

State Environmental Planning Policy (Penrith Lakes Scheme) 1989 (1986 EPI 18)

[1986-18]



New South Wales

Status Information

Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Previously named**
Sydney Regional Environmental Plan No 11—Penrith Lakes Scheme
- **Does not include amendments by**
[State Environmental Planning Policy Amendment \(Repeal of Operational SEPPs\) 2019 \(659\)](#) (not commenced — to commence on 1.2.2020)
- **See also**
[Planning Legislation Amendment Bill 2019](#)
- **Deemed SEPP**
From 1 July 2009 this plan is taken to be a State environmental planning policy (see clause 120 of Schedule 6 to the [Environmental Planning and Assessment Act 1979](#)).

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](#).

File last modified 15 January 2020

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State Environmental Planning Policy (Penrith Lakes Scheme) 1989 (1986 EPI 18)



New South Wales

Part 1 Preliminary

1 Name of Policy

This Policy is *State Environmental Planning Policy (Penrith Lakes Scheme) 1989*.

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.

3B Amendment of the structure plan

- (1) The Minister may from time to time amend the structure plan, but only in relation to—
 - (a) the size and shape of a lake or lakes, or
 - (b) the proposed route of the road to replace Castlereagh Road.
- (2) The Minister may only amend the structure plan in accordance with subclause (1)(a) if—
 - (a) the proposed size and shape of the lake or lakes is generally in accordance with the structure plan before its amendment, or
 - (b) the Minister is of the opinion that the proposed size and shape is in the public interest and will not significantly reduce the public enjoyment or use of the Penrith Lakes Scheme on completion.
- (3) An amendment of the structure plan may not extend the land to which this Policy applies.

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.
- (4) *State Environmental Planning Policy No 1—Development Standards* does not apply to

land to which this Policy applies.

5 Definitions

- (1) In this Policy, except in so far as the context or subject-matter otherwise indicates or requires—

agriculture has the meaning ascribed to it in section 514A of the [Local Government Act 1919](#).

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 recurrence 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*.

Penrith Lakes Scheme means the scheme described in Schedule 1.

the Act means the [Environmental Planning and Assessment Act 1979](#).

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.

Note—

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Policy.

- (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.

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 relevant instrument within the meaning of section 13.4 of the *Crown Land Management Act 2016*, 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 7.1 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.

Part 2 Development control

7 Development generally

A person shall not carry out development on land to which this Policy applies except development authorised by or under this Policy.

8 Development for the purposes of implementing the Penrith Lakes Scheme

(1) Development for the purposes of implementing the Penrith Lakes Scheme may, with development consent, be carried out on land to which this Policy applies.

(2) The consent authority shall grant consent to development to which this clause applies unless—

(a) the consent authority is of the opinion that the development the subject of the application—

(i) does not fully implement the Penrith Lakes Scheme on the land to which the application for development relates,

(ii) will not ensure the satisfactory implementation of the Penrith Lakes Scheme, or

(iii) is not generally in accordance with the structure plan, and

(b) in the case of an application to carry out development which includes an extractive industry, the consent authority is of the opinion that—

(i) development should not be carried out until other land to which this Policy applies is developed for purposes which include an extractive industry,

- (ii) the land, the subject of the application, will not be rehabilitated and reconstructed—
 - (A) generally in accordance with the structure plan, or
 - (B) to ensure the satisfactory implementation of the Penrith Lakes Scheme, or
 - (iii) the person (including any person related, connected or otherwise associated to or with that person) proposing to carry out that development has not complied with the conditions of a consent previously granted to carry out development which included an extractive industry in respect of other land to which this Policy applies.
- (3) The consent authority shall not consent to the carrying out of development for the purposes of implementing the Penrith Lakes Scheme unless the person making the application has submitted a statement of the environmental effects of the proposed development containing the matters specified in clause 1 of Schedule 2 and addressing the matters specified in clause 2 of that Schedule.
- (4) In determining an application to carry out development to implement the Penrith Lakes Scheme, the consent authority shall take into consideration the following matters—
- (a) the Penrith Lakes Scheme Regional Environmental Study,
 - (b) the recommendations, if any, of such technical working parties as may be established from time to time by the consent authority,
 - (c) the statement of environmental effects accompanying the application,
 - (d) the proposed sequence of extraction and rehabilitation,
 - (e) whether the land is to be dedicated to the Crown and, if not, the proposed control and management of the land,
 - (f) the management and control of water resources including—
 - (i) the source of water in order to fill any lake (including the quality and quantity of water from that source),
 - (ii) water reticulation systems from the Nepean River to any lake, from lake to lake and from any lake to the Nepean River,
 - (iii) the water quality of any lake (including the aquatic ecosystem),
 - (iv) water treatment facilities,
 - (v) water depth of any lake,

