



Rylstone Local Environmental Plan 1996 (Amendment No 6)—General Amendments

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (S99/01286/S69)

ANDREW REFSHAUGE, M.P.,
Minister for Planning

Rylstone Local Environmental Plan 1996 (Amendment No 6)—General Amendments

under the

Environmental Planning and Assessment Act 1979

1 Name of plan

This plan is *Rylstone Local Environmental Plan 1996 (Amendment No 6)—General Amendments*.

2 Aims of plan

The aims of this plan are:

- (a) to make provision for exempt and complying development, and
- (b) to expand the provisions in *Rylstone Local Environmental Plan 1996* that deal with the protection of the environmental heritage of the local government area of Rylstone, and
- (c) to make other minor amendments to that Plan, and
- (d) to amend *State Environmental Planning Policy No 60—Exempt and Complying Development* consequentially.

3 Land to which this plan applies

This plan applies to all land within the local government area of Rylstone.

4 Amendment of other environmental planning instruments

- (1) This plan amends *Rylstone Local Environmental Plan 1996* as set out in Schedule 1.
- (2) This plan amends *State Environmental Planning Policy No 60—Exempt and Complying Development* by omitting “Rylstone” from Part 2 of Schedule 1.

Schedule 1 Amendments

(Clause 4 (1))

[1] Clause 5 Interpretation

Omit the definitions of *demolition*, *heritage item* and *maintenance* from clause 5 (1).

[2] Clause 5 (1)

Insert in alphabetical order:

archaeological site means the site of one or more relics.

bed and breakfast means a dwelling that:

- (a) provides temporary overnight accommodation for the short-term traveller, and
- (b) offers at least breakfast for guests, and
- (c) does not accommodate more than 8 guests, and
- (d) is not used in whole or in part for the permanent or long-term accommodation of any person other than the person or persons who operate and manage the temporary accommodation and who normally reside in the dwelling.

conservation management plan means a document prepared in accordance with the requirements of the NSW Heritage Office that establishes the heritage significance of an item, place or heritage conservation area and identifies conservation policies and management mechanisms that are appropriate to enable that significance to be retained.

demolish a heritage item, or a building, work, archaeological site, tree or place within a heritage conservation area, means wholly or partly destroy, dismantle or deface the heritage item or the building, work, archaeological site, tree or place.

door sales outlet means a building or place, not exceeding 100 square metres in floor space, on a property, where produce harvested from, or manufactured on, the property is exposed or offered for sale or sold by retail, but does not include a road-side stall.

heritage impact statement means a document consisting of a statement demonstrating the heritage significance of a heritage item or heritage conservation area, or of a building, work, archaeological site, tree or place within a heritage conservation area, an assessment of the impact that proposed development will have on that significance and proposals to minimise that impact.

heritage item means:

- (a) a building, work, archaeological site or place specified in Schedule 1, or
- (b) a building, work, archaeological site or place listed on the State Heritage Register (under the *Heritage Act 1977*) or the Register of the National Estate (compiled by the Australian Heritage Commission), or
- (c) an item or place of aboriginal or archaeological significance included on the register held by the National Parks and Wildlife Service.

home child care means an existing dwelling providing care for up to seven children (including the care giver's own children), in the premises where the care giver resides.

maintenance means the ongoing protective care of a heritage item or a building, work, archaeological site, tree or place within a heritage conservation area. It does not include alterations, such as carrying out extensions or additions, or the introduction of new materials or technology.

on-site sewage management facility means a facility designed and operated for the treatment and disposal of sewage waste and includes a septic tank, an aerated waste water treatment plant and the like.

place of Aboriginal heritage significance means:

- (a) a place that has the physical remains of pre-European occupation by, or is of contemporary significance to, the Aboriginal people. It can (but need not) include items and remnants of the occupation of the land by Aboriginal people, such as burial places, engraving sites, rock art, midden deposits, scarred and sacred trees and sharpening grooves, or
- (b) a natural Aboriginal sacred site or other sacred feature. It includes natural features such as creeks or mountains

of long-standing cultural significance, as well as initiation, ceremonial or story places or areas of more contemporary cultural significance.

potential archaeological site means a site that, in the opinion of the Council, has potential to have Aboriginal heritage significance.

potential place of Aboriginal significance means a place that, in the opinion of the Council, has potential to have Aboriginal heritage significance.

recreation vehicle area means land which is designated as a recreation vehicle area pursuant to an order in force under section 11 (1) of the *Recreation Vehicles Act 1983*.

timber plantation means an area of land on which the predominant number of trees forming, or expected to form, the canopy are trees that have been planted (whether by sowing seed or otherwise) for the purpose of timber production, but does not include a natural forest.

