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Bathurst Regional (Interim) Local Environmental Plan 2005

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Part 4

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Part 4 Heritage provisions

23 Protection of environmental heritage

- (1) Despite any other provision of this plan, the following development may be carried out only with development consent:
 - (a) demolishing or moving a heritage item or a building, work, relic or place within a heritage conservation area,
 - (b) altering a heritage item or a building, work, relic 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 or Aboriginal object being discovered, exposed, moved, damaged or destroyed,
 - (e) erecting a building on, or subdividing, land on which a heritage item is located or that is within a heritage conservation area.
- (2) Development consent is not required by this clause if:
 - (a) the proponent has notified the consent authority in writing of the proposed development, and
 - (b) in the opinion of the consent authority:
 - (i) the proposed development is of a minor nature or consists of maintenance of the heritage item, place of Aboriginal heritage significance or archaeological site or of the building, work, relic or place within a heritage conservation area, and
 - (ii) the proposed development would not adversely affect the significance of the heritage item, place of Aboriginal heritage significance, archaeological site or of the building, work, relic or place within a heritage conservation area, and
 - (c) the consent authority has advised the proponent in writing before the development is carried out that it is satisfied that development consent is not required because of the exception created by this subclause.
- (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) The consent authority must not grant consent to development of land on which a heritage item is located, within the vicinity of a heritage item, or within a heritage conservation area, unless it is satisfied that the impact of the proposed development on the heritage significance of the relevant heritage item or of the heritage conservation area is acceptable to the consent authority.
- (5) In the case of proposed development that requires consent under this clause, being development that would affect a heritage item, the assessment in subclause (4) must include consideration of a heritage impact statement that addresses the following matters:
- (a) the heritage significance of the item as part of the environmental heritage of the local government area of Bathurst Regional,
 - (b) the impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or cultural features,
 - (c) the measures proposed to conserve the heritage significance of the item and its setting,
 - (d) the extent to which the carrying out of the proposed development will affect the form of any historic subdivision.
- (6) In the case of proposed development in a heritage conservation area that requires consent under this clause, the assessment in subclause (4) must include consideration of a heritage impact statement that addresses the following:
- (a) the heritage significance of the heritage conservation area and the contribution that any building, work, relic or place affected by the proposed development makes to that heritage significance,
 - (b) the impact that the proposed development will have on the heritage significance of the heritage conservation area,
 - (c) the compatibility of the 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,
 - (d) the measures proposed to conserve the heritage significance of the heritage conservation area and its setting,
 - (e) whether any landscape or horticultural features will be affected by the proposed development,
 - (f) the extent to which the carrying out of the proposed development in accordance with the consent will affect any historic subdivision pattern.
- (7) In assessing a development application to carry out work on a heritage item or within a heritage conservation area, the consent authority may require the preparation of a conservation management plan.
- (8) Before granting consent for development required by this clause that will be carried out in a place of Aboriginal heritage significance, the consent authority must:
- (a) consider the effect on the heritage significance of the place and any Aboriginal object known, or reasonably likely, to be located at the place, and
 - (b) unless the proposed development requires the consent of the Director-General of the Department of Environment and Conservation under section 90 of the *National Parks and Wildlife Act 1974*, notify the local Aboriginal communities (in such way as it thinks appropriate) of its intention to do so and take

into consideration any comments received in response within 21 days after the notice is sent, and

(c) be satisfied that any necessary consent or permission under the *National Parks and Wildlife Act 1974* has been granted.

(9) Before granting consent for development required by this clause that will be carried out on an archaeological site (whether or not it is also the site of an Aboriginal object), the consent authority must:

(a) consider the effect on the heritage significance of 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.

This subclause does not apply to land that is listed on the State Heritage Register under the *Heritage Act 1977* or to which an interim heritage order under that Act applies.

Note. The website of the Heritage Branch of the Department of Planning has publications that provide guidance on assessing the impact of proposed development on the heritage significance of items (for example, *Statements of Heritage Impact*).

24 Conservation incentives

(1) The consent authority may grant consent to the use for any purpose of a building that is a heritage item or is within a heritage conservation area or, in the opinion of the consent authority, is a building of heritage significance, or of the land on which such a building is erected, even though the use would otherwise be prohibited by this plan, if it is satisfied that:

(a) the retention of the building depends on the granting of consent, and

(b) the proposed development is in accordance with a conservation management plan that has been endorsed by the consent authority, and

(c) the granting of consent to the proposed development would ensure that all necessary conservation work identified in the conservation management plan is carried out, and

(d) the proposed development would not adversely affect the heritage significance of the building or its setting, and

(e) the proposed development 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 a heritage item is located or on land within a heritage conservation area, the consent authority may, for the purpose of determining:

(a) the floor space ratio, and

(b) the number of parking spaces to be provided on the site,

exclude the floor space of the building from its calculation of the floor space of the buildings erected on the land, but only if the consent authority is satisfied that the conservation of the building depends on its making the exclusion.

25 (Repealed)

26 Advertising of heritage applications

(1) Except as provided by this clause, the provisions of clause 10 apply to and in respect of an application for consent for:

(a) the demolition of a heritage item, or

- (b) the demolition of a building, work, relic or place within a heritage conservation area, or
 - (c) the use of a building or land referred to in clause 24 for a purpose that, but for that clause, would be prohibited under this plan.
- (2) This clause does not apply to the partial demolition of a heritage item or the demolition of a building or work within a heritage conservation area if, in the opinion of the consent authority, the partial demolition or demolition will be of a minor nature and will not adversely affect the environmental heritage of the local government area of Bathurst Regional.

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