

# Bombala Local Environmental Plan 1990 (1991 EPI 1)

[1991-1]



New South Wales

## Status Information

### Currency of version

Repealed version for 15 December 2008 to 28 June 2012 (accessed 23 December 2024 at 9:43)

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The plan was repealed by cl 1.8 (1) of the [Bombala Local Environmental Plan 2012 \(2012-302\)](#) (LW 29.6.2012) with effect from 29.6.2012.

### Authorisation

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

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New South Wales

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New South Wales

## Part 1 Preliminary

### 1 Name of plan

This plan may be cited as *Bombala Local Environmental Plan 1990*.

### 2 Aims, objectives etc

(1) The aims of this plan are:

- (a) to consolidate existing environmental planning instruments and to provide flexible planning controls to assist the council in its administration of planning,
- (b) to enable the council to prepare development control plans to introduce more detailed policies and guidelines,
- (c) to protect prime crop and pasture land for agricultural use and to maintain and promote commercial agriculture,
- (d) to recognise the role of the main villages in the Shire,
- (e) to provide a range of housing opportunities, including rural residential development in the Shire,
- (f) to ensure that development does not have the effect of placing financial burdens on ratepayers, particularly in relation to road upgrading and maintenance,
- (g) to ensure that development occurs in a manner which reflects and respects the opinions of the rural community,
- (h) to ensure that development occurs in a manner which minimises risks due to environmental hazards, and minimises risks to important elements of the physical environment,
- (i) to provide opportunities for the expansion of the tourism industry,

(j) to promote the development of industry in the Shire, while ensuring that such development is located and carried out in a manner that minimises nuisance to residents, and

(k) to conserve the environmental heritage of the Shire.

(2) The objectives of the zones adopted by this plan for the purpose of achieving the aims in subclause (1) are set out in relation to those zones in the Table to clause 9.

### 3 Land to which plan applies

This plan applies to land within the Shire of Bombala indicated by black edging on the map.

### 4 Relationship to other environmental planning instruments

This plan repeals:

(a) *Interim Development Order No 1—Municipality of Bombala*,

(b) *Interim Development Order No 2—Shire of Bibbenluke*, and

(c) Bombala Local Environmental Plans Nos 1–4 and 6.

### 5 Definitions

(1) In this plan:

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

***alter***, in relation to a heritage item, means:

(a) to make structural changes to the outside of the heritage item, building or work,  
or

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

***council*** means the Council of the Shire of Bombala.

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

***existing holding*** means any area of adjoining or adjacent land to which this plan applies held in the same ownership on and from 25 December 1975 and includes such an area:

- (a) from which land has been excised for a public purpose after that date,
- (b) affected by a subdivision for the purpose of boundary adjustment after that date,  
or
- (c) that has been transferred in its entirety to another person after that date.

**extractive material** means sand, gravel, clay, turf, soil, rock, stone or any similar substance, but does not include a pure metal or any substance extracted for the purpose of refinement to obtain a metal or mineral.

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

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

**intensive agriculture** means market gardening, mushroom growing, fruit growing or any similar activity.

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

**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) the council, 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 area of the Shire of Bombala which is 50 or more years old.

**the map** means the series of maps marked "*Bombala Local Environmental Plan 1990*", as amended by the maps (or, if any sheets of maps are specified, by the specified sheets of the maps) marked as follows:

*Bombala Local Environmental Plan 1990 (Amendment No 1)*

*Bombala Local Environmental Plan 1990 (Amendment No 2)*

(2) In this plan:

- (a) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for the purpose,
- (b) a reference to a map is a reference to a map deposited in the office of the council, and
- (c) a reference to land within a zone specified in the Table to clause 9 is a reference to land shown on the map in the manner indicated in clause 8 as the means of identifying land of the zone so specified.

