

# **HERITAGE INFORMATION SERIES**

## **MODEL HERITAGE PROVISIONS FOR LOCAL ENVIRONMENTAL PLANS**

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# Heritage Model Provisions

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## Part [X] Heritage conservation

### 1 Definitions

[Note: *It may be more convenient to insert these definitions in the clause, Schedule or Dictionary containing other definitions used in the LEP adopting these model provisions*]

In this Part [or “*plan*” or “*Division*”]:

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

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

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

***heritage conservation area*** means an area of land that is shown [*insert how it is shown, for example, edged heavy black*] on the map marked “.....” and includes buildings, works, archaeological sites, trees and places and situated on or within the land.

***heritage impact statement*** means a document consisting of a statement demonstrating the heritage significance of a heritage item or heritage conservation area, or of a building, work, archaeological site, tree or place within a heritage conservation area, an assessment of the impact that proposed development will

have on that significance and proposals for measures to minimise that impact.

**heritage item** means:

- (a) a building, work, archaeological site or place specified in an inventory of heritage items that is available at the office of the Council and the site of which is described in Schedule X [*insert reference to the schedule of the plan containing a written description of heritage item sites*] and shown [*insert how it is shown, for example, by diagonal hatching*] on the map marked '.....', or
- (b) a place specified in an inventory of heritage items available at the office of the Council and described in the inventory as a place of Aboriginal heritage significance. [*the site may also be described in a Schedule to the plan and shown on a map*]

**heritage significance** means historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value.

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

**place of Aboriginal heritage significance** means:

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

**potential archaeological site** means a site:

- (a) that is specified in Schedule [X], described in that Schedule as a potential archaeological site and shown [*insert how it is*

- to be shown, for example, by cross hatching]* on the map marked ‘.....’, or
- (b) that, in the opinion of the consent authority, has the potential to be an archaeological site, even if it is not so specified.

***potential place of Aboriginal heritage significance*** means a place:

- (a) that is specified in an inventory of heritage items available at the office of the Council and described in the inventory as a potential place of Aboriginal heritage significance [*the site may also be described in a Schedule to the plan and shown on a map*], or
- (b) that, in the opinion of the consent authority, has the potential to have Aboriginal heritage significance, even if it is not so specified.

***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 [*insert name of local government area*] and that is a fixture or is wholly or partly within the ground, or
- (b) any deposit, object or material evidence (which may consist of human remains) of any age relating to Aboriginal habitation of [*insert name of local government area*].

## 2 Objectives

The objectives of this plan in relation to heritage are:

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

### **3 Protection of heritage items and heritage conservation areas**

#### **When is consent required?**

- (1) The following development may be carried out only with development consent:
- (a) demolishing or moving a heritage item or a building, work, relic, tree or place within a heritage conservation area,
  - (b) altering a heritage item or a building, work, relic, tree or place within a heritage conservation area by making structural or non-structural changes to its exterior, such as to its detail, fabric, finish or appearance,
  - (c) altering a heritage item by making structural changes to its interior,
  - (d) disturbing or excavating a place of Aboriginal heritage significance or an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
  - (e) moving the whole or a part of a heritage item,
  - (f) erecting a building on, or subdividing, land on which a heritage item is located or which is within a heritage conservation area.

#### **What exceptions are there?**

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

- (3) Development consent is not required by this clause for the following development in a cemetery or burial ground if there will be no disturbance to human remains, to relics in the form of grave goods or to a place of Aboriginal heritage significance:
- (a) the creation of a new grave or monument, or
  - (b) an excavation or disturbance of land for the purpose of carrying out conservation or repair of monuments or grave markers.

**What must be included in assessing a development application?**

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

**What extra documentation is needed?**

- (5) 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) for development that would affect a **heritage item**:
    - (i) the heritage significance of the item as part of the environmental heritage of [*name of local government area*], and
    - (ii) the impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or horticultural features, and
    - (iii) the measures proposed to conserve the heritage significance of the item and its setting, and
    - (iv) whether any archaeological site or potential archaeological site would be adversely affected by the proposed development, and
    - (v) the extent to which the carrying out of the proposed development would affect the form of any historic subdivision, and;
  - (b) for development that would be carried out in a **heritage conservation area**:
    - (i) the heritage significance of the heritage conservation area and the contribution which any building, work,

- (ii) relic, tree or place affected by the proposed development makes to this heritage significance, and the impact that the proposed development would have on the heritage significance of the heritage conservation area, and
- (iii) the compatibility of any proposed development with nearby original buildings and the character of the heritage conservation area, taking into account the size, form, scale, orientation, setbacks, materials and detailing of the proposed development, and
- (iv) the measures proposed to conserve the significance of the heritage conservation area and its setting, and
- (v) whether any landscape or horticultural features would be affected by the proposed development, and
- (vi) whether any archaeological site or potential archaeological site would be affected by the proposed development, and
- (vii) the extent to which the carrying out of the proposed development in accordance with the consent would affect any historic subdivision pattern, and
- (viii) the issues raised by any submission received in relation to the proposed development in response to the notification or advertising of the application.

#### **4 Advertised development**

The following development is identified as advertised development:

- (a) the demolition of a heritage item or a building, work, tree or place in a heritage conservation area, and
- (b) the carrying out of any development allowed by clause *[insert the number of the clause (equivalent to clause 9 in these model provisions) that allows a heritage conservation incentive]*.

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

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

#### **6 Development affecting places or sites of known or potential Aboriginal heritage significance**

Before granting consent for development that is likely to have an impact on a place of Aboriginal heritage significance or a potential place of Aboriginal heritage significance, or that will be carried out

on an archaeological site of a relic that has Aboriginal heritage significance, the consent authority must:

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

## **7 Development affecting known or potential archaeological sites of relics of non-Aboriginal heritage significance**

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

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

*[Note: if there are no heritage conservation areas, references to them are to be removed from this clause]*

- (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 and of any heritage conservation area within which it is situated.
- (2) This clause extends to development:

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

## **9 Conservation incentives**

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

- (a) it is satisfied that the retention of the heritage item depends on the granting of consent, and
- (b) the proposed use is in accordance with a conservation management plan which has been endorsed by the consent authority, and
- (c) the granting of consent to the proposed use would ensure that all necessary conservation work identified in the conservation management plan is carried out, and
- (d) the proposed use would not adversely affect the heritage significance of the heritage item or its setting, and
- (e) the proposed use would not adversely affect the amenity of the surrounding area otherwise than to an insignificant extent.

## **10 Development in heritage conservation areas**

*[Note: The following subclauses are optional and apply only if there are heritage conservation areas]*

- (1) Before granting consent for the erection of a building within a heritage conservation area, the consent authority must be satisfied that the features of the proposed building will be compatible with

the heritage significance of the heritage conservation area, having regard to the form of, and materials used in, buildings that contribute to the heritage significance of the heritage conservation area.

- (2) In satisfying itself about those features, the consent authority must have regard to at least the following (but is not to be limited to having regard to those features):
  - (a) the pitch and form of the roof (if any), and
  - (b) the style, size, proportion and position of the openings for windows or doors (if any), and
  - (c) the colour, texture, style, size and type of finish of the materials to be used on the exterior of the building.
- (3) Consent must not be granted to development on a site within a heritage conservation area which will result in a landscaped area of less than [*insert appropriate percentage*]% of the site area, if the site is within [*specify where this requirement will apply*].