

Cabonne Local Environmental Plan 1991

[1991-432]



New South Wales

Status Information

Currency of version

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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The plan was repealed by cl 1.8 (1) of the [Cabonne Local Environmental Plan 2012 \(2013-2\)](#) (LW 18.1.2013) with effect from 18.1.2013.

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](#).

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Cabonne Local Environmental Plan 1991



New South Wales

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Cabonne Local Environmental Plan 1991



New South Wales

Part 1 Preliminary

1 Name of plan

This plan may be cited as *Cabonne Local Environmental Plan 1991*.

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 Cabonne by protecting, enhancing or conserving:
 - (i) prime crop and pasture land,
 - (ii) timber, mineral, soil, water and other natural resources,
 - (iii) areas of significance for nature conservation,
 - (iv) areas of high scenic or recreational value, and
 - (v) places and buildings of archaeological or heritage significance, including aboriginal relics and places,
- (b) to replace the existing planning controls with a single local environmental plan to help facilitate growth and development of the Shire of Cabonne in a manner which is consistent with the objectives specified in paragraph (a) and which:
 - (i) minimises the cost to the community of fragmented and isolated development of rural land,
 - (ii) facilitates the efficient and effective delivery of amenities and services,
 - (iii) facilitates a range of residential and employment opportunities in accordance with demand,
 - (iv) facilitates farm adjustments, and

- (v) ensures the efficiency of arterial roads is not adversely affected by development on adjacent lands,
- (c) to give the Council greater responsibility for environmental planning by creating a broad framework of controls and to create opportunity for the more detailed provisions relating to matters of significance only for local environmental planning to be contained in development control plans made by the Council,
- (d) to speed up the planning process,
- (e) to maintain the opportunity for public involvement and participation in the environmental planning and assessment process, and
- (f) to reduce the incidence of damage to areas subject to flooding by restricting development in the flood plain and in the floodways.

3 Land to which plan applies

- (1) This plan applies to all land within the Shire of Cabonne, as shown on the map, with the boundaries as indicated on the map.
- (2) This plan does not apply to Portion 109 of the Parish of Buckenbah.

4 Relationship to other environmental planning instruments

This plan repeals Cabonne Local Environmental Plans Nos 2 to 11 and 13.

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

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

animal boarding or training establishment means a building or place used for the commercial boarding, breeding, keeping or training of animals, and includes riding schools and veterinary clinics.

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

lines.

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

Council means the Council of the Shire of Cabonne.

demolition in relation to a building or work, means the damaging, defacing, destruction pulling down or removal of that building or work, in whole or in part.

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

existing holding means:

- (a) except as provided by paragraph (b)—the area of a lot, portion or parcel of land as it was at 29 November 1989, or
- (b) where, as at 29 November 1989, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land, the combined area of those lots, portions or parcels as they were as at 29 November 1989.

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

heritage conservation area means an area of heritage significance being land the land edged heavy black and marked “Heritage Conservation Area” on the map.

heritage item means those buildings, works, relics or places of historic, scientific, cultural, social, architectural, archaeological, natural or aesthetic significance to the Shire of Cabonne:

- (a) situated on land shown in a distinctive manner on the map and
- (b) described in Schedule 1.

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

intensive livestock keeping means a building or place in which or on which cattle, sheep, goats, poultry or other livestock are held for the purposes 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) fish farming (including crustaceans and oysters),

but does not include an animal boarding or training establishment or the keeping of livestock or poultry intended solely for personal consumption or enjoyment by the owner or occupier of the land.

irrigated agriculture means agricultural production requiring the application of water to crops by utilisation of permanent irrigation systems and includes the following activities: orcharding, propagation, plant breeding, viticulture, ornamental floriculture, intensive vegetable production and landscape horticulture.

maintenance means the continuous protective care of the fabric of a heritage item and its setting.

plantation forest means private forestry involving the establishment of plantations of more than 5 hectares in area in respect of any one property.

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 Department of Agriculture and Fisheries and deposited in the office of the Council, as Class 1, Class 2 or Class 3 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 (terrestrial or underwater) relating to the use or settlement of the Shire of Cabonne which is 50 or more years old.

the map means the map marked "*Cabonne Local Environmental Plan 1991*", as amended by the maps (or specified sheets of 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.

Cabonne Local Environmental Plan 1991 (Amendment No 1)

Cabonne Local Environmental Plan 1991 (Amendment No 5)

Cabonne Local Environmental Plan 1991 (Amendment No 10)

Cabonne Local Environmental Plan 1991 (Amendment No 12)

Cabonne Local Environmental Plan 1991 (Amendment No 14)

Cabonne Local Environmental Plan 1991 (Amendment No 17)

Cabonne Local Environmental Plan 1991 (Amendment No 18)

Cabonne Local Environmental Plan 1991 (Amendment No 20)

tree includes a sapling and a shrub.

vacant means devoid of dwellings.

wetland means land shown on the map by parallel broken lines within a heritage conservation area.

