



New South Wales

Heritage Regulation 1999

under the

Heritage Act 1977

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Heritage Act 1977*.

ANDREW REFSHAUGE, M.P.,

Minister for Urban Affairs and Planning

Explanatory note

The object of this Regulation is to repeal and remake, with minor changes only, the provisions of the *Heritage Regulation 1993* under the *Heritage Act 1977*.

This Regulation makes provision with respect to the following matters:

- (a) prescribing the relevant fees and form for an application for an approval under section 60 of the Act,
- (b) prescribing the relevant fee and form for an application for an excavation permit under section 140 of the Act,
- (c) prescribing the relevant form for a certificate of authority under section 148 of the Act to inspect buildings, works, relics and places,
- (d) prescribing the relevant fee for an application for an evidentiary certificate under section 167 of the Act,
- (e) imposing minimum standards with respect to the maintenance and repair of buildings, works and relics that are listed on the State Heritage Register or within a precinct that is listed on that Register,
- (f) creating an offence of furnishing false or misleading statements in or in connection with an application under the Act.

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Explanatory note

This Regulation is made under the *Heritage Act 1977*, including section 165 (the general regulation-making power).

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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Clause 1 Heritage Regulation 1999

Part 1 Preliminary

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Heritage Regulation 1999*.

2 Commencement

This Regulation commences on 1 September 1999.

3 Definitions

(1) In this Regulation:

the Act means the *Heritage Act 1977*.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

(3) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Part 2 Fees and forms

4 Application fee for approval under section 60

- (1) For the purposes of section 60 of the Act, the prescribed fee for an application for approval to carry out an activity referred to in section 57 (1) (a)–(h) of the Act is:
- (a) \$60, if the estimated cost of carrying out the activity is \$100,000 or less and the activity is in relation to an owner-occupied private house, or
 - (b) \$100, if the estimated cost of carrying out the activity is \$100,000 or less and the activity is not in relation to an owner-occupied private house, or
 - (c) \$150, if the estimated cost of carrying out the activity is more than \$100,000 but less than \$250,000, or
 - (d) \$250, if the estimated cost of carrying out the activity is more than \$250,000 but less than \$500,000, or
 - (e) \$400, if the estimated cost of carrying out the activity is more than \$500,000 but less than \$1,000,000, or
 - (f) \$750, if the estimated cost of carrying out the activity is more than \$1,000,000 but less than \$2,000,000, or
 - (g) \$1,000, if the estimated cost of carrying out the activity is more than \$2,000,000 but less than \$5,000,000, or
 - (h) \$2,000, if the estimated cost of carrying out the activity is more than \$5,000,000.
- (2) The estimated cost of carrying out an activity is the reasonable cost (estimated on the basis of prices current when the application is made) of carrying out the activity as referred to in the application.

5 Application form for approval under section 60

For the purposes of section 60 of the Act, the prescribed form for an application for approval to carry out an activity referred to in section 57 (1) (a)–(h) of the Act is Form 1.

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Part 2 Fees and forms

6 Application fee for excavation permit under section 140

- (1) For the purposes of section 140 (2) of the Act, the prescribed fee for an application for an excavation permit is:
 - (a) \$25, if the estimated cost of carrying out the development to which the excavation relates is \$100,000 or less, and the development is in relation to an owner-occupied private house, or
 - (b) \$100, if the estimated cost of carrying out the development to which the excavation relates is \$100,000 or less, and the development is not in relation to an owner-occupied private house, or
 - (c) \$100, if the estimated cost of carrying out the development to which the excavation relates is more than \$100,000.
- (2) The estimated cost of carrying out a development is the reasonable cost (estimated on the basis of prices current when the application is made) of carrying out the development as referred to in the application.

7 Application form for excavation permit under section 140

For the purposes of section 140 (2) of the Act, the prescribed form for an application for an excavation permit is Form 2.

8 Certificate of authority under section 148

For the purposes of section 148 (1) of the Act, the prescribed form for a certificate of authority is Form 3.

