

1991—No. 646

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

**SYDNEY REGIONAL ENVIRONMENTAL PLAN No. 25—
ORCHARD HILLS**

NEW SOUTH WALES



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

I, the Minister for Planning, in pursuance of section 51 of the Environmental Planning and Assessment Act 1979, make the regional environmental plan set out hereunder. (86/1900)

ROBERT WEBSTER
Minister for Planning.

Sydney, 9 December, 1991.

PART 1—PRELIMINARY

Citation

1. This plan may be cited as Sydney Regional Environmental Plan No. 25—Orchard Hills.

Aims, objectives etc.

2. This plan aims:

- (a) to identify and protect the prime agricultural land of Orchard Hills and to encourage the continuation of the use of that land for the purpose of agriculture;
- (b) to protect and enhance the scenic landscape quality of the area;
- (c) to ensure that development does not compromise the agricultural or scenic qualities of Orchard;

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- (d) to ensure that development is compatible with existing infrastructure;
- (e) to promote Orchard Hills as a rural landscape buffer area both along the F4 Freeway and between the various residential areas of Penrith;
- (f) to permit the carrying out of development which promotes the agricultural and scenic qualities of Orchard Hills;
- (g) to identify and protect land which may be needed in the future for urban development;
- (h) to identify and conserve items of the environmental heritage; and
- (i) to identify and protect land required by the Commonwealth for the operation of defence facilities.

Land to which plan applies

3. (1) This plan applies to land within the City of Penrith as shown edged heavy black on sheet 1 of the map.

(2) This plan does not apply to the land within the City of Penrith shown as deferred on sheet 1 of the map.

Relationship to other environmental planning instruments

4. (1) This plan amends Interim Development Order No. 93—Penrith, by inserting at the end of clause 1A the following words:

Land to which Sydney Regional Environmental Plan No. 25—Orchard Hills applies.

(2) State Environmental Planning Policy No. 4—Development Without Consent is amended in the manner set out in clause 28.

(3) State Environmental Planning Policy No. 5—Housing for Aged or Disabled Persons is amended in the manner set out in clause 29.

Interpretation

5. (1) In this plan, except in so far as the context or subject-matter otherwise indicates or requires:

“**alter**”, in relation to a heritage item, means:

- (a) make structural changes to the outside of the heritage item;
or
- (b) make non-structural changes to the detail, fabric, finish or appearance of the outside of the heritage item, other than changes that maintain the existing detail, fabric, appearance of the outside of the heritage item;

- “appointed day”** means the day on which this plan takes effect;
- “conservation plan”** means a document setting out the significance of a heritage item and identifying the policies that are appropriate to enable that significance to be retained in its future use and development;
- “demolition”** in relation to a heritage item, means the damaging, defacing, destruction, pulling down or removal of the heritage item, in whole or in part;
- “development control code”** means a code prepared in accordance with clause 25;
- “existing holding”** means:
- (a) except as provided by paragraph (b), a lot, portion or parcel of land as it was at the appointed day; or
 - (b) where, at the appointed day, a person owned 2 or more adjoining lots, portions or parcels of land, the aggregation of those lots, portions or parcels as they were at the appointed day;
- “heritage significance”** means historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance;
- “housing for aged or disabled persons”** means residential accommodation which may take any building form, which is or is intended to be used permanently as housing for the accommodation of aged persons or disabled persons and which may consist of hostels or a grouping of 2 or more self-contained dwellings, or a combination of both, whether or not any 1 or more of the following facilities are provided for use in connection with that accommodation:
- (a) accommodation for staff employed or to be employed in connection with that accommodation;
 - (b) chapels;
 - (c) medical consulting rooms;
 - (d) meeting rooms;
 - (e) recreation facilities;
 - (f) shops;
 - (g) therapy rooms;
 - (h) any other facilities for the use or benefit of aged persons or disabled persons;
- “heritage item”** means a building, work, relic, tree or place identified on sheet 2 of the map as a heritage item;
- “maintenance”** means the continuous protective care of the fabric of the item and its setting;

“map” means the map marked “Sydney Regional Environmental Plan No. 25—Orchard Hills” deposited in the office of the Department and a copy of which is deposited in the office of the Council of the City of Penrith;

“recreation area” means:

