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## **NSW HERITAGE ACT 1977**

### Consent to Delegations

I, James Griffin MP, Minister for Environment and Heritage, pursuant to section 169(3) and section 21 of the *Heritage Act 1977* (the Act), on the recommendation of the Heritage Council of New South Wales (Heritage Council) give consent for the Heritage Council to:

- a) **revoke** all previous delegations made by the Heritage Council to Place Management NSW dated 23 January 2017 titled 'Instrument of Delegation of Functions of the Heritage Council Heritage Act 1977'
- b) **delegate** the Heritage Council's statutory functions set out in column 1 and described in column 2 of Schedule A below to the persons in the delegate level or levels specified in column 4 of Schedule A, subject to the limitations in column 3 of Schedule A and the general conditions in Schedule B (as amended from time to time).

### **Power under which this Instrument is made**

This instrument is made under section 169(3) and section 21 of the Act.

The Hon. James Griffin MP  
**Minister for Environment and Heritage**  
**Date: 1 September 2022**

## **NSW HERITAGE ACT 1977**

### Delegation of Functions of Heritage Council of NSW

I, Robyn Parker, Deputy Chairperson of the Heritage Council of NSW, in accordance with resolutions of the Heritage Council of 1 December 2021 do by this instrument:

- a) **revoke** all previous delegations made by the Heritage Council to Place Management NSW dated 23 January 2017, titled 'Instrument of Delegation of Functions of the Heritage Council Heritage Act 1977'
- b) **delegate** the Heritage Council's statutory functions set out in column 1 and described in column 2 of Schedule A below to the persons in the delegate level or levels specified in column 4 of Schedule A, subject to the conditions and limitations in column 3 of Schedule A and the general limitations in Schedule B (as amended from time to time).

#### **Power under which this delegation is made**

This delegation is made under section 169(3) and section 21 of the *NSW Heritage Act 1977*.

#### **Commencement**

This instrument commences on the date on which the Minister gives consent pursuant to section 169(3), on the recommendation of the Heritage Council under section 21.

The Hon. Robyn Parker  
**A/Chairperson, Heritage Council of New South Wales**  
**Date: 25 August 2022**

## Definitions and Abbreviations

### In this instrument:

- (a) A reference to an Act includes any regulations or rules or instruments made under that Act;
- (b) **Approval** has the same meaning as the term in section 4, *Heritage Act 1977*;
- (c) **Approval body** has the same meaning as the term in section 56, *Heritage Act 1977*;
- (d) **Archaeological Significance** means as described in the *Assessing Significance for Historical Archaeological Sites and 'Relics'* 2009 (as amended from time to time);
- (e) **CMP** means a 'conservation management plan' as defined under section 38A(3), *Heritage Act 1977*;
- (f) **Functions** has the same meaning as the term in section 4, *Heritage Act 1977*;
- (g) **Grade 11/12** – means the role (in a permanent or acting capacity) of Senior Manager, Heritage/Grade 11/12 or Senior Manager, Archaeology/Grade 11/12 at Place Management NSW (or the equivalent);
- (h) **Heritage Council** means the Heritage Council of NSW constituted under section 7, *Heritage Act 1977*;
- (i) **Heritage Expert** means a person employed by Place Management NSW to provide advice on heritage matters, who has appropriate heritage knowledge, qualifications, skills and experience;
- (j) **Heritage NSW** is a section within the Department of Premier and Cabinet – see clause 17, *Administrative Arrangements (Administrative Changes—Public Service Agencies) Order 2019*;
- (k) **Historic Shipwreck** has the same meaning as the term in section 47, *Heritage Act 1977*;
- (l) **Historical Archaeologist** means a person employment by Place Management NSW to provide advice on archaeological matters, who has appropriate archaeological knowledge, qualifications, skills and experience
- (m) **Item** has the same meaning as the term in section 4, *Heritage Act 1977*;
- (n) **Local heritage significance** has the same meaning as the term in section 4A, *Heritage Act 1977*;
- (o) **Major Development** means development that is likely to reach the material threshold and impact on the significance of an item/site;
- (p) **Material threshold** is described in sections 61(1) and 63(3)(c) of the *Heritage Act 1977*, where there is a 'material effect' that impacts the exercise of a function to give public notice of an application or determine an application for approval;
- (q) **Material Threshold Policy 2020** is a Heritage NSW policy (as amended from time to time);

