

Wagga Wagga Local Environmental Plan 1985

[1985-15]



New South Wales

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New South Wales

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Wagga Wagga Local Environmental Plan 1985



New South Wales

Part 1 Preliminary

1 Name of plan

This plan may be cited as *Wagga Wagga Local Environmental Plan 1985*.

2 Aims, objectives etc

(1) The general aims of this plan are:

- (a) to repeal all the existing local planning controls which apply to the land shown on the map and to replace those controls with a single local environmental plan,
- (b) to simplify the general restrictions on development by reducing the number of zones into which land is divided,
- (c) to give the council greater responsibility for environmental planning by creating only a broad framework of controls and to create opportunity for the more detailed provisions relating to matters of significance only for local environmental planning to be contained in development control plans made by the council,
- (d) to speed up the planning process in matters of significance only for local environmental planning, and
- (e) to maintain the opportunity for public involvement and participation in environmental planning and assessment by using development control plans to supplement the broad controls in the plan.

(2) The particular aims of the plan are as follows:

- (a) to divide land into the zones referred to in clause 8 and to achieve in respect of land within each of those zones the objectives specified for that zone in the Table to clause 9,
- (b) to encourage the council to make development control plans regulating the carrying out of development in any zone:
 - (i) by restricting the carrying out of that development to a specified area within

the zone, or

- (ii) by fixing standards or specifying requirements in respect of any aspect of that development,
- (c) to ensure that development is carried out in such a way as to allow the economic and efficient provision of public services and amenities,
- (d) to identify the central business district as the commercial and retail focus of the city and the region,
- (e) to promote the city as a tourist base and a centre for sporting, leisure, conference and convention activities,
- (f) to develop a safe, convenient and economic movement system for public and private motor vehicles, cyclists and pedestrians,
- (g) to identify and improve significant landscape and townscape elements within the city,
- (h) to ensure the conservation of the historic, architectural and aesthetic character of the central city area,
- (i) to reduce the incidence of damage to areas subject to flooding by restricting development in the flood plain and in the floodway,
- (j) to promote ecologically sustainable development.

3 Land to which plan applies

This plan applies to the land within the city as shown bounded by a firm black line on the map.

4 Relationship to other environmental planning instruments

- (1) This plan repeals the environmental planning instruments referred to in subclause (2) and amends *Interim Development Order No 1—Shire of Mitchell* in the manner set out in subclause (3).
- (2) The following environmental planning instruments are repealed:
 - (a) *City of Wagga Wagga Planning Scheme Ordinance*,
 - (b) Interim Development Order Nos 1-8, 10 and 12-35—City of Wagga Wagga,
 - (c) Wagga Wagga Local Environmental Plan Nos 1, 3-14, 17, 21, 22, 24 and 25,
 - (d) such other deemed environmental planning instruments and local environmental plans as, immediately before the appointed day, applied to the land to which this plan applies, to the extent to which those instruments and plans so applied to that

land.

- (3) *Interim Development Order No 1—Shire of Mitchell* is amended by inserting after clause 2 the following clause:

2A Land to which this Order does not apply

This Order does not apply to land to which the *Wagga Wagga Local Environmental Plan 1985* applies.

5 Interpretation

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

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

conservation area means the area of land shown crosshatched in black and bounded by a broken black line on the map.

council means the Council of the City.

demolition, in relation to a building or work, means the damaging, defacing, destruction, pulling down or removal of that building or work in whole or in part.

development control plan means a development control plan made under section 72 of the Act in respect of the whole or any part of the land to which this plan applies.

ecologically sustainable development means development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs (as derived from the “*Brundtland Report*” (1990) on Environment and Development). The principles of ecological sustainability are set out in Schedule 1.

item of the environmental heritage means a building, work, relic or place of historic, scientific, cultural, social, architectural, archaeological, natural or aesthetic significance for the City identified in a development control plan.

relic means any deposit, object or material evidence relating to the settlement (including aboriginal habitation) prior to 1 January 1900 of the area of the council.

renovation, in relation to a building or work, means:

- (a) the making of structural changes to the inside or outside of the building or work,
or
- (b) the making of non-structural changes to the fabric or appearance of the outside of the building or work, including changes that involve the repair, or the painting,

plastering or other decoration, of the building or work.

the city means the City of Wagga Wagga.

