Zone No 1 (a) if the Council is satisfied that any allotment to be created by the subdivision is intended to be used primarily for purposes other than agriculture or a dwelling-house, unless, in the opinion of the Council:
  - (a) none of the land the subject of the application is prime crop and pasture land, and
  - (b) the area of each allotment to be created by the subdivision is appropriate having regard to the purpose for which it is being created.
- (2) Nothing in subclause (1) prevents the Council from granting consent to an application to subdivide land to create an allotment that the Council is satisfied is intended to be used for a purpose other than agriculture or a dwelling-house if the Council is also satisfied that:
  - (a) the purpose for which the allotment is to be used involves the supply of goods or services for which there is a demand in the locality,
  - (b) no other land in the locality could reasonably be used for that purpose, and
  - (c) the level of demand for the goods or services which are to be supplied from the



allotment and the extent to which that allotment is proposed to be used to meet that demand justifies the creation of the allotment despite its agricultural value.

**14 (Repealed)**

**15 Subdivision for the purposes of dwelling-houses within Zone No 1 (c) and on land listed in Schedule 5**

- (1) The Council shall not consent to an application to subdivide land within Zone No 1 (c) or land listed in Schedule 5 where the Council is satisfied that each proposed allotment will be used for the purposes of a dwelling-house 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 not 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 2 hectares,
    - (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 2 hectares which will be created as a result of the subdivision is not more than 65 per cent of the maximum number of allotments which may be created on that land under subparagraph (i).
- (2) Nothing in subclause (1) (b) (i) prevents the Council from consenting to the subdivision of land to which this clause applies where the size of the allotments created is less than the prescribed area if it is satisfied that the individual allotments have adequate provision for effluent disposal.
- (3) If:
  - (a) communal land is to be provided and developed for the communal use of future owners of allotments within a subdivision of land 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 the communal land may be included in calculating the average lot size of that subdivision.
- (4) The Council shall not grant consent to the subdivision of land within Zone No 1 (c) and on land listed in Schedule 5 unless it has taken into consideration:

- (a) the land capability (including soil resources and soil stability), natural constraints and hazards of the land to be subdivided in relation to the density of the allotments proposed to be created,
  - (b) the desirability of providing a range and mixture of allotment sizes,
  - (c) whether the design of each allotment to be created by the subdivision is satisfactory for the economic provision of services,
  - (d) the physical suitability of the land for on-site disposal of wastes, and
  - (e) the provisions of subclause (5).
- (5) The Council shall not consent to the development of a lot created in accordance with subclause (1) for the purpose of a dwelling-house if that dwelling-house is to be located less than 150 metres from the boundary of land within Zone No 1 (a) unless, in the opinion of the Council, the development will not be adversely affected by the use of the adjoining land for agriculture.
- (6) Subject to subclause (7) of this clause, nothing in this plan prevents a person, with the consent of Council, from subdividing the land listed in Schedule 5 and identified as such on the map (or any part of that land) and erecting a dwelling-house on each of the allotments created by the subdivision.
- (7) The Council shall not grant consent to an application to carry out development referred to in subclause (6) after the expiration of three years from the date specified in Schedule 5 in relation to the land concerned or after such later date as the Minister may, before the expiration of that period, notify by order published in the Government Gazette.
- (8) Nothing in subclause (7) shall prevent the Council from granting consent to the erection of a dwelling-house on an allotment created in accordance with subclause (6).

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

The Council must not consent to the subdivision of land within Zone No 1 (d) unless each allotment to be created by the subdivision is not less than 20 hectares in area and the Council is satisfied that the subdivision will complement future urban development.

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

- (1) A person shall not subdivide land within Zone No 2 (v) so as to create an allotment which the Council is satisfied is to be used for the purpose of a dwelling-house unless the allotment has an area of 600 square metres or more.
- (2) Despite subclause (1), the Council may consent to the subdivision of land within Zone No 2 (v) into lots having an area of less than 600 square metres where the Council is satisfied that the resultant lots are to be used for the erection of villa units in

accordance with clause 20 of this plan.

