

**PENRITH
LOCAL ENVIRONMENTAL PLAN NO. 226**

Government Gazette No. 19 - 14th January 1994
As amended.

Penrith City Council

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

PENRITH LOCAL ENVIRONMENTAL PLAN NO. 226

I, the Minister for Planning, in pursuance of section 70 of the Environmental Planning and Assessment Act 1979, make the local environmental plan set out hereunder. (P90-00550).

Ian Armstrong.
Acting Minister for Planning.

Sydney, 6 January, 1994.

PART 1 - PRELIMINARY

Citation

1. This plan may be cited as Penrith Local Environmental Plan No. 226.

Aims and objectives

2. (1) The aim of this plan is to bring certain land on the Blue Mountains eastern escarpment into public ownership and to provide for protection of the remaining land to which this plan applies by introducing an environment protection zone.

- (2) The objectives of this plan are:
- (a) to identify lands for regional open space and to strictly control development within these lands; and
 - (b) to identify lands for environment protection and to strictly control development within these lands; and
 - (c) to ensure that the tree covered natural appearance of the escarpment is retained; and
 - (d) to ensure that, in any development of the land, regard is had to physical constraints, including bushfire hazard, slopes, soil erosion hazards, flooding and access difficulties, as well as archaeological issues; and
 - (e) to ensure that, in any development of the land, regard is had to the visual prominence of the area; and
 - (f) to ensure that, in any development of the land, provision is made for an adequate water supply, environmentally acceptable

waste water disposal systems, drainage systems and electricity supply systems.

Land to which plan applies

3. (1) This plan applies to land at Emu Plains within the City of Penrith, as shown edged heavy black on the map marked “Penrith Local Environmental Plan No. 226”.

(2) This plan does not apply to land shown on the map as “Deferred Matter”.

Relationship to other environmental planning instruments

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

Land at Emu Plains, as shown edged heavy black on the map marked “Penrith Local Environmental Plan No. 226” deposited in the office of the council;

(2) Clause 10 of State Environmental Planning Policy No. 4 - Development Without Consent does not apply to land to which this plan applies.

(3) State Environmental Planning Policy No. 5 - Housing for Aged or Disabled Persons does not apply to land to which this plan applies.

Definitions

5. (1) In this plan:

“animal establishment” means a building or place used for the breeding, boarding, training or keeping of, or for caring for, small domestic animals (but excluding rural livestock such as pigs, goats, cows, chickens, ducks, geese and horses) for commercial purposes;

“appointed day” means the day on which this plan takes effect;

“attached dual occupancy” means a building consisting of two attached dwellings on one allotment of land;

“bushfire hazard reduction” means work to reduce bushfire hazard in conformity with a notice issued by the council or with a development consent or a bushfire management plan prepared by the Penrith Fire Control Officer;

“corporation” means the corporation constituted by section 8(1) of the Environmental Planning and Assessment Act 1979;

“council” means the Council of the City of Penrith;

“health care consulting rooms” means a dwelling-house used by not more than 3 health care professionals for the purpose of providing health care services only to outpatients of those health care consulting rooms, and who employ not more than 3 employees in connection with such health care services;

“health care consulting rooms” definition added G.G. No. 22 of 11/2/00 (LEP 252).

“health care professional” means a person who provides traditional or complementary professional health care services to members of the public;

“health care professional” definition added G.G. No. 22 of 11/2/00 (LEP 252).

“health care services” means services ordinarily provided by a health care professional to members of the public, but does not include any procedures such as x-rays, ultrasounds, cat scans, radiography or pathology tests or the like;

“health care services” definition added G.G. No. 22 of 11/2/00 (LEP 252).

“the map” means the map marked “Penrith Local Environmental Plan No. 226”, as amended by the map marked as follows:

“wholesale plant nursery” means a building or place used for both the growing of plants, and the sale of plants by wholesale, whether or not landscape supplies (including earth products) and other landscape and horticultural products are also sold at the building or place by wholesale, but which is not used for the direct sale of plants or other such supplies or products to the public from the site.

