

State Environmental Planning Policy (Major Development) Amendment (North Penrith) 2010

under the Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Major Development) Amendment (North Penrith) 2010*.

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

3 Repeal of Policy

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

Schedule 1 Amendment of State Environmental Planning Policy (Major Development) 2005

Schedule 3 State Significant Sites

Insert at the end of the Schedule (before the maps) with appropriate Part numbering:

Part X North Penrith site

Division 1 Preliminary

1 Land to which Part applies

This Part applies to the land identified on the Land Application Map, referred to in this Part as the **North Penrith site**.

2 Interpretation

(1) In this Part:

Height of Buildings Map means the State Environmental Planning Policy (Major Development) 2005 North Penrith Height of Buildings Map.

Heritage item means a building, work, archaeological site, tree, place or Aboriginal object:

- a) shown on the Heritage Map as a heritage item, and
- b) the location and nature of which is described in the Table to clause 24 (8).

Heritage Map means the State Environmental Planning Policy (Major Development) 2005 North Penrith Heritage Map.

Land Application Map means the State Environmental Planning Policy (Major Development) 2005 North Penrith Land Application Map.

Land Zoning Map means the State Environmental Planning Policy (Major Development) 2005 North Penrith Land Zoning Map.

Lot Size Map means the State Environmental Planning Policy (Major Development) 2005 North Penrith Land Lot Size Map.

relevant council, in relation to land, means the council of the local government area in which the land is situated.

studio loft means a self-contained dwelling that:

- a) is established in conjunction with another dwelling (the principal dwelling), and
- b) may be on an individual and separately titled lot of land as the principal dwelling, and
- c) is separate from, the principal dwelling.

Note. The land concerned is situated in the local government area of Penrith.

(2) A word or expression used in this Part has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* unless it is otherwise defined in this Part.

2 Consent authority

(1) The consent authority for development on land within the North Penrith site, other than development that is a project to which Part 3A of the Act applies, is the relevant council.

3 Maps

(1) A reference in this Plan to a named map adopted by this Plan is a reference to a map by that name:

- a) approved by the Minister when the map is adopted, and

- b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister when the instruments are made.
- (2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Plan to any such named map is a reference to the relevant part or aspect of the single map.
- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (4) For the purposes of this Plan, a map may be in, and may be kept and made available in, electronic or paper form, or both.

4 Relationship with other environmental planning instruments applying to land

- (1) This Plan is subject to the provisions of any State environmental planning policy that prevails over this Plan as provided by section 36 of the Act.
- (2) The following State environmental planning policies (or provisions) do not apply to the land to which this Plan applies:
 - a) State Environmental Planning Policy No 1—Development Standards
 - b) State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development (clause 6 and Parts 3 and 4)
 - c) State Environmental Planning Policy No 60—Exempt and Complying Development
- (3) All local environmental plans and deemed environmental planning instruments applying only to the land to which this Plan applies are repealed.

Note. The following local environmental plans are repealed under this provision:

- a) Penrith Local Environmental Plan 2010;
 - b) Penrith Local Environmental Plan 1998 (Urban Land);
 - c) Penrith Local Environmental Plan (Environmental Heritage) 1991;
 - d) Penrith Planning Scheme Ordinance 1960.
- (4) All local environmental plans and deemed environmental planning instruments applying to the land to which this Plan applies and to other land cease to apply to the land to which this Plan applies.

5 Land to which Plan applies

This Plan applies to the land identified on the Land Application Map.

Direction. The Land Application Map may be a separate map or be constituted by the outer boundary of the Land Zoning Map (by an annotation on that Map).

