

# Sydney Regional Environmental Plan No 25—Orchard Hills (1991 EPI 646)

[1991-646]



New South Wales

## Status Information

### Currency of version

Historical version for 10 August 2012 to 21 February 2014 (accessed 30 December 2024 at 0:49)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Commercial and Industrial Development and Other Matters) 2013 (706)* (LW 20.12.2013) (not commenced — to commence on 22.2.2014)
- **Deemed SEPP**  
From 1 July 2009 this plan is taken to be a State environmental planning policy (see clause 120 of Schedule 6 to the *Environmental Planning and Assessment Act 1979*).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the *Interpretation Act 1987*.

File last modified 20 December 2013

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New South Wales

## Contents

<b>Part 1 Preliminary</b> .....	4
1 Name of plan .....	4
2 Aims, objectives etc.....	4
3 Land to which plan applies .....	4
4 (Repealed) .....	5
5 Interpretation .....	5
6 Adoption of Model Provisions .....	9
7 Consent authority .....	9
<b>Part 2 General restrictions on development of land</b> .....	9
8 Zones indicated on the map .....	9
9 Zone objectives and development control table.....	9
<b>Part 3 Special provisions</b> .....	12
10 Heritage aims and objectives .....	12
11 Heritage items .....	12
12 Development in the vicinity of a heritage item .....	13
13 Heritage advertisements and notifications.....	13
14 Subdivision generally .....	13
15 Subdivision within Zone No 1 (a) .....	14
16 Subdivision and amalgamation of agricultural land.....	14
17 Erection of buildings within drainage areas.....	15
18 Subdivision within Zone No 1 (b)—“Area A” .....	15

19 Subdivision within Zone No 1 (b)—“Area B” .....	15
19A Subdivision within Zone No 1 (b)—“Area C” .....	16
20 Subdivision within Zone No 1 (b)—“Area D” .....	17
21 Dwelling-houses within Zone No 1 (a) or 1 (b) .....	18
21A Restriction on further subdivision of certain land within Zone No 1 (a) or 1 (b) .....	18
21B Dual occupancy .....	18
22 Preservation of trees .....	19
23 Matters for consideration—development along The Northern Road .....	19
24 Noise abatement .....	19
25 Development control code .....	20
26 Meat processing plants prohibited.....	20
26A Development related to agriculture in rural locality .....	20
27 Development of certain land—Kingswood Road, Orchard Hills .....	21
28, 29 (Repealed) .....	21
30 Development for certain additional purposes.....	22
<b>Schedule 1 Land that is not to be subdivided .....</b>	<b>22</b>
<b>Schedule 2 Development for certain additional purposes .....</b>	<b>22</b>

# Sydney Regional Environmental Plan No 25—Orchard Hills (1991 EPI 646)



New South Wales

## Part 1 Preliminary

### 1 Name of plan

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

### 2 Aims, objectives etc

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 Hills,
- (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.

### 3 Land to which plan applies

- (1) This plan applies to land in the City of Penrith, being that part of Lot 21, DP 1151724,

No 17-53 Caddens Road, Kingswood, identified as “Deferred matter” on the *Penrith Local Environmental Plan 2010 Land Application Map*.

(2) (Repealed)

#### 4 (Repealed)

#### 5 Interpretation

(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, finish or appearance of the outside of the heritage item.

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

**bed and breakfast establishment** means a dwelling-house used by its permanent residents to provide short-term paid accommodation (which may include meals) for visitors on a room basis and includes homestay accommodation, but which does not involve:

- (a) more than six visitors at any one time,
- (b) the employment of persons other than the permanent residents,
- (c) interference with the amenity of the neighbourhood,
- (d) the selling of liquor, or
- (e) the provision of reception centres or recreation facilities.

**cafe or tea room** means a building or place where food is prepared or offered for consumption, to be consumed in the building or at the place, the use of which is ancillary to the principal use of the land and with a maximum seating capacity for 50 people, but (in the Table to clause 9) does not include a building or place elsewhere specifically defined for the purposes of this plan or a building or place used or intended for a land use elsewhere specifically defined for those purposes.

**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.

**dual occupancy** means two attached dwellings on a single allotment of land.

**educational establishment** means a building used as a school, college, TAFE establishment, academy, lecture hall, or the like, but does not include a building used wholly or principally as an institution or child care centre.

