

# Lithgow City Local Environmental Plan 1994

[1994-626]



New South Wales

## Status Information

### Currency of version

Historical version for 11 December 2020 to 3 March 2022 (accessed 18 July 2024 at 5:50)

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**  
Greater Lithgow Local Environmental Plan 1994

### 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 11 December 2020

# Lithgow City Local Environmental Plan 1994



New South Wales

## Contents

<b>Part 1 Introduction</b> .....	5
1 Name of Plan .....	5
1A References to Greater Lithgow Local Environmental Plan 1994 .....	5
2 Aims of the Plan.....	5
3 Where this Plan applies .....	6
4 How this Plan affects other plans .....	6
4A Covenants, agreements, etc .....	6
5 Adoption of Model Provisions .....	7
6 Definitions .....	7
7 Who determines development applications.....	14
<b>Part 2 Development control by zoning</b> .....	14
8 Zones shown on the map .....	14
9 Zone objectives and development control.....	14
<b>Part 3 Special provisions</b> .....	25
10 Subdivision of land generally.....	25
11 General considerations for development in rural zones .....	25
12 Subdivision in Zone No 1 (a).....	26
12A Subdivision in Zone No 1 (e) .....	26
13 Subdivision for other purposes in Zone No 1 (a) or 1 (e).....	26
14 Subdivision for residential purposes in Zone No 1 (c).....	27
15 Development in Zone No 1 (d) .....	27
16 Subdivision in the Village Zone .....	28

17	Erection of a dwelling in Zone No 1 (a).....	28
17A	Dwelling entitlements on existing concessional lots .....	28
18	Erection of a dwelling in Zone No 1 (c).....	29
18A	Erection of a dwelling in Zone No 1 (e) .....	29
19	Dual occupancy development .....	29
20	Temporary accommodation for workers in Zone No 1 (a) or 1 (e) .....	30
21	Notification of certain development and development in Residential and Village Zones .....	30
22	Residential development in the Business Zone .....	30
23	Demolition control in the Business Zone .....	30
24	Consideration of development in the Open Space Zone.....	30
25	Acquisition of Open Space.....	30
26	Development along arterial roads .....	31
27	Access .....	31
28	Environmentally sensitive land.....	31
29	Flood liable land .....	32
30	Land subject to bushfire hazards.....	32
30A	Development within the hydrological catchment comprising intensive plant growing.....	32
31	Minor variations to zoning boundaries.....	32
32	Temporary use of land .....	33
33	Community use of schools.....	33
34	Existing dwellings on unsubdivided land .....	33
35	Bed and breakfast establishments .....	34
36	Land shown uncoloured.....	34
37	Contaminated land .....	34
38	Clubs on open space land.....	34
38A	(Repealed).....	34
38B	Exceptions to development standards .....	34
38C	Demolition requires development consent.....	36
38D	Temporary use of land.....	36
38E	Conversion of fire alarms.....	37
38F	Standards that cannot be used to refuse consent—playing and performing music .....	38
<b>Part 4 Heritage provisions</b> .....		<b>38</b>
39	Heritage objectives.....	38

40 Heritage items .....	39
41 Development in the vicinity of heritage items .....	39
42 Development of known or potential archaeological sites .....	39
43 Conservation incentives .....	40
44 Home occupation (sex services), restricted premises and sex services premises .....	40
<b>Schedule 1 Heritage items .....</b>	<b>41</b>
<b>Schedule 2 Development requiring notification .....</b>	<b>45</b>

# Lithgow City Local Environmental Plan 1994



New South Wales

## Part 1 Introduction

### 1 Name of Plan

This Plan is called *Lithgow City Local Environmental Plan 1994*.

#### 1A References to **Greater Lithgow Local Environmental Plan 1994**

A reference in any environmental planning instrument to *Greater Lithgow Local Environmental Plan 1994* is taken to be a reference to *Lithgow City Local Environmental Plan 1994*, whether the instrument was made before or after the commencement of *Greater Lithgow Local Environmental Plan 1994 (Amendment No 9)*.

### 2 Aims of the Plan

This Plan aims—

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
- (a) to recognise and promote the City of Lithgow as a desirable and viable place in which to live and to visit and invest,
- (b) to encourage the proper management, development and conservation of natural resources and the built environment within the City of Lithgow by protecting, enhancing or conserving—
  - (i) prime crop and pasture land,
  - (ii) timber, minerals, soil, water quality, stream environment and other natural resources,
  - (iii) places of significance for nature or heritage conservation,
  - (iv) places or features of high scenic or recreational value, and
- (c) to replace the former local planning controls with a comprehensive local environmental plan to help facilitate growth and development of the City of Lithgow in

a manner which is consistent with the aims specified in paragraph (a) and which—

- (i) minimises the environmental cost to the community of fragmented and isolated development of rural land which has less than full provision of services,
- (ii) facilitates the efficient and effective provision of amenities and services,
- (iii) facilitates a range of residential and employment opportunities in accordance with demand,
- (iv) facilitates farm adjustments,
- (v) ensures that the safety and efficiency of arterial roads is not adversely affected by development on adjacent land,
- (vi) minimises the impact of flooding and bushfires,
- (vii) encourages the separation of conflicting land uses,
- (viii) establishes measures to preserve water quality in the City's streams and waterways, and
- (ix) facilitates the protection of the catchment areas within and downstream of the City area in accordance with the principles of total catchment management.

### **3 Where this Plan applies**

This Plan applies to all land in the City of Lithgow.

### **4 How this Plan affects other plans**

This Plan repeals *Interim Development Order No 1—City of Greater Lithgow* and *Interim Development Order No 1—Shire of Blaxland* to the extent that they applied to the land to which this Plan applies.

#### **4A Covenants, agreements, etc**

- (1) If any agreement, covenant or similar instrument prohibits a use of land allowed by this Plan, then that agreement does not apply to that use to the extent necessary to allow that use.
- (2) Nothing in subclause (1) affects the rights or interests under any registered instrument of the Council or any other public authority.
- (3) In accordance with section 28 of the Act, the Governor approved of subclauses (1) and (2) before *Greater Lithgow Local Environmental Plan 1994 (Amendment No 3)* was made.

## 5 Adoption of Model Provisions

This Plan adopts the *Environmental Planning and Assessment Model Provisions 1980* except for the definitions of **agriculture**, **arterial road**, **child care centre**, **church**, **educational establishment**, **map**, **recreation facility**, **residential flat building** and **rural worker's dwelling** in clause 4 (1), and clauses 15, 17, 18, 19, 29 and 34.

The adopted provisions apply as well as the provisions of this Plan.

## 6 Definitions

(1) In this Plan—

**abattoir** means a building or place used for the slaughter of animals or for the processing of animal carcasses or by-products.

**agriculture** means the use of land for the grazing of livestock, the production of annual crops or the keeping or breeding of livestock, including bees (but does not include the use of land for an intensive livestock keeping establishment).

**alter**, in relation to a heritage item or to a building or work within a heritage conservation area, means—

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

**animal boarding or training establishment** means a place used for the commercial boarding, breeding, keeping or training of animals, and includes a riding school.

**aquaculture** means cultivation (including propagation and rearing) of the living resources of the sea and inland waters, whether or not that cultivation is carried out in a farm established for that purpose using an artificially created body of water.