- (r) **Minor archaeological works** can include activities like archaeological test excavations, trenching for services, and archaeological monitoring, where the affected archaeology is not directly related to the heritage significance of the item or its Statement of Significance. For example, the excavation would only affect peripheral areas of a significant archaeological site or proposed testing to verify the existence of relics would not disturb, destroy or remove State significant relics;
- (s) **Minor archaeological remains** means deposits or relics which are not intact or not extensive because part or all of the site has been previously disturbed with some archaeology already removed, or because the remains are in a peripheral area of a much larger archaeological site;
- (t) **PMNSW** means Place Management NSW ABN 51 437 725 177 being a statutory corporation formed under the *Place Management NSW Act 1998 (NSW)*;
- (u) **Relic** has the same meaning as the term in section 4, *Heritage Act 1977*;
- (v) **Senior Executive Band 1** – means the role (in a permanent or acting capacity) of Director that is responsible for the management of Heritage Experts and Historical Archaeologists within Place Management NSW;
- (w) **SHR** means the ‘State Heritage Register’ as defined in section 4 of the *Heritage Act 1977*;
- (x) **State heritage significance** has the same meaning as the term in section 4, *Heritage Act 1977*.

## Schedule A

### Delegation of Heritage Council Functions

Column 1	Column 2	Column 3	Column 4
Section	Short Description	Limitation	Delegation
s.38A(1)	Endorse conservation management plan (CMP).	<p>The delegate may endorse a CMP for property owned, leased, managed or controlled by PMNSW, provided it has been assessed in accordance with <i>Conservation Management Documents</i> guidelines (as amended from time to time): section 38A(3)(c)</p> <ul style="list-style-type: none"> <li>a) The delegate when endorsing a CMP has regard to the <i>Material Threshold Policy</i>.</li> <li>b) A delegate may only endorse a CMP where no works are proposed by the CMP which could materially affect the State significance of the SHR item.</li> <li>c) This delegation does not apply to CMPs that contain a proposal for major development.</li> </ul>	Senior Executive Band 1 Grade 11/12
s.62 and clause 8B of the <i>Heritage Regulation 2012</i> (NSW)	Approval body may request the applicant provide additional information in order for the approval body to properly consider an application.	<p>The request for additional information:</p> <ul style="list-style-type: none"> <li>a) must be in writing, and</li> <li>b) may specify a reasonable period within which the information must be provided to the approval body, and</li> <li>c) must include the number of days of the assessment period that have elapsed and the effect of clause 8C on the assessment period (clause 8B(2)).</li> </ul>	Senior Executive Band 1 Grade 11/12
s.63	Determine an application made under section 60 for property owned, leased, managed or controlled by PMNSW.	1. The delegate may approve an application for property owned, leased, managed or controlled by PMNSW provided:	Senior Executive Band 1 Grade 11/12

Column 1	Column 2	Column 3	Column 4
Section	Short Description	Limitation	Delegation
		<ul style="list-style-type: none"> <li>a) the application is accompanied by a Statement of Heritage Impact in accordance with the guideline <i>Statements of Heritage Impact 2002</i> (as amended from time to time)</li> <li>b) the application will not materially affect the State heritage significance of the SHR item in accordance with the <i>Material Threshold Policy 2020</i> (as amended from time to time)</li> <li>c) the application is consistent with a CMP endorsed by the Heritage Council or its delegate: section 38A</li> <li>d) the application would not affect an historic shipwreck</li> <li>e) the application would not affect an item of significance to Aboriginal people as identified on the State Heritage Inventory: section 21(1)(e)</li> <li>f) the application would not impact state significant archaeology</li> <li>g) the 'matters of consideration' in section 62 are taken into consideration when determining an application for approval</li> </ul> <p>2. The delegate may determine an application for property owned, leased, managed or controlled by PMNSW for the following classes of works affecting a relic (including an item of archaeological significance):</p>	

