



Government Gazette

of the State of

New South Wales

Number 650–Planning and Heritage

Friday, 17 December 2021

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HERITAGE ACT 1977

Notice of Order Under Section 139(4) of the *Heritage Act 1977*

I, Frank Howarth, Chair of the Heritage Council of New South Wales, pursuant to subsection 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 all previous exceptions to subsections 139(1) and (2) of the *Heritage Act 1977* granted to Sydney Water Corporation. This includes exceptions published in the *New South Wales Government Gazette* on 21 December 2007.

I, Chair of the Heritage Council of New South Wales, in pursuance of section 139(4) of the *Heritage Act 1977*, do by this my order, create exceptions from the date of this Order to subsections (1) and (2) of section 139 of that Act, in respect of the engaging in or carrying out by Sydney Water Corporation, any of activities described in Schedule A in relation to relics owned or controlled by Sydney Water Corporation, subject to the relevant standards in Schedule B.

Frank Howarth

Chair, Heritage Council of New South Wales

Date:

Schedule A

1. Interpretation:

- a) Words and expressions that occur in this order have the same meanings as they do in the *Heritage Act 1977* (the Act), except in so far as the context or subject matter otherwise indicates or requires or as otherwise defined in clause 1(c).
- b) A reference to an Act includes any regulations or rules or instruments made under that Act.
- c) The following definitions apply:
 - i **Aboriginal object** has the meaning given by section 5 of the *National Parks and Wildlife Act 1974*;
 - ii **Archaeological significance** means as described in the *Assessing Significance for Historical Archaeological Sites and 'Relics' 2009* (as amended from time to time);
 - iii **Conservation management strategy** means a shorter version of a conservation management plan, providing a broad overview of conservation approaches and management guidance and is prepared in accordance with *Conservation Management Strategy (CMS) Part 1: Investigation and Assessment sections and Part 2: conservation policy and management sections 2002* (as amended from time to time).
 - iv **Heritage Act** means the *Heritage Act 1977*;
 - v **SWS** means Sydney Water Corporation ABN 49 776 225 038.

2. Exceptions:

The following specified activities/works being carried out by or engaged in by SWC in relation to the excavation or disturbance of land does not require an excavation permit under section 139 of the *Heritage Act 1977* if the specified activities/works are undertaken in accordance with each of the relevant standard(s) prescribed below.

EXCEPTION 1. EMERGENCY AND/OR PREVENTING IMMINENT SERIOUS DAMAGE

Specified activities/works:

- (a) Excavation or disturbance of land to carry out specified activities/works that are solely for the purpose of:
 - i. Saving or protecting human life under imminent threat in an emergency.
 - ii. Dealing with an emergency involving serious threat to the environment.
 - iii. Preventing imminent serious damage to property or any heritage item in an emergency.

Relevant standards:

- (b) The activities/works must have been immediately necessary for the identified purposes.¹
- (c) The activities/works were reasonable and justifiable in the circumstances.
- (d) The activities/works are proportionate to the damage the item has suffered and to the risk of further damage.
- (e) The effects of the activities/ works must be adequately mitigated or remedied.

EXCEPTION 2: SIGNAGE INSTALLATION

Specified activities/works:

- (a) Excavation or disturbance of land that is for the purpose of installing or relocation of signage for:
 - i. safety,
 - ii. interpretation,
 - iii. wayfinding and/or
 - iv. other relevant signs/labels.

Relevant standards:

- (b) Excavation or disturbance must only occur where the activity occurs totally within an area of previous disturbance and outside of areas assessed as having archaeological significance.
- (c) Installing or relocating signs is for the sole purpose of providing security, safety, interpolation, wayfinding or similar relevant information.
- (d) The signs must not be for commercial or advertising purposes.

EXCEPTION 3: FACILITIES FOR DISABLED ACCESS

Specified activities/works:

- (a) Excavation or disturbance of land that is for the purpose of providing facilities for access for people with disabilities consistent with the obligations of public authorities.

Relevant standard:

- (b) Excavation or disturbance must only occur where the activity occurs totally within an area of previous disturbance and outside of areas assessed as having archaeological significance.

¹ Incidents likely to cause serious damage and require actions necessary to save or protect life could include: an uncontrolled escape, spillage or leakage of a substance, an uncontrolled implosion, explosion or fire, an uncontrolled escape of gas or steam, an uncontrolled escape of a pressurised substance, exposed live electrical parts, fall or release from a height of any plant, substance or thing, the collapse, overturning, failure or malfunction of, or damage to any plant that is required to be designed or registered (for example a collapsing crane), the collapse or partial collapse of a structure, the collapse or failure of an excavation or of any shoring supporting an excavation, the inrush of water, mud or gas. <https://www.safeworkaustralia.gov.au/doc/incident-notification-fact-sheet>

EXCEPTION 4: VEGETATION AND ANIMAL MANAGEMENT

- (a) Excavation or disturbance of land that is for the purpose of:
- i. revegetation,
 - ii. controlling weeds and/or animals and/or
 - iii. undertaking routine horticultural maintenance.

Relevant standards:

- (b) Excavation or disturbance must only occur where work areas assessed as having no archaeological significance.
- (c) Removal of diseased, dead, dying or dangerous trees and/or plant material must not disturb relics i.e. through stump grinding or removal of tree boles. In these types of situations stumps and tree boles should be left in place.