**arterial road** means the Great Western Highway, Bells Line of Road or Mudgee Road, as shown on the Map, and includes realignments as they occur.

**bed and breakfast** means a dwelling-house used by its permanent residents for the provision of short term accommodation for commercial purposes, which may include meals.

**brothel** has the same meaning as in the Act.

**building** has the same meaning as in the Act.

**Note—**

The term is defined to include part of a building and any structure or part of a structure, but not including a manufactured home, a moveable dwelling or associated structure (or part of a manufactured home, moveable dwelling or associated structure).

**bulky goods salesroom or showroom** means a building or place used primarily for the sale by retail or auction, the hire or the display of items (whether goods or materials) which are of such size, shape or weight as to require—

- (a) a large area for handling, storage or display, or
  - (b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading items into their vehicles after purchase or hire,
- but does not include a building or place used for the sale of foodstuffs or clothing.

**child care centre** means a building or place used for the supervision and care of children that—

- (a) provides long day care, pre-school care, occasional child care or out-of-school-hours care, and
  - (b) does not provide overnight accommodation for children other than those related to the owner or operator of the centre,
- but does not include—
- (c) a building or place used for home-based child care, or
  - (d) an out-of-home care service provided by an agency or organisation accredited by the NSW Office of the Children’s Guardian, or
  - (e) a baby-sitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or
  - (f) a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised, or
  - (g) a regular child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium), by or on behalf of the person conducting the facility, to care for children while the children’s parents are using the facility, or
  - (h) a service that is concerned primarily with the provision of—
    - (i) lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or
    - (ii) private tutoring, or



- (i) a school, or
- (j) a service provided at exempt premises (within the meaning of Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*), such as hospitals, but only if the service is established, registered or licensed as part of the institution operating on those premises.

**conservation plan** means a document establishing the significance of a heritage item and identifying the policies that are appropriate to enable that significance to be retained in its future use and development.

**Council** means the Council of the City of Lithgow.

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

**destruction**, in relation to a tree, means the ringbarking, cutting down, felling, poisoning, topping, lopping, removing or injuring of a tree.

**entertainment facility** means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub, nightclub or registered club.

**environmentally sensitive land** means land shown diagonally hatched with blue lines on the Map.

**existing holding** means—

- (a) except as provided by paragraph (b), the area of a lot, portion or parcel of land as it was as at the date of gazettal of this Plan,
- (b) if, as at the date of gazettal of this Plan, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land, the combined area of these lots, portions or parcels as they were on that date.

**flood liable land** means land identified by the Council as being inundated by the 1% AEP Flood event and shown edged heavy black on the map marked “*Flood Liable Land Map*”.

**heritage item** means a building, work, relic, tree or place described in Schedule 1.

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

**home-based child care** means a dwelling used by a resident of the dwelling for the supervision and care of one or more children and that satisfies the following conditions—

- (a) the service is appropriately licensed within the meaning of the *Children and Young*

*Persons (Care and Protection) Act 1998,*

- (b) the number of children (including children related to the carer or licensee) does not at any one time exceed 7 children under the age of 12 years, including no more than 5 who do not ordinarily attend school.

**home business** means a business, whether or not involving the sale of items online, carried on in a dwelling, or in a building ancillary to a dwelling, by 1 or more permanent residents of the dwelling and not involving the following—

- (a) the employment of more than 2 persons other than the residents,
- (b) interference with the amenity of the neighbourhood because of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise,
- (c) the exposure to view, from adjacent premises or from a public place, of unsightly matter,
- (d) the exhibition of signage, other than a business identification sign,
- (e) the retail sale of, or the exposure or offer for retail sale of, items, whether goods or materials, not produced at the dwelling or building, other than by online retailing,

but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises.

**home occupation (sex services)** means the provision of sex services in a dwelling that is a brothel, or in a building that is a brothel and is ancillary to such a dwelling, by no more than 2 permanent residents of the dwelling and that does not involve—

- (a) the employment of persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, traffic generation or otherwise, or
- (c) the exhibition of any notice, advertisement or sign, or
- (d) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail,

but does not include a home business or sex services premises.

**hotel or motel accommodation** means tourist and visitor accommodation (whether or not licensed premises under the *Liquor Act 1982*)—

- (a) comprising rooms or self-contained suites, and

(b) that may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

**intensive livestock keeping establishment** means a building or place in which or on which cattle, sheep, goats, poultry or other livestock are held for the purpose 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, and

(d) fish farms (including places at which crustaceans or oysters are farmed),

but does not include an animal boarding or training establishment or land used for the keeping of livestock or poultry intended solely for personal consumption or enjoyment by the owner or occupier of the land.

**maintenance**, in relation to a heritage item, means the continuous protective care of the existing detail, fabric, finish or appearance of the outside of the heritage item.

**nightclub** means premises specified in a nightclub licence under the [Liquor Act 1982](#).

**place of public worship** means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

**prime crop and pasture land** means land within an area identified, on a map prepared by or on behalf of the Director-General of the Department of Agriculture deposited in the office of the Council, as Class 1, Class 2 or Class 3 or as land of merit for special agricultural uses, but does not include land which the Director-General has notified the Council in writing is not prime crop and pasture land for the purposes of this Plan.

**pub** means licensed premises under the [Liquor Act 1982](#) the principal purpose of which is the sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold on the premises.

**recreation area** means—

(a) a children's playground,

- (b) an area for sporting activities or sporting facilities, including ancillary buildings for the purpose of supporting 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) a public authority, or
  - (ii) a body of persons associated for the purpose of promoting the physical, cultural or intellectual welfare of persons within the community,but does not include a racecourse or showground.

**recreation facility (indoor)** means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

**recreation facility (major)** means a building or place used for large-scale sporting or recreation activities that are attended by large numbers of people whether regularly or periodically, and includes sports stadiums, showgrounds, racecourses and motor racing tracks.

**recreation facility (outdoor)** means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

**registered club** means a club in respect of which a certificate of registration under the [Registered Clubs Act 1976](#) is in force.

**relic** means any deposit, object or material evidence relating to—

- (a) the use or settlement of the area, not being Aboriginal settlement, which is more than 50 years old, and
- (b) Aboriginal habitation of the area both prior to and concurrent with its occupation by persons of European extraction, including human remains.

**residential units** means three or more dwellings, whether attached or detached, on

an allotment of land.

**restricted premises** means business premises or retail premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises, but does not include hotel or motel accommodation, a pub, home occupation (sex services) or sex services premises.

**school** means a government school or non-government school within the meaning of the [Education Act 1990](#).

**sex services** means sexual acts or sexual services in exchange for payment.

**sex services premises** means a brothel, but does not include home occupation (sex services).

**the Map** means the map consisting of 6 sheets marked “*Greater Lithgow Local Environmental Plan 1994*” as amended by the maps (or, if sheets are specified, by the sheets of the maps) marked as follows—

**Editorial note—**

The amending maps are not necessarily listed in the order of gazettal or publication on the NSW legislation website. Information about the order of gazettal or publication can be determined by referring to the Historical notes at the end of the Plan.

