



# Hurstville Local Environmental Plan 1994 (Amendment No 39)

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*. (S02/02135/S69)

ANDREW REFSHAUGE, M.P.,  
Minister for Planning

## **2003 No 148**

Clause 1                      Hurstville Local Environmental Plan 1994 (Amendment No 39)

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# **Hurstville Local Environmental Plan 1994 (Amendment No 39)**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of plan**

This plan is *Hurstville Local Environmental Plan 1994 (Amendment No 39)*.

### **2 Aims of plan**

This plan aims to ensure the heritage provisions contained in *Hurstville Local Environmental Plan 1994* are consistent with the model heritage provisions prepared by the NSW Heritage Office.

### **3 Land to which plan applies**

This plan applies to all land within the local government area of the City of Hurstville under the provisions of *Hurstville Local Environmental Plan 1994*.

### **4 Amendment of Hurstville Local Environmental Plan 1994**

*Hurstville Local Environmental Plan 1994* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 4)

### [1] Clause 5 Interpretation

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

### [2] Clause 5 (1)

Insert in alphabetical order:

*archaeological site* means the site of one or more relics.

*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 or place and identifies conservation policies and management mechanisms that are appropriate to enable that significance to be retained.

*demolish*, in relation to a heritage item, means wholly or partly destroy, dismantle or deface the heritage item.

*heritage impact statement* means a document consisting of a statement demonstrating the heritage significance of a heritage item, an assessment of the impact that proposed development will have on that significance and proposals for measures to minimise that impact.

*heritage item* means a building, an element of a building, a work, relic, tree, archaeological site or place of heritage significance to the local government area of the City of Hurstville described in Schedule 2.

*maintenance* means the ongoing protective care of the fabric of a heritage item and its setting. It does not include alterations, such as carrying out extensions or additions, or the introduction of new materials or technology.

*place of Aboriginal heritage significance* means:

- (a) a place that has the physical remains of a 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

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- (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 consent authority, has the potential to be an archaeological site.

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

*relic* means:

- (a) any deposit, object or material evidence (which may consist of human remains) that is more than 50 years old relating to the use or settlement, not being Aboriginal habitation, of the local government area of the City of Hurstville and that is a fixture or is wholly or partly within the ground, or
- (b) any deposit, object or material evidence (which may consist of human remains) of any age relating to Aboriginal habitation of the local government area of the City of Hurstville.

### [3] Part 4

Omit the Part. Insert instead:

## Part 4 Heritage provisions

### 27 Aims in relation to heritage

The aims of this Part in relation to heritage are:

- (a) to conserve the environmental heritage of the local government area of the City of Hurstville, and
- (b) to conserve the heritage significance of existing significant fabric, relics, settings and views associated with the heritage significance of heritage items, 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.

## **28 Protection of heritage items**

### **(1) When is consent required?**

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

- (a) demolishing or moving a heritage item,
- (b) altering a heritage item 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 a 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 part of a heritage item,
- (f) erecting a building on, or subdividing, land on which a heritage item is located.

### **(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, and
  - (ii) the proposed development would not adversely affect the significance of the heritage item, 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.

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- (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,
- (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 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 number of issues that must be addressed by the heritage impact statement are:

- (a) the heritage significance of the heritage item as part of the environmental heritage of the local government area of the City of Hurstville, and
- (b) 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
- (c) the measures proposed to conserve the heritage significance of the item and its setting, and
- (d) whether any archaeological site or potential archaeological site would be adversely affected by the proposed development, and

- (e) the extent to which the carrying out of the proposed development would affect the form of any historic subdivision.

### **29 Advertised development**

The following development is identified as advertised development:

- (a) the demolition of a heritage item,
- (b) the carrying out of any development allowed by clause 34.

### **30 Notice of demolition to the Heritage Council**

Before granting consent for the demolition of a heritage item listed on the State Heritage Register (under the *Heritage Act 1977*), 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.

### **31 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.

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### **32 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.

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

- (1) Before granting consent to 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.
- (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 a heritage item or of any heritage significance of the item.



- (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.

#### **34 Conservation incentives**

- (1) 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 the 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.
- (2) When considering an application for consent to erect a building on land on which there is situated a building which is a heritage item, the consent authority may:
  - (a) for the purpose of determining the floor space ratio, and
  - (b) for the purpose of determining the number of parking spaces to be provided on the site,

exclude from its calculation of the floor space of the buildings erected on the land the floor space of the item, but only if the

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consent authority is satisfied that the retention of the building depends on the consent authority's granting the exclusion.

BY AUTHORITY

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