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SPECIAL SUPPLEMENT

HERITAGE ACT, 1977

Order Under Section 57(2) of the Heritage Act, 1977

I, the Minister for Planning, pursuant to section 57(2) of the Heritage Act 1977, on the recommendation of the Heritage Council of New South Wales, do by this Order:

1. revoke the Schedule of Exemptions to subsection 57(1) of the Heritage Act made under subsection 57(2) and published in the Government Gazette on 7 March 2003, 18 June 2004 and 8 July 2005; and
2. grant standard exemptions from section 57(1) of the Heritage Act 1977, described in the Schedule below.

FRANK SARTOR, M.P.,
Minister for Planning

Sydney, 25 March 2006.

SCHEDULE OF EXEMPTIONS TO SUBSECTION 57(1) OF THE HERITAGE ACT 1977 MADE UNDER SUBSECTION 57(2)

GENERAL CONDITIONS

1. These general conditions apply to all of the following Exemptions.
2. Anything done pursuant to the following Exemptions must be carried out in accordance with relevant Guidelines issued by the NSW Heritage Office including "The Maintenance of Heritage Assets: A Practical Guide" 1998, "Movable Heritage Principles" 2000 and "The Heritage Council Policy on Managing Change to Heritage Items".
3. The following Standard Exemptions do not apply to anything affecting relics, places, items or sites of heritage significance to Aboriginal people or which affect traditional access by Aboriginal people.
4. The Executive Director, Director and Principal Heritage Officers employed by the Heritage Office, Department of Planning; the Executive Director, Tenant and Asset Management Services, employed by the Sydney Harbour Foreshore Authority; the Executive Director Cultural Heritage employed by the Department of Environment and Conservation; and the Director of Planning employed by the Sydney City Council may perform any of the functions of the Director-General of the Department of Planning (Director-General) under these exemptions.

The authorisation to the Executive Director, Tenant and Asset Management Services of the Sydney Harbour Foreshore Authority is restricted to land for which it is the delegated approval body under section 169 of the Heritage Act, and the preparation and submission of information required to demonstrate that compliance with the criteria contained in these exemptions is satisfied, must not be carried out by the Executive Director, Tenant and Asset Management Services.

The authorisation to the Executive Director Cultural Heritage of the Department of Environment and Conservation is restricted to land for which it is the delegated approval body under section 169 of the Heritage Act, and the preparation and submission of information required to demonstrate that compliance with the criteria contained in these exemptions is satisfied, must not be carried out by the Executive Director Cultural Heritage.

The authorisation to the Director of Planning, Sydney City Council is restricted to land for which the Council is the delegated approval body under section 169 of the Heritage Act, and the preparation and submission of information required to demonstrate that compliance with the criteria contained in these exemptions is satisfied, must not be carried out by the Director of Planning, Sydney City Council.

5. In these Exemptions, words shall be given the same meaning as in the Heritage Act 1977 (“the Act”) unless the contrary intention appears from the context of the exemption.
6. Anything done pursuant to the following Exemptions must be specified, supervised and carried out by people with knowledge, skills and experience appropriate to the work.

STANDARD EXEMPTION 1: MAINTENANCE AND CLEANING

1. The following maintenance and cleaning does not require approval under s. 57(1) of the Act:
 - (a) the maintenance of an item to retain its condition or operation without the removal of or damage to the existing fabric or the introduction of new materials;
 - (b) cleaning including the removal of surface deposits, organic growths or graffiti by the use of low pressure water (less than 100 psi at the surface being cleaned) and neutral detergents and mild brushing and scrubbing.

NOTE 1: Traditional finishes such as oils and waxes must continue to be used for timber surfaces rather than modern alternative protective coatings such as polyurethane or acrylic which may seal the surface and can cause damage.

NOTE 2: Surface patina which has developed on the fabric may be an important part of the item’s significance and if so needs to be preserved during maintenance and cleaning.

STANDARD EXEMPTION 2: REPAIRS

1. Repair to an item which is of the type described in (a) or (b) below does not require approval under s. 57(1) of the Act:
 - (a) the replacement of services such as cabling, plumbing, wiring and fire services that uses existing service routes, cavities or voids or replaces existing surface mounted services and does not involve damage to or the removal of significant fabric;
 - (b) the repair (such as refixing and patching) or the replacement of missing, damaged or deteriorated fabric that is beyond further maintenance, which matches the existing fabric in appearance, material and method of affixing and does not involve damage to or the removal of significant fabric.

NOTE 1: Repairs must be based on the principle of doing as little as possible and only as much as is necessary to retain and protect the element. Therefore replacement must only occur as a last resort where the major part of an element has decayed beyond further maintenance.

