



New South Wales

State Environmental Planning Policy (Penrith Lakes Scheme) Amendment 2017

under the

Environmental Planning and Assessment Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

MARK SPEAKMAN, MP
Acting Minister for Planning

State Environmental Planning Policy (Penrith Lakes Scheme) Amendment 2017

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Penrith Lakes Scheme) Amendment 2017*.

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

3 Repeal of Policy

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

Schedule 1 Amendment of State Environmental Planning Policy (Penrith Lakes Scheme) 1989

[1] Clauses 2–4

Omit the clauses. Insert instead:

2 Aims of Policy

The aims of this Policy are as follows:

- (a) to provide a development control process that ensures that environmental and technical matters are considered in the implementation of the Penrith Lakes Scheme,
- (b) to identify and protect items of the environmental heritage,
- (c) to identify certain land that may be rezoned for employment, environmental, parkland, residential, tourism and waterway purposes and land that will be rezoned as unzoned land,
- (d) to permit interim development that will not detrimentally impact on the implementation of the Penrith Lakes Scheme,
- (e) to ensure that the implementation of the Penrith Lakes Scheme does not detrimentally impact on the ongoing operation and use of olympic legacy infrastructure, including the Sydney International Regatta Centre and the Penrith Whitewater Stadium.

3 Land to which Policy applies

This Policy applies to the land shown edged heavy black on the structure plan.

3A Maps

- (1) A reference in this Policy to a named map adopted by this Policy is a reference to a map by that name:
 - (a) approved by the Minister when the map is adopted, and
 - (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister when the instruments are made.
- (2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Policy to any such named map is a reference to the relevant part or aspect of the single map.
- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (4) For the purposes of this Policy, a map may be in, and may be kept and made available in, electronic or paper form, or both.

4 Relationship with other State environmental planning policies

- (1) If there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.
- (2) *State Environmental Planning Policy (Affordable Rental Housing) 2009* does not apply to land zoned Employment, Residential or Tourism under this Policy.

- (3) *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* does not apply to unzoned land or land zoned Environment, Parkland or Waterway under this Policy.

[2] Clause 5 Definitions

Omit the definitions of *community facility*, *extractive industry* and *the structure plan*.

Insert in alphabetical order:

council means the council of the area in which development is, or is proposed to be, carried out.

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

heritage item means a building, work, place, relic, tree, object or archaeological site the location and nature of which is described in Schedule 3.

Land Zoning Map means the State Environmental Planning Policy (Penrith Lakes Scheme) 1989 Land Zoning Map.

the structure plan means the map marked “Sydney Regional Environmental Plan No 11—Penrith Lakes Scheme (Amendment No 4)”.

unzoned land means land identified as “Unzoned” on the Land Zoning Map.

urban release area means land in any of the following zones:

- (a) Employment,
- (b) Residential,
- (c) Tourism.

[3] Clause 5 (2) and (3)

Insert at the end of clause 5:

- (2) A word or expression used in this Policy has the same meaning as it has in the standard local environmental planning instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* unless it is otherwise defined in this Policy.
- (3) Notes included in this Policy do not form part of this Policy.

[4] Clauses 6–6C

Omit clause 6. Insert instead:

6 Consent authority

The consent authority for the purposes of this Policy is (subject to the Act):

- (a) for unzoned land and land zoned Employment, Environment, Parkland, Tourism or Waterway—the Minister, and
- (b) for any other land to which this Policy applies—the council.

6A Savings provision relating to certain applications

If a development application or an application to modify a development consent or a transitional Part 3A project has been made before the commencement of this clause in relation to land to which this Policy applies and the application has not been finally determined before that commencement, the application must be determined as if this clause had not commenced.

Note. However, under Division 4B of Part 3 of the Act, a development application may be made for consent to carry out development that may only be carried out if the

environmental planning instrument applying to the relevant development is appropriately amended or if a new instrument, including an appropriate principal environmental planning instrument, is made, the consent authority may consider the application. The Division requires public notice of the development application and the draft environmental planning instrument allowing the development at the same time, or as closely together as is practicable.