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

## **6 Adoption of Model Provisions**

- (1) Subject to subclause (2), the *Environmental Planning and Assessment Model Provisions 1980* (except for the definitions **extractive material** and **map** in clause 4 (1), and clauses 8 (7), 15, 29, 33 and 34) are adopted for the purposes of this plan.
- (2) For the purposes of this plan the *Environmental Planning and Assessment Model Provisions 1980* shall be read as if:
  - (a) the definition of **arterial road** in clause 4 (1) referred to a “distinctive symbol” instead of a “continuous red band on white”, and
  - (b) the definition of **forestry** in clause 4 (1) did not include the clearing of regrowth from land previously cleared for agricultural use or minor and incidental felling of trees by land owners for the purposes of farming, firewood, poles, housing, yarding and the like.

## **7 Consent authority**

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

## **Part 2 General restrictions on development of land**

### **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) (Rural Zone)—black edging and lettered “1 (a)”.

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

Zone No 1 (f) (Rural (Forestry) Zone)—black edging and lettered “1 (f)”.

Zone No 2 (Urban and Village Zone)—black edging and marked “2”.

Zone No 8 (National Parks and Nature Reserves Zone)—black edging and marked “8”.

## **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 consent”, “Only with 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 has considered the objectives of the zone within which the development is proposed to be carried out, and the extent to which that development is consistent with those objectives.

Table

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

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

The objectives of this zone are:

- (a) to enable the continuation of traditional forms of rural land use and occupation and the development of new or changed forms of agricultural enterprise,
- (b) to enable other forms of development which are associated with rural activity, which require an isolated or rural location, or which support tourism, and
- (c) to ensure that the type and intensity of development is appropriate in relation to the characteristics of the land, the rural environment, the need to protect agricultural activity from the effects of other development and the costs of providing public services and amenities.



## **2 Without consent**

Agriculture (other than pig keeping establishments, feed lot establishments or poultry farming establishments); dwelling houses on vacant land having an area of not less than 40 hectares; extractive industries on sites of less than 0.5 hectares.

## **3 Only with 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).

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

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

The objectives of this zone are:

- (a) to enable appropriately staged development for the purposes of small holdings or hobby farms to be carried out on land which is suitable for those purposes,
- (b) to provide for a varied density of housing in the vicinity of Bombala, and
- (c) to enable other forms of development to be carried out on land within the zone if it is in keeping with the rural character of the locality and is compatible with existing or likely future small holdings or hobby farms.

#### **2 Without consent**

Agriculture (other than pig keeping establishments, feed lot establishments or poultry farming establishments).

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

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

#### **4 Prohibited**

Feed lot establishments; industries other than light industries; institutions; junk yards; mines; pig keeping establishments; poultry farming establishments.

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

### **1 Objectives of zone**

The objectives of this zone are to enable the continuance or expansion of forestry and development for associated purposes.

### **2 Without consent**

Agriculture; any purpose ordinarily incidental or subsidiary to purposes included in this item; camping grounds; forestry; gravel extraction on sites of less than 0.5 hectares; picnic grounds; roads; utility installations.

### **3 Only with consent**

Extractive industries other than those permitted without consent; mines.

### **4 Prohibited**

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

## **Zone No 2 (Urban and Village Zone)**

### **1 Objectives of zone**

The objectives of this zone are to recognise existing towns and villages and to enable future development appropriate to their function.

### **2 Without consent**

Dwelling-houses (other than those on land having frontage to an unformed or unmade road, or on land without reticulated water and sewerage services).

### **3 Only with consent**

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

### **4 Prohibited**

Feed lot establishments; industries other than light industries; institutions; junk yards; mines; pig keeping establishments; poultry farming establishments.

## **Zone No 8 (National Parks and Nature Reserves Zone)**

## **1 Objectives of zone**

The objective of this zone is to recognise existing national parks and nature reserves.

## **2 Without consent**

Aboriginal areas; historic sites; national parks; nature reserves; state recreational areas.

## **3 Only with consent**

Nil.

