

Hurstville Local Environmental Plan 1994

[1994-189]



New South Wales

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Hurstville Local Environmental Plan 1994



New South Wales

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Hurstville Local Environmental Plan 1994



New South Wales

Part 1 Preliminary

1 Name of plan

This plan may be cited as *Hurstville Local Environmental Plan 1994*.

2 Aims, objectives etc

The aims of this plan are—

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
- (a) to consolidate and update existing planning controls in the City of Hurstville,
- (b) to modify planning controls having regard to growth and change in the City,
- (c) to simplify the general restrictions on development by reducing the number of zones into which land is divided,
- (d) to create a broad framework of planning controls within which the council may, from time to time, develop and adopt more detailed policies and guidelines relating only to matters of significance for local environmental planning,
- (e) to ensure that development is carried out in such a way as to allow the economic and efficient provision of public services and amenities, and
- (f) to ensure the conservation of the historic architecture and the aesthetic character of the City.

3 Land to which plan applies

This plan applies to all land situated in the City of Hurstville, as shown edged by a broken black line and black bars on the map.

4 Relationship to other environmental planning instruments

- (1) This plan repeals—

- (a) the *Hurstville Planning Scheme Ordinance*, and
 - (b) all other local environmental plans and deemed environmental planning instruments which, immediately before the appointed day, applied to land to which this plan applies, but to the extent only to which those plans so applied to that land.
- (2) *State Environmental Planning Policy No 25—Residential Allotment Sizes and Dual Occupancy Subdivision* does not apply to land to which this plan applies.
- (3) *Sydney Regional Environmental Plan No 12—Dual Occupancy* does not apply to land to which this plan applies.
- (4) *State Environmental Planning Policy No 25—Residential Allotment Sizes and Dual Occupancy Subdivision* and *Sydney Regional Environmental Plan No 12—Dual Occupancy* are amended in the manner set out in Schedule 1.

5 Interpretation

- (1) In this plan—

acid sulfate soils means actual or potential acid sulfate soils, as defined in the *Acid Sulfate Soils Assessment Guidelines*.

Acid Sulfate Soils Assessment Guidelines means the *Acid Sulfate Soils Assessment Guidelines* as published by the NSW Acid Sulfate Soils Management Advisory Committee and adopted for the time being by the Director-General.

Acid Sulfate Soils Planning Map means the map marked “*Hurstville Local Environmental Plan 1994 (Amendment No 48)—Acid Sulfate Soils Planning Map*”.

advertising means the use of a building or place for the display of symbols, messages or other devices for promotional purposes or for conveying information, instructions, directions or the like, whether or not the display involves the erection of a structure or the carrying out of a work.

alter, in relation to a heritage item, means—

- (a) make structural changes to the outside of the heritage item, or
- (b) make non-structural changes to the detail, fabric, finish or appearance of the outside of the heritage item, other than changes ensuing from the maintenance of the existing detail, fabric, finish or appearance of the outside of the item.

amusement centre means a building or place used, or adapted for use, for the operation, playing or viewing of—

- (a) billiards, pool or other like games (whether or not by use of coin operated tables or equipment), but only if tables or equipment for more than 3 such games is

installed in the building or place, or

- (b) electrically or mechanically operated amusement devices, such as pinball machines and the like, but only if more than 3 such machines are installed in the building or place, or
- (c) electronic appliances which are controlled or partly computer controlled and associated with one or more electronic screens operated by one or more players for amusement or recreation, but only if more than 3 such appliances are installed in the building or place,

but does not include a building or place used for the primary purpose of providing general computer office and associated internet services and facilities.

animal establishment means a building or place used for the breeding, boarding, training or keeping of, or for caring for, animals whether or not for commercial purposes, but does not include a veterinary establishment or a building or place used (in conjunction with a dwelling) for the keeping of pets.

appointed day means the day on which this plan takes effect.

aquaculture means the cultivation (including the propagation and rearing) of the living resources of the sea or inland waters, whether or not the cultivation is carried out in a farm established for that purpose using an artificially created body of water.

archaeological site means the site of one or more relics.

arterial road means—

- (a) a road shown on the map by a broken red band,
- (b) a road declared to be a main road under the [Roads Act 1993](#), or
- (c) a road declared to be a secondary road under the [Roads Act 1993](#).

automotive use means a use of a building or work or land for the purpose of fuelling, lubricating, cleaning, caring for, maintaining or repairing motor vehicles or of offering for sale and installing automotive accessories or parts and includes a workshop, a shop for the sale of automotive spare parts, tyres or car batteries, a tyre retreading workshop and any other establishment performing similar functions, but does not include a panel beating workshop (other than a place used for minor panel beating ancillary to a motor showroom) or a service station.

bed and breakfast accommodation means a dwelling house occupied by permanent residents who provide temporary paid accommodation to guests, which may include meals, with not more than three bedrooms.

boarding house means a building or place—

- (a) where accommodation, meals and laundry facilities are provided to the residents of the building or place, and
- (b) which is not licensed to sell liquor within the meaning of the *Liquor Act 1982*.

bulky goods salesroom or showroom means a building or place used for the sale (by retail or auction), hire or display of items (whether goods or materials) which are of such a size, shape or weight as to require—

- (a) a large area for handling, storage or display, or
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading items into their vehicles after purchase,

but does not include a building or place used for the sale of foodstuffs or clothing.

bushfire hazard reduction means a reduction or modification (by controlled burning or mechanical or manual means) of material that constitutes a bushfire hazard.

bushland means land on which there is vegetation which is either a remainder of the natural vegetation of the land or is still representative of the natural vegetation.

business premises means a building or place in which there is carried on an occupation, profession, light industry or trade which provides a service directly and regularly to the public, but does not include a building or place elsewhere defined in this clause.

car park means a building or place (other than a building or place used in conjunction with a dwelling) used for parking vehicles, whether operated for gain or not, and includes any manoeuvring space and access to that building or place.

caravan park means land used as a site for moveable dwellings, including tents and caravans or other vehicles used for temporary or permanent accommodation.

child care centre means fixed premises (other than the home of the licensee of the child care service) at which a child care service is provided by a person for the purpose of educating, minding or caring for (but without providing residential care for) 4 or more children (disregarding any children who are related to the person providing the service) who are under 6 years of age and who do not ordinarily attend school.

commercial sign means a non-illuminated advertisement, which, in respect of any place or premises to which it is affixed, contains only—

- (a) an identification or description of the place or premises,
- (b) an identification or description of any person residing or carrying on an occupation at the place or premises,

- (c) particulars of any occupation carried on at the place or premises,
- (d) such directions or cautions as are usual or necessary in relation to the place or premises or any occupation carried on there,
- (e) particulars or notifications required or permitted to be displayed by or under any Act or any Act of the Parliament of the Commonwealth,
- (f) particulars relating to the goods, commodities or services dealt with or provided at the place or premises,
- (g) a notice that the place or premises is or are for sale or letting together with particulars of the sale or letting, or
- (h) particulars of any activities held or to be held at the place or premises.

communications facility means a building, structure, work or place used primarily for transmitting or receiving signals for the purpose of communication, and includes radio masts, towers, satellite discs and the like.

community facility means a building or place owned or controlled by a public authority or a body of persons which may provide for the physical, social, cultural or intellectual development or welfare of the local community, but does not include a building or place elsewhere defined in this clause.

community land means land classified as community land within the meaning of the [Local Government Act 1993](#).

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.

contaminated land has the same meaning as it has in section 145A of the Act.

convenience store means a shop selling a variety of small consumer goods, petrol, oil and petroleum products, whether or not other goods are available for hire.

correctional centre has the same meaning as in the standard instrument prescribed under the [Standard Instrument \(Local Environmental Plans\) Order 2006](#).

council means the Council of the City of Hurstville.

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

dual occupancy means two dwellings on a single allotment of land.

dwelling means a room or number of rooms occupied or used, or so constructed or

adapted as to be capable of being occupied or used, as a separate residence.

dwelling house means a building containing one but not more than one dwelling.

educational establishment means a building or place used for education (including teaching) and includes—

- (a) a school,
- (b) a tertiary institution, being a university, college of advanced education, teachers' college, technical college or other tertiary college providing formal education which is constituted by or under an Act, and
- (c) an art gallery or museum, not being a gallery or museum in which any items on display are for sale,

whether or not accommodation for staff and students is provided and whether or not used for the purpose of gain.

environmental facilities or works means—

- (a) a structure or work that facilitates public pedestrian access and includes, but is not limited to, nature study or display facilities, walking tracks, boardwalks, pedestrian bridges, duckboards, observation decks, bird hides, fishing decks, or the like, or
- (b) environmental management or restoration works including, but not limited to, bush regeneration, wetlands restoration, erosion and sedimentation works, other drainage works, or the like.

exempt development—see clause 9A.

floor means that space within a building which is situated between one level of the building and the level next above or, if there is no level above, the ceiling or roof above.

floor space ratio means the ratio of the gross floor area of a building to the area of the site on which the building is situated.

generating works means a building or place used for the purpose of making or generating gas, electricity or other forms of energy.

gross floor area means the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the internal face of the external enclosing walls as measured at a height of 1,400 millimetres above each floor level, excluding—

- (a) columns, fin walls, shading devices, awnings and any other elements, projections or works outside the general lines of the outer face of the external wall,

- (b) lift towers, cooling towers, machinery and plant rooms and ancillary storage space and air-conditioning ducts,
- (c) car parking needed to meet any requirements of the council and any internal vehicular or pedestrian access to that parking,
- (d) space for the loading and unloading of goods, and
- (e) internal public arcades and thoroughfares, terraces and balconies and the like.

ground level means the level of a site as if no development had taken place.

group home includes both a permanent group home and a transitional group home.

hazardous industry means an industry which, when in operation and when all measures proposed to minimise its impact on the locality have been employed (including measures to isolate the industry from existing or likely future development on other land in the locality), would pose a significant risk in relation to the locality—

- (a) to human health, life or property, or
- (b) to the biophysical environment.

hazardous storage establishment means an establishment where goods, materials or products are stored which, when in operation and when all measures proposed to minimise its impact on the locality have been employed (including measures to isolate the establishment from existing or likely future development on other land in the locality), would pose a significant risk in relation to the locality—

- (a) to human health, life or property, or
- (b) to the biophysical environment.

health consulting rooms means a room or a number of rooms forming either the whole or part of, attached to, or within the curtilage of, a dwelling house used by not more than 2 practitioners providing professional treatment or health care services (including dental and optical services) to members of the public.