Column 1	Column 2	Column 3	Column 4
Section	Short Description	Limitation	Delegation
		<ul style="list-style-type: none"> <li>a) monitoring (meaning where there is an expectation of only minor archaeological remains and supervision is required primarily to record archaeological information)</li> <li>b) test excavation (meaning where small-scale excavation is undertaken on a site to determine the extent and preservation of a larger archaeological resource)</li> <li>c) minor archaeological works.</li> </ul>	
s.65A(1)(a)	Modify approvals to vary any aspect of the original approval issued by PMNSW.	<p>This function can only be exercised for an approval issued by PMNSW:</p> <ol style="list-style-type: none"> <li>1. If the delegate is satisfied that the act, matter or thing authorised by the modified approval is substantially the same as the act, matter or thing authorised by the original approval: section 65A(1)(a) <ul style="list-style-type: none"> <li>a) the delegate when determining the application has regard to the <i>Material Threshold Policy 2020</i> (as amended from time to time)</li> <li>b) the application is accompanied by a Statement of Heritage Impact in accordance with the guideline <i>Statements of Heritage Impact 2002</i> (as amended from time to time)</li> <li>c) the application will not materially affect the State heritage significance of the SHR item in accordance with the <i>Material Threshold Policy</i></li> </ul> </li> </ol>	Senior Executive Band 1 Grade 11/12



Column 1	Column 2	Column 3	Column 4
Section	Short Description	Limitation	Delegation
		<p>2020 (as amended from time to time)</p> <p>d) the application is consistent with a CMP endorsed by the Heritage Council or its delegate: section 38A</p> <p>e) the application would not affect a historic shipwreck</p> <p>f) the application would not affect an item of significance to Aboriginal people as identified on the State Heritage Inventory: section 21(1)(e)</p> <p>g) the application would not impact state significant archaeology</p> <p>h) the 'matters of consideration' in section 62 are taken into consideration when determining an application for approval in respect of a SHR item.</p>	
s.65A(1)(b)	Modify approvals determined by PMNSW to correct a minor error, misdescription or miscalculation.	The delegate may only vary a permit issued by PMNSW.	Senior Executive Band 1 Grade 11/12
s.141(1)	To determine an application made under section 141 for an excavation permit (section 139) for property owned, leased, managed or controlled by PMNSW.	<p>1. The delegate may only exercise these functions for property owned, leased, managed or controlled by PMNSW for the following classes of works affecting relics:</p> <p>a) monitoring (meaning where there is an expectation of minor archaeological remains only and supervision is required primarily to</p>	Senior Executive Band 1 Grade 11/12

Column 1	Column 2	Column 3	Column 4
Section	Short Description	Limitation	Delegation
		<p>record archaeological information);</p> <p>b) test excavation (meaning where small-scale excavation is undertaken on a site to determine the extent and preservation of a larger archaeological resource); and</p> <p>c) minor archaeological works.</p> <p>2. Where excavation is required as part of the proposed works, PMNSW must use an Excavation Director selected using the <i>Heritage Council of NSW Criteria for assessing Excavation Directors 2019</i> (as amended from time to time)</p> <p>3. The delegate can approve an application for property owned, leased, managed or controlled by PMNSW provided:</p> <p>a) the application would not affect an historic shipwreck;</p> <p>b) the application would not affect an item of significance to Aboriginal people as identified on the State Heritage Inventory: section 21(1)(e);</p> <p>c) the application would not impact state significant archaeology;</p> <p>d) the delegate may approve the specific classes of archaeological works which impact locally significant archaeology listed in above in 1(a-c) provided it does not affect shipwrecks.</p>	

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Section</b>	<b>Short Description</b>	<b>Limitation</b>	<b>Delegation</b>
s.144(b)	To vary the conditions of a permit issued by PMNSW where a permit has been issued subject to conditions.	The delegate may only vary a permit issued by PMNSW.	Senior Executive Band 1 Grade 11/12

## **Schedule B**

### **General Conditions of Delegation**

1. A delegate must:
  - a) before exercising any function under this delegation instrument, obtain the advice of the Heritage Expert about the heritage significance of the item and the impact of the application on the heritage significance of that item; and
  - b) in exercising any functions under this delegation instrument, take the relevant advice referred to in 1(a) above into account.
  