- (a) a children’s playground;
- (b) an area used for sporting activities or sporting facilities; or
- (c) an area used to provide facilities for recreational activities which promote the physical, cultural or intellectual welfare of persons within the community, being facilities provided by:
 - (i) a public authority; or
 - (ii) a body of persons associated for the purpose of the physical, cultural or intellectual welfare of persons within the community,

but does not include a racecourse or a showground;

“relic” means any deposit, object or material evidence relating to the use or settlement of the City of Penrith which is 50 or more years old;

“residue allotment” means an allotment of land created in accordance with clause 15, other than a small allotment;

“small allotment” means an allotment of land created in accordance with clause 15, having an area of not less than 4,000 square metres and not more than 5,000 square metres;

“waste disposal depot” means premises to which waste is transported for treatment, storage or disposal.

(2) In this plan:

- (a) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for the purpose;
- (b) a reference to a map is a reference to a map deposited in the office of the consent authority; and
- (c) a reference to land within a zone specified in the Table to clause 9 is a reference to land shown on the map in the manner indicated in clause 8 as the means of identifying land of the zone so specified.

Adoption of model provisions

6. Clauses 4 (except for the definition of the “map”) and 35 of and Schedule 1 to the Environmental Planning and Assessment Provisions 1980 are adopted for the purpose of this of this plan and,

application of these provisions, a reference to the local environmental plan shall be read and construed as a reference to this regional environmental plan.

Consent authority

7. For the purposes of this plan, the consent authority is the Council of the City of Penrith.

PART 2—GENERAL RESTRICTIONS ON DEVELOPMENT OF LAND

Zones indicated on the map

8. For the purposes of this plan, land to which this plan applies is within a zone specified below if the land is shown on Sheet 1 of the map in the manner specified below in relation to that zone:

Zone No. 1 (a)—Agriculture Protection—coloured light brown, edged heavy black and numbered “1 (a)”.

Zone No. 1 (b)—Rural—coloured light brown, edged heavy black and numbered “1 (b)”.

Zone No. 5—Special Uses (Defence)—coloured yellow, edged heavy black and numbered “5”.

Zone objectives and development control table

9. (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 in this clause, the purposes (if any) for which:

- (a) development may be carried out without development consent;
- (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 consent authority shall not grant consent to an application to carry out development on land to which this plan applies unless it is of the opinion that the carrying out of the development is generally consistent with one or more of the aims

of this plan and the objectives of the zone within which the development is proposed to be carried out.

TABLE

ZONE No. 1 (a)—AGRICULTURAL PROTECTION

1. Objectives of zone

The objectives of this zone are:

- (a) to identify and protect prime agricultural land;
- (b) to encourage the use of that land for agriculture;
- (c) to prevent further fragmentation of agricultural land and encourage amalgamation of lots into viable agricultural holdings;
- (d) to protect commercial agricultural enterprises;
- (e) to encourage the revitalisation of commercial agriculture; and
- (f) to protect and promote the scenic qualities of the landscape.

2. Without development consent

Agriculture (not involving the erection of a building).

3. Only with development consent

Any purpose other than a purpose included in item 2 or 4.

4. Prohibited

Advertising structures; airline terminals; amusement parks; bus depots; bus stations; commercial premises; car repair stations; drive-in theatres; extractive industries; general stores; heliports; hotels; housing for aged or disabled persons; industries (other than rural and home industries); intensive livestock keeping; junk yards; liquid fuel depots; mines; motels; motor showrooms; offensive and hazardous industries; places of assembly; places of public worship; recreation facilities; residential flat buildings; sawmills; service stations; shops; stock and sale yards; transport terminals; taverns; warehouses; waste disposal depots.

ZONE No. 1 (b)—RURAL

1. Objectives of zone

The objectives of this zone are:

- (a) to protect and promote rural land uses;
- (b) to protect and promote the scenic qualities of the rural landscape;

- (c) to allow development consistent with the land capabilities, rural aesthetics and rural economics;
- (d) to identify certain areas suitable for more intensive rural settlement subject to certain environmental, design and servicing constraints; and
- (e) to protect certain areas, which have long term urban potential, from development which would jeopardise that potential.

2. Without development consent

Agriculture (not involving the erection of a building).

3. Only with development consent

Any purpose other than a purpose included in item 2 or 4.

