

Penrith Local Environmental Plan No 188 (1989 EPI 2)

[1989-2]



New South Wales

Status Information

Currency of version

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Provisions in force

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

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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1 Name of plan

This plan may be cited as *Penrith Local Environmental Plan No 188*.

1A Relationship to **Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation)**

In the event of an inconsistency between this plan and *Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation)*, that plan shall prevail to the extent of the inconsistency.

2 Aims, objectives etc

The aims of this plan are:

- (a) to introduce a flexible planning framework for the staged development of the South Penrith Release Area, having regard to its special characteristics and potential for the evolution of a self-contained community with its own identity,
- (b) to assist the process of management of the establishment of a new urban community,
- (c) to enable the council to prepare development control plans to introduce more detailed provisions relating to:
 - (i) development, conservation and community objectives,
 - (ii) urban form, structure and functioning, and land use arrangement,
 - (iii) staging of development and infrastructure provision,
 - (iv) the equitable distribution of costs of infrastructure required for the total area, and
 - (v) the overall management of urban development in a manner which assists community development, and
- (d) to promote the managed production of residential allotments and support services in relation to local and metropolitan markets, while retaining the flexibility to adapt to

changing market preferences.

3 Land to which plan applies

- (1) Except as provided by subclause (2), this plan applies to the land within the City of Penrith as shown edged heavy black on the map.
- (2) This plan does not apply to that land, marked “Deferred Matter” on the map referred to in subclause (1), which has been excluded from the application of this plan pursuant to section 70 (4) of the *Environmental Planning and Assessment Act 1979*.
- (3) This plan does not apply to the land to which the following instruments apply:

Penrith Local Environmental Plan 1998 (Urban Land).

4 Relationship to other environmental planning instruments

- (1) *Interim Development Order No 93—Penrith* is amended in the manner set out in subclause (2).
- (2) *Interim Development Order No 93—Penrith* is amended by inserting at the end of clause 1A the following words:

Land shown edged heavy black on the map marked “*Penrith Local Environmental Plan No 188*” deposited in the office of the council.

5 Adoption of Model Provisions

The *Environmental Planning and Assessment Model Provisions 1980* except for:

- (a) the definitions of **health care professional, map** and **professional consulting rooms** and **residential flat building** in clause 4 (1), and
 - (b) clauses 15, 17, 19, 20, 21, 22, 26, 27, 28, 29, 32 and 33,
- are adopted for the purposes of this plan.

6 Definitions

- (1) In this plan:

appointed day means the day on and from which this plan takes effect.

bush regeneration means the rehabilitation of native vegetation from a weed-infested or other degraded plant community to a healthy community composed of native species:

- (a) by natural regeneration, (which relies on natural germination and resprouting of plants and focuses on weed removal, management of disturbance and the maintenance of natural processes and does not normally include replanting of

vegetation), or

- (b) by assisted regeneration (which includes intervention actions such as site replanting with locally indigenous seed or plant material derived from the locality, or other similar plant communities to that occurring on the site, or controlled management of disturbance), or
- (c) by both natural regeneration or assisted regeneration.

bushfire hazard reduction means a reduction or modification (by controlled burning or by mechanical or manual means) of material that constitutes a bushfire hazard.

community signage means signs providing directional, educative or community information, but does not include any form of commercial advertising.

council means the Council of the City of Penrith.

dual occupancy means development that results in two dwellings (whether attached or detached) on a single allotment of land (or which would have that result were it not for the fact that the allotment is to be subdivided as part of the development), however that development is described or provided for in an environmental planning instrument.

health care consulting rooms means a dwelling-house used by not more than 3 health care professionals for the purpose of providing health care services only to outpatients of those health care consulting rooms, and who employ not more than 3 employees in connection with such health care services.

health care professional means a person who provides traditional or complementary professional health care services to members of the public.

health care services means services ordinarily provided by a health care professional to members of the public, but does not include any procedures such as x-rays, ultrasounds, cat scans, radiography or pathology tests or the like.

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

- (a) feed lots,
- (b) piggeries,
- (c) poultry farms,
- (d) animal boarding or training establishments, and

(e) any similar purposes,

but does not include the keeping of livestock or poultry intended solely for personal consumption or enjoyment by the owner or occupier of the building or place.

multi-unit housing means a building or buildings containing three or more dwellings and includes forms of residential buildings commonly known as apartments, boarding houses, cluster housing, integrated housing, residential flat buildings, serviced apartments, row houses, terrace houses, townhouses, villas and the like.

native vegetation means any of the following types of indigenous vegetation:

- (a) a tree,
- (b) a shrub,
- (c) understorey plants,
- (d) groundcover,
- (e) plants occurring in a wetland.

plant community means a group of organisms living together in a definable region or habitat defined by the vegetation.

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 showground.

the map means the map marked "*Penrith Local Environmental Plan No 188*", as amended by the maps marked as follows:

Editorial note—

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

Penrith Local Environmental Plan No 188 (Amendment No 1)

Penrith Local Environmental Plan No 188 (Amendment No 3)

Penrith Local Environmental Plan No 188 (Amendment No 4)

Penrith Local Environmental Plan No 188 (Amendment No 5)

(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.