*Greater Lithgow Local Environmental Plan 1994 (Amendment No 1)*

*Greater Lithgow Local Environmental Plan 1994 (Amendment No 2)*

*Greater Lithgow Local Environmental Plan 1994 (Amendment No 5)*

*Greater Lithgow Local Environmental Plan 1994 (Amendment No 7)*

*Greater Lithgow Local Environmental Plan 1994 (Amendment No 8)*

*Greater Lithgow Local Environmental Plan 1994 (Amendment No 9)*

*Lithgow City Local Environmental Plan 1994 (Amendment No 12)—Sheet 1*

**tree** includes a sapling and a shrub.

**vacant land** means land on which no building is erected, except fences.

**veterinary clinic** means a building or place used for diagnosing or surgically or medically treating animals, whether or not the animals are kept on the premises for treatment.

(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, and

(b) a reference to a map is a reference to a map deposited in the office of the Council.

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

## **7 Who determines development applications**

The Council of the City of Lithgow is the consent authority for development permitted only with the development consent by this Plan.

## **Part 2 Development control by zoning**

### **8 Zones shown on the map**

Land is within a zone described below if it is shown on the Map as being within the zone—

Zone No 1 (a)—Rural (General)

Zone No 1 (c)—Rural (Small holdings)

Zone No 1 (d)—Rural (Future urban)

Zone No 1 (e)—Outer Rural

Zone No 1 (f)—Rural (Forestry)

Zone No 2 (a)—Residential

Zone No 2 (v)—Village

Zone No 3—Business

Zone No 4—Industrial

Zone No 6—Open space

Zone No 8—National Parks and Nature Reserves

### **9 Zone objectives and development control**

(1) Set out below for each zone are—

(a) the objectives of the zone,

(b) the development that may be carried out without development consent,

(c) the development that may be carried out only with development consent, and

(d) the development that is prohibited.

(2) The Council must not grant consent to development unless it is of the opinion that such development is consistent with the objectives for the zone in which it is proposed to be carried out.

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

### **1 Objective of the zone**

The objective of the zone is to promote the proper management and utilisation of natural resources by—

- (a) protecting, enhancing and conserving—
  - (i) rural land, in particular prime crop and pasture land, in a manner which sustains its efficient and effective agricultural production potential,
  - (ii) soil, by controlling and locating development in accordance with soil capability,
  - (iii) forests of existing and potential commercial value for timber production,
  - (iv) valuable deposits of minerals, coal and extractive materials, by controlling the location of development for other purposes in order to ensure the efficient extraction of those deposits,
  - (v) trees and other vegetation in environmentally sensitive areas, where the conservation of the vegetation is significant for scenic amenity or natural wildlife habitat or is likely to control land degradation,
  - (vi) water resources for use in the public interest, preventing the pollution of water supply catchment and major water storages,
  - (vii) localities of significance for nature conservation, including places with rare plants, wetlands and significant wildlife habitat, and
  - (viii) items of heritage significance,
- (b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture,
- (c) facilitating farm adjustments,
- (d) minimising the cost to the community of—
  - (i) fragmented and isolated development of rural land, and
  - (ii) providing, extending and maintaining public amenities and services,

(e) providing land for other non-agricultural purposes, in accordance with the need for that development, and

(f) providing for the separation of conflicting land uses.

## **2 Without development consent**

Development for the purpose of agriculture (other than intensive livestock keeping establishments or ancillary dwellings); bushfire hazard reduction; forestry (other than ancillary dwellings); home-based child care.

## **3 Only with development consent**

Any development except that permitted without consent or prohibited.

## **4 Prohibited**

Development for the purpose of boarding houses; bulky goods salesrooms or showrooms; commercial premises; home occupation (sex services); motor showrooms; residential units; restricted premises; sex services premises; shops (other than general stores).

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

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

The objectives of the zone—

- (a) to allow development of land for rural small holdings if the land is identified as suitable for that purpose,
- (b) to ensure that allotments created for rural small holdings are of an area and subject to arrangements that—
  - (i) enable the provision of an adequate water supply,
  - (ii) enable effective disposal of domestic waste,
  - (iii) minimise the creation of traffic hazards,
  - (iv) do not contribute to pollution of water supply catchments, and
  - (v) do not impact unfavourably on water quality within the Nepean-Hawkesbury River System,
- (c) to ensure that development is carried out in a way that is sensitive to the environmental characteristics of the land,



- (d) to minimise the cost to the community of providing, extending and maintaining public amenities and services,
- (e) to ensure that rural small holdings development does not prejudice the interests of agricultural producers in the vicinity, and
- (f) to allow development for a range of purposes which are compatible with the environmental capabilities of the land and which are unlikely to adversely affect land or other development in the vicinity or create unscheduled demands for service infrastructure.

## **2 Without development consent**

Development for the purpose of agriculture (other than ancillary dwellings); single dwellings, where—

- (a) a sewer is available, or
- (b) the Council is satisfied by a geotechnical or water balance assessment (or both) that disposal of domestic waste water within the boundaries of the allotment is feasible.

## **3 Only with development consent**

Any development except that permitted without consent or prohibited.

## **4 Prohibited**

Development for the purpose of abattoirs; animal boarding or training establishments; bulk stores; car repair stations; commercial premises; extractive industries; home occupation (sex services); industries (other than home industries and light industries); intensive livestock keeping establishments; junk yards; motor showrooms; offensive or hazardous industries; residential units; restricted premises; sex services premises; shops (other than general stores).

## **Zone No 1 (d) Rural (Future urban)**

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

The objectives of the zone are—

- (a) to identify land for future urban purposes,
- (b) to enable interim development which will not compromise eventual urban development,

- (c) to ensure effective disposal of solid and liquid waste,
- (d) to maintain the rural appearance of the future urban lands of Lithgow, while awaiting urban development, and
- (e) to ensure that development does not create unreasonable or uneconomic demands for the provision or extension of public amenities or services.

## **2 Without development consent**

Development for the purpose of agriculture (other than intensive livestock keeping establishments or animal boarding or training establishments); bushfire hazard reduction; home-based child care.

## **3 Only with development consent**

Any development except that permitted without consent or prohibited.

## **4 Prohibited**

Development for the purpose of abattoirs; animal boarding or training establishments; bulk stores; car repair stations; commercial premises; extractive industries; home occupation (sex services); intensive livestock keeping establishments; junk yards; mines; motor showrooms; offensive or hazardous industries; residential units; restricted premises; sex services premises; shops.

## **Zone No 1 (e) Outer Rural**

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

The objective of this zone is to promote the proper management and utilisation of resources by—

- (a) protecting, enhancing and conserving—
  - (i) agricultural land in a manner that sustains its efficient and effective agricultural production potential, and
  - (ii) soil stability, by controlling and locating development in accordance with land capability, and
  - (iii) forests of existing and potential commercial value for timber production, and

- (iv) valuable deposits of minerals, coal, petroleum and extractive materials, by controlling the location of development in order to ensure the efficient extraction of those deposits, and
  - (v) trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is likely to control land degradation or is significant to scenic amenity or the natural wildlife habitat, and
  - (vi) water resources, including groundwater, for use in the public interest, by preventing the pollution of water supply catchments and water storage, and
  - (vii) areas of significance for nature conservation, including areas with rare plants, wetlands and significant habitats, and
  - (viii) items of archaeological or heritage significance, including Aboriginal relics and places, and
- (b) preventing unjustified development of prime crop and pasture land otherwise than for the purpose of agriculture, and
  - (c) facilitating farm adjustments, and
  - (d) minimising the cost to the community of—
    - (i) fragmented and isolated development of rural land, and
    - (ii) providing, extending and maintaining public amenities and services, and
  - (e) providing land for non-agricultural purposes, in accordance with the need for that development, and
  - (f) providing for the separation of conflicting land uses.