## **4 Prohibited**

Any purpose other than a purpose included in item 2.

## **Part 3 Special provisions**

### **10 Development principles—Zone No 1 (a)**

- (1) In determining a development application for consent to carry out development on land within Zone No 1 (a), the council shall have regard to:
  - (a) whether the development is likely to restrict or otherwise inhibit agricultural use of land, by way of fragmenting prime crop and pasture land or removing it from production or otherwise,
  - (b) whether the development is likely to assist the maintenance and expansion of agricultural enterprise by farm consolidation, property rationalisation, maintenance of equity or otherwise,
  - (c) whether adequate water is available to service the development,
  - (d) whether the development is likely to create unreasonable demands for the uneconomic provision of services, particularly the provision, extension, upgrading and maintenance of public roads,
  - (e) the risks to the development and the risks to other land as a consequence of the development, from natural hazards, particularly soil erosion, land degradation and fire,
  - (f) whether the development poses an avoidable risk to land of environmental or conservation value,
  - (g) whether the development is likely to create a condition of ribbon development, related to traffic safety and the character of the countryside, and

(h) whether the development will substantially change the appearance and character of the countryside.

- (2) In considering the matters referred to in subclause (1) the council shall take into account the significance of any probable effect, whether any potential adverse effect is capable of being minimised, and whether in the circumstances there are any benefits which compensate for any adverse effect.

### **11 Development that must be advertised**

Pursuant to section 30 (4) of the Act, the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development which, in the opinion of the council, may affect the character and existing use of rural land or land within Zone No 2 in the same way as those provisions apply to and in respect of designated development.

### **12 Clearing and forestry**

- (1) In this clause, **clearing** means the removal of trees and other vegetation, but does not include the clearing of regrowth from land previously cleared for agricultural use, or the cutting down of individual trees for farm purposes such as fencing, firewood and the like which may be carried out without the consent of the council.
- (2) Subject to this clause, land within Zone No 1 (a), 1 (c) or 1 (f) may be cleared for the purposes of agriculture, forestry, air navigation safety, land survey, fencing or bushfire hazard reduction without the consent of the council, and for any other purpose with the consent of the council.
- (3) Nothing in subclause (2) authorises the clearing of land in contravention of any Act or instrument made under an Act concerned with soil erosion, protection of riverbank vegetation or catchment areas or the like.
- (4) A person shall not clear land within Zone No 1 (a) or 1 (c) identified as Class 7 or Class 8 on a map, a copy of which is deposited in the office of the council, prepared and kept by the Soil Conservation Service of New South Wales (other than for the purposes of bushfire hazard reduction) without the consent of the council.
- (5) In granting consent to an application for clearing referred to in subclause (4), the council may attach conditions to the consent intended to minimise the risk of soil erosion.
- (6) Notwithstanding clause 9, where land is proposed to be used for the purposes of forestry, and arrangements satisfactory to the council have been made in relation to the:
- (a) management of forestry operations,
  - (b) the control of soil erosion and bush fire, and

(c) the maintenance and repair of public roads,

the land may be used for the purposes of forestry in accordance with those arrangements without development consent.

### **13 Subdivision generally**

Land to which this plan applies may be subdivided only with the consent of the council.

### **14 Subdivision of land within Zone No 1 (a)**

- (1) This clause applies to land within Zone No 1 (a).
- (2) The Council shall not consent to an application to subdivide land unless it has obtained all relevant information in relation to, and made an assessment of:
  - (a) the primary purpose for which each allotment to be created by the subdivision is intended to be used, and
  - (b) whether any allotment to be created by the subdivision is intended to be used primarily for the purpose of agriculture, and
  - (c) whether a dwelling is intended to be erected on any allotment to be created by the subdivision and the approximate location of any such dwelling, and
  - (d) which part of the land will form the residue of the subdivision.
- (3) Where a lot is created from an existing holding by subdivision carried out under this plan or deemed to have been carried out under this plan, this residue of the holding continues to be an existing holding for the purposes of this plan.