- (2) In this plan, a reference to the destruction of a tree, is a reference to ringbarking, cutting down, felling, poisoning, lopping, removing or otherwise destroying or injuring a tree.
- (3) In this plan:
 - (a) a reference to a map is a reference to a map deposited in the office of the Council, and
 - (b) a reference to a building or placed used for a purpose includes a reference to a building or a place intended to be used for the purpose.
- (4) Notes in this plan do not form part of this plan.

6 Adoption of Model Provisions

The *Environmental Planning and Assessment Model Provisions 1980* (except for the definition of **arterial road** and **map** in clause 4 (1), and except for clauses 15, 29, 32 and 33) are adopted for the purposes of this plan.

7 Consent authority

The Council shall be the consent authority for the purpose 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)—edged heavy black and lettered “1 (a)”.

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

Zone No 1 (f) (Forestry)—edged heavy black and lettered “1 (f)”.

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

Zone No 7 (c) (Environmental Protection—Water Catchments)—edged heavy black and lettered “7 (c)”.

Zone No 8 (National Parks and Nature Reserves Zone)—edged heavy black and lettered “8”.

9 Zone objectives and development control table

- (1) The objective 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)

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,
 - (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 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 habitat, and
 - (viii) places and buildings of archaeological or heritage significance, including the protection of Aboriginal relics and places,
- (b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture,
- (c) ensuring that any allotment created for intensive agricultural purposes is potentially and physically capable, on its own, of sustaining a range of such purposes or other agricultural purposes as a commercial agricultural operation suitable to the locality,
- (d) facilitating farm adjustments,
- (e) 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,
- (f) providing land for future urban development, for rural residential development and for development for other non-agricultural purposes, in accordance with the need for that development,
- (g) providing for a range of rural living styles in appropriate locations within the area to which this plan applies, and
- (h) encouraging the establishment of rural and related industries within the area to which this plan applies.

2 Without development consent

Agriculture (other than dwellings and intensive livestock keeping); forestry (other than ancillary dwellings and plantation forests).

3 Only with development consent

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

4 Prohibited

Motor showrooms; residential flat buildings; shops (other than general stores, wineries or craft shops).

Zone No 1 (c) (Rural Small Holdings)

1 Objectives of zone

The objective of this zone is to promote development of land identified as suitable for rural residential or hobby farm development.

2 Without development consent

Agriculture (other than dwellings and intensive livestock keeping).

3 Only with development consent

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

4 Prohibited

Caravan parks; hotels; industries (other than rural, light or home industries); motels; motor showrooms; residential flat buildings; shops (other than general stores).

Zone No 1 (f) (Forestry)

1 Objectives of zone

The objectives of this zone are:

- (a) to identify land managed by the Forestry Commission under the *Forestry Act 1916*, and
- (b) to preserve those existing forests within the Shire of Cabonne.

2 Without development consent

Any purpose authorised under the *Forestry Act 1916*.

3 Only with development consent

Any purpose other than a purpose included in item 2.

4 Prohibited

Nil.

Zone No 2 (v) (Village or Urban)

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

Zone No 7 (c) Environmental Protection—Water Catchments

1 Objectives of zone

The objectives of this zone are:

- (a) to protect and conserve the catchments of the Molong and Borenore Dams so that water quality is maintained and enhanced in order that the water is fit for human consumption,
- (b) to maintain the scenic quality of the Towac Valley, and
- (c) to promote the proper management and utilisation of agricultural resources by:
 - (i) protecting, enhancing and conserving:
 - agricultural land in a manner which sustains its efficient and effective agricultural production potential,
 - soil stability by controlling and locating development in accordance with soil capability,
 - forests of existing and potential commercial value for timber production,
 - 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,
 - trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is significant to scenic amenity or natural wildlife habitat or is likely to control land degradation,
 - water resources for use in the public interest,
 - areas of significance for nature conservation, including areas with rare plants, wetlands and significant habitat, and
 - places and buildings of archaeological or heritage significance, including the protection of Aboriginal relics and places,
 - (ii) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture,
 - (iii) ensuring that any allotment created for intensive agricultural purposes is potentially and physically capable, on its own, of sustaining a range of such purposes or other agricultural purposes as a commercial agricultural operation suitable to the locality,

- (iv) facilitating farm adjustments,
- (v) minimising the cost to the community of:
 - fragmented and isolated development of rural land, and
 - providing, extending and maintaining public amenities and services, and
- (vi) providing land for future urban development, for rural residential development and for development for other non-agricultural purposes, in accordance with the need for that development,
- (vii) providing for a range of rural living styles in appropriate locations within the area to which the plan applies, and
- (viii) encouraging the establishment of rural and related industries within the area to which the plan applies.

2 Without development consent

Agriculture (other than intensive livestock keeping, dwellings or new intensive horticultural enterprises of more than 20 hectares in area).

3 Only with development consent

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

4 Prohibited

Caravan parks; industries (other than rural industries or home industries); intensive livestock keeping; motor showrooms; offensive or hazardous industries; residential flat buildings; sewerage treatment plants; shops (other than general stores not exceeding 100 square metres of floor area); stock and sale yards.

Zone No 8 (National Parks and Nature Reserves Zone)

1 Objectives of zone

The objective of this zone is to identify those lands included in national parks, nature reserves, aboriginal areas and state recreation areas as advised by the Director of the National Parks and Wildlife Service.

