

NORFOLK



SLAND



HERITAGE ACT 2002

Act No. 6 of 2003

TABLE OF PROVISIONS

Section

PART I — PRELIMINARY

1. Short title
2. Commencement
3. The Crown and the Administration
4. Application of other laws
5. Interpretation

PART 2 — HERITAGE REGISTER

6. Establishment
7. Making of register and variations
8. Application to vary Heritage Register
9. Amendment or withdrawal of application
10. Notice of refusal to act on application
11. Notices to owners of proposed heritage items
12. Public consultation
13. Inquiry into heritage matters
14. Decision on heritage proposal
15. Criteria for making or variation of the Heritage Register
16. Notice of making of Heritage Register
17. Commencement of provision of Heritage Register
18. Interim effect

19. Public access

PART 3 – PANEL OF HERITAGE ADVISERS

Division 1 — Establishment and constitution of panel of heritage advisers

20. Establishment of panel of heritage advisers
21. Constitution of panel
22. Appointment of heritage advisers
23. Term of appointment
24. Resignation
25. Removal from panel

Division 2 — Appointment of heritage advisers to the Board

26. When heritage adviser to be member of the Board

PART 4 — OTHER PROVISIONS FOR PRESERVATION OF HERITAGE ITEMS

27. Heritage conservation fund
28. Heritage impact statements and conservation management plans for development under Planning Act 2002

PART 5 — MISCELLANEOUS

29. Delegation by executive member
30. Delegation by Chief Executive Officer
31. Effect of documents being “available for public inspection”
32. Executive member may refer matters to the Board
33. Regulations

PART 6 — REPEAL

34. Repeal of *Heritage Act 1996*
Schedule — Criteria for making or variation of the Heritage Register



Heritage Act 2002

Act No. 6 of 2003

An Act in association with the *Planning Act 2002* to provide for the promotion of the conservation of the heritage of Norfolk Island, and for related purposes

[Assented to 16 April 2003]

BE IT ENACTED by the Legislative Assembly of Norfolk Island as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Heritage Act 2002*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the Gazette.
(2) The remaining provisions commence on a day, or respective days, fixed by the Administrator by notice in the Gazette.

The Crown and the Administration

3. (1) This Act binds the Crown and the Administration.
(2) Nothing in this Act renders the Crown in any capacity or the Administration liable to be prosecuted for an offence.

Application of other laws

4. Nothing in this Act limits or derogates from the operation of any other enactment.

Interpretation

5. In this Act, unless the contrary intention appears —
“Board” means the Norfolk Island Planning and Environment Board established under the *Norfolk Island Planning and Environment Act 2002*;

“Chief Executive Officer” means the Chief Executive Officer within the meaning of the *Public Sector Management Act 2000*;

“heritage” means the archaeological, historical, aesthetic, architectural, scientific, natural, cultural or social heritage of Norfolk Island for the present community and for future generations;

“heritage adviser” means a person appointed to the panel of heritage advisers under Part 3 whose appointment is current;

“heritage conservation fund” means a heritage conservation fund established under the Regulations;

“heritage item” means an object or place listed on the Heritage Register;

“heritage proposal” means a proposal by the executive member to make the Heritage Register or to vary the Heritage Register;

“Heritage Register” means the Norfolk Island Heritage Register established by section 6, as varied from time to time;

“panel” means the panel of heritage advisers appointed under Part 3;

“proposed heritage item” means an object or place which is sought to be included in the Heritage Register whether by the making of the Register or variation of the Register;

“this Act” includes the Regulations;

“variation application” means an application under section 8 to vary the Heritage Register;

“vary”, in relation to the Heritage Register, means to add an object or place to the Register or to omit a heritage item from the Register.

PART 2 — HERITAGE REGISTER

Establishment

6. (1) There shall be a Norfolk Island Heritage Register.
- (2) The Heritage Register shall list objects and places of significance to the heritage of Norfolk Island.

Making of register and variations

7. (1) The executive member shall make the Heritage Register by instrument.

(2) The executive member may vary the Heritage Register by instrument.

(3) An instrument under this section is a disallowable instrument for the purposes of section 41A of the *Interpretation Act 1979*.

(4) The Heritage Register may be varied under subsection 7(2) on an application by a person or on the executive member's own initiative.

Application to vary Heritage Register

8. (1) Any person may make a variation application to the Chief Executive Officer.

(2) The application shall be accompanied by —

- (a) information or documents to support the application; and
- (b) any information or documents required under any other enactment; and
- (c) the prescribed fee (if any) for such an application.