9 Application fee for evidentiary certificate under section 167

For the purposes of section 167 (1) of the Act, the prescribed fee for a certificate under that section is \$20.

Part 3 Minimum standards of maintenance and repair

10 Minimum standards imposed

Pursuant to section 118 of the Act, the standards set out in this Part are imposed as minimum standards with respect to the maintenance and repair of a building, work or relic that is listed or within a precinct that is listed on the State Heritage Register.

Note. Section 119 of the Act requires the owner of the building, work or relic to ensure that it is maintained and repaired to standards that are not less than the minimum standards imposed by this Part. Nothing in this Part affects any requirement for the approval under Part 4 of the Act of any aspect of maintenance or repair.

11 Inspection

- (1) The building, work or relic, and its curtilage or site, must be inspected to identify maintenance and repairs that are needed to ensure compliance with section 119 of the Act in respect of the standards set out in clauses 12–17.
- (2) The inspection must be carried out at least once every 12 months in the case of the standards set out in clauses 12–16 and at least once every 3 years in the case of the standards set out in clause 17.

Note. The maintenance and repair requirements of section 119 of the Act are ongoing and are not limited to matters identified by an inspection carried out for the purposes of this clause.

- (3) The inspection is to be carried out by a person with expertise and experience appropriate to the nature of the item concerned.
- (4) In the case of a relic kept in a repository or as part of a collection, the inspection is to extend to the conditions under which the relic is kept.
- (5) In the case of a relic that is attached to or forms part of land, the inspection is to include an assessment of the stability of the site of the relic.

12 Weather protection

- (1) The following systems or components, if present, must be maintained and repaired (including by being cleaned and secured) when and to the standard necessary to ensure a reasonable level of protection for the building, work or relic, and its curtilage or site, against damage or deterioration due to weather:
 - (a) surface and sub-surface drainage systems,

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Part 3 Minimum standards of maintenance and repair

- (b) roof drainage systems, including gutters, rainwater heads, down-pipes and stormwater drainage systems,
 - (c) water storages, dams, ponds, retention basins, watercourses, batters, levee banks, sea walls and other flood and erosion mitigation measures,
 - (d) roofs, walls, doors and windows (including the glass components of doors and windows) and other components intended to exclude sun, rain, wind, hail, snow or other weather elements, including their security against the effects of high winds,
 - (e) systems or components which might be at risk of damage or dislodgment by high winds, including damage by falling trees and branches, tidal inundation or wave action,
 - (f) systems and components such as damp proof courses, flashings, ventilation systems and other measures intended to prevent the ingress of water or dampness or to reduce its effects,
 - (g) lightning conductors,
 - (h) any other system or component designed to protect the building, work or relic or its curtilage or site against damage or deterioration due to weather.
- (2) Doors and windows of a building may, as an alternative to being repaired, be boarded up, but only:
- (a) if the building is unoccupied, or
 - (b) as a short term measure pending repair.
- (3) If an opening to a building is designed or intended to have a door, window or other closure in place and does not have the door, window or other closure in place, the opening must be boarded up.

13 Fire protection

- (1) Vegetation, rubbish and any other material that could create a fire hazard for the building, work or relic is to be removed and not permitted to accumulate.

Note. Vegetation and other items can be of heritage significance, and their removal may require the approval of the Heritage Council or the local council.

- (2) The following systems or components, if present, must be maintained and repaired when and to the standard necessary to ensure a reasonable level of protection for the building, work or relic against damage or destruction by fire:
- (a) lightning conductors,
 - (b) fire detection and control systems, including smoke and heat detectors and fire sprinkler systems and including associated alarm and communication systems,
 - (c) stores of inflammable materials or rubbish,
 - (d) building services such as electricity, gas and heating systems,
 - (e) any other system or component designed to protect the building, work or relic from damage or destruction by fire.