## **2 Without development consent**

Development for the purpose of agriculture (other than intensive livestock keeping establishments or ancillary dwellings); bushfire hazard reduction; forestry (other than ancillary dwellings); home-based child care.

## **3 Only with development consent**

Any development except that permitted without consent or prohibited.

#### **4 Prohibited**

Development for the purpose of boarding-houses; bulky goods salesrooms or showrooms; commercial premises; home occupation (sex services); motor showrooms; residential units; restricted premises; sex services premises; shops (other than general stores).

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

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

The objectives of the zone are—

- (a) to identify land managed by the Forestry Commission under the *Forestry Act 1916*,
- (b) to preserve existing forests within the City of Lithgow, while allowing compatible development, and
- (c) to prevent pollution of water supply catchments and water quality in major water storages.

#### **2 Without development consent**

Development for any purpose authorised by the Forestry Commission under the *Forestry Act 1916*.

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

Development for the purpose of extractive industries; mining; veterinary clinics.

#### **4 Prohibited**

Any development except that permitted without consent or only with consent.

### **Zone 2 (a) Residential**

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

The objectives of the zone are—

- (a) to provide for housing and associated development, where such development is feasible,
- (b) to allow a variety of housing types,

(c) to ensure that development does not create unreasonable demands for the provision or extension of public amenities or services, and

(d) to allow other uses in the zone which are compatible with housing.

## **2 Without development consent**

Development for the purpose of single dwelling-houses on serviced allotments; home-based child care.

## **3 Only with development consent**

Any development except that permitted without consent or prohibited.

## **4 Prohibited**

Development for the purpose of abattoirs; animal boarding or training establishments; bulk stores; extractive industries; forestry; generating works; heliports; home occupation (sex services); industries (other than home or light industries); intensive livestock keeping establishments; junk yards; liquid fuel depots; mines; motor showrooms; offensive or hazardous industries; restricted premises; sawmills; sex services premises; shops (other than general stores); stock and sale yards; timber yards; transport terminals; veterinary clinics; warehouses.

## **Zone No 2 (v) Village**

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

The objectives of the zone are—

(a) to promote development which is compatible with an urban function within a rural area,

(b) to maintain the rural atmosphere of the village,

(c) to safeguard residential amenity within the village, and

(d) to prevent pollution of water supply catchments and water quality in major water storages.

### **2 Without development consent**

Development for the purpose of single dwellings, where—

(a) a sewer is available, or

- (b) the Council is satisfied by a geotechnical assessment that disposal of domestic waste water within the boundaries of the allotment is feasible.

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

Any development except that permitted without consent or prohibited.

### **4 Prohibited**

Development for the purpose of extractive industries; home occupation (sex services); intensive livestock keeping establishments; junk yards; mines; offensive or hazardous industries; sex services premises.

## **Zone No 3 Business**

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

The objectives of the zone are—

- (a) to encourage a range of retail and commercial uses within the central business district,
- (b) to encourage high density residential development in conjunction with business development, and
- (c) to accommodate retail, commercial and allied services within the City.

### **2 Without development consent**

Nil.

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

Any development except that prohibited.

### **4 Prohibited**

Development for the purpose of abattoirs; animal boarding or training establishments; extractive industries; forestry; generating works; heliports; home occupation (sex services); industries (other than home or light industries); intensive livestock keeping establishments; junk yards; liquid fuel depots; mines; offensive or hazardous industries; sawmills; sex services premises; stock and sale yards; transport terminals; warehouses.

## **Zone No 4 Industrial**

## **1 Objectives of the zone**

The objectives of the zone are—

- (a) to designate sufficient land for industrial uses,
- (b) to allow a wide range of industrial activities which by the nature of their operation may require a large portion of the activities to be comprised of commercial, office or shop purposes in conjunction with industry, and
- (c) to allow appropriate bulky goods retailing.

## **2 Without development consent**

Nil.

## **3 Only with development consent**

Development for the purpose of bulky goods salesrooms or showrooms; commercial premises; home occupation (sex services); restricted premises; sex services premises; shops operated in conjunction with other development permitted within this zone or which, in the opinion of the Council, primarily serves the daily convenience needs of the workforce in the locality; any other development except that prohibited.

## **4 Prohibited**

Development for the purpose of caravan parks, dwelling-houses (other than those used in conjunction with development permissible in this zone); offensive or hazardous industries; residential units (other than those used in conjunction with development permissible in this zone); shops (other than those described in item 3).

## **Zone No 6 Open space**

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

The objectives of the zone are—

- (a) to identify land which is owned, controlled or managed by the Council, is proposed for open space or public recreational purposes or is privately owned and used for recreational purposes,
- (b) to maximise the value of community land and promote its multiple use to satisfy the diverse recreational needs of the community,

- (c) to enable development, including clubs, only if associated with, ancillary to, or supportive of recreational uses,
- (d) to offer opportunities for recreational pursuits within residential neighbourhoods,
- (e) to provide opportunities to enhance the total environment of Lithgow,
- (f) to retain significant features and ensure that the visual impact is not unnecessarily reduced,
- (g) to ensure that water quality is maintained in watercourses and wetlands, and
- (h) to maintain or enhance the ecological biodiversity of watercourses and wetlands.

## **2 Without development consent**

Development for the purpose of landscaping; gardening and bushfire hazard control.

## **3 Only with development consent**

Development for the purpose of community facilities; drainage; racecourses; recreation areas; refreshment rooms; roads; showgrounds; sportsgrounds; utility installations (other than gas holders and generating works).

## **4 Prohibited**

Development except that permitted without consent or permitted only with consent.

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

## **1 Objectives of the zone**

The objectives of the zone are—

- (a) to identify land managed by the National Parks and Wildlife Service, and
- (b) to preserve existing natural areas, aboriginal sites and historic sites, while allowing compatible development.

## **2 Without development consent**

Development authorised to be carried out by the National Parks and Wildlife



Service under the *National Parks and Wildlife Act 1974*.

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

Nil.

### **4 Prohibited**

Any development except that permitted without development consent.

## **Part 3 Special provisions**

### **10 Subdivision of land generally**

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

### **11 General considerations for development in rural zones**

- (1) Before determining a development application relating to land within Zone No 1 (a), 1 (c) or 1 (e), the Council must take into consideration the effect that the proposed development would have on—
  - (a) the present use of the land, and the potential for sustained agricultural production of so much (if any) of the land as is prime crop and pasture land,
  - (b) vegetation, timber production, land capability and water resources (including the quality of the water, stability of water courses, ground water storage and riparian rights),
  - (c) the future recovery from known or prospective areas of valuable deposits of minerals, coal, petroleum, sand, gravel or other extractive materials,
  - (d) the protection of areas of nature conservation significance or of high scenic or recreational value, and of items of heritage significance,
  - (e) the cost of providing, extending and maintaining public amenities and services,
  - (f) development on adjoining land and on other land in the locality, including any cumulative impact, and
  - (g) the future expansion of settlements in the locality.
- (2) These considerations do not apply to proposed development which is—
  - (a) an addition to a building or work,
  - (b) ancillary to a purpose for which development may be carried out with the permission of the Council under this Plan, or

- (c) the erection of a dwelling-house on an allotment of land that the Council is satisfied was created in accordance with this Plan for a dwelling.