2 Without development consent

Any purpose authorised under the *National Parks and Wildlife Act 1974* or any purpose ancillary or incidental to such purpose.

3 Only with development consent

Nil.

4 Prohibited

Any purpose other than a purpose included in item 2.

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), 1 (c) or 7 (c) unless it has made an assessment, where relevant, of the effect of the carrying out of that development on:
 - (a) the present and potential use of the land for the purposes of agriculture,
 - (b) vegetation, timber production, land capability (including soil resources and soil stability), water resources (including the quality and stability of water courses and ground water storage and riparian rights),
 - (c) the future recovery of known or prospective areas of valuable deposits of minerals, coal, petroleum, sand gravel or other extractive 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, and
 - (f) future expansion of settlements in the vicinity,and the Council is satisfied that the development will not have an adverse effect on the long term use, for sustained agricultural production, of any prime crop and pasture land.
- (2) In assessing the effect referred to in subclause (1), the Council shall have regard not only to the land the subject of the application but also to land in the vicinity.
- (3) Subclause (1) does not apply to:
 - (a) an addition to a building or work,

- (b) development ancillary to a purpose for which land may be used with the consent of the Council under this plan, and
- (c) the erection of a dwelling-house on an allotment of land created in accordance with this plan for the purpose of a dwelling-house.

11 Subdivision of land generally

- (1) A person shall not subdivide land to which this plan applies except with the consent of the Council.
- (2) The Council shall not consent to an application to subdivide land within Zone No 1 (a), 1 (c) or 7 (c) unless it has obtained all relevant information in relation to, and made an assessment of:
 - (a) the primary purpose for which each allotment to be created by the subdivision is intended to be used,
 - (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-house is intended to be erected on any allotment to be created by the subdivision and the approximate location of any such dwelling-house, and
 - (d) whether any proposed allotment contains an existing dwelling-house and the location of any such dwelling-house.

12 Subdivision for the purposes of agriculture in Zones Nos 1 (a) and 7 (c)

- (1) This clause applies to land within zone No 1 (a) or 7 (c).
- (2) Subject to subclause (3), the Council may consent to the creation of an allotment of any area if the Council is satisfied that the allotment will be used for the purposes of agriculture.
- (3) The Council shall not grant consent to the creation of an allotment referred to in subclause (2) if the allotment has an area of less than 100 hectares and there is already a dwelling-house on that allotment.
- (4) Notwithstanding subclause (3), the Council may consent to the creation of one but not more than one allotment referred to in subclause (2) for the purposes of agriculture from an existing holding on which a dwelling-house stands if that dwelling-house was lawfully erected on that land on or before the appointed day.

Note—

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

13 Subdivision for the purposes of intensive livestock keeping or irrigated agriculture and dwelling-house in Zones Nos 1 (a) and 7 (c)

- (1) The Council may consent to the subdivision of land within Zone No 1 (a) or 7 (c) for the purposes of creating one or more allotments (each having an area of not less than 10 hectares in Zone No 1 (a) and not less than 20 hectares in Zone No 7 (c)) if the Council is satisfied that each allotment so created will be used for the purposes of irrigated agriculture and a dwelling-house.
- (2) The Council may consent to the subdivision only if:
 - (a) the objectives of the relevant zone are met, and
 - (b) the subject land is developed as a viable irrigated agricultural operation or the Council can impose suitable conditions to ensure such development is effected.
- (3) In ensuring such viability, the Council will require evidence from the applicant of the following:
 - net value of production,
 - an adequate and lawful source of piped or impounded water,
 - methods of ensuring minimal adverse impacts on the locality,
 - the suitability of the allotment or allotments to accommodate a dwelling-house.
- (4) The Council may consent to the subdivision of land within Zone No 1 (a) for the purposes of creating one or more allotments (each not less than 10 hectares) if the Council is satisfied that each allotment so created is for the purposes of intensive livestock keeping or the purposes of intensive livestock keeping and a dwelling-house.
- (5) In the case of an application in respect of intensive livestock keeping and a dwelling-house the Council may consent to the subdivision only if:
 - (a) the objectives of the zone are met,
 - (b) the subject land is developed as a viable intensive livestock keeping operation or the Council can impose suitable conditions to ensure such development is effected.
- (6) In ensuring such viability, the Council will require evidence from the applicant of the following:
 - net value of production,
 - an adequate and lawful source of piped or impounded water,
 - methods of ensuring minimal adverse impacts on the locality with particular emphasis on the management of wastes and noise,

- the suitability of the allotment or allotments to accommodate a dwelling-house.

14 (Repealed)

15 Subdivision for other purposes in Zones Nos 1 (a) and 7 (c)

- (1) The Council shall not consent to an application to subdivide land within Zone No 1 (a) or 7 (c) if the Council is satisfied that any allotment to be created by the subdivision is to be used primarily for purposes other than agriculture or a dwelling-house, unless in the opinion of the Council:
 - (a) the allotment will not compromise prime crop and pasture land,
 - (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
 - (c) any allotment so created within Zone No 7 (c) will not adversely affect water quality and landscape values.
- (2) Nothing in subclause (1) prevents the Council from granting consent to an application to subdivide land to create an allotment the Council is satisfied will be used primarily for a purpose other than agriculture or a dwelling-house if the Council is satisfied:
 - (a) the purpose for which the allotment is to be used involves the supply of goods or services for which there is a demand in the locality,
 - (b) no other land in the locality could reasonably be used for that purpose, and
 - (c) the level of demand for the goods or services which are to be supplied from the allotment and the extent to which that allotment is proposed to be used to meet that demand justifies the creation of the allotment notwithstanding its agricultural value.

