

Penrith Local Environmental Plan No 201 (Rural Lands) (1991 EPI 364)

[1991-364]



New South Wales

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New South Wales

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Penrith Local Environmental Plan No 201 (Rural Lands) (1991 EPI 364)



New South Wales

Part 1 Preliminary

1 Name of plan

This plan may be cited as *Penrith Local Environmental Plan No 201 (Rural Lands)*.

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

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

2 Aims, objectives etc

- (1) The general aim of this plan is to encourage the property management, development and conservation of valuable natural and man-made resources within the rural lands of the City of Penrith.
- (2) The specific aims of this plan are to protect, enhance or conserve—
 - (a) the rural character and setting of the City of Penrith, and
 - (b) the scenic quality and valuable landscape features of the rural areas, and
 - (c) productive agricultural and horticultural areas, and
 - (d) areas of significance for nature conservation, and
 - (e) minerals, soils, water, creek systems and other natural resources, and
 - (f) areas needed to accommodate Sydney's future growth, and
 - (g) areas needed to accommodate special uses such as public utilities.
- (3) The objectives, policies and strategies of this plan are—

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts, and
- (a) to rationalise the existing planning controls by replacing them with a single up-to-date local environmental plan in a manner which is consistent with the aims specified in subclauses (1) and (2), and
- (b) to provide a framework which will encourage development to observe sound environmental planning principles, and
- (c) to promote rural/residential development where it is consistent with the conservation of the rural, agricultural, heritage and natural landscape qualities, and
- (d) to minimise the cost to the community of fragmented and haphazard development of rural land by ensuring that development does not create unreasonable demands for the provision or extension of public amenities and services now or in the future, and
- (e) to ensure that traffic generating developments are suitably located so that the safety and efficiency of roads is not adversely affected by development on adjacent land, and
- (f) to control development in areas subject to flood hazard.

(4) The particular objectives of each zone are set out in the Table to clause 9.

3 Land to which plan applies

- (1) This plan applies to land within the City of Penrith shown edged heavy black on the map.
- (2) This plan does not apply to land referred to on the map as “deferred matter” or to land to which *Penrith Local Environmental Plan 2002 (Villages of Mulgoa and Wallacia)* applies.

4 Relationship to other environmental planning instruments

- (1) This plan—
 - (a) amends *Interim Development Order No 93—Penrith* in the manner set out in subclause (2), and
 - (b) repeals *Interim Development Order No 54—City of Penrith*, and
 - (c) amends the *Wollondilly Planning Scheme Ordinance* in the manner set out in subclause (3), and
 - (d) amends the *Penrith Planning Scheme Ordinance* in the manner set out in

subclause (4), and

(e) does not affect the operation of State environmental planning policies and does not apply to land to which *State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, Chapter 5 applies, and

(f) repeals *Penrith Local Environmental Plan No 179*.

(2) *Interim Development Order No 93—Penrith* is amended by inserting at the end of clause 1A the following words—

Land shown edged heavy black on the map marked “*Penrith Local Environmental Plan No 201 (Rural Lands)*” deposited in the office of the council.

(3) The *Wollondilly Planning Scheme Ordinance* is amended by inserting at the end of the definition of **Scheme map** in clause 4 the following words—

Penrith Local Environmental Plan No 201 (Rural Lands).

(4) The *Penrith Planning Scheme Ordinance* is amended by inserting at the end of clause 5 (2) the following matter—

Penrith Local Environmental Plan No 201 (Rural Lands).

5 Interpretation

(1) In this plan—

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

appointed day means the day upon which this plan takes effect.

camping ground means an area used for the short-term accommodation of tents but does not include land used to accommodate caravans or mobile homes.

community facility means a building or place used to provide services relating to any one or more of the following—

- (a) a public library,
- (b) public health, welfare or information services,
- (c) rest rooms,
- (d) meeting rooms,

- (e) indoor recreation,
- (f) child minding,
- (g) other community support facilities.

convenience store means a building or place—

- (a) used for the purpose of selling, exposing or offering for sale by retail principally groceries, small goods and associated small items, and
- (b) used in conjunction with the sale by retail of petrol, oil and other petroleum products.

Corporation means the Corporation constituted by Section 8 (1) of the Act.

council means the Council of the City of Penrith.

designated road means Castlereagh Road, Cranebrook Road, Elizabeth Drive, the M4 Motorway, the Great Western Highway, Greendale Road, Londonderry Road, Luddenham Road, Mamre Road, Mulgoa Road, the Northern Road, Park Road, or Richmond Road.

dual occupancy development means development that results in 2 dwellings (whether or not attached) on a single allotment of land.

existing allotment means the area of a lot or portion of land as it was as at the appointed day.

garaging of plant and trucks means storage and maintenance of up to 2 pieces of plant or trucks on a property where the plant or trucks are operated only by the occupier or occupiers of the property.

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

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

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

intensive livestock keeping establishment means a building or place in which or upon 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 farming (including crustaceans),

but does not include an animal boarding, breeding, training or treating 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.

produce store means a building or place used for the sale by retail of grain, stock feed, fertilizer and veterinary medicine.

recreation area means—

- (a) a children’s playground, or
- (b) a building or place used for sporting activities or sporting facilities, or
- (c) a building or place used by the council to provide recreational facilities for the physical, cultural or intellectual welfare of the community, or
- (d) a building or place used by a body of persons associated for the purposes of the physical, cultural or intellectual welfare of the community to provide recreational facilities for those purposes,

but does not include a racecourse.

recreation establishment means a health farm, religious retreat house, rest home, youth hostel, guesthouse or the like, but does not include a building or place elsewhere specifically defined for the purposes of this plan.

road includes a street, lane, highway, pathway and thoroughfare, and any bridge, culvert, causeway, road-ferry, ford, crossing or the like on the line of a road through or over a watercourse.

rural exhibition ground includes a building or place used for exhibition, educational and promotional purposes associated with agricultural, livestock and rural related activities, or minor ancillary retailing and manufacture of agricultural and rural products.

the map means the series of maps marked “*Penrith Local Environmental Plan No 201 (Rural Lands)*”, as amended by the maps (or, if any sheets of maps are specified, by the specified sheets of the maps) marked as follows—

Editorial note—

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

Penrith Local Environmental Plan No 201 (Rural Lands) (Amendment No 3)—Sheets 1-4

Penrith Local Environmental Plan No 201 (Rural Lands) (Amendment No 9)

traffic sensitive land use means a use of land for the purpose of any building, work or place listed in Schedule 3—

- (a) that will involve direct vehicular access between that land and a designated road, or
- (b) where the land has a common boundary with a designated road.