(3) The Chief Executive Officer may, if the Chief Executive Officer considers it reasonable in the circumstances, require an applicant to provide further relevant information or documents by written notice to the applicant.

(4) A requirement under subsection 8(3) shall be made within 14 days of receipt of the application.

Amendment or withdrawal of application

9. A variation application may be amended or withdrawn by the applicant at any time.

Notice of refusal to act on application

10. (1) This section applies if, at the expiration of 28 days after a variation application is made, the executive member has failed to invite public submissions about the proposed variation under section 12.

(2) The executive member shall, as soon as practicable after the expiration of the 28 days —

- (a) give the applicant notice of the failure; and
- (b) lay before the Legislative Assembly a statement giving —

- (i) details of the application; and
- (ii) the reasons why the public submissions about the proposed variation have not been invited under section 12.

(3) After the statement is laid before the Legislative Assembly under paragraph 10(2)(b), the Legislative Assembly may —

- (a) take no action; or
- (b) by resolution direct the executive member to do all or any of the things the executive member may do under this Act in relation to the application.

Notices to owners of proposed heritage items

11. (1) Before making the Heritage Register or a variation to the Register, the executive member shall take all reasonable steps to give the owner of each object or place in the heritage proposal, notice of the proposal.

(2) The notice shall —

- (a) specify the object or place proposed to be listed on or removed from the Heritage Register; and
- (b) indicate where and when the proposal is available for inspection; and
- (c) include a statement about the interim effect of the proposal under section 18; and
- (d) invite submissions from the owner about the proposal.

Public consultation

12. (1) Before making the Heritage Register or a variation to the Register, the executive member shall invite public submissions about the heritage proposal by notice published in the Gazette —

- (a) indicating where and when the proposal is available for inspection; and
- (b) including a statement about the interim effect of the proposal under section 18.

(2) The executive member shall take such other measures as the executive member considers appropriate to ascertain public opinion about the heritage proposal and to respond to such opinion.

(3) The heritage proposal shall be available for public inspection.

Inquiry into heritage matters

13. (1) This section applies where —

- (a) the executive member is considering a heritage proposal; or
- (b) a variation application is made to the Chief Executive Officer; or
- (c) the executive member considers a matter may have a significant impact on the implementation of the objects of this Act.

(2) The executive member may appoint, by notice published in the Gazette, a person to investigate any matters relating to the matters to which this section applies and make recommendations on the matters.

(3) Upon publication of the notice, the person is taken to be a Commission of inquiry issued under the *Royal Commissions Act 1928* and has all the powers, privileges and protection of a Commission under that Act.

(4) The Administrator may, under section 33 make Regulations prescribing the procedures to be followed in the investigation of matters under this section.

Decision on heritage proposal

14. (1) Following the notification of a heritage proposal under section 12, the Chief Executive Officer shall refer the heritage proposal and supporting documentation and submissions received as a result of public consultation on the proposal and a report on the submissions from the Chief Executive Officer to the Board for its consideration.

(2) Following receipt of the Board's recommendation on the heritage proposal, the executive member may decide —

- (a) to make the Heritage Register or variation to the Register whether or not in the form of the heritage proposal; or
- (b) to withdraw the proposal.

(3) A decision under subsection 14(2) shall be made no earlier than 28 days following the later of —

- (a) the notification; or
- (b) if a person is appointed under section 13 to inquire into and make recommendations on matters in relation to the proposal, the date the recommendations are made.

(4) Notice of a decision to withdraw a heritage proposal shall be published in the Gazette.

(5) In considering a heritage proposal, the executive member shall have regard to the matters, if any, prescribed by the Regulations.

(6) When considering any submission which objects to a heritage proposal, the executive member shall give utmost consideration to the significance, as part of the heritage of Norfolk Island, of the object or place the subject of a heritage proposal.

Criteria for making or variation of the Heritage Register

15. (1) In considering a heritage proposal, the executive member shall determine the heritage significance of the proposed heritage item against the criteria for entry in the Heritage Register, listed in the Schedule and any other matters, prescribed by the Regulations.

(2) The executive member may only include a proposed heritage item in the Heritage Register, whether by making or variation of the Register, if —

- (a) the Board has assessed the item, determined that the item is of heritage significance to the heritage of Norfolk Island and recommended the item be included in the Heritage Register; and
- (b) in the opinion of the executive member, the item meets three or more of the criteria for entry in the Heritage Register.