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

- (1) The Council shall not consent to an application to subdivide land within Zone No 1 (c) unless the area of each allotment which Council is satisfied will be used primarily for the purposes of a dwelling-house has an area of 0.4 hectares or more.
- (1A) This subclause applies to land within the investigation areas identified on Map A to the *Cabonne Rural Settlement Strategy 1999*, that is within Zone No 1 (c), and that was so zoned after the Council adopted that Strategy.

Despite subclause (1), the Council must not consent to an application to subdivide land to which this subclause applies unless the area of each allotment which the Council is satisfied will be used primarily for the purposes of a dwelling-house has an area of 2 hectares or more.

- (1B) A reference in subclause (1A) to the *Cabonne Rural Settlement Strategy 1999* is a

reference to the document so entitled that was adopted by the Council on 17 May 1999.

- (1C) Despite subclause (1), the Council must not consent to an application to subdivide land shown edged heavy black and lettered "1 (c)" on the map marked "*Cabonne Local Environmental Plan 1991 (Amendment No 20)*" unless the Council is satisfied that:
- (a) the total number of allotments that may be created by the subdivision of land in accordance with this subclause will not exceed 22, and
 - (b) each allotment proposed to be created by the subdivision will have an area of 2 hectares or more and will be used primarily for the purposes of a dwelling-house, and
 - (c) the land has not previously been subdivided in accordance with this subclause.
- (2) The Council shall not grant consent to the subdivision of land under subclause (1), (1A) or (1C) unless it has made an assessment of:
- (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) the availability of reticulated water services or, if those services are unavailable, the capacity of the land to provide an adequate domestic water supply without adversely affecting the existing surrounding and downstream water supply,
 - (d) the capability of the land to accommodate septic disposal of household waste,
 - (e) the standard and capacity of public roads serving the land relative to the likely volume of traffic to be generated as a consequence of the density of the subdivision, and the means available to improve roads to a standard appropriate to the level of traffic likely to be generated,
 - (f) the availability of other services and social services relative to the likely demand for those services and the costs of their provision,
 - (g) the likely impact the development will have on other land, and, in particular, on land located between the land to be subdivided and major public roads and utility services,
 - (h) whether any source of pollution in the locality requires larger allotments to enable separation of dwellings from that source,
 - (i) the need to maintain a semi rural character in the area, and

(j) the purpose for which the land is to be used after subdivision.

17 Subdivision of land in Zone No 2 (v)

- (1) A person shall not subdivide land within Zone No 2 (v) to create an allotment which the Council is satisfied will be used for the purpose of a dwelling-house unless the allotment has an area of 500 square metres or more (in the case of areas of the Shire of Cabonne serviced by sewer) and 2000 square metres or more (in the case of areas of the Shire of Cabonne serviced by septic tank).
- (2) The shape and frontage of the allotment is to be to the satisfaction of Council, having regard to its use as a dwelling site.
- (3) In assessing an application for subdivision for dwelling purposes in zone number 2 (v) the Council shall have regard to:
 - (a) the nature and topography of the land to be subdivided in relation to the density of the allotments proposed to be created,
 - (b) the desirability of providing a range and mixture of allotment sizes,
 - (c) whether the design of each allotment to be created by the subdivision is satisfactory for the economic provision of services, and
 - (d) the impact of the subdivision on the future development of the village.

18 Dwelling-houses in Zones Nos 1 (a), 1 (c) and 7 (c)

- (1) Subject to subclause (2), a person shall not erect a dwelling-house on vacant land within Zone No 1 (a), 1 (c) or 7 (c) unless:
 - (a) the land has an area of 100 hectares or more (or, in the case of land within Zone No 1 (c), the land has an area of 0.4 hectares or more), or
 - (b) the land comprises:
 - (i) the whole of an existing holding,
 - (ii) an allotment created for a purpose (other than agriculture) in accordance with this plan, or
 - (iii) an allotment created in accordance with a consent granted before the appointed day, being an allotment on which a dwelling could have been erected immediately before the appointed day, or
 - (iv) a viable intensive agricultural holding which is established either in accordance with a subdivision consent referred to in clause 13 or on an existing allotment in accordance with the requirements specified in clause 13 (2) (a) and (b), or

- (v) land as described in Schedule 2.
- (2) The Council may consent to the erection of a dwelling-house in land within Zone No 1 (a) or 7 (c) where:
 - (a) the dwelling-house is ancillary to the use of the land for another purpose, and
 - (b) the Council is satisfied that:
 - (i) the land could not reasonably be used for that primary purpose without the erection of that dwelling-house, and
 - (ii) the dwelling house is to be located so as to minimise any adverse effect on the use of the land for that primary purpose.
- (3) Subject to subclause (1), in the case of any parcel having an area of less than 2 hectares, the Council will need to be satisfied that the allotment contains an adequate area for the on-site disposal of wastes.

