

# Sydney Regional Environmental Plan No 13—Mulgoa Valley (1987 EPI 14)

[1987-14]



New South Wales

## Status Information

### Currency of version

Repealed version for 26 June 2009 to 21 September 2010 (accessed 3 October 2024 at 16:18)

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—

- **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](#)).

- **Repeal**

The plan was repealed by cl 1.8 (1A) of the [Penrith Local Environmental Plan 2010 \(540\)](#) (LW 22.9.2010) with effect from 22.9.2010.

### 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 22 September 2010

# Sydney Regional Environmental Plan No 13—Mulgoa Valley (1987 EPI 14)



New South Wales

## Contents

<b>Part 1 Preliminary</b> .....	4
1 Name of plan .....	4
2 Land to which plan applies .....	4
3 Aims, objectives etc.....	4
4 Relationship to other environmental planning instruments .....	5
5 Interpretation .....	5
6 Consent authority .....	8
<b>Part 2 Provisions for development of land</b> .....	8
7 Zones indicated on the map.....	8
8 Zone objectives .....	8
<b>Part 3 Special provisions</b> .....	11
9 Development consent required for items of environmental heritage .....	11
10 Demolition applications .....	12
11 Lands subject to conservation orders .....	12
12 Development consent criteria .....	13
13 Subdivision .....	14
14 Dwelling-houses .....	15
14A Dual occupancy .....	15
15 Development affecting Mulgoa Road.....	15
16 Preservation of trees .....	15
17 Development control codes.....	16

18 Development near the boundary of adjoining zones .....	16
19 Development for certain additional purposes.....	17
20 Conservation incentives for items of environmental heritage .....	17
<b>Schedule 1 Development for certain additional purposes.....</b>	<b>17</b>

# Sydney Regional Environmental Plan No 13—Mulgoa Valley (1987 EPI 14)



New South Wales

## Part 1 Preliminary

### 1 Name of plan

This plan may be cited as *Sydney Regional Environmental Plan No 13—Mulgoa Valley*.

### 2 Land to which plan applies

- (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 land to which the following instruments apply:

*Penrith Local Environmental Plan 2002 (Villages of Mulgoa and Wallacia)*

### 3 Aims, objectives etc

- (1) The general aim of this plan is to ensure that the development of the Mulgoa Valley is guided to maximise the benefits and conservation of its resources in its metropolitan context, especially its rural landscape and heritage resources.
- (2) The specific aims of this plan are:
  - (a) to identify those buildings, works, relics and places of historic, architectural, cultural, scientific, archaeological, aesthetic and natural significance which comprise the environmental heritage of the Mulgoa Valley,
  - (b) to ensure conservation of items of environmental heritage,
  - (c) to ensure protection of natural ecological elements within the valley, especially areas of ecological significance,
  - (d) to identify and protect the Mulgoa Nature Reserve to be established by the National Parks and Wildlife Service,
  - (e) to conserve the rural landscape of the valley,

- (f) to protect the setting of the Mulgoa village within the rural landscape,
- (g) to allow orderly and economic development which is compatible with the rural and natural landscape and heritage of the valley,
- (h) to protect and utilise the tourism and recreation potential of the valley where it is consistent with the conservation of its rural and natural landscape, heritage and agricultural qualities,
- (i) to protect the agricultural capability of prime agricultural land, and
- (j) to enable rural residential development where it is consistent with the conservation of the rural and natural landscape, heritage and agricultural qualities.

#### 4 Relationship to other environmental planning instruments

- (1) (Repealed)
- (2) The provisions of clause 10 of *State Environmental Planning Policy No 4—Development Without Consent*, do not apply to the land to which this plan applies.