6B Suspension of covenants, agreements and instruments

- (1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Policy or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.
- (2) This clause does not apply:
 - (a) to a covenant imposed by the council or that the council requires to be imposed, or
 - (b) to any prescribed instrument within the meaning of section 183A of the *Crown Lands Act 1989*, or
 - (c) to any conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, or
 - (d) to any Trust agreement within the meaning of the *Nature Conservation Trust Act 2001*, or
 - (e) to any property vegetation plan within the meaning of the *Native Vegetation Act 2003*, or
 - (f) to any biobanking agreement within the meaning of Part 7A of the *Threatened Species Conservation Act 1995*, or
 - (g) to any planning agreement within the meaning of Division 6 of Part 4 of the Act, or
 - (h) to any heritage agreement or interim heritage order within the meaning of the *Heritage Act 1977*.
- (3) This clause does not affect the rights or interests of any public authority under any registered instrument.
- (4) Under section 28 of the Act, the Governor, before the making of this clause, approved of subclauses (1)–(3).

6C Review of Policy

The Minister must, in consultation with the Penrith City Council and any relevant landowners, review the provisions of this Policy as soon as practicable after the third anniversary of the commencement of this clause.

[5] Clause 8 Development for the purposes of implementing the Penrith Lakes Scheme

Omit clause 8 (5). Insert instead:

- (5) Development on land to which this Policy applies is identified as advertised development.
- (6) This clause has effect despite anything to the contrary in the Land Use Table or any other provision of this Policy.

[6] Clause 9 Interim development on unzoned land

Omit “any part of the land to which this Policy applies”. Insert instead “unzoned land”.

[7] Clause 9 (2) and notes

Insert at the end of the clause:

Note. The consent authority will also consider the aims of this Policy in determining whether the interim development will adversely affect the implementation of the Penrith Lakes Scheme.

- (2) Despite any other provision of this Policy, any other environmental planning instrument that applies to unzoned land continues to have effect in relation to that land.

Note. This Policy prevails to the extent of any inconsistency between this Policy and any other environmental planning instrument (see clause 4).

[8] Clauses 10 and 11

Omit the clauses.

[9] Clause 12 Amendment of the structure plan

Re-number the clause as 3B and place in appropriate order.

[10] Parts 3–7

Omit Parts 3 and 4. Insert instead:

Part 3 Permitted or prohibited development on zoned land

12 Land use zones

The land use zones under this Policy are as follows:

Employment
Environment
Parkland
Residential
Tourism
Waterway

13 Zoning of land to which Policy applies

For the purposes of this Policy, land is within the zones shown on the Land Zoning Map.

14 Zone objectives and Land Use Table

- (1) The Land Use Table at the end of this Part specifies for each zone:
- (a) the objectives for development, and
 - (b) development that may be carried out without development consent, and
 - (c) development that may be carried out only with development consent, and
 - (d) development that is prohibited.
- (2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.
- (3) In the Land Use Table at the end of this Part:
- (a) a reference to a type of building or other thing is a reference to development for the purposes of that type of building or other thing, and

(b) a reference to a type of building or other thing does not include (despite any definition in or adopted by this Policy) a reference to a type of building or other thing referred to separately in the Land Use Table in relation to the same zone.

(4) This clause is subject to the other provisions of this Policy.

15 Subdivision—consent requirements

Land to which this Policy applies may be subdivided, but only with development consent.

16 Demolition requires development consent

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

17 Temporary use of land

(1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.

(2) Despite any other provision of this Policy, development consent may be granted for development on any land for a temporary use for a maximum period of 180 days (whether or not consecutive days) in any period of 12 months.

(3) Development consent must not be granted unless the consent authority is satisfied that:

(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Policy and any other applicable environmental planning instrument, and

(b) the temporary use will not adversely impact on any adjoining land, the implementation of the Penrith Lakes Scheme or the operation or use of the Sydney International Regatta Centre or the Penrith Whitewater Stadium, and

(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and

(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

Land Use Table

Employment

1 Objectives of zone

- To provide a range of office and light industrial uses and to provide employment opportunities relating to health, high order technology, culture and sports.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To provide for a range of higher order job opportunities including health, cultural and high technology industries.

- To incorporate appropriate water quality management measures to ensure that development does not detrimentally impact on the implementation of the Penrith Lakes Scheme and the operation and use of olympic legacy infrastructure, including the Sydney International Regatta Centre and the Penrith Whitewater Stadium.
- To encourage the development of business incubators, and other employment opportunities relating to tourism and water-based sport and recreation.