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 dwellings in Zones Nos 1 (a), 1 (c) and 7 (c)

- (1) The Council may consent to the erection of 1 but not more than 1, additional dwelling for every 40 hectares of land within Zone No 1 (a) or 7 (c) (including the alteration of an existing dwelling to create 2 dwellings) where:
 - (a) a dwelling-house could be erected on the land in accordance with clause 18,
 - (b) no additional access to a public road is required from the land,
 - (c) separate ownership of the proposed dwelling could only be achieved by a subdivision of the land,
 - (d) in the opinion of the Council, the dwelling to be erected on that land will not interfere with the purpose for which the land is being used, and
 - (e) the dwelling will not compromise prime crop and pasture land.
- (2) The Council may consent to the erection of a second dwelling within Zone No 1 (c), or within Zone No 1 (a) or 7 (c) on a holding of less than 40 hectares, provided that:

- (a) the Council is satisfied that adequate capacity exists for the on-site disposal of wastes and to provide adequate services to the second dwelling,
 - (b) a dwelling-house could be erected on the land in accordance with clause 18,
 - (c) no additional access to a public road is required from the land,
 - (d) separate ownership of the proposed dwelling-house could only be achieved by subdivision of the land,
 - (e) in the opinion of the Council, the dwelling to be erected on that land will not interfere with the purpose for which the land is being used, and
 - (f) the dwelling will not compromise prime crop and pasture land.
- (3) The Council shall not consent to the subdivision of land on which one additional dwelling is erected in pursuance of this clause except in accordance with this plan.

20 Dwellings in Zone No 7 (c)

In addition to the requirements of clauses 18 and 19, no dwelling-houses on land within Zone No 7 (c) are to be sited within 400 metres of a waterway unless the Council is satisfied that adequate arrangements have been made to protect the catchment.

21 Development along arterial roads

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

22 Flood liable land

- (1) A person shall not erect a building or carry out work for any purpose on flood liable land except with the consent of the Council.
- (2) The Council shall not grant consent to the erection of a building or the carrying out of a work on flood liable land if, in the opinion of the Council, the carrying out of the development is likely:
 - (a) to impede the flow of flood waters on that land or adjacent land,
 - (b) to imperil the safety of persons on that land or adjacent land in the event of the land being inundated with flood waters,
 - (c) to aggravate the consequences of flood waters flowing on that land or adjacent 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 adjacent land.

23 Bushfire hazard

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 because 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.

24 Access

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

25 Applications that must be advertised

The provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development for the purposes specified in Schedule 4 in the same way as those provisions apply to and in respect of designated development.

26 Residential development in Zone No 2 (v)

- (1) A person shall not erect a dwelling house, boarding house or residential flat building within Zone No 2 (v) except with the consent of the Council.
- (2) The Council shall not consent to an application to erect a dwelling house within Zone No 2 (v) except on an allotment of land which was created:

- (a) in accordance with clause 17, or
- (b) by a subdivision carried out before the appointed day to create an allotment on which a dwelling house could have been erected before the appointed day (provided that in the case of small allotments in areas which are not serviced by sewer, the Council is satisfied that adequate area exists within the allotment for the on-site disposal of wastes).

27 Heritage items

- (1) A person shall not in respect of a building, work, relic or place that is a heritage item:
- (a) demolish or alter that building or work,
 - (b) damage or despoil that relic or place or any part of that relic or place,
 - (c) excavate any land for the purpose of exposing or removing that relic,
 - (d) erect a building on the land on which that building, work or relic is situated or the land which comprises that place,
 - (e) subdivide the land on which that building, work or relic is situated or the land which comprises that place, or
 - (f) damage any tree on land which forms part of the curtilage of the building work or relic or is situated on land which comprises that place,
- except with the consent of the Council.
- (2) The Council shall not grant a consent 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 and 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*).

28 Development in the vicinity of heritage items

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

29 Heritage conservation area

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

- (a) demolish, extend or change the outside of a building or work within that area, including changes to the outside of the building or work that involve the repair of the painting, plastering or other decoration to the outside of the building or work,
 - (b) damage or despoil a relic or part of a relic within that area,
 - (c) excavate any land for the purpose of exposing or removing a relic within that area,
 - (d) erect a building within that area, or
 - (e) subdivide the land within that area,
- except with the consent of the Council.
- (2) The Council shall not grant a consent required by subclause (1) unless it has made an assessment of:
- (a) the extent to which the carrying out of the development in accordance with the consent would affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the conservation area, and
 - (b) whether a refusal to grant consent would constitute a danger to the users or occupiers of that land or the public.
- (3) The Council shall not grant a consent required by subclause (1), being consent to the erection of a new building or to the alteration of the exterior of an existing building, unless the Council has made an assessment of:
- (a) the pitch and form of the roof,
 - (b) the style, size, proportion and position of the openings for windows and doors,
 - (c) whether the colour, texture, style, size and type of finish of the materials to be used on the exterior of the building are compatible with the materials used in the existing buildings in the conservation area, and
 - (d) any other architectural feature characteristic of other existing buildings in the conservation area.