**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.

**food outlet** means a building or place (such as a restaurant, take-away restaurant, drive-in take-away restaurant or the like) where food is prepared or offered for consumption, whether the food is consumed in the building or at the place or elsewhere, but (in the Table to clause 9) does not include a building or place elsewhere specifically defined for the purposes of this plan or a building or place used or intended for a land use elsewhere specifically defined for those purposes.

**gallery** means a building used for the purpose of displaying arts and crafts created by the residents of the land on which the building is located or by residents of the immediate local area, but does not include a building used for the purpose of training or instruction in arts and crafts.

**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.

**intensive livestock keeping** means the use of a building or place in which or on which cattle, sheep, goats, poultry or other livestock are held for the purpose of nurturing them by a feeding method other than natural grazing and, without limiting the generality of the foregoing, includes the use of:

- (a) feed lots,
- (b) piggeries,
- (c) poultry farms, and
- (d) fish farms (including places used for the farming of crustaceans),

but does not include the use of land for the keeping of livestock or poultry intended solely for personal consumption or enjoyment by the owner or occupier of the land.

**maintenance** means the continuous protective care of the fabric of a heritage item and its setting.

**map** means the map marked “*Sydney Regional Environmental Plan No 25—Orchard Hills (Amendment No 1)*” deposited in the Parramatta office of the Department and a copy of which is deposited in the office of the Council of the City of Penrith.

**museum** means a building or place, identified by Council as having heritage significance, used for the purpose of displaying memorabilia relating to the building or place, but not used for activities of a commercial nature.

**place of worship** means a church, chapel or other place of worship or religious instruction or place used for the purpose of religious training.

**reception centre** means a building or place used for the holding of functions or occasions that involve the preparation and consumption of food in the building or at the place, including wedding receptions, celebratory functions, conferences or the like, but (in the Table to clause 9) does not include a building or place elsewhere specifically defined for the purposes of this plan or a building or place used or intended for a land use elsewhere specifically defined for those purposes.

**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.

**tourist facilities** means an establishment providing for holiday accommodation or recreation and may include a boat shed, boat landing facilities, camping ground, holiday cabins, house boat, marina, playground, water sport facilities or a club used in conjunction with any such activities, but (in the Table to clause 9) does not include a caravan park or racecourse or stadium or a building or place elsewhere specifically defined for the purposes of this plan or a building or place used or intended for a land use elsewhere specifically defined for those purposes.

**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.



## 6 Adoption of Model Provisions

Clauses 4 (except for the definitions of **educational establishment, map, place of public worship, refreshment room** and **tourist facilities**) and 35 of and Schedule 1 to the *Environmental Planning and Assessment Model Provisions 1980* are adopted for the purposes of this plan and, in the application of these provisions, a reference to the local environmental plan shall be read and construed as a reference to this regional environmental plan.

## 7 Consent authority

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

### 8 Zones indicated on the map

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”.

### 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 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, and promotes, 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; boarding-houses; bulk stores; bus depots; bus stations; commercial premises; car repair stations; caravan parks; drive-in theatres; educational establishments; extractive industries; food outlets; general stores; heliports; hospitals; hotels; housing for aged or disabled persons; industries (other than rural and home industries); institutions; intensive livestock keeping; junk yards; liquid fuel depots; mines; motels; motor showrooms; offensive and hazardous industries; places of assembly; places of worship; racecourses; reception centres; recreation facilities; residential flat buildings; sawmills; service stations; shops; stadium; 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,
- (b1) to ensure that development of land along main and arterial roads does not detract from 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; boarding-houses; bulk stores; bus depots; bus stations; caravan parks; clubs; commercial premises; car repair stations; drive-in theatres; educational establishments; extractive industries; food outlets; general stores; heliports; hospitals; hotels; housing for aged or disabled persons; industry (other than rural and home industries); institutions; intensive livestock keeping; junk yards; light industries; liquid fuel depots; mines; motels; motor showrooms; offensive and hazardous industries; places of assembly; places of worship; racecourses; reception centres; recreation facilities; residential flat buildings; road transport terminals; sawmills; service stations; shops; stadium; 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**

## **10 Heritage aims and objectives**

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.

## **11 Heritage items**

- (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 the item and its setting.