#### 5 Interpretation

- (1) This plan adopts clauses 3, 4, and 35 of the *Environmental Planning and Assessment Model Provisions 1980*, and Schedule 1 to those Model Provisions, but the provisions as adopted shall be construed as if:
  - (a) the definitions of **educational establishment**, **map**, **place of public worship**, **refreshment room** and **tourist facilities** were omitted from clause 4 (1) of the Model Provisions, and
  - (b) any reference to a local environmental plan were a reference to this plan.
- (2) In this plan, except in so far as the context or subject-matter otherwise indicates or requires:
  - amusement park** means a commercially run enclosed ground where amusements and mechanical entertainments such as merry-go-rounds and the like are permanently situated.
  - 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) interference with the amenity of the neighbourhood,

(c) the selling of liquor, or

(d) 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 8) 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.

**commercial office space** means a building or portion of a building used as an office, but does not include a building, place or purpose elsewhere specifically defined in this clause.

**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.

**Design and Management Guidelines** means the guidelines known by that name prepared by officers of the Department of Environment and Planning from time to time and available for public inspection, without charge, at the offices of the consent authority and the Department of Environment and Planning during ordinary office hours.

**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.

**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 8) 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 art and craft created by the residents of the land on which the building is located or by residents of the local area, but does not include use of the building for the purpose of training or instruction in art and craft.

**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.

**item of environmental heritage** means those buildings, works, relics or places of historic, scientific, cultural, social, architectural, archaeological, natural or aesthetic significance for the Sydney Region identified on sheet 2 of the map.

**map** means the map marked “*Sydney Regional Environmental Plan No 13—Mulgoa Valley*” deposited in the offices of the Department and the Council of the City of Penrith, as amended by the maps similarly deposited and marked as follows:

**Editorial note—**

The amending maps are not necessarily listed in the order of gazettal. Information about the order of gazettal can be determined by referring to the Historical notes at the end of the plan.

*Sydney Regional Environmental Plan No 13—Mulgoa Valley (Amendment No 1)*

**museum** means a building or place identified as an item of environmental heritage, used for the purpose of displaying memorabilia relating to the building or place.

**place of worship** means a church, chapel or other place of worship or religious instruction or a 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 8) 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.

**relic** means any deposit, object or material evidence:

- (a) which relates to the settlement of the area that comprises New South Wales, not being aboriginal settlement, and
- (b) which is 50 or more years old.

**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 outside of the building or work.

**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 8) does not include a 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.

**zone** means land shown on sheet 1 of the map in some distinctive manner for the purpose of indicating the restrictions imposed by this plan on the development of the land.

## 6 Consent authority

For the purposes of this plan, the consent authority shall be the Council of the City of Penrith.

## Part 2 Provisions for development of land

### 7 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 sheet 1 of the map in the manner specified hereunder in relation to that zone:

Zone No 1—Rural Conservation—coloured light brown, edged black and numbered “1”.

Zone No 7—Environment Protection—coloured orange, edged black and numbered “7”.

Zone No 8 (b)—Proposed Nature Reserve—coloured light green, edged black and numbered “8 (b)”.

### 8 Zone objectives

- (1) The objectives of a zone are set out in the Table to this clause under the heading “Objectives of zone” appearing in the manner 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,
  - (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 the carrying out of development on land to which this plan applies unless it is of the opinion that the carrying out of the development is consistent with the objectives of the plan and of the zone within which the development is proposed to be carried out.

Table

## **Zone No 1 Rural Conservation**

### **1 Objectives of zone**

The objectives of this zone are:

- (a) to conserve the rural, heritage and natural landscape of the valley,
- (b) to provide for the development of agricultural, residential, tourist and recreational land uses which are compatible with the rural and natural landscape and heritage of the valley,
- (c) to protect the visual amenity of the valley,
- (d) to avoid fragmentation and alienation of prime agricultural land,
- (e) to maintain the low density of rural settlement, and
- (f) to allow for the development and maintenance of the Warragamba—Prospect water supply facilities.

### **2 Without development consent**

Agriculture (not involving the erection of any buildings); water supply facilities on land owned by the Water Board.

