

Sydney Regional Environmental Plan No 9—Extractive Industry (No 2—1995) (1995 EPI 574)

[1995-574]



New South Wales

Status Information

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Provisions in force

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

Notes—

- **Previously named**
Sydney Regional Environmental Plan No 9—Extractive Industry (No 2)
- **Does not include amendments by**
[Sutherland Shire Local Environmental Plan 2006 \(669\)](#) (GG No 138 of 15.11.2006, p 9577) (not commenced — to commence on 29.11.2006)

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

Contents

1 Name of plan	4
2 Aims, objectives etc.....	4
3 Land to which plan applies	4
4 Relationship to other environmental planning instruments.....	5
5 Definitions	5
6 Consent authority	5
7 Extractive industries permissible with consent.....	5
8 Consultation with Department of Mineral Resources	6
9 Extractive industry on Schedule 1 or 2 land—matters for consideration	7
10 Extractive industry at Wrights and Wellums Creeks—matters for consideration	7
11 Special requirements for extractive industry at Maroota.....	7
12 Future development controls for extraction from the Richmond Lowlands.....	8
13 Future development controls for extraction from Schedule 1 or 2 land.....	9
14 Notification of certain matters affecting land in the vicinity of extractive industry sites.....	9
15 Consultation over local environmental plans likely to restrict extractive operations.....	9
16 Restrictions on development in the vicinity of extractive resource sites	10
17 Development control codes.....	10
18 Dwellings within 50 metres of a quarry access road	11
19 Extractive industry and waste	11
20 Extractive industry prohibited in certain places	11
Schedule 1	12

Schedule 2	15
Schedule 3	15
Schedule 4	16
Schedule 5	16

Sydney Regional Environmental Plan No 9—Extractive Industry (No 2—1995) (1995 EPI 574)



New South Wales

1 Name of plan

This plan may be called *Sydney Regional Environmental Plan No 9—Extractive Industry (No 2—1995)*.

2 Aims, objectives etc

This plan aims:

- (a) to facilitate the development of extractive resources in proximity to the population of the Sydney Metropolitan Area by identifying land which contains extractive material of regional significance, and
- (b) to permit, with the consent of the council, development for the purpose of extractive industries on land described in Schedule 1 or 2, and
- (c) to ensure consideration is given to the impact of encroaching development on the ability of extractive industries to realise their full potential, and
- (d) to promote the carrying out of development for the purpose of extractive industries in an environmentally acceptable manner, and
- (e) to prohibit development for the purpose of extractive industry on the land described in Schedule 3 in the Macdonald, Colo, Hawkesbury and Nepean Rivers, being land which is environmentally sensitive.

3 Land to which plan applies

This plan applies to the local government areas specified in Schedule 4, which comprise part of the land declared under section 4 (6) of the *Environmental Planning and Assessment Act 1979* (by order published in Gazette No 185 of 11 December 1981, at page 6381) to be a region known as the Sydney Region.

4 Relationship to other environmental planning instruments

- (1) This plan prevails to the extent of any inconsistency between it and another environmental planning instrument, except a State environmental planning policy.
- (2) This plan repeals *Sydney Regional Environmental Plan No 9—(Extractive Industry)*.

5 Definitions

In this plan:

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

extractive industry means:

- (a) the winning of extractive material, or
- (b) an undertaking, not being a mine, which depends for its operations on the winning of extractive material from the land on which it is carried on, and includes any washing, crushing, grinding, milling or separating into different sizes of that extractive material on that land.

Extractive Industry Report means the report prepared by the Department of Planning dated 1994 and titled “Sydney Regional Environmental Plan No 9—Extractive Industry (No 2) Planning Report” available at the offices of the Department and of the councils of the areas specified in Schedule 4.

extractive material means sand, gravel, clay, turf, soil, rock, stone or any similar substance.

Richmond Lowlands means the land referred to in Item 2 of Schedule 5.

the map means the map marked “*Sydney Regional Environmental Plan No 9—Extractive Industry (No 2)*” comprising 10 Sheets held in the head office of the Department of Urban Affairs and Planning and copies of which are held at the Department’s offices at Newcastle, Parramatta and Wollongong and at the offices of the councils of the areas specified in Schedule 4.

6 Consent authority

The council is the consent authority for the purposes of this plan.