Division 2 Part 3A Projects

- (1) Subdivision of land and associated site infrastructure and bulk earth works within the North Penrith site, other than a strata title subdivision, a community title subdivision, or a subdivision for any one or more of the following purposes:
 - a) widening a public road,
 - b) making an adjustment to a boundary between lots, being an adjustment that does not involve the creation of a greater number of lots,
 - c) a minor realignment of boundaries that does not create additional lots or the opportunity for additional dwellings,
 - d) a consolidation of lots that does not create additional lots or the opportunity for additional dwellings,
 - e) rectifying an encroachment on a lot,
 - f) creating a public reserve,

- g) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public conveniences.
- (2) Construction and embellishment of open space associated with development identified in subclause (1) above.
- (3) Any development works to a heritage item as identified on the Heritage Map, within a 3 year period from the introduction of this environmental planning instrument.
- (4) Notwithstanding subclause (1) above, torrens title re-subdivision of any super lot created under subclause (1) above is not a Part 3A project.

Division 2 Provisions relating to development in North Penrith site

6 Application of Division

- (1) This Division applies to development on land within the North Penrith site, except as provided by subclause (2).
- (2) Clauses 7–13, 16-18 and 24 do not apply to development to the extent that it is a project to which Part 3A of the Act applies.

7 Land use zones

The land use zones under this Plan are as follows:

- a) R1 General Residential
- b) R2 Low Density Residential
- c) B4 Mixed Use
- d) IN2 Light Industrial
- e) RE1 Public Recreation

8 Zone objectives and Land Use Table

- (1) The Land Use Table specifies for each zone:
 - a) the objectives for development, and
 - b) development that may be carried out without consent, and
 - c) development that may be carried out only with consent, and
 - d) development that is prohibited.
- (2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.
- (3) In the Land Use Table at the end of this Part:
 - a) a reference to a type of building or other thing is a reference to development for the purposes of that type of building or other thing, and
 - b) a reference to a type of building or other thing does not include (despite any definition in this Plan) a reference to a type of building or other thing referred to separately in the Land Use Table in relation to the same zone.
- (4) This clause is subject to the other provisions of this Plan.

9 Zone R1 General Residential

- (1) The objectives of the R1 General Residential zone are as follows:
 - a) To provide for the housing needs of the community;
 - b) To provide for a variety of housing types and densities;
 - c) To enable other land uses that provide facilities or services to meet the day to day needs of residents;

- d) To encourage medium density housing in locations of high amenity adjoining open space and accessible transport corridors;
- e) To support the well being of the community, including recreational, community, and other activities where appropriate, whilst also ensuring there will be no adverse effect on the amenity of proposed or existing nearby residential development; ~~and~~
- f) To allow for a variety of recreational uses within open space areas; and
- ~~f)g)~~ To encourage high rise residential typologies.

- (2) Development for any of the following purposes is permitted without development consent on land within Zone R1 General Residential:

Home businesses; Home industries; Home occupations.

- (3) Development for any of the following purposes is permitted only with development consent on land within Zone R1 General Residential:

Affordable housing; Attached dwellings; Boarding houses, Business premises; Child care centres; Community facilities, Dual occupancies; Dwelling houses, Earthworks; Exhibition homes; Exhibition villages; Group homes, Food and drink premises; Health services facilities; Hostels, Mixed use developments; Multi dwelling housing, Neighbourhood shops; Places of public workshop, Roads; Recreation facilities (indoor); Recreation facilities (outdoor); Residential care facilities; Residential flat buildings; Roads; Semi-detached dwellings; secondary dwellings; Semi-detached dwellings; Seniors housing; Shop top housing; Studio lofts; Take away food and drink premises.

- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone R1 General Residential unless it is permitted by subclause (2) or (3).

- (5) In this clause, studio loft means a self-contained dwelling that:

- a) may be on an individual and separate title, and
- b) is separate from, the principal dwelling.

10 Zone R2 Low Density Residential

- (1) The objectives of the R2 Low Residential zone are as follows:

- a) To provide for the housing needs of the community within a low density residential environment.
- b) To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- c) To support the well being of the community, including educational, recreational, community and other activities if there will be no adverse effect on the amenity of the proposed or existing nearby residential development.

- (2) Development for any of the following purposes is permitted without development consent on land within Zone R2 Low Residential:

Home businesses; Home industries; Home occupations.

- (3) Development for any of the following purposes is permitted only with development consent on land within Zone R2 Low Residential:

Boarding houses, Business identification signage; Business premises; Community facilities; Dwelling houses, Earthworks; Educational establishments; Environmental protection works; Group homes; Health consulting rooms; Information and education facilities; Recreation areas; Roads.

- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone R2 Low Residential unless it is permitted by subclause (2) or (3).

11 Zone B4 Mixed Use

- (1) The objectives of the B4 Mixed Uses zone are as follows:
- a) To provide a mixture of compatible land uses;
 - b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling;
 - c) To encourage development that supports or complements the primary retail and office functions of the Penrith City Centre;
 - d) To encourage development providing services to the surrounding community;
 - e) To permit development that adds to the vitality and diversity of commercial and retail centres while not prejudicing their principal function;
 - f) To create opportunities to improve public amenity; and
 - ~~f)g)~~ To encourage high rise residential typologies.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone B4 Mixed Uses:

Home occupations; Home Businesses; Home Industries.

- (3) Development for any of the following purposes is permitted only with development consent on land within Zone B4 Mixed Uses:

Affordable housing; Amusement centres; Boarding houses; Building identification signage; Business identification signs; Business premises; Child care centres; Community facilities; Drainage; Educational establishments; Entertainment facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Function centres; Health services facilities; Home based child care; Hostels; Hotel or motel accommodation; Information and education facilities; Medical centres; Mortuaries; Multi dwelling housing; Office premises; Passenger transport facilities; Places of public worship; Public administration buildings; Pubs; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Residential care facilities; Residential flat buildings; Retail premises; Roads; Seniors housing; Serviced apartments; Shop top housing; Signage.

- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone B4 Mixed Uses unless it is permitted by subclause (2) or (3).

12 Zone IN2 Light Industrial

- (1) The objectives of the Zone IN2 Light Industrial zone are as follows:
- a) To provide a wide range of light industrial, warehouse and related land uses.
 - b) To encourage employment opportunities and to support the viability of centres.
 - c) To minimise any adverse effect of industry on other land uses.
 - d) To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
 - e) To promote development that makes efficient use of industrial land.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone IN2 Light Industrial:
- Nil
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone IN2 Light Industrial:

Amusement centres; Car parks; Child care centres; Community facilities; Crematoria; Depots; Drainage; Earthworks; Educational establishments; Electricity generating works; Environmental facilities; Environmental protection works; Flood mitigation works; Food and drink premises; Function centres; Hotel or motel accommodation; Industrial retail outlets; Landscape and garden supplies; Light industries; Medical centres; Neighbourhood shops; Places of public worship; Recreation areas; Recreation facilities (indoor); Resource recovery facilities; Roads; Self-storage units; Service stations; Signage; Timber and

buildings supplies; Vehicle repair stations; Vehicle sales or hire premises; Veterinary hospitals; Warehouse or distribution centres; Waste or resource transfer stations

- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone IN2 Light Industrial unless it is permitted by subclause (2) or (3).

13 Zone RE1 Public Recreation

- (1) The objectives of the Zone RE1 Public Recreation zone are as follows:

- a) To enable land to be used for public open space or recreational purposes.
- b) To provide a range of recreational settings and activities and compatible land uses.
- c) To protect and enhance the natural environment for recreational purposes.
- d) To ensure development is secondary and complementary to the use of the land as public open space, and enhances public use, and access to, the open space.

- (2) Development for any of the following purposes is permitted without development consent on land within Zone RE1 Public Recreation:

Nil

- (3) Development for any of the following purposes is permitted only with development consent on land within Zone RE1 Public Recreation:

Boat launching ramps; Boat sheds; Building identification signage; Business identification signs; Caravan parks; Charter and tourism boating facilities; Child care centres; Community facilities; Drainage; Earthworks; Environmental facilities; Environmental protection works; Flood mitigation works; Function centres; Information and education facilities; Jetties; Kiosks; Markets; Moorings; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Restaurants; Roads; Water recreation structures; water reticulation systems; water storage facilities; water supply systems; water treatment facilities; waterbodies; waterbodies (artificial).

- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone RE1 Public Recreation unless it is permitted by subclause (2) or (3).