### **3 Only with development consent**

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

### **4 Prohibited**

Advertising structures; amusement parks; boarding-houses; bulk stores; car repair stations; caravan parks; commercial office space; commercial

premises; drive-in theatres; educational establishments; extractive industries; food outlets; general stores; heliports; hospitals; hotels; industry (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; poultry farming establishments; racecourses; reception centres; recreation facilities; residential flat buildings; saw mills; service stations; shops; stadiums; stock and sale yards; transport terminals; warehouses; waste disposal.

## **Zone No 7 Environment Protection**

### **1 Objectives of zone**

The objectives of this zone are:

- (a) to identify and protect environmentally sensitive and scenic land,
- (b) to protect areas of natural vegetation which provide key landscape and ecological elements in the valley,
- (c) to provide a buffer around important areas of natural ecological significance such as Blue Mountains National Park and Nortons Basin,
- (d) to prevent development of areas where the combination of physical factors such as slope gradient, soil conditions and geology results in a high soil erosion hazard,
- (e) to prevent development in areas of high bushfire potential, and
- (f) to enable development for residential and recreational purposes which are consistent with environmental and visual qualities of the land.

### **2 Without development consent**

Nil.

### **3 Only with development consent**

Any purpose other than a purpose included in item 4.

### **4 Prohibited**

Advertising structures; amusement parks; boarding-houses; bulk stores; car repair stations; caravan parks; commercial office space; commercial

premises; drive-in theatres; dual occupancies; dwelling-houses (except as allowed by clause 14); educational establishments; extractive industries; food outlets; general stores; heliports; hospitals; hotels; industry (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; poultry farming establishments; racecourses; reception centres; recreation facilities; residential flat buildings; saw mills; service stations; shops; stadiums; stock and saleyards; transport terminals; warehouses; waste disposal.

## **Zone No 8 (b) Proposed Nature Reserve**

### **1 Objectives of zone**

The objectives of this zone is to conserve the natural characteristics of the land which is proposed for reservation or dedication under the *National Parks and Wildlife Act 1974* as a nature reserve.

### **2 Without development consent**

Development carried out by or on behalf of the National Parks and Wildlife Service; transmission lines.

### **3 Only with development consent**

Nil.

### **4 Prohibited**

Any purpose other than a purpose included in item 2.

## **Part 3 Special provisions**

### **9 Development consent required for items of environmental heritage**

- (1) Subject to clause 11, a person shall not, in respect of a building, work, relic or place that is part of an item of environmental heritage:
  - (a) demolish, renovate or extend a building or work,
  - (b) damage or despoil a relic or place or any part thereof,
  - (c) excavate any land for the purpose of exposing or removing the relic,
  - (d) erect a building on the land on which the building, work or relic is situated or the land which comprises the place, or

(e) subdivide the land on which the building, work or relic is situated or the land which comprises the place,

except with the consent of the consent authority.

(2) In deciding whether to grant consent for the purposes of subclause (1), the consent authority shall consider:

- (a) the significance of the item to the environmental heritage of the Sydney Region,
- (b) the impact of the proposed development on the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the item of environmental heritage,
- (c) in the case of an application to erect or alter a building, its compatibility with either buildings on the site of the item of environmental heritage in terms of roof form, style, size, proportion and position of opening for doors and windows and the colour, texture, style, size and finish of the materials,
- (d) the retention of stylistic, horticultural, vegetation, landscape or archaeological features of the setting, and
- (e) any elements of danger to the users or occupiers of the item of environmental heritage or to the public.

## **10 Demolition applications**

(1) Except as provided by subclause (2), in respect of an application to demolish a building or work that is an item of environmental heritage:

- (a) the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act shall apply in the same way as those provisions apply to and in respect of designated development, and
- (b) (Repealed)

(2) Subclause (1) does not apply to the partial demolition of a building or work if, in the opinion of the consent authority, the proposed work is of a minor nature and will not adversely affect the significance of the building or work as part of the environmental heritage of the Sydney Region.

### **Note—**

The website of the Heritage Branch of the Department of Planning has publications that provide guidance on assessing the impact of proposed development on the heritage significance of items (for example, *Statements of Heritage Impact*).

