

Heritage Regulation 2012

As at 10 August 2018

Part 1 – Preliminary

1 Name of Regulation

This Regulation is the *Heritage Regulation 2012*.

2 Commencement

This Regulation commences on 1 September 2012 and is required to be published on the NSW legislation website.

This Regulation replaces the *Heritage Regulation 2005* which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation: "**ruin**" has the same meaning as it has in section 118 of the Act. "**the Act**" means the *Heritage Act 1977*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 – Fees and forms

4 Prescribed fee for application for approval

(1) For the purposes of section 60 of the Act, the prescribed fee that is to accompany 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 dwelling, 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 dwelling, 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.

5 Prescribed fee for excavation permit application

(1) For the purposes of section 140 (2) of the Act, the prescribed fee that is to accompany 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 dwelling, 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 dwelling, 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.

6 Prescribed form for certificate of authority

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

7 Application fee for evidentiary certificate

For the purposes of section 167 (1) of the Act, the prescribed fee is \$100.

8 Fee for certain reviews of conservation management plans

(1) The Director-General of the Department of Premier and Cabinet (or a delegate of the Director-General) may, from time to time, determine the fees payable for the review of conservation management plans.

(2) The Director-General of the Department of Premier and Cabinet (or a delegate of the Director-General) 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 Office of Environment and Heritage or by other persons engaged for that purpose).

(3) In determining the fees payable under this clause, the Director-General of the Department of Premier and Cabinet (or a delegate of the Director-General) may include a component (a "**public notice 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
- (b) the review is for the purpose of the Heritage Council's endorsement of the plan and the endorsement is requested by the affected owner.

(5) 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) However, if the fee payable under this clause includes a public notice component, 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

Division 1 – Buildings, works and relics

9 Minimum standards imposed

- (1) Pursuant to section 118 (1) of the Act, the standards set out in this Division are imposed as minimum standards with respect to the maintenance and repair of a building or work (other than a ruin) or a relic that is listed or within a precinct that is listed on the State Heritage Register.
- (2) Nothing in this Division affects any requirement for the approval under Part 4 of the Act of any aspect of maintenance or repair.
- (3) 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 Division does not apply to the building, work or relic (in which case the standard does not apply to it), or
 - (b) provide for additional standards of maintenance and repair for the building, work or relic (in which case those standards are imposed as additional minimum standards with respect to the maintenance and repair of the building, work or relic, in addition to those set out in Division 2).

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 Division.

10 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,
 - (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.

11 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. 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,
- (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.

12 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.

13 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.

(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.

14 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.

15 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.

Division 2 – Ruins and moveable objects

16 Minimum standards imposed

- (1) Pursuant to section 118 (2) and (3) of the Act, the minimum standards for the maintenance of a ruin or moveable object that is listed on the State Heritage Register are the minimum standards (if any) listed on the Register in accordance with this Division in relation to the ruin or moveable object.
- (2) Nothing in this Division affects any requirement for the approval under Part 4 of the Act of any aspect of maintenance.

17 Procedure for listing of minimum standards on Register

- (1) The Heritage Council may list minimum standards on the State Heritage Register in relation to a specified ruin or moveable object that is listed on the State Heritage Register (whether listed before or after the commencement of this Regulation) in accordance with this clause.
- (2) Such a listing may be made at the same time that the item, in relation to which the minimum standards relate, is listed on the State Heritage Register or at any time after the item is listed.
- (3) Before listing any minimum standards on the State Heritage Register, the Heritage Council must follow this procedure:
- (a) the Heritage Council is to give notice that it is going to consider the listing of the minimum standards concerned (a "**notice of intention to consider listing of**

standards") by written notice given to each person that it considers to be an affected owner or occupier, and

(b) within 14 days after notice of intention to consider listing of standards is given under paragraph (a), the Heritage Council is to cause a notice of intention to consider listing of standards to be published in a manner that the Heritage Council is satisfied will bring the notice to the attention of members of the public in the area in which the item is situated, and

(c) a notice of intention to consider listing of standards is to invite submissions on the listing and is to specify a date as the closing date for the receipt of submissions (being a date that is at least 28 days after the notice was first published) and the manner in which submissions may be made, and

(d) the Heritage Council is to consider the submissions that are received before the closing date for receipt of submissions and is to decide whether or not to list the minimum standards on the State Heritage Register, and

(e) the Heritage Council is to give notice of its decision in the same manner as it is required to give notice of its intention to consider listing of standards under paragraph (a) and is also to give notice to the council of the area in which the item is situated and to each of the persons who made submissions that were considered.

(4) If the Heritage Council's decision is to list the minimum standards on the State Heritage Register, the Heritage Council is to cause notice of the listing to be published in the Gazette.

(5) A listing of minimum standards takes effect on the date of publication of the notice of listing in the Gazette.