30 Advertising of heritage applications

- (1) The provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of:
- (a) the demolition of a building or work within a conservation area, or
 - (b) the demolition of a building or work that is a heritage item,
- in the same way as those provisions apply to and in respect of designated development.

(2), (3) (Repealed)

(4) Subclause (1) does not apply to the partial demolition of a building or work where, in the opinion of the Council, the partial demolition is of a minor nature and does not adversely affect the heritage significance of the building or work as part of the environmental heritage of the Shire of Cabonne.

31 Conservation incentives relating to heritage items

(1) Nothing in this plan prevents the Council from granting consent to:

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

where the Council is satisfied that:

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

(2) The Council, when considering an application to erect a building on land on which there is a building which is a heritage item, may exclude from its calculation of the floor space of the buildings erected on the land the floor space of the heritage item:

- (a) for the purpose of determining the floor space ratio, and
- (b) for the purpose of determining the number of parking spaces to be provided on the site,

but only if the Council is satisfied that the conservation of the building depends upon the Council granting an exclusion in pursuance of this subclause.

32 Dual occupancy in the village zone

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

(2) A person may, with the consent of the Council, alter a dwelling-house so as to create 2 dwellings or erect a second dwelling on the one allotment.

33 Variation of zone boundaries

(1) Where a boundary between 2 zones (as indicated on the map) does not correspond with a cadastral boundary, the Council may determine a precise boundary following survey.

(2) In determining a zone boundary under subclause (1), the Council shall have regard to

the characteristics of the land as indicated by the survey, and the relationship of those characteristics to the objectives of the zones on either side of the boundary.

- (3) A boundary fixed under this clause shall generally approximate the position indicated on the map.
- (4) Where a zone boundary is fixed under this clause, land shall be deemed to be within the appropriate zone as determined by the Council.

34 Temporary accommodation

The Council may grant consent to the carrying out of development for the purposes of temporary accommodation (including hostels, caravan parks and construction camps) on any land to which this plan applies if the Council is satisfied that:

- (a) the development, by virtue of its location, scale, site landscaping and treatment (and temporary nature) is unlikely to significantly conflict with the purpose of the zone applying to the land on which the development is proposed to be carried out,
- (b) appropriate arrangements have been made for water supply, sewage disposal and stormwater drainage, other utility services, access and parking on that land, and
- (c) the development is unlikely to interfere with the amenity of any neighbouring residence.

35 Advertising structures

- (1) A person shall not use or erect an advertising structure on land to which this plan applies without the consent of the Council.
- (2) On land to which this plan applies, a person shall not use or erect an advertising structure for the purpose of displaying any advertisement, other than an advertisement:
 - (a) which relates to that land, or to premises situated on that land, and
 - (b) which specifies one or more of the following particulars:
 - (i) the purpose for which the land or premises is or are used,
 - (ii) the identification of a person residing or carrying on an occupation or business on the land or premises,
 - (iii) a description of an occupation or business referred to in subparagraph (ii),
 - (iv) particulars of the goods or services dealt with or provided on the land or premises.
- (3) Notwithstanding subclause (2), the Council may grant consent to a person to erect an

advertising structure on land to which this plan applies, except within road reserves in Zone No 1 (a), 1 (c) or 7 (c), for the purpose of displaying an advertisement directing the travelling public to places of agricultural, scientific, cultural, historical or scenic interest.

- (4) The Council shall not grant consent as referred to in subclause (2) or (3) unless it is satisfied that the advertising structure will not interfere with the amenity of the area and that the safety of the travelling public will not be endangered by the erection of that structure.
- (5) Notwithstanding subclauses (2) and (3), this clause shall not apply to advertising structures and advertisements erected within information bays erected by or approved by the Council.

36 Environmentally sensitive land

- (1) A person shall not carry out development on environmentally sensitive land for the purposes of:
 - (a) intensive livestock keeping,
 - (b) junk yards,
 - (c) liquid fuel depots,
 - (d) offensive or hazardous industries,
 - (e) sawmills, or
 - (f) stock and sales yards.
- (2) A person shall not cause tree destruction to:
 - (a) more than 1 hectare of environmentally sensitive land, or
 - (b) more than 5 per cent of a holding, where that 5 per cent comprises environmentally sensitive land, whichever is less,except with the consent of the Council.
- (3) The Council shall not consent to an application made in accordance with 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 or other land degradation,
 - (b) the loss of scenic amenity, and
 - (c) the loss of important vegetation systems and natural wildlife habitats.

37 Subdivision of certain land in Spring Hill and in the vicinity of Fannings Lane, Orange

- (1) This clause applies to the two parcels of land shown edged heavy black on the map marked "*Cabonne Local Environmental Plan 1991 (Amendment No 4)*", being Lots 43, 44, 46 and part Lot 45, DP 750387, and Portions 18, 58, 59 and 80, Parish of Anson.
- (2) The Council may consent to the creation of one, but not more than one, additional allotment that the Council is satisfied will be used for the purpose of a dwelling house from each parcel of land to which this clause applies but only if the Council is satisfied that:
 - (a) each such allotment has an area of not less than 0.4 hectares and generally not more than 5 hectares (unless justified on the grounds of water supply or agricultural buffer, or both), and
 - (a1) each such allotment does not compromise prime crop and pasture land, and
 - (a2) the creation of each such allotment is unlikely to adversely affect the existing and potential capability of the land and adjacent land to produce food or fibre, and
 - (a3) the creation of each such allotment is unlikely to generate additional servicing costs beyond those that can be met by the developer, and
 - (b) the residue of the existing holding from which the additional allotment is created is incorporated into one allotment.