[3] Clause 5 (1), definition of “prime crop and pasture land”

Omit “prime crop and pasture land” wherever occurring.

Insert instead “prime crop or pasture land”.

[4] Clause 5 (1), definition of “private waste disposal facility”

Omit “private waste disposal facility”.

Insert instead, in alphabetical order, “solid waste disposal facility”.

[5] Clause 7A

Insert before clause 8 (within Part 2):

7A Exempt and complying development

- (1) Development of minimal environmental impact listed in *Development Control Plan No 3—Exempt and Complying Development* adopted by the Council on 15 May 2002 is exempt development, despite any provision of this plan.
- (2) Development listed in *Development Control Plan No 3—Exempt and Complying Development* adopted by the Council on 15 May 2002 is complying development if:

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- (a) it is local development of a kind that can be carried out with consent on 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 or complying development only if it complies with the development standards and other requirements applied to the development by *Development Control Plan No 3—Exempt and Complying Development* adopted by Council on 15 May 2002.
- (4) A complying development certificate issued for any complying development is to be subject to the conditions specified in *Development Control Plan No 3—Exempt and Complying Development* adopted by the Council, as in force when the certificate is issued.

[6] Clause 9 Zone objectives and development control table

Omit “and commercial pine plantations)” from item 2 of the matter relating to Zone No 1 (a) (General Rural) in the Table to the clause.

Insert instead “), timber plantation (involving the planting of endemic native species only)”.

[7] Clause 9, Table

Insert “door sales outlets or” after “other than” in item 4 of the matter relating to Zone No 1 (a) (General Rural).

[8] Clause 9, Table

Omit “dual occupancy;” wherever occurring in item 4 of the matter relating to Zone No 1 (c) (Rural small holdings—rural residential) and Zone No 1 (c1) (Rural small holdings—rural retreat).

[9] Clause 9, Table

Omit “private waste disposal facilities” wherever occurring from item 4 of the matter relating to Zone No 1 (a) (General Rural), Zone No 2 (v) (Village or urban), Zone No 7 (a) (Environmental Protection (Recreation)) and Zone No 7 (c) (Water Catchment).

Insert instead “solid waste disposal facilities”.

[10] Clause 9, Table

Omit “private waste disposal facilities; sawmills” wherever occurring from item 4 of the matter relating to Zone No 1 (c) (Rural small holdings—rural residential) and Zone No 1 (c1) (Rural small holdings—rural retreat).

Insert instead “sawmills; solid waste disposal facilities”.

[11] Clause 9, Table

Omit “Dwelling house and additions thereto” from item 2 of the matter relating to Zone No 2 (v) (Village or urban).

Insert instead “Nil”.

[12] Clause 9, Table

Omit “2 or 4” from item 3 of the matter relating to Zone No 2 (v) (Village or urban).

Insert instead “4”.

[13] Clause 9, Table

Insert “; timber plantations (involving the planting of endemic native species only)” after “dam” in item 2 of the matter relating to Zone No 7 (c) (Water Catchment).

[14] Clause 10A

Insert before clause 11:

10A Door sales outlets

- (1) Despite any other provision of this Plan, a person may, with the consent of the Council, carry out development of land within Zones Nos 1 (a), 1 (c), 1 (c1), 7 (a) or 7 (c) for the purpose of a door sales outlet primarily for the display and sale of rural produce including wine, fruit, harvested products and the like, substantially grown or produced on the land.
- (2) The Council may only consent to such development if the Council is satisfied that:
 - (a) the building or place used for the sale of produce is situated wholly within the land, and

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- (b) the produce is substantially produced within the land, and
- (c) there are adequate parking and manoeuvring areas associated with the building or place used for the sale of produce, and adequate access to a public road, and
- (d) the building or place used for the sale of produce complements the rural character of the locality.

[15] Clause 13 Subdivision for the purposes of dwellings within Zone No 1 (a)

Omit “dwelling house” and “dwelling-house” wherever occurring.

Insert instead “dwelling.”

[16] Clauses 15 (2) (d) and 19 (2) (d)

Omit “for the for on-site disposal of private wastes” wherever occurring.

Insert instead “for on-site sewage management”.

[17] Clauses 17 (2) (d) and 18 (2) (d)

Omit “the on-site disposal of private wastes” wherever occurring.