2 Permitted without consent

Nil

3 Permitted with consent

Business premises; Car parks; Community facilities; Educational establishments; Environmental protection works; Flood mitigation works; Food and drink premises; Function centres; Garden centres; Hardware and building supplies; Health services facilities; Industrial retail outlets; Industrial training facilities; Information and education facilities; Kiosks; Light industries; Markets; Neighbourhood shops; Office premises; Passenger transport facilities; Recreation areas; Roads; Signage; Warehouse or distribution centres

4 Prohibited

Any development not specified in item 2 or 3

Environment

1 Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic value.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, wetlands, groundwater resources, biodiversity corridors, areas of remnant indigenous vegetation and dependent ecosystems.
- To allow for low impact passive recreational and ancillary land uses that are consistent with the retention of the natural ecological significance.

2 Permitted without consent

Nil

3 Permitted with consent

Environmental facilities; Environmental protection works; Flood mitigation works; Recreation areas; Roads

4 Prohibited

Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

Parkland

1 Objectives of zone

- To enable land to be used for open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

2 Permitted without consent

Nil

3 Permitted with consent

Building identification signs; Caravan parks; Community facilities; Environmental facilities; Environmental protection works; Function centres; Hotel or motel accommodation; Information and education facilities; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Restaurants or cafes; Roads

4 Prohibited

Any development not specified in item 2 or 3

Residential

1 Objectives of zone

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic value.
- To ensure that residential development does not have an adverse effect on those values.
- To minimise the potential for conflict between development in residential areas and land uses within adjoining zones.
- To ensure that land uses are compatible with the available infrastructure, services and facilities and with the environmental capabilities of the land.
- To preserve and improve natural resources through appropriate land and water quality management practices.

2 Permitted without consent

Home occupations

3 Permitted with consent

Building identification signs; Business identification signs; Dwelling houses; Environmental facilities; Environmental protection works; Flood mitigation works; Home businesses; Home industries; Information and education facilities; Recreation areas; Roads

4 Prohibited

Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

Tourism

1 Objectives of zone

- To provide for a variety of tourist-oriented development and related uses.
- To provide for diverse tourist and visitor accommodation and activities that are compatible with the promotion of tourism in Penrith that utilises the public assets of the Penrith Lakes Scheme.
- To create an appropriate scale that maintains important views to and from the Nepean River as well as to the Blue Mountains escarpment, while also improving important connections to the Penrith City Centre and the Nepean River.

2 Permitted without consent

Nil

3 Permitted with consent

Amusement centres; Boat launching ramps; Boat sheds; Car parks; Charter and tourism boating facilities; Community facilities; Educational establishments; Entertainment facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Food and drink premises; Function centres; Health services facilities; Helipads; Information and education facilities; Jetties; Kiosks; Markets; Neighbourhood shops; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Roads; Service stations; Signage; Tourist and visitor accommodation; Water recreation structures

4 Prohibited

Any development not specified in item 2 or 3

Waterway

1 Objectives of zone

- To protect the ecological, scenic and recreation values of recreational waterways.
- To allow for water-based recreation and related uses.
- To provide for sustainable fishing industries and recreational fishing.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

2 Permitted without consent

Nil

3 Permitted with consent

Boat sheds; Charter and tourism boating facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Jetties; Kiosks; Marinas; Mooring pens; Recreation areas; Recreation facilities (outdoor); Water recreation structures

4 Prohibited

Industries; Multi dwelling housing; Residential flat buildings; Seniors housing; Warehouse or distribution centres; Any other development not specified in item 2 or 3

Part 4 Development standards for certain zoned land

18 Minimum subdivision lot size for land zoned Residential

- (1) This clause applies to a subdivision of any land zoned Residential that requires development consent and that is carried out after the commencement of this clause.
- (2) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than 2 hectares.

19 Development near zone boundaries

- (1) The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.
- (2) This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is 100 metres.
- (3) This clause does not apply to unzoned land.
- (4) Despite the provisions of this Policy relating to the purposes for which development may be carried out, development consent may be granted to development of land to which this clause applies for any purpose that may be carried out in the adjoining zone, but only if the consent authority is satisfied that:
 - (a) the development is not inconsistent with the objectives for development in both zones, and
 - (b) the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.