7 Extractive industries permissible with consent

- (1) This clause applies to land described in Schedule 1 or 2.
- (2) A person may, with the consent of the council, carry out development for the purpose of an extractive industry on land to which this clause applies.

- (3) The council must not grant such a consent unless:
- (a) it has considered the effect of the development on flood behaviour, the water quality, quantity and hydrodynamics of any watercourse or underground waters and also the effect of flood behaviour on the development and operations associated with the development in the vicinity, and
 - (b) it has considered a rehabilitation plan prepared in accordance with the *Guidelines for Rehabilitation Plans in the Extractive Industry Report*, and
 - (c) it is satisfied that, while the development is being carried out, noise and vibration levels will generally be in accordance with the guidelines in the *State Pollution Control Commission Environmental Noise Manual* (1985 edition) available at the offices of the Environment Protection Authority and the councils of the areas specified in Schedule 4, and
 - (d) it is satisfied that rehabilitation measures will be carried out in accordance with the guidelines in the *Urban Erosion and Sediment Control Handbook* (1992) prepared by the Department of Conservation and Land Management and available at the offices of the Department of Land and Water Conservation.

8 Consultation with Department of Mineral Resources

- (1) This clause applies when a council receives an application for consent:
- (a) to the carrying out of development for the purpose of extractive industry in respect of land described in Schedule 1, 2 or 5, or
 - (b) to the carrying out of development for a purpose other than an extractive industry on land described in Division 1, 3, 4, 5, 6, 7, 8 or 9 of Schedule 1 or in Schedule 2.
- (2) When this clause applies, the council must, within 7 days after receipt of the development application, forward a copy of the application to the Director-General of the Department of Mineral Resources.
- (3) The council must not determine the development application until:
- (a) it has received a written representation with respect to the application from the Director-General of that Department, or
 - (b) the Director-General has informed the council in writing that the Director-General does not wish to make any representation with respect to the application, or
 - (c) 21 days have elapsed after the date on which the copy of the application was forwarded to the Director-General without any written response being received from the Director-General,
- whichever occurs first.

- (4) If the council has received a written representation from the Director-General of the Department of Mineral Resources within the 21 days, the council must have regard to that representation in determining the development application.
- (5) In this clause, a reference to the Director-General of the Department of Mineral Resources includes a reference to any officer of that Department who is delegated by the Director-General the function of responding on behalf of the Director-General for the purposes of this clause.

9 Extractive industry on Schedule 1 or 2 land—matters for consideration

- (1) This clause applies to land described in Schedule 1 or 2.
- (2) When considering an application for consent to the carrying out of development for the purpose of extractive industry on land to which this clause applies, the council must take into account the recommendations for future extraction outlined in the Extractive Industry Report.

10 Extractive industry at Wrights and Wellums Creeks—matters for consideration

- (1) This clause applies to land described in Item 1 of Schedule 5.
- (2) The council must not grant consent to the carrying out of development for the purpose of extractive industry on land to which this clause applies unless it has considered the effect of the proposed development on:
 - (a) the wetlands system, particularly Wellums Lake, and
 - (b) the nature and extent of flooding, and
 - (c) silting of the Lower Macdonald and Hawkesbury Rivers, and
 - (d) the scenic amenity of the Macdonald River Valley.

11 Special requirements for extractive industry at Maroota

- (1) This clause applies to land described in Schedule 2.
- (2) The council must not grant consent to the carrying out of development for the purpose of extractive industry on land to which this clause applies unless the council is satisfied that the proposed development:
 - (a) is unlikely to have a significant adverse impact on the Maroota groundwater resource or on other groundwater users in the region, and
 - (b) will conserve the environmentally sensitive and significant areas and features of the Maroota locality, including the environment of threatened species, populations and ecological communities, and

- (c) will involve controlled and limited access points to main roads, and
- (d) will result in a final landform capable of supporting sustainable agricultural production or other post-extraction land uses compatible with the established character and the landscape and natural quality of the Maroota locality.