14 Additional fire protection for unoccupied buildings

- (1) The following additional fire protection measures must be taken for the protection of a building that is to be unoccupied for a continuous period of 60 days or more:
- (a) heating or gas services must be shut down, gas or oil supply to those services must be turned off at the mains or other point of connection to supply, and portable gas or oil storages must be removed,
 - (b) permanent or temporary smoke detection systems must be installed with associated communication systems connected to the Fire Brigade and, if the building will be unoccupied for a period of 6 months or more, provided with a permanent power supply.
- (2) This clause does not apply to any outbuilding within the curtilage or site of a building unless the outbuilding has been constructed or adapted for use as a dwelling.
- (3) The use of a building for storage of goods or materials does not constitute occupation of the building for the purposes of this clause if the building ordinarily has another use or is a building of a kind not ordinarily used for storage.

15 Security

- (1) Fencing or surveillance systems appropriate to the nature and location of the building, work or relic must be installed to secure it and its site and prevent vandalism.

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Part 3 Minimum standards of maintenance and repair

- (2) The following systems or components, if present, must be maintained and repaired when and to the standard necessary to ensure a reasonable level of security for the building, work or relic:
 - (a) boundary and internal fences and gates, including associated locking mechanisms,
 - (b) in the case of a building, the walls, roof and other building elements, doors, windows and other closures, including glazing and associated locking and latching mechanisms,
 - (c) any electronic surveillance or alarm system installed on the site,
 - (d) any other system or component designed to ensure the security of the building, work or relic.
- (3) Doors and windows of a building may, as an alternative to being repaired, be boarded up, but only:
 - (a) if the building is unoccupied, or
 - (b) as a short term measure pending repair.
- (4) If an opening to a building is designed or intended to have a door, window or other closure in place and does not have the door, window or other closure in place, the opening must be boarded up.

16 Additional security measures for unoccupied buildings

- (1) The following additional security measures must be taken for the protection of a building that is to be unoccupied for a continuous period of 60 days or more:
 - (a) if an electronic surveillance or alarm system is installed, the system must be connected to a Police Station or a commercial security provider,
 - (b) if no electronic surveillance or alarm system is installed, arrangements must be in place for regular surveillance of the building, work or relic, as appropriate to its nature and location.
- (2) This clause does not apply to any outbuilding within the curtilage or site of a building unless the outbuilding has been constructed or adapted for use as a dwelling.
- (3) The use of a building for storage of goods or materials does not constitute occupation of the building for the purposes of this clause if the building ordinarily has another use or is a building of a kind not ordinarily used for storage.

17 Essential maintenance and repair

- (1) Essential maintenance and repair of a building, work or relic (being maintenance and repair necessary to prevent serious or irreparable damage or deterioration) must be carried out whenever necessary.
- (2) Essential maintenance and repair includes:
 - (a) the taking of measures (including inspection) to control pests such as termites, rodents, birds and other vermin, and
 - (b) the taking of measures to maintain a stable environment for in-situ archaeological relics.
- (3) The requirement for essential maintenance and repair extends to (but is not limited to) the following:
 - (a) foundations, footings and supporting structure of any building, work or relic,
 - (b) structural elements such as walls, columns, beams, floors, roofs and roof structures, and verandah or balcony structures,
 - (c) exterior and interior finishes and details,
 - (d) systems and components (such as ventilators or ventilation systems) intended to reduce or prevent damage due to dampness,
 - (e) fixtures, fittings and moveable objects attached to the building, work or relic, or to its curtilage or site,
 - (f) landscape elements on the site of and associated with the building, work or relic, including vegetation, garden walls, paths, fences, statuary, ornaments and the like.

18 Conservation management plans

- (1) A *conservation management plan* is a plan prepared by the owner of a building, work or relic for the conservation of the building, work or relic.
- (2) A conservation management plan endorsed by the Heritage Council for a building, work or relic may:
 - (a) provide that a standard set out in this Part does not apply to the building, work or relic (in which case the standard does not apply to it), or

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Part 3 Minimum standards of maintenance and repair

- (b) impose additional standards of maintenance and repair for the building, work or relic (in which case those standards are imposed as minimum standards with respect to the maintenance and repair of the building, work or relic, in addition to those set out in this Part).