4. Prohibited

Advertising structures; airline terminals; amusement parks; bus stations; commercial premises; car repair stations; drive-in theatres; extractive industries; general stores; heliports; hotels; housing for aged or disabled persons; industry (other than rural and home industries); intensive livestock keeping; junk yards; liquid fuel depots; mines; motor showrooms; offensive and hazardous industries; residential flat buildings; sawmills; service stations; shops; stock and sale yards; transport terminals; taverns; warehouses; waste disposal depots.

ZONE No. 5—SPECIAL USES (DEFENCE)

1. Objective of zone

The objective of this zone is to identify land required by the Commonwealth Government for the operation of the Kingswood Armament Depot and associated defence facilities.

2. Without development consent

Agriculture; defence.

3. Only with development consent

Utility installations; utility undertakings.

4. Prohibited

Any purpose other than a purpose included in item 2 or 3.

PART 3—SPECIAL PROVISIONS**Heritage aims and objectives**

- 10.** The aims and objectives of the heritage provisions of this plan are:
- (a) to conserve the environmental heritage of the land to which this plan applies;
 - (b) to integrate heritage conservation into the planning and development control processes;
 - (c) to provide for public involvement in matters relating to the conservation of the environmental heritage to which this plan applies; and
 - (d) to ensure that new development is undertaken in a manner that is sympathetic to, and does not detract from, the heritage significance of items and their settings, as well as streetscapes and landscapes and the distinctive character that they impart to the land to which this plan applies.

Heritage items

11. (1) A person must not, in respect of a building, work, relic, tree or place that is a heritage item:

- (a) demolish or alter the building or work;
- (b) damage or move the relic;
- (c) excavate for the purpose of exposing the relic;
- (d) damage or despoil the place or tree;
- (e) erect a building on or subdivide land on which the building, work, relic or tree is situated or which comprises the place; or
- (f) damage any tree on land on which the building, work or relic is situated or on the land which comprises the place,

except with the consent of the consent authority.

(2) The consent authority must not grant consent required by subclause (1) unless it has taken into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the item and any stylistic or horticultural features of its setting.

(3) The consent authority may require that a conservation plan accompany a development application required by this clause to enable the consent authority fully to consider the heritage significance of the item and the impact of the proposed development on the significance of its item and its setting.

Development in the vicinity of a heritage item

12. The consent authority must not grant consent for the carrying out of development on land in the vicinity of a heritage item unless it is satisfied that the development will not adversely affect the heritage significance of the heritage item.

Heritage advertisements and notifications

13. (1) Except as provided by this clause:

- (a) the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of the demolition of a building or work that is a heritage item in the same way as those provisions apply to and in respect of designated development; and
- (b) where a person makes a development application to demolish a building or work that is a heritage item, the consent authority may not grant consent to that application until 28 days after the consent authority has notified the Secretary of the Heritage Council of its intention to do so or the Heritage Council has advised the consent authority in writing that it has no objection to the demolition, whichever occurs first.

(2) The consent authority must not grant consent to the demolition or partial demolition of a building or work that is a heritage item unless it is satisfied that the building or work has been adequately recorded and that copies of the records have been deposited with the Department of Planning, the Australian Heritage Commission and the Mitchell Library.

Subdivision generally

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

Subdivision within Zone No. 1 (a)

15. (1) The objectives of this clause are:

- (a) to encourage the creation of allotments of land having a sufficient size to be viable for agriculture; and
- (b) to permit in certain circumstances, the creation of small allotments of land.

(2) The consent authority may grant consent to an application to subdivide land within Zone No. 1 (a) only if:

- (a) the land to which the application relates is or forms part of an existing holding an area of not less than 4 hectares; and

- (b) all but one of the allotments to be created by the proposed subdivision will be a small allotment; and
- (c) the number of small allotments will not exceed:
 - (i) in the case of land having an area of not less than 4 hectares but less than 6 hectares—1; or
 - (ii) in the case of land having an area of 6 hectares or more—2, plus 1 for each additional 2 hectares in excess of 6 hectares; and
- (d) in the case of an application to subdivide land on which 2 or more dwelling-houses are erected—the consent authority is satisfied that, so far as is practicable, only 1 dwelling-house will be located on each allotment to be created by the proposed subdivision.