(2) In this plan—

- (a) a reference to a map is a reference to a map deposited in the office of the council, and
- (b) a reference to land within a zone specified in clause 8 is a reference to land shown on the map in the manner indicated in that clause as the means of identifying land of the zone so specified, and
- (c) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for that purpose.

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

6 Model Provisions

This plan adopts the *Environmental Planning and Assessment Model Provisions 1980* except for the definitions of **health care professional, map, professional consulting rooms** and **recreation establishment** in clause 4 (1) and clauses 5 (2), 5 (3), 15-23, 30, 32 and 34.

7 Consent authority

The council shall be the consent authority for the purposes of this plan.

7A Savings provisions relating to development applications

A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

Part 2 General restrictions on development of land

8 Zones indicated on the map

For the purposes of this plan, land to which this plan applies shall be within a zone specified hereunder if the land is shown on the map in the manner specified hereunder in relation to that zone—

Zone No 1 (a) (Rural “A” Zone—General)	lettered 1 (a)
Zone No 1 (b) (Rural “B” Zone—Smallholdings)	lettered 1 (b)
Zone No 1 (c) (Rural “C” Zone—Rural/ Residential)	lettered 1 (c)
Zone No 5 (a) (Special Uses “A” Zone)	lettered 5 (a) and with the nominated use
Zone No 5 (b) (Local Roads and Local Road Widening Zone)	lettered 5 (b)
Zone No 5 (c) (Arterial Roads and Arterial Road Widening Zone)	broken band between a firm black line and lettered 5 (c)
Zone No 5 (d) (Corridors Zone)	lettered 5 (d) and corridor
Zone No 6 (a) (Public Recreation Zone)	lettered 6 (a)
Zone No 7 (Environment/Scenic Protection Zone)	lettered 7
Zone No 8 (National Park and Nature Reserve Zone)	lettered 8

9 Zone objectives and development control table

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

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

Table

Zone No 1 (a) (Rural “A” Zone—General)

1 Objectives of zone

The objectives are—

- (a) to protect and enhance the scenic quality and rural character of the locality, and
- (b) to ensure that development is compatible with the environmental capabilities of the land and to encourage the conservation and enhancement of natural resources by means of appropriate land management techniques, and
- (c) to protect productive agricultural and horticultural land which supplies produce to the Sydney markets, and
- (d) to protect valuable deposits of extractive materials, and
- (e) to ensure that development does not create unreasonable demands, now or in the future, for provision or extension of public amenities or services, and
- (f) to ensure that traffic generating developments are suitably located so as not to adversely affect the safety and efficiency of roads, and
- (g) to ensure that the form, siting and colours of buildings, building materials and landscaping complement the natural scenic quality of these localities, and
- (h) to ensure that where development is to be located on or near ridgetops, it will not significantly intrude into the skyline or detract from the scenic amenity of the locality, and
- (i) to ensure that views from main roads and the rural character of the locality will not be adversely affected, and
- (j) to ensure that the development will not lead to excessive soil erosion or run-off.

2 Without development consent

Agriculture (other than intensive livestock keeping establishments).

3 Only with development consent

Any purpose, other than a purpose included in Item 2 or 4 of the matter relating to this zone.

4 Prohibited

Boarding houses; caravan parks; commercial premises; extractive industries; health care consulting rooms; industries (other than rural and home industries); junkyards; liquid fuel depots; motor showrooms; offensive or hazardous industries; residential flat buildings; rural exhibition grounds; sawmills; shops (other than convenience stores, general stores and produce stores); traffic sensitive land uses transport terminals.

Zone No 1 (b) (Rural “B” Zone—Smallholdings)

1 Objectives of zone

The objectives are—

- (a) to protect and enhance the scenic quality and rural character of the locality, and
- (b) to assist in meeting the demand for hobby farms and rural/residential development in Penrith where it is consistent with the conservation of the rural, agricultural, heritage and natural landscape qualities, and
- (c) to provide land for intensive agricultural and horticultural activities which are compatible with the environmental capabilities of the land and which are unlikely to adversely affect the amenity of the area, and
- (d) to ensure that development does not create unreasonable demands, now or in the future, for provision or extension of public amenities or services, and
- (e) to ensure that traffic generating developments are suitably located so as not to adversely affect the safety and efficiency of roads, and
- (f) to ensure that the form, siting and colours of buildings, building materials and landscaping complement the natural scenic quality of these localities, and

- (g) to ensure that where development is to be located on or near ridgetops, it will not significantly intrude into the skyline or detract from the scenic amenity of the locality, and
- (h) to ensure that views from main roads and the rural character of the area will not be adversely affected, and
- (i) to ensure that development will not lead to excessive soil erosion or run-off.

2 Without development consent

Agriculture (other than intensive livestock keeping establishments).

3 Only with development consent

Any purpose other than a purpose included in Item 2 or 4 of the matter relating to this zone.

4 Prohibited

Boarding houses; caravan parks; commercial premises; extractive industries; health care consulting rooms; industries (other than rural and home industries); junkyards; liquid fuel depots; motor showrooms; offensive or hazardous industries; residential flat buildings; rural exhibition grounds; rural workers dwellings, sawmills; shops (other than convenience stores, general stores and produce stores); traffic sensitive land uses transport terminals.

Zone No 1 (c) (Rural “C” Zone—Rural/Residential)

1 Objectives of zone

The objectives are—

- (a) to provide the opportunity for development of integrated rural/residential communities in accordance with development control plans for the land, and
- (b) to promote an innovative approach to rural/residential development, and
- (c) to ensure that development is compatible with the environmental capabilities of the land and to encourage the conservation and enhancement of natural resources by means of appropriate land management techniques, and

- (d) to assist in meeting the demand for rural/residential development in Penrith where it is consistent with the conservation of rural, agricultural, heritage and natural landscape qualities, and
- (e) to ensure that attractive views from main roads and other vantage points are protected and enhanced, and
- (f) to ensure that adequate provision has been made for water and disposal of effluent, and
- (g) to ensure that development does not create unreasonable demands, now or in the future, for provision or extension of public amenities or services, and
- (h) to ensure that traffic generating developments are suitably located so as not to adversely affect the safety and efficiency of roads, and
- (i) to ensure that development will not lead to excessive soil erosion or run-off, and
- (j) to ensure that the form, siting and colours of buildings, building materials and landscaping complement the natural scenic quality of these areas.

2 Without development consent

Agriculture (other than intensive livestock keeping establishments).

3 Only with development consent

Any purpose, other than a purpose included in Item 2 or 4 of the matter relating to this zone.

4 Prohibited

Boarding houses; caravan parks, commercial premises; extractive industries; health care consulting rooms; industries (other than rural and home industries); junkyards; liquid fuel depots; motor showrooms; offensive or hazardous industries; residential flat buildings; rural exhibition grounds; rural workers' dwellings; sawmills; shops (other than convenience stores and general stores); traffic sensitive land uses transport terminals.