the map means the map marked “Wagga Wagga Local Environmental Plan 1985” as amended by the maps marked as follows:

Wagga Wagga Local Environmental Plan 1985 (Amendment No 2)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 3)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 4)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 6)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 8)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 9)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 10)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 11)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 12)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 13)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 15)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 16)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 17)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 18)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 20)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 22)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 23)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 24)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 27)
Wagga Wagga Local Environmental Plan 1985—Amendment No 28
Wagga Wagga Local Environmental Plan 1985 (Amendment No 29)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 30)
Wagga Wagga Local Environmental Plan 1985 (Amendment No 31)

Wagga Wagga Local Environmental Plan 1985 (Amendment No 32)

Wagga Wagga Local Environmental Plan 1985 (Amendment No 36)

Wagga Wagga Local Environmental Plan 1985 (Amendment No 39)

Wagga Wagga Local Environmental Plan 1985 (Amendment No 40)

Wagga Wagga Local Environmental Plan 1985 (Amendment No 41)

Wagga Wagga Local Environmental Plan 1985 (Amendment No 44)

Wagga Wagga Local Environmental Plan 1985 (Amendment No 45)

Wagga Wagga Local Environmental Plan 1985 (Amendment No 50)

- (2) In this plan, except in so far as the context or subject-matter otherwise indicates or requires:
- (a) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for the purpose, and
 - (b) a reference to a map is a reference to a map deposited in the office of the council.

6 Adoption of Model Provisions

The *Environmental Planning and Assessment Model Provisions 1980*, except for:

- (a) the definition of **map** in clause 4 (1), and
- (b) clauses 15 and 36,

are adopted for the purposes of this plan.

7 Consent authority

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

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:

Rural Zone—edged black and numbered “1”.

Residential Zone—edged black and numbered “2”.

Business Zone—edged black and numbered “3”.

Industrial Zone—edged black and numbered “4”.

Special Uses Zone—edged black and numbered “5” (and either hatched or unhatched).

Open Space Zone—edged black and numbered “6” (and either hatched or unhatched).

Environmental Protection Zone—edged black and numbered “7”.

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,are specified under the headings “Without development consent” and “Only with development consent”, 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 zone within which the development is proposed to be carried out.

Table

Rural Zone

1 Objectives of zone

The objectives are:

- (a) to enable development for the purposes of small holdings or hobby farms to be carried out on land which is suitable for those purposes and is not of prime agricultural value,
- (b) to encourage the planning of the size and shape of small holdings or hobby farms to have regard to existing stands of trees, views, soils, topography, winds and location of services,
- (c) to ensure that allotments created in a small holdings or hobby farms subdivision do not hinder the proper and orderly development of future urban areas,

- (d) to ensure that development maintains the rural character of the locality and minimizes disturbances to the landscape through clearing, earthworks and access roads and is in harmony with the environment, and
- (e) to enable other forms of development to be carried out on land within the zone if it is in keeping with the rural character of the locality and is compatible with existing or likely future small holdings or hobby farms, and
- (f) to allow development for purposes other than small holdings or hobby farms within the zone only if it does not detrimentally affect the character or amenity of the locality.

2 Without development consent

Nil.

3 Only with development consent

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

Residential Zone

1 Objectives of zone

The objectives are:

- (a) to make general provision to set aside land to be used for the purposes of housing and associated facilities,
- (b) to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for medium density housing as well as an area where only single dwelling-houses and dual occupancy buildings are permitted,
- (c) to allow a variety of housing types within existing and new residential areas,
- (d) to encourage greater visual amenity by requiring landscaping and permitting a greater variety of building materials and flexibility of design, and
- (e) to allow development for purposes other than housing within the zone

only if it does not detrimentally affect the character or amenity of the locality.

2 Without development consent

Nil.

3 Only with development consent

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

Business Zone

1 Objectives of zone

The objectives are:

- (a) to encourage the development and expansion of business activities which will contribute to the economic growth and employment opportunities within the City,
- (b) to encourage a wide range of retail, commercial and tourist facilities within the central business district,
- (c) to accommodate the establishment of retail, commercial and professional services for local residents in convenient locations within the residential neighbourhoods where that scale and type of development is compatible with the amenity of the surrounding residential areas,
- (d) to ensure there is adequate provision for car parking facilities in the vicinity of the central business district, and
- (e) to minimize conflicts between pedestrians and vehicular movement systems within the central business district.