2. A delegate must:
  - a) before exercising any function under this delegation instrument obtain the advice of the Historical Archaeologist about the heritage significance of the archaeological resource and/or the impact of the application on the heritage significance of the archaeological resource;
  - b) in exercising any functions under this delegation instrument, take the relevant advice referred to in 2(a) above into account.
  
3. Before endorsing a CMP under section 38A of the *Heritage Act 1977* the delegate must:
  - a) ensure the CMP has been reviewed by a person with appropriate heritage knowledge, qualifications, skills and experience.
  
4. The delegate must ensure that applications and permits are determined in accordance with any guidelines issued by the Heritage Council under the *Heritage Act 1977*. The delegate may impose additional conditions which do not conflict with any Heritage Council conditions.
  
5. The delegate must take into account as far as practicable the cumulative effect of approvals on the heritage significance of the item and on the archaeological resource of its area.
  
6. The preparation and submission of information required to accompany an application to which this delegation applies must not be carried out by the delegate.
  
7. If the Heritage Council or Executive Director of Heritage NSW requests in writing that the delegate not exercise delegation in relation to an application, Place Management NSW must refer the application and fee to the Heritage Council.
  
8. Place Management NSW delegates must adhere to the limitations and conditions included in the Instrument of Delegation to avoid their delegation and/or determination being invalid. Serious cases of non-adherence may result in their delegation being revoked by the Heritage Council with the consent of the Minister.
  
9. Place Management NSW will be responsible for defending proceedings in any Court relating to decisions made under this delegation (including the bearing of all costs). Place Management NSW must notify the Heritage Council of any appeals lodged.

## HERITAGE ACT 1977

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

I, James Griffin MP, Minister for Environment and Heritage, on the recommendation of the Heritage Council of New South Wales, pursuant to section 57(2) of the *Heritage Act 1977*, revoke all previous exemptions to section 57(1) of the *Heritage Act 1977* granted to Place Management NSW (PMNSW). This includes exemptions published in the *New South Wales Government Gazette* on 28 August 2019.

I, James Griffin MP, Minister for Environment and Heritage, on the recommendation of the Heritage Council of NSW, pursuant to section 57(2) of the *Heritage Act 1977* grant an exemption from section 57(1) of that Act, in respect of the engaging in or carrying out of any of activities by PMNSW described in clause 2 of Schedule A and subject to the relevant standards described in clause 2 of Schedule A and the general conditions described in clause 3 of Schedule A (as amended from time to time).

The Hon. James Griffin MP  
**Minister for Environment and Heritage**

**Date: 1 September 2022**

## Schedule A

### 1. Interpretation:

- (a) Words and expressions that occur in this order have the same meanings as they do in the *NSW 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).
  - i. **HAAP** means 'heritage asset action plan', which is a simple, succinct document that provides guidance about maintenance of a heritage asset, an aspect of conservation or management, a conservation approach to be applied across an asset type, or a component of an item. A HAAP is prepared in accordance with *Statement of best practice for heritage asset action plans 2021* (as amended from time to time).
  - ii. **Heritage Expert** means a person employed by Place Management NSW to provide advice on heritage matters, who has appropriate heritage knowledge, qualifications, skills and experience.
  - iii. **Material Threshold** means as defined by the *Material Threshold Policy 2020* (as amended from time to time).
  - iv. **Statement of Heritage Impact** means a heritage impact statement prepared in accordance with the *Statements of Heritage Impact 2002* (as amended from time to time).
  - v. **Significant** means an item graded as having exceptional, high, moderate, little or intrusive significance, according to the *Assessing Heritage Significance guideline 2001* (as amended from time to time).
  - vi. **Significant fabric** means all the physical material of the place/item including elements, fixtures, landscape features, contents, relics and objects which contributes to the item's heritage significance.
  - vii. **PMNSW** means Place Management NSW ABN 51 437 725 177 being a statutory corporation formed under the *Place Management NSW Act 1998* (NSW).