NOTE 2: Any new materials used for repair must not exacerbate the decay of existing fabric due to chemical incompatibility, obscure existing fabric or limit access to existing fabric for future maintenance.

NOTE 3: Repair must maximise protection and retention of fabric and include the conservation of existing detailing, such as vents, capping, chimneys, carving, decoration or glazing.

STANDARD EXEMPTION 3: PAINTING

1. Painting does not require approval under s. 57(1) of the Act if the painting:
 - (a) does not involve the disturbance or removal of earlier paint layers other than that which has failed by chalking, flaking, peeling or blistering;
 - (b) involves over-coating with an appropriate surface as an isolating layer to provide a means of protection for significant earlier layers or to provide a stable basis for repainting; and
 - (c) employs the same colour scheme and paint type as an earlier scheme if they are appropriate to the substrate and do not endanger the survival of earlier paint layers.
2. Painting which employs a different colour scheme and paint type from an earlier scheme does not require approval under s. 57(1) of the Act, provided that:
 - (a) the Director-General is satisfied that the proposed colour scheme, paint type, details of surface preparation and paint removal will not adversely affect the heritage significance of the item; and

- (b) the person proposing to undertake the painting has received a notice advising that the Director-General is satisfied.
3. A person proposing to undertake repainting of the kind described in paragraph 2 must write to the Director-General and describe the proposed colour scheme, paint type, details of surface preparation and paint removal involved in the repainting. If the Director-General is satisfied that the proposed development meets the criteria set out in paragraph 2(a) the Director-General shall notify the applicant.

NOTE: Preference should be given to the re-establishment of historically significant paint schemes of the item that are appropriate to the significance of the building.

STANDARD EXEMPTION 4: EXCAVATION

1. Excavation or disturbance of land of the kind specified below does not require approval under s. 57(1) of the Act, provided that the Director-General is satisfied that the criteria in (a), (b) or (c) have been met and the person proposing to undertake the excavation or disturbance of land has received a notice advising that the Director-General is satisfied:
- (a) where an archaeological assessment has been prepared in accordance with Guidelines published by the Heritage Council of NSW which indicates that any relics in the land are unlikely to have State or local heritage significance; or
 - (b) where the excavation or disturbance of land will have a minor impact on archaeological relics; or
 - (c) where the excavation or disturbance of land involves only the removal of unstratified fill which has been deposited on the land.
2. A person proposing to excavate or disturb land in the manner described in paragraph 1 must write to the Director-General and describe the proposed excavation or disturbance of land and set out why it satisfies the criteria set out in paragraph 1. If the Director-General is satisfied that the proposed development meets the criteria set out in paragraph (a), (b) or (c) the Director-General shall notify the applicant.

NOTE 1: Any excavation with the potential to affect Aboriginal objects must be referred to the Director-General of the Department of Environment and Conservation.

NOTE 2: If any Aboriginal objects are discovered on the site, excavation or disturbance is to cease and the Department of Environment and Conservation is to be informed in accordance with s. 91 of the National Parks and Wildlife Act, 1974.

NOTE 3: This exemption does not allow the removal of State significant relics.

NOTE 4: Where substantial intact archaeological relics of State or local significance, not identified in the archaeological assessment or statement required by this exemption, are unexpectedly discovered during excavation, work must cease in the affected area and the Heritage Office must be notified in writing in accordance with s. 146 of the Act. Depending on the nature of the discovery, additional assessment and possibly an excavation permit may be required prior to the recommencement of excavation in the affected area.

STANDARD EXEMPTION 5: RESTORATION

1. Restoration of an item by returning significant fabric to a known earlier location without the introduction of new material does not require approval under s. 57(1) of the Act.
2. The following restoration does not require approval under s. 57(1) of the Act, provided that the Director-General is satisfied that the criteria in (a) have been met and the person proposing to undertake the restoration has received a notice advising that the Director-General is satisfied:
- (a) the restoration of an item without the introduction of new material (except for fixings) to reveal a known earlier configuration by removing accretions or reassembling existing components which does not adversely affect the heritage significance of the item.
3. A person proposing to undertake restoration of the kind described in paragraph 2 must write to the Director-General and set out why there is a need for restoration to be undertaken and the proposed material and method of restoration. If the Director-General is satisfied that the proposed development meets the criteria set out in paragraph 2(a), the Director-General shall notify the applicant.