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 below in relation to that zone:

Zone No 2 (Urban Zone)—edged black and lettered “2”

Zone No 2r (Rural Residential)—edged black and lettered 2r

Zone No 2r1 (Rural Residential)—edged black and lettered 2r1

Zone No 7 (a) (Environmental Protection Zone)—edged black and lettered 7 (a)

9 Zone objectives and development control table

- (1) The objectives of a zone are set out in the Table to this clause under the heading “Objectives of zone” appearing in the matter relating to the zone.
- (2) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause, the purposes (if any) for which:
 - (a) development may be carried out without development consent,
 - (b) development may be carried out only with development consent, and
 - (c) development is prohibited,

are specified under the headings “Without development consent”, “Only with development consent” and “Prohibited”, respectively, appearing in the matter relating to the zone.

- (3) Except as otherwise provided by this plan, the council shall not grant consent to the carrying out of development on land to which this plan applies unless the council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Table

Zone No 2 (Urban Zone)

1 Objectives of zone

The objectives of this zone are:

- (a) to provide a flexible framework for the promotion of growth and development in the South Penrith Urban Release Area,
- (b) to enable the council to provide more detailed guidelines about preferred land use distribution and development issues in a development control plan, and
- (c) to ensure that development is carried out in a manner which achieves appropriate provision of or funding for major infrastructure works that are a necessary prerequisite for urban development generally in the area.

2 Without development consent

Dwelling-houses on allotments of land (being allotments of not less than 400m²) created by a subdivision for that purpose, where development consent in respect of that subdivision has been given under this plan.

3 Only with development consent

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

4 Prohibited

Extractive industries; industries other than home industries or light industries; institutions; intensive livestock keeping; junk yards; mines.

Zone No 2r (Rural Residential Zone)

1 Objectives of zone

The objectives of this zone are:

- (a) to conserve the open, semi-rural character of The Northern Road and Mulgoa Road frontages of Glenmore Park, and
- (b) to protect and promote a low density settlement pattern which:

- (i) recognises the importance of conserving the semi-rural land use pattern and the appearance of the approaches to the urban areas of the City of Penrith when viewed from major roads, and
- (ii) provides sufficient flexibility for dwelling siting and orientation of allotments to minimise the visual impact of development and overcome noise constraints, and
- (c) to prohibit the establishment of activities of a retail or commercial nature along The Northern Road or Mulgoa Road frontages of Glenmore Park.

2 Without development consent

Dwelling-houses.

3 Only with development consent

Agriculture; home industries; home occupations; roads; utility installations.

4 Prohibited

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

Zone No 2r1 (Rural Residential Zone)

1 Objectives of zone are

The objectives of this zone are:

- (a) to provide a transition between the open, semi-rural character of The Northern Road frontage and urban areas of Glenmore Park, and
- (b) to protect and promote a low density settlement pattern which:
 - (i) recognises the importance of conserving the semi-rural land use pattern within the vicinity of The Northern Road, and
 - (ii) provide sufficient flexibility for dwelling siting and orientation of allotments to minimise the visual impact of development and overcome noise constraints.

2 Without development consent

Dwelling-houses.

3 Only with development consent

Home industries; home occupations; roads; utility installations.

4 Prohibited

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

Zone No 7 (a) (Environmental Protection Zone)

1 Objectives of zone

The objectives of this zone are:

- (a) to reserve land for the protection and preservation of native vegetation and places of natural ecological significance, and
- (b) to ensure that places of Aboriginal significance are conserved, and
- (c) to improve the condition of existing native vegetation and encourage the revegetation and rehabilitation of land with appropriate native vegetation management, and
- (d) to maintain flora and fauna corridors between remnant areas of native vegetation, and
- (e) to allow for low impact passive recreational and ancillary land uses that are consistent with the retention of the natural ecological significance.

2 Without development consent

Bushfire hazard reduction; bush regeneration.

3 Only with development consent

Cycleways or pedestrian pathways; community signage; drainage; purposes specifically permitted by a plan of management for the land prepared pursuant to the [Local Government Act 1993](#), which are under the care, control and management of the Council.

4 Prohibited

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

Part 3 Special provisions

10 Subdivision

A person shall not subdivide land to which this plan applies, except with the consent of the council.

10A Subdivision of land within Zone No 2r—generally

- (1) The Council must not consent to the subdivision of land within Zone No 2r unless each allotment to be created has an area of not less than 4,000 square metres and the number of allotments does not exceed one for each hectare of the land being subdivided.
- (2) The council must not consent to the subdivision of land within Zone No 2r unless:
 - (a) arrangements have been made with the Water Board that are satisfactory to that Board for the provision of a sewerage system if it is proposed by the applicant to connect to the Water Board's reticulated sewerage system instead of making provision for disposing of effluent on-site, and

- (b) arrangements have been made with the Water Board that are satisfactory to that Board for the provision of a reticulated water service to all allotments to be created by the subdivision, and
- (c) vehicular access to all of those allotments, other than allotments which have both existing vehicular access and frontage to Bradley Street, Mulgoa Road or The Northern Road, is provided by a road other than Bradley Street, Mulgoa Road and The Northern Road, and
- (d) the council is satisfied that the size of each of those allotments is adequate having regard to stormwater drainage and sewerage disposal and the desirability of retaining the semi-rural character of the neighbourhood.