Zone No 5 (a) (Special Uses "A" Zone)

1 Objectives of zone

The objective is to reserve land for the uses nominated on the map.

2 Without development consent

Nil.

3 Only with development consent

The particular purpose indicated by lettering on the map and any purpose ordinarily incidental to or subsidiary to that purpose; drains; landscaping; recreation areas; roads; utility installations.

4 Prohibited

Any purpose other than a purpose included in Item 3 of the matter relating to this zone.

Zone No 5 (b) (Local Roads and Local Road Widening Zone)

1 Objectives of zone

The objective of this zone is to reserve land which will be required for local roads and local road widening purposes.

2 Without development consent

Road widening; roads.

3 Only with development consent

Drains; landscaping; parking space; utility installations.

4 Prohibited

Any purpose other than a purpose included in Item 3 of the matter relating to this zone.

Zone No 5 (c) (Arterial Roads and Arterial Road Widening Zone)

1 Objectives of zone

The objective is to reserve land which will be required for arterial roads and arterial road widening purposes.

2 Without development consent

Road widening; roads.

3 Only with development consent

Drains; landscaping; parking space; utility installations.

4 Prohibited

Any purpose other than a purpose included in Item 2 or 3 of the matter relating to this zone.

Zone No 5 (d) (Corridors Zone)

1 Objectives of zone

The objectives are—

- (a) to provide land for recreation and community purposes, and
- (b) to provide a physical and visual buffer between urban areas, and
- (c) to set aside land for the development of services, facilities and special uses by public authorities for the benefit of the community.

2 Without development consent

Agriculture (other than intensive livestock keeping establishments).

3 Only with development consent

Community facilities; development of services, facilities and special uses by public authorities; drains; dwelling-houses; home occupations; landscaping; public buildings; public utility undertakings; recreation areas; roads; utility installations.

4 Prohibited

Any purpose other than a purpose included in Item 2 or 3 of the matter relating to this zone.

Zone No 6 (a) (Public Recreation)

1 Objective of zone

The objective is to provide and maintain land for a variety of recreational

and community pursuits.

2 Without development consent

Works for the purpose of landscaping, gardening or bushfire hazard reduction.

3 Only with development consent

Buildings for the purpose of gardening, landscaping or bushfire hazard reduction; drains; recreation areas; roads; utility installations.

4 Prohibited

Any purpose other than a purpose included in Item 2 or 3 of the matter relating to this zone.

Zone No 7 (Environment/Scenic Protection Zone)

1 Objectives of zone

The objectives are—

- (a) to protect and enhance land of scenic and environmental significance in the City of Penrith, particularly land adjacent to the Hawkesbury/Nepean River, scenic corridors and escarpments, and
- (b) to ensure that development is compatible with the environmental capabilities of the land and to encourage the conservation of natural resources by means of appropriate land management techniques, and
- (c) to ensure that the form, siting and colours of buildings, building materials and landscaping complement the natural scenic quality of that land, and
- (d) to ensure that development does not create unreasonable demands, now or in the future, for provision or extension of public amenities or services, and
- (e) to ensure that adequate provision has been made for services, including water and disposal of effluent.

2 Without development consent

Nil.

3 Only with development consent

Agriculture (other than intensive livestock keeping establishments but excluding fish farming); camping grounds; dams; dwelling houses; fish farming; home occupations; parks; picnic facilities; recreation establishments; refreshment rooms; roads; utility installations (other than gas holders and generating works).

4 Prohibited

Any purpose other than a purpose included in Item 3 of the matter relating to this zone.

Zone No 8 (National Park and Nature Reserve)

1 Objective of zone

The objective is to identify those lands included in National Parks and Natural Reserves and permit development of land within the zone in accordance with the [National Parks and Wildlife Act 1974](#).

2 Without development consent

Any purpose authorised by or under the [National Parks and Wildlife Act 1974](#).

3 Only with development consent

Nil.

4 Prohibited

Any purpose other than a purpose included in Item 2 of the matter relating to this zone.

Part 3 Special provisions

10 Subdivision generally

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

11 Subdivision within Zones Nos 1 (a), 1 (b), 1 (c), 5 (d) and 7

(1) This clause applies to land within Zone No 1 (a), 1 (b), 1 (c), 5 (d) or 7.

(2) The council may consent to the subdivision of land to which this clause applies only

where the area of each allotment to be created by the subdivision is not less than—

- (a) in the case of land within Zone No 1 (a)—40 hectares, or
 - (b) in the case of land within Zone No 1 (b)—2 hectares, or
 - (c) in the case of land within Zone No 1 (c)—an area which complies with any requirements relevant to the subdivision set out in Section 4.9 (Rural Development) of Part 4 (Land Use Based Controls) of *Penrith Development Control Plan 2006*, as adopted by the council on 21 August 2006, or
 - (d) in the case of land within Zone No 5 (d)—20 hectares, or
 - (e) in the case of land within Zone No 7 at Agnes Banks, Castlereagh and Wallacia—40 hectares, or
 - (f) in the case of land within Zone No 7 at Cranebrook and fronting, or with vehicular access to, Cranebrook Road or Boundary Road—2 hectares, or
 - (g) in the case of land within Zone No 7 at Cranebrook and fronting, or with vehicular access to, Vincent Road—9 000 m².
- (3) The council must not consent to the subdivision of land within Zone No 7 unless it is satisfied that the subdivision will allow the objectives specified in clause 40 (2) (a)–(c) to be met.
- (3A) The Council must not consent to a subdivision of land within Zone No 7 at Cranebrook and fronting, or with vehicular access to, Vincent Road, that will create allotments at a lesser density than one per hectare of the land.
- (4) Nothing in this clause shall prohibit or restrict a subdivision for any of the following purposes—
- (a) the opening or widening of a public road,
 - (b) minor adjustments to common property boundaries,
 - (c) rectifying any encroachment upon an existing allotment.

12 Erection of dwelling houses

- (1) This clause applies to land within Zone No 1 (a), 1 (b), 1 (c), 5 (d) or 7.
- (2) A dwelling-house may, with the consent of the council, be erected on vacant land to which this clause applies only where that land—
 - (a) is an allotment created by a subdivision in accordance with clause 11, or
 - (b) in the case of land not within Zone No 5 (d) and not included in Schedule 1 or 2—is an existing allotment, or

- (c) in the case of land included in Schedule 1—is an allotment of not less than 2 hectares in area, or
 - (d) in the case of land within Zone No 5 (d)—is an allotment of not less than 20 hectares in area.
- (3) The council shall not grant consent to the erection of a dwelling-house on land included in Schedule 1 unless it imposes, as a condition of its consent, a requirement that the land upon which the dwelling-house is to be erected is a single allotment or shall be consolidated into a single allotment.