## **11 Lands subject to conservation orders**

(1) Where, in respect of an item of environmental heritage that is subject to one of the

following Permanent Conservation Orders or any conservation instrument made after the date this plan takes effect, a person is required to lodge an application under Division 3 of Part 4 of the *Heritage Act 1977*, clause 9 shall not apply to that development:

- (a) “Fernhill”—*Permanent Conservation Order No 54*,
- (b) “St Thomas Church”—*Permanent Conservation Order No 426*,
- (c) “Cox’s Cottage”—*Permanent Conservation Order No 171*,
- (d) “Glenleigh”—*Permanent Conservation Order No 346*,
- (e) “Glenmore”—*Permanent Conservation Order No 74*,
- (f) “Fairlight”—*Permanent Conservation Order No 262*.

## **12 Development consent criteria**

The consent authority shall not grant consent to an application to carry out development for any purpose:

- (a) if any proposed building will be located on ridgetops or if it will intrude into the skyline when viewed from road or other public places,
- (b) unless it is satisfied that the proposed development will not adversely affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of any item of environmental heritage in the valley,
- (c) if services, in particular arrangements regarding the provision of water and disposal of effluent satisfactory to the requirements of the Water Board, are not adequate or will not be provided in a reasonable time,
- (d) unless it is satisfied that the proposed form and sitting of buildings, colours, landscaping, and building materials are appropriate for the rural character of the valley and are consistent with the Design and Management Guidelines or their intent,
- (e) if any proposed development will detract from the vistas of an item of environmental heritage as documented in the Design and Management Guidelines,
- (f) unless it is satisfied that the development will not be exposed to unacceptable risk from bushfires,
- (g) if extensive areas of vegetation will be cleared,
- (h) unless it is satisfied that the agricultural viability of holdings and potential of the land will not be adversely affected,
- (i) unless it is satisfied that Aboriginal and European archaeological material on the land

will not be adversely affected,

- (j) unless it is satisfied that the view from Mulgoa Road will not be adversely affected,
- (k) unless it is satisfied that the rural setting of Mulgoa village will not be adversely affected,
- (l) unless it is satisfied that development and its access will not be exposed to unacceptable risk from flooding,
- (m) unless it is satisfied that the development will not adversely affect the hydrology of Mulgoa Creek, and
- (n) unless it has considered any Development Control Code prepared pursuant to clause 17,
- (o) unless it is satisfied that the proposed development is appropriate for the size and shape of the land to which the development relates,
- (p) unless it is satisfied that the proposed bulk, scale, shape, size, height, density, design and external appearance of that development is appropriate for the rural character of the valley,
- (q) unless it is satisfied that the proposed development will not adversely affect the amenity of the area, and
- (r) unless it is satisfied that adequate provision has been made for the landscaping of the land to which that development relates and it has considered whether any trees or other vegetation on the land should be preserved.

### **13 Subdivision**

- (1) Subdivision of land within Zone No 7 is prohibited (except as provided by *State Environmental Planning Policy No 4—Development without consent*).
- (2) Subdivision of land within Zone No 1 may be carried out with development consent, but that consent shall not be given unless:
  - (a) each allotment proposed to be created is sufficiently large to enable on-site disposal of waste water and sewage without affecting streams and adjacent land to the satisfaction of the Water Board, or
  - (b) consent for a building could be granted pursuant to clause 12 on each allotment proposed to be created.
- (3) In order to maintain a low density of rural settlement, to protect the visual and scenic amenity of Mulgoa Valley, and to prevent fragmentation of inherently productive agricultural and environmentally sensitive land, the consent authority shall not grant

consent to an application for subdivision of land within Zone No 1:

- (a) identified as Area A on sheet 2 of the map, if the allotments created will be less than 20 hectares in area, and
- (b) being other land, if the allotments created will be less than 10 hectares in area.