## **12 Development in the vicinity of a heritage item**

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.

## **13 Heritage advertisements and notifications**

- (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.

## **14 Subdivision generally**

- (1) A person shall not subdivide land to which this plan applies except with the consent of the consent authority.

- (2) The consent authority must not grant consent to an application to subdivide land listed in Schedule 1.
- (3) *State Environmental Planning Policy No 4—Development Without Consent* applies to the land listed in Schedule 1 despite subclause (2).

#### **15 Subdivision within Zone No 1 (a)**

- (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 having 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.

#### **16 Subdivision and amalgamation of agricultural land**

- (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), but 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.

#### **17 Erection of buildings within drainage areas**

(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 to 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.

#### **18 Subdivision within Zone No 1 (b)—“Area A”**

(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.

#### **19 Subdivision within Zone No 1 (b)—“Area B”**

(1) This clause applies to land within Zone No 1 (b) shown edged heavy 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.

**19A Subdivision within Zone No 1 (b)—“Area C”**

- (1) This clause applies to land within Zone No 1 (b) shown edged heavy black and marked “C” on sheet 2 of the map.
- (2) The objectives of this clause are:
  - (a) to identify the long-term potential for urban development of the land to which this clause applies, and
  - (b) to provide for a settlement pattern that will not adversely affect the potential of the land for orderly and efficient urban development.
- (3) Except as provided by subclause (4), the consent authority must not grant consent to an application to subdivide land to which this clause applies.
- (4) The consent authority may grant a consent referred to in subclause (3) 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 will not exceed 1 for each 2 hectares 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 that makes provision for the matters specified in subclause (5).

(5) For the purposes of subclause (4) (c), a development control code must:

- (a) promote the aims of this plan and, in particular, contain provisions designed to maintain a low density settlement pattern, and
- (b) provide for adequate water supply, waste water disposal and drainage, and
- (c) take into account existing and likely future road patterns and soil erosion, and the noise, dust, vibration and safety factors relating to nearby defence facilities and extractive industries, and
- (d) identify and protect land suitable for future urban development.

## **20 Subdivision within Zone No 1 (b)—“Area D”**

- (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.

## **21 Dwelling-houses within Zone No 1 (a) or 1 (b)**

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, 19A or 20.

### **21A Restriction on further subdivision of certain land within Zone No 1 (a) or 1 (b)**

- (1) This clause applies to land within Zone No 1 (a) or 1 (b) which has been subdivided in accordance with clause 15 or 19A after the appointed day.
- (2) In this clause:
  - (a) the **original subdivision** of an area of land means the first subdivision of the area of land carried out in accordance with clause 15 or 19A after the appointed day, and
  - (b) **current lots** means lots in current plans within the meaning of section 327AA of the [Local Government Act 1919](#).
- (3) The consent authority must not consent to a subdivision which would result in the area of land which was the subject of an original subdivision being divided into a greater number of current lots than the maximum number of lots into which that area might have been lawfully divided by the original subdivision.
- (4) This clause has effect despite anything in clause 15, 16 or 19A.

### **21B Dual occupancy**

The consent authority may grant consent to an application to erect a dual occupancy on an allotment of land within Zone No 1 (a) or 1 (b) only if:

- (a) development for the purposes of a dwelling-house may be carried out on that allotment in accordance with clause 21, and
- (b) no more than two dwellings will be on that allotment as a result of the development being carried out.

## **22 Preservation of trees**

- (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.

## **23 Matters for consideration—development along The Northern Road**

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 any 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.

## **24 Noise abatement**

The consent authority may only grant consent to an application to erect a building which includes a habitable room in the vicinity of the M4 Motorway 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.

## **25 Development control code**

- (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, 19A 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 this 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.

## **26 Meat processing plants prohibited**

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.

### **26A Development related to agriculture in rural locality**

- (1) Nothing in this plan prevents a person, with the consent of the consent authority, from carrying out, on land to which this plan applies, development that is related and subordinate to an agricultural use of the land (such as development for the purpose of a winery on land used for a vineyard).
- (2) The consent authority must not grant a consent referred to in subclause (1) unless it is satisfied that:
  - (a) the land to which the application for consent relates is (and will continue to be)

used for the purpose of agriculture, and

- (b) the proposed development is (and will continue to be) related and subordinate to the use of the land for that purpose, and
- (c) the carrying out of the development will not give rise to any use of the land that would have an adverse impact on the scenic values of the landscape, particularly when the land concerned is viewed from the M4 Motorway or The Northern Road, and
- (d) the carrying out of the development will not detract from the rural amenity of Orchard Hills.

