

Part 10 Heritage provisions

56 Aims in relation to heritage

The aims of this plan in relation to heritage are:

- (a) to conserve the environmental heritage of the local government area of Bega Valley,
- (b) to conserve the heritage significance of existing significant fabric, relics, settings, and views associated with the heritage significance of heritage items,
- (c) to allow for the protection of places which have the potential to have heritage significance but are not identified as heritage items,
- (d) to integrate heritage conservation into the planning and development control processes,
- (e) to provide for public involvement in the conservation of environmental heritage, and
- (f) to ensure that any development does not adversely affect the heritage significance of heritage items and their settings.

57 Protection of heritage items and relics

(1) The following development may be carried out only with development consent:

- (a) demolishing, defacing or damaging a heritage item,
- (b) altering a heritage item by making structural changes to its interior,
- (c) altering a heritage item by making structural or non-structural changes to the detail, fabric, finish or appearance of its exterior, except changes resulting from any maintenance necessary for its ongoing protective care which does not adversely affect its heritage significance,
- (d) moving the whole or part of a heritage item,
- (e) moving a relic, or excavating land for the purpose of discovering, exposing or moving a relic, or

- (f) 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 is likely to result in a relic being damaged, disturbed or excavated, or
- (g) 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 Council:
 - (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 consent is not otherwise required by this plan.

(3) Development consent is not required by this clause for the following

Development in a cemetery or burial ground if there will be no disturbance to human remains, to relics in the form of grave goods or to a place of Aboriginal heritage significance:

- (a) the creation of a new grave or monument, or
- (b) an excavation or disturbance of land for the purpose of carrying out conservation or repair of monuments or grave markers.

(4) What must be included in assessing a developed 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 Bega Valley, 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.

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 heritage significance of items (for example, *Statements of Heritage Impact*).[#]

[Refer to Schedule 5 of the plan for the list of heritage items affected by this clause](#)

58 Advertised development

The following development is identified as advertised development:

- (a) the demolition of a heritage item, and

[#] Amendment: Repeal of Concurrence and Referral Provisions SEPP clause amended

- (b) the carrying out of any development allowed by clause 62.

Refer to the Environmental Planning and Assessment Regulations 2000 and Council's Development Control Plan No 3 Notification Policy for advertising requirements

59 Interim heritage items

- (1) A person shall not demolish an interim heritage item except with development consent.
- (2) Consent must not be granted to a development application required by subclause (1) unless the consent authority has made an assessment of:
 - (a) the significance of the item as an interim heritage item, and
 - (b) the extent to which the carrying out of the development in accordance with the consent would affect the heritage significance of the item and its site, and
 - (c) whether the setting of the item and, in particular, whether any stylistic, horticultural or archaeological features of the setting should be retained, and
 - (d) whether the item constitutes a danger to the users or occupiers of that item or to the public, and
 - (e) measures to be taken to conserve interim heritage items, including any conservation plan prepared by the applicant.

Refer to Schedule 6 of the plan for the list of heritage items affected by this clause.

60 Notice of demolition to the Heritage Council [#]

Items of state significance are identified in Schedule 5 with an *

61 Development in the vicinity of heritage items

- (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) if the heritage item is a place, that will otherwise have any adverse impact on the heritage significance of the place 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.

62 Conservation incentives

- (1) Consent may be granted to the use, for any purpose, of a building that is a heritage item, or of the land on which the building is erected, even though the use would otherwise be prohibited by this plan, if the consent authority is satisfied that:
 - (a) the proposed use would not adversely affect the heritage significance of the item or its setting, 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 necessary conservation work identified in the conservation management plan is carried out, and
 - (d) the proposed use would not adversely affect the amenity of the surrounding area otherwise than to an insignificant extent, and
 - (e) the conservation of the building depends on the granting of the consent.
- (2) When considering an application for consent to erect a building on land on which a building that is a heritage item is located, 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 heritage item 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 heritage item depends on it making the exclusion.

63 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 its intention to do so and take into consideration any comments received in response within 21[#] days after the relevant notice is sent.

[#] Amendment: Repeal of Concurrence and Referral Provisions SEPP clause amended

Further information relating to the legislative controls applying to Aboriginal Heritage can be obtained from the NSW National Parks and Wildlife Service.

Please note that Council will refer Development Applications in culturally sensitive locations to the relevant Aboriginal Land Council for comment as part of the Development Application process.

64 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 Council is of the opinion that the heritage significance of any above-ground relics would not be adversely affected by the proposed development, or
 - (b) is integrated development.

Further information relating to the legislative controls applying to potential archaeological sites, relics and Non Aboriginal Heritage can be obtained from the NSW Heritage Office or Council.

[#] Amendment: Repeal of Concurrence and Referral Provisions SEPP clause amended