#### **14 Dwelling-houses**

- (1) A person may, with development consent, erect a dwelling-house on an allotment of land within Zone No 7 if a dwelling-house could have been erected on that land, either with or without consent, immediately before the date on which this plan took effect.
- (2) A dwelling-house may not be erected on an allotment of land having an area of less than 10 hectares if that land is within the area identified as Area B on sheet 2 of the map.
- (3) No more than one dwelling-house is permitted to be constructed on each allotment of land.

#### **14A Dual occupancy**

The consent authority may grant consent to a dual occupancy on an allotment of land within Zone No 1 only if:

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

#### **15 Development affecting Mulgoa Road**

The consent authority shall not grant consent to an application to carry out development if, in the opinion of the consent authority:

- (a) the safety and efficiency of Mulgoa Road will be adversely affected by the design and sitting of the proposed access and by the nature, volume or frequency of vehicles using Mulgoa Road to gain access to the proposed development, and
- (b) any upgrading or strengthening of Mulgoa Road required to maintain the safety and efficiency of Mulgoa Road detracts from the present rural character and function of Mulgoa Road.

#### **16 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,

- (b) has a girth of not less than 0.30 metres at a height of 0.40 metres from the ground,
  - (c) is located within 20 metres of a watercourse, or
  - (d) 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,
  - (b) any tree which is dying or dead or has become dangerous,
  - (c) any land to which the provisions of section 21C of the *Soil Conservation Act 1938* apply, or
  - (d) any clearing, lopping or pruning necessary for the maintenance of electricity transmission lines.

#### **17 Development control codes**

- (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 a development control code.
- (2) 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 Part 3 of the *Environmental Planning and Assessment Regulation 1980*, which shall be construed as if:
- (a) references to a development control plan were references to a development control code, and
  - (b) references to a local environmental plan were references to this plan.
- (3) A development control code shall generally conform to the provisions of this plan and shall be endorsed by the Director of Environment and Planning and the Secretary of the Heritage Council of New South Wales prior to its adoption.
- (4) A development control code prepared in accordance with this clause shall be available for public inspection, without charge, at the office of the consent authority during ordinary office hours.

#### **18 Development near the boundary of adjoining zones**

- (1) This clause applies to land which is within 20 metres of a boundary between any 2 zones.



- (2) Development may, with the consent of the consent authority, 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 consent authority shall not consent to the carrying out of development referred to in subclause (2) unless the carrying out of the development is generally consistent with the objectives of this plan.

## **19 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 1 for the purposes, and subject to the conditions (if any), specified in that Schedule.

## **20 Conservation incentives for items of environmental heritage**

- (1) In this clause:

**statement of economic viability** means a detailed quantitative assessment that compares the financial merits of the proposed use of an item of environmental heritage with the current or original use.

**statement of heritage impact** means an assessment of the effect of the proposed changes to an item of environmental heritage and includes a detailed schedule of works, materials and finishes.

- (2) The consent authority shall not grant consent to an application to carry out development referred to in subclause (3) unless it has considered a statement of heritage impact and a statement of economic viability.
- (3) The consent authority may grant consent to the use, for any purpose, of a building that is an item of environmental heritage, or of the land on which the building is erected, even though the use would otherwise be prohibited by this plan, if it is satisfied that:
  - (a) the proposed use would have little or no adverse effect on the amenity of the area, and
  - (b) the proposed use would not adversely affect the heritage significance of the item of environmental heritage, and
  - (c) the conservation of the building is unlikely unless the consent authority grants consent as referred to in this clause.

## **Schedule 1 Development for certain additional purposes**

(Clause 19)

### **Mulgoa Road**

Lot 200, DP 804405 (Nos 836-840)—Educational establishment

Lot 32, DP 585921 (Nos 1298-1304) “Settlers”—Museum, restaurant and reception centre

Lot 11A, DP 402147 (Nos 1319-1327)—Restaurant

Lot 8, DP 718233 (Nos 1440-1482)—Reception centre and dance studio

**St. Thomas Road**

Lot 1, DP 996994 (Nos 43-47) and Part Lot 10, DP 752044 (Nos 59-119) “St. Thomas Church”—Church and church hall