20 Controls relating to miscellaneous permissible uses

(1) Home businesses

If development for the purposes of a home business is permitted under this Policy, the carrying on of the business must not involve the use of more than 30 square metres of floor area.

(2) Home industries

If development for the purposes of a home industry is permitted under this Policy, the carrying on of the home industry must not involve the use of more than 50 square metres of floor area.

(3) Industrial retail outlets

If development for the purposes of an industrial retail outlet is permitted under this Policy, the retail floor area must not exceed:

- (a) 25% of the gross floor area of the industry or rural industry located on the same land as the retail outlet, or

(b) 400 square metres,
whichever is the lesser.

(4) **Kiosks**

If development for the purposes of a kiosk is permitted under this Policy, the gross floor area must not exceed 50 square metres.

(5) **Neighbourhood shops**

If development for the purposes of a neighbourhood shop is permitted under this Policy, the retail floor area must not exceed 200 square metres.

(6) **Roadside stalls**

If development for the purposes of a roadside stall is permitted under this Policy, the gross floor area must not exceed 20 square metres.

21 Preservation of trees or vegetation

(1) The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.

(2) This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Secretary.

Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.

(3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:

- (a) development consent, or
- (b) a permit granted by the council.

(4) The refusal by the council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the council to grant consent for the carrying out of the activity for which a permit was sought.

(5) This clause does not apply to a tree or other vegetation that the Secretary is satisfied is dying or dead and is not required as the habitat of native fauna.

(6) This clause does not apply to a tree or other vegetation that the Secretary is satisfied is a risk to human life or property.

(7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:

- (a) that is or forms part of a heritage item or that is within a heritage conservation area, or
- (b) that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,

unless the Secretary is satisfied that the proposed activity:

- (c) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and

- (d) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.

Note. As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 28 will be applicable to any such consent.

- (8) This clause does not apply to or in respect of:
 - (a) the clearing of native vegetation:
 - (i) that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003*, or
 - (ii) that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or
 - (b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*) that is authorised by a development consent under the provisions of the *Native Vegetation Conservation Act 1997* as continued in force by that clause, or
 - (c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 1916*, or
 - (d) action required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying and Spatial Information Act 2002*, or
 - (e) plants declared to be noxious weeds under the *Noxious Weeds Act 1993*.

Note. Permissibility may be a matter that is determined by or under any of these Acts.

Part 5 Additional provisions for zoned land

Note. The Secretary may prepare a development control plan for zoned land in accordance with Division 6 of Part 3 of the *Environmental Planning and Assessment Act 1979*. A development control plan may contain additional matters for consideration for development on zoned land.

22 Development on land zoned Employment

Development consent must not be granted for development on land zoned Employment unless the consent authority has considered the following:

- (a) a water quality management plan and water operations plan for the Penrith Lakes Scheme that are endorsed by the Secretary as being appropriate for the Scheme,
- (b) an evacuation plan and procedures for early warnings that are prepared by an emergency services organisation and endorsed by the State Emergency Service as being appropriate for the development,
- (c) a traffic and transportation plan that includes proposals about the management of traffic impacts caused by the development,
- (d) a geotechnical assessment that has been prepared by a suitably qualified person and demonstrates that a stable development platform exists for the development.

23 Development on land zoned Environment

Development consent must not be granted for development on land zoned Environment unless the consent authority has considered the following:

- (a) whether the development is consistent with a plan of management for the Penrith Lakes Scheme that is endorsed by the Secretary as being appropriate for the Scheme,

- (b) an Aboriginal cultural heritage assessment for the land (being a written report detailing the results of the assessment and recommendations for actions to be taken before, during and after an activity to manage and protect Aboriginal objects and declared Aboriginal places identified by the investigation and assessment) that has been prepared by a suitably qualified person.

24 Development on land zoned Parkland

Development consent must not be granted for development on land zoned Parkland unless the consent authority has considered the following:

- (a) whether the development is consistent with a plan of management for the Penrith Lakes Scheme that is endorsed by the Secretary as being appropriate for the Scheme,
- (b) whether the development interferes with the operation or use of the Sydney International Regatta Centre or the Penrith Whitewater Stadium,
- (c) a traffic and transportation plan that includes proposals about the management of traffic impacts caused by the development,
- (d) an Aboriginal cultural heritage assessment for the land (being a written report detailing the results of the assessment and recommendations for actions to be taken before, during and after an activity to manage and protect Aboriginal objects and declared Aboriginal places identified by the investigation and assessment) that has been prepared by a suitably qualified person.

