



New South Wales

Heritage Regulation 2005

under the

Heritage Act 1977

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

FRANK SARTOR, M.P.,
Minister for Planning

Explanatory note

The object of this Regulation is to repeal and remake the *Heritage Regulation 1999 (the 1999 Regulation)* without substantial alteration. This Regulation:

- (a) specifies the requirements of conservation management plans, including a requirement that conservation management plans be prepared in accordance with guidelines issued by the Director of the Heritage Office (*the Director*), and
- (b) specifies the requirements for heritage impact statements, including a requirement that heritage impact statements be prepared in accordance with guidelines issued by the Director, and
- (c) prescribes the fees for an application for an approval under section 60 of the *Heritage Act 1977 (the Act)*, an application for an excavation permit under section 140 of the Act and an application for an evidentiary certificate under section 167 of the Act, and
- (d) provides for the fees chargeable for the review of conservation management plans, and
- (e) prescribes the relevant form for a certificate of authority under section 148 of the Act to inspect buildings, works, relics, moveable objects and places, and
- (f) imposes 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.

The main changes that this Regulation makes to the 1999 Regulation are as follows:

- (a) providing for an increase in fees for the applications referred to in paragraph (c) above,

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Explanatory note

- (b) omitting Schedules (and associated provisions) containing the prescribed forms for the applications referred to in paragraph (c) above (because under the Act, the relevant forms are now as approved by the Minister),
- (c) omitting a provision creating an offence for making false or misleading statements in or in connection with applications under the Act (because section 307A of the *Crimes Act 1900* now provides for an offence in relation to making false or misleading applications, the maximum penalty for which is 2 years imprisonment or 200 penalty units (currently \$22,000) or both),
- (d) clarifying the operation of the provision dealing with fees for the review of conservation management plans, in particular, clarifying the plans in respect of which such fees are payable (being conservation management plans including preliminary or draft plans) and the persons who may be charged such fees (being affected owners (as defined in the Act) who request the review, or who request the Heritage Council's endorsement of the conservation management plan concerned, the review being for the purpose of that endorsement),
- (e) providing that the fees payable for a review of a conservation management plan may include a component to cover the reasonable costs incurred by the Heritage Council in causing public notice of the review to be given.

This Regulation is made under the *Heritage Act 1977*, including section 165 (the general regulation-making power) and various other sections referred to in the Regulation.

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Part 1 Preliminary

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Heritage Regulation 2005*.

2 Commencement

This Regulation commences on 1 September 2005.

Note. This Regulation replaces the *Heritage Regulation 1999* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

In this Regulation:

conservation management plan means a document that:

- (a) identifies the State or local heritage significance of a place, building, work, relic, moveable object or precinct, and
- (b) sets out policies and strategies for the retention of that significance, and
- (c) is prepared by the affected owner in accordance with guidelines for the preparation of conservation management plans issued from time to time by the Director.

heritage impact statement means a document that:

- (a) identifies the impact that an activity referred to in section 57 (1) (a)–(h) of the Act that is proposed to be carried out would have on the State or local heritage significance of a place, building, work, relic, moveable object, precinct or land affected by the proposed activity, and
- (b) sets out measures to minimise the impact of the proposed activity on that heritage significance, and
- (c) is prepared by the affected owner in accordance with guidelines for the preparation of heritage impact statements issued from time to time by the Director.

the Act means the *Heritage Act 1977*.

4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

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Part 2 Fees and forms

Part 2 Fees and forms

5 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) \$150, 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) \$300, 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) \$400 plus \$25 for each \$100,000 (or part \$100,000) of the estimated cost of carrying out the activity, if the estimated cost of carrying out the activity is more than \$100,000 but no more than \$500,000, or
 - (d) \$500 plus \$100 for each \$100,000 (or part \$100,000) of the estimated cost of carrying out the activity, if the estimated cost of carrying out the activity is more than \$500,000 but no more than \$1,000,000, or
 - (e) \$1,000 plus \$50 for each \$100,000 (or part \$100,000) of the estimated cost of carrying out the activity, if the estimated cost of carrying out the activity is more than \$1,000,000 but no more than \$2,000,000, or
 - (f) \$1,500 plus \$33.33 for each \$100,000 (or part \$100,000) of the estimated cost of carrying out the activity, if the estimated cost of carrying out the activity is more than \$2,000,000 but no more than \$5,000,000, or
 - (g) \$2,500 plus \$10 for each \$100,000 (or part \$100,000) of the estimated cost of carrying out the activity, if the estimated cost of carrying out the activity is more than \$5,000,000 but no more than \$10,000,000, or
 - (h) \$3,000 plus \$10 for each \$100,000 (or part \$100,000) in excess of \$10,000,000, if the estimated cost of carrying out the activity is more than \$10,000,000.
- (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.

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) \$100, 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) \$250, 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) \$500, plus \$10 for each \$100,000 in excess of \$100,000, 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 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 1 in Schedule 1.

8 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 \$100.

9 Fee for certain reviews of conservation management plans

- (1) The Director may, from time to time, determine the fees payable for the review of conservation management plans.
- (2) The Director may determine different fees for the review of different conservation management plans, having regard to the costs incurred in conducting the review (whether the review is conducted by members of staff of the Heritage Office or by persons engaged for that purpose by the Director).
- (3) In determining the fees payable under this clause, the Director may include a component to cover the reasonable costs (including any administrative costs) incurred by the Heritage Council in causing public notice of the review of a conservation management plan to be given.
- (4) The Heritage Council may charge an affected owner the fee determined under this clause for the review of a conservation management plan if:
 - (a) the review is requested by the affected owner, or

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Part 2 Fees and forms

- (b) the review is for the purpose of the Heritage Council's endorsement of the plan which (endorsement) is requested by the affected owner.
- (5) Subject to subclause (6), a request for a review of a conservation management plan in respect of which a fee is payable under this clause must be accompanied by the applicable fee.
- (6) If the fees payable under this clause include a component referred to in subclause (3), that component is payable within 30 days after written notification of the amount due for the component is given to the affected owner concerned.
- (7) A fee is not payable under this clause for the review of a conservation management plan that is undertaken in the process of determining an application for an approval to carry out an act, matter or thing referred to in section 57 (1) of the Act.
- (8) In subclauses (1)–(5), a reference to a conservation management plan includes a reference to a preliminary or draft conservation management plan.

Part 3 Minimum standards of maintenance and repair

10 Minimum standards imposed

- (1) 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.
- (2) Nothing in this Part affects any requirement for the approval under Part 4 of the Act of any aspect of maintenance or repair.

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.

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) 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,
 - (b) roof drainage systems, including gutters, rainwater heads, down-pipes and stormwater drainage systems,

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Part 3 Minimum standards of maintenance and repair

- (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 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,

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- (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 in the district 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.
- (2) The following systems or components, if present, must be maintained and repaired 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.

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Part 3 Minimum standards of maintenance and repair

- (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,

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- (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

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
- (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).

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Part 4 Miscellaneous

Part 4 Miscellaneous

19 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Heritage Regulation 1999*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Form

Form 1 Certificate of authority

(Clause 7)

(Heritage Act 1977, section 148)

Name:

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, moveable objects and places for the purposes of that Act.

Signature:

Minister for Infrastructure and Planning.