- (vi) flood control,
 - (vii) storm water control,
 - (viii) the effect that development would have upon the quantity and quality of the existing groundwater, the level of the existing water table and groundwater movement,
 - (ix) lake usage,
 - (x) staged development of the lakes and their usage during stage development,
 - (xi) the need to monitor the water quality of the lakes having regard to their intended use, and
 - (xii) the effect upon the Hawkesbury/Nepean River system,
- (g) the rehabilitation and reconstruction of the land including—
- (i) landscape design,
 - (ii) the structural stability and soil compaction of landforms (including, where appropriate, the land shown on the structure plan as future urban),
 - (iii) the stability and impermeability of the Nepean River embankment,
 - (iv) soil conservation, and
 - (v) revegetation,
- (h) access to, the supply of water from any existing source to, and the supply of and access to municipal and utility services to, land to which this Policy applies, other than that part of that land the subject of the application,
- (i) any item of the environmental heritage listed in Schedule 3,
- (j) the effect upon a locality, place or building not listed in Schedule 3 having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations, and
- (k) the need and frequency to monitor the implementation of the subject development.
- (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.

9 Interim development on unzoned land

(1) Development may be carried out on unzoned land—

- (a) for the purpose of agriculture, without the necessity for development consent, or
- (b) for any other purpose, with development consent, if the consent authority is satisfied that the carrying out of development for that purpose will not adversely affect the implementation of the Penrith Lakes Scheme,

pending the completion of the Penrith Lakes Scheme in, and the use as a public recreational lake system of, that part of the land.

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).

10, 11 (Repealed)

11A Development for the purposes of a community facility

- (1) Nothing in this Policy prevents a person, with the Minister's consent, from carrying out subdivision and other development, for the purposes of a community facility, on Lots 2 and 4 DP 579006 Cranebrook Road, Cranebrook, as shown edged heavy black on the map marked "*Sydney Regional Environmental Plan No 11—Penrith Lakes Scheme (Amendment No 5)*".
- (2) When determining an application to carry out subdivision or other development for the purposes of a community facility, the consent authority must take into consideration the implementation of the Penrith Lakes Scheme and the structure plan.

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.

17A Exceptions to development standards

- (1) The objectives of this clause are as follows—
- (a) to provide an appropriate degree of flexibility in applying certain development standards to development on land to which this Policy applies,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

- (4) Development consent must not be granted for development that contravenes a development standard unless—
- (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land zoned Residential if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least 1 lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for land on which such a building is situated,
 - (c) clause 25(1).

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; Dual occupancies; 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 Planning 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 Planning 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 Planning 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 Planning 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 Planning Secretary may prepare a development control plan for zoned land in accordance with Division 3.6 of the Act. 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 Planning Secretary as being appropriate for the Scheme,

- (b) (Repealed)
- (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 Planning 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 Planning 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 38.

- (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) (Repealed)
- (3) Development consent must not be granted for development on land zoned Residential for the purposes of a dual occupancy unless the consent authority is satisfied that—
- (a) the size of the lot is not less than 2 hectares, and
 - (b) the dual occupancy will be erected on an area of land on the lot that is above the level of the probable maximum flood (based on the natural surface level and not a level achieved by filling).

Note—

Clause 33 provides for development on land that is at or below the flood planning level.

- (4) In this clause—

probable maximum flood 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.

Note—

The probable maximum flood is the largest flood that could conceivably occur at a particular location, usually estimated from probable maximum precipitation.

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 Planning 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) (Repealed)

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 Planning 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 Planning 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 7.1 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.