10B Subdivision for purpose of dwelling-houses in Zone No 2r—noise levels

Despite any other provision of this plan, the council must not consent to the subdivision of land within Zone No 2r for the purpose of dwelling-houses unless it has been demonstrated to the satisfaction of the council that the maximum noise level, as measured one metre from the outside wall of each proposed dwelling-house, will not exceed 60dB(a) Leq (24 hour) during day-time or 55dB(a) Leq (8 hour) during night-time (night-time meaning between 10 pm and 6 am on the following day).

10C Erection of dwelling-houses within Zone No 2r

- (1) Dwelling-houses may be erected without consent on allotments of land within Zone No 2r created by a subdivision for which consent has been granted if the development application stated that the subdivision was for the purpose of those dwelling-houses.
- (2) Dwelling-houses must not be erected on land within Zone No 2r without consent in all other cases.

10D Subdivision of land within Zone No 2r1

The Council must not consent to the subdivision of land within Zone No 2r1 unless:

- (a) each allotment to be created has an area of not less than 4,000 square metres, and
- (b) it can be demonstrated to the Council's satisfaction that arrangements have been made with the relevant public authority that are satisfactory to that authority for the provision of reticulated water to, the removal of waste water from and the provision of electricity to each allotment.

11 Advertised development to which section 79A of the Act applies

- (1) Development of land that is inconsistent with any development control plan applying to the land is identified as advertised development for the purposes of the Act.
- (2) Subclause (1) does not apply so as to identify the residential development of land in

Zone No 2 (Urban Zone) that is shown hatched on the map if that development involves the erection of a garage on a side lot boundary and that boundary abuts an adjoining residential lot.

12 Land use arrangement

- (1) Subject to this clause, the council shall not consent to any development on land to which this plan applies unless the type and location of development is generally in accordance with any development control plan applying to the land.
- (2) Notwithstanding subclause (1), the council may consent to development which is not in accordance with a development control plan where it is of the opinion that the development otherwise satisfies the objectives of that plan.
- (3) Where a development application is made in respect of land to which a development control plan having the effect of controlling the type and location of development does not apply, in determining the application the council:
 - (a) shall have regard to the provisions of any general development control plan applying to the land, and
 - (b) may have regard to any overall plan for development of an area, including the land, prepared by or on behalf of the applicant.

13 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, any covenant, agreement or instrument imposing restrictions on the carrying out of 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 interests of any statutory authority under any registered instrument.

14 Roads, drainage, recreation areas and parking

- (1) Nothing in this plan shall prevent the council from, or require the council to obtain its own consent for, the carrying out of development on land to which this plan applies for the purposes of roads, stormwater drainage, recreation areas, landscaping, gardening, bushfire hazard reduction, parking, utility installations, flood mitigation works or amenity buildings.
- (2) 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 or a public authority for the purpose of road construction.

15 Integrated housing development

- (1) Integrated housing development may, with the consent of the council, be carried out on land to which this plan applies.
- (2) The council shall not consent to integrated housing development on land to which this plan applies unless it is satisfied that:
 - (a) each proposed allotment has an area of 232 square metres or more, and
 - (b) the development makes adequate provision with respect to the privacy of each proposed dwelling-house, and
 - (c) the development makes adequate provision with respect to access to natural light for each proposed dwelling-house, and
 - (d) the floor space ratio of each proposed dwelling-house will not exceed 0.5:1.
- (3) In this clause:

floor space ratio means the ratio of the total gross floor area of a dwelling-house to the site area of land on which the dwelling-house is proposed to be erected.

integrated housing development means development that consists of:

- (a) the subdivision of land into 2 or more allotments, and
- (b) the erection of a single dwelling-house on each of the allotments created by that subdivision.

16 Site controls for dwellings in Zone No 2 (Urban Zone)

- (1) The council must not consent to the erection of a dwelling on land in Zone No 2 (Urban Zone) that is shown hatched on the map unless:
 - (a) a rear building setback of 4 metres minimum is achieved—in the case of a single storey dwelling, and
 - (b) a rear building setback of 6 metres minimum is achieved—in the case of a two-storey dwelling, and
 - (c) a restriction on the use of the land is created that specifies:
 - (i) the rear building setbacks referred to in paragraphs (a) and (b), and
 - (ii) the resultant area of the lot on which a dwelling may be erected, and
 - (d) all the provisions of section 6.20 (Glenmore Park Eastern Hamlets) of Part 6 (Site and Area Specific Controls) of *Penrith Development Control Plan 2006* (as adopted by the council on 21 August 2006) are complied with.

(2) In this clause:

storey means a floor or level of a building which may be intersected by the same vertical line, not being a line which passes through any wall of the building.