13 Erection of dwelling-houses on land included in Schedule 2

Notwithstanding the provisions of clause 12, the council may only consent to the erection of a dwelling-house on land referred to in Schedule 2 where the land is consolidated into a single allotment in accordance with that Schedule.

14 Rural workers' dwellings within Zone No 1 (a) or 7

- (1) This clause applies to land within Zone No 1 (a) or 7.
- (2) A rural worker's dwelling may, with the consent of the council, be erected on an allotment of land to which this clause applies, if the allotment has an area of not less than 10 hectares.
- (3) Notwithstanding the provisions of subclause (2), the council shall not consent to the erection of a rural worker's dwelling on an allotment of land unless it is satisfied that—
 - (a) the erection of a rural worker's dwelling will not impair the suitability of the land for agriculture, and
 - (b) the needs of existing agriculture on the land genuinely require that rural workers reside on the land.

15 Rural/residential development within Zone No 1 (c)

- (1) This clause applies to a development application to subdivide land within Zone No 1 (c) and to erect more than one dwelling on that land.
- (2) The council shall not consent to a development application to which this clause applies unless it is satisfied that—
 - (a) the proposed development will not create a demand for the unreasonable or uneconomic provision or extension of public amenities or public services, whether by the council or by another public authority, and
 - (b) the design of each allotment to be created by the subdivision is satisfactory for the economic provision of services and is physically suitable for disposal of effluent, and

- (c) consideration has been given to the effect of the proposal on the agricultural viability of holdings and potential of the land, and
- (d) where development is to be located on or near ridgetops, it will not significantly intrude into the skyline or detract from the scenic amenity of the vicinity, and
- (e) views from main roads and the rural character of the area will not be adversely affected, and
- (f) allotments are compatible in size and shape with the physical nature of the land, adjoining land uses and the likely use of the land in the future, and
- (g) where the land may, in the council's opinion, be suitable for long-term urban development, the subdivision has been designed to facilitate its possible future resubdivision, and
- (h) the development will not lead to excessive soil erosion or run-off.

16 Development within Zone 7 (Environment/Scenic Protection)

- (1) This clause applies to land within Zone No 7.
- (2) The council shall not consent to development on land to which this clause applies unless—
 - (a) it is satisfied that—
 - (i) the proposed development will not detract from the scenic quality of the locality, and
 - (ii) the proposed development will not have an adverse impact on the biophysical characteristics of the locality, and
 - (b) it has considered whether it should impose conditions relating to landscaping and the form, siting, building materials and colours of any proposed buildings, and
 - (c) the height of any proposed building does not exceed 8 metres (measured at any point of the building) above natural ground level.
- (3) A person shall not, on land to which this clause applies, clear, fill or otherwise significantly alter the surface level of the land without the consent of the council.

17 Tree preservation

- (1) A person shall not, except with the consent of the council, ringbark, cut down, top, lop, injure or wilfully destroy any tree which—
 - (a) is not less than 3 metres high, or
 - (b) has a girth of not less than 0.3 of a metre at a height of 0.4 of a metre from the

ground, or

(c) is located within 20 metres of a watercourse.

(2) Subclause (1) does not apply to or in respect of—

(a) the pruning of any tree for the purpose of its regeneration or ornamental shaping,
or

(b) any tree which is dying or dead or has become dangerous.

18 Convenience and general stores

The council shall only grant consent to the establishment of a convenience store or general store on land to which this plan applies where the gross floor area of the store does not exceed 200 square metres and the store is more than 3 kilometres from another general store or convenience store in the area.

19 Development of land within Zones Nos 1 (a), 1 (b) and 1 (c) near designated roads

The Council must not consent to a use of land for the purpose of any building, work or place listed in Schedule 3 that will involve direct vehicular access between that land and a road connecting a designated road if the access to that road will be within 90 metres (measured along the road alignment of the connecting road) of the alignment of the designated road.

20 Flood liable land

In considering an application to carry out development on land which is, in the opinion of the council, flood liable land, the council shall consider—

(a) the effect of the proposed development on the efficiency and capacity of the floodway to carry and discharge floodwaters, and

(b) the safety of the proposed development in time of flood, and

(c) whether the proposed development involves any possible risk to life, human safety or private property in time of flood.

21 Provision of services

The council shall not grant consent to the carrying out of development on land to which this plan applies unless—

(a) evidence is furnished to the council's satisfaction that adequate support services and utilities are or will be available within a reasonable time, and

(b) (Repealed)

22 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 to development that contravenes a development standard unless the consent authority is satisfied the applicant for development consent has demonstrated that—
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Note—

The *Environmental Planning and Assessment Regulation 2021* requires the development application to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

- (4) The consent authority must keep a record of its assessment carried out under subclause (3).
- (5) (Repealed)
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone No 1 (a) (Rural “A” Zone—General), Zone No 1 (b) (Rural “B” Zone—Smallholdings), Zone No 1 (c) (Rural “C” Zone—Rural/Residential) or Zone No 7 (Environment/Scenic Protection Zone) 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) (Repealed)

- (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.

23 Assessment of development in Zone No 6 (a)

The council shall not consent to the carrying out of development on land within Zone No 6 (a) unless consideration has been given to—

- (a) the need for the carrying out of that development on the land, and
- (b) the impact of the carrying out of that 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.

24 Acquisition of land within Zone No 5 (b)

- (1) The owner of any land within Zone No 5 (b) may, by notice in writing, require the council to acquire the land.
- (2) On receipt of a notice under this clause, the council must acquire the land unless the land might reasonably be required to be dedicated for public roads.

25 Acquisition and development of land reserved for roads

Note—

Nothing in this clause is to be construed as requiring a public authority to acquire land—see section 27 (3) of the Act.