### **15 Subdivision of land within Zone No 1 (a) for the purpose of agriculture**

- (1) Subject to clause (2), the council may consent to the creation of an allotment of any area if the council is satisfied it is intended to be used for the purposes of agriculture.
- (2) The council shall not grant consent to the creation of an allotment if the council is satisfied it is intended to be used for the purposes of agriculture, the allotment has an area of less than 40 hectares and there is a dwelling on that allotment.
- (3) Notwithstanding subclause (2), the council may consent to the creation of one but not more than one allotment from an existing holding that the council is satisfied is intended to be used for the purposes of agriculture on which a dwelling stands if that dwelling was lawfully erected on that land on or before the appointed day.

#### **Note—**

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

**16 Subdivision of land within Zone No 1 (a) for the purpose of intensive agriculture**

The council shall not grant consent to the creation of an allotment that the Council is satisfied is intended to be used for the purpose of intensive agriculture unless, in the opinion of the council, the allotment will be capable of sustaining a range of intensive agricultural activities.

**17 (Repealed)**

**18 Subdivision of land within Zone No 1 (a) for other purposes**

- (1) Subject to subclause (2), the council shall not consent to an application to subdivide land within Zone No 1 (a) where any allotment to be created by the subdivision is, in the opinion of the council, intended to be used primarily for purposes other than agriculture, intensive agriculture or a dwelling 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, in the opinion of the council, is intended to be used for a purpose other than agriculture, intensive agriculture or a dwelling where the council is 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, and
  - (b) no other available land in the locality could reasonably be used for that purpose.

**19 Dwelling-houses—Zone No 1 (a)**

- (1) The council shall not consent to the erection of a dwelling-house on vacant land within Zone No 1 (a) having an area of less than 40 hectares unless the land consists of:
  - (a) an existing holding,
  - (b) an allotment created pursuant to clause 16 and a dwelling-house is, in the opinion of the council, necessary for the use of the land for the purpose of intensive agriculture,
  - (c) (Repealed)
  - (d) an allotment created in accordance with a consent granted before the appointed day, being an allotment on which a dwelling-house could have been erected immediately before the appointed day,
  - (e) an allotment created pursuant to clause 18 where the use of the dwelling-house

will be or is ancillary to the use of the land for a permissible purpose other than agriculture or intensive agriculture and the council is satisfied that:

- (i) the land could not reasonably be used for that purpose without the erection of the 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 other purpose.
- (2) Subject to the provisions of clause 21 and this clause, only one dwelling-house may be erected on an allotment or portion of land within Zone No 1 (a).
  - (3) A person may, with the consent of the council, erect additional dwelling-houses on an allotment or portion of land within Zone No 1 (a) provided that any such additional dwelling-house is erected after the first dwelling-house and is used exclusively to accommodate a person employed or engaged in the use of the allotment or portion for the purposes of agriculture.
  - (4) Nothing in subclause (2) shall prevent the erection of a dwelling-house on land on which another dwelling-house is erected, where the dwelling-house is intended to replace the original dwelling-house and is not occupied until the original dwelling-house is demolished or its occupation has permanently ceased.
  - (5) Notwithstanding the provisions of this clause, the council may grant consent to the erection of a dwelling-house on an existing allotment or portion of land within Zone No 1 (a) that is not an existing holding where the council is satisfied that:
    - (a) the erection of a dwelling-house will not create any substantial conflict with the objectives of Zone No 1 (a),
    - (b) adequate practical and legal access to the allotment or portion is available, and
    - (c) the erection of a dwelling-house will not create or increase a demand for the uneconomic provision of services to the locality.
  - (6) (Repealed)