STANDARD EXEMPTION 6: DEVELOPMENT ENDORSED BY THE HERITAGE COUNCIL OR DIRECTOR-GENERAL

1. Minor development specifically identified as exempt development which does not materially impact on heritage significance, by a conservation policy or strategy within a conservation management plan which has been endorsed by the Heritage Council of NSW or by a conservation management strategy endorsed by the Director-General does not require approval under s. 57(1) of the Act.

2. A person proposing to do anything of the kind described in paragraph 1 must write to the Director-General and describe the proposed development. If the Director-General is satisfied that the proposed development meets the criteria set out in paragraph 1, the Director-General shall notify the applicant.

STANDARD EXEMPTION 7: MINOR ACTIVITIES WITH NO ADVERSE IMPACT ON HERITAGE SIGNIFICANCE

1. Anything which in the opinion of the Director-General is of a minor nature and will not adversely affect the heritage significance of the item does not require approval under s. 57(1) of the Act.
2. A person proposing to do anything of the kind described in paragraph 1 must write to the Director-General and describe the proposed activity. If the Director-General is satisfied that the proposed activity meets the criteria set out in paragraph 1, the Director-General shall notify the applicant.

STANDARD EXEMPTION 8: NON-SIGNIFICANT FABRIC

1. The following development does not require approval under s. 57(1) of the Act, provided that the Director-General is satisfied that the criteria in (a) have been met and the person proposing to undertake the development has received a notice advising that the Director-General is satisfied:
 - (a) the alteration of a building involving the construction or installation of new fabric or services or the removal of building fabric which will not adversely affect the heritage significance of the item.
2. A person proposing to do anything of the kind described in paragraph 1 must write to the Director-General and describe the proposed development. If the Director-General is satisfied that the proposed development meets the criteria set out in paragraph 1(a), the Director-General shall notify the applicant.

STANDARD EXEMPTION 9: CHANGE OF USE

1. The change of use of an item or its curtilage or the commencement of an additional or temporary use does not require approval under s. 57(1) of the Act, provided that the Director-General is satisfied that the criteria in (a) and (b) have been met and the person proposing to undertake the change of use has received a notice advising that the Director-General is satisfied:
 - (a) the use does not involve the alteration of the fabric, layout or setting of the item or the carrying out of development other than that permitted by other standard or site specific exemptions; and
 - (b) the use does not involve the cessation of the primary use for which the building was erected, a later significant use or the loss of significant associations with the item by current users;
2. A person proposing to change the use of an item or its curtilage or to commence an additional or temporary use of an item or its curtilage in the manner described in paragraph 1 must write to the Director-General and describe the changes proposed. If the Director-General is satisfied that the proposed development meets the criteria set out in paragraph 1(a) and (b), the Director-General shall notify the applicant.

STANDARD EXEMPTION 10: NEW BUILDINGS

1. Subdivision under the Strata Scheme (Freehold Development) Act or Strata Scheme (Leasehold Development) Act of the interior of a building that has been constructed since the listing of the item on the State Heritage Register or the publication of an interim heritage order in the Gazette which applies to the land does not require approval under s. 57(1) of the Act.
2. Alteration to the interior of a building which has been constructed since the listing of the item on the State Heritage Register or the publication of an interim heritage order in the Gazette which applies to the land does not require approval under s. 57(1) of the Act.

STANDARD EXEMPTION 11: TEMPORARY STRUCTURES

1. The erection of temporary structures does not require approval under s. 57(1) of the Act, provided that the Director-General is satisfied that the criteria in (a) and (b) have been met and the person proposing to erect the structure has received a notice advising that the Director-General is satisfied:
 - (a) the structure will be erected within and used for a maximum period of 4 weeks after which it will be removed within a period of 2 days and not erected again within a period of 6 months; and
 - (b) the structure is not to be located where it could damage or endanger significant fabric including landscape or archaeological features of its curtilage or obstruct significant views of and from heritage items.

2. A person proposing to erect a structure of the kind described in paragraph 1 must write to the Director-General and set out the nature of the structure, the use for the structure and how long it will remain in place and the next occasion on which it is anticipated that the structure will be erected. If the Director-General is satisfied that the proposed development meets the criteria set out in paragraphs 1(a) and 1(b) the Director-General shall notify the applicant.

STANDARD EXEMPTION 12: LANDSCAPE MAINTENANCE

1. Landscape maintenance which is of the type described below does not require approval under s. 57(1) of the Act:
 - (a) weeding, watering, mowing, top-dressing, pest control and fertilizing necessary for the continued health of plants, without damage or major alterations to layout, contours, plant species or other significant landscape features;
 - (b) pruning to control size, improve shape, flowering or fruiting and the removal of diseased, dead or dangerous material, not exceeding 20% of the crown of a tree within a period of 2 years; or
 - (c) tree surgery by a qualified horticulturist or tree surgeon necessary for the health of those plants.