- (1) The owner of any vacant land within Zone No 5 (c) may, by notice in writing, require—
 - (a) the RTA in the case of land that is included in the 5 year works program of the RTA current at the time of receipt of the notice, or
 - (b) the Corporation—in any other case,to acquire the land.
- (2) The owner of any land within Zone No 5 (c) that is not vacant may, by notice in writing, require the RTA to acquire the land if—
 - (a) the land is included in the 5 year works program of the RTA current at the time of the receipt of the notice, or

- (b) the RTA has decided not to give concurrence to an application for consent to the carrying out of development on the land, or
 - (c) the RTA is of the opinion that the owner of the land will suffer hardship if the land is not acquired within a reasonable time.
- (3) On receipt of a notice under this clause, the RTA or the Corporation, as the case may be, must acquire the land unless the land might reasonably be required to be dedicated for public roads.
- (4) A person may, with the consent of the council, carry out development on land within Zone No 5 (c)—
- (a) for a purpose for which development may be carried out on land in an adjoining zone, or
 - (b) for any purpose that is compatible with development that may be carried out on land in an adjoining zone.
- (5) (Repealed)
- (6) Land acquired under this clause may be developed, with the consent of the council, for any purpose, until such time as it is required for the purpose for which it was acquired.
- (7) In this clause—

the RTA means the Roads and Traffic Authority constituted under the *Transport Administration Act 1988*.

vacant land means land on which, immediately before the day on which a notice under subclause (1) is given, there were no buildings other than fences, greenhouses, conservatories, garages, summer houses, private boat houses, fuel sheds, tool houses, cycle sheds, aviaries, milking bails, hay sheds, stables, fowl houses, pig sties, barns or the like.

26 Acquisition and development of land within Zone No 5 (d)

Note—

Nothing in this clause is to be construed as requiring a public authority to acquire land—see section 27 (3) of the Act.

- (1) The owner of any land within Zone No 5 (d) may, by notice in writing, require the Corporation to acquire that land.
- (2) Subject to subclause (3), the Corporation shall acquire the land to which the notice under subclause (1) relates.

- (3) The Corporation shall not be required to acquire land to which a notice under subclause (1) relates unless—
- (a) the land is included in a priority program for acquisition as determined by the Corporation, or
 - (b) the Corporation has decided not to give concurrence under subclause (4) to an application for consent to the carrying out of development on the land, or
 - (c) the Corporation is of the opinion that the owner of the land will suffer hardship if the land is not acquired within a reasonable time,
- and in any event, shall not be obliged to acquire the land if the land might otherwise be reasonably required to be dedicated.
- (4) Land within Zone No 5 (d) may, prior to its acquisition by the Corporation be subdivided, and development may be carried out on any such land in accordance with clause 9 or for a purpose for which land in an adjoining zone may be developed, but only—
- (a) with the consent of the council, and
 - (b) if the land is not included in a priority program for acquisition referred to in subclause (3).
- (5) In deciding whether to grant consent under subclause (4), the council must take the following matters into consideration—
- (a) the need for the relevant public purpose to be carried out on the land,
 - (b) the likely effect of the proposed development on the cost of acquisition,
 - (c) the imminence of acquisition, and
 - (d) the likely additional cost of implementing the public purpose resulting from the carrying out of the proposed development.
- (6) Land acquired under this clause may be developed, with the consent of the council, for any purpose until such time as it is required for the purpose for which it was acquired.

27 Development of land within Zones Nos 5 (b) and 6 (a)

- (1) Notwithstanding clause 9, the council may consent to the development of land within Zone No 5 (b) or 6 (a) for any purpose where, in the opinion of the council—
- (a) the land cannot be used within a reasonable time for the purposes for which the land is zoned, or

- (b) the land is surplus to the area of land needed for the purposes for which the land is zoned, or
 - (c) the land has been developed for the purposes for which it is zoned and the proposed development is compatible with those purposes.
- (2) A consent referred to in subclause (1) shall not be granted unless the council is satisfied that any necessary arrangements have been made (whether by the imposition of conditions under section 91 of the Act or otherwise) with respect to each of the following—
- (a) the removal or alteration of any building, work or excavation to be erected or carried out on the land pursuant to the consent,
 - (b) the reinstatement of the land,
 - (c) the removal of any waste material or refuse from the land.
- (3) Nothing in this clause shall operate to prohibit on land referred to in subclause (1)—
- (a) the erection of a fence, or
 - (b) with the consent of the council, the erection or construction of a utility installation.

28 Development near the boundary of adjoining zones

- (1) This clause applies to land which is within 20 metres of a boundary between any 2 zones.
- (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 adjoining land within 20 metres of the boundary.
- (3) The council shall not consent to the carrying out of development referred to in subclause (2) unless the carrying out of the development is desirable, in the opinion of the council, due to planning, design, ownership, servicing or similar requirements relating to the development of land to which this plan applies.

29 Community use of school sites etc

Notwithstanding any other provision of this plan, a person may, with the consent of the council, carry out development for the purposes of—

- (a) the community use of the facilities and sites of schools, colleges and other educational establishments, and
- (b) the commercial operation of those facilities and sites for community purposes, and

- (c) the carrying out of development for community uses on land used for the purposes of schools, colleges or other educational institutions, whether or not the development is ancillary to those purposes.

30 Extractive industries

Notwithstanding any other provision of this plan, extractive industries are permissible with the consent of the council on those sites identified in Schedule 1 to *Sydney Regional Environmental Plan No 9—(Extractive Industry)*.

31 Airport noise

- (1) In this clause, **ANEF contour line** means an Australian Noise Exposure Forecast contour line shown on the map in Appendix U of the draft environmental impact statement for the second Sydney Airport, copies of which are deposited in the office of the council and of the Commonwealth Department of Transport and Communications.
- (2) Notwithstanding any other provision of this plan, the council shall not consent to the carrying out of development for the purposes of—
- (a) schools, hospitals, churches and theatres on land within the boundaries of the 20 ANEF contour line, or
 - (b) hotels, motels or public buildings on land within the boundaries of the 30 ANEF contour line, or
 - (c) a dwelling on land within the boundaries of the 25 ANEF contour line unless it is satisfied that—
 - (i) no practical alternative location exists for the proposed dwelling, and
 - (ii) the dwelling is designed so that interior noise levels will meet Australian Standard 2021, or
 - (d) converting a dwelling-house into 2 dwellings on land within the boundaries of the 25 ANEF contour line.
- (3) The council shall only consent to the carrying out of development within the boundaries of the 20 ANEF contour line where it is satisfied that the development will not hinder the future development of the Badgery's Creek Airport.

31A 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.

31B 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).

31C 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.

32 Development of certain land off Horsley Road, Mt Vernon

- (1) This clause applies to portions 62, 73 and 64, DP 62469, off Horsley Road, Mt Vernon.
- (2) The council must not grant consent to the subdivision of land to which this clause applies unless the area of each allotment to be created by the subdivision is not less than 1 hectare.
- (3) The maximum number of lots that can be created from the land to which this clause applies is 90.

32A Development of certain rural residential land at Mt Vernon

- (1) This clause applies to that land within the City of Penrith and within Zone No 1 (c) shown edged heavy black on the map marked “*Penrith Local Environmental Plan No 201 (Rural lands) (Amendment No 2)*” deposited in the office of the council.
- (2) The council must not grant consent to the subdivision of land to which this clause applies unless the area of each allotment to be created by the subdivision is not less than 1 hectare.
- (3) Despite any provision of this plan or *Sydney Regional Environmental Plan No 12—Dual Occupancy*, the council must not grant consent to dual occupancy development on an allotment of land to which this clause applies having an area of less than 2 hectares unless the dwellings will be attached.

