

1991—No. 645

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
STATE ENVIRONMENTAL PLANNING POLICY No. 25—
RESIDENTIAL ALLOTMENT SIZES (AMENDMENT No.2—
DUAL OCCUPANCY SUBDIVISION**

NEW SOUTH WALES



[Published in Gazette No. 174 of 13 December 1991]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Environmental Planning and Assessment Act 1979, has been pleased to make the State Environmental Planning Policy set forth hereunder in accordance with the recommendation made by the Minister for Planning. (S91/06800/001)

ROBERT WEBSTER
Minister for Planning

Sydney, 11 December, 1991.

Citation

1. This Policy may be cited as State Environmental Planning Policy No. 25—Residential allotment Sizes (Amendment No. 2—Dual Occupancy Subdivision).

Commencement

2. This Policy commences on 1 January 1992.

Aims, Objectives etc.

3. (1) The aims of this policy are:

- (a) to promote the orderly and economic use and development of urban land by enabling a separate title for each dwelling or

dwelling-house in a dual occupancy development to be created;
and

- (b) to encourage dual occupancy development by broadening its application and usefulness to the community.

(2) The objectives of this Policy are as follows:

- (a) to permit the subdivision of new and existing dual occupancy development;
- (b) to remove the effect of provisions in environmental planning instruments which would prohibit or restrict the subdivision of an existing dual occupancy development or the subsequent or simultaneous subdivision of a new dual occupancy development;
- (c) to suspend regulatory instruments which may prohibit or restrict the subdivision of existing or new dual occupancy development;
- (d) to remove the effect of provisions in environmental planning instruments which may prohibit or restrict the erection of a building subsequent to approval for subdivision for the purposes of dual occupancy development;
- (e) to suspend regulatory instruments which may prohibit or restrict the erection of a building subsequent to approval for subdivision for the purposes of dual occupancy development;
- (f) to provide for special consideration of certain matters in relation to dual occupancy development.

Application of this Policy

4. This Policy applies to the State.

Relationship to other environment planning instruments

5. (1) This Policy mends State Environmental Planning Policy No. 25—Residential Allotment Sizes in the manner set out in clause 6.

(2) This Policy amends Sydney Regional Environmental Plan No. 12—Dual Occupancy in the manner set out in clause 7.

Amendment of SEPP No. 25

6. State Environmental Planning Policy No 25—Residential Allotment Sizes is amended:

- (a) by inserting before clause 1 the following heading:

PART 1—PRELIMINARY

- (b) by inserting before clause 6 the following heading:

PART 2—RESIDENTIAL ALLOTMENT SIZES

- (c) by omitting from clause 1 the words “Residential Allotment Sizes” and by inserting instead the words “Residential Allotment Sizes and Dual Occupancy Subdivision”;
- (d) by inserting after the definition of “Council” in clause 2 (1) the following definition:

“dual occupancy development” means development that results in 2 dwellings (whether attached or detached) on a single allotment of land (or which would have that result were it not for the fact that the allotment is to be subdivided as part of the development), however that development is described or provided for in an environmental planning instrument;

- (e) by omitting the definition of “residential flat building” from clause 2;
- (f) by omitting from clause 2 (2) the words “and ‘gross floor area’ ” and by inserting instead the words “, ‘gross floor area’ and ‘residential flat building’ ”;
- (g) by inserting after clause 2 (3) the following subclause:

(4) To remove doubt, it is declared that a reference in this Policy to dual occupancy development includes a reference to the following:

- (a) development consisting of 2 detached dwelling-houses;
- (b) development consisting of a residential flat building, or residential flats, where the development contains 2 dwellings only;
- (c) development known as cluster housing, villa houses, town houses, group houses, terrace buildings, duplex flats, maisonettes or semi-detached cottages, where the development contains 2 dwellings only.
- (h) by inserting in clause 3 (d) after the words “residential flat buildings” the words “containing 3 or more dwellings”;
- (i) by inserting in clause 9 (2) after the words “residential flat building” the words “containing 3 or more dwellings”;

- (i) by inserting after clause 9 the following Part:

PART 3—SUBDIVISION FOR DUAL OCCUPANCY

Land to which Part applies

10. This Part applies to land described in Schedule 3.

Dual occupancy development may be subdivided

11. Where under an environmental planning instrument dual occupancy development is permissible with or without the consent of the Council, a person may with the consent of that Council subdivide the dual occupancy development (including any land on which that development is or is to be erected).

Minimum allotment sizes

12. (1) The Council must not grant consent to subdivision in accordance with this Part unless:

- (a) in a case where the dual occupancy development is in the form of 2 attached dwellings, the area of the land on which that development is or is to be created is at least 400 square metres; or
- (b) in the case of any other dual occupancy development, the area of the land on which that development is or is to be created is at least 600 square metres.

(2) Subclause (1) does not apply if the environmental planning instrument concerned provides that dual occupancy development may be carried out on an allotment the area of which is less than that specified in whichever of subclause (1) (a) or (b) is applicable in the particular case.

Subdivision must be in conjunction with dual occupancy development

13. The Council must not grant consent to a subdivision in accordance with this Part unless the consent relates to land on which there is an existing dual occupancy development or to land in respect of which the Council grants consent at the same time for dual occupancy development on the unsubdivided allotment.

EPI restrictions as to dimensions and road frontage

14. A provision of an environmental planning instrument does not operate so as to prevent:

- (a) the subdivision of an allotment of land in accordance with this Part; or
- (b) development for the purposes of a dwelling or dwelling-house on an allotment created by such a subdivision,

merely because one or more of the proposed allotments to be created by the subdivision fails to comply with the requirements of the provision with respect to road frontage or with respect to the dimensions of an allotment.