25 Development on land zoned Residential

- (1) Development consent must not be granted for development on land zoned Residential unless the consent authority is satisfied that the number of dwellings on all land zoned Residential will not exceed 30.
- (2) Development consent must not be granted for development on land zoned Residential unless the consent authority has considered the following:
 - (a) an Aboriginal cultural heritage assessment for the land (being a written report detailing the results of the assessment and recommendations for actions to be taken before, during and after an activity to manage and protect Aboriginal objects and declared Aboriginal places identified by the investigation and assessment) that has been prepared by a suitably qualified person,
 - (b) a geotechnical assessment that has been prepared by a suitably qualified person and demonstrates that a stable development platform exists for the development,
 - (c) an evacuation plan that is prepared by an emergency services organisation and endorsed by the NSW State Emergency Service as being appropriate for the development.

26 Development on land zoned Tourism

Development consent must not be granted for development on land zoned Tourism unless the consent authority has considered the following:

- (a) a traffic and transportation plan that includes proposals about the management of traffic impacts caused by the development,
- (b) if the development involves or is near a heritage item:

- (i) a heritage conservation management plan prepared in relation to that heritage item and approved by the Secretary, and
- (ii) whether the development is consistent with that plan,
- (c) a geotechnical assessment that has been prepared by a suitably qualified person and demonstrates that a stable development platform exists for the development,
- (d) an evacuation plan and procedures for early warnings that are prepared by an emergency services organisation and endorsed by the NSW State Emergency Service as being appropriate for the development.

27 Development on land zoned Waterway

Development consent must not be granted for development on land zoned Waterway unless the consent authority has considered whether the development is consistent with a plan of management for the Penrith Lakes Scheme that is endorsed by the Secretary as being appropriate for the Scheme.

Part 6 Miscellaneous provisions

28 Heritage conservation

Note. Heritage items (if any) are listed and described in Schedule 3. Heritage conservation areas (if any) are described in Schedule 3.

(1) Objectives

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Penrith,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

(2) Requirement for consent

Development consent is required for any of the following:

- (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):
 - (i) a heritage item,
 - (ii) an Aboriginal object,
 - (iii) a building, work, relic or tree within a heritage conservation area,
- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 3 in relation to the item,
- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (d) disturbing or excavating an Aboriginal place of heritage significance,
- (e) erecting a building on land:
 - (i) on which a heritage item is located or that is within a heritage conservation area, or

- (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
- (f) subdividing land:
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

(3) When consent not required

However, development consent under this clause is not required if:

- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:
 - (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and
 - (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or
- (b) the development is in a cemetery or burial ground and the proposed development:
 - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or
- (c) the development is limited to the removal of a tree or other vegetation that the consent authority is satisfied is a risk to human life or property, or
- (d) the development is exempt development.

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) Heritage assessment

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or
- (b) on land that is within a heritage conservation area, or
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the

heritage significance of the heritage item or heritage conservation area concerned.

(6) **Heritage conservation management plans**

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(7) **Archaeological sites**

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the *Heritage Act 1977* applies):

- (a) notify the Heritage Council of its intention to grant consent, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(8) **Aboriginal places of heritage significance**

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.

(9) **Demolition of nominated State heritage items**

The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:

- (a) notify the Heritage Council about the application, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(10) **Conservation incentives**

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Policy, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and

- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

29 Bush fire hazard reduction

Bush fire hazard reduction work authorised by the *Rural Fires Act 1997* may be carried out on any land without development consent.

Note. The *Rural Fires Act 1997* also makes provision relating to the carrying out of development on bush fire prone land.

30 Infrastructure development and use of existing buildings of the Crown

- (1) This Policy does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, by or on behalf of a public authority, that is permitted to be carried out with or without development consent, or that is exempt development, under *State Environmental Planning Policy (Infrastructure) 2007*.
- (2) This Policy does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.