(6) Without limiting any other matter it may consider in determining whether to list minimum standards, the Heritage Council must consider the following:

(a) whether the listing of standards would render the item incapable of reasonable or economic use,

(b) whether the listing of standards would cause undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated.

(7) This clause applies to the amendment or revocation of a minimum standard listed on the State Heritage Register in the same way as it applies to the listing.

18 Enforcement of minimum standards

(1) The following provisions are extended to any minimum standards for the maintenance of a ruin or moveable object:

(a) in the case of a ruin--sections 119-122 of the Act,

(b) in the case of a moveable object--sections 119-120N of the Act.

(2) For that purpose:

(a) a reference in section 119, 120, 120E, 120F, 120G, 120I, 120M or 120N of the Act to a building, work or relic listed on the State Heritage Register includes a reference to a ruin or moveable object listed on the Register, and

(b) a reference in section 119 or 120 of the Act to the minimum standards imposed by the regulations includes a reference to any minimum standards listed on the State Heritage Register in relation to a ruin or moveable object, and

(c) a reference in section 121 of the Act to a building or work the subject of an order under section 120 of the Act includes a reference to a ruin the subject of an order under that section.

Division 3 – Inspections

19 Owner to arrange inspections

(1) The owner of a building or work (other than a ruin) or a relic must, in accordance with this Division, arrange for the building, work or relic, and its curtilage or site, to 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 Division 1.

(2) The owner of a ruin or moveable object must, in accordance with this Division, arrange for the ruin or moveable object, and its curtilage or site, to be inspected to identify maintenance and repairs that are needed to ensure compliance with section 119 of the Act in respect of the standards imposed in accordance with Division 2.

(3) An inspection must be carried out:

- (a) in the case of the standards set out in clauses 10-14--at least once every 12 months, and
- (b) in the case of the standards set out in clause 15--at least once every 3 years, and
- (c) in the case of standards imposed in accordance with Division 2--within the time period (if any) specified in the relevant listing, and
- (d) in any case--whenever reasonably requested by the Heritage Council.

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.

(4) The inspection is to be carried out by a person with expertise and experience appropriate to the nature of the item concerned.

(5) 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.

(6) 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.

20 Inspection reports

(1) An owner must provide the Heritage Council with an inspection report within 2 months from the date of an inspection if the Heritage Council notifies the owner that such a report is required before the inspection is carried out.

(2) In this clause, an "**inspection report**" means a report that:

- (a) includes details of any problems, faults or other matters that have been identified during the inspection to which the report relates and that give rise to a requirement to carry out maintenance and repair work (in order to meet the relevant minimum standards), and
- (b) includes details of the type of work that is required to meet the relevant minimum standards in relation to any such problem, fault or other matter, and
- (c) is prepared and signed by the person who carried out the inspection to which the report relates.

Part 4 – Miscellaneous

21 Time period for review of recommendation for listing

For the purposes of section 34 (1A) of the Act, the time period within which the Planning Assessment Commission is to conduct its review and provide a report to the Minister is 3 months.

22 Items to be included in Heritage and Conservation Registers

(1) The following classes of items of the environmental heritage are prescribed for the purposes of section 170 (4) (a) of the Act:

- (a) items that are listed as heritage items under an environmental planning instrument made under the *Environmental Planning and Assessment Act 1979*,
- (b) items that are subject to an interim heritage order,
- (c) items that are listed on the State Heritage Register,
- (d) items identified by the government instrumentality concerned as having State heritage significance.

(2) A government instrumentality must, for the purposes of identifying an item under subclause (1) (d), have regard to the criteria approved by the Minister under section 4A of the Act for the making of decisions as to whether or not an item is of State heritage

significance.

(3) An entry in a Heritage and Conservation Register of a government instrumentality relating to an item of a class referred to in subclause (1) (a) or (b) must include the item's name, location and the name of the local government area in which it is situated.

(4) An entry in a Heritage and Conservation Register of a government instrumentality relating to an item of a class referred to in subclause (1) (c) or (d) must be in the form approved by the Director-General of the Department of Premier and Cabinet (or a delegate of the Director-General).

23 Saving

Any act, matter or thing that, immediately before the repeal of the *Heritage Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Form

(Clause 6)

Form 1 – Certificate of authority

Certificate of authority

(*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.

Minister for Heritage

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Heritage Regulation 2012 (401)*. LW 24.8.2012 Date of commencement, 1.9.2012, cl 2. This Regulation has been amended as follows:

2018	No 25	<i>Statute Law (Miscellaneous Provisions) Act 2018</i> . Assented to 15.6.2018. Date of commencement of Sch 2, 1.8.2018, sec 2 (3).
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Table of amendments

Cl 17	Am 2018 No 25, Sch 2.14 [1] [2].
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