38 Development of certain land—north of Castle Street, Molong

- (1) This clause applies to land situated in the town of Molong, north of Castle Street, as shown edged heavy black and lettered "V" on the map marked "*Cabonne Local Environmental Plan 1991 (Amendment No 5)*".
- (2) Despite any other provision of this plan, a person may carry out development on land to which this clause applies only with the consent of the Council.
- (3) The Council may grant consent to the development of an allotment of land to which this clause applies only if:
 - (a) in the case of an allotment for which a reticulated sewerage system is available, any dwelling-house that will result from carrying out the development is required to be connected to the reticulated sewerage system, and
 - (b) in the case of any other allotment:
 - (i) the allotment has an area of not less than 1500 square metres and the Council is satisfied that sufficient area will be available for on-site treatment of septic waste, and
 - (ii) the siting of any buildings or works that will result from the carrying out of

development will not constrain future development of the land when a reticulated sewerage system becomes available for the land, and

- (c) the Council is satisfied that adequate arrangements have been or will be made to service the development with roads, drainage and a reticulated water supply.

39 Development of certain land near Mullion Creek

- (1) This clause applies to land situated near Mullion Creek, as shown edged heavy black on the map marked "*Cabonne Local Environmental Plan 1991 (Amendment No 6)*".
- (2) Despite any other provision of this plan, such development may be carried out, but only with the consent of the Council, as will result in a maximum of 4 allotments being created within Lot 1 DP 600986 on each of which a dwelling is situated.
- (3) The Council may consent to the development allowed by this clause only if:
 - (a) the Council is satisfied (whether by the imposition of conditions on the grant of that consent or otherwise) that development of the land for rural residential purposes will not have an adverse environmental impact on Caleula Creek, and
 - (b) (Repealed)
- (4) If the Council consents to the subdivision of Lot 1 DP 600986 to create 4 allotments, the holding comprising Portions 8, 184, 185, 250, 267 and part Portions 223 and 245 Parish of Mulyan and Portions 73, 84 and Part Portions 5 and 8 Parish of Larras lake is taken not to be an existing holding for the purposes of any provision of this plan that provides any concession relating to subdivision or the erection of dwellings because land is the whole or part of an existing holding.

40 Development of certain land in Byng

- (1) This clause applies to land shown edged heavy black on the map marked "*Cabonne Local Environmental Plan 1991—Amendment No 7*" being the whole of lots 2, 3 and 4, Section 8, Parish of Byng, Lane Street, Byng.
- (2) Despite any other provision of this plan, one, but only one, dwelling-house may be erected on the land to which this clause applies but only with the consent of the Council and only after all of the land has been consolidated into one lot.

41 Classification and reclassification of public land as operational land

- (1) The public land described in Schedule 5 is classified, or reclassified, as operational land for the purposes of the *Local Government Act 1993*, subject to this clause.
- (2) Land described in Part 1 of Schedule 5:
 - (a) to the extent (if any) that the land is a public reserve, does not cease to be a public reserve, and

- (b) continues to be affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants by which it was affected before its classification, or reclassification, as the case requires, as operational land.
- (3) Land described in Columns 1 and 2 of Part 2 of Schedule 5, to the extent (if any) that it is a public reserve, ceases to be a public reserve on the commencement of the relevant amending 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 5, and
- (b) any reservations that except land out of a Crown grant relating to the land, and
- (c) reservations of minerals (within the meaning of the *Crown Lands Act 1989*).
- (4) In this clause, ***the relevant amending plan***, in relation to land described in Part 2 of Schedule 5, means the local environmental plan that inserted the land description in that Part.
- (5) Before the relevant amending plan inserted a description of land into Part 2 of Schedule 5, the Governor approved of subclause (3) applying to the land.

Schedule 1 Heritage items

(Clause 5)

BORENORE

Land description

Former Hotel

(Ass 49) Lot 2, DP 623620 Ph Barton

Borenore Caves

All that part of Reserve No 81412 within the Parish of Barton

BYNG

“Springfield Homestead” and outbuildings

(Ass 1115.1) Pt Por 11 Ph Anson

“Pendarves Homestead” and outbuildings

(Ass 10.2) Lot 2, DP 70872 Ph Anson

Wesleyan Chapel

(Ass 1142) Por 108/111 Ph Byng

“Bookannon Homestead”

(Ass 11) Lot 3 DP 70872 Ph Anson

CADIA

Cadia copper mine, including Cornish engine house and ruins (including boiler house, chimney and working yard)