Part 4 Miscellaneous

19 False or misleading statements

A person must not, in or in connection with an application under the Act, make a statement that the person knows to be false or misleading in a material particular.

Note. Pursuant to section 157 (2) of the Act, a person who is guilty of an offence against clause 19 is liable to a penalty not exceeding 50 penalty units.

20 Repeal

- (1) The *Heritage Regulation 1993* is repealed.
- (2) Any act, matter or thing that, immediately before the commencement of this Regulation, had effect under the *Heritage Regulation 1993* is taken to have effect under this Regulation.

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Schedule 1 Forms

Schedule 1 Forms

Form 1

(Clause 5)

HERITAGE ACT 1977

APPLICATION UNDER SECTION 60 FOR APPROVAL TO CARRY OUT
SECTION 57 (1) ACTIVITY

**This form applies if the item or relevant property is listed on the
State Heritage Register or is subject to an Interim Heritage Order**

**Please complete all relevant parts of this Form and attach the
following:**

- (a) 3 copies of all drawings and/or documents necessary to describe your proposal. Show clearly what you propose to demolish, remove, destroy or excavate, what will remain without change, and what you propose to construct, create, plant or alter. Show the relationship of your proposals to the site boundaries and existing site features.
- (b) 1 copy of a heritage impact statement and any other supporting documentation. Information to assist you to prepare your application and documentation is available from the NSW Heritage Office.
- (c) 1 copy of a conservation management plan (CMP), if your proposal will have a major impact on the heritage significance of an item listed on the State Heritage Register.
- (d) If the proposal involves excavation, also complete the section entitled "Excavation Director" below.
- (e) Application fee — see section below.

Item / Property

Name or number of item / property:

Address:

Suburb or Town:

Postcode:

Local Government Area:

Was the Interim Heritage Order made by the local council of that area?

If so, this application should be submitted to that council.

Type or description of the item / property:

Is there a CMP for the item / property?

Who prepared it?

Date:

Has the CMP been endorsed by the Heritage Council?

Date:

Proposal

Description of the proposal:

.....

.....

Applicant

Name:

Company Name (if applicable):

Address:

Postcode:

Person responsible for the proposed activity:

Telephone: ()

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Schedule 1 Forms

Mobile:
Facsimile: ()
Email:
Signature:
Date:

Consent of Owner (where application is not made by the owner)

Note. The owner's consent must relate specifically to the making of this application. It may be provided in a separate letter. If the item is situated on Crown land, this section should be completed by the lawful occupier.

I, the owner of the item
to which this application relates, hereby consent to the making of this
application.

Signature:
Date:
Address:
Postcode:
Telephone: ()
Mobile:
Facsimile: ()

Excavation Director

Note. Complete this section if your proposal involves building cavities or excavation of land which will or is likely to disturb relics.

Name:
Company Name (if applicable):
Address:
Postcode:
Telephone: ()
Mobile:
Facsimile: ()

Email:
Signature:
Date:

Please attach CV of Excavation Director if this has not been lodged with the Heritage Office within the last 12 months.

Integrated Development

Has consent for integrated development been granted?
If so: IDA No:
Date:
Please attach a copy of the consent.
Is this application consistent with the consent?

Making Your Application

If the item is subject to an Interim Heritage Order made by a council, forward your application and the applicable fee to the council.

If the item is listed on the State Heritage Register or is subject to an Interim Heritage Order made by the Minister, forward your application and the applicable fee to:

NSW Heritage Office
Locked Bag 5020
PARRAMATTA NSW 2124
OR
DX 8225 Parramatta

If the Heritage Council considers that your proposal will have an adverse impact on the heritage significance of an item, then the application will be advertised in State and local newspapers for public comment. The application will also be exhibited at the local council and at the NSW Heritage Office. You will be notified if your application is advertised. Advertising increases the time required to assess your application.