33 Waste disposal

The provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development for the purpose of waste disposal (other than minor filling for drainage or building purposes).

33A Waste disposal on land near Sydney West Airport

- (1) This clause applies to land within the City of Penrith as shown edged heavy black on the map marked "*Penrith Local Environmental Plan No 201 (Rural Lands)—(Amendment No 5)*".
- (2) Notwithstanding any other provision of this plan, the Council shall not grant consent to the carrying out of development on the land described in subclause (1) for the purpose of waste disposal or for any other purpose involving waste disposal unless, in both cases, it is satisfied that the waste to be disposed of does not include foodstuffs or the by-products of the manufacture or processing of foodstuffs, garbage from litter bins, dead animals or parts thereof, any other organic matter ordinarily liable to putrefaction when exposed to the air or domestic garbage, other than lawn clippings, grass, tree and shrub prunings and general garden waste.

34 Detached dual occupancy within Zones Nos 1 (b) and 1 (c)

- (1) This clause applies to land within Zone No 1 (b) or 1 (c) and not specified in Schedule 4.
- (2) Notwithstanding the provisions of *Sydney Regional Environmental Plan No 12—Dual Occupancy*, a person may, with the consent of the council—
 - (a) erect 2 dwelling-houses on an allotment of land to which this clause applies, or
 - (b) erect a second dwelling-house in addition to one already on an allotment of land to which this clause applies,but only if no more than 2 dwellings will be situated on the allotment after the development is carried out.
- (3) The council shall not grant consent to applications for subdivisions pursuant to the provisions of *State Environmental Planning Policy No 1—Development Standards* where consent has been given for development of the land concerned pursuant to subclause (2).

35 Development of certain land at Badgery's Creek

- (1) This clause applies to Lot 5, DP 229770, Part Portion 52, Lot 25, DP 258414, Lot 1, DP 60530, Lots 1 and 2, DP 227140 and Lot 1, DP 309802 Luddenham Road, Badgery's Creek, being land shown on the map as land to which this clause applies.

- (2) The objectives of this clause in addition to those specified in Item 1 of the matter relating to Zone No 1 (c) in the Table to clause 9 are—
- (a) to allow rural residential development at an average density for the area of land to which this clause applies of not more than one dwelling per 2 hectares, and
 - (b) to protect the existing vegetation, especially along creek lines and on ridges, and
 - (c) to protect localities of Aboriginal archaeological significance, and
 - (d) to protect downstream land from further flooding as a result of additional stormwater run off from the development, and
 - (e) to ensure that development of the land is consistent with the aims and objectives of *Sydney Regional Environmental Plan No 9—(Extractive Industry)* in relation to potential extractive industry in adjoining areas.
- (3) Notwithstanding any other provision of this plan, a person may, with the consent of the council, carry out rural residential development, on land to which this clause applies, as part of an integrated development with an associated golf course, a motel, and recreation facilities.
- (4) The council shall not grant consent to development on land to which this clause applies unless it is satisfied that—
- (a) the development will not create a demand for the unreasonable or uneconomic provision or extension of public amenities or public services whether by the council or by another public authority, and
 - (b) the design of each allotment to be created by any subdivision and the location of any dwelling-house is satisfactory for the economic provision of services and is suitable for disposal of effluent, and
 - (c) where the development is to be carried out on or near ridgetops, it will not significantly intrude into the skyline or detract from the scenic amenity of the area, and
 - (d) building curtilages are identified and dwellings appropriately sited to minimise clearing of vegetation, and
 - (e) views from main roads and the rural character of the area will not be adversely affected, and
 - (f) allotments are compatible in size and shape with the physical nature of the land, adjoining land uses and the likely use of the land in the future, and
 - (g) the development will not lead to excessive soil erosion or run off, and

- (h) landscaping and the form, siting, building materials and colours of any proposed building are compatible with the surrounding environment, and
 - (i) satisfactory arrangements have been made with the Water Board for the amplification and reticulation of water services to the land, and
 - (j) the development will be compatible with the environmental capabilities of the land, and
 - (k) the development will not affect the efficiency and capacity of the floodway to carry and discharge floodwaters safely, and
 - (l) the scientific, cultural or aesthetic significance of any Aboriginal archaeological sites will not be detrimentally affected by the development, and
 - (m) the aquatic environment and its water quality will not be detrimentally affected by the development, and
 - (n) when the land to which this clause applies is fully developed to the extent considered by the council to be suitable for this land, the cumulative impact of the development on flooding downstream land will be negligible for the full range of flood magnitudes, and
 - (o) dwellings located in the land shown hatched on the map marked "*Penrith Local Environmental Plan No 193*" are sited to minimise any adverse impacts that might arise from potential extractive industry situated to the south and west of the land.
- (5) The council shall not grant consent as referred to in subclause (3) with respect to individual lots or the entire parcel of land, unless it is satisfied that the development is part of a comprehensive and integrated development proposal which includes a golf course, golf country club, community facility and other associated recreation facilities, generally in accordance with Section 6.1 (Luddenham Equestrian Estate (Twin Creeks)) of Part 6 (Site and Area Specific Controls) of *Penrith Development Control Plan 2006* (as adopted by the council on 21 August 2006) and Plan Nos 14, 15 and 16 of the *Statement of Environmental Factors* accompanying the rezoning application, copies of which are deposited in the office of the council.
- (6) The council shall not grant consent to the subdivision of land shown hatched on the map marked "*Penrith Local Environmental Plan No 193*" unless each allotment created by the subdivision has an area of not less than 4 hectares.

36 Development of certain land at Mamre Road, Luddenham

- (1) This clause applies to land at Mamre Road, Luddenham, being land shown on the map as land to which this clause applies.
- (2) Notwithstanding any other provision of this plan, a person may, with the consent of

the council, carry out development on the land to which this clause applies for the purposes of rural exhibition grounds and ancillary tourist facilities.

37 Development of certain land adjacent to The Northern Road, Luddenham

- (1) This clause applies to land situated adjacent to The Northern Road, Luddenham, being land shown on the map as land to which this clause applies.
- (2) Notwithstanding any other provision of this plan a person may, with the consent of the council, carry out development on land to which this clause applies for the purposes of a general store (including sales of petrol and ancillary automotive products) with a maximum gross floor area of 500 square metres.
- (3) The council shall not grant consent to the carrying out of development as referred to in subclause (2) unless the council imposes a condition requiring, before the commencement of the operation of a general store on the land to which this clause applies—
 - (a) the surrender of all existing use rights that attach to Lot 2, DP 510238, The Northern Road, Luddenham, and
 - (b) the cessation of the use of Lot 2, DP 510238, The Northern Road, Luddenham, for its existing use as a general store.