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.

heritage significance means historic, scientific, cultural, social, archaeological,

architectural, natural or aesthetic significance.

home activity means any activity or pursuit carried on for personal gain in a building or room or a number of rooms forming part of, attached to, or within the curtilage of, a dwelling where—

- (a) only goods made or produced, or services offered, as a result of the activity or pursuit are displayed, sold or provided, and
- (b) the primary use of the dwelling is for residential purposes, and
- (c) the activity or pursuit does not—
 - (i) interfere with the amenity of the locality by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil or otherwise, or
 - (ii) involve exposure to view from any public place of any matter, or
 - (iii) require the provision of any essential service main of a greater capacity than that available in the locality, or
 - (iv) generate traffic out of keeping with the surrounding area, and
- (d) not more than two persons (including any employee) carry on the activity or pursuit, at least one of whom is a resident of the dwelling, and
- (e) the premises do not constitute sex services premises.

hospital means a building or place used for the purpose of providing professional health services (including preventative care, diagnosis, medical or surgical treatment or counselling) to people admitted as in-patients, whether or not out-patients are also cared for or treated, and includes—

- (a) ancillary facilities for the accommodation of nurses or other health care workers, ancillary shops or refreshment rooms and ancillary accommodation for persons receiving health care or for their visitors, and
- (b) facilities situated in the building or at the place and used for educational or research purposes, whether or not they are used only by hospital staff or health care workers, and whether or not any such use is a commercial use.

industry means the manufacturing, assembling, altering, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, processing or adapting of any goods or articles for a commercial purpose, but does not include anything elsewhere defined in this clause (except hazardous, light and offensive industries).

landscaped area means that part of a site area which is not occupied by any building and includes so much of that part as is used, or to be used, for swimming

pools, recreation areas, lawns, gardens or the like, but does not include so much of that part as is used, or to be used, for driveways or parking areas.

light industry means an industry in which the processes carried on, or the transportation involved, or the machinery or materials used, do not interfere unreasonably with the amenity of the neighbourhood, but does not include anything (other than industry) elsewhere defined in this clause.

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.

materials recycling yard means a building or place used for the collecting, dismantling, storing, abandoning or recycling of second-hand or scrap materials for the purpose of resale.

medical centre means a building or place used for the purpose of providing professional health services (including preventative care, diagnosis, medical or surgical treatment or counselling) to out-patients only.

multiple dwellings means a building or buildings, consisting of 3 or more dwellings (whether or not attached), where each dwelling has an individual entrance and direct private access to private open space at natural ground level, and includes villas, town houses, terraces, cluster housing, and the like.

offensive industry means an industry which, when in operation and when all measures proposed to minimise its impact on the locality have been employed (including measures to isolate the industry from existing or likely future development on other land in the locality), would emit a polluting discharge (including noise) in a manner which would have a significant adverse impact in the locality or on the development.

offensive storage establishment means any establishment where goods, materials or products are stored which, when in operation and when all measures proposed to minimise its impact on the locality have been employed (including measures to isolate the establishment from existing or likely future development on other land in the locality), would emit a polluting discharge (including noise) in a manner which would have a significant adverse impact in the locality or on the development.

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities (except dealing with members of the public otherwise than by appointment), but does not include a building or place elsewhere defined in this clause.

operational land means land classified as operational land within the meaning of the [Local Government Act 1993](#).

panel beating workshop means a building or place used for the purpose of carrying out repairs to motor vehicles and agricultural machinery, where the work involved includes—

- (a) body building,
- (b) panel beating (which may or may not involve dismantling), and
- (c) spray painting.

permanent group home means a dwelling—

- (a) which is used to provide a household environment for disabled persons or socially disadvantaged persons, whether those persons are related or not, and
- (b) which is occupied by the persons referred to in paragraph (a) as a single household, with or without paid or unpaid supervision or care and with or without payment for board and lodging being required.

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
- (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.

place of worship means a building or place used for the purposes of religious worship, whether or not the building or place is also used for counselling, social events, instruction or religious training by a congregation or religious group.

plant nursery means a building or place used for both the growing and selling by retail of plants, whether or not landscape supplies (including earth products) and other landscape and horticultural products are also sold there.

plant and equipment hire establishment means a building or place where plant and equipment are stored, displayed and hired or leased to persons for temporary use, but does not include premises used for the purpose of hiring home entertainment equipment, such as stereo sound systems, televisions, video cassette recorders, video tapes and the like.

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.

public building means a building or place used to carry on a business or as an office by a public authority or an organisation established for public purposes.

public utility undertaking means any undertaking carried on by, or by authority of, any Government department, or in pursuance of any Commonwealth or State Act, for the purpose of—

- (a) railway, road, water or air transport, or wharf or river undertakings, or
- (b) the provision of sewerage or drainage services, or
- (c) the supply of water, hydraulic power, electricity or gas.

recreation area means—

- (a) a children's playground,
- (b) an area used for sporting activities or sporting facilities, or
- (c) an area used to provide facilities for recreational activities which promote the physical, cultural or intellectual welfare of persons within the community, being facilities provided by—
 - (i) the council, or
 - (ii) a body of persons associated for the purpose of promoting the physical, cultural or intellectual welfare of persons within the community,

and includes golf courses, tennis courts and bowling greens and any ancillary club building, but does not include a racecourse or a showground.

recreation facility means a building or place used exclusively for a sporting activity, or exercise or for a leisure activity, whether operated for the purpose of gain or not, but does not include a building or place elsewhere defined in this clause.

refreshment room means a restaurant, cafe, tea room, eating house or the like.

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.

residential flat building means a building containing 2 or more dwellings, but does not include anything elsewhere defined in this clause except dwellings.

residential office means a building or room or a number of rooms (forming part of, attached to, or within the curtilage of, a dwelling) in which a business or profession is carried on by a permanent resident of the dwelling and where—

- (a) not more than 2 persons practise or are employed on the premises at any one time, and
- (b) no goods are sold or displayed on the premises.

service station means a building or place used for the fuelling of motor vehicles involving the sale by retail of petrol, oil and other petroleum products whether or not the building or place is also used for any one or more of the following purposes—

- (a) the hiring of trailers,
- (b) the retail selling or the installing of spare parts and accessories for motor vehicles,
- (c) the washing and greasing of motor vehicles,
- (d) the repairing and servicing of motor vehicles (other than body building, panel beating or spray painting),
- (e) the retail selling or hiring of small consumer goods.

sex services means sexual acts or sexual services in exchange for payment.

sex services premises means premises habitually used for the purposes of sex services.

shop means a building or place used for the purpose of selling (whether by retail or auction), or hiring (or displaying for the purpose of selling or hiring) items (whether goods or materials).

site area, in relation to development, means the area of land to which an application for consent to carry out development relates, but does not include any part of that land on which the development is not permitted by or under this plan or any other environmental planning instrument.

subdivision of land has the same meaning as in the Act.

the Act means the [Environmental Planning and Assessment Act 1979](#).

the map means the map marked “*Hurstville Local Environmental Plan 1994*”, as

amended by the maps (or specified sheets of maps) marked as follows—

Editorial note—

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

Hurstville Local Environmental Plan 1994 (Amendment No 2)

Hurstville Local Environmental Plan 1994 (Amendment No 4)—Sheets 3 and 4

Hurstville Local Environmental Plan 1994 (Amendment No 5)

Hurstville Local Environmental Plan 1994 (Amendment No 6)

Hurstville Local Environmental Plan 1994 (Amendment No 14)

Hurstville Local Environmental Plan 1994 (Amendment No 15)—Sheets 1 and 2

Hurstville Local Environmental Plan 1994 (Amendment No 16)

Hurstville Local Environmental Plan 1994 (Amendment No 17)

Hurstville Local Environmental Plan 1994 (Amendment No 21)

Hurstville Local Environmental Plan 1994 (Amendment No 25)

Hurstville Local Environmental Plan 1994 (Amendment No 26)—Sheet 1

Hurstville Local Environmental Plan 1994 (Amendment No 29)

Hurstville Local Environmental Plan 1994 (Amendment No 30)

Hurstville Local Environmental Plan 1994 (Amendment No 31)

Hurstville Local Environmental Plan 1994 (Amendment No 32)

Hurstville Local Environmental Plan 1994 (Amendment No 34)

Hurstville Local Environmental Plan 1994 (Amendment No 38)—Sheets 1 and 2

Hurstville Local Environmental Plan 1994 (Amendment No 40)

Hurstville Local Environmental Plan 1994 (Amendment No 44)—Sheet 1

Hurstville Local Environmental Plan 1994 (Amendment No 45)

Hurstville Local Environmental Plan 1994 (Amendment No 54)

Hurstville Local Environmental Plan 1994 (Amendment No 56)—Sheet 1

Hurstville Local Environmental Plan 1994 (Amendment No 57)

Hurstville Local Environmental Plan 1994 (Amendment No 64)

Hurstville Local Environmental Plan 1994 (Amendment No 70)

Hurstville Local Environmental Plan 1994 (Amendment No 71)—Sheet 1

transitional group home means a dwelling—

- (a) which is used to provide temporary accommodation, for the purpose of relief or rehabilitation, for disabled persons or socially disadvantaged persons, whether those persons are related or not, and
- (b) which is occupied by the persons referred to in paragraph (a) as a single household, either with or without paid or unpaid supervision or care and with or without payment for board and lodging being required.

transport depot means a building or place used for the parking or storage of motor-powered or motor-drawn vehicles used in connection with a passenger transport undertaking, business, industry or shop.

utility installation means a building or work used for a public utility undertaking.

veterinary establishment means a building or place used for the purpose of the medical or surgical treatment of animals, whether or not animals are kept or boarded on the premises.

warehouse or distribution centre means a building or place used for the principal purpose of storing, handling or displaying items (whether goods or materials) which have been produced or manufactured for sale, other than retail sale to the public from the building or place.

(2) In this plan—

- (a) 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,
- (b) a reference to a map is a reference to a map deposited in the office of the council, and
- (c) a reference to land within a zone specified in the Table to Part 2 is a reference to land shown on the map in the manner indicated in clause 7 as the means of identifying land of the zone so specified.

(3) Notes included in this plan do not form part of this plan.

6 Consent authority

The council is the consent authority for the purposes of this plan.

6A Transitional provisions for certain development applications

- (1) The amendments to this plan made by *Hurstville Local Environmental Plan 1994 (Amendment No 43)* do not apply to development the subject of a development application that had been made, but had not been finally determined, before the commencement of those amendments.
- (2) The amendments to this plan made by *Hurstville Local Environmental Plan 1994 (Amendment No 70)* do not apply to development the subject of a development application that had been made, but had not been finally determined, before the commencement of those amendments.