14 Subdivision—consent requirements

- (1) Land within the North Penrith site may be subdivided, but only with development consent.
- (2) However, consent is not required for a subdivision for the purpose only of any one or more of the following:
- a) widening a public road,
 - b) a minor realignment of boundaries that does not create:
 - i. additional lots or the opportunity for additional dwellings, or
 - ii. lots that are smaller than the minimum size shown on the Lot Size Map in relation to the land concerned,
 - c) a consolidation of lots that does not create additional lots or the opportunity for additional dwellings,
 - d) rectifying an encroachment on a lot,
 - e) creating a public reserve,
 - f) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets.

15 Exempt and complying development

Development within the North Penrith site that satisfies the requirements for exempt development or complying development specified in Penrith Local Environmental Plan 2010, is exempt development or complying development, as appropriate.

16 Minimum subdivision lot size

- (1) The objectives of this clause are as follows:
 - a) to facilitate and encourage a range of residential lot types, in particular small lot housing;
 - b) to encourage the efficient use of land for residential purposes;
 - c) to encourage an appropriate density of development and recognise the North Penrith site's strategic location and proximity to public transport services;
 - d) to ensure that lot sizes are compatible with the environmental capabilities of the land being subdivided;
 - e) to ensure that lot sizes and dimensions allow developments to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views;
 - f) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.
- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.
- (4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.

17 Residential Densities and Minimum Lot Sizes for Specific Development

- (1) The objective of this clause is to make provision with respect to the delivery of up to 1,000 new dwellings on the North Penrith site.
- (2) Development must not be carried out on a lot in Zone R1 General Residential or Zone B4 Mixed Uses for any of the following purposes, if the area of the lot is less than the area specified below in relation to those purposes:
 - a) Attached dwellings – ~~130-120~~ square metres;
 - b) Semi-detached dwellings – ~~130-120~~ square metres;
 - c) Dwelling houses – 235 square metres; ~~and~~
 - d) Multi unit housing – ~~360-235~~ square metres; ~~and~~
 - e) ~~Residential flat buildings – 650 square metres.~~
- (3) Development consent must not be granted to the subdivision of land intended to be used for residential purposes within the North Penrith site unless the consent authority is satisfied that the granting of consent would not preclude or impede the delivery of up to 1,000 dwellings.

18 Height of buildings

- (1) The objectives of this clause are as follows:
 - a) to preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale;
 - b) to provide for a range of residential building heights in appropriate locations that provide a high quality urban form;
 - c) to facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas; and
 - d) to provide appropriate height controls for commercial and industrial development.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Direction. Different heights may be shown on the map for different zones or for different land in the same zone. This Plan may also provide for specified height restrictions to be varied or modified in certain circumstances, for example, to prevent overshadowing of public open space, for air safety reasons or for the purposes of promoting design excellence.

19 Opportunity Site

- (1) The consent authority may grant consent to development for the purpose of office premises, educational establishments, and information and education facilities, on land marked with black hatching and identified as the “Opportunity Site” on the Land Zoning Map, if it is satisfied that the amenity of residential uses permitted on the “Opportunity Site” or on any adjoining development site will not be detrimentally affected by the development.
- (2) The Council may grant consent to the carrying out of development referred to in subclause (1) on the Innovation Site if it is satisfied that:
 - a) the design of the development is derived from, and supported by, a rigorous analysis of the development site, and
 - b) the development will result in a built form that contributes positively to the amenity of the public domain, and will not have a significant adverse effect on the use of any adjoining land,
 - c) the development will provide a positive street address and provide active street frontages, particularly on frontages addressing land zoned RE1 Public Recreation;
 - d) the development will achieve the relevant objectives of the zone in which it is carried out in a manner that equals, or improves, that which would result from the carrying out of residential development on that site; and
 - e) the development will not generate significant additional traffic or impede traffic movement to, from and within the North Penrith site.

20 Exceptions to development standards

- (1) The objectives of this clause are:
 - a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
 - b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) 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) 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) 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 Director-General has been obtained.

- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.
- (6) Consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living 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 consent to be granted for development that would contravene any of the following:
 - a) a development standard for complying development, or
 - 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,

Direction. Additional exclusions may be added.

21 Public utility infrastructure

- (1) Development consent must not be granted for development on land in the North Penrith site unless the consent authority is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.
- (2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.

22 Relevant acquisition authority

- (1) The objective of this clause is to identify, for the purposes of section 27 of the Act, the authority of the State that will be the relevant authority to acquire land reserved for certain public purposes if the land is required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991 (the owner-initiated acquisition provisions).

Note. If the landholder will suffer hardship if there is any delay in the land being acquired by the relevant authority, section 23 of the Land Acquisition (Just Terms Compensation) Act 1991 requires the authority to acquire the land.

- (2) The authority of the State that will be the relevant authority to acquire land, if the land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown on the Land Reservation Acquisition Map (or, if an authority of the State is not specified in relation to land required to be so acquired, the authority designated or determined under those provisions).

Type of land shown on Map	Authority of the State
Zone RE1 Public Recreation and marked "Local open space"	Council

Direction. Land is required to be shown on the Land Reservation Acquisition Map if it is expressly set apart by the Plan exclusively for a public purpose referred to in section 26 (1) (c) of the Act. However, any such land that is held by an authority of the State, or by a public company or a subsidiary of a public company (within the meaning of the Corporations Act 2001 of the Commonwealth) is not required to be shown on that Map. An authority of the State is to be listed for all land shown on the Land Reservation Acquisition Map, but the land is not to be so reserved and the authority listed unless the authority consents to its being listed.

- (3) Development on land acquired by an authority of the State under the owner-initiated acquisition provisions may, before it is used for the purpose for which it is reserved, be carried out, with development consent, for any purpose.

23 Development near zone boundaries

- (1) The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.
- (2) This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is 50 metres.
- (3) This clause does not apply to:
- a) land in Zone R2 Low Residential; Zone RE1 Public Recreation, Zone E1 National Parks and Nature Reserves, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone W1 Natural Waterways, or
 - b) land within the coastal zone, or
 - c) land proposed to be developed for the purpose of sex services or restricted premises.
- (4) Despite the provisions of this Plan relating to the purposes for which development may be carried out, consent may be granted to development of land to which this clause applies for any purpose that may be carried out in the adjoining zone, but only if the consent authority is satisfied that:
- a) the development is not inconsistent with the objectives for development in both zones, and
 - b) the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.
- (5) The clause does not prescribe a development standard that may be varied under this Plan.

24 Controls relating to miscellaneous permissible uses

(1) Bed and breakfast accommodation

If development for the purposes of bed and breakfast accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than 5 bedrooms.

(2) **Home businesses**

If development for the purposes of a home business is permitted under this Plan, the carrying on of the business must not involve the use of more than 50 square metres of floor area.

(3) **Home industries**

If development for the purposes of a home industry is permitted under this Plan, the carrying on of the home industry must not involve the use of more than 50 square metres of floor area.

(4) **Industrial retail outlets**

If development for the purposes of an industrial retail outlet is permitted under this Plan, the retail floor area must not exceed:

- a) 40% of the combined gross floor area of the industrial retail outlet and the building or place on which the relevant industry is carried out, or
- b) 400 square metres,
- c) whichever is the lesser.

(5) **Kiosks**

If development for the purposes of a kiosk is permitted under this Plan, the gross floor area must not exceed 15 square metres.

(6) **Neighbourhood shops**

If development for the purposes of a neighbourhood shop is permitted under this Plan, the retail floor area must not exceed 100 square metres.

(7) **Secondary dwellings**

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- a) 60 square metres,
- b) 20% of the total floor area of both the self-contained dwelling and the principal dwelling.

25 Preservation of trees or vegetation

- (1) The objective of this clause is to preserve the amenity of the area through the preservation of trees and other vegetation.

- (2) This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.

Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.

- (3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:

- a) development consent, or
- b) a permit granted by the Council.

- (4) The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.

- (5) This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.

- (6) This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.
- (7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:
 - a) that is or forms part of a heritage item, or
 - b) that is within a heritage conservation area.