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

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

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

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

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

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

- (1) The Council may consent to the erection of one additional dwelling-house on land within Zone No 1 (a) or 1 (c) (including the alteration of an existing dwelling-house to create 2 dwelling-houses) where:
  - (a) no additional access to a public road is required from the land,

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

**20 Villa units within Zone No 2 (v)**

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

**Table**

<b>Column I</b>	<b>Column II</b>	<b>Column III</b>
	Minimum site area (in square metres) required for each:	Minimum landscaped area (in square metres) required for each
	(a) large,	(a) large,
Zone	(b) medium, and	(b) medium, and
	(c) small	(c) small
	villa unit	villa unit
No 2 (v)	(a) 330	(a) 110

(b) 240

(b) 95

(c) 170

(c) 70

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

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

## **22 Development along arterial roads**

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

## **23 Environmentally sensitive land**

- (1) After the relevant day, a person shall not carry out development on environmentally sensitive land for the purposes of:
  - (a) intensive livestock keeping establishments,
  - (b) junk yards,
  - (c) liquid fuel depots,

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

## 24 Flood liable land

- (1) A person shall not erect a building or carry out a work for any purpose on flood liable land except with the consent of the Council.
- (2) The Council shall not consent to the erection of a building or the carrying out of a work on flood liable land if the Council is satisfied that the development is likely:

- (a) to impede the flow of flood water on that land or on adjoining land,
  - (b) to imperil the safety of persons on that land or on adjoining land in the event of those lands being inundated with flood water,
  - (c) to aggravate the consequences of flood water flowing on that land or on adjoining land with regard to erosion, siltation and the destruction of vegetation, or
  - (d) to have an adverse effect on the water table of that land or adjoining land.
- (3) The Council shall not grant a consent required by this clause unless it has taken into consideration:
- (a) the cumulative effect of carrying out the proposed development on flood behaviour,
  - (b) the risk of pollution to the waterways caused by carrying out the proposed development, and
  - (c) the availability of flood free access to the site of the proposed development.

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

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

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

## **26 Heritage items**

- (1) A person shall not, in respect of a building, work, relic, tree or place that is a heritage item:
- (a) demolish or alter the building or work,
  - (b) damage or move the relic,
  - (c) excavate for the purpose of exposing the relic,
  - (d) damage or despoil the place or tree,
  - (e) erect a building on or subdivide land on which the building, work or relic is situated or that comprises the place, or

(f) damage any tree on land on which the building, work or relic is situated or on the land which comprises the place,

except with the consent of the Council.

(2) The Council shall not grant consent to a development application required by subclause (1) unless it has taken into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the item and any stylistic or horticultural features of its setting.

**Note—**

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

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

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

## **28 Conservation areas**

(1) A person shall not, in respect of a conservation area:

- (a) demolish or alter a building or work within the area,
- (b) damage or move a relic within the area,
- (c) excavate, for the purpose of exposing or removing a relic, within the area,
- (d) damage or despoil a place within the area, or
- (e) erect a building on or subdivide land within the area,

except with the consent of the Council.

(2) The Council shall not grant consent to an application required by subclause (1) unless it has taken into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the conservation area.

## **29 Heritage advertisements and notifications**

(1) Except as provided by subclause (2):

- (a) the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of:
  - (i) the demolition of a building or work that is a heritage item, and



(ii) the demolition of a building or work within a conservation area,  
in the same way as those provisions apply to and in respect of designated  
development, and

(b) (Repealed)

(2) Subclause (1) does not apply to the partial demolition of a heritage item or a building or work within a conservation area if, in the opinion of the Council, the partial demolition will not adversely affect the heritage significance of the heritage item, building or work in relation to the environmental heritage of the Berrigan Shire.