12 Future development controls for extraction from the Richmond Lowlands

A council should not prepare a draft local environmental plan to permit development for the purpose of an extractive industry on land described in Item 2 of Schedule 5 unless it has considered the following matters:

- (a) the amount of extractive material it is economic to recover, and
- (b) the need to extract from the Richmond Lowlands and the timing and duration of extraction, to be determined with reference to:
 - the supplies of extractive material from the remaining reserves at Penrith Lakes, and
 - the current and likely future yields of extractive material from such supplies, and
 - the duration of such supplies in relation to the market, and
- (c) alternative potential sources of supply, and
- (d) the effect of the proposed development on:
 - the current and future agricultural value and regional agricultural significance of the land underlain by the extractive material and land in the vicinity of that land, and
 - the heritage value of the Richmond Lowlands, having regard to the relationship of such land to the Hawkesbury River and to nearby settlements, and
 - the tourism potential of the Richmond Lowlands, and
 - the environmental value of the Richmond Lowlands, and
 - the environmental value of the wetland areas of the Richmond Lowlands, including the importance of such areas to migratory birds and to the groundwater regime, and
 - the nature and effects of flooding on the Richmond Lowlands, and
- (e) the need for extractive operations to follow a co-ordinated plan of management, and
- (f) the effect that flooding may have on the proposed development.

13 Future development controls for extraction from Schedule 1 or 2 land

A council should not prepare a draft local environmental plan to prohibit development for the purpose of an extractive industry on land described in Schedule 1 or 2.

14 Notification of certain matters affecting land in the vicinity of extractive industry sites

- (1) This clause applies to land in the vicinity of land described in Division 1, 4, 6, 7, 8 or 9 of Schedule 1.
- (2) Before a council exhibits under the Act a draft local environmental plan for a parcel of land to which this clause applies:
 - (a) which will decrease the minimum lot size for any such land or rezone any such land from a rural or non-urban zone to permit rural-residential, residential or urban development, and
 - (b) which, in the opinion of the council, is likely to result in development which will restrict the obtaining of deposits of extractive material from land described in Division 1, 4, 6, 7, 8 or 9 of Schedule 1,

the council should serve written notice of the draft plan on the owner of the parcel.

- (3) When a council receives an application for consent to carry out development of land to which this clause applies that, in the council's opinion, is likely to have the effect of restricting the obtaining of deposits of extractive materials from a parcel of land described in Division 1, 4, 6, 7, 8 or 9 of Schedule 1, the council must serve written notice of the application on the owner of the parcel.

15 Consultation over local environmental plans likely to restrict extractive operations

- (1) This clause applies to land in the vicinity of land described in Division 1, 4, 6, 7, 8 or 9 of Schedule 1.
- (2) Before a council exhibits under the Act a draft local environmental plan for land to which this clause applies:
 - (a) which will decrease the minimum lot size for any such land or rezone any such land from a rural or non-urban zone to permit rural-residential, residential or urban development, and
 - (b) which, in the opinion of the council, is likely to result in development which will restrict the obtaining of deposits of extractive material from land described in Division 1, 4, 6, 7, 8 or 9 of Schedule 1,

the council should forward copies of the draft plan to the Director-General of the Department of Mineral Resources and the Director-General of the Environment Protection Authority.

- (3) The council should not exhibit under the Act a draft plan a copy of which has been so forwarded to a Director-General (or a draft plan substantially similar to such a draft plan) until:
 - (a) it has received written representations with respect to the draft plan from the Director-General, and
 - (b) the Director-General has informed the council that the Director-General does not wish to make any representation with respect to the plan, or
 - (c) 40 days have elapsed after the date on which the copy of the draft plan was submitted in accordance with subclause (2) without any written response being received from the Director-General,whichever occurs first.
- (4) If the council has received a written representation from either Director-General within the 40 days, the council should, in finalising the draft plan, have regard to that representation.
- (5) If either Director-General is of the opinion that the copy of the draft plan forwarded is inconsistent with any of the aims of this plan, the Director-General must forward a copy of his or her representations to the Director of Planning for consideration.

16 Restrictions on development in the vicinity of extractive resource sites

- (1) This clause applies to land in the vicinity of land described in Division 1, 4, 6, 7, 8 or 9 of Schedule 1.
- (2) A council must not grant an application for consent to carry out development of land to which this clause applies unless it is satisfied that, if the development is carried out in accordance with the consent:
 - (a) the proposed development will not be adversely affected by noise, dust, vibration or reduced visual amenity from any nearby extractive industry, and
 - (b) the proposed development will not in any way adversely affect any existing nearby extractive industry or prevent any such extractive industry from realising its full economic potential by adversely affecting future expansion of the extractive industry of which the council is aware.