## 2. Exemptions:

The following specified activities/works being carried out by or engaged in by Place Management NSW (PMNSW) in relation to State Heritage Register (SHR)/Interim Heritage Order (IHO) items are exempt from approval or notification under section 57(1) of the *Heritage Act 1977* if the specified activities/works are undertaken by PMNSW in accordance with each of the Relevant standard(s) prescribed below.

### EXEMPTION 1: MAINTENANCE AND CLEANING

#### Specified activities/works:

- (a) Maintenance of an item to retain its condition, operation and significance:
  - i. by the application of protection coatings such as limewash, polish, oils and waxes to an item, or
  - ii. water washing and scrubbing using non-ferrous brushes and water pressure below 200psi and lead by the results of cleaning trials as per Place Management NSW's Heritage Fabric Cleaning Guidelines, 2020 (as amended from time to time).

#### Relevant standards:

- (b) Specified activities/works must not involve the removal of or damage to significant fabric.
- (c) New materials or new finishes may only be introduced to fabric where this does not impact the significance of the item, uses a colour and finish sympathetic to the item, does not detract from the item and does not reduce the ability to appreciate the item.
- (d) Existing protective coatings such as oils or waxes for timber must continue to be used rather than modern alternative protective coatings.

### EXEMPTION 2: REPAIRS AND RECONSTRUCTION

#### Specified activities/works:

- (a) 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.
- (b) Repair involving reconstruction – reconstructing of fabric to a known earlier state may involve the use of new or recycled material for elements beyond repair.

#### Relevant standards:

- (c) Repairs must:
  - i. be based on the principle of doing as little as possible and only as much as is necessary to retain and protect the element, and
  - ii. maximise the protection and retention of fabric and include the conservation of existing detailing, such as vents, capping, chimneys, carving, decoration or glazing.
- (d) Only missing, damaged or deteriorated fabric that is beyond further maintenance may be replaced.
- (e) Reconstruction of fabric to a known earlier state must be based on evidence and not based on conjecture.
- (f) Any replacement fabric must be matching in appearance and method of fixing.
- (g) The replacement of fabric can only occur if the fabric is missing or it is so damaged or deteriorated that it is beyond further maintenance.
- (h) 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.

- (i) New material used in repairs should, where possible, be date stamped in a location which is not conspicuous but is legible on close examination. Archival recording of removed and replacement fabric is advocated and should be used in interpretive displays where practicable.
- (j) This exemption is not intended to allow the cumulative replacement of large amounts, or a high proportion of the fabric of an item. If replacement of large amounts of fabric is necessary, a s60 application will be required.
- (k) The scope and method for the proposed activities/works is to be considered by the Place Management NSW Heritage Expert. The Place Management NSW Heritage Expert must be satisfied and confirm that the proposed activities/works will not adversely impact the heritage significance of the item.

### **EXEMPTION 3: PAINTING**

#### **INTERNAL**

##### Specified activities/works:

- (a) Painting of significant internal fabric with a paint colour scheme sympathetic with the heritage architecture and fabric.
- (b) Removal of paint from significant internal surfaces originally not intended for painting such as brick and stone. The removal methods must not damage the significant fabric.
- (c) Re-painting to internal fabric without disturbing the significant surfaces underneath.
- (d) Application of anti-graffiti treatments.
- (e) Removal of lead based paint as required for work, health and safety reasons and which cannot be adequately mitigated.

##### Relevant Standards:

- (f) Painting must:
  - i. be sympathetic with the heritage architecture and fabric,
  - ii. not detract from the item, and
  - iii. not reduce the ability to appreciate and interpret the item.
- (g) New paint must be appropriate to the substrate to prevent inadvertent damage (e.g. moisture and rising damp, paint failure).
- (h) When painting or applying wallpaper to significant internal fabric, activities/works should involve application of a separation layer where appropriate.
- (i) Historic paint layers may be displayed as an interpretive panel and is encouraged where appropriate.
- (j) The scope and method for the proposed activities/works is to be considered by the Place Management NSW Heritage Expert. The Place Management NSW Heritage Expert must be satisfied and confirm that the proposed activities/works will not adversely impact the heritage significance of the item.