2 Without development consent

Nil.

3 Only with development consent

Any purpose.

Industrial Zone

1 Objectives of zone

The objectives are:

- (a) to encourage the establishment of industries outside of areas used or zoned for residential or business purposes by making general provision to set aside an area of land to be used for a broad range of industrial purposes,
- (b) to allow detailed provision to be made, by means of a development control plan, to set aside different areas within the zone for offensive or hazardous industries, general industries and light industries,
- (c) to ensure industrial development creates areas which are pleasant to work in, safe and efficient in terms of transportation, land utilization and service distribution,
- (d) to enhance and improve the physical environment of the city by minimizing disturbances caused by air pollutants, water pollutants, noise pollutants and other pollutants, and
- (e) to allow commercial or retail development only where it relates to the use of land within the zone for industrial purposes, and
- (f) to allow development for purposes other than industries within the zone only if it does not detrimentally affect the character or amenity of the locality.

2 Without development consent

Nil.

3 Only with development consent

Any purpose.

Special Uses Zone

1 Objectives of zone

The objectives are to identify areas which:

- (a) in the case of land shown unhatched on the map, are now owned or used for public or community purposes, and
- (b) in the case of land shown hatched on the map, will be acquired by a

public authority for the particular public or community purpose shown on the map.

2 Without development consent

The particular purpose indicated by black lettering on the map.

3 Only with development consent

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

Open Space Zone

1 Objectives of zone

The objectives are:

- (a) to ensure there is provision of adequate open space areas to meet the needs of all residents and provide opportunities to enhance the total environmental quality of the city,
- (b) in the case of land shown unhatched, to identify land which is now owned by the council or which will be dedicated as a condition of development consent or subdivision approval to the Council for open space or public recreational purposes, and
- (c) in the case of land shown hatched, to identify land which will be acquired by the council in the future for open space or public recreational purposes.

2 Without development consent

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

3 Only with development consent

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

Environmental Protection Zone

1 Objectives of zone

The objectives are to identify and protect the land which is environmentally

sensitive and in particular:

- (a) to protect significant wildlife habitats within the flood plain of the Murrumbidgee River,
- (b) to preserve hillscapes, ridgelines and riparian areas,
- (c) to promote the preservation, conservation and enhancement of major landscape features and indigenous fauna and flora in the City, and
- (d) to facilitate the protection of land which is susceptible to degradation.

2 Without development consent

Nil.

3 Only with development consent

Any purpose.

Part 3 Special provisions

10 Advertising of certain development applications

- (1) This clause applies to development proposed to be carried out on land:
 - (a) within the Residential Zone, or
 - (b) within the Open Space Zone and owned by the council,other than development involving alterations or additions to any existing development which alterations or additions are of a minor nature and do not to any significant extent adversely affect the existing or likely future amenity of the neighbourhood.
- (2) The provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development to which this clause applies in the same manner as those provisions apply to and in respect of designated development.
- (3) For the purposes of subclause (2), section 84 (4) (a) shall be construed as if the words “the Department (where the Minister or the Director is not the consent authority)” were omitted therefrom.

11 Subdivision

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

12 Flooding

(1) In this clause:

flood plain means the land shown on the map between broken black lines, being the land flooded in the 1974 floods.

floodway means the land within the flood plain, as determined in consultation between the council and the Water Resources Commission, as essential to the clear passage of floodwater.

(2) A person shall not erect a building or carry out a work in the flood plain except with the consent of the council.

(3) The Council shall not consent to the erection of a building or the carrying out of a work on land within a floodway if, in the opinion of the council, the carrying out of the development is likely:

- (a) to impede the flow of flood waters on the land or land in its immediate vicinity,
- (b) to imperil the safety of persons on the land or land in its immediate vicinity in the event of those lands being inundated by flood waters,
- (c) to aggravate the consequences of floodwaters flowing on the land or land in its immediate vicinity with regard to erosion, siltation and the destruction of vegetation, or
- (d) to have an adverse effect on the water table of the land or land in its immediate vicinity.

13 Demolition in the Business Zone

A person shall not demolish a building within the Business Zone except with the consent of the council.

14 Development on arterial roads

The Council shall not consent to an application to carry out development within the Rural Zone where the council is of the opinion that the development will constitute a traffic hazard by reason of its proximity to an arterial road.