Part 2 General restrictions on development of land

7 Zones indicated on the map

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

Zone No 2 (Residential Zone)—coloured light pink

Zone No 3 (a) (Neighbourhood Business Zone)—coloured light blue

Zone No 3 (b) (City Centre Business Zone)—coloured dark blue

Zone No 3 (c) (Business Centre Zone)—coloured navy blue

Zone No 3 (d) (City Centre Commercial Core Zone)—coloured orange

Zone No 4 (Light Industrial Zone)—coloured light purple

Zone No 5 (a) (General Special Uses Zone)—coloured yellow

Zone No 5 (b) (Railways Special Uses Zone)—coloured blue-purple

Zone No 6 (a) (Open Space Zone)—coloured green

Zone No 6 (b) (Private Open Space Zone)—coloured green with yellow edging

Zone No 7 (Waterways Zone)—uncoloured with dark blue edging

Zone No 9 (Arterial Road Reservation Zone)—broken red band with black edging

8 Zone objectives and development control table

- (1) The objectives of each zone are set out in the Table to this Part. Any objectives appearing on the map do not form part of this plan.
- (2) Except as otherwise provided by this plan, in relation to land within a zone specified in

the Table to this Part, 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 that zone.

- (3) Except as otherwise provided by this plan, the council may grant consent to the carrying out of development on land to which this plan applies only if the council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out and has considered the extent to which the proposed development is consistent with those objectives.

9 Council policies

The council may only grant consent to the development of land where it has taken into consideration any planning and design principles or policies adopted by the council from time to time which may be relevant to the particular development.

Table

Zone No 2 (Residential Zone)

Zone objectives

The objectives of this zone are—

- (a) to preserve and enhance the character and amenity of established residential areas,
- (b) to allow a variety of housing types within existing residential areas,
- (c) to encourage the conservation of residential areas which include individual buildings and streets of heritage significance,
- (d) to encourage greater visual amenity by requiring landscaping and permitting a greater variety of building materials and flexibility of design,
- (e) to enable redevelopment for medium density housing forms, including townhouses, villas, cluster housing, semi-detached housing, residential flat buildings and the like, where such development does not interfere with the amenity of surrounding residential areas, and
- (f) to allow people to carry out a reasonable range of activities from their homes, where such activities are not likely to adversely affect the living environment of neighbours.

1 Without development consent

Exempt development; public utility undertakings other than gas holders or generating works.

2 Only with development consent

Animal establishments; bed and breakfast accommodation; carparks; child care centres; commercial signs; community facilities; dual occupancies; dwelling houses; educational establishments; group homes; health consulting rooms; home activities; hospitals; multiple dwellings; places of worship; recreation areas; recreation facilities; residential flat buildings; residential offices; roads.

3 Prohibited

Any purpose other than a purpose included in item 1 or 2.

Zone No 3 (a) (Neighbourhood Business Zone)

Zone objectives

The objectives of this zone are—

- (a) to provide for small scale retail and business activities to serve the needs of the surrounding local community, and
- (b) to provide for development of a scale and type compatible with the amenity of the surrounding residential area, and
- (c) to facilitate retail and business activities at ground floor level to provide active street frontage.

1 Without development consent

Exempt development; public utility undertakings other than gas holders or generating works.

2 Only with development consent

Any purpose other than a purpose included in item 1 or 3.

3 Prohibited

Amusement centres; animal establishments; automotive uses; boarding houses; caravan parks; dwellings (other than those attached to other buildings the use of which is permissible in the zone); gas holders and generating works; group homes; industries; hazardous industries; hazardous storage establishments; institutions; liquid fuel depots; materials recycling yards; offensive industries; offensive storage establishments; panel beating workshops; plant and equipment hire establishments; sex services premises; transport depots; warehouse and distribution centres; wholesale markets.

Zone No 3 (b) (City Centre Business Zone)

Zone objectives

The objectives of this zone are—

- (a) to designate sufficient areas of land to meet the projected needs of the Hurstville Town Centre as a multi-functional regional centre,
- (b) to facilitate development of land within the Hurstville Town Centre for commercial, retail, residential and community purposes,
- (c) to provide a single business zone for the Hurstville Town Centre as a sub-regional centre,
- (d) to facilitate the implementation of a development control plan for the Hurstville Town Centre—
 - (i) by introducing appropriate floor space ratio controls,
 - (ii) by encouraging an economically viable retail core which is centrally located and in close proximity to public transport,
 - (iii) by enhancing employment opportunities and to service the needs of the local and regional community,
 - (iv) by encouraging and facilitating the use of public transport,
 - (v) by providing and enhancing pedestrian and public open space areas for shoppers and workers,
 - (vi) by maintaining and improving the environmental and aesthetic quality of the Hurstville Town Centre and its surrounds,
 - (vii) by ensuring adequate and accessible off-street car parking, and
- (e) to improve traffic flow in and around the Hurstville Town Centre.

1 Without development consent

Exempt development; public utility undertakings other than gas holders or generating works.

2 Only with development consent

Any purpose other than a purpose included in item 1 or 3.

3 Prohibited

Amusement centres; animal establishments; boarding houses; caravan parks; gas holders and generating works; hazardous industry; hazardous storage establishments; industries; institutions; materials recycling yards; offensive industries; offensive storage establishments; panel beating workshops; sex services premises; transport depots; warehouse or distribution centres.

Zone No 3 (c) (Business Centre Zone)

Zone objectives

The objectives of this zone are—

- (a) to maintain a commercial and retail focus for larger scale commercial precincts,
- (b) to allow for residential development in mixed use buildings, with non-residential uses on at least the ground level and residential uses above, so as to promote the vitality of business centres, and
- (c) to provide opportunities for associated development such as parking, service industries and the like.

1 Without development consent

Exempt development; public utility undertakings other than gasholders or generating works.

2 Only with development consent

Any purpose other than a purpose included in item 1 or 3.

3 Prohibited

Amusement centres; animal establishments; automotive uses; boarding houses; caravan parks; dwellings (other than those attached to other buildings the use of which is permissible in the zone); gas holders and generating works; group homes; hazardous industries; hazardous storage establishments; industries; institutions; liquid fuel depots; materials recycling yards; offensive industries; offensive storage establishments; panel beating workshops; plant and equipment hire establishments; sex services premises; transport depots; warehouse or distribution centres; wholesale markets.

Zone No 3 (d) (City Centre Commercial Core Zone)

Zone objectives

The objectives of this zone are as follows—

- (a) to provide for a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community,
- (b) to encourage appropriate employment opportunities in accessible locations,
- (c) to maximise public transport patronage and encourage walking and cycling,
- (d) to strengthen the role of Hurstville City Centre as a major retail and commercial centre,
- (e) to provide a consolidated commercial core (where residential development is prohibited) around the Hurstville railway station and proposed bus interchange.

1 Without development consent

Exempt development; public utility undertakings other than gas holders or generating works.

2 Only with development consent

Any purpose other than a purpose included in item 1 or 3.

3 Prohibited

Amusement centres; animal establishments; aquaculture; automotive uses; bed and breakfast accommodation; boarding houses; bulky goods salesrooms or showrooms; caravan parks; correctional centres; dual occupancies; dwellings; dwelling houses; gas holders and generating works; group homes; hazardous industries; hazardous storage establishments; home activities; industries; light industries; materials recycling yards; multiple dwellings; offensive industries; offensive storage establishments; panel beating workshops; plant nurseries; plant and equipment hire establishments; residential flat buildings; residential offices; sex services premises; transport depots; veterinary establishments; warehouse or distributions centres.

Zone No 4 (Light Industrial Zone)

Zone objectives

The objectives of this zone are—

- (a) to accommodate both traditional and modern forms of light industrial, warehousing and like development outside areas used or zoned for residential or business purposes and so encourage economic and employment growth in Hurstville,
- (b) to ensure industrial development creates areas which are pleasant to work in, safe and efficient in terms of transportation, land utilisation and service distribution,
- (c) to encourage development of, and accommodate innovation in, the sources of economic growth,
- (d) to enhance and improve the physical environment of the city by minimising disturbances caused by air pollutants, water pollutants, noise pollutants and other pollutants,
- (e) to enable limited retailing for bulky goods where, in the opinion of the Council, this is unlikely to detract from the role and function of land zoned for business purposes,
- (f) to enable development for the purposes of retailing only where it is associated with, and ancillary to, manufacturing purposes on the same land or where it serves the daily convenience needs of the local workforce,
- (g) to enable development for the purposes of commercial offices only where it is associated with, and ancillary to, industrial, warehousing or like purposes on the same land or where it serves the daily convenience needs of the local workforce, and

- (h) to enable development for the purposes of community facilities such as child care facilities either in association with or independently of other permitted development to serve the needs of the workforce of the area.

1 Without development consent

Exempt development; public utility undertakings other than gas holders or generating works.

2 Only with development consent

Any purpose other than a purpose included in item 1 or 3.

3 Prohibited

Boarding houses; business premises, office premises and shops (other than those ordinarily incidental or subsidiary to industry, or which are primarily intended to serve persons occupied or employed in uses otherwise permitted in this zone, or which by virtue of their nature, the services provided, or the products produced, distributed or sold are, in the opinion of the council, appropriately located in an industrial zone); caravan parks; dual occupancies; dwellings (other than those attached to and ancillary to other buildings permitted in this zone); educational establishments; group homes; hazardous industries; hazardous storage establishments; hospitals; industries other than light industries; institutions; liquid fuel depots; multiple dwellings; mines; motels; offensive industries; offensive storage establishments; residential flat buildings; transport depots.

Zone No 5 (a) (General Special Uses Zone)

Zone objectives

The objectives of this zone are—

- (a) to accommodate development by public authorities on publicly owned land,
- (b) to accommodate private educational, religious or similar purposes on privately owned land,
- (c) to allow appropriate community uses,
- (d) to enable associated and ancillary development, and
- (e) to identify and protect land intended to be acquired for special uses.

1 Without development consent

Exempt development; public utility undertakings other than gas holders or generating works.

2 Only with development consent

Advertising; commercial signs; roads; the particular purpose indicated by red lettering on the map and purposes ordinarily incidental or subsidiary to that purpose; any public purpose.

3 Prohibited

Any purpose other than a purpose included in item 1 or 2.

Zone No 5 (b) (Railway Special Uses Zone)

Zone objectives

The objectives of this zone are—

- (a) to accommodate development for railways and associated purposes on railway land, and
- (b) to encourage the redevelopment of railway land and air space in the vicinity of railway stations to take advantage of public transport accessibility.

1 Without development consent

Advertising; exempt development; public utility undertakings other than gas holders or generating works.

2 Only with development consent

Any purpose other than a purpose included in item 1 or 3.

3 Prohibited

Amusement centres; animal establishments; automotive uses; boarding houses; caravan parks; convenience stores; gas holders; generating works; group homes; hazardous industries; hazardous storage establishments; hospitals; industries other than light industries; liquid fuel depots; materials recycling yards; offensive industries; offensive storage establishments; panel beating workshops; plant and equipment hire establishments; service stations; sex services premises; warehouse or distribution centres.

