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ERRATUM

HERITAGE ACT 1977

The notice published in the Government Gazette No. 650 of 17 December 2021, relating to Sydney Water Corporation (SWC) should have read:

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: 7 December 2021

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.

ERRATUM

HERITAGE ACT 1977

The notice published in the Government Gazette No. 636 of 10 December 2021, relating to Sydney Water Corporation (SWC) should have read:

HERITAGE ACT 1977

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

I, Donald Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, 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 Sydney Water Corporation (SWC). This includes exemptions published in the *New South Wales Government Gazette* on 21 December 2007.

I, Donald Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, on the recommendation of the Heritage Council of New South Wales, 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 SWC 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. Donald Harwin MLC
**Special Minister of State,
Minister for the Public Service and Employee Relations,
Aboriginal Affairs, and the Arts**

Date: 23 November 2021

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* (NSW) (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 **CMS** means 'conservation management strategy', which is 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 **Material Threshold** means as defined by the *Material Threshold Policy 2020* (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 **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).
 - viii **SWC** means the Sydney Water Corporation, ABN 49 776 225 038.
 - ix **Sydney Water Corporation Heritage Expert** means a person employed by SWC to provide advice on heritage matters, who must have appropriate heritage knowledge, qualifications, skills and experience.

2. Exemptions:

The following specified activities/works being carried out by or engaged in by SWC 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 in accordance with each of the relevant standard(s) prescribed below.

EXEMPTION 1: URGENT MAINTENANCE AND REPAIR

Specified activities/works:

- (a) **Valve replacement** – replacing mechanical components to allow the ongoing operation of the system.

Relevant standard:

- (b) Removed valves are to be assessed for moveable heritage values in accordance with the *Moveable Heritage Principles 2000* (as amended from time to time).

Specified activities/works:

- (c) **Removing lead-based paints** - if required for health and safety reasons which cannot be adequately mitigated.

Relevant standards:

- (d) Removal of lead-based paints may only be done if the removal process has minimal impact on the underlying significant fabric.
- (e) Paint layers are to be recorded by Sydney Water Corporation Heritage experts or a heritage professional contracted to do the work.
- (f) The original or early colour scheme must