38 Development of certain land at Erskine Park

- (1) This clause applies to land being Lot 2, DP 556036, Bakers Lane, Erskine Park.
- (2) Notwithstanding any other provision of this plan or of *State Environmental Planning Policy No 5—Housing for Aged or Disabled Persons*, a person may, with the consent of the council, carry out development on land to which this clause applies for the purposes of housing for the aged or disabled.
- (3) The council may only grant consent as referred to in subclause (2) if—
 - (a) satisfactory support facilities and transport facilities will be provided for residents of the development, and
 - (b) the development is integrated with the other uses on the site and the council is satisfied that the site will be managed by the one organisation.

39 Development of certain land at Berkshire Park

- (1) This clause applies to Lot 1, DP 742554 and that part of Lot 33, DP 748101, Richmond Road, Berkshire Park, as is shown on the map as land to which this clause applies.
- (2) Notwithstanding any other provision of this plan, a person may, with the consent of the council, carry out development for the purposes of a service station and convenience store on the land to which this clause applies.

40 Development of certain land at North Cranebrook

- (1) This clause applies to land within Zone No 1 (c) or 7 at North Cranebrook, north-east of Cranebrook Road and Boundary Road.
- (2) The objectives relating to development of land to which this clause applies are—
 - (a) to protect the environmental and scenic quality of the Cranebrook Escarpment and nearby elevated areas, and
 - (b) to protect areas of natural vegetation which provide key ecological and scenic elements in the area, and
 - (c) to retain and enhance the parkland quality of the area along Cranebrook Road, north of Vincent Road.
- (3) The object of this clause is to limit subdivision of, and the carrying out of development on the land to which this clause applies so as to ensure that the above objectives are met.
- (4) In considering an application to subdivide or carry out development for any purpose on land to which this clause applies, the council shall take into account—
 - (a) the effect of the development on the rural setting of the area, and
 - (b) whether the development will impinge on the character of items of environmental significance (such as ridgelines, drainage courses and dams), and
 - (c) whether the development will adversely affect items of Aboriginal and European heritage significance, and
 - (d) the amount of existing vegetation that would be removed as a result of the development, and
 - (e) the susceptibility of the land to soil erosion and the measures to be taken to prevent such erosion, and
 - (f) whether the development will result in significant alteration of the natural landform, and
 - (g) whether the proposed form, scale, character and siting of any proposed building are appropriate for the rural and natural settings of the area, and
 - (h) whether arrangements have been made for the provision of adequate services to the land, and
 - (i) specific objectives contained in any development control plan applying to the land to which the application relates.

41 Development of certain land at Llandilo

- (1) This clause applies to land situated adjacent to Third Avenue, Llandilo, being Lot 2, DP 221473, shown edged heavy black on the map marked "*Penrith local Environmental Plan No 201 (Rural Lands) (Amendment No 1)*".
- (2) For the purpose of this clause—

floor area means the whole of the area used for the display and storage of goods and merchandise within a fruit and vegetable store, but does not include an area used for the bulk storage of produce (whether in a cool room or otherwise) pending display or sale.

fruit and vegetable store means a building or place used primarily for selling or exposing for sale by retail, fruit and vegetables and, as an ancillary use only, the selling or exposing or offering for sale by retail of bread, milk, cigarettes, confectionery, soft drinks, fruit juice, flowers, potted plants, pasta, eggs and honey only.
- (3) Notwithstanding any other provision of this plan, a person may, with the consent of the council, carry out development on land to which this clause applies for the purposes of a fruit and vegetable store with a maximum floor area of 150 sq.m.
- (4) The council shall not grant consent to the carrying out of development as referred to in subclause (3) unless arrangements satisfactory to the council have been made with the council with regard to the supply of water and disposal of effluent.

42 Development of certain land at Mamre Road, Kemps Creek

- (1) This clause applies to land at Mamre Road, Kemps Creek, being land shown edged heavy black on the map marked "*Penrith Local Environmental Plan No 201 (Rural Lands) Amendment No 10*".
- (2) Despite any other provision of this plan, a person may, with the consent of the Council, carry out development on the land to which this clause applies for the purposes of a produce store and wholesale and retail plant nursery.
- (3) The Council must not grant consent to the carrying out of such development unless—
 - (a) the Council has taken into consideration whether the development would adversely affect the existing or future service and safety levels of roads into and out of the development site, and
 - (b) vehicular access into the development site is via the signal-equipped intersection of Mamre Road and Baker's Lane.
- (4) In this clause—

produce store means a building or place, not exceeding 650m² in gross floor area with an attached awning not exceeding 330m², that is used for the sale by retail or storage of—

- (a) grain, or
- (b) stock feed, or
- (c) fertilizer, or
- (d) veterinary medicine,

and includes any ancillary office or toilet facilities.

wholesale and retail plant nursery means a building or place used for any one or more of the following purposes—

- (a) the growing and retail selling of plants, where the growing and propagation area does not exceed 1,600m²,
- (b) the storage of nursery items within a shade house,
- (c) the storage and retail selling of bulk landscape supplies including sand, mulch and compost, and materials such as fence rails, posts, gates, logs and firewood.

43 Development of certain land at Elizabeth Drive, Luddenham

- (1) This clause applies to Lot 1, DP 542395 and Lot 740, DP 810111, Elizabeth Drive, Luddenham, being land shown edged heavy black on the map marked “*Penrith Local Environmental Plan No 201 (Rural Lands) (Amendment No 12)*”.
- (2) Despite any other provision of this plan, a person may, with the consent of the council, carry out development on land to which this clause applies for the purposes of an advanced waste treatment facility.
- (3) The council must not grant consent to the carrying out of such development unless it is satisfied that—
 - (a) the development is not likely to result in a significant impact on the environment in the event of a flood of a 1% annual exceedance probability flood level or greater, and
 - (b) the quality and quantity of stormwater discharged from the development will assist in improving aquatic ecosystem health, through the use of appropriate riparian buffer zones and adoption of “best practice” water sensitive designs.
- (4) In deciding whether or not consent to development as referred to in subclause (2), the council must consider the potential impact of the development on Badgerys Creek.

(5) In this clause—

1% annual exceedance probability flood level means a flood level that has a 1 in 100 chance of being reached in any one year.

advanced waste treatment facility means a building, group of buildings or place in which putrescible waste, green waste or biosolids are sorted and processed to produce the following—

- (a) recyclable materials,
- (b) solid waste Class 2 (within the meaning of the *Environmental Guidelines: Assessment, Classification & Management of Liquid & Non-liquid Wastes* published by the Department of Environment and Conservation),
- (c) compost which is certifiable to the relevant Australian Standard for wholesale or retail use.