## **12 Subdivision in Zone No 1 (a)**

- (1) **General restriction** The Council may consent to a subdivision of land within Zone No 1 (a) in accordance with subclause (2). Such a consent can be granted only if the land to be subdivided does not comprise the whole or any part of an allotment or portion of land previously subdivided in accordance with a consent granted after the commencement of this plan. However, a further subdivision under subclause (2) may be permitted to a parcel of land notwithstanding that a previous subdivision has been approved under that subclause.
- (2) **Creation of “40 hectare allotments”** The Council may consent to a subdivision of land within Zone No 1 (a) if each allotment to be created by the subdivision will have an area of not less than 40 hectares.
- (3)–(5) (Repealed)
- (6) **Exception for subdivisions to allow agriculture** Nothing in this clause prevents the Council from granting consent to the creation of an allotment of vacant land of any area if the Council is satisfied that the allotment will be used for the purpose of agriculture. The Council may decline to grant consent pursuant to this subclause if it has not been satisfied that agricultural production will be viable on any proposed allotment that will have an area of less than 40 hectares.

### **Note—**

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

## **12A Subdivision in Zone No 1 (e)**

The Council must not grant development consent for the subdivision of land within Zone No 1 (e) unless each lot to be created by the subdivision will have an area of at least 100 hectares.

## **13 Subdivision for other purposes in Zone No 1 (a) or 1 (e)**

- (1) The Council may consent to the subdivision of land within Zone No 1 (a) or 1 (e) that the Council is satisfied will be used primarily for purposes other than agriculture or a dwelling-house only if the Council is satisfied that—
- (a) the land is not prime crop and pasture land, and
  - (b) the area of each allotment to be created by the subdivision is appropriate having regard to the purpose for which the Council considers it is being created.
- (2) Despite subclause (1), the Council may consent to the subdivision of such land to

create an allotment if it is satisfied that—

- (a) the proposed allotment will be used for the purpose of supplying goods or services for which there is a demand,
- (b) no other land in the locality could reasonably be used for that purpose, and
- (c) the level of demand for the goods or services and the extent of the use justifies the creation of the allotment regardless of its agricultural value.

#### **14 Subdivision for residential purposes in Zone No 1 (c)**

- (1) The Council may consent to the subdivision of land within Zone No 1 (c) for the purpose of a dwelling if it is satisfied that—
  - (a) each allotment to be created will have an area of not less than 1 hectare,
  - (b) after the subdivision, the average area of the allotments that have been and will be created from the existing holding concerned by all subdivisions, including all allotments created since 8 May 1992 and those effected in accordance with this clause will be not less than 2 hectares,
  - (c) a geotechnical survey indicates the capacity of the land for septic disposal of effluent within the boundaries of each allotment or a water balance assessment indicates that effluent can be disposed of within the boundaries of each allotment using domestic aerated sewerage or similar treatment,
  - (d) the land capability is classified as predominantly Class I to V, inclusive, as defined on maps prepared by the Department of Conservation and Land Management and deposited in the office of the Council,
  - (e) appropriate measures will be undertaken to prevent pollution of water catchment areas from each allotment,
  - (f) appropriate measures will be taken to control soil erosion and stormwater flows across each allotment or onto adjoining land,
  - (g) the subdivision is so arranged that the number of new vehicular access points to main roads is minimised,
  - (h) adequate measures will be taken, in relation to each allotment, for the provision of a water supply, power supply, access and disposal of domestic waste water, and
  - (i) development on each allotment is unlikely to be exposed to significant risks from natural hazards, or to increase those risks to other land.

#### **15 Development in Zone No 1 (d)**

- (1) The Council may consent to the subdivision of land in Zone No 1 (d) to create

allotments it is satisfied will be used for the purposes of a dwelling only if each allotment has an area of not less than 10 hectares.

- (2) In determining any application for consent to development in Zone No 1 (d), the Council must consider—
- (a) the strategic implications of the development on likely future land use patterns,
  - (b) the relationship to surrounding uses,
  - (c) provision for the effective disposal of solid and liquid waste, and
  - (d) the availability of suitably zoned land elsewhere in the City.

#### **16 Subdivision in the Village Zone**

- (1) All new lots in Zone No 2 (v), are to be 2,000 square meters or greater in area, where sewer is unavailable.
- (2) The Council must not consent to subdivision of land in Zone No 2 (v) unless it has considered a geotechnical survey indicating the capacity of the land for disposal of effluent within the boundaries of each allotment or a water balance assessment indicating that effluent can be disposed of within the boundaries of each allotment using domestic aerated sewerage or similar treatment.

#### **17 Erection of a dwelling in Zone No 1 (a)**

The Council may consent to the erection of a dwelling on land within Zone No 1 (a) which is—

- (a) 40 hectares or more in area, or
- (b) the whole of an existing holding, or
- (c) an allotment less than 40 hectares in area created under clause 12 (6) provided that the agricultural use of the land has been established and the Council is satisfied that the agricultural use requires the residential occupation of the site, or
- (d) (Repealed)
- (e) an allotment created by a subdivision consented to or approved by the Council prior to the gazettal of this Plan, being an allotment on which a dwelling could have been lawfully erected or consented to immediately before that gazettal, but only if any requirements relating to use or occupation of the dwelling are complied with.

#### **17A Dwelling entitlements on existing concessional lots**

The amendment of this Plan by the [State Environmental Planning Policy \(Rural Lands\) 2008](#) does not affect any entitlement arising under a provision of this Plan (as in force

before that amendment) to erect a dwelling-house on a lot, if—

- (a) the lot was created before that commencement, or
- (b) development consent to the creation of the lot was applied for, or granted, before that commencement.

### **18 Erection of a dwelling in Zone No 1 (c)**

The Council may consent to the erection of a dwelling on a separate, existing parcel of land in Zone No 1 (c), provided that the land is greater than one hectare in area and that the parcel meets the requirements for an allotment created by a subdivision of land within that zone after the commencement of this Plan.

### **18A Erection of a dwelling in Zone No 1 (e)**

The Council must not consent to the erection of a dwelling on vacant land within Zone No 1 (e) unless the land has an area of at least 100 hectares.

### **19 Dual occupancy development**

- (1) In this clause, **dual occupancy** means development which would result in two dwellings but no more on an allotment of land.
- (2) The Council may consent to dual occupancy on land which a dwelling-house may be erected.
- (3) The Council may consent to dual occupancy on land within Zone No 1 (a), 1 (c), 1 (d) or 1 (e), provided that—
  - (a) a dwelling may be or has been lawfully erected on the land,
  - (b) the proposed development will not interfere substantially with the prime purpose for which the land is intended to be used,
  - (c) a single or no additional access to a public road is required from the land, and
  - (d) the effective disposal of domestic waste water is achievable within the boundaries of the land.
- (4) The Council may consent to dual occupancy on land within Zone No 2 (a) or sewerage land within Zone No 2 (v), provided that—
  - (a) where the development will result in the creation of 2 attached dwellings—the area of the allotment on which the dwellings are or will be created is not less than 400 square metres, or
  - (b) where the development will result in the erection of 2 dwelling-houses—the area of the allotment on which the dwellings are or will be erected is not less than 600 square metres.