#### **EXTERNAL**

##### Specified activities/works:

- (a) Painting to significant external fabric with a paint colour scheme sympathetic with the heritage architecture, surrounding locality and fabric.
- (b) Removal of paint from significant external surfaces originally not intended for painting such as brick and stone. The removal methods must not damage the significant fabric.
- (c) Painting to external fabric without requiring a separation layer where appropriate.
- (d) Application of anti-graffiti treatments.
- (e) Removal of lead-based paint as required for work, health and safety reasons and which cannot be adequately mitigated.



#### Relevant Standards:

- (f) External painting must:
  - i. be sympathetic with the heritage architecture, surrounding locality and fabric,
  - ii. not detract from the item, and
  - iii. not reduce the ability to appreciate and interpret the item.
- (g) New paint must be appropriate to the substrate to prevent inadvertent damage (e.g. moisture and rising damp, paint failure).
- (h) Re-painting to internal fabric without disturbing the significant surfaces underneath.
- (i) The scope and method for the proposed activities/works is to be considered by the Place Management NSW Heritage Expert. The Place Management NSW Heritage Expert must be satisfied and confirm that the proposed activities/works will not adversely impact the heritage significance of the item.

#### **EXEMPTION 4: VEGETATION**

##### Specified activities/works:

- (a) Management of significant vegetation in accordance with a Landscape Management Plan or equivalent document (as amended from time to time) for all activities and works beyond routine maintenance, including:
  - i. the removal of significant vegetation identified as sick or dying (end of life) and replacement with suitable species in same location or immediate vicinity,
  - ii. removal of significant vegetation where it is impacting the significance of a heritage item, or
  - iii. removal of significant diseased, dying, dead and/or dangerous branches and/or plant material on identified significant trees.

##### Relevant standards:

- (b) A Landscape Management Plan must be prepared by a suitably qualified and experienced professional and must take into consideration the heritage values of the item. The Landscape Management Plan, as updated from time to time, must be reviewed by the Heritage Expert and adopted by PMNSW.
- (c) Works must be undertaken by a suitably qualified and experienced horticulturalist or equivalent.
- (d) Excludes the management of items included on the Significant Tree Register held by PMNSW or the relevant local government.

#### **EXEMPTION 5: SIGNAGE**

##### Specified activities/works:

- (a) The installation of decals or signs behind or on the glass surface of a commercial and/or retail tenancy, provided the amount of signage does not overwhelm the aesthetic significance of the item.
- (b) Removal, repair, replacement or updating of signage with like for like signage where previous Development Consent is in place for signage.

##### Relevant Standards:

- (c) Signs must minimise all new fixings and use existing fixing-points into the significant fabric of the item
- (d) Signs must not:
  - i. be internally illuminated or flashing,
  - ii. conceal or involve the removal of or damage to significant pre-existing signs, or

- iii. use glue products (such as liquid nails) in the affixing process.
- (e) Signage must comply with the current relevant signage policy for PMNSW, (as amended from time to time). Signage must be fully reversible and removable.

#### **EXEMPTION 6: FILMING**

##### Specified activities/works:

- (a) The use of an item as a set or backdrop for filming in a manner that may result in the temporary movement or alteration of an item.

##### Relevant standards:

- (b) The specified use of the heritage item as a set or backdrop for filming is permitted for up to 90 calendar days in a calendar year. Standard Exemption 16: Filming allows for 60 calendar days in a calendar year. This Agency Specific Exemption allows for an additional 30 days.
- (c) Any activities/works must be temporary, reversible and must have no physical impact to significant fabric, landscape elements and/or archaeological relics.
- (d) No permanent activities/works are to be undertaken to the item.
- (e) No painting or special effects are to be physically applied to significant fabric.
- (f) Significant fabric must be protected from damage by using bumpers, gaskets and/or matting.
- (g) No penetrations into significant fabric are permitted. Clamping or bracing to the item's significant fabric may be used.
- (h) Consent must be provided by the owner or lawful occupier of the item to the use of the item as a set or backdrop for filming.
- (i) The item must not be moved except as permitted by Standard Exemption 17 - Moveable Heritage Items.