Zone No 6 (a) (Open Space Zone)

Zone objectives

The objectives of this zone are—

- (a) to recognise existing publicly owned land used or capable of being used for public recreation purposes, and
- (b) to identify and protect land intended to be acquired for public open space.

1 Without development consent

Exempt development; public utility undertakings other than gas holders or generating works.

2 Only with development consent

Buildings ordinarily incidental or subsidiary to the purposes of landscaping, gardening or bushfire

hazard reduction; commercial signs; community facilities; recreation areas; recreation facilities; refreshment rooms; roads; works (but not buildings) for the purposes of landscaping or gardening.

3 Prohibited

Any purpose other than a purpose included in item 1 or 2.

Zone No 6 (b) (Private Open Space Zone)

Zone objective

The objective of this zone is to enable private recreation facilities to be provided on privately owned land.

1 Without development consent

Exempt development; public utility undertakings other than gas holders or generating works.

2 Only with development consent

Buildings ordinarily incidental or subsidiary to the purposes of landscaping, gardening or bushfire hazard reduction; clubs; commercial signs; community facilities; recreation areas; recreation facilities; refreshment rooms; roads; works (but not buildings) for the purposes of landscaping or gardening.

3 Prohibited

Any purpose other than a purpose included in item 1 or 2.

Zone No 7 (Waterways Zone)

Zone objective

The objective of this zone is to ensure any development of land below mean high water mark is carried out in an environmentally sensitive manner, having particular regard to the nature and function of the waterways.

1 Without development consent

Exempt development; public utility undertakings other than gas holders or generating works.

2 Only with development consent

Aquaculture; boatsheds; dredging; environmental facilities or works; marinas; oyster farms; reclamation; roads; swimming enclosures; watercraft launching and landing facilities.

3 Prohibited

Any purpose other than a purpose included in item 1 or 2.

Zone No 9 (Arterial Road Reservation Zone)

Zone objective

The objective of this zone is to identify and protect land intended to be acquired for new arterial roads or the widening of existing arterial roads.

1 Without development consent

Arterial roads; arterial road widening; exempt development; public utility undertakings other than gas holders or generating works.

2 Only with development consent

Advertising.

3 Prohibited

Any purposes other than a purpose included in item 1.

Part 3 Special provisions

9A What is exempt and complying development

- (1) Development of minimal environmental impact listed as exempt development in *Hurstville Development Control Plan No 14—Exempt and Complying Development* (as adopted by the council on 17 December 2003) is **exempt development**, despite any other provisions of this plan.
- (2) Development listed as complying development in *Hurstville Development Control Plan No 14—Exempt and Complying Development* (as adopted by the council on 17 December 2003) is **complying development** if—
 - (a) it is local development of a kind that can be carried out with consent on the 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 *Hurstville Development Control Plan No 14—Exempt and Complying Development* (as adopted by the council on 17 December 2003).
- (4) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in *Hurstville Development Control Plan No 14—Exempt and Complying Development* adopted by the council (as in force when the certificate is issued).

9B Exceptions to development standards

- (1) The objectives of this clause are as follows—

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant for development consent has demonstrated that—
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Note—

The *Environmental Planning and Assessment Regulation 2021* requires the development application to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

- (4) The consent authority must keep a record of its assessment carried out under subclause (3).
- (5), (6) (Repealed)
- (7) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,
 - (c) clause 15A.

10 Subdivision generally

A person may subdivide land to which this plan applies but only with the consent of the council.

11 Minimum lot sizes for dwelling houses on land within Zone No 2

- (1) The minimum allotment size for the erection of a dwelling house on land within Zone No 2 is 450 m² and the allotment must have a width of at least 15 metres.
- (1A) The objectives of this clause are to—
 - (a) retain the pattern of subdivision in residential areas as reflected in lot size, orientation and shape, and
 - (b) ensure allotments have a minimum size so as to provide landscaped areas that are suitable for tree planting, and
 - (c) require larger allotments within the foreshore scenic protection area (as referred to in clause 19B) where the topography or other natural features of a site limit its subdivision potential.
- (2) Notwithstanding subclause (1), the minimum allotment size for the erection of a dwelling house on a battleaxe allotment on land within Zone No 2 is 550 m² and the allotment must have a width of at least 15 metres.
- (3) Notwithstanding subclauses (1) and (2), the minimum allotment size for the erection of a dwelling house on land within Zone No 2 that is located within a foreshore scenic protection area (as referred to in clause 19B) is 550m² for the allotment at the front and 650m² for the battleaxe allotment.
- (4) The width or area of any access corridor, accessway, right of carriageway or the like is not to be included in the calculation of the width or area of an allotment.
- (5) This clause does not prohibit the erection of a dwelling house in Zone No 2 on an allotment of land that existed as a separate allotment on the appointed day.

11A Dual occupancies

- (1) Notwithstanding any other provisions of this plan, the objectives of this clause are to—
 - (a) prohibit the creation of a second detached dwelling within the backyard of an existing property, except in respect of corner allotments or sites which have rear lane or dual street access, and
 - (b) encourage the development of a second dwelling in the form of—
 - (i) first floor additions to an existing detached dwelling, or
 - (ii) new attached dwellings, and
 - (c) allow minor extensions to an existing detached dwelling to provide additional floor space required to create a second dwelling, and

- (d) provide a minimum allotment size and width required for the development of dual occupancies so that—
 - (i) the pattern of subdivision in residential areas is retained as reflected in lot size, orientation and shape, and
 - (ii) allotments have a minimum size so as to provide landscaped areas that are suitable for tree planting, and
 - (iii) the scale and density of development is compatible with the existing streetscape.
- (2) Unless otherwise provided for in this plan, this clause applies to all land within the local government area of the City of Hurstville.
- (2A) The minimum allotment size for the creation of a dual occupancy on land within Zone No 2 is 630 m² and the allotment must have a width of at least 15 metres.
- (2B) Any development application relating to the creation of a dual occupancy on land within Zone No 2 that was lodged, but not finally determined, before the commencement of *Hurstville Local Environmental Plan 1994 (Amendment No 50)* is to be determined as if that plan had not been made.
- (3) The council must not consent to the erection of a second detached dwelling in the backyard of a dwelling house except in respect of corner allotments or sites which have rear lane or dual street access.
- (4) The council may consent to the creation of a second attached dwelling at the rear of an existing dwelling house if—
 - (a) any additional floor space to be created does not constitute more than 20% of the total site area, and
 - (b) the length of any building extension does not exceed 25% of the shortest perpendicular distance measured from the rear alignment of the existing dwelling to the rear boundary of the allotment, and
 - (c) such an addition is of single storey construction.
- (5) For the purposes of this clause, an **attached dwelling** means a dwelling attached to another dwelling by a common wall, where the dwellings maintain the appearance of a single integrated building. Dwellings are not attached dwellings for the purposes of this clause where they are connected by breezeways, carports or the like.

11AA Multiple dwellings for seniors and people with a disability

- (1) This clause applies to development carried out on land within Zone No 2 for the purposes of multiple dwellings for occupation by seniors or people with a disability

(seniors housing).

- (2) The minimum allotment size for the erection of seniors housing is 1,500 square metres, and the allotment must have a width of at least 15 metres.
- (3) The maximum number of dwellings permissible in development under this clause is to be calculated on the basis of—
 - (a) if situated in a foreshore scenic protection area—one dwelling for every 435 square metres of site area, or
 - (b) in any other case—one dwelling for every 275 square metres of site area.
- (4) Before granting consent to development for the purposes of seniors housing, the council must be satisfied, by written evidence, that there is reasonable access between the proposed development and the following services and facilities—
 - (a) shops, banks and other retail and commercial services that residents may reasonably require,
 - (b) community services and recreation facilities,
 - (c) the premises of a general medical practitioner’s practice.
- (5) For the purposes of subclause (4), there is reasonable access between the proposed development and any such service or facility if—
 - (a) the facility or service is less than 400 metres’ walking distance from the site of the proposed development, or
 - (b) a bus, train or other transport service will be available to take prospective residents of the proposed development to and from the place where the facility or service is situated, being a transport service—
 - (i) that picks up and sets down passengers at a location within 400 metres’ walking distance of the site of the proposed development, and
 - (ii) that picks up and sets down passengers at a location within 400 metres’ walking distance of the facility or service, and
 - (iii) that is available to take passengers to and from the place where the facility or service is situated during daylight hours at least once a day from Monday to Friday (both days inclusive).
- (6) Development for the purposes of seniors housing may be carried out for the accommodation of the following only—
 - (a) seniors or people with a disability,
 - (b) people who live within the same household as seniors or people with a disability,

(c) staff employed to assist in the administration or provision of services to people living in seniors housing.

(7) The council must not consent to development for the purposes of seniors housing unless the consent is made subject to a condition to the effect that the only people who may occupy the seniors housing are people of the kind referred to in subclause (6).

(8) In this clause—

people with a disability means people of any age who, as a result of an intellectual, physical, psychiatric or sensory impairment, either permanently or for an extended period, have substantially limited opportunities to enjoy a full or active life.

seniors means people aged 55 years or more.

12 (Repealed)

13 Floor space ratios

(1) The maximum floor space ratio for a building or buildings not used for residential purposes within Zone No 2 is 0.5:1.

(2) For buildings within Zone No 3 (a)—

(a) the maximum floor space ratio overall is 1.5:1, and

(b) the maximum floor space ratio for the exclusively non-residential component is 1:1, and

(c) the maximum floor space ratio for the exclusively residential component is 0.5:1.

(2A) For buildings on land within Zone No 3 (c)—

(a) except as provided by paragraphs (c) and (d), the maximum floor space ratio overall is 1.5:1, and

(b) except as provided by paragraph (d), the maximum floor space ratio for the exclusively non-residential component is 1:1, and

(c) if the buildings are on the land within Beverly Hills and Riverwood town centres shown edged heavy black on Sheets 1 and 2, respectively, of the map marked "*Hurstville Local Environmental Plan 1994 (Amendment No 36)*", the maximum floor space ratio overall is 2:1, and

(d) if the buildings are on the land shown edged heavy black on Sheet 1 of the map marked "*Hurstville Local Environmental Plan 1994 (Amendment No 71)*"—

(i) the maximum floor space ratio overall is 2:1, and

(ii) the minimum floor space ratio for the exclusively non-residential component is 0.5:1, and

(iii) the maximum floor space ratio for the exclusively residential component is 1.5:1.

(2B) Nothing in subclause (2) or (2A) shall be construed as removing the need for compliance with clause 15A.

(3) The maximum floor space ratio for a building within Zone No 4 is 1:1.

(4) The area of the access corridor for a battleaxe allotment is not to be included in the calculation of the floor space ratio of any building on the allotment.

13A Size of display or sales area in shops on land within Zone No 3 (a)

(1) The maximum area that may be used as a display or sales area in a shop that is on land within Zone No 3 (a) is 400 square metres.