17 Development control codes

- (1) The council of the area concerned may prepare, or cause to be prepared, a development control code in respect of land in the vicinity of land identified in Division 1, 4, 6, 7, 8 or 9 of Schedule 1.
- (2) Such a code does not have effect until it is approved by the Director-General of the

Department of Mineral Resources and the Director-General of the Environment Protection Authority.

- (3) The format, structure, subject-matter and procedures for the preparation, public exhibition, approval, amendment and repeal of any such development control code are to comply with Part 3 of the *Environmental Planning and Assessment Regulation 1994* which is to be construed as if:
 - (a) a reference in that Part to a development control plan were a reference to a development control code, and
 - (b) a reference in that Part to a local environmental plan were a reference to this plan.
- (4) A development control code prepared in accordance with this clause is to be made available for public inspection, without charge, at the office of the council during ordinary office hours.

18 Dwellings within 50 metres of a quarry access road

A local environmental plan should not permit a subdivision of land which will allow a residential building situated within 50 metres of a road:

- (a) constructed to provide access to a quarry on land described in Schedule 1, 2 or 5, or
- (b) principally used to provide access to such a quarry.

19 Extractive industry and waste

- (1) Nothing in this plan allows the use of land for the disposal of waste brought on to the land from other land, whether or not such a use is ancillary to the use of land for the purpose of extractive industry.
- (2) A council must not consent to the carrying out of development for the purpose of extractive industry on land to which this plan applies unless it is satisfied that the extraction will be carried out in such a way as maximises the quality of the material extracted and minimises the creation of waste.

20 Extractive industry prohibited in certain places

- (1) This clause applies to land described in Schedule 3.
- (2) A person must not carry out development for the purpose of extractive industry on land to which this clause applies.
- (3) This clause does not prevent the carrying out of development described in item (6) of clause 11 of *Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)* in accordance with that plan.
- (4), (5) (Repealed)

Schedule 1

(Clauses 2, 7, 8, 9, 13, 14, 15, 16, 17, 18)

Division 1 Clay/shale extraction areas of regional significance—current and potential

1 (Repealed)

- 2** Lot 1, DP 373863; Lots 54–59 DP 3050; Lot 1, DP 981161; Martin Road, Badgerys Creek; Part Lot 1, DP 981748 and Part Portions 29 and 34 in Certificate of Title Volume 12466, Folio 2, area of Bringelly, County of Cumberland. Boral Bricks, Badgerys Creek.
- 3** Lot 53, DP 8453; Lot 1, DP 55379; Lot 1, DP 984965; Lot 1, DP 947317; Lot A, DP 333558, Eastwood. Land contained within Certificate of Title Volume 4782, Folio 232, being part land in DP 55380 and Certificate of Title Volume 2751, Folio 12. Austral Bricks, Eastwood.
- 4** Lot 2, DP 733115, Greendale Road, Bringelly. Boral Bricks, Bringelly.
- 5** Lots 4–8 and 10–14, DP 236527; Lots 1–2, DP 533788 and Part Lot 25 (Section 5), DP 2954, Cecil Road, Cecil Park. PGH Brickworks, Cecil Park.
- 6** Lot 1, DP 106143 Cnr. Old Wallgrove Road and Burley Road, Horsley Park. PGH, Horsley Park.
- 7** Lots 3 and 4, DP 235478; Lot 1, DP 206617; Lot E, DP 384514 Wallgrove Road, Horsley Park. Austral Plants 1 and 2, Horsley Park.
- 8** Lot 2, DP 120673, Old Wallgrove Road, Horsley Park. Land in Conveyance Book 2842 No 807, excluding Lot 1, DP 579002, Old Wallgrove Road, Horsley Park, being Part Portion 32 and Part Portion 45, Parish of Melville, County of Cumberland. Austral Plant 3, Horsley Park.
- 9** Lots 1–4, DP 233539; Lot 4, DP 229769, Wallgrove Road, Eastern Creek. Austral Brick Pit, Eastern Creek.
- 10** Lot 3, DP 232574, Townson Road, Schofields. PGH Schofields.
- 11** Lots 58, 59, 62, 66 and 69, DP 1358, Burfitt Road, Riverstone. Abax, Riverstone.
- 12** Lot 4, DP 521268, Patons Lane, Erskine Park. Erskine Quarries, Erskine Park.
- 13** Lots 17–23, DP 2566, Clifton Avenue, Kemps Creek. Khari and Ghossayn, Kemps Creek.
- 14** Lots 1–3, DP 221313 and Lot 1, DP 716403, Elizabeth Drive, Kemps Creek. Nolans Quarrying and Mining, Kemps Creek.
- 15** Lot 740, DP 810111; Lot 1, DP 542395, Elizabeth Drive, Badgerys Creek. Pacific Waste