Notice of making of Heritage Register

16. (1) The executive member may make the Heritage Register or variation to the register whether or not in the form of the heritage proposal.

(2) Notice of the making of the Heritage Register or of a variation to the Heritage Register shall be published in the Gazette, together with —

- (a) a statement about the commencement of the Register or variation pursuant to section 17; and
- (b) a statement indicating where and when the Heritage Register is available for inspection.

Commencement of provision of Heritage Register

17. A provision of the Heritage Register, or of a variation to the

Register, comes into effect on the later of —

- (a) the date of publication in the Gazette of the relevant notice under subsection 16(2); or
- (b) a date of commencement specified in the notice.

Interim effect

18. (1) A heritage proposal, other than a proposal to remove a heritage item from the Heritage Register, has interim effect as a listing of the object or place on the Heritage Register on and from the later of —

- (a) the notification of a heritage proposal under section 12; or
- (b) a date specified in the notice.

(2) Any interim effect of a heritage proposal under this section ceases on the earlier of —

- (a) the commencement under section 17 of the listing of the object or place through the making of the Heritage Register or a variation to the Register listing the object or place; or
- (b) the day after the publication of a notice of a decision to withdraw the proposal under subsection 14(3).

Public access

19. The Heritage Register, heritage proposals and variation applications shall be available for public inspection.

PART 3 — PANEL OF HERITAGE ADVISERS

Division 1 — Establishment and constitution of panel of heritage advisers

Establishment of panel of heritage advisers

20. The executive member shall establish a panel of heritage advisers.

Constitution of panel

21. (1) The panel shall consist of such number of persons from time to time appointed by the executive member to the panel.

(2) In appointing a heritage adviser, the executive member shall endeavour to ensure that the adviser is a person with knowledge of or experience in one or more of the following disciplines and areas of expertise and interest as it relates to Norfolk Island —

- (a) archaeology;

- (b) Norfolk Island history and culture;
- (c) urban, regional or environmental planning;
- (d) engineering;
- (e) architectural history;
- (f) heritage conservation;
- (g) landscape architecture;
- (h) the natural environment and its conservation.

Appointment of heritage advisers

22. (1) The executive member shall publish notice in the Gazette of the appointment of a heritage adviser.

(2) Before making an appointment of a heritage adviser, the executive member may invite expressions of interest to be a heritage adviser, by notice published in the Gazette and any other publication as the executive member determines.

(3) The notice shall, indicate —

- (a) how, where and when an expression of interest may be made; and
- (b) the knowledge or experience specified in subsection 21(2) in relation to appointment of heritage advisers.

(4) Failure to comply with subsection 22(2) or 22(3) does not affect the validity of an appointment of a heritage adviser.

Term of appointment

23. A heritage adviser holds office for 3 years, or for such lesser period as is specified in the instrument of appointment, and is eligible for reappointment subject to this Division.

Resignation

24. A heritage adviser may resign from the panel by writing signed by the heritage adviser and given to the executive member.

Removal from panel

25. (1) The executive member may remove the name of a heritage adviser from the panel for any of the following reasons —

- (a) inability;
- (b) inefficiency;

- (c) misbehaviour;
- (d) physical or mental incapacity.

(2) Before terminating the appointment under subsection 25(1), the executive member shall give the heritage adviser a reasonable opportunity to respond to the allegations forming the basis of the proposed removal.

Division 2 — Appointment of heritage advisers to the Board

When heritage adviser to be member of the Board

26. For paragraph 6(1)(b) of the *Norfolk Island Planning and Environment Board Act 2002*, one heritage adviser shall be appointed to, and be a member of, the Board when the Board considers and makes recommendations on any of the following matters —

- (a) the Heritage Register;
- (b) a heritage proposal;
- (c) development applications made under the *Planning Act 2002* in relation to objects and places listed in the Heritage Register;
- (d) heritage conservation on Norfolk Island; and
- (e) the application of money from a heritage conservation fund in furtherance of the objects of this Act.

**PART 4 — OTHER PROVISIONS FOR PRESERVATION OF
HERITAGE ITEMS**

Heritage conservation fund

27. (1) The Administrator may, under section 33 make Regulations providing for the establishment and operation of a heritage conservation fund for the purpose of providing financial assistance towards the conservation of a heritage item.

(2) A heritage conservation fund shall be operated and utilised as prescribed by the Regulations.

(3) The executive member may accept donations of money for the purposes of a heritage conservation fund which shall be paid into that fund.

(4) Proper accounts shall be kept of the operations of a

heritage conservation fund and all monies in that fund shall be applied only for the purposes of conservation of heritage items.