(2) In calculating the area used as a display or sales area, any part of the shop that is ancillary to the display or sales area or that is used for storage, office or staff convenience purposes is to be excluded.

14 Tree preservation orders

(1) The council may, by resolution, make a tree preservation order.

(2) A tree preservation order may prohibit the ringbarking, cutting down, topping, lopping, removal, injuring or destroying of trees without the consent of the council.

(3) A tree preservation order comes into force on the day a notice stating that the order has been made is first published in a newspaper circulating at least once weekly in the City of Hurstville.

(4) A tree preservation order, and the notice referred to in subclause (3), must specify the types or sizes of trees, or identify the locations of the trees, that are covered by the order.

(5) Where a tree preservation order is in force a person must not ringbark, cut down, top, lop, remove, injure or destroy any tree covered by the order without the consent of the council.

(6) Subclause (5) does not apply where it can be demonstrated to the satisfaction of the council that the tree is dying, dead or has become dangerous.

(7) When considering an application for a consent referred to in subclause (5) the council must make an assessment of the importance of the tree or trees in relation to—

(a) soil stability and prevention of land degradation,

(b) scenic or environmental amenity, and

(c) vegetation systems and natural wildlife habitats.

(8) This clause does not apply to any trees that are required to be trimmed in accordance with clause 23 of the *Electricity (Overhead Line Safety) Regulation 1991*.

15 Services

Before granting consent to the carrying out of development on land for any purpose the council must be satisfied that—

(a) facilities for the supply of water and for the removal or disposal of sewage and drainage are available to that land, or

(b) (Repealed)

15A Height restrictions for land within Zones Nos 3 (a) and 3 (c)

(1) Despite any other provision of this plan, but subject to subclause (1A), buildings exceeding 2 storeys in height must not be erected on so much of the land within Zone No 3 (a) or 3 (c) as is shown edged heavy black on the height map for Zones Nos 3 (a) and 3 (c).

(1A) Consent may be granted for development for the purposes of the erection of a building that exceeds 2 storeys in height on the land shown edged heavy black on Sheet 2 of the map marked “*Hurstville Local Environmental Plan 1994 (Amendment No 71)*” but only if—

(a) the building will not exceed the number of storeys shown on that map in respect of that land, or

(b) the consent authority is satisfied that the proposed development—

(i) constitutes no more than a minor variation to the height limits indicated on that map, and

(ii) is not inconsistent with the aims of *Hurstville Local Environmental Plan 1994 (Amendment No 71)*.

(2) In this clause—

height map for Zones Nos 3 (a) and 3 (c) means Sheets 1–20 of the map marked “*Hurstville Local Environmental Plan 1994—Height Map for Zones Nos 3 (a) and 3 (c)*”, as amended by the maps (or specified sheets of maps) marked as follows—

Editorial note—

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

Hurstville Local Environmental Plan 1994 (Amendment No 71)—Sheet 2

16 Development in industrial zones

- (1) The council may grant consent to the carrying out of development on and within Zone No 4 for the purpose of shops (other than bulky goods salesrooms or showrooms) or for commercial purposes only where it is satisfied that—
 - (a) where the proposed development may otherwise have been carried out within a business centre in the locality, suitable land for the development is not available in that business centre, and
 - (b) the proposed development is of a type appropriate to an industrial zone, or to the general character of existing structures or uses within the industrial zone.
- (2) The council may grant consent to the carrying out of development on land within Zone No 4 for the purpose of a panel beating workshop only where it is satisfied that—
 - (a) the land in question does not adjoin land within a residential zone, and
 - (b) appropriate arrangements are made to store on the site of the proposed development and either within a building or within a suitably screened area all vehicles awaiting or undergoing repair, awaiting collection or otherwise involved with the proposed workshop.

16A Sex services premises

- (1) The objectives of this clause are as follows—
 - (a) to specify appropriate planning controls relating to the use of premises as sex services premises,
 - (b) to ensure that sex services premises are not located near or within view of a school, church or hospital or any place frequented by children, or within or near land that is within a residential zone or used for residential purposes,
 - (c) to provide for sufficient separation between sex services premises so that there is not a concentration of those premises in any one locality,
 - (d) to limit the size of sex services premises.
- (2) Despite any other provision of this plan, the council may grant consent to the carrying out of development for the purposes of sex services premises only if—
 - (a) the council is satisfied that the premises will not be near, or within view of, any educational establishment, place of public worship or hospital or any place frequented by children, and
 - (b) the premises will not be located within 100 metres of—

- (i) land within Zone No 2, or
 - (ii) land within Zone No 5 (a) used for the purposes of an educational establishment, place of public worship or hospital, or
 - (iii) land used for residential purposes, and
- (c) the premises will not be located within 200 metres of the boundary of any land on which there is one or more than one sex services premises lawfully operating, and
- (d) the council is satisfied that the premises will not contain more than five rooms used, or capable of being used, for the purposes of sex services.
- (3) For the purposes of subclause (2) (d), any room with an area exceeding 18m² is taken to comprise two rooms.

17 Bulky goods retailing

The council may grant consent to the carrying out of development on land within Zone No 4 for the purposes of a bulky goods showroom or salesroom only if it is satisfied that—

- (a) suitable land for the development is not available in any nearby business centre, and
- (b) the carrying out of the development would not, by reason of the number of retail outlets which exist or are proposed on the land, conflict with the objectives of Zone No 4.

18 Development in open space zones

- (1) When determining an application for consent to carry out development on land within Zone No 6 (a) or 6 (b), the council must consider—
- (a) the need for the proposed development on that land,
 - (b) the impact of the proposed development on the existing or likely future use of the land, and
 - (c) the need to retain the land for its existing or likely future use.
- (2) Where any land within Zone No 6 (a) is not under the ownership of the council, the owner of that land may, by notice in writing, require the council to acquire the land.
- (3) On receipt of a notice referred to in subclause (2), the council shall acquire the land, unless the land might reasonably be required to be dedicated for public open space.
- (4) Any land within Zone No 6 (a) which is not under the ownership of the council (may with the consent of the council) be used for any purpose which is permissible (either with or without development consent) on land adjoining the land in question, prior to that land's being acquired by the council.

- (5) The council may grant consent as referred to in subclause (4) only after it has considered—
- (a) the effects of the proposed development on the costs of acquisition,
 - (b) the imminence of acquisition, and
 - (c) the costs associated with the reinstatement of the land for the purpose for which it is zoned.

19 Foreshore building lines

- (1) The council may, by resolution, fix a foreshore building line in respect of any bay, river, creek or waterway.
- (2) A foreshore building line fixed in accordance with subclause (1) shall be shown on a map or series of maps and shall come into effect on the date a notice stating that the line has been fixed and specifying its location is first published in a newspaper circulating at least once weekly in the City of Hurstville.
- (3) Except as provided by subclauses (5) and (6), a building shall not be erected between a foreshore building line and the bay, river, creek or waterway in respect of which the line is fixed.
- (4) The council may, by resolution, alter or abolish any foreshore building line fixed in accordance with this clause where the levels, depth or other exceptional features of the site make it necessary or expedient to do so.
- (5) A person may, with the consent of the council granted after the council has considered the probable aesthetic appearance of the proposed structure in relation to the foreshore, erect—
- (a) baths,
 - (b) boat sheds,
 - (c) dressing sheds,
 - (d) wharves,
 - (e) jetties,
 - (f) structures below the surface of the ground,
 - (g) swimming pools,
 - (h) pergolas, or
 - (i) boundary fences,

between a foreshore building line and the bay, river or creek in respect of which the line is fixed.

- (6) The council may grant consent to the erection of a building even though part of the building will be located between the foreshore building line and the bay, river or creek in respect of which the line is fixed, but only if the levels, depth or other exceptional features of the site make it necessary or expedient for the building to be so located, and the council has taken into consideration the probable aesthetic appearance of the proposed development in relation to the foreshore.

19A Development in foreshore areas

Before granting consent to the development of land within or adjoining land within Zone No 7, the council must be satisfied that—

- (a) it has appropriately considered the appearance of the development from both the waterway and adjacent foreshore areas,
- (b) the development will not cause any pollution or siltation of the waterway,
- (c) the development will not have any adverse effects on surrounding uses, marine habitats, wetland areas or flora and fauna habitats,
- (d) the development will not cause significant runoff, and will not result in inappropriate and excessive excavation or have an adverse effect on drainage patterns,
- (e) the development will not cause congestion of, or generate conflicts between, people using open space areas or the waterway (or both),
- (f) the development will not adversely affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of any heritage item, or any other building, work, area or place relating to the environmental heritage on or forming part of the land, or on or forming part of surrounding land, and
- (g) the development will not adversely affect the natural topography, any natural rock formations or significant vegetation located on or adjoining the land.

19B Foreshore scenic protection area

- (1) This clause applies to land within a foreshore scenic protection area, which is land shown edged heavy black with diagonal hatching on the map marked “foreshore scenic protection area”.
- (2) A dwelling house must not be erected on land within a foreshore scenic protection area, except with the consent of the council.
- (3) The minimum density requirement for the erection of more than one dwelling on land that is within Zone No 2 and within a foreshore scenic protection area is 500 square

metres per dwelling.

- (4) The council must not grant consent to the carrying out of any development on land to which this clause applies unless it has considered the following—
 - (a) the appearance of the proposed development from both the waterway and adjacent foreshore areas,
 - (b) the likely impact of the proposed development on views from adjoining properties and public places to the waterway and adjacent foreshore areas,
 - (c) the likely effect of the proposed development on the natural topography, natural rock formations, canopy vegetation, or any other significant vegetation,
 - (d) the design of the proposed development and selection of materials and their impact on the character of the locality and landscaped open space on the site.

20 Community use of school facilities or sites

- (1) Any educational establishment (including its site and facilities) may, with the consent of the council, be used for any community purpose (including meeting rooms, public halls, entertainment and recreation) whether for commercial purposes or not.
- (2) Nothing in this clause requires development consent to be granted for the carrying out of development on any land if that development could, but for this clause, be carried out on that land without development consent.

21 Roads

- (1) A person may, with the consent of the council, carry out development on any part of a public road, or any other land shown uncoloured on the map, for any purpose which is permissible on land adjoining that road.
- (2) Despite subclause (1), development of the land referred to in that subclause for the purposes of a public utility undertaking, or by the Roads and Traffic Authority for arterial road purposes, may be carried out without the consent of the council.
- (3) Where any land shown uncoloured on the map is not under the ownership of the council, the owner of that land may, by notice in writing, require the council to acquire the land.
- (4) On receipt of a notice referred to in subclause (3), the council shall acquire the land, unless the land might reasonably be required to be dedicated for public roads.
- (5) The council may grant consent required by subclause (1), in respect of and which it does not own, only after it has considered—
 - (a) the effects of the proposed development on the costs of acquisition,

- (b) the imminence of acquisition, and
- (c) the costs associated with the reinstatement of the land for the purpose for which it is to be acquired.