31 Earthworks

- (1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.
- (2) Development consent is required for earthworks unless:
 - (a) the earthworks are exempt development under an applicable environmental planning instrument, or
 - (b) the earthworks are ancillary to development that is permitted without consent under this Policy or to development for which development consent has been given.
- (3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:
 - (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
 - (b) the effect of the development on the likely future use or redevelopment of the land,
 - (c) the quality of the fill or the soil to be excavated, or both,
 - (d) the effect of the development on the existing and likely amenity of adjoining properties,
 - (e) the source of any fill material and the destination of any excavated material,
 - (f) the likelihood of disturbing relics,
 - (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,

- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Note. The *National Parks and Wildlife Act 1974*, particularly section 86, deals with harming Aboriginal objects.

32 Council infrastructure development

- (1) Development may be carried out by or on behalf of a public authority or the council without development consent on any land, other than land in a heritage conservation area or land containing a heritage item.
- (2) Subclause (1) does not apply to the following development:
 - (a) the erection of a class 1–9 building under the *Building Code of Australia*,
 - (b) development that is not exempt development under *State Environmental Planning Policy (Infrastructure) 2007* and has a capital value of more than \$1,000,000.

33 Flood planning

- (1) The objectives of this clause are as follows:
 - (a) to minimise the flood risk to life and property associated with the use of the land,
 - (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
 - (c) to avoid significant adverse impacts on flood behaviour and the environment.
- (2) Development consent must not be granted for development on land to which this Policy applies that is at or below the flood planning level unless the consent authority is satisfied that the development:
 - (a) is compatible with the flood hazard of the land, and
 - (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
 - (c) incorporates appropriate measures to manage risk to life from flood, and
 - (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
 - (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.
- (3) Development consent must not be granted for development on land zoned Employment, Residential or Tourism unless the consent authority is satisfied that the development will not adversely affect the safe and effective evacuation of the land and the surrounding area.
- (4) A word or expression used in this clause has the same meaning as it has in the *Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this Policy.

Part 7 Urban release areas

34 Arrangements for designated State public infrastructure

- (1) The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.
- (2) Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the commencement of this Part, unless the Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.
- (3) Subclause (2) does not apply to:
 - (a) any lot identified in the certificate as a residue lot, or
 - (b) any lot to be created by a subdivision of land that was the subject of a previous development consent granted in accordance with this clause, or
 - (c) any lot that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utility undertakings, educational facilities or any other public purpose, or
 - (d) a subdivision for the purpose only of rectifying an encroachment on any existing lot.
- (4) This clause does not apply to land in an urban release area if all or any part of the land is in a special contributions area (as defined by section 93C of the Act).
- (5) In this clause:

designated State public infrastructure means public facilities or services that are provided or financed by the State (or if provided or financed by the private sector, to the extent of any financial or in-kind contribution by the State) of the following kinds:

 - (a) State and regional roads,
 - (b) bus interchanges and bus lanes,
 - (c) land required for regional open space,
 - (d) land required for social infrastructure and facilities (such as land for schools, hospitals, emergency services and justice purposes).

35 Public utility infrastructure

- (1) Development consent must not be granted for development on land in an urban release area unless the consent authority is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.

- (2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.
- (3) In this clause:
public utility infrastructure, in relation to an urban release area, includes infrastructure for any of the following:
 - (a) the supply of water,
 - (b) the supply of electricity,
 - (c) the disposal and management of sewage.

36 Development control plan

- (1) The objective of this clause is to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.
- (2) Development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.
- (3) The development control plan must provide for all of the following:
 - (a) a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,
 - (b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,
 - (c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,
 - (d) a network of active and passive recreation areas,
 - (e) stormwater and water quality management controls,
 - (f) amelioration of natural and environmental hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,
 - (g) detailed urban design controls for significant development sites,
 - (h) measures to accommodate and control appropriate neighbourhood commercial and retail uses,
 - (i) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.
- (4) Subclause (2) does not apply to any of the following developments:
 - (a) a subdivision for the purpose of a realignment of boundaries that does not create additional lots,
 - (b) a subdivision of land if all of the lots proposed to be created are to be reserved or dedicated for public open space, public roads or any other public or environmental protection purpose,
 - (c) a subdivision of land in a zone in which the erection of structures is prohibited,
 - (d) proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed

development would be consistent with the objectives of the zone in which the land is situated.

37 Relationship between Part and remainder of Policy

A provision of this Part prevails over any other provision of this Policy to the extent of any inconsistency.

[11] Schedule 3 Heritage items

Omit “(Clause 13)”. Insert instead “(Clause 28)”.