Note. As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 5.10 will be applicable to any such consent.

- (8) This clause does not apply to or in respect of:
 - a) the clearing of native vegetation that is authorised by a development consent or property vegetation plan under the Native Vegetation Act 2003 or that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or
 - b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the Native Vegetation Act 2003) that is authorised by a development consent under the provisions of the Native Vegetation Conservation Act 1997 as continued in force by that clause, or
 - c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the Forestry Act 1916, or
 - d) action required or authorised to be done by or under the Electricity Supply Act 1995, the Roads Act 1993 or the Surveying Act 2002, or
 - e) plants declared to be noxious weeds under the Noxious Weeds Act 1993.

26 Heritage conservation

Note. Heritage items, heritage conservation areas and archaeological sites (if any) are shown on the Heritage Map. The location and nature of any such item, area or site is also described in Schedule 5.

- (1) The objectives of this clause are:
 - a) to conserve the environmental heritage of North Penrith site, and
 - b) to conserve the heritage significance of heritage items and heritage conservation areas including associated fabric, settings and views, and
 - c) to conserve archaeological sites, and
 - d) to conserve places of Aboriginal heritage significance.
- (2) Development consent is required for any of the following:
 - a) demolishing or moving a heritage item or a building, work, relic or tree within a heritage conservation area,
 - b) altering a heritage item or a building, work, relic, tree or place within a heritage conservation area, including (in the case of a building) making changes to the detail, fabric, finish or appearance of its exterior,
 - c) altering a heritage item that is a building by making structural changes to its interior,
 - d) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
 - e) disturbing or excavating a heritage conservation area that is a place of Aboriginal heritage significance,
 - f) erecting a building on land on which a heritage item is located or that is within a heritage conservation area,
 - g) subdividing land on which a heritage item is located or that is within a heritage conservation area.
- (3) However, consent under this clause is not required if:

- a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:
 - i. is of a minor nature, or is for the maintenance of the heritage item, archaeological site, or a building, work, relic, tree or place within a heritage conservation area, and
 - ii. would not adversely affect the significance of the heritage item, archaeological site or heritage conservation area, or
 - b) the development is in a cemetery or burial ground and the proposed development:
 - i. is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
 - ii. would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to a place of Aboriginal heritage significance, or
 - c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
 - d) the development is exempt development.
- (4) The consent authority must, before granting consent under this clause, consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area concerned. This subclause applies regardless of whether a heritage impact statement is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).
- (5) The consent authority may, before granting consent to any development on land:
 - a) on which a heritage item is situated, or
 - b) within a heritage conservation area, or
 - c) within the vicinity of land referred to in paragraph (a) or (b),
 require a heritage impact statement to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.
- (6) The consent authority may require, after considering the significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.
- (7) The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies):
 - a) notify the Heritage Council of its intention to grant consent, and
 - b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.
- (8) The consent authority must, before granting consent under this clause to the carrying out of development in a place of Aboriginal heritage significance:
 - a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place, and
 - b) notify the local Aboriginal communities (in such way as it thinks appropriate) about the application and take into consideration any response received within 28 days after the notice is sent.
- (9) The consent authority must, before granting consent for the demolition of a heritage item identified in Schedule 5 as being of State significance (other than an item listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies):
 - a) notify the Heritage Council about the application, and

- b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.
- (10) The consent authority may grant consent to development for any purpose of a building that is a heritage item, or of the land on which such a building is erected, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:
- a) the conservation of the heritage item is facilitated by the granting of consent, and
 - b) the proposed development is in accordance with a heritage conservation management plan that has been approved by the consent authority, and
 - c) the consent to the proposed development would require that all necessary conservation work identified in the heritage conservation management plan is carried out, and
 - d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, and
 - e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

27 Infrastructure development and use of existing buildings of the Crown [compulsory]

- (1) This Plan does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, by or on behalf of a public authority, that is permitted to be carried out with or without consent, or that is exempt development, under the State Environmental Planning Policy (Infrastructure) 2007.
- (2) This Plan does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.