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Schedule 1 Forms

Application Fees

<i>Estimated cost of activity</i>	<i>Fee</i>
For activity relating to owner-occupied private house up to \$100,000	\$60
Other activity up to \$100,000	\$100
\$100,000 - \$250,000	\$150
\$250,000 - \$500,000	\$250
\$500,000 - \$1 million	\$400
\$1 million - \$2 million	\$750
\$2 million - \$5 million	\$1,000
Over \$5 million	\$2,000

Note. You can apply to have the fee reduced or waived on the basis of financial hardship. If you wish to do so, please submit evidence of financial hardship with your application.

Form 2

(Clause 7)

HERITAGE ACT 1977

APPLICATION UNDER SECTION 140 FOR EXCAVATION PERMIT

Please complete all relevant parts of this Form and note the following:

- (a) This Form should be completed by or in consultation with a qualified historical or maritime archaeologist as appropriate.
- (b) This Form applies to archaeological sites above or below water.
- (c) The applicant is to be the owner of the land or the company or individual with whom the archaeologist is contracted. The Excavation Director cannot be the applicant.
- (d) Please read and complete all pages of this Form in duplicate and provide full details of proposed work in supporting documentation.
- (e) All signatures on the Form must be original. Faxed applications will not be accepted.
- (f) Please ensure that all necessary documentation is enclosed with this application.

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Schedule 1 Forms

Description of property to be excavated

Name or number of property / relic

Street:

Latitude (if applicable):

Longitude (if applicable):

Chart/Map No or Geocentric Datum (if applicable):

Suburb or Town:

Postcode:

Local Government Area:

Lot or Portion:

Section:

Deposited Plan:

Title Ref:

Nature of the land to be excavated

.....

Other heritage listings (eg under a Local or Regional Environment Plan):

.....

Description of excavation (tick those applicable)

- (a) Archaeological test excavation
- (b) Archaeological monitoring
- (c) Large scale archaeological excavation
- (d) Other excavation
- (e) Investigations associated with the conservation or interpretation of the land or relics

- (f) Archaeological Research/Training exercise
not associated with development
- (g) Other (please specify):
-
- Give a brief description of the excavation:
-
- Estimated date of commencement of the excavation:
-
- Estimated date of completion of the excavation:
-

Documents to accompany this application

This application must be accompanied by all appropriate documentation.

Please ensure that all archaeological assessments and related documents are prepared by a qualified historical archaeologist with demonstrated historic sites experience.

Applicant

- Name:
- Company Name (if applicable):
- Address:
- Postcode:
- Telephone: ()
- Mobile:
- Facsimile: ()
- Email:
- Signature:
- Date:

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Schedule 1 Forms

Consent of Owner

I, being the owner of the property to which this application relates, hereby consent to the making of this application.

Signature:

Date:

Address:

Postcode:

Telephone: ()

Mobile:

Facsimile: ()

Note. The owner's consent must relate specifically to the making of this application. It may be provided in a separate letter. If the relic is situated on Crown lands, then this section should be completed by the lawful occupier.

Excavation Director

Name:

Company Name (if applicable):

Address:

Postcode:

Telephone: ()

Mobile:

Facsimile: ()

Email:

Signature:

Date:

Please attach CV of Excavation Director if this has not been lodged with the Heritage Office within the last 12 months.

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Forms

Schedule 1

Application Fees*Estimated cost of carrying out**development to which excavation relates* *Fee*

For excavation relating to owner-

occupied private house up to \$100,000 \$25

Other excavations up to \$100,000 \$100

All excavations over \$100,000 \$100

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Schedule 1 Forms

Form 3

(Clause 8)

HERITAGE ACT 1977

CERTIFICATE OF AUTHORITY UNDER SECTION 148

Name:

Signature:

I certify that the above-named person has been authorised, pursuant to section 148 (1) of the *Heritage Act 1977*, to carry out inspections of buildings, works, relics and places for the purposes of that Act.

Minister for Urban Affairs and Planning.

BY AUTHORITY