EPI restrictions on separate occupation and subdivision

15. (1) A provision of an environmental planning instrument:

- (a) purporting to impose, or enable the imposition of, any limitations or restrictions as to the person who may occupy a dwelling or dwelling-house in a dual occupancy development; or
- (b) prohibiting or purporting to prohibit the separate occupation of lots illustrated by a proposed strata plan relating to dual occupancy development,

does not operate so as to prevent subdivision in accordance with this Part and does not apply to any dwelling in a dual occupancy development.

(2) A provision of an environmental planning instrument suspending or purporting to suspend the operation of section 37 of the Strata Titles Act 1973 in relation to dual occupancy development or to suspend, prohibit or restrict the issue of a council clerk's certificate under the Local Government Act 1919 or of a council's certificate under the Strata Titles Act 1973 does not operate so as to prevent subdivision in accordance with this Part.

Special considerations relating to dual occupancy development

16. Prior to granting consent to dual occupancy development in accordance with an environmental planning instrument or granting consent to development that is subdivision in accordance with this Part, the council must (to the extent it is not already required to do so under an environmental planning instrument applying to that development or under the Act) consider each of the following:

- (a) whether adequate arrangements have been made for the removal and the disposal of waste from each dwelling in the proposed development;
- (b) whether adequate provision has been made for the supply of water to and the disposal of sewage and stormwater from each dwelling in the proposed development;
- (c) whether adequate provision is made for the privacy of the occupants of each dwelling in the proposed development and in any adjacent development;

- (d) whether adequate provision is made in respect of access to natural light for each dwelling in the proposed development and in any adjacent development;
- (e) whether there is a demonstrated need for access for the purposes of maintaining services and buildings and if so whether adequate arrangements have been made for such access;
- (f) whether there is a demonstrated need for off street car parking and if so whether adequate arrangements have been made for such parking.

Car parking requirements

17. Despite any provision of an environmental planning instrument, the Council in granting consent to a dual occupancy development must not require the provision of more than one car parking space per dwelling.

Setbacks etc.

18. A provision of an environmental planning instrument relating to residential flat buildings (other than in a zoning table), setbacks from roads or side boundaries, or rear building lines does not apply to dual occupancy development or to a dwelling or dwelling-house in a dual occupancy development, except to the extent (if any) that it makes provision as referred to in clause 12 (2).

Suspension of certain provisions, covenants etc.

19. (1) For the purposes of enabling the subdivision of dual occupancy development to be carried out in accordance with this Part or dual occupancy development to be carried out in accordance with an environmental planning instrument or with a consent granted under the Act:

- (a) any agreement, covenant or instrument imposing restrictions as to the erection or use of more than one dwelling-house or dwelling on an allotment of land, as to the use of land for that purpose, as to the persons who may occupy a dwelling-house or dwelling, or as to the size of a dwelling or dwelling-house; and
- (b) clauses 11.2 (1), 11.2 (2), 11.3 (1) and 11.10 (1), (2), (3) of Ordinance 70 under the Local Government Act 1919,

to the extent necessary to serve that purpose do not apply to that development.

(2) Pursuant to section 28 of the Act, before the making of subclause (1):

- (a) the Governor approved of the subclause; and
- (b) the Minister for the time being administering Ordinance 70 under the Local Government Act 1919 concurred in writing in the recommendation for the approval by the Governor of subclause (1) (b).

Operation of conditions of existing consents—transitional

20. A condition of a consent relating to occupancy granted under the Act before the commencement of this Part does not operate so as to prevent subdivision in accordance with this Part or apply to any dwelling in a dual occupancy development.

- (k) by inserting after Schedule 2 the following Schedule:

SCHEDULE 3—LAND TO WHICH PART 3 APPLIES

(Cl. 10)

Land under any environmental planning instrument which is within an area or zone (within the meaning of that instrument) identified in that instrument by the description:

- (a) urban;
- (b) business;
- (c) industrial;
- (d) commercial;
- (e) special uses;
- (f) residential;
- (g) village;
- (h) township;
- (i) living area,

or identified in that instrument by a word or words which is or are cognate with any of the words used in paragraphs (a)–(i), except land excluded by clause 4.

Amendment of Sydney REP No. 12

7. Sydney Regional Environmental Plan No. 12—Dual Occupancy is amended:

- (a) by inserting in clause 3 (1) after word “Penrith” the words “, South Sydney”;

1991—No. 645

- (b) by inserting at the end of clause 8 (c) (ii) the following word and subparagraph:

; or

(iii) alter or add to a dwelling-house or to any other building erected on that allotment so as to create 2 dwelling-houses,

- (c) by omitting from clause 13 (1) the words “being an allotment other than an allotment zoned to allow residential flat buildings” and by inserting instead the words “, other than land described in Schedule 5”;

- (d) by inserting after Schedule 4 the following Schedule:

**SCHEDULE 5—LAND EXCLUDED FROM
CLAUSE 13**

Land under any environmental planning instrument which is within an area or zone (within the meaning of that instrument) identified in that instrument by the description:

- (a) urban;
- (b) business;
- (c) industrial;
- (d) commercial;
- (e) special uses;
- (f) residential;
- (g) village;
- (h) township;
- (i) living area,

or identified in that instrument by a word or words which is or are cognate with any of the words used in paragraphs (a)–(i), except