Management, Badgerys Creek.

- 16** Lot 9A, DP 561214, Elizabeth Drive, Kemps Creek. Brandown, Kemps Creek.
- 17** Land covered by Mining Lease 554 and Special Lease 84/7, Wyee. Boral, Wyee.
- 18 (Repealed)**
- 19** Lot 3, DP 623799, Adams Road, Luddenham. Ferndale Resources, Luddenham.
- 20** The land covered by Mining Lease 6030; Mining Lease 6031; Mining Lease 6032 (clay) Sydney Mining Division. Monier Clay Pits, Londonderry.
- 21** The land covered by Mining Lease 6024 (clay), Sydney Mining Division. Camide Clay Pits, Londonderry.
- 22** The land identified on Sheet 1 of the map as Mulgoa clay/shale.

Division 2 Potential clay/shale extraction areas of regional significance

- 1** The land identified on Sheet 2 of the map as Bringelly clay/shale.

Division 3 Other potential clay/shale extraction areas of regional significance

- 1** The land identified on Sheet 3 of the map as Central Coast Plateau Area clay/shale.
- 2** The land identified on Sheet 4 of the map as Castlereagh clay.

Division 4 Sand extraction areas of regional significance—current and potential

- 1** The land identified on Sheet 5 of the map as Agnes Banks sand.
- 2** The land identified on Sheet 6 of the map as Elderslie sand/soil.
- 3** Lot 2, DP 793146 and Lot 33, DP 755246, Somersby, Pioneer.
- 4** Lot 2, DP 229889, Calga, Calga Sands.
- 5** Lot 4, DP 214861, Somersby, CSR.
- 6** Lot 1, DP 569057; Lots 1 and 3, DP 571083, Lots 5–6, DP 755235, Lot 1, DP392219, Lots 2 and 3, DP 620901; Lots 1 and 2, DP 729030, Kulnura, Hymix.

Division 5 Sand and gravel extraction areas of regional

significance—current and potential

- 1** The land at Windsor covered by Licence Number 74/3, Windsor. Rocla, Hawkesbury River, Windsor.
- 2** The land at Pitt Town covered by Licence Number 82/14, Windsor. Breen Holdings P/L, Hawkesbury River, Pitt Town.
- 3** The land in Port Hacking within the 7 (a) Environmental Protection (Waterways) zone under [Sutherland Shire Local Environmental Plan 2000](#).

Division 6 Hard rock quarries of regional significance

- 1** Lot 2, DP 262213; Part Lot 1, DP 400697, being land contained in Certificate of Title Volume 12180, Folio 203, Lot 11, DP 558723; Lot W, DP 419612 and part Lot 1, DP 109198, being land contained in Certificate of Title Volume 12050, Folio 249, Wallgrove, Pioneer.
- 2** Lots A-E, DP 318676; Lot 1, DP 215510 and Part Portion 75, Parish of South Colah, County of Cumberland, being land contained in Certificate of Title Volume 2169, Folio 187, Hornsby, CSR.
- 3** Lot 1, DP 519182; Lots A and B, DP 33023; Lots 5 and 8, DP 235064; Lot 3, DP 218194; Lot 2, DP 222382; Lots 1-3, DP 566729, Prospect, Boral.
- 4** Lots 1-7, DP 260704, Prospect, CSR.
- 5** Portions 3 and 4, Parish of Kooree, County of Northumberland and Lot 81, DP 755235; Portion 71 and part Portion 79, being land contained in Certificate of Title Volume 8308 Folio 140; Parish of Kooree, County of Northumberland. Lots 1 and 2, DP 233808; lot 1, DP 652375, Kulnura, Hymix.
- 6** Portions 2-4, Parish of Popran, County of Northumberland, Lots 49, 105 and 143, DP 755253, Boral, Peats Ridge.