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

A person may, with the consent of the Council:

- (a) use, for any purpose, a building within a conservation area or the land on which that building is erected, or
- (b) use, for any purpose, a building that is a heritage item or the land on which that building is erected,

if, in the opinion of the Council:

- (c) the use would have little or no adverse effect on the amenity of the area, and
- (d) conservation of the building depends on the Council's granting consent under this clause.

### **31 Access**

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

### **32 Development along Murray River**

- (1) Despite any other provisions of this plan, a person shall not, on land to which this plan applies:
  - (a) erect a building for any purpose on land within Zone No 1 (a), 1 (c) or 1 (d) within 400 metres of any bank of the river,
  - (b) destroy any tree on land within 100 metres of any bank of the river,
  - (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 purposes of:
    - (i) a canal,

- (ii) a marina (including pontoons, jetties, piers or other structures) designed to provide mooring or dry storage for one or more vessels used for any purpose, or
  - (iii) filling or extraction,on land comprising the bed or any bank of the river, except with the consent of the Council.
- (2) The Council shall not consent to an application to erect a building on land comprising:
  - (a) a bed of the river, or
  - (b) land within Zone No 1 (a), 1 (c) or 1 (d) and being within 100 metres of any bank of the river, or shown on the map as being land to which this subclause applies, unless, in the opinion of the Council, the building:
  - (c) is ancillary to the use of that land for the purpose of a recreation area, or
  - (d) is to be used for the purpose of fisheries, irrigation works (including the pumping and treatment of water for private domestic consumption), marinas, utility installations or the servicing of vessels or sea planes.
- (3) The Council shall not consent to an application made in accordance with subclause (1) unless, in the opinion of the Council, the destruction of the trees or the development of the land, including subdivision of the land, will be carried out in a manner which, in respect of the land and the adjacent land, minimises:
  - (a) the risk of soil erosion and other land degradation,
  - (b) the loss of scenic amenity, and
  - (c) the loss of important vegetation systems and natural wildlife habitats, including fish habitats.

### **33 Forestry**

- (1) This clause applies to land within a state forest or timber reserve within the meaning of the [Forestry Act 1916](#).
- (2) Despite the provisions of clauses 9 and 23, development may be carried out on land to which this clause applies without development consent:
  - (a) by the Forestry Commission, if the development is authorised under the [Forestry Act 1916](#), or
  - (b) by any person, if the development is authorised by an authority granted or issued by the Forestry Commission under that Act.

### **34 Advertising structures**

- (1) A person shall not, except with the consent of the Council, erect an advertising structure on land to which this plan applies.
- (2) The Council shall not consent to the erection of an advertising structure unless:
  - (a) the advertisement on or to be placed on the structure indicates or is to indicate the purpose for which the premises on the land are to be used,
  - (b) in the case of land within Zone No 1 (a), 1 (c) or 1 (d), the advertising structure is to be used for the purposes of displaying an advertisement indicating the location of tourist facilities and places of scientific, cultural, historic or scenic interest, and
  - (c) the Council is satisfied that the advertising structure will not interfere with the amenity of the area.

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

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

### **36 Development near aerodromes**

- (1) After the relevant day, a person shall 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, or
  - (b) carry out development for the purposes of:
    - (i) a dam or reservoir,
    - (ii) the handling or storage of grain,
    - (iii) the disposal of refuse,
    - (iv) a sewage treatment plant or effluent ponds,
    - (v) an abattoir,
    - (vi) a stock yard 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 of waste foodstuff, could be expected to constitute an attraction to birds,

except with the consent of the Council.

- (2) An application made after the relevant day for development consent to carry out any development on land to which the Obstacle Limitation Plan applies shall be referred to the Civil Aviation Authority for comment where the development proposed relates to a building or proposed building that exceeds the height specified for it in the Obstacle Limitation Plan.
- (3) In considering whether to grant consent to the development referred to in subclause (2), the Council shall take into account any comment furnished by the Civil Aviation Authority within 28 days after referral of the application.
- (4) In this clause, **the relevant day** means the first anniversary of the commencement of this plan.