## **27 Development of certain land—Kingswood Road, Orchard Hills**

- (1) Notwithstanding any other provision of this plan, development for the purposes of a place of worship is permissible with the consent of the consent authority on Lot 43, DP 811320 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 Sydney Water Corporation.
- (2) Notwithstanding any other provision of this plan, development for the purposes of an educational establishment is permissible with the consent of the consent authority on Lot 43, DP 811320, Kingswood Road, Orchard Hills, but only if:
  - (a) the consent authority is satisfied that the total site coverage of all educational establishment buildings will not exceed 550 square metres, and
  - (b) the consent authority is satisfied that no more than 50 students will attend the educational establishment at any one time, and
  - (c) the consent authority is satisfied that any new building comprising the educational establishment will be constructed so as to appear as a dwelling-house, and
  - (d) the consent authority is satisfied that the landscaping proposed is adequate and enhances the rural setting of the development, and
  - (e) satisfactory arrangements for the provision of water services have been made with the Sydney Water Corporation.

## **28, 29 (Repealed)**

### **30 Development for certain additional purposes**

Notwithstanding any other provision of this plan, a person may, with the consent of the consent authority, carry out development of land described in Schedule 2 for the purposes, and subject to the conditions (if any), specified in that Schedule.

### **Schedule 1 Land that is not to be subdivided**

(Clause 14 (2))

Lots 42 and 53, DP 846098  
Lot 15, DP 803128  
Lot 101, DP 841269

### **Schedule 2 Development for certain additional purposes**

(Clause 30)

#### **Bringelly Road**

Proposed Lot 201 as shown in a plan of resubdivision available at the Offices of Penrith City Council of Lot 2, DP 26607 and Lot 1D, DP 394618—Infants School for Pared Foundation (maximum student number of 90)

#### **Frogmore Road**

Lot 1, DP 118729 (No 1)—Educational establishment

Lot 101, DP 128254 (Nos 3-5)—Place of worship

Lot 121, DP 848994 and Lot 11, DP 831409 (Nos 116-124)—Educational establishment and place of worship

#### **Homestead Road**

Lot 1, DP 543975 (Nos 328-336)—Place of worship

#### **The Northern Road**

Lot 523, DP 557389 (Nos 1974-1980)—Produce store

#### **Wentworth Road**

Lot 501, DP 866791 (Nos 338-356)—Educational establishment

Lot 502, DP 866791—Educational establishment, including community use of the establishment's facilities (whether or not for financial gain), but only if the consent authority is satisfied that:

- (a) no more than 1,300 students will be enrolled at the educational establishment (located on this site and the adjoining Lot 501, DP 866791) at any one time, and
- (b) the rural viewscape and character of the site is protected by the location of buildings, recreation areas and ancillary structures generally as shown on Sheet 2 of the map marked "Penrith Local Environmental Plan (Orchard Hills) 2005", which establishes the following areas and uses for those

areas:

- (i) Area One (School extension area)—to be used for the purposes of substantial structures, car parking and main access roads,
  - (ii) Area Two (Active recreation area)—to be used for the purposes of active recreation facilities, including sports fields and minor or ancillary structures,
  - (iii) Area Three (Transmission easement)—to be used primarily for passive recreation and drainage infrastructure, with some encroachment of playing fields acceptable provided that Transgrid or any other relevant authority has given written approval for the encroachment, and
- (c) the relevant requirements of the document entitled *Planning for Bush Fire Protection*, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, dated December 2006, have been met, and
- (d) the proposed development will allow the existing water course on the site to be relocated and rehabilitated without the use of pipes or other engineering devices:
- (i) to emulate a naturally functioning stream with a minimum riparian width of 10 metres along both sides of the watercourse (measured from the top of the bank), and
  - (ii) to provide vegetated habitat refuges (terrestrial and aquatic), and
  - (iii) to facilitate the treatment of stormwater runoff outside the riparian corridor before it enters the watercourse.