



Kogarah Local Environmental Plan 1998 (Amendment No 32)

under the

Environmental Planning and Assessment Act 1979

I, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (S02/00763/S69)

DIANE BEAMER, M.P.,

Minister Assisting the Minister for Infrastructure
and Planning (Planning Administration)

2003 No 999

Clause 1 Kogarah Local Environmental Plan 1998 (Amendment No 32)

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1 Name of plan

This plan is *Kogarah Local Environmental Plan 1998 (Amendment No 32)*.

2 Aims of plan

The aim of this plan is to ensure that the heritage provisions contained in *Kogarah Local Environmental Plan 1998* are generally consistent with the *Heritage Model Provisions* for local environmental plans prepared by the NSW Heritage Office.

3 Land to which plan applies

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

4 Amendment of Kogarah Local Environmental Plan 1998

Kogarah Local Environmental Plan 1998 is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 4)

[1] Clause 6 Savings

Omit “clause 17”. Insert instead “clauses 17–17H”.

[2] Clauses 17–17H

Omit clause 17. Insert instead:

17 Objectives

The objectives of this plan in relation to heritage are:

- (a) to conserve the environmental heritage of Kogarah 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 Kogarah local government area retain their heritage significance.

17A 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 a 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,

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- (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 Council:
 - (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 Council in writing of the proposed development and the Council 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 Council 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 Council 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) for development that would affect a heritage item:
 - (i) the heritage significance of the item as part of the environmental heritage of Kogarah 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:

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- (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, and
- (ix) if the Council has adopted any design guidelines that apply to the heritage conservation area, whether the proposed development satisfies those guidelines.

17B 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 17G.

17C Notice of demolition to Heritage Council

Before granting consent for the demolition of a heritage item identified in Part 1 of Schedule 3 as being of State significance, the Council 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.

17D 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 Council 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.

17E 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 Council must:

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- (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 Council 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.

17F Development on site adjacent to site of heritage item

- (1) Before granting consent to the carrying out of development on a site adjacent to the site of a heritage item, the Council 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 the heritage significance of a heritage item.
- (3) The Council 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.

17G Conservation incentives

The Council 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, regardless of any other provision of 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 Council, 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.

17H Development in heritage conservation areas

- (1) Before granting consent for the erection of a building within a heritage conservation area, the Council 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 Council 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.

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Schedule 1 Amendments

[3] Clause 25 Dictionary

Omit the definitions of *conservation plan*, *demolish*, *heritage item*, *maintenance*, *potential archaeological site* and *relic* from clause 25 (1).

[4] Clause 25 (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, 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.

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 for measures to minimise that impact.

heritage item means a building, work, relic, tree, archaeological site or place (which may or may not be situated on or within land that is a heritage conservation area) described in Part 1 of Schedule 3.

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.

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 the potential to be an archaeological site.

potential place of Aboriginal heritage significance means a place that, in the opinion of the Council, 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 Kogarah local government area 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 Kogarah local government area.

[5] Schedule 3 Heritage items

Omit “(Clause 17)”.

Insert instead “Clause 25 (1) definitions of ‘heritage item’ and ‘heritage conservation area’”.