#### **19A 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.

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

- (1) Subject to this clause, a person shall not subdivide land within Zone No 1 (c) unless each proposed allotment has an area determined by the council having regard to:
  - (a) whether reticulated water services are able to be provided to the land at full cost to the applicant, and if unavailable, the capacity of the land to provide an adequate domestic water supply,
  - (b) the ability of the land to accommodate septic disposal of household waste,
  - (c) the standard and capacity of public roads serving the land and 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,
  - (d) the availability of other utility services and social services and the likely demand for those services and the cost of their provision,
  - (e) the likely impact the subdivision and subsequent building development will have on other land, particularly in relation to potential soil erosion and land degradation,
  - (f) the nature and topography of the land as related to the density of subdivision and land capability,
  - (g) whether any source of nuisance or pollution in the locality requires larger allotments to enable separation of dwellings from that source,
  - (h) the desirability of providing a range and mix of allotment sizes,
  - (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.
- (2) In considering the design of a subdivision of land within Zone No 1 (c), the council shall have regard to:
  - (a) if the land may, in the opinion of the council, be suitable for long-term urban development, whether the subdivision has been designed to facilitate its possible future resubdivision,
  - (b) whether it is necessary and possible to construct a dam on each allotment,
  - (c) whether the subdivision enables the subsequent erection of dwelling-houses in a manner that appropriately relates dwellings to each other and to the topography of the land,
  - (d) whether the development is likely to lead to pollution of water supply systems,



- (e) the risk to the development, and the risk to other land as a consequence of the development, from natural hazards such as soil erosion, land degradation and fire, and
  - (f) whether the development poses an avoidable risk to land of environmental or conservation value.
- (3) Notwithstanding any other provision of this clause, the council may grant consent to the erection of a dwelling-house on an existing allotment or portion of land within Zone No 1 (c).

## **21 Dual occupancy**

- (1) This clause applies to all land on which a dwelling-house may be erected.
- (2) A person may, with the consent of the council:
  - (a) alter or add to a dwelling-house so as to create 2 dwellings, or
  - (b) erect a building containing 2 dwellings.
- (3) The council shall not grant consent under subclause (2) unless the area of the allotment of land the subject of the application for consent is not less than the minimum area for an allotment on which a dwelling-house may be erected in the zone in which the land is situated.
- (4) The council may grant consent to the erection of an additional dwelling which is not physically attached to an existing dwelling, where it is satisfied that the needs of the occupants of the land would be better satisfied by separate dwellings and the resulting development is comparable to that which could otherwise be approved under this plan.
- (5) Not more than 1 additional dwelling may be erected under subclause (4) on any particular land.

## **22 Development on main and arterial road frontages**

- (1) This clause applies to land within Zone No 1 (a):
  - (a) having frontage to a main or arterial road,
  - (b) which otherwise relies on a main or arterial road for its sole means of access, or
  - (c) which has access to a road which intersects with a main or arterial road, where the point of access is within 90 metres of the intersection of the road and the main or arterial road.
- (2) The council shall not grant consent to the carrying out of development on land to which this clause applies, unless it is satisfied that:

- (a) the development, by its nature, intensity or the volume and type of traffic likely to be generated, is unlikely to constitute a traffic hazard or to materially reduce the capacity and efficiency of the main or arterial road,
  - (b) the development is of a type, whether or not related to the characteristics of the land on which it is proposed to be carried out, that justifies a location in proximity to a main or arterial road,
  - (c) the location, standard and design of access points, and on-site arrangements for vehicle movement and parking, ensure that through traffic movements on the main or arterial road are not impeded, and
  - (d) the development will not prejudice future improvements or realignment to a main or arterial road, as may be indicated to the council from time to time by the Roads and Traffic Authority, or any associated intention of the Authority to declare part of the road as a freeway under section 4 of the *State Roads Act 1986*.
- (3) Subject to this clause, the council may grant consent to development on land to which this clause applies which has frontage to a main or arterial road for the purposes of providing services to motorists, tourists and the travelling public, where the development comprises or is part of a planned roadside service area that has been located and designed so as to minimise interference with the free flow of traffic on the road and to minimise traffic hazards.