## **20 Temporary accommodation for workers in Zone No 1 (a) or 1 (e)**

The Council may consent to temporary accommodation being erected on land within Zone No 1 (a) or 1 (e) for workers engaged in major construction projects, notwithstanding any other provision in this Plan.

## **21 Notification of certain development and development in Residential and Village Zones**

(1) If the Council receives an application for consent to the carrying out of—

- (a) development specified in Schedule 2, or
- (b) development on land within Zone No 2 (a) or 2 (v),

the Council must notify owners of the land adjoining the land the subject of the application (and any other person the Council considers to be affected by the proposed development), and must allow the persons notified a minimum of 14 days to comment before the Council determines the application.

(2) However, this clause does not apply to designated development.

## **22 Residential development in the Business Zone**

Residential development in Zone No 3 is permitted with the consent of the Council provided that the main street frontage of the site is so designed and constructed that any residential premises at ground level on that frontage may be readily adapted for business usage.

## **23 Demolition control in the Business Zone**

Demolition of buildings in Zone No 3 requires consent from the Council. Consent is not required where an Order has been served under the [Local Government Act 1993](#) requiring demolition of the building.

## **24 Consideration of development in the Open Space Zone**

Before granting consent for development of land in Zone No 6, the Council must consider—

- (a) the need for the proposed development on that land,
- (b) the impact of the proposed development on the existing or likely future use of the land, and
- (c) the need to retain the land for its existing or likely future use.

## **25 Acquisition of Open Space**

The owner of any land within Zone No 6 may by notice in writing require the Council to acquire that land. On receipt of any such notice, the Council must acquire the land to

which the notice relates.

## **26 Development along arterial roads**

- (1) Development on land fronting an arterial road must not be carried out unless—
  - (a) direct access to that land is provided from a road other than the arterial road, wherever practicable, and
  - (b) in the opinion of the Council, the safety and efficiency of the arterial road will not be adversely affected by—
    - (i) the design of the access to the proposed development,
    - (ii) the emission of smoke or dust from the proposed development, or
    - (iii) the nature, volume or frequency of vehicles using the arterial road to gain access to the proposed development.

## **27 Access**

A person, other than the Council, must not construct a road which has access to a public road except with the consent of the Council.

## **28 Environmentally sensitive land**

- (1) A person must not carry out development on environmentally sensitive land for the purposes of—
  - (a) hazardous storage establishments,
  - (b) intensive livestock keeping establishments,
  - (c) junk yards,
  - (d) liquid fuel depots,
  - (e) offensive or hazardous industries,
  - (f) sawmills, or
  - (g) stock and sale yards.
- (2) A person must not cause the destruction of trees on environmentally sensitive land except with the consent of the Council.
- (3) The Council must not grant consent to the destruction of trees on any such land unless the Council has considered—
  - (a) the risk of soil erosion or other land degradation on that and adjacent land,

(b) the loss of scenic amenity, and

(c) the loss of important vegetation systems and natural wildlife habitats.

(4) However, a person may prune trees or allow stock to feed off trees in drought times without the consent of the Council.

### **29 Flood liable land**

(1) A person must not erect a building or carry out a work on flood liable land except with the consent of the Council.

(2) This clause does not apply to minor extensions to single dwelling-houses where the total area of such extensions carried out since the date of gazettal of this Plan is less than 30 square metres.

### **30 Land subject to bushfire hazards**

The Council must not consent to the subdivision of land or to the erection of a building on land which, in the opinion of the Council, is subject to bushfire hazards unless—

(a) adequate provision is made for access for fire fighting vehicles,

(b) adequate safeguards are adopted in the form of fire breaks, reserves and fire radiation zones, and

(c) adequate water supplies are available for fire fighting purposes.

### **30A Development within the hydrological catchment comprising intensive plant growing**

(1) This clause applies to the Sydney drinking water catchment within the meaning of *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*.

(2) The objective of this clause is to ensure that development with the potential to adversely impact on water quality in the Sydney drinking water catchment requires development consent.

(3) For the purposes of this clause, **intensive plant growing** on land means market gardening, fungi growing, fruit growing, flower growing, viticulture or the like for commercial purposes, but does not include growing field crops (such as wheat, oats, oilseed or legumes) or any species of plant for pastures.

(4) Despite clause 9 or any other provision of this plan, the consent of the Council is required for development that comprises intensive plant growing.

### **31 Minor variations to zoning boundaries**

(1) This clause applies to land which is within 50 metres of a boundary between any 2 zones or of a boundary between a zone and environmentally sensitive land.



- (2) Subject to subclause (3), development may, with the consent of the Council, be carried out on land to which this clause applies for any purpose for which development may be carried out in the adjoining zone on the other side of the boundary, or on the environmentally sensitive land on the other side of the boundary.
- (3) The Council shall not consent to the carrying out of development referred to in subclause (2) unless, in the opinion of the Council, the carrying out of the development is desirable due to planning, design, ownership, servicing, or similar requirements relating to the optimum development of land to which this Plan applies or for minimising land degradation.
- (4) This clause does not apply to certain land northwest of Kirkley Street, South Bowenfels, as shown edged heavy black on the map marked "*Greater Lithgow Local Environmental Plan 1994 (Amendment No 9)*".

### **32 Temporary use of land**

The Council may consent to the carrying out on any land, for a maximum period of 28 days whether consecutive or not in any 12 month period, of development otherwise prohibited on that land.

### **33 Community use of schools**

The Council may consent to the community use of schools, colleges and other educational establishments, whether or not the use is ancillary to use of the land for those purposes or is of a commercial nature.

### **34 Existing dwellings on unsubdivided land**

- (1) This clause applies to the following land—
  - (a) Doctors Gap, being the land in Part Portions 86 and 130, Parish Lett, County Cook,
  - (b) East Corney Town, being the land in Part Portion 100, Parish Lett, County Cook and Lot 12, DP 239627,
  - (c) State Mine Gully, being the land in Portion 93 and 102, Parish Marrangaroo, County Cook,
  - (d) Windy Gully, being the land in DP 312780, including land to the north and Part Portion 5, Parish Cullen Bullen, County Roxburgh.
- (2) Notwithstanding any other provision of this Plan, land to which this clause applies may be subdivided into allotments of any size provided that—
  - (a) each lot created contains one or more existing dwellings,
  - (b) the Council is satisfied that domestic waste water can be disposed of within the boundaries of each allotment,

(c) satisfactory access to public roads is provided, minimising access to main roads, and

(d) likely future development is not prejudiced by the subdivision.

### **35 Bed and breakfast establishments**

Development for the purpose of bed and breakfast is prohibited unless the dwelling-house in which it is carried out—

(a) is connected to a reticulated sewerage system, or

(b) is located on an allotment on which the Council is satisfied by a geotechnical or water balance assessment that disposal of waste water within the boundaries of the allotment is feasible.