Insert instead “on-site sewage management”.

[18] Clause 20 Subdivision for the purposes of dwellings within Zone No 7 (c)

Insert after clause 20 (1) (d):

, and

- (e) is suitable for on-site sewage management.

[19] Clause 23 Erection of additional dwellings within Zones Nos 1 (a), 1 (c), 1 (c1) and 7 (c)

Insert after clause 23 (1) (e):

, and

- (f) the Council has received a site analysis and satisfactory soil test results confirming the suitability of the site for on-site sewage management.

[20] Clauses 30–34D

Omit clauses 30–34. Insert instead:

30 Objectives in relation to heritage

The objectives of this plan in relation to heritage are:

- (a) to conserve the environmental heritage of the Rylstone local government area, and
- (b) to conserve the heritage significance of existing significant fabric, relics, settings and views associated with the heritage significance of heritage items and heritage conservation areas, and
- (c) to ensure that archaeological sites and places of Aboriginal heritage significance are conserved, and
- (d) to allow for the protection of places which have the potential to have heritage significance but are not identified as heritage items, and
- (e) to ensure that the heritage conservation areas throughout the Rylstone local government area retain their heritage significance.

31 Protection of heritage items and heritage conservation areas

(1) When is consent required?

The following development may be carried out only with development consent:

- (a) demolishing or moving a heritage item or building, work, relic, tree or place within a heritage conservation area,
- (b) altering a heritage item or a building, work, relic, tree or place within a heritage conservation area by making structural or non-structural changes to its exterior, such as to its detail, fabric, finish or appearance,
- (c) altering a heritage item by making structural changes to its interior,
- (d) disturbing or excavating a place of Aboriginal heritage significance or an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,

- (e) moving the whole or a part of a heritage item,
- (f) erecting a building on, or subdividing, land on which a heritage item is located or which is within a heritage conservation area.

(2) What exceptions are there?

Development consent is not required by this clause if:

- (a) in the opinion of the consent authority:
 - (i) the proposed development is of a minor nature or consists of maintenance of the heritage item or of a building, work, archaeological site, tree or place within a heritage conservation area, and
 - (ii) the proposed development would not adversely affect the significance of the heritage item or heritage conservation area, and
- (b) the proponent has notified the consent authority in writing of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development will comply with this subclause and that development consent is not otherwise required by this plan.

(3) Development consent is not required by this clause for the following development in a cemetery or burial ground if there will be no disturbance to human remains, to relics in the form of grave goods or to a place of Aboriginal heritage significance:

- (a) the creation of a new grave or monument, or
- (b) an excavation or disturbance of land for the purpose of carrying out conservation or repair of monuments or grave markers.

(4) What must be included in assessing a development application?

Before granting a consent required by this clause, the consent authority must assess the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(5) **What extra documentation is needed?**

The assessment must include consideration of a *heritage impact statement* that addresses at least the following issues (but is not to be limited to assessment of those issues, if the heritage significance concerned involves other issues). The consent authority may also decline to grant such a consent until it has considered a *conservation management plan*, if it considers the development proposed should be assessed with regard to such a plan.

(6) The minimum issues that must be addressed by the heritage impact statement are:

- (a) for development that would affect a *heritage item*:
 - (i) the heritage significance of the item as part of the environmental heritage of Rylstone local government area, and
 - (ii) the impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or horticultural features, and
 - (iii) the measures proposed to conserve the heritage significance of the item and its setting, and
 - (iv) whether any archaeological site or potential archaeological site would be adversely affected by the proposed development, and
 - (v) the extent to which the carrying out of the proposed development would affect the form of any historic subdivision, and
- (b) for development that would be carried out in a *heritage conservation area*:
 - (i) the heritage significance of the heritage conservation area and the contribution which any building, work, relic, tree or place affected by the proposed development makes to this heritage significance, and
 - (ii) the impact that the proposed development would have on the heritage significance of the heritage conservation area, and
 - (iii) the compatibility of any proposed development with nearby original buildings and the character of the heritage conservation area, taking into

- account the size, form, scale, orientation, setbacks, materials and detailing of the proposed development, and
- (iv) the measures proposed to conserve the significance of the heritage conservation area and its setting, and
- (v) whether any landscape or horticultural features would be affected by the proposed development, and
- (vi) whether any archaeological site or potential archaeological site would be affected by the proposed development, and
- (vii) the extent to which the carrying out of the proposed development in accordance with the consent would affect any historic subdivision pattern, and
- (viii) the issues raised by any submission received in relation to the proposed development in response to the notification or advertising of the application.