#### **EXEMPTION 7: RECOVERY WORKS**

##### Specified activities/works:

- (a) Recovery works to protect an item from further damage or imminent threat to:
  - i. salvage materials,
  - ii. undertake temporary weatherproofing, or
  - iii. undertake temporary stabilisation.
- (b) Manage recovery works and activities in accordance with the relevant NSW Emergency Plan and the PMNSW Emergency Plan and Agency Business Continuity Plan, heritage management documents and PMNSW heritage disaster risk management plans (as relevant and as amended from time to time).

##### Relevant standards:

- (c) The activities/works must be:
  - i. necessary to prevent further damage to an item,
  - ii. reasonable and justifiable in the circumstances,
  - iii. considered to be temporary in nature and the effects of the activities/works must be adequately remedied, and
  - iv. proportionate to the damage the item has suffered and to the risk of further damage.
- (d) Use of this Agency Specific Exemption requires delivery under the direction of and in consultation with:
  - i. the Heritage Expert of PMNSW,
  - ii. another State Government Agency employee with appropriate heritage expertise, or

- iii. a consultant with appropriate heritage expertise.

### **EXEMPTION 8: INVESTIGATING THE CONDITION OF SIGNIFICANT FABRIC**

#### Specified activities/works:

- (a) Physical investigation into the condition of significant fabric (including small penetrations) to determine the condition of fabric and to inform maintenance, repair, conservation works, and pest investigations. Works can include:
  - i. lifting of flooring sections to inspect structural members and fabric condition,
  - ii. lifting of roofing sections to inspect structural members and fabric condition,
  - iii. discrete inspection hatches to inspect structural members and fabric condition,
  - iv. openings in flooring, walls or ceilings to inspect structural members and fabric condition,
  - v. lifting or minimal removal of covering material, fabric or finish to inspect structural members and fabric condition, or
  - vi. timber condition investigations with a maximum of 2mm diameter drilling.
- (b) Paint scrapings for paint colour and type matching in discrete locations.
- (c) Non-invasive testing for timber and other materials.

#### Relevant standards:

- (d) The activities/works must be:
  - i. necessary to prevent further damage and to inform conservation of an item,
  - ii. reasonable and justifiable in the circumstances,
  - iii. adequately remediated with like for like and make good, and
  - iv. as little as possible and as much as necessary
- (e) The scope and method for the proposed activities/works is to be considered by the Place Management NSW Heritage Expert. The Place Management NSW Heritage Expert must be satisfied and confirm that the proposed activities/works will not adversely impact the heritage significance of the item.

### **EXEMPTION 9: MINOR INTERNAL ACTIVITIES AND WORKS TO SIGNIFICANT FABRIC**

#### Specified activities/works:

- (a) Minor internal activities/works with little or no adverse impact on heritage significance. Works include:
  - i. fitout activities/works,
  - ii. defit activities/works,
  - iii. fixings into existing penetrations or secured into mortar joints, or
  - iv. monitoring devices affixed to significant fabric.
- (b) Excludes works for:
  - i. new services and upgrade works required for BCA fire, safety, egress and access alterations and upgrades, or
  - ii. a change in use.

#### Relevant standards:

- (c) Activities and works must:
  - i. be fully removable and reversible,
  - ii. have little or no adverse heritage or visual impact on the significance of the heritage item and be discreetly located,
  - iii. consider and minimise cumulative impacts on the heritage item, and
  - iv. use existing service routes, cavities or voids or replace existing surface mounted services.