22 Excavation, filling of land

- (1) A person may excavate or fill any land to which this plan applies only with the consent of the council.
- (2) When considering an application for consent required by subclause (1), the council shall have particular regard to—
 - (a) the likely disruption of, or detrimental effect on, existing drainage patterns and soil stability in the locality, and
 - (b) the effect of the proposed works on the likely future use or redevelopment of the land.
- (3) Subclause (1) does not apply to any excavation or filling of land associated with minor landscaping or similar works.

22A Development on land identified on the Acid Sulfate Soils Planning Map

- (1) **Consent usually required** A person must not, without the consent of the council, carry out works described in the following table on land of the class or classes specified for those works, except as provided by subclause (3).

Class of land as shown on Acid Sulfate Soils Planning Map

Works

1	Any works.
2	Works below natural ground surface. Works by which the watertable is likely to be lowered.
3	Works beyond 1 metre below natural ground surface. Works by which the watertable is likely to be lowered to any point beyond 1 metre below natural ground surface.
4	Works beyond 2 metres below natural ground surface. Works by which the watertable is likely to be lowered to any point beyond 2 metres below natural ground surface.
5	Works within 100 metres of adjacent Class 2 or 3 land which are likely to lower the watertable to any point below 1 metre AHD on adjacent Class 2 or 3 land.

- (2) For the purposes of the table to subclause (1), **works** includes—

- (a) any disturbance of more than one tonne of soil (such as occurs in carrying out the construction and maintenance of drains, extractive industries, dredging, the construction of artificial waterbodies (including canals, dams and detention basins) or foundations, or flood mitigation works), or
 - (b) any other works that are likely to lower the watertable.
- (3) **Exception following preliminary assessment** This clause does not require consent for the carrying out of those works if—
- (a) a copy of a preliminary assessment of the proposed works undertaken in accordance with the *Acid Sulfate Soils Assessment Guidelines* has been given to the council, and
 - (b) the council has provided written advice to the person proposing to carry out the works confirming that results of the preliminary assessment indicate that the proposed works need not be carried out pursuant to an acid sulfate soils management plan prepared in accordance with the *Acid Sulfate Soils Assessment Guidelines*.
- (4) **Considerations for consent authority** The council must not grant a consent required by this clause unless it has considered—
- (a) an acid sulfate soils management plan prepared for the proposed development in accordance with the *Acid Sulfate Soils Assessment Guidelines*, and
 - (b) the likelihood of the proposed development resulting in the discharge of acid water, and
 - (c) (Repealed)
- (5) **Public authorities not excepted** This clause requires consent for development to be carried out by the council or any statutory or public authority despite clause 35 of, and items 2 and 11 of Schedule 1 to, the *Environmental Planning and Assessment Model Provisions 1980*, as adopted by this plan.
- (6) **Special provisions for the council or any statutory or public authorities** Despite subclause (5), the following types of development may be carried out without consent by the council or any statutory or public authority—
- (a) development consisting of emergency work,
 - (b) development consisting of routine maintenance,
 - (c) development consisting of minor work,
- and development ancillary to that development, such as the carrying out of excavation work, the construction of accessways and the provision of power supplies.

(7) Where the council or any statutory or public authority carries out development described in subclause (6) and encounters, or is reasonably likely to encounter, actual acid sulfate soils, the council or statutory or public authority shall properly deal with those soils in accordance with the *Acid Sulfate Soils Assessment Guidelines* so as to minimise the actual or potential impact to the environment arising from disturbance of the soils.

(8) In this clause—

council's works means such works as are owned or controlled by the council.

emergency work means the repair or replacement of any part of the council's works or the works of any statutory or public authority—

(a) because it has been (or is being) damaged by a natural disaster, an accident, an act of vandalism or a like occurrence, or

(b) because it has ceased to function or suddenly ceased to function adequately,

and includes work reasonably necessary to prevent or limit any further damage or malfunction.

minor work means new work effected by the council or any statutory or public authority, but not drainage work, which has a value not greater than \$20,000.

routine maintenance means the periodic inspection, cleaning, repair and replacement of the council's works or the works of any statutory or public authority, but does not include work that would result in an increase in the design capacity of any part of those works or necessitates the deepening of an existing works capacity, except where one tonne, or less, of soils is disturbed.

22B Remediation of contaminated land

(1) This clause applies to any development on contaminated land.

(2) Consent must not be granted for development to which this clause applies unless the consent authority is satisfied—

(a) that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(b) if the land requires remediation to be made suitable for that purpose, that the land will be remediated before the land is used for that purpose.

(3) Nothing in this clause affects the application of *State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 4 to land to which this plan applies.

23 Acquisition and development of land reserved for arterial roads

Note—

Nothing in this clause is to be construed as requiring a public authority to acquire land—see section 27 (3) of the Act.

- (1) The owner of any land within Zone No 9 may, by notice in writing, request the Roads and Traffic Authority to acquire that land.
- (2) On receipt of a notice referred to in subclause (1), the Roads and Traffic Authority shall acquire the land in accordance with its current policies on acquisition at the time) unless the land might reasonably be required to be dedicated for public roads.
- (3) A person may, with the consent of the council, carry out development on land within Zone No 9 for any purpose which is permissible on land adjoining that land.
- (4) (Repealed)
- (5) The council may grant consent required by subclause (3) only after it has made an assessment of—
 - (a) the need for the proposed development on the land,
 - (b) the impact of the proposed development on the existing or likely future use of the land, and
 - (c) the need to retain the land for its existing or likely future use.

24 Suspension of certain laws etc

- (1) For the purpose of enabling development to be carried out in accordance with this plan or with a consent granted under the Act, the operation of any covenant, agreement or similar instrument imposing restrictions on development shall not apply to the development (to the extent necessary to serve that purpose).
- (2) Nothing in subclause (1) shall affect the rights or interests of any statutory authority under any registered instrument.
- (3) Pursuant to section 28 of the Act, before the making of this plan, the Governor approved of subclauses (1) and (2).

25 Temporary use of land

Notwithstanding any other provisions of this plan, the council may grant consent to development on land within any zone for any temporary purpose for a maximum period of 28 days, whether consecutive or not, in any one year provided the council is satisfied that—

- (a) the temporary purpose is necessary and reasonable for the economic use of the land

pending its development in accordance with this plan,

- (b) the temporary purpose will not prejudice the carrying out of development on the land in accordance with this plan, and
- (c) appropriate arrangements are made for the removal of the use and any associated structures at the end of the period specified in the development consent.

25A Advertising and signage

- (1) The objectives of this clause are as follows—
 - (a) to provide for a variety of advertising that is compatible with the purpose for which the land is zoned and with the character of the area,
 - (b) to permit advertising that is complementary in scale, form and location with the surrounding natural or built environment,
 - (c) to ensure that advertising does not detract from the safety, efficiency or appearance of any public thoroughfare.
- (2) Before granting consent for development that will result in the displaying of an advertisement, the council must consider the objectives of this clause.
- (3) The council must not grant consent for any such development unless it is satisfied that—
 - (a) the advertisement will not detract from the amenity of the local environment because of its appearance, size, design, illumination or location, or as a result of the number and location of other advertisements within the vicinity, and
 - (b) the size and likely impacts of the advertisement are compatible with the size and design of the premises on which the advertisement is to be placed or constructed and with the size and design of the surrounding buildings, and
 - (c) the advertisement will not detract from any item of scenic, historic, architectural, scientific or cultural interest, and
 - (d) appropriate setbacks, clearances and structural features are incorporated into the proposed advertisement to ensure safe pedestrian and vehicular traffic circulation.
- (4) Development that will result in the display of the following kinds of advertisements is prohibited—
 - (a) posters on poles or other structures in public places,
 - (b) temporary signs of a commercial nature on land whether zoned or unzoned,
 - (c) flag pole signs,

- (d) advertisements that uses flashing lights,
- (e) advertisements in a foreshore scenic protection area, within the meaning of clause 19B.

26 Development of land for certain additional purposes

Notwithstanding the provisions of this plan, a person may, with the consent of the council, carry out development on land referred to in Column 1 of Schedule 3 for a purpose specified in Column 2 of that Schedule subject to such conditions, if any, as are so specified.

26AA Development of No 1 Forest Road, Hurstville

Residential development of Lot 10 in DP 776811, known as No 1 Forest Road, Hurstville; shall be carried out in accordance with the following conditions—

- (a) the site shall be consolidated and developed with Lot 4 in DP 975238 known as No 126 Botany Street, Hurstville, and
- (b) these consolidated lands shall be restricted to a maximum residential density of 150m² per dwelling.

26AAA Development on certain land in Narwee

- (1) This clause applies to land in Narwee as shown coloured light pink and green on the map marked "*Hurstville Local Environmental Plan 1994 (Amendment No 64)*" deposited in the office of the council.
- (2) Notwithstanding any other provision of this plan, development for the purposes of loft houses and studios may be carried out on the land to which this clause applies that is within Zone No 2 (Residential Zone), but only with the consent of the council.
- (3) Clause 11 does not apply in respect of development for residential purposes on the land to which this clause applies.
- (4) The council must not grant consent to development for the purposes of a residential subdivision of the land to which this clause applies unless satisfied that—
 - (a) adequate provision has been made in respect of means of access to and within the land via public roads, and
 - (b) the subdivision makes provision for the boundaries of the land within Zone 6 (a) (Open Space Zone).

This subclause applies only to the first grant of consent after the commencement of this clause.

- (5) The council must not grant consent to development for residential purposes on land

to which this clause applies if the proposed development would result in—

(a) more than a total of 90 separately titled dwellings being located on that land, including a maximum of 18 loft houses, but excluding any studios, and

(b) more than a total of 5 studios being located on that land,

unless the council is satisfied that the proposed development constitutes a minor variation to the limits specified in paragraphs (a) and (b) and that the proposed development is not inconsistent with the aims of *Hurstville Local Environmental Plan 1994 (Amendment No 64)*.

- (6) Development for the purposes of providing rainwater or stormwater detention (or both) in association with residential development (including ancillary development and any subdivision for that purpose) may be carried out on the land to which this clause applies that is zoned 6 (a) (Public Open Space), but only with development consent.
- (7) The council must not grant consent to development for residential, subdivision or open space purposes on the land to which this clause applies unless it is satisfied that the land is suitable, or will be suitable following the remediation of contamination on the site, for residential, subdivision or open space purposes.
- (8) In this clause—

loft house means a self contained dwelling, comprised as a separate lot which is located above an existing or proposed garage, but does not include a type of dwelling elsewhere defined in this plan.

studio means a self contained dwelling, which is comprised in the same title as the dwelling to which the studio relates and which has a maximum gross floor area of 42m² and is located above an existing or proposed garage, but does not include a type of dwelling elsewhere defined in this plan.