32 Advertised development

The following development is identified as advertised development:

- (a) the demolition of a heritage item or a building, work, tree or place in a heritage conservation area, and
- (b) the carrying out of any development allowed by clause 34C.

33 Notice of demolition to the Heritage Council

Before granting consent for the demolition of a heritage item identified in Schedule 1 as being of State significance, the consent authority must notify the Heritage Council about the application and take into consideration any comments received in response within 28 days after the notice is sent.

34 Development affecting places or sites of known or potential Aboriginal heritage significance

Before granting consent for development that is likely to have an impact on a place of Aboriginal heritage significance or a

potential place of Aboriginal heritage significance, or that will be carried out on an archaeological site of a relic that has Aboriginal heritage significance, the consent authority must:

- (a) consider a heritage impact statement explaining how the proposed development would affect the conservation of the place or site and any relic known or reasonably likely to be located at the place or site, and
- (b) except where the proposed development is integrated development, notify the local Aboriginal communities (in such way as it thinks appropriate) and the Director-General of National Parks and Wildlife of its intention to do so and take into consideration any comments received in response within 28 days after the relevant notice is sent.

34A Development affecting known or potential archaeological sites of relics of non-Aboriginal heritage significance

- (1) Before granting consent for development that will be carried out on an archaeological site or a potential archaeological site of a relic that has non-Aboriginal heritage significance (whether or not it is, or has the potential to be, also the site of a relic of Aboriginal heritage significance), the consent authority must:
 - (a) consider a heritage impact statement explaining how the proposed development will affect the conservation of the site and any relic known or reasonably likely to be located at the site, and
 - (b) notify the Heritage Council of its intention to do so and take into consideration any comments received in response within 28 days after the notice is sent.
- (2) This clause does not apply if the proposed development:
 - (a) does not involve disturbance of below-ground deposits and the consent authority is of the opinion that the heritage significance of any above-ground relics would not be adversely affected by the proposed development, or
 - (b) is integrated development.

34B Development in the vicinity of a heritage item

- (1) Before granting consent for development in the vicinity of a heritage item, the consent authority must assess the impact of the proposed development on the heritage significance of the heritage item and of any heritage conservation area within which it is situated.
- (2) This clause extends to development:
 - (a) that may have an impact on the setting of a heritage item, for example, by affecting a significant view to or from the item or by overshadowing, or
 - (b) that may undermine or otherwise cause physical damage to a heritage item, or
 - (c) that will otherwise have any adverse impact on the heritage significance of a heritage item or of any heritage conservation area within which it is situated.
- (3) The consent authority may refuse to grant any such consent unless it has considered a heritage impact statement that will help it assess the impact of the proposed development on the heritage significance, visual curtilage and setting of the heritage item.
- (4) The heritage impact statement should include details of the size, shape and scale of, setbacks for, and the materials to be used in, any proposed buildings or works and details of any modification that would reduce the impact of the proposed development on the heritage significance of the heritage item.

34C Conservation incentives

The consent authority may grant consent to the use for any purpose of a building that is a heritage item, or of the land on which such a building is erected, even though the use would otherwise not be allowed by this plan, if:

- (a) it is satisfied that the retention of the heritage item depends on the granting of consent, and
- (b) the proposed use is in accordance with a conservation management plan which has been endorsed by the consent authority, and
- (c) the granting of consent to the proposed use would ensure that all necessary conservation work identified in the conservation management plan is carried out, and

- (d) the proposed use would not adversely affect the heritage significance of the heritage item or its setting, and
- (e) the proposed use would not adversely affect the amenity of the surrounding area otherwise than to an insignificant extent.

34D Development in heritage conservation areas

- (1) Before granting consent for the erection of a building within a heritage conservation area, the consent authority must be satisfied that the features of the proposed building will be compatible with the heritage significance of the heritage conservation area, having regard to the form of, and materials used in, buildings that contribute to the heritage significance of the heritage conservation area.
- (2) In satisfying itself about those features, the consent authority must have regard to at least the following (but is not to be limited to having regard to those features):
 - (a) the pitch and form of the roof (if any), and
 - (b) the style, size, proportion and position of the openings for windows or doors (if any), and
 - (c) the colour, texture, style, size and type of finish of the materials to be used on the exterior of the building.

[21] Clause 35 Advertising structures or advertisements

Insert “(except an advertisement the erection of which is exempt development)” after “an advertisement” in clause 35 (1).