Subdivision and amalgamation of agricultural land

16. (1) Notwithstanding clause 15, the consent authority may grant consent to an application to subdivide land (other than a small allotment) within Zone No. 1(a) only if, as a condition of granting that consent, it requires that:

- (a) in the case of an application to subdivide land on which a dwelling-house is or is proposed to be erected—each allotment to be created by the proposed subdivision (except the allotment on which the dwelling-house is or is proposed to be erected) will be amalgamated with another allotment not created by the subdivision and the land so amalgamated will be used exclusively for the purpose of agriculture; or
- (b) in any other case—each allotment to be created by the proposed subdivision will be amalgamated with another allotment not created by the subdivision and the land so amalgamated will be used exclusively for the purpose of agriculture.

(2) An allotment of land of less than 4,000 square metres may not be created under this clause if a dwelling-house is or is proposed to be erected on the allotment.

Erection of buildings within drainage areas

17. (1) This clause applies to land shown stippled black on sheet 2 of the map.

(2) The consent authority shall not grant consent to an application to erect a building on land which this clause applies unless it is satisfied that:

- (a) no practical alternative location exists for the proposed building; and
- (b) the building is not likely to be threatened by flood flows; and
- (c) the erection or use of the building will not divert flood flows or adversely affect drainage flows; and
- (d) the erection or use of the building will not cause soil erosion.

Subdivision within Zone No. 1(b)—“Area A”

18. (1) This clause applies to land within Zone No. 1(b) shown edged heavy black and marked “A” on sheet 2 of the map.

(2) The objective of this clause is to maintain the existing low density settlement pattern of the land to which this clause applies.

(3) The consent authority shall not grant consent to an application to subdivide land to which this clause applies so as to create an allotment of land having an area of less than 2 hectares.

Subdivision within Zone No. 1(b)—“Area B”

19. (1) This clause applies to land within Zone No. 1(b) shown edged black and marked “B” on sheet 2 of the map.

(2) The objectives of this clause are:

- (a) to permit closer settlement of the land to which this clause applies, subject to the availability and cost of providing services to the land and the compatibility of closer settlement of the land with the adjacent Commonwealth defence facility; and
- (b) to protect and improve the rural landscape quality of the area; and
- (c) to provide for a diversity of rural living opportunities.

(3) The consent authority may grant consent to an application to subdivide land to which this clause applies only if:

- (a) each allotment to be created by the proposed subdivision has an area of not less than 4,000 square metres; and
- (b) the number of allotments to be created by the proposed subdivision does not exceed 1 for each 2 hectares in area of land to which the application relates; and
- (c) the pattern of allotments to be created by the proposed subdivision and the location of any proposed buildings on those allotments conform to a development control code which makes provision for the matters specified in subclause (4); and

- (d) in the case of an application to subdivide land on which 2 or more dwelling-houses are erected—the consent authority is satisfied that, in so far as is practicable, only 1 dwelling-house will be located on each allotment to be created by the proposed subdivision.
- (4) For the purposes of subclause (3) (c), a development control code shall:
 - (a) promote the aims of this plan and, in particular, promote the need to maintain a low density settlement pattern; and
 - (b) provide for adequate water supply, waste water disposal and drainage; and
 - (c) ensure that the number of allotments having direct access to The Northern Road is not increased; and
 - (d) protect and preserve the rural landscape quality along The Northern Road.

Subdivision within Zone No. 1 (b)—“Area D”

20. (1) This clause applies to land within Zone No. 1(b) shown edged heavy black and marked “D” on sheet 2 of the map.

(2) The objective of this clause is to enable the land to which this clause applies to function as a transitional zone between the urban area to the west and the larger lot rural residential area to the east and south-east.

(3) The consent authority shall not grant consent to an application to subdivide land to which this clause applies unless:

- (a) each allotment to be created by the proposed subdivision has an area of not less than 4,000 square metres; and
 - (b) arrangements regarding service provision have been made which are satisfactory to the Water Board; and
 - (c) the pattern of allotments to be created by the proposed subdivision and the location of any proposed buildings on these allotments conform to a development control code which makes provision for the matters specified in subclause (4).
- (4)** For the purposes of subclause (3) (c), a development control code shall:
- (a) promote the aims of this plan and contain provisions designed to promote a low density settlement pattern; and
 - (b) provide for adequate water supply, waste water disposal and drainage; and
 - (c) ensure that there is no access from the future development onto The Northern Road; and

- (d) protect and preserve the rural landscape quality along The Northern Road.

Dwelling-houses within Zone No. 1 (a) or 1 (b)

21. The consent authority may grant consent to an application to erect a dwelling-house on an allotment of land within Zone No. 1(a) or 1(b) only if there is no other dwelling-house erected on the allotment and:

- (a) the allotment was in existence on the appointed day; or
- (b) the allotment was created in accordance with clause 15, 16, 18, 19 or 20.