26A Classification and reclassification of public land as operational land

- (1) The public land described in Schedule 4 is classified, or reclassified, as operational land for the purposes of the *Local Government Act 1993*, subject to this clause.
- (2) The amendments made by the *Local Government Amendment (Community Land Management) Act 1998* to section 30 of the *Local Government Act 1993* do not apply to the land described in Part 1 of Schedule 4.
- (3) Land described in Part 2 of Schedule 4—
- (a) to the extent (if any) that the land is a public reserve, does not cease to be a public reserve, and

- (b) continues to be affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants by which it was affected before its classification, or reclassification, as operational land.
- (4) Land described in Columns 1 and 2 of Part 3 of Schedule 4, to the extent (if any) that it is a public reserve, ceases to be a public reserve on the commencement of the relevant amending plan and, by the operation of that plan, is discharged from all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land except those (if any) specified opposite the land in Column 3 of Part 3 of Schedule 4.
- (5) In this clause, **the relevant amending plan**, in relation to land described in Part 3 of Schedule 4, means the local environmental plan that inserted the description of the land into that Part of that Schedule.
- (6) Before the relevant amending plan inserted the description of land into Part 3 of Schedule 4, the Governor approved of subclause (4) applying to the land.

26B Savings and transitional provisions

- (1) A development application made (but not finally determined) before the commencement of [Hurstville Local Environmental Plan 1994 \(Amendment No 41\)](#) may be determined and have effect as if that plan had not been made.
- (2) A development application made, but not finally determined, before the commencement of [State Environmental Planning Policy Amendment \(Exceptions to Development Standards\) 2023](#) must be determined as if that policy had not commenced.
- (3) A development application made, but not finally determined, before the commencement of [State Environmental Planning Policy Amendment \(Flood Planning\) 2023](#) must be determined as if that policy had not commenced.

26C Demolition requires development consent

The demolition of a building or work may be carried out only with development consent.

Note—

If the demolition of a building or work is identified in an applicable environmental planning instrument, such as this plan or [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#), as exempt development, the Act enables it to be carried out without development consent.

26D Conversion of fire alarms

- (1) This clause applies to a fire alarm system that can be monitored by Fire and Rescue NSW or by a private service provider.
- (2) The following development may be carried out, but only with development consent—

- (a) converting a fire alarm system from connection with the alarm monitoring system of Fire and Rescue NSW to connection with the alarm monitoring system of a private service provider,
 - (b) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with the alarm monitoring system of another private service provider,
 - (c) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with a different alarm monitoring system of the same private service provider.
- (3) Development to which subclause (2) applies is complying development if it consists only of—
- (a) internal alterations to a building, or
 - (b) internal alterations to a building together with the mounting of an antenna, and any support structure, on an external wall or roof of a building so as to occupy a space of not more than 450mm × 100mm × 100mm.
- (4) A complying development certificate for any such complying development is subject to a condition that any building work may only be carried out between 7.00 am and 6.00 pm on Monday to Friday and between 7.00 am and 5.00 pm on Saturday, and must not be carried out on a Sunday or a public holiday.
- (5) In this clause—

private service provider means a person or body that has entered into an agreement that is in force with Fire and Rescue NSW to monitor fire alarm systems.

26E Standards that cannot be used to refuse consent—playing and performing music

- (1) The consent authority must not refuse consent to development in relation to licensed premises on the following grounds—
- (a) the playing or performance of music, including the following—
 - (i) the genre of music played or performed, or
 - (ii) whether the music played or performed is live or amplified, or
 - (iii) whether the music played or performed is original music, or
 - (iv) the number of musicians or live entertainment acts playing or performing, or
 - (v) the type of instruments played,
 - (b) whether dancing occurs,

- (c) the presence or use of a dance floor or another area ordinarily used for dancing,
 - (d) the direction in which a stage for players or performers faces,
 - (e) the decoration to be used, including, for example, mirror balls, or lighting used by players or performers.
- (2) The consent authority must not refuse consent to development in relation to licensed premises on the grounds of noise caused by the playing or performance of music, if the consent authority is satisfied the noise may be managed and minimised to an acceptable level.
- (3) In this clause—
- licensed premises*** has the same meaning as in the [Liquor Act 2007](#).

26F Flood planning

- (1) The objectives of this clause are as follows—
- (a) to minimise the flood risk to life and property associated with the use of land,
 - (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,
 - (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,
 - (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.
- (2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—
- (a) is compatible with the flood function and behaviour on the land, and
 - (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
 - (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
 - (d) incorporates appropriate measures to manage risk to life in the event of a flood, and
 - (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or

watercourses.

- (3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—
 - (a) the impact of the development on projected changes to flood behaviour as a result of climate change,
 - (b) the intended design and scale of buildings resulting from the development,
 - (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,
 - (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.
- (4) A word or expression used in this clause has the same meaning as it has in the *Considering Flooding in Land Use Planning Guideline* unless it is otherwise defined in this clause.
- (5) In this clause—

Considering Flooding in Land Use Planning Guideline means the *Considering Flooding in Land Use Planning Guideline* published on the Department’s website on 14 July 2021.

flood planning area has the same meaning as it has in the Flood Risk Management Manual.

Flood Risk Management Manual means the *Flood Risk Management Manual*, ISBN 978-1-923076-17-4, published by the NSW Government in June 2023.

26G Public bushland

- (1) The objective of this clause is to protect and ensure the ecological viability of bushland, including rehabilitated areas in urban areas, by—
 - (a) preserving biodiversity, habitat corridors and links between public bushland and other nearby bushland, and
 - (b) preserving bushland as a natural stabiliser of the soil surface, and
 - (c) preserving existing hydrological landforms, processes and functions, including natural drainage lines, watercourses, wetlands and foreshores, and
 - (d) preserving the recreational, educational, scientific, aesthetic, environmental, ecological and cultural values and potential of bushland, and
 - (e) mitigating disturbance caused by development.

- (2) Development that will disturb, or is reasonably likely to disturb, public bushland is permitted with development consent.
- (3) Development consent must not be granted to development that will disturb, or is reasonably likely to disturb, public bushland unless the consent authority is satisfied of the following—
 - (a) the disturbance of the bushland is essential for a purpose in the public interest,
 - (b) there is no reasonable alternative to the disturbance,
 - (c) the development minimises the amount of bushland to be disturbed,
 - (d) the development includes measures to remediate the disturbed bushland.
- (4) Despite subclause (2), development that will disturb, or is reasonably likely to disturb, public bushland is permitted without development consent if the development is for the following purposes—
 - (a) the construction, operation or maintenance of pipelines to carry water, sewerage or gas or pipelines licensed under the *Pipelines Act 1967*,
 - (b) the construction, operation or maintenance of electricity or telecommunication lines,
 - (c) bush fire hazard reduction,
 - (d) the construction or maintenance of classified roads,
 - (e) facilitating the recreational use of the public bushland.
- (5) Development specified in subclause (4)(e) is permitted without development consent only if it is carried out in accordance with a plan of management for the public bushland, adopted by the Council in the same way a plan of management is required to be adopted for community land under the *Local Government Act 1993*, Chapter 6, Part 2, Division 2, that includes measures for the following—
 - (a) the recreational use of the land,
 - (b) bush fire hazard reduction,
 - (c) the prevention of degradation, including the alteration of drainage patterns, rubbish dumping, vehicle intrusion and infestation with weeds or non-native plants,
 - (d) the remediation of degraded public bushland.
- (6) This clause does not require development consent for clearing of native vegetation if the clearing is of a kind that is authorised under the *Local Land Services Act 2013*,

section 600.

- (7) In deciding whether to grant development consent to development on land adjoining public bushland, the consent authority must consider the following—
- (a) the need to retain public bushland adjoining the site of the development,
 - (b) the likely effect of the development on public bushland, including the following—
 - (i) the erosion of soil,
 - (ii) the siltation of streams and waterways,
 - (iii) the spread of weeds and non-native plants within public bushland,
 - (c) other matters the consent authority considers relevant to the protection and preservation of public bushland.
- (8) This clause does not apply to the following land that is public bushland—
- (a) land in Zone RU1, RU2, RU3, RU4 or RU5,
 - (b) land reserved, dedicated or acquired under the *National Parks and Wildlife Act 1974*,
 - (c) land within a State forest, flora reserve or timber reserve within the meaning of the *Forestry Act 2012*,
 - (d) land to which *State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, Chapter 7 applies.
- (9) In this clause—
- disturb** public bushland means—
- (a) remove vegetation from public bushland, or
 - (b) cause a change in the natural ecology of public bushland that results in the destruction or degradation of the public bushland.
- non-native plant** means a plant that is not native vegetation.
- public bushland** means land—
- (a) on which there is vegetation that is—
 - (i) a remainder of the natural vegetation of the land, or
 - (ii) representative of the structure and floristics of the natural vegetation of the land, and

- (b) that is owned, managed or reserved for open space or environmental conservation by the Council or a public authority.

26H Canal estate development prohibited

- (1) Canal estate development is prohibited on land to which this Plan applies.
- (2) In this clause—

canal estate development has the same meaning as in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

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.
- (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, 30 (Repealed)

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) of the development application and take into consideration any comments received in response within 21 days after the relevant notice is sent.

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) be satisfied that any necessary excavation permit required by the [Heritage Act 1977](#) has been granted.

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

Schedule 1 Amendment of other environmental planning instruments

(Clause 4 (4))

- 1** *State Environmental Planning Policy No 25—Residential Allotment Sizes and Dual Occupancy Subdivision* is amended by inserting after item 5 of Schedule 1 (Land to which this policy does not apply) the following item—

5AA Hurstville

Land to which [Hurstville Local Environmental Plan 1994](#) applies.

- 2** *Sydney Regional Environmental Plan No 12—Dual Occupancy* is amended by inserting in appropriate order in Schedule 1 (Land to which plan does not apply) the following item—

2B Land to which [Hurstville Local Environmental Plan 1994](#) applies.