- (d) Reuse of existing fixing points in significant fabric is permitted.
- (e) Any new fabric must not:
  - i. limit access to significant fabric for future maintenance, or
  - ii. exacerbate the decay of existing fabric or risk the destruction of existing significant fabric due to chemical incompatibility, vibration, percussion or explosive flammability.
- (f) Replacement surface mounted services must be the same or less intrusive than the surface mounted services they replace.
- (g) Where appropriate existing service routes and/or conduits may be deleted if the installation can be streamlined into one existing service route, cavity or void.
- (h) Activities and works must not materially affect heritage significance in accordance with the Heritage NSW Materials Threshold Policy (as updated from time to time).
- (i) The specified activities/works must be undertaken in accordance to detailed works scopes, specifications and drawing documentation from a suitably qualified and experienced professional and a heritage impact statement that assesses that the activities/works will have little or no adverse heritage impact on the item's heritage significance. The scope and method for the proposed activities/works is to be considered by the Place Management NSW Heritage Expert. The Place Management NSW Heritage Expert must be satisfied and confirm that the proposed activities/works will not adversely impact the heritage significance of the item.

### 3. General conditions:

1. These general conditions apply to **all** of the exemptions described in clause 2 of Schedule A.
2. These exemptions apply to **all** items of **all** values listing on the NSW State Heritage Register or subject to an Interim Heritage Order, including Aboriginal cultural heritage.
3. These exemptions are to be applied in relation to activities and SHR and IHO items owned, leased, managed or controlled by PMNSW.
4. Anything done under the exemptions must be carried out by people with knowledge, skills and experience appropriate to the work (some exemptions may require suitable qualified and experienced professional advice/work).
5. The exemptions do not permit the removal of any significant fabric.
6. The exemptions do not permit relics or Aboriginal objects to be damaged, destroyed or removed.

If relics are discovered, work must cease in the affected area and the Heritage Council must be notified in writing in accordance with section 146 of the *Heritage Act 1977*.

Depending on the nature of the discovery, assessment and an excavation permit may be required prior to the recommencement of work in the affected area.

If any Aboriginal objects are discovered, excavation or disturbance is to cease, and Heritage NSW notified in accordance with section 89A of the *National Parks and Wildlife Act 1974*. Visit the Heritage NSW website for more information about Aboriginal Objects and Places.

Aboriginal object has the same meaning as in the *National Parks and Wildlife Act 1974*

7. The exemptions do not apply to historic shipwrecks.
8. Activities/works that do not fit strictly within the exemptions described in clause 2 of Schedule A or the Standards Exemptions will require approval by way of an application under section 60 of the *Heritage Act 1977*.
9. PMNSW is responsible for ensuring that any activities/works undertaken by them meet all the Relevant standards and have all necessary approvals.
10. PMNSW must keep records of any activities/works for auditing and compliance purposes by the Heritage Council. Where advice of a suitably qualified and experienced professional has been sought, a record of that advice must be kept. Records must be kept in a current readable electronic file or hard copy for a reasonable time.
11. It is an offence to do any of the things listed in section 57(1) of the *Heritage Act 1977* without a valid exemption or approval.
12. A person guilty of an offence against the *Heritage Act 1977* shall be liable to a penalty or imprisonment, or both under Section 157 of the *Heritage Act 1977*.
13. Authorised persons under the *Heritage Act 1977* carry out inspections for compliance.
14. The exemptions are not authorisations, approvals or exemptions for the activities/works under any other legislation, Local Government and State Government requirements (including, but not limited to, the *Environmental Planning and Assessment Act 1979* and the *National Parks and Wildlife Act 1974*).
15. The exemptions do not constitute satisfaction of the relevant provisions of the Building Code of Australia for ancillary works.
16. Activities or work undertaken pursuant to an exemption must not, if it relates to an existing building, cause the building to contravene the Building Code of Australia.
17. In these exemptions, words have the same meaning as in the *Heritage Act 1977* or the relevant guidelines, unless otherwise indicated.
18. The *Heritage Manual 1996* (as amended from time to time) and *The Maintenance Series 2004* (as amended from time to time), must be complied with when undertaking any activities/works on a SHR/IHO item. These guidelines are available on the Heritage NSW website.