### **36 Land shown uncoloured**

Notwithstanding any other provision of this Plan, the Council may consent to development of land shown uncoloured on the Map for a purpose which is permissible on land adjoining that land.

### **37 Contaminated land**

Notwithstanding any other provision of this Plan, the Council may consent to development of land that the Environment Protection Authority has advised the Council is contaminated or potentially contaminated only if the development includes measures to deal with the remediation of the land.

### **38 Clubs on open space land**

(1) This clause applies to the following land while the land is being used for private recreational purposes—

(a) Lithgow Bowling Club, being the land in DP 332058 and Lot 1, DP 557641,

(b) Lithgow Greyhound Racing Association land, being Part DP 327930.

(2) Notwithstanding any other provision of this Plan, the Council may consent to development for the purpose of clubs on land to which this clause applies.

### **38A (Repealed)**

### **38B 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 particular development,

- (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 in Zone No 1 (a)—Rural (General), Zone No 1 (c)—Rural (Small holdings), Zone No 1 (d)—Rural (Future urban), Zone No 1 (e)—Outer Rural or Zone No 1 (f)—Rural

(Forestry) 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 one 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 the land on which such a building is situated.

### **38C Demolition requires development consent**

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

**Note—**

If the demolition of a building or work is identified in an applicable environmental planning instrument, such as this Plan or [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#), as exempt development, the Act enables it to be carried out without development consent.

### **38D 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 Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 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 Plan and any other applicable environmental planning instrument, and
  - (b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, 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.
- (4) Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.
- (5) Subclause (3)(d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).

### **38E Conversion of fire alarms**

- (1) This clause applies to a fire alarm system that can be monitored by Fire and Rescue NSW or by a private service provider.
- (2) The following development may be carried out, but only with development consent—
- (a) converting a fire alarm system from connection with the alarm monitoring system of Fire and Rescue NSW to connection with the alarm monitoring system of a private service provider,
  - (b) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with the alarm monitoring system of another private service provider,
  - (c) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with a different alarm monitoring system of the same private service provider.
- (3) Development to which subclause (2) applies is complying development if it consists only of—
- (a) internal alterations to a building, or
  - (b) internal alterations to a building together with the mounting of an antenna, and any support structure, on an external wall or roof of a building so as to occupy a space of not more than 450mm × 100mm × 100mm.
- (4) A complying development certificate for any such complying development is subject to a condition that any building work may only be carried out between 7.00 am and 6.00 pm on Monday to Friday and between 7.00 am and 5.00 pm on Saturday, and must not be carried out on a Sunday or a public holiday.
- (5) In this clause—

**private service provider** means a person or body that has entered into an agreement that is in force with Fire and Rescue NSW to monitor fire alarm systems.

**38F Standards that cannot be used to refuse consent—playing and performing music**

- (1) The consent authority must not refuse consent to development in relation to licensed premises on the following grounds—
  - (a) the playing or performance of music, including the following—
    - (i) the genre of music played or performed, or
    - (ii) whether the music played or performed is live or amplified, or
    - (iii) whether the music played or performed is original music, or
    - (iv) the number of musicians or live entertainment acts playing or performing, or
    - (v) the type of instruments played,
  - (b) whether dancing occurs,
  - (c) the presence or use of a dance floor or another area ordinarily used for dancing,
  - (d) the direction in which a stage for players or performers faces,
  - (e) the decoration to be used, including, for example, mirror balls, or lighting used by players or performers.
- (2) The consent authority must not refuse consent to development in relation to licensed premises on the grounds of noise caused by the playing or performance of music, if the consent authority is satisfied the noise may be managed and minimised to an acceptable level.
- (3) In this clause—

**licensed premises** has the same meaning as in the [Liquor Act 2007](#).

## **Part 4 Heritage provisions**

### **39 Heritage objectives**

The heritage objectives of this Plan are—

- (a) to conserve the environmental heritage of the City of Lithgow,
- (b) to better integrate heritage conservation into the planning and development control processes,
- (c) to provide for public involvement in matters relating to the conservation of the area's environmental heritage, and

- (d) to ensure that new development is undertaken in a manner that is sympathetic to, and does not detract from, the heritage significance of heritage items and their settings, as well as streetscapes and landscapes and the distinctive character that they impart to the City of Lithgow.

#### **40 Heritage items**

- (1) In respect of a building, work, place, tree, relic or land that is a heritage item, a person must not, except with the consent of the Council—
  - (a) demolish or alter the building or work,
  - (b) damage, despoil or destroy the place, tree, or relic,
  - (c) erect a building on, or subdivide, the land.
- (2) (Repealed)
- (3) Before granting such a consent, the Council must consider the impact of the development on the heritage significance of the item.

**Note—**

The website of the Heritage Branch of the Department of Planning has publications that provide guidance on assessing the impact of proposed development on the heritage significance of items (for example, *Statements of Heritage Impact*).

- (4) Development consent is not required if the Council considers the proposed development would not adversely affect the heritage significance of the item concerned.
- (5) The Council may decline to determine a development application required by this clause unless it has considered a conservation plan explaining the heritage significance of the item and the impact of the proposed development on the significance of the item and its setting.

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

The Council must not grant consent to development on land in the vicinity of a heritage item unless it has made an assessment of the effect the carrying out of that development will have on the heritage significance of the item and its setting.

#### **42 Development of known or potential archaeological sites**

- (1) The Council may grant consent to development on a known potential archaeological site—
  - (a) that has European heritage significance, only if the Council is satisfied that any necessary excavation permit under the [Heritage Act 1977](#) has been granted, or
  - (b) that is the location of a relic or an Aboriginal place, within the meaning of the

*National Parks and Wildlife Act 1974*, only if the Council—

- (i) is satisfied that any necessary consent or permission under the *National Parks and Wildlife Act 1974* has been granted, and
  - (ii) except where the proposed development is integrated development, has notified the local Aboriginal communities (in such a way as it thinks appropriate) of the development application and take into consideration any comments received in response within 21 days after the notice was sent.
- (2) The Council may decline to determine a development application relating to a known or potential archaeological site unless it has considered an assessment of how the site would be affected by the proposed development and how the site could be conserved.

#### **43 Conservation incentives**

The Council may grant consent to the use, for any purpose, of a building that is a heritage item or the land on which such a building is erected, even if the use is otherwise prohibited by this Plan, if it is satisfied that—

- (a) the proposed use would have little or no adverse effect on the conservation of the building, or on the amenity of the locality in which it is situated, and
- (b) the conservation of the item depends upon the granting of consent.

#### **44 Home occupation (sex services), restricted premises and sex services premises**

- (1) The Council must not consent to development for the purpose of restricted premises on land within Zone No 3 that is within the Lithgow core business district unless the Council is satisfied that—
  - (a) the premises are not located on the same level as Main Street, Lithgow, and
  - (b) the only way to go up or down to the premises from Main Street, Lithgow, is through a doorway entrance.
- (2) The Council must not consent to development for the purpose of restricted premises on land within Zone No 3 but outside the Lithgow core business district or on land within Zone No 2 (v) unless the Council is satisfied—
  - (a) that the land does not adjoin an arterial road, or
  - (b) that, taking the most direct route along the nearest public roads, the premises are at least 80 metres from—
    - (i) any other restricted premises, and
    - (ii) any child care centre, club, entertainment facility, place of public worship, recreation facility (indoor), recreation facility (major), recreation facility



(outdoor) or school.