Schedule 2 Heritage items

(Clause 5 (1))

Part 1 Buildings and works

Arcadia Street, Penshurst
19 Arcadia Street, Penshurst
1 Bayside Drive, Lugarno—The Hermitage
78 Bonds Road, Peakhurst—Ilfracombe
117 Botany Street, Hurstville
69 Bristol Road, Hurstville
76 Bristol Road, Hurstville
55 Cambridge Street, Penshurst
60 Cambridge Street, Penshurst
136 Carlton Parade, Allawah
19 Carrington Avenue, Hurstville
56–58 Carrington Avenue, Hurstville
71 Carrington Avenue, Hurstville
73 Carrington Avenue, Hurstville
75 Carrington Avenue, Hurstville

2 Clevedon Road, Hurstville
4 Clevedon Road, Hurstville
27 Cook Street, Mortdale—Woronora Lodge Masonic Temple
2-6 Crofts Avenue, Hurstville—Crosswalk House
8 Crofts Avenue, Hurstville
3 Cronulla Street, Hurstville
7 Cronulla Street, Hurstville
30-32 Cronulla Street, Hurstville
43 Cronulla Street, Hurstville
77 Cronulla Street, Hurstville
33-47 Dora Street, Hurstville
50 Dora Street, Hurstville
273 Dora Street, Hurstville
43 Durham Street, Hurstville
71 Edgbaston Road, Beverly Hills
79 Edgbaston Road, Beverly Hills
80 Forest Road, Hurstville—Hurstville Public School—1891 Building
112 Forest Road, Hurstville
127-137 Forest Road, Hurstville—Advance House
140-142 Forest Road, Hurstville
144 Forest Road, Hurstville—St George Anglican Church
166 Forest Road, Hurstville
174-176 Forest Road, Hurstville—Wingello
178 Forest Road, Hurstville
185A Forest Road, Hurstville
Forest Road, Hurstville—War Memorial Monument
213 Forest Road, Hurstville—Electricity House Building
218 Forest Road, Hurstville—Old Propellor Building
220 Forest Road, Hurstville
225 Forest Road, Hurstville—Soul Pattinson Building
239 Forest Road, Hurstville
243a Forest Road, Hurstville—Old Post Office
245-247 Forest Road, Hurstville
279-285 Forest Road, Hurstville
319-321 Forest Road, Hurstville—Centennial Bakery
350 Forest Road, Hurstville—Hurstville Hotel
469 Forest Road, Penshurst—Torino
589 Forest Road, Penshurst—Rose Lea
671 Forest Road, Hurstville—Holy Trinity Anglican Church
800 Forest Road, Peakhurst—Wesleyan Chapel
50 Gloucester Road, Hurstville
1 Gordon Street, Hurstville—Colvins Bakery
55 Inverness Avenue, Penshurst—Ithiel
11 Jersey Avenue, Penshurst
14 Kimberley Road, Hurstville
18 Kimberley Road, Hurstville
62 Kimberley Road, Hurstville
39 Lily Street, Hurstville

52/53A Lily Street, Hurstville
76 Lily Street, Hurstville
1 MacMahon Street, Hurstville—Presbyterian Church
14 MacMahon Street, Hurstville
17 MacMahon Street, Hurstville—Friendly Societies' Dispensary Building
27 MacMahon Street, Hurstville—Fire Station
Mashman Avenue, Kingsgrove—Mashman's Pottery and Tile Works
18 Millett Street, Hurstville—Erina
29 Millett Street, Hurstville—Alinda
67 Millett Street, Hurstville
66A Moons Avenue, Lugarno—Killarney
7 Mutual Road, Mortdale—Longleat
16 Patrick Street, Hurstville
27 Penshurst Street, Penshurst—Former Penshurst Post Office
55 Penshurst Street, Penshurst—Residence St Joseph's Convent
69 Penshurst Street, Penshurst
71 Penshurst Street, Penshurst
102–108 Penshurst Street, Penshurst
146 Penshurst Street, Penshurst
75 Queens Road, Hurstville—Yarra-mundi
96 Queens Road, Hurstville—Gladwyn
Stone Wharf and Path, between Bayside Drive and Lime Kiln Bay, Lugarno
136 Stoney Creek Road, Hurstville—Devonia Farm House
287 Stoney Creek Road, Beverly Hills
24 Taunton Road, Hurstville
12 The Avenue, Hurstville
18 The Avenue, Hurstville—Lorne
20–22 The Avenue, Hurstville
78 The Avenue, Hurstville
79 The Avenue, Hurstville
81 The Avenue, Hurstville
82 The Avenue, Hurstville
84 The Avenue, Hurstville
85 The Avenue, Hurstville—Yuringa
87 The Avenue, Hurstville
89 The Avenue, Hurstville—Sylvan
90 The Avenue, Hurstville
92 The Avenue, Hurstville
95 The Avenue, Hurstville—Waikouaiti
110–112 The Avenue, Hurstville
1 Vine Street, Hurstville
11 Waratah Street, Oatley—Lindaville
30 Waratah Street, Oatley
34 Waratah Street, Oatley
26 Weston Road, Hurstville
12 Woodcliffe Parade, Lugarno—Woodcliffe
8 Woronora Parade, Oatley
22 Woronora Parade, Oatley

36–38 Woronora Parade, Oatley
37 Woronora Parade, Oatley
46 Woronora Parade, Oatley
51 Woronora Parade, Oatley
84 Woronora Parade, Oatley

Part 2 Elements of buildings

136 Forest Road, Hurstville

Element— Front facade of building, including rendered facade, awning and shopfront including tiled finish to piers.

160 Forest Road, Hurstville

Element— Brickwork and rendered facade, including window, above awning level.

167–169 Forest Road, Hurstville—HT Wills & Co.

Element— Rendered facade, including windows, above awning level. Includes awning.

173a Forest Road, Hurstville—John Fretus Building—1921

Element— Brickwork and rendered facade, including windows, above awning level. Includes awning.

183b Forest Road, Hurstville—Glenvale Court

Element— Rendered facade, including windows and balcony, above awning level. Frontage to Forest Road and Treacy Street.

184 Forest Road, Hurstville

Element— Rendered facade, including windows, above awning level.

195–197 Forest Road, Hurstville—Berkley Building

Element— Brick and rendered facade, including windows and painted signage, above awning level.

230–242 Forest Road, Hurstville

Element— Rendered facade above awning level.

235 Forest Road, Hurstville—NIB Health Building

Element— Brickwork and rendered facade, including windows and painted signage, above awning level.

244 Forest Road, Hurstville—Westpac Bank

Element— Rendered facade above awning level.

248 Forest Road, Hurstville

Element— Rendered facade, including windows, above awning level.

255–257 Forest Road, Hurstville

Element— Brickwork and rendered facade above awning level.

263–273 Forest Road, Hurstville

Element— Brickwork and rendered facade above awning level.

272 Forest Road, Hurstville

Element— Rendered facade, including windows, above awning level

289 Forest Road, Hurstville—Ritchie House

Element— Rendered facade, including detailed panels, above awning level.

307 Forest Road, Hurstville

Element— Rendered facade above awning level.

316 Forest Road, Hurstville

Element— Rendered facade above awning level.

324–328 Forest Road, Hurstville

Element— Brickwork and rendered facade, including orb ornaments, above awning level.

338–340 Forest Road, Hurstville

Element— Brick and rendered facade above awning level, including windows, bracketed window awnings, and tile panels.

342–348 Forest Road, Hurstville

Element— Brickwork and rendered facade, including windows, above awning level.

372 Forest Road, Hurstville—Belmontes Pizza Shop

Element— Rendered facade, including windows, above awning level.

16 Treacy Street, Hurstville—Fretus Corner (formerly Fretus Service Station)

Element— Rendered facade to Treacy Street and Alfred Street.

18 Treacy Street, Hurstville

Element— Rendered facade to upper half of building.

48 Treacy Street, Hurstville

Element— Front of building below awning level, including leadlight window highlights, window framing and brick walls.

Schedule 3 Development of land for certain additional purposes

(Clause 26)

Column 1

Column 2

Land

Purpose

Lot 101, DP 1062302, being land known as 695 Forest Road, Peakhurst	Shop with a display or sales area exceeding 400m ²
Lot Y, DP 362415, being land known as 94 Cronulla Street, Hurstville	Dwelling house
Lot 2, DP 596535, being land known as 95 Forest Road, Hurstville	Manufacture of aerosol cans
Lot 8, Section 1, DP 5337, being land known as 98 Forest Road, Hurstville	Panel beating workshop
Lot 1, DP 78322, being land known as 108 Forest Road, Hurstville	Automotive use
Lot 1, DP 75572, being land known as 112 Forest Road, Hurstville	Fitting and turning workshop
Lot 1, Section 1, DP 3232, being land known as 16 Treacy Street, Hurstville	Panel beating workshop
Lot A, DP 398056, being land known as 31 Treacy Street, Hurstville	Panel beating workshop
Lot 6, DP 11931, being land known as 33 Treacy Street, Hurstville	Panel beating workshop
Lot 42, DP 5337, being land known as 27 Wright Street, Hurstville	Dwelling house
Lot A, DP 401276, being land known as 1044 Forest Road, Lugarno	Petrol station with mechanical workshop and convenience store
Lots 21-23 and 26-29, Section D, DP 2921, being land known as 25 Macquarie Place, Mortdale	Club
Lots 1 and 2, DP 388264, being land known as 21 Boundary Road, Oatley	Petrol station with mechanical workshop and convenience store
Lot 14, Section 11, DP 6368, being land known as 95 Mulga Road, Oatley	Automotive use
Lots 1 and 2, SP 48902, being land known as 633 Forest Road, Peakhurst	Petrol station with mechanical workshop and convenience store
Lot Pt 5, Lot Pt 6, Lot Pt 7, Lot Pt 8, Lot Pt 9 and Lot Pt 10, DP 12823, being land known as 742 Forest Road, Peakhurst	Petrol station with mechanical workshop and convenience store
Lot 8, DP 659072, being land known as 764 Forest Road, Peakhurst	Reception centre
Lot 1, DP 209909, being land known as 836 Forest Road, Peakhurst	Petrol station with mechanical workshop and convenience store
Lots 18-21, Section A, DP 3418 and Lot B, DP 435765, being land known as 598-602 Forest Road, Penshurst	Automotive use

Kingsgrove

McGregor Street Lot 1, DP 503262 and Lot 19, Section 5, DP 12082, as shown edged heavy black on Sheet 2 of the map marked “*Hurstville Local Environmental Plan 1994 (Amendment No 26)*”.

Part 3 Land classified, or reclassified, under amended section 30 of Local Government Act 1993—interests changed

Column 1	Column 2	Column 3
Locality	Description	Trusts etc not discharged
Kingsgrove		
36 Kindilan Street	Lot 837, DP 13496, as shown edged heavy black on Sheet 2 of the map marked “ <i>Hurstville Local Environmental Plan 1994 (Amendment No 56)</i> ”.	Nil.
Peakhurst		
Ogilvy Street	Lot 2, DP 538402, known as the Ogilvy Street Reserve, as shown edged heavy black on Sheet 2 of the map marked “ <i>Hurstville Local Environmental Plan 1994 (Amendment No 44)</i> ”.	Nil.
Penshurst		
469 Forest Road	Lot 2, DP 511490, as shown edged heavy black on the map marked “ <i>Hurstville Local Environmental Plan 1994 (Amendment No 55)</i> ”.	Nil.