Heritage impact statements and conservation management plans for development under Planning Act 2002

28. (1) For a development application under the *Planning Act 2002* that is in relation to, or is likely to affect, a heritage item —

- (a) the applicant shall prepare, in relation to that item, a heritage impact statement; and
- (b) the executive member shall also have regard to the heritage impact statement for the item.

(2) The form and content of the heritage impact statement shall be as directed by the executive member.

(3) For a development application under the *Planning Act 2002* that is in relation to a heritage item —

- (a) the executive member may require the applicant to prepare in relation to that item a conservation management plan; and
- (b) if so, the development application shall not be proceeded with until —
 - (i) the conservation management plan is approved for the heritage item pursuant to the Regulations; or
 - (ii) the executive member withdraws the requirement.

(4) In considering a development application, the executive member shall also have regard to any conservation management plan approved pursuant to the Regulations for any heritage item affected, or likely to be affected, by the proposed development.

PART 5 — MISCELLANEOUS

Delegation by executive member

29. (1) The executive member may, by instrument, delegate any of the functions or powers of the executive member under this Act other than this power of delegation.

(2) A delegation under subsection 29(1) may be made —

- (a) to a specified person; or
- (b) to the holder for the time being of a specified office or

position.

(3) A delegate, in making a decision in accordance with a delegation under this section, shall comply with the requirements of this Act which the executive member is required to comply with in making such a decision.

Delegation by Chief Executive Officer

30. (1) The Chief Executive Officer may, by instrument, delegate any of the powers of the Chief Executive Officer under this Act other than this power of delegation.

(2) A delegation under subsection 30(1) may be made —

- (a) to a specified person; or
- (b) to the holder for the time being of a specified office or position.

(3) A delegate, in making a decision in accordance with a delegation under this section, shall comply with the requirements of this Act which the Chief Executive Officer is required to comply with in making such a decision.

Effect of documents being “available for public inspection”

31. (1) Where a provision of this Act states that any document shall be available for public inspection, the Chief Executive Officer shall ensure that the document is available for public inspection free of charge at the offices of the Administration determined by the Chief Executive Officer during usual business hours.

(2) On application by any person accompanied by the determined fee, the Chief Executive Officer shall ensure that a copy of a document, or an extract from a document that is available for public inspection, is made available to the person.

Executive member may refer matters to the Board

32. The executive member may refer to the Board —

- (a) any matter relevant to any decision the executive member may make under this Act; or
- (b) any matter relevant to the effective administration of this Act.

Regulations

33. (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Regulations may prescribe penalties not exceeding 10 penalty units for a contravention of the Regulations.

(3) Without limiting the Regulations which may be made under subsection 33(1), Regulations may be made under this section with respect to procedures to be followed in determining heritage proposals.

PART 6 — REPEAL

Repeal of Heritage Act 1996

34. The *Heritage Act 1996* is repealed.

SCHEDULE

Section 15

CRITERIA FOR MAKING OR VARIATION OF THE HERITAGE REGISTER

The criteria to be used in assessing whether or not an object or place should be listed in the Heritage Register are whether the object or place has special significance in Norfolk Island —

1. For the evolution of Norfolk Island's natural or cultural history.
2. Because it demonstrates, rare or endangered aspects of Norfolk Island's natural or cultural heritage.
3. Because it provides information that will contribute to an understanding of Norfolk Island's natural or cultural history.
4. In demonstrating the principal characteristics of the range of landscapes, environments or ecosystems, the attributes of which identify them as being characteristic of their class.
5. By virtue of aesthetic characteristics or through technical, creative, design or artistic excellence, innovation or achievement valued by the

Norfolk Island community.

6. Because it has a strong or special association with the Norfolk Island community for social, cultural or spiritual reasons.

7. Because it has a special association with the life or works of a person or group of persons that have been significant in Norfolk Island's natural or cultural history.

Notified Gazette No. 21, 9 May 2003.

Sections 1 and 2 commenced on gazettal (No. 21, 9 May 2003). The remainder commenced on a day fixed by the Administrator, 15 August 2003 (Gazette No. 37, 15 August 2003).

Printed on the authority of the Administrator.

© Norfolk Island Government 2013

The *Copyright Act 1968* of the Commonwealth of Australia permits certain reproduction and publication of this legislation. For reproduction or publication beyond that permitted by the Act, written permission must be sought from the Legislative Counsel, Administration of Norfolk Island, Norfolk Island, South Pacific 2899.