### **37 Sound insulation of buildings near aerodromes**

- (1) A person shall not, without the consent of the Council, erect a building in an area for which an Australian Noise Exposure Forecast has been prepared by the Civil Aviation Authority.
- (2) The Council shall not grant consent to the erection of a building in such an area 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 against Aircraft Noise Intrusion (AS 2021)* published by the Standards Association of Australia on 4 November 1985, and
  - (b) which are adequate for the insulation of the building from aircraft noise.

### **38 Development on travelling stock route or reserve**

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*.

### **39 Development near explosive storage area**

The Council shall not grant consent to the subdivision or development of Portions 195 or 196 in the Parish of Tocumwal, County of Denison unless, in the opinion of the Council, the development will not be subject to any hazard arising from its proximity to the explosive storage area located on Lot 2, Deposited Plan No 225459.

## **Schedule 1 Heritage items**

(Clause 5 (1))

<b>Locality</b>	<b>Street</b>	<b>Description</b>
Barooga	Off Mulwala Road	Boomanoomana Homestead
Berrigan	Chanter Street	St. John's Church
Tocumwal	Newell Highway	Road and Rail Bridge

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

(Clause 21)

- (1)** The demolition of a building or work that is a heritage item or is within a conservation area, other than a partial demolition which, in the opinion of the Council, does not adversely affect the significance of the building or work as part of the environmental heritage.
- (2)** Boarding-houses; hotels; motels; residential flat buildings.
- (3)** Industries (other than rural industries) within Zone No 1 (a) or 1 (c).
- (4)** Intensive livestock keeping establishments.
- (5)** Junk yards; liquid fuel depots; saw-mills; stock and sale yards.
- (6)** Subdivisions of land within Zone No 1 (c) or land listed in Schedule 5 and indicated as such on the map.

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

(Clause 22)

Bulk stores  
Caravan parks  
Car repair stations  
Clubs  
Commercial premises  
Educational establishments  
Hospitals  
Hotels

Industries (other than home or rural industries)  
Institutions  
Junk yards  
Liquid fuel depots  
Mines  
Motels  
Places of public assembly  
Places of public worship  
Recreation establishments  
Recreation facilities  
Refreshment rooms  
Retail plant nurseries  
Roadside stalls  
Sawmills  
Service stations  
Stock and sale yards  
Transport terminals  
Warehouses

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

(Clause 35)

**(1)** Portion 148, Parish of Barooga, County of Denison—boomerang factory and associated activities.

#### **Schedule 5 Development for Rural Residential purposes**

(Clause 15)

**(1)** Parish of Barooga, County of Denison

Date Specified cl 15 (7)—Appointed Day

Lot 1, DP 554782

Lots 3 & 4, DP 583265

Lots 1 & 2, DP 600194

Portions 138, 139, 142, 143, 144, 145, 146, 147, 148, 149, 151, 152, 153, 154, 155, 156, 157, 158 and 159

**(2)** Parish of Cottadidda, County of Denison

Date Specified cl 15 (7)—Appointed Day

Part Portions 18 and 25

Portion 71

Part Portion 1

**(3)** Parish of Finley, County of Denison

Date Specified cl 15 (7)—Appointed Day

Lot 52, DP 533353

Lots 55, 56 and 57, DP 588668

**(4)** Parish of Gereldery, County of Denison

Date Specified cl 15 (7)—Appointed Day

Lot 6, DP 603752

Lot 8, DP 616007

Lots 6 & 7, DP 732331

Lots 45, 46, 47 and 48, DP 746275

Lot 442, D.P. 791457

Lots 911, 913 and 914, DP 776119

- (5)** Parish of Tocumwal, County of Denison  
Date Specified cl 15 (7)—Appointed Day  
Part Portion 104  
Part Portion 211  
Part Portions 221 and 222
- (6)** Parish of Ulupna, County of Denison  
Date Specified cl 15 (7)—Appointed Day  
Portions 116, 117, 118, 120, 121 and 177