44 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*.

45 Public bushland

- (1) The objective of this clause is to protect and ensure the ecological viability of bushland, including rehabilitated areas in urban areas, by—
 - (a) preserving biodiversity, habitat corridors and links between public bushland and other nearby bushland, and
 - (b) preserving bushland as a natural stabiliser of the soil surface, and
 - (c) preserving existing hydrological landforms, processes and functions, including natural drainage lines, watercourses, wetlands and foreshores, and
 - (d) preserving the recreational, educational, scientific, aesthetic, environmental, ecological and cultural values and potential of bushland, and
 - (e) mitigating disturbance caused by development.
- (2) Development that will disturb, or is reasonably likely to disturb, public bushland is permitted with development consent.
- (3) Development consent must not be granted to development that will disturb, or is reasonably likely to disturb, public bushland unless the consent authority is satisfied of the following—
 - (a) the disturbance of the bushland is essential for a purpose in the public interest,
 - (b) there is no reasonable alternative to the disturbance,
 - (c) the development minimises the amount of bushland to be disturbed,
 - (d) the development includes measures to remediate the disturbed bushland.
- (4) Despite subclause (2), development that will disturb, or is reasonably likely to disturb, public bushland is permitted without development consent if the development is for the following purposes—
 - (a) the construction, operation or maintenance of pipelines to carry water, sewerage or gas or pipelines licensed under the *Pipelines Act 1967*,
 - (b) the construction, operation or maintenance of electricity or telecommunication lines,
 - (c) bush fire hazard reduction,
 - (d) the construction or maintenance of classified roads,
 - (e) facilitating the recreational use of the public bushland.

- (5) Development specified in subclause (4)(e) is permitted without development consent only if it is carried out in accordance with a plan of management for the public bushland, adopted by the Council in the same way a plan of management is required to be adopted for community land under the *Local Government Act 1993*, Chapter 6, Part 2, Division 2, that includes measures for the following—
- (a) the recreational use of the land,
 - (b) bush fire hazard reduction,
 - (c) the prevention of degradation, including the alteration of drainage patterns, rubbish dumping, vehicle intrusion and infestation with weeds or non-native plants,
 - (d) the remediation of degraded public bushland.
- (6) This clause does not require development consent for clearing of native vegetation if the clearing is of a kind that is authorised under the *Local Land Services Act 2013*, section 600.
- (7) In deciding whether to grant development consent to development on land adjoining public bushland, the consent authority must consider the following—
- (a) the need to retain public bushland adjoining the site of the development,
 - (b) the likely effect of the development on public bushland, including the following—
 - (i) the erosion of soil,
 - (ii) the siltation of streams and waterways,
 - (iii) the spread of weeds and non-native plants within public bushland,
 - (c) other matters the consent authority considers relevant to the protection and preservation of public bushland.
- (8) This clause does not apply to the following land that is public bushland—
- (a) land in Zone RU1, RU2, RU3, RU4 or RU5,
 - (b) land reserved, dedicated or acquired under the *National Parks and Wildlife Act 1974*,
 - (c) land within a State forest, flora reserve or timber reserve within the meaning of the *Forestry Act 2012*,
 - (d) land to which *State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, Chapter 7 applies.
- (9) In this clause—

disturb public bushland means—

- (a) remove vegetation from public bushland, or
- (b) cause a change in the natural ecology of public bushland that results in the destruction or degradation of the public bushland.

non-native plant means a plant that is not native vegetation.

public bushland means land—

- (a) on which there is vegetation that is—
 - (i) a remainder of the natural vegetation of the land, or
 - (ii) representative of the structure and floristics of the natural vegetation of the land, and
- (b) that is owned, managed or reserved for open space or environmental conservation by the Council or a public authority.

46 Canal estate development prohibited

- (1) Canal estate development is prohibited on land to which this Plan applies.
- (2) In this clause—

canal estate development has the same meaning as in the standard instrument prescribed by the [Standard Instrument \(Local Environmental Plans\) Order 2006](#).

Schedule 1

(Clause 12)

The following land, as shown hatched on the map—

All the land within the area bounded by Londonderry Road, Studley Street and Rickaby's Creek, Londonderry.

All the land within the Richmond Park Estate, being lots 1 to 537 (inclusive) in 387 (1) Londonderry. Lots 1 to 3 and Lots 45 to 52, Deposited Plan No 3784, Castle Street and Castlereagh Road, Castlereagh.

All the land within the area bounded by Terrybrook Road, Ninth Avenue, Second Avenue and Mayo Road, Llandilo.

Part Lots 1 to 16 inclusive, Lots 17 to 23 inclusive, Lots 28, 29, 32, 33, 39 and 40, Deposited Plan 2566; Part Lot Y, Deposited Plan 160439; Lot B, Deposited Plan 415712; Lots 1 and 2, Deposited Plan 736951; Lot B, Deposited Plan 416720, Clifton Avenue, Salisbury Avenue and Elizabeth Drive, Kemps Creek.

Schedule 2

(Clause 12, 13)

Council shall not grant consent to the erection of a dwelling-house on land fronting Boscobel Road in Deposited Plan 23989 or St Marys Road in Deposited Plan 224858, except where the lots are consolidated in the manner set out below—

Lot 18 with Lot 43,	DP 23989 Boscobel Road
Lot 19 with Lot 42	"
Lot 20 with Lot 41	"
Lot 21 with Lot 40	"
Lot 22 with Lot 39	"
Lot 23 with Lot 38	"
Lot 24 with Lot 36 and 37	"
Lot 26 with Lot 35	"
Lot 27 with Lot 34	"
Lot 28 with Lot 33	"
Lot 29 with Lot 32	"
Part Lot 30 with Part Lot 31	"
Lot 8 with Lot 17,	DP 224858 Ninth and St Marys Roads, Berkshire Park
Lot 9 with Lot 16	"
Lot 10 with Lot 15	"
Lot 12 with Lot 13	"

Schedule 3

(Clause 19)

Amusement parks
Bulk stores
Car repair stations
Clubs
Convenience stores
Drive-in theatres
Educational establishments
General stores
Hospitals
Hotels
Institutions
Mines
Motels

Places of assembly
Places of public worship
Produce stores
Recreation facilities
Refreshment rooms
Retail plant nurseries
Roadside stalls
Saw mills
Service stations
Stock and sales yards
Warehouses

Schedule 4

(Clause 34)

Land north of the proposed Ryde Castlereagh Freeway.

Land within the South Creek Valley Study Area, as identified as such on the map.