(Ass 1524) Lot 100, DP 576778 Ph Clarendon

CHEESEMANS CREEK

“Boree Nyrang Homestead”	(Ass 457) Lot 1, DP 595175 Ph Boree Nyrang
Former Post Office/Hotel	(Ass 340.11) Lot 168, DP 601997 Ph Boree Nyrang
<u>CUDAL</u>	
<u>Main Street</u>	
Former CBC Bank	(Ass 2580) Lot 5, Sec 9, Main Street Cudal
Former EW Gordon Stores (Council Building	(Ass 2618) Lot 3, Sec 4, Main Street Cudal
Roman Catholic Church	(Ass 2591) Lot 16, Sec 14, Main Street Cudal
<u>Parkes Road</u>	
“Boree Cabonne Homestead”	(Ass 325) Pt Por 221 Ph Boree Cabonne
<u>CUMNOCK</u>	
<u>Bruce Street</u>	
Bruce Memorial Church	(Ass 930) Lot 12, Sec 3, Bruce Street Cumnock
Cnr Obley and Black Streets building	(Ass 1044) Pt Por 61, Lot 1, DP 249418, Obley Street, Cumnock
<u>Obley Street</u>	
Former CBC Bank	(Ass 1045) Pt Por 61, Lot 2, DP 228211, Obley Street, Cumnock
“Burrawong Homestead”	(Ass 2732) Lot 2, DP 775359 Ph Dilga
“Geneffe” outbuildings and woolshed	(Ass 2712) DP 976453, Ph Dilga
“Yullundry Homestead” plus stables and outbuildings	(Ass 626) Pt Por 2, Ph Buckinbah
<u>EMU SWAMP</u>	
“Woodville Homestead”	(Ass 15) Por 13, Ph Anson
<u>GUYONG EAST</u>	
<u>Mitchell Highway</u>	
Church of England and Cemetery	(Ass 2416) Sec 15, Ph Colville
Former Church of England rectory “Quinton”	(Ass 2380) Por 158, Ph Colville
Former Methodist Church	(Ass 5103) Pt Por 14A, Ph Shadforth
“Hillview Homestead”	(Ass 1117.1) Por 59, Ph Byng
Former schoolroom with residence	(Ass 2417–2419) Unnumbered Por, Ph Colville
<u>LARRAS LEE</u>	

Mitchell Highway

“Claremont Homestead” (Ass 5195) Pt Por 38, Ph Three Rivers

“Larras Lake Homestead” (Ass 2422) Pt Por 1, Ph Copper Hill

MOLONG

Edward Street

Court House (Ass 5716) Lot 1, Sec 16, Edward St Molong

Police residence (Ass 5716) Lot 22, Sec 16, Edward St Molong

Adjoining Court House and Police station House (Ass 5716) Lot 22, Sec 16, Edward St Molong

Gidley Street

Historic Museum (Ass 4161) Lot 9, Sec 37, Gidley Street Molong

Haslam’s Mill (Ass 4177.01) Lot 1, DP 717788, Gidley St Molong

Molong Street

House (Former Quinn’s residence) (Ass 4382) Pt Lot 5, Sec 37, Molong St Molong

Former Quinn’s stables (Ass 4524) Pt Lot 5, Sec 37, Molong St Molong

Watson Street

Railway Station

Euchareena Road

Cole House (Ass 4008) Lots 37-40 and 60, Sec A Molong

Starr House (Ass 4556) Lots 41-44, 59 and Pt 45 (B), Sec A Molong

TOOGONG

Eugowra Road

The Barracks Formerly Court House/Police Barracks (Ass 5277) Lot 2, Sec 20, Ph Toogong

Post Office Formerly Royal Hotel (Ass 5273) Lot 1 and 9, Sec 18, Ph Toogong

MOUNT CANABOLAS PARKLANDS Reserves No 81412 for Public Recreation

OPHIR MEMORIAL RECREATION RESERVE

Schedule 2

(Clause 18)

Portion 93, Parish of Cargo.

Lots 5-7, DP 804450

Portion 5, Parish of Cargo

Portion 153, Parish of Canobolas

Proposed Lot 10, comprising the consolidation of Lots 7-9, DP 259264

Schedule 3 Restricted development fronting arterial roads

(Clause 21 (2))

Bulk stores
Caravan parks
Car repair stations
Clubs
Commercial premises
Education establishments
Hospitals
Hotels
Industries (other than home, rural or extractive 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
Saw mills
Service stations
Stock and Sales yards
Warehouses

Schedule 4 Development which must be advertised

(Clause 25)

Boarding houses
Bulk stores
Caravan parks
Car repair stations
Commercial premises
Drive in take-away food shops
Generating works
Industries
Light industries
Liquid fuel depots
Motels
Motor showrooms
Residential flat buildings
Road transport terminals
Sawmills
Service stations

Tourist facilities
Transport terminals
Units for aged persons
Utility installations
Warehouses

Schedule 5 Classification and reclassification of public land as operational land

(Clause 41)

Part 1 Interests not changed

Locality	Description
Molong	
Euchareena Road	Lot 10, DP 1034198, as shown edged heavy black on the map marked "Cabonne Local Environmental Plan 1991 (Amendment No 22)".

Part 2 Interests changed

Column 1	Column 2	Column 3
Locality	Description	Any trusts etc not discharged