EXCEPTION 5: ROAD/PATHWAY MAINTENANCE

Specified activities/works:

- (a) Excavation or disturbance of land for the purpose of maintaining, repairing, resurfacing existing roads and pathways with similar materials.

Relevant standard:

- (b) Like for like materials must be used, and no modification to the dimensions of the road or the alignment of the road or pathway is permitted.
- (c) Re-surfacing must not disturb significant road or pathway surfaces, kerb or guttering which may lie underneath.

EXCEPTION 6: REPLACING SERVICES/INFRASTRUCTURE

Specified activities/works:

- (a) Excavation or disturbance of land that is for the purpose of replacing conduits, cables, services and/or pipes.

Relevant standard:

- (b) Excavation or disturbance must only occur where the activity occurs totally within existing trenches or areas of previous disturbance and outside of areas assessed as having archaeological significance.

EXCEPTION 7: MINOR EXCAVATION WORKS

Specified activities/works:

- (a) Minor excavation within known fill layers for maintenance purposes, including weed control and revegetation.

Relevant standard:

- (b) Excavation or disturbance must only occur where fill layers are confirmed to exist through prior archaeological assessment and the fill layers have no archaeological significance.

EXCEPTION 8: BORE HOLES AND TEST PITS

Specified activities/works:

- (a) Bore-holing, up to a diameter of 300mm.

Relevant standards:

- (b) Bore-holing is only permitted up to a diameter of 300mm.
- (c) Bore-holing must occur totally within an area of previous disturbance and outside of areas assessed as having archaeological significance.

Specified activities/works:

- (d) Test pits that are no greater than 500mm x 500mm.

Relevant standards:

- (e) Test pits must be no greater than 500mm x 500mm.
- (f) Test pits must occur totally within an area of previous disturbance and outside of areas assessed as having archaeological significance.

EXCEPTION 9: REMOVAL OF CONTAMINATED SOILS

Specified activities/works:

- (a) Removing of contaminated soils.

Relevant standard:

- (b) Where environmental assessment is required under Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW) in relation to the removal of contaminated soils, the assessment must be undertaken prior to commencing any work to remove the contaminated soils.

EXCEPTION 10: STOCKPILES AND MAINTAINING/REPAIRING INFRASTRUCTURE/ASSETS

Specified activities/works:

- (a) Excavation or disturbance of land for the purpose of:
 - i creating temporary stockpiles; and/or
 - ii exposing, inspecting, testing, replacing, installing, maintaining and/or repairing Sydney Water infrastructure and assets (including dams and fences) and/or survey markers.

Relevant standards:

- (b) Excavation or disturbance of land is only permissible within existing trenches, or within an area of previous disturbance.
- (c) Excavation or disturbance of land is not permitted in areas assessed as having archaeological significance.

EXCEPTION 11: DIRECTIONAL DRILLING

Specified activities/works:

- (a) Directional drilling (micro tunnelling) through strata below the layer of archaeological significance.

Relevant standard:

- (b) Directional drilling may only be done where the launch and exit pits have been positioned in areas assessed as having no archaeological significance, in existing trenches or areas of previous disturbance. Only applicable where the previous disturbance extends to the depths required for each pit.

3. General Conditions:

1. These general conditions apply to **all** of the exceptions described in clause 2 of Schedule A.
2. These exceptions are to be applied in relation to activities/works engaged in or being carried out by SWC as described in Schedule A in relation to relics owned or controlled by SWC.
3. SWC is responsible for ensuring that any activities/works undertaken by them meet all the Relevant standards and have all necessary approvals.
4. The exceptions do not apply to excavation associated with historic shipwrecks.
5. These exceptions do not permit relics to be damaged, destroyed or removed except in the case of an emergency, as outline in Schedule A Exception 1.
6. These exceptions do not permit harm to Aboriginal objects.

7. Activities/works that do not fit strictly within the exceptions described in clauses 2 and 3 of Schedule A or the Standards Exceptions will require approval by way of an excavation permit application under section 139 of the *Heritage Act 1977*.
8. Anything done under these exceptions must be supervised and carried out by people with knowledge, skills and experience appropriate to the work (some exceptions require suitably qualified and experienced professional advice/work).
9. Any excavation or disturbance which SWC knows, or has reasonable cause to suspect, will, or is likely to result in relics not owned or controlled by SWC being discovered, moved, damaged or destroyed is not permitted.
10. Any excavation or disturbance on land where that land has not been the subject of an appropriate environmental and archaeological assessment prepared by a suitably qualified and experienced historic archaeologist is not permitted unless for emergency works as described in clause 2 of Schedule A.
11. Works must not affect archaeological evidence, for example the archaeology of foundation trench deposits from the time of original construction, unless for emergency works as described in clause 2 of Schedule A.
12. Excavation or disturbance of land must not compromise the structural integrity of any structure listed on the State Heritage Register (SHR) or subject to an Interim Heritage Order, including significant landscape elements, as identified in a SHR listing, statement of significance, conservation management plan and/or conservation management strategy.
13. With regard to excavation or disturbance of land, areas of previous disturbance must extend to the depths required for the activity/works.
14. The *Historical Archaeology Code of Practice* 2006 (as amended from time to time), *Archaeological Assessment Guidelines* 1996 (as amended from time to time), *Assessing Significance for Historical Archaeological Sites and 'Relics'* 2009 (as amended from time to time) and the *Historical Archaeological Sites - Investigation and Conservation Guidelines* 1993 (as amended from time to time), must be complied with when undertaking any activities/works described in Schedule A.