NOTE 1: In relation to cemeteries, landscape features include monuments, grave markers, grave surrounds, fencing, path edging and the like.

STANDARD EXEMPTION 13: SIGNAGE

1. The erection of signage which is of the types described in (a) or (b) below does not require approval under s. 57(1) of the Act:
 - (a) temporary signage which is located behind or on the glass surface of a shop window which is not internally illuminated or flashing and is to be removed within eight weeks; or
 - (b) a real estate sign indicating that the place is for auction, sale or letting and related particulars and which is removed within 10 days of the sale or letting of the place;
2. The erection of signage which is of the types described in (a) or (b) below does not require approval under s. 57(1) of the Act, provided that the Director-General is satisfied that the criteria in (a) and (b) respectively have been met and the person proposing to erect it has received a notice advising that the Director-General is satisfied:
 - (a) the erection of non-illuminated signage for the sole purpose of providing information to assist in the interpretation of the heritage significance of the item and which will not adversely affect significant fabric including landscape or archaeological features of its curtilage or obstruct significant views of and from heritage items; or
 - (b) signage which is in the form of a flag or banner associated with a building used for a purpose which requires such form of promotion such as a theatre or gallery, which is displayed for a maximum period of eight weeks and which will not adversely affect significant fabric including landscape or archaeological features of its curtilage;
3. A person proposing to erect signage of the kind described in paragraph 2 must write to the Director-General and describe the nature and purpose of the advertising or signage. If the Director-General is satisfied that the proposed development meets the criteria set out in paragraph 2(a) or 2(b), the Director-General shall notify the applicant.
4. Signage of the kind described in paragraphs 1 and 2 must:
 - (a) not conceal or involve the removal of signage which has an integral relationship with the significance of the item;
 - (b) be located and be of a suitable size so as not to obscure or damage significant fabric of the item;
 - (c) be able to be later removed without causing damage to the significant fabric of the item; and
 - (d) reuse existing fixing points or insert fixings within existing joints without damage to adjacent masonry.

STANDARD EXEMPTION 14: BURIAL SITES AND CEMETERIES

1. Development on land within a burial site or cemetery which is of the type described in (a), (b) or (c) below does not require approval under s. 57(1) of the Act:
 - (a) the creation of a new grave;
 - (b) the erection of monuments or grave markers in a place of consistent character, including materials, size and form, which will not be in conflict with the character of the place; or
 - (c) an excavation or disturbance of land for the purpose of carrying out conservation or repair of monuments or grave markers;

provided that there will be no disturbance to human remains, to relics in the form of grave goods, associated landscape features or to a place of Aboriginal heritage significance.

2. A person proposing to carry out development in the manner described in paragraph 1(b) or (c) must write to the Director-General and describe the development proposed. If the Director-General is satisfied that the proposed development meets the criteria set out in paragraph 1, the Director-General shall notify the applicant.
3. This exemption does not apply to the erection of above-ground chambers, columbaria or vaults, or the designation of additional areas to be used as a burial place.

NOTE 1: Other standard exemptions apply to the maintenance, cleaning and repair of burial sites and cemeteries.

STANDARD EXEMPTION 15: COMPLIANCE WITH MINIMUM STANDARDS AND ORDERS

1. Development which is required for the purpose of compliance with the minimum standards set out in Part 3 of the Heritage Regulation 1999 or an order issued under either:
 - (a) section 120 of the Heritage Act 1977 regarding minimum standards of maintenance and repair; or
 - (b) section 121S of the Environmental Planning and Assessment Act 1979 regarding an order which is consistent with a submission by the Heritage Council under section 121S(6) of that Act;does not require approval under s. 57(1) of the Act.

STANDARD EXEMPTION 16: SAFETY AND SECURITY

1. The following development does not require approval under s. 57(1) of the Act, provided that the Director-General is satisfied that the criteria in (a) or (b) have been met and the person proposing to undertake the development has received a notice advising that the Director-General is satisfied:
 - (a) the erection of temporary security fencing, scaffolding, hoardings or surveillance systems to prevent unauthorised access or secure public safety which will not adversely affect significant fabric of the item including landscape or archaeological features of its curtilage; or
 - (b) development, including emergency stabilisation, necessary to secure safety where a building or part of a building has been irreparably damaged or destabilised and poses a safety risk to its users or the public.
2. A person proposing to undertake development of the kind described in paragraph 1 must write to the Director-General and describe the development and, if it is of the kind set out in 1(b), provide certification from a structural engineer having experience with heritage items confirming the necessity for the development with regard to the criteria set out in 1(b) and any adverse impact on significant fabric. If the Director-General is satisfied that the proposed development meets the criteria set out in paragraph 1(a) or (b), the Director-General shall notify the applicant.