15 Minor variation of zoning boundaries

(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 the other side of the

boundary.

- (3) The council shall not consent to the carrying out of development referred to in subclause (2) unless, in the opinion of the council, the carrying out of the development is desirable due to planning, design, ownership, servicing or similar requirements relating to the optimum development of land to which this plan applies.

16 Items of the environmental heritage

A person shall not, in respect of a building, work, relic or place that is an item of the environmental heritage:

- (a) demolish, renovate or extend that building or work,
- (b) damage or despoil that relic or place or any part of that relic or place,
- (c) excavate any land for the purpose of exposing or removing that relic,
- (d) erect a building on the land on which that building, work or relic is situated or on the land which comprises that place, or
- (e) subdivide the land on which that building, work or relic is situated or the land which comprises that place,

except with the consent of the council.

17 Conservation area

A person shall not, in respect of a conservation area:

- (a) demolish, extend or change the outside of a building or work within that area, including changes to the outside of a building or work that involve the repair or the painting, plastering or other decoration of the outside of the building or work,
- (b) damage or despoil a relic or part of a relic within that area,
- (c) excavate any land for the purpose of exposing or removing a relic within that area, or
- (d) erect a building within that area,

except with the consent of the council.

18 Development incentive relating to heritage items

Nothing in this plan prevents the council from granting consent:

- (a) to the use, for any purpose, of a building within the conservation area or of the land on which that building is erected, or
- (b) to the use, for any purpose, of a building that is an item of the environmental heritage or of the land on which that building is erected,

where the council is satisfied that:

- (c) the use would have little or no adverse effect on the amenity of the neighbourhood, and
- (d) conservation of the building depends upon the council granting consent in pursuance of this subclause.

19 Heritage Council to be given prior notice of demolition consent

Where a person makes a development application to demolish a building or work that is an item of the environmental heritage or is within the conservation area, the council shall not grant consent to that application until the council has notified the Secretary of the Heritage Council of its intention to do so.

20 Advertising of heritage applications

- (1) Subject to subclause (2), the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of:
 - (a) the demolition of a building or work within the conservation area, and
 - (b) the demolition of a building or work that is an item of the environmental heritage, in the same way as those provisions apply to and in respect of designated development.
- (2) Subclause (1) does not apply to the partial demolition of a building or work where the partial demolition is of a minor nature and does not adversely affect the significance of the building or work as part of the environmental heritage of the City.
- (3) For the purposes of subclause (1), section 84 (4) (a) of the Act shall be construed as if the words “the Department (where the Minister or the Director is not the consent authority)” were omitted therefrom.

21 Development within the Open Space Zone

Where the council owns land which is within the Open Space Zone, the council shall not consent to an application to carry out development on that land unless it has made an assessment of:

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

22 Acquisition of reserved land

- (1) The owner of any land shown hatched on the map and within:
 - (a) the Open Space Zone,
 - (b) the Special Uses Zone and lettered “Sewerage Treatment Works”,
 - (c) the Special Uses Zone and lettered “school”,
 - (d) the Special Uses Zone and lettered “proposed motorway”,may, by notice in writing, require:
 - (e) in the case of land referred to in paragraphs (a) and (b), the council,
 - (f) in the case of land referred to in paragraph (c), the Minister for Education, and
 - (g) in the case of land referred to in paragraph (d), The Commissioner of Main Roads,to acquire that land.
- (2) Subject to subclause (3), on receipt of a notice referred to in subclause (1), the public authority concerned shall acquire the land.
- (3) Land to which this clause applies may be developed for any purpose, with the consent of the council, until the land is acquired by the public authority concerned where the council is satisfied that the carrying out of that development will not adversely affect the usefulness of the land for the purposes for which it has been zoned.
- (4) The council shall not grant consent referred to in subclause (3) to the development of land to be acquired by the Commissioner for Main Roads unless it obtains the concurrence of the Commissioner for Main Roads.
- (5) In considering whether to grant concurrence under subclause (4), the Commissioner for Main Roads shall take into consideration:
 - (a) the effect of the proposed development on the costs of acquisition,
 - (b) the imminence of acquisition, and
 - (c) the cost associated with the reinstatement of the land for the purposes for which the land has been zoned.