(3) The Council must not consent to development for the purpose of home occupation (sex services), restricted premises or sex services premises on land within Zone No 4 unless the Council is satisfied—

(a) that the land does not adjoin an arterial road, or

(b) that, taking the most direct route along the nearest public roads, the premises are at least 80 metres from—

(i) any other home occupation (sex services) premises, restricted premises or sex services premises, and

(ii) any child care centre, club, entertainment facility, place of public worship, recreation facility (indoor), recreation facility (major), recreation facility (outdoor) or school.

(4) In this clause—

**club** means a building used by persons associated, or by a body incorporated, for social, literary, political, sporting, athletic or other lawful purposes whether of the same or of a different kind, but does not include a nightclub or registered club.

**Lithgow core business district** means the area in Lithgow surrounding Main Street, between its intersections with Lithgow and Bridge Streets, that is shown hatched on Sheet 2 of the map marked “*Lithgow City Local Environmental Plan 1994 (Amendment No 12)*”.

## Schedule 1 Heritage items

(Clause 6 (1))

Locality	Item
<b>Bowenfels</b>	
Tweed Road	Lithgow Woollen Mill
Main Western Line	Railway Station Group
Evans Place	Methven
Great Western Highway	Coerwull
<b>Clarence</b>	
Main West Line—	Railway items Newnes Junction—Sodwalls
<b>Dark Corner</b>	
Sunny Corner—Capertee Road	General Cemetery

**Glen Davis**

Oil Shale Works and Refinery

**Hampton**

Wicketty War Road

St Thomas's Church

**Hartley**

Great Western Highway

St John Anglican Church

Great Western Highway

Old Roman Catholic Cemetery

Jenolan Caves Road

Grave of Eliza Rodd

Old Bathurst Road

Courthouse

Old Bathurst Road

St Bernard's Roman Catholic Church Group

Old Bathurst Road

Former Royal Hotel

**Hartley Vale**

Gap Road

Blackman and Merrick Family Cemetery

Hartley Vale Road

Lockyers Pass

Hartley Vale Road

Shale Mining and Works Remains

Hartley Vale Road  
(330m south of Collits Inn)

Collits/Mt York Burial Ground

Hartley Vale Road

Collits, formerly Golden Fleece Inn

Mid Hartley Road

Slab Cottage

**Lidsdale**

Mudgee Road

Lidsdale House Gardens

**Lithgow**

Bells Road

Oakey Park Colliery Site

Bennett Street

Eskbank House

Bent Street

Lithgow Valley Colliery and Pottery Site

Bragg Street, 1-13 and 2-12

Houses

Brewery Lane

Former Zig Zag Brewery

Bridge Street

Union Theatre

Bridge Street/Cnr Mort Street

Lithgow Court House

Bridge Street/Cnr Mort Street

Hoskins Memorial Presbyterian Church

Brisbane Street, 1-9 and 2-12

Houses

Coalbrook Street, 8	Hermitage Colliery Managers Residence
Commonwealth Avenue	Staff Cottages, Small Arms Factory
Cooerwull Road	Andrew Brown's Private Cemetery
Eskbank Street/Cnr Main Street	ANZ Bank
Farmers Creek	Lithgow No 2 Dam
Great Western Highway	Cooerwull Presbyterian Church
Great Western Highway	Lithgow Cemetery
Inch Street	Blast Furnace Coke Ovens
Inch Street	Blast Furnace Site
Lithgow Street, 8-24	Houses
Lithgow Valley Reserve	Great Zig Zag
Main Street, 31	Office
Main Street, 156	Bank
Main Street, cnr Eskbank Street	Bank
Mort Street	Lithgow Primary School Residence
Rabaul Street	La Salle College, formerly Cooerwull Academy
Railway Parade	Lithgow Co-operative Society Buildings
State Mine Gully	State Mine Site
<b>Little Hartley</b>	
Cox's River Road	Moyne Farm and Cemetery
Great Western Highway	Ambermere
Great Western Highway	Rosedale
Great Western Highway	Harp of Erin
Great Western Highway	Meades Farm
<b>Lowther</b>	
Jenolan Caves Road	Lowther Park and Cemetery
<b>Marrangaroo</b>	
Great Western Highway	Anglican Church
Main West Line—	Railway Items Newnes Junction—Sodwalls
<b>Meadow Flat</b>	

Mead Street	Cemetery
<b>Megalong Valley</b>	Six Foot Track
<b>Mt Victoria</b>	
Great Western Highway	Victoria Pass (Mitchell's Pass)
<b>Newnes</b>	
Wolgan Road	Newnes Hotel
Wolgan Valley	Coke Ovens
Wolgan Valley	Village
Wolgan Valley	Associated Works
Wolgan Valley	Wolgan Valley Railway
Wolgan Valley	Shale-Oil Refinery Group
<b>Newnes Junction</b>	
Main West Line—	Railway Items Newnes Junction—Sodwalls
Main West Line	Wolgan Valley Railway
<b>Pipers Flat</b>	
Portland Road	Railway Cottage
<b>Portland</b>	
Quarry Road/Williwa Street	Portland Cement Group
<b>Rydal</b>	
Bathurst Street	Railway Station
Cartwright Street	Anglican Church
0.5km north of Town	General Store
Main West Line—	Railway Items Newnes Junction—Sodwalls General Cemetery
<b>Sodwalls</b>	
Main West Line—	Railway Items Newnes Junction—Sodwalls
Sodwalls-Tarana Road	Sodwalls House
<b>South Bowenfels</b>	Presbyterian Church Hall Sessions Hall and Cemetery
Kirkley Street	Airdrie Formerly Presbyterian Manse

Off Kirkley Street	Gun Emplacements
Great Western Highway	Umera Formerly Bowenfels Inn
Great Western Highway	Sweet Briars
Great Western Highway	Somerset House
Great Western Highway	Royal Hotel
Great Western Highway	Former National School
Great Western Highway	Forty Bends Formerly Monte Vista (including graves)
Great Western Highway	Fernhill
Great Western Highway	Emoh Formerly Emu Store (including stone culvert)
Great Western Highway	Ben Avon Formerly Royal Hotel
<b>Sunny Corner</b>	
Dark Corner Road	Sunny Corner General Cemetery
Sunny Corner PO 1km North/East	Sunny Corner Smelter Ruins
<b>Tarana</b>	
Rydal Road	School Residence Formerly School & Residence
<b>Wallerawang</b>	
	Walker/Barton Private Cemetery
Main Street	School and Residence
Main Street	St John the Evangelist Church
Main West Line	Railway Items Newnes Junction—Sodwalls
Portland Road	Willowvale
Wolgan Road	Wolgan Valley Station

## **Schedule 2 Development requiring notification**

(Clause 21)

- 1 Demolition of a building or work that is a heritage item.
- 2 Development for the purpose of boarding-houses, hotels, motels, residential units or tourist facilities.
- 3 Development for the purpose of industries (other than rural industries) in Zone No 1 (a).
- 4 Development for the purpose of abattoirs, hazardous storage establishment, intensive livestock keeping establishments, junk yards, offensive or hazardous industries, sawmills, stock and sale yards.