STANDARD EXEMPTION 17: MOVABLE HERITAGE ITEMS

1. The temporary relocation of movable heritage items, including contents, fixtures and objects, to ensure their security, maintenance and preservation, for conservation or exhibition, to ensure health or safety, the need for a controlled environment for those heritage items, or to protect the place, and which are to be returned to their present location within six months, does not require approval under s. 57(1) of the Act.
2. A person proposing to relocate a movable heritage item as set out in paragraph 1 must advise the Director-General in writing of the proposed location and the reasons for its relocation. If the Director-General is satisfied that the temporary relocation meets the criteria set out in paragraph 1 the Director-General shall notify the applicant.

HERITAGE ACT 1977

Notice of Order Under Section 139(4)

I, Chair of the Heritage Council of New South Wales, pursuant to section 139(4) of the Heritage Act 1977, in accordance with the resolution of the Heritage Council of New South Wales, do by this Order, revoke the exceptions to subsections 139(1) and (2) of the Heritage Act 1977 published in the Government Gazette on 22 July 2005 and create exceptions to subsections 139(1) and (2) of the Heritage Act 1977, described in the Schedule below.

MICHAEL COLLINS,
Chair, Heritage Council of New South Wales

Sydney, 4 April 2006.

SCHEDULE

1. Excavation or disturbance of land of the kind specified below does not require an excavation permit under s. 139 of the Heritage Act, provided that the Director-General of the Department of Planning (the Director-General) is satisfied that the criteria in (a), (b) or (c) have been met and the person proposing to undertake the excavation or disturbance of land has received a notice advising that the Director-General is satisfied:
 - (a) where an archaeological assessment has been prepared in accordance with Guidelines published by the Heritage Council of NSW which indicates that any relics in the land are unlikely to have State or local heritage significance; or
 - (b) where the excavation or disturbance of land will have a minor impact on archaeological relics; or
 - (c) where the excavation or disturbance of land involves only the removal of unstratified fill which has been deposited on the land.

2. A person proposing to excavate or disturb land in the manner described in paragraph 1 must write to the Director-General and describe the proposed excavation or disturbance of land and set out why it satisfies the criteria set out in paragraph 1. If the Director-General is satisfied that the proposed development meets the criteria set out in paragraph (a), (b) or (c) the Director-General shall notify the applicant.

3. The Executive Director, Director, and Principal Heritage Officers employed by the Heritage Office, Department of Planning; the Executive Director, Tenant and Asset Management Services employed by the Sydney Harbour Foreshore Authority; and the Executive Director Cultural Heritage employed by the Department of Environment and Conservation may perform any of the functions of the Director-General under this exception.

The authorisation to the Executive Director, Tenant and Asset Management Services of the Sydney Harbour Foreshore Authority is restricted to land for which the Sydney Harbour Foreshore Authority is the delegated approval body under section 169 of the Heritage Act, and the preparation and submission of information required to demonstrate that compliance with the criteria contained in this exception is satisfied, must not be carried out by the Executive Director, Tenant and Asset Management Services.

The authorisation to the Executive Director Cultural Heritage of the Department of Environment and Conservation is restricted to land for which the Department of Environment and Conservation is the delegated approval body under section 169 of the Heritage Act, and the preparation and submission of information required to demonstrate that compliance with the criteria contained in this exception is satisfied, must not be carried out by the Executive Director Cultural Heritage.

NOTE 1: Any excavation with the potential to affect Aboriginal objects should be referred to the Director-General of the Department of Environment and Conservation.

NOTE 2: If any Aboriginal objects are discovered on the site, excavation or disturbance is to cease and the Department of Environment and Conservation is to be informed in accordance with s. 91 of the National Parks and Wildlife Act, 1974.

NOTE 3: This exception does not allow the removal of State significant relics.

NOTE 4: Where substantial intact archaeological relics of State or local significance, not identified in the archaeological assessment or statement required by this exception, are unexpectedly discovered during excavation, work must cease in the affected area and the Heritage Office must be notified in writing in accordance with s. 146 of the Act. Depending on the nature of the discovery, additional assessment and possibly an excavation permit may be required prior to the recommencement of excavation in the affected area.

NOTE 5: Anything done pursuant to this exception must be specified, supervised and carried out by people with knowledge, skills and experience appropriate to the work.

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