23 Suspension of certain laws etc

- (1) For the purpose of enabling development to be carried out in accordance with this plan (as in force at the time the development is carried out) section 314 (1) (c) of, and Schedule 7 to, the [Local Government Act 1919](#) shall not apply to the development to the extent necessary to serve that purpose.

(2) Pursuant to section 28 of the Act, before the making of this clause:

- (a) the Governor approved of subclause (1), and
- (b) the Minister for the time being administering the provisions referred to in subclause (1) concurred in writing to the recommendation for the approval of the Governor with regard to subclause (1).

23A Suspension of certain covenants etc

- (1) For the purpose of enabling development to be carried out in accordance with this plan (as in force at the time the development is carried out) or in accordance with any consent granted under the Act, the operation of any covenant, agreement or instrument imposing restrictions on development, to the extent necessary to serve that purpose, shall not apply to the development.
- (2) Pursuant to section 28 of the Act, before the making of this plan the Governor approved of subclause (1).

24 Provision of public amenities and public services

As a consequence of the carrying out of development in accordance with this plan (as in force at the time the development is carried out), this plan identifies a likely increased demand for public amenities and public services (as specified in Schedule 1) and stipulates that dedication or a contribution under section 94 (1) of the Act, or both, may be required as a condition of any consent to that development.

25 Development on land subject to flooding

Notwithstanding any other provisions of this plan, the council shall not consent to the erection of any building or the carrying out of any work on land subject to flooding to which *Wagga Wagga Local Environmental Plan 1985 (Amendment No 4)* applies, if, in the opinion of the council:

- (a) the carrying out of the development is likely to impede the flow of flood waters on the land or on land in its immediate vicinity, or
- (b) the safety of the building or work would be adversely affected in time of flood.

26 North Wagga Wagga—erection of new dwellings

Notwithstanding any other provision of this plan, the council shall not consent to the erection of any new dwelling on land in North Wagga Wagga to which *Wagga Wagga Local Environmental Plan 1985 (Amendment No 6)* applies except where:

- (a) the proposed new dwelling will replace a dwelling which was in existence as at 14 December 1987, and
- (b) the dwelling being replaced by the new dwelling is demolished or removed.

27 What is exempt and complying development?

- (1) Development of minimal environmental impact listed as exempt development in *Wagga Wagga Development Control Plan No 8* as adopted by Council on 22 November 1999 is **exempt development** and may be carried out without development consent despite any other provision of this plan.
- (2) Development listed as complying development in *Wagga Wagga Development Control Plan No 10* as adopted by Council on 22 November 1999 is **complying development** if:
 - (a) it is local development of a kind that can be carried out with consent on the land on which it is proposed, and
 - (b) it is not an existing use, as defined in section 106 of the Act.
- (3) Development is exempt development only if it complies with the development standards and other requirements applied to the development by *Wagga Wagga Development Control Plan No 8* as adopted by the Council on 22 November 1999.
- (4) Development is complying development only if it complies with the development standards and other requirements applied to the development by *Wagga Wagga Development Control Plan No 10* as adopted by the Council on 22 November 1999.
- (5) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in *Wagga Wagga Development Control Plan No 10* as adopted by Council, as in force when the certificate is issued.

Schedule 1

(Clause 24)

- 1 Community and recreational facilities.
- 2 Water, sewerage and drainage works.
- 3 Local open space.
- 4 Public car parks.
- 5 Embellishment of local open space and public car parks.
- 6 Roads, traffic management systems and facilities.
- 7 Flood mitigation works.

Schedule 2 Principles of ecological sustainability

(Clause 5 (1))

The following are principles of ecological sustainability:

1 The precautionary principle

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (a) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
- (b) an assessment of the risk-weighted consequences of various options.

The principle requires decision-making to give the environment the benefit of the doubt.

2 Intergenerational equity

The present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations (that is, a partnership among all of the generations that may use or expect to benefit from the nation's resources).

3 Conservation of biological diversity and ecological integrity

Conservation of biological diversity and ecological integrity should be a fundamental consideration.

4 Improved valuation, pricing and incentive mechanisms

Environmental factors should be included in the valuation of assets and services:

- (a) polluter pays (that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement), and
- (b) the users of goods and services should pay prices based on the full cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste, and
- (c) environmental goals having been established should be pursued in the most cost-effective way by establishing incentive structures, including market mechanisms which enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.