Schedule 1 Penrith Lakes Scheme

(Clause 5)

The Penrith Lakes Scheme is the creation of a regional recreational lake system as shown on the structure plan for the benefit of the public as a result of—

- (a) the staged optimum extraction of sand and gravel reserves,
- (b) the staged rehabilitation, reconstruction and landscaping of the land, and
- (c) the staged formation of a series of interconnected lakes,

and includes the identification of land for possible future urban purposes as a result of the work referred to in paragraphs (a) and (b).

Schedule 2 Matters to be included in the statement of environmental

effects

(Clause 8)

- 1 The following matters—
 - (a) justification of the proposed development in the context of *State Environmental Planning Policy (Penrith Lakes Scheme) 1989*,
 - (b) a full description of the proposed development,
 - (c) a statement of the objectives of the proposed development,
 - (d) a full description of the existing environment likely to be affected by the proposed development if carried out,
 - (e) identification and analysis of the likely environmental interactions between the proposed development and the environment,
 - (f) analysis of the likely environmental impacts or consequences of carrying out the proposed development (including implications for use and conservation of energy),
 - (g) justification of the proposed development in terms of environmental, economic and social considerations,
 - (h) measures to be taken in conjunction with the proposed development to protect the environment and an assessment of the likely effectiveness of those measures,
 - (i) energy requirements of the proposed development,
 - (j) any feasible alternatives to the carrying out of the proposed development and the reasons for choosing the latter, and
 - (k) the consequences of not carrying out the proposed development.
- 2 In addition to the matters listed in clause 1, particular regard must be given to the following matters—
 - (a) relationship and extent of the proposed development to the completed scheme,
 - (b) where appropriate, the integration of the proposed development with development previously carried out,
 - (c) the sequence of extraction and rehabilitation where the proposed development is for or includes an extractive industry,
 - (d) unless the land is to be dedicated to the Crown, the proposed control and management of the land,
 - (e) the management and control of water resources including—
 - (i) the source of water in order to fill any lake (including the quality and quantity of water from that source),

- (ii) water reticulation systems from the Nepean River to any lake, from lake to lake and from any lake to the Nepean River,
 - (iii) the water quality of any lake (including the aquatic ecosystem),
 - (iv) water treatment facilities,
 - (v) water depth of any lake,
 - (vi) flood control,
 - (vii) storm water control,
 - (viii) the effect that development would have upon the quantity and quality of the existing groundwater as well as the level of the existing groundwater table,
 - (ix) lake usage,
 - (x) staged development of the lakes and their usage during staged development,
 - (xi) the need to monitor the water quality of the lakes having regard to their intended use, and
 - (xii) the effect upon the Hawkesbury/Nepean River system,
- (f) the rehabilitation and reconstruction of the land including—
- (i) landscape design,
 - (ii) the structural stability and soil compaction of landforms (including, where appropriate, the land shown on the structure plan as future urban),
 - (iii) the stability and impermeability of the Nepean River embankment,
 - (iv) soil conservation, and
 - (v) revegetation,
- (g) any effect upon a locality, place or building not listed in Schedule 3 having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations,
- (h) measures to be taken to conserve and preserve items of environmental heritage listed in Schedule 3 including, where appropriate, a conservation plan, and
- (i) access to, the supply of water from any existing service to, and the supply of and access to municipal and utility services to, land to which this Policy applies other than that part of that land the subject of the application.

Schedule 3 Items of the environmental heritage

(Clause 28)

Hadley Park, lots 1 and 2, MPS (OS) 8807, Parish of Castlereagh, County of Cumberland (shown as Heritage Item No 1 on the structure plan).

Nepean Park, part portion 48, Parish of Castlereagh, County of Cumberland (shown as Heritage Item No 2 on the structure plan).

McCarthy's Cemetery, part portion 82, Parish of Castlereagh, County of Cumberland (shown as Heritage Item No 3 on the structure plan).

Upper Castlereagh Methodist Church and Hall, part portion 71, Parish of Castlereagh, County of Cumberland (shown as Heritage Item No 4 on the structure plan).

Upper Castlereagh School and Residence, part portion 54, Parish of Castlereagh, County of Cumberland (shown as Heritage Item No 5 on the structure plan). *Permanent Conservation Order No 339* under the [Heritage Act 1977](#), applies to Upper Castlereagh School.

Methodist Cemetery, part portion 71, Parish of Castlereagh, County of Cumberland (shown as Heritage Item No 6 on the structure plan).