Division 7 Hard rock deposits of regional significance

- 1** Lot 1, DP 527102; Lots 1 and 41, DP 755235, and Lot 22, DP 787019, Kulnura, Hymix, Basalt Hill.

Division 8 Crushed sandstone quarries of regional significance

- 1** Lot 25, DP 706475, Mt. Hunter, CSR.
- 2** Lot D, DP 339526, Wallacia, Nolan Quarrying and Mining.
- 3** Lot 2, DP 622362, Medhurst Road, Menangle Park, Cleary Brothers.
- 4** The land covered by Licence Number 76/31 Metropolitan, Sandy Point, CSR.
- 5** The land covered by Licence Number 64/193 Metropolitan, Belrose, Warringah Gravel and Stone

Supplies.

- 6 Lot 2, DP 569408, Weromba, Nepean Quarries, Cobbitty.
- 7 Lots 221, 222 and 223, DP 623304, Kurrajong, CSR.
- 8 Lot 1, DP 437699; Lot 4, DP 556534, Kurrajong and Part Portion 106, Parish of Meehan, County of Cook, being land contained in Certificate of Title Volume 6858, Folio 53, East Kurrajong, Schaffer Corporation.

Division 9 Dimensional sandstone quarries of regional significance

- 1 The land covered by Permissive Occupancies Nos 55/113 Gosford, and 88/10 Gosford (Wondabyne), Gosford Quarries.
- 2 The land covered by Permissive Occupancy No 66/91, Gosford (Somersby), Gosford Quarries.
- 3 The land covered by Permissive Occupancy No 54/54, Gosford (Piles Creek), Gosford Quarries.
- 4 Lots 11, 12, 13 and 14, DP 618324, Somersby, Tydds Quarry.
- 5 Lot 1, DP 522099, Somersby, Melocco Quarries.
- 6 The land covered by Permissive Occupancy No 79/104, Gosford (Mount White), Gosford Quarries.
- 7 The land shown edged heavy black on the map marked “*Sydney Regional Environmental Plan No 9—Extractive Industry (No 2) (Amendment No 1)*” held in the head office of the Department of Urban Affairs and Planning, Mount White, Central Coast (Sandstone).
- 8 The land covered by Special Lease 1988/2 Gosford, (Somersby), Sandstones of Australia.
- 9 The land covered by Special Lease 1973/7 (Lot 173, DP 755246), Quarry Road, Somersby, Gosford Quarries.

Schedule 2

(Clauses 2, 7, 8, 9, 11, 13, 18)

- 1 The land identified on Sheet 8 of the map as Maroota sand and clay/shale.

Schedule 3

(Clauses 2, 20)

- 1 The Macdonald River from its confluence with the Hawkesbury River and for its entire length within the Hawkesbury local government area, being land comprising the bank or bed of the river and the land within 40 metres of the river (being 40 metres measured horizontally from the top of the bank of that river).
- 2 The Colo River from its confluence with the Hawkesbury River and for its entire length within the Hawkesbury local government area, being land comprising the bank or bed of the river and the land within 40 metres of the river (being 40 metres measured horizontally from the top of the bank

of that river).

- 3 The Hawkesbury and Nepean Rivers, downstream of the Wallacia Bridge, comprising the bank or bed of the river and the land within 10 metres of the river (being 10 metres measured horizontally from the top of the bank of that river), but excluding:

- (a) land identified in Division 5 of Schedule 1, and

- (b) land to which *Sydney Regional Environmental Plan No 11—Penrith Lakes Scheme* applies.

Schedule 4

(Clauses 3, 5, 7)

Baulkham Hills	Hornsby
Blacktown	Liverpool
Camden	Parramatta
Campbelltown	Penrith
Fairfield	Sutherland Shire
Gosford	Warringah
Hawkesbury	Wollondilly
Holroyd	Wyong

Schedule 5

(Clauses 5, 8, 10, 12, 18)

- 1 The land identified on Sheet 7 of the map as Wrights and Wellums Creeks sand, clay and peat.
- 2 The land identified on Sheet 9 of the map as Richmond Lowlands sand/gravel.