### **23 Building lines**

Where land within Zone No 1 (a), 1 (c) or 1 (f) has frontage to a road, each building to be erected on the land shall be set back from the nearest alignment of the road at a distance determined by the council having regard to:

- (a) the nature, scale and function of the building,
- (b) the maximisation of sight distances for drivers using the road, including visibility of points of access to the road,
- (c) the minimisation of distractions to drivers using the road, and
- (d) any possible need to alter the road alignment in the future.

### **24 Advertisements**

- (1) Subject to this clause, an advertising structure shall not be erected and an advertisement shall not be displayed on any land within Zone No 1 (a), 1 (c), or 1 (f).
- (2) The council may consent to the erection of a single advertising structure on land within Zone No 1 (a), 1 (c) or 1 (f) for the purpose only of displaying a notice related to the purpose for which the land is used.

- (3) Nothing in this clause shall operate to prohibit the council or a person, with the consent of the council, from erecting advertising structures on land within Zone No 1 (a), 1 (c) or 1 (f) for the purpose of directing the travelling public to local tourist areas or facilities or motorists' services, or for the display on such structures of private advertisements of tourist facilities or motorists' services.

## **25 Development principles—Zone No 2**

The council shall not grant consent to development on land within Zone No 2 which adjoins land used or capable of being used for a residential purpose unless it is satisfied that:

- (a) the elevation of any building facing land used for residential purposes has been designed to be compatible with residential development, or is suitably screened,
- (b) the development will maintain reasonable solar access to residential development between the hours of 9.00am and 3.00pm during the winter solstice,
- (c) noise generation from fixed sources or motor vehicles associated with the development will be effectively insulated or otherwise minimised,
- (d) the development will not otherwise cause nuisance to residents, by way of traffic movements, parking, headlight glare, security lighting or the like, and
- (e) the development contributes to an improvement to residential amenity.

## **26 Temporary accommodation**

Notwithstanding any other provision of this plan, the council may grant consent to the erection or occupation of a structure as a temporary residence, provided it is satisfied that:

- (a) a permanent residence is likely to be erected within a reasonable period,
- (b) appropriate arrangements have been made for the demolition or removal of the structure or the cessation of its occupation upon erection of a permanent residence, and
- (c) adequate arrangements have been made for sewage disposal and fire safety.

## **27 Flood prone land**

The council may refuse consent to the carrying out of any development on land to which this plan applies which, in its opinion, will:

- (a) be liable to damage by flood, or involve a risk to the safety of occupants of the development in the event of a flood,
- (b) affect the flood level at any point above or below the development,

- (c) increase, to a substantial degree, the flow of water on any adjoining flood liable lands,
- (d) cause soil erosion, siltation or destruction of river bank vegetation,
- (e) affect the water table of any adjoining land, or
- (f) adversely affect river bank stability.

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

- (1) Nothing in clause 9 shall prevent the council from, or require the council to obtain its own consent for, carrying out development on land within any zone for the purposes of roads, stormwater drainage, water and sewerage works, recreation areas, landscaping, gardening, bushfire hazard reduction or parking.
- (2) A person may, with the consent of the council (except in the case of landscaping and gardening, which may be carried out without consent), carry out development on land within any zone for a purpose referred to in subclause (1).
- (3) The reference in subclause (1) to the carrying out of development for the purpose of roads includes a reference to the winning of extractive material by the council for the purpose of road construction.

## **29 Suspension of certain laws etc**

- (1) For the purpose of enabling development to be carried out in accordance with this plan (as in force at the time the development is carried out), or in accordance with a consent granted under the Act, the operation of any covenant, agreement or instrument imposing restrictions on the development, to the extent necessary to serve that purpose, shall not apply to the development.
- (2) Nothing in subclause (1) shall affect the rights or interest of any public authority under any instrument registered in the Land Titles Office.
- (3) Before the making of this plan, the Governor approved of subclause (1).