Preservation of trees

22. (1) A person shall not, except with the consent of the consent authority, 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 0.30 metres at a height of 0.40 metres above the ground; or
 - (c) is located within 20 metres of a watercourse; or
 - (d) is located on the land shown stippled black on sheet 2 of the map; or
 - (e) is located on land with a gradient greater than 18 degrees from the horizontal.
- (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 cultivated for the purposes of horticulture; or
 - (c) any tree which is dying or dead or has become dangerous.

Matters for consideration—development along The Northern Road

23. In determining an application for consent to carry out development on land having a frontage to The Northern Road, the consent authority shall:

- (a) only grant consent to my development which causes a significant increase in traffic generation if it has no direct access onto The Northern Road; and

- (b) consider whether the development is sympathetic with the existing rural landscape and its future development having regard to the intended use of the land, the scale and design of buildings or landscaping.

Noise abatement

24. The consent authority may only grant consent to an application to erect a building which includes a habitable room in the vicinity of the F4 Freeway or The Northern Road:

- (a) if the consent authority is satisfied that the external facade of the habitable room will not be exposed to an LA10 (18 hour) traffic noise level exceeding 63dB (a); or
- (b) if appropriate noise attenuation measures have been or will be carried out, which the consent authority is satisfied will reduce the internal noise level to meet the State Pollution Control Commission criteria for dwellings.

Development control code

25. (1) Where the consent authority considers it necessary or desirable to provide more detailed provisions than are contained in this plan in respect of a part or parts of the land to which this plan applies, it may prepare or cause to be prepared in accordance with this clause a development control code.

(2) The consent authority must prepare a development control code for the purposes of clauses 19 and 20 or cause such a code to be prepared.

(3) The format, structure, subject-matter and procedures for the preparation, public exhibition, approval, amendment and repeal of a development control code shall be in accordance with the provisions of Part. 3 of the Environmental Planning and Assessment Regulation 1980 which shall be read and construed as if:

- (a) a reference to a development control plan was a reference to a development control code; and
- (b) the reference to a local environmental plan was a reference to plan; and
- (c) the reference to the council was a reference to the consent authority.

(4) A development control code shall promote the general and specific aims of this plan, generally conform to the provisions of this plan and must have been endorsed by the Director of Planning prior to its adoption by the consent authority.

(5) A development control code shall be available for public inspection, without charge, at the office of the consent authority during ordinary office hours.

(6) The consent authority shall not grant consent to an application to carry out development on land to which this plan applies and to which a development control code applies, unless it has taken into consideration the provisions of the code.

Meat processing plants prohibited

26. Notwithstanding clause 9, development for the purposes of a meat (including poultry and fish) processing plant is prohibited on land to which this plan applies.

Development of certain land—Kingswood Road, Orchard Hills

27. Notwithstanding any other provision of this plan, development for the purposes of a place of public worship is permissible with the consent of the consent authority on Lot 43, D.P. 1344 Kingswood Road, Orchard Hills but only if:

- (a) the consent authority is satisfied as to the appropriateness of the buildings in their rural context; and
- (b) the consent authority is satisfied that the landscaping proposed is adequate and enhance the rural setting; and
- (c) satisfactory arrangements for the provisions of water services have been made with the Water Board.

Amendment of S.E.P.P No. 4—Development Without consent

28. State Environmental Planning Policy No. 4—Development Without Consent is amended:

- (a) by omitting from clause 10 (1) the words “, but does not apply to development authorized by clause 9 or to land to which State Environmental Planning Policy No. 14—Coastal Wetlands applies”;
- (b) by inserting at the end of clause 10 (3) (d) the following words and paragraphs:
 - ; or
 - (e) to development authorised by clause 9; or
 - (f) to land to which State Environmental Planning Policy No. 14—Coastal Wetlands applies; or
 - (g) to land to which Sydney Regional Environmental Plan No. 25—Orchard Hills applies.

Amendment of S.E.P.P. No. 5—Housing for Aged or Disabled Persons

29. State Environmental Planning Policy No. 5—Housing for Aged or Disabled Persons is amended by adding to Schedule 2 the following clause:

2. Land to which Sydney Regional Environmental Plan No. 25—Orchard Hills applies.

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