- (2) In this plan:
 - (a) a reference to a map is a reference to a map deposited in the office of the council; and
 - (b) 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.

Adoption of Model Provisions

6. Clauses 3, 4 (except for the definitions of “health care professional”, “map” and “professional consulting rooms”) and 35 of, and Schedule 1 to, the Environmental Planning and Assessment Model Provisions 1980 are adopted for the purposes of this plan.

Clause 6 amended G.G. No. 22 of 11/2/00 (LEP 252).

Consent authority

7. For the purposes of this plan, the consent authority is the council.

PART 2 - GENERAL PROVISIONS FOR DEVELOPMENT OF LAND

Zones indicated on the map

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

Zone No. 7(e) (Environment Protection Zone) - coloured orange, with black edging and lettered "7(e)"

Zone No. 9(e) (Regional Open Space Zone) - coloured green with black edging and lettered "9(e)"

Zone objectives

9. (1) The objectives of a zone are set out in the Table to this clause under the heading "Objectives of zone" appearing in the matter relating to the zone.

(2) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table 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; 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 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 aims and objectives of this plan and the objectives of the zone within which the development is proposed to be carried out.

TABLE

ZONE NO. 7(e) - ENVIRONMENT PROTECTION ZONE

1. Objectives of zone

The objectives of this zone are:

- (a) to identify and protect environmentally sensitive and scenic lands; and
- (b) to protect areas of natural vegetation which provide key landscape and ecological elements on the Blue Mountains eastern escarpment; and
- (c) to prevent development of areas where the combination of physical factors (such as slope gradient, soil conditions and geology) results in high soil erosion hazards; and
- (d) to prevent development in areas of high bush fire potential; and
- (e) to enable residential development which is consistent with the environmental and visual qualities of the land; and
- (f) to prevent development which would lead to pollution of the Nepean River.

2. Without development consent

Nil

3. Only with development consent

Agriculture; animal establishments; attached dual occupancies; bushfire hazard reduction; dams; drainage works; dwelling-houses; home industries; home occupations; roads; utility installations; wholesale plant nurseries.

4. Prohibited

Any purpose other than a purpose included in Item 3.

ZONE NO. 9(e) - REGIONAL OPEN SPACE ZONE

1. Objectives of zone

The objectives of this zone are:

- (a) to identify land for regional open space purposes; and

- (b) to enhance and protect the unique natural scenic environment of the Blue Mountains eastern escarpment; and
 - (c) to provide greater opportunities for passive recreation on the Blue Mountains eastern escarpment; and
 - (d) to complement and expand the open space available in the area of the Blue Mountains eastern escarpment.
2. Without development consent
- Gardening.
3. Only with development consent
- Bushfire hazard reduction; drainage works; roads; utility installations; visitor facilities.
4. Prohibited
- Any purpose other than a purpose included in Item 2 or 3.

PART 3 - SPECIAL PROVISIONS

Development consent criteria

10. (1) The council shall not grant consent to an application to carry out development for any purpose unless it is satisfied:
- (a) that the nature of the development is consistent with the objectives, requirements and intent of any siting, design and management guidelines development control plan prepared by the council and deposited in the office of the council; and
 - (b) that the development is consistent with the provisions of any other development control plan prepared in respect of the land; and
 - (c) that the development will not be exposed to unacceptable risk of bushfires; and
 - (d) that Aboriginal and European archaeological material on the land will not be adversely affected; and
 - (e) that the development and its access will not be exposed to unacceptable risk from flooding; and
 - (f) that the vistas of the Blue Mountains eastern escarpment from the Nepean River, Great Western Highway, Western Freeway, residential areas, Penrith Lakes Scheme, Great Western

Railway and Old Bathurst Road will not be adversely affected;
and

- (g) that the development will not generate unacceptable levels of pollutants; and
- (h) that the development will not cause unacceptable soil erosion;
and
- (i) that adequate provision has been made for drainage.

(2) The council shall not grant consent to an application to carry out development for any purpose:

- (a) if extensive areas of vegetation will be cleared as a consequence of carrying out the development; or
- (b) if services, and (in particular) arrangements regarding the provision of water and disposal of effluent, are not adequate or will not be provided in a reasonable time.

Subdivision generally

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

Subdivision within Zone No. 7(e)

12. (1) This clause applies to land within Zone No. 7(e).

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

- (a) consent for a dwelling-house could be granted in accordance with this plan on each allotment proposed to be created; and
- (b) in the case of so much of an allotment of land described in Schedule 1 as is within Zone No. 7(e), the number of allotments created does not exceed the number described in that Schedule in respect of the allotment; and
- (c) the pattern of allotments to be created by the proposed subdivision and the location of any buildings on those allotments conform to any development control plan prepared in respect of the land; and
- (d) in the case of an application to subdivide land on which two or more dwelling-houses were erected on the appointed day, the council is satisfied that, in so far as is practicable, only one

dwelling-house will be located on each allotment to be added by the proposed subdivision; and

- (e) in the case of an allotment which at the appointed day was comprised of land partly within Zone No. 7(e) and partly within Zone No. 9(e), the allotment has been subdivided along the boundary between the two zones and all the land within Zone No. 9(e) is held in the ownership of the corporation.

(3) Any development control plan prepared for the purposes of subclause (2)(c) shall promote the aims of this plan and the objectives of Zone No. 7 (e).

Subdivision within Zone No. 9(e)

13. Subdivision of land within Zone No. 9(e) is prohibited, except as provided by clause 6 of State Environmental Planning Policy No. 4 - Development Without Consent.

Dwelling-houses within Zone No. 7(e)

14. The council will grant consent to only one dwelling-house, or an attached dual occupancy, on each allotment of land within Zone No. 7(e).

Development affecting Old Bathurst Road

15. The council shall not grant consent to an application to carry out development if, in the opinion of the council, the safety and efficiency of Old Bathurst Road will be adversely affected by:

- (a) the design and siting of the proposed access to the site;
or
- (b) the nature, volume or frequency of vehicles using Old Bathurst Road to obtain access to the site.

Wholesale plant nurseries

16. Despite clause 9, the council shall not grant consent to development for the purposes of wholesale plant nurseries at locations where the removal of trees is required for that development to be carried out.

Preservation of trees

17. (1) A person shall not, except with the consent of the council, ringbark, cut down, top, lop, injure or wilfully destroy any tree which:

- (a) is not less than 3m high; or

- (b) has a girth of not less than 0.3m at a height of 0.4m from the ground; or
 - (c) is located within 20m of a watercourse; or
 - (d) is located on land with a gradient greater than 18°.
- (2) Subclause (1) does not apply to or in respect of:
- (a) the pruning of any tree for the purpose of regeneration of the tree or ornamental shaping; or
 - (b) any tree which is dying or dead or has become dangerous; or
 - (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 lines.

SCHEDULE 1

(Cl. 12(2))

ALLOTMENT DENSITIES

Part of Lot C in DP 332782 being Lot 3 in DP 828154 - 8 allotments

Lot 1 in DP 431561 and Lot B in DP 381994 - a total of 10 allotments

Lot 1 in DP 434880 - 6 allotments

Lot 5 in DP 433894 - 3 allotments

Lot 1 in DP 433934 - 6 allotments

Lot 1 in DP 434089 - 3 allotments

Lot 35 in DP 751662 - 3 allotments

NOTE

TABLE OF PROVISIONS

PART 1 - PRELIMINARY

1. Citation
2. Aims and objectives
3. Land to which plan applies
4. Relationship to other environmental planning instruments
5. Definitions
6. Adoption of Model Provisions
7. Consent authority

PART 2 - GENERAL PROVISIONS FOR DEVELOPMENT OF LAND

8. Zones indicated on the map
9. Zone objectives

PART 3 - SPECIAL PROVISIONS

10. Development consent criteria
11. Subdivision generally
12. Subdivision within Zone No. 7(e)
13. Subdivision within Zone No. 9(e)
14. Dwelling-houses within Zone No. 7(e)
15. Development affecting Old Bathurst Road
16. Wholesale plant nurseries
17. Preservation of trees

SCHEDULE 1