## **30 Variation of zone boundaries**

- (1) Subject to subclause (2), development may with the consent of the council, be carried out on land within 50 metres of the boundary of any zone for any purpose for which development may be carried out within 50 metres of that boundary on land within the zone adjacent to the zone within which the development is to be carried out.
- (2) The council shall not grant consent under the Act to the carrying out of development pursuant to subclause (1), unless the carrying out of the development is necessary, in the opinion of the council, due to design requirements relating to the subdivision of land to which this plan applies.

- (3) Where a zone boundary does not correspond with a cadastral boundary, the council may fix the zone boundary following a survey which identifies the characteristics of the land and the relationship of those characteristics to the objectives of the zones concerned.
- (4) Where a zone boundary is fixed under subclause (3), land shall be deemed to be within the zone determined by the council in accordance with the survey.

### **31 Heritage items**

- (1) A person shall not, in respect of 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 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*).

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

The council may grant consent to an application to carry out development on land in the vicinity of a heritage item only after it has made an assessment of the effect the carrying out of that development will have on the heritage significance of the item and its setting.

### **33 Heritage advertisements**

- (1) Except as provided by subclause (2):
  - (a) the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of 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, and

(b) (Repealed)

- (2) Subclause (1) does not apply to the partial demolition of a heritage item if, in the opinion of the council, the partial demolition will be of a minor nature and will not adversely affect the heritage of the Shire of Bombala.

### **34 Conservation incentives**

Nothing in this plan prevents the council from granting consent to an application for the use, for any purpose, of a building that is a heritage item or the land on which the building is erected where it is satisfied that:

- (a) the proposed use would have little or no adverse effect on the amenity of the area, and
- (b) the conservation of the building depends on the council granting consent under this clause.

### **35 Land subject to bushfire hazards**

- (1) The council shall not grant consent to the carrying out of any development on land to which this plan applies which, in the opinion of the council, is subject to bushfire hazards until it has made an assessment of:

(a) the nature and degree of the hazard, relative to the appropriate measures available to reduce the hazard,

(b) in the case of subdivision of land:

(i) whether the subdivision has been designed to enable the siting of any buildings to be erected on the land in areas of least risk,

(ii) the necessity for the inclusion of a perimeter road in the subdivision, or on land adjoining the subdivision, for the purposes of providing a fire break and access for fire fighting vehicles, and

(ii) the necessity to increase the depth of allotments adjoining land which may be the source of bushfire hazard, whether or not defined by a perimeter road, for the purposes of providing a fire radiation zone,

(c) in the case of buildings:

(i) whether the buildings have been sited in a manner which reduces bushfire hazard, and

(ii) the necessity for fireproof building materials,

(d) the means of access for firefighting vehicles, and

(e) the means available to ensure the fire protection measures, including fire radiation zones and hazard reduction, are appropriately maintained.

(2) The council may refuse consent to a development application where it is of the opinion that the development is inappropriate having regard to bushfire hazard affecting the land the subject of the application.

## **Schedule 1 Heritage items**

(Clause 5 (1))

National Bank, Bombala (1871)  
House, 10 Caveat Street, Bombala (1865)  
Imperial Hotel, Bombala  
Olympia Theatre Facade, Bombala (1920)  
Bombala Literary Institute  
House, 8 Caveat Street, Bombala (1870)  
House "The Croft", Cathcart (1881)  
Aston Cemetery (1845)  
"Burnima" Homestead (1896)  
"Bukalong" Homestead (1868)  
"Bibbenluke" Former Inn house in Main Street (1875)  
"Delegate Station" Homestead (1906)  
"Delegate Station" Slab House (1820's)  
Mt Cooper Cemetery  
Old Cambalong Store (1830's)  
"Gunningrah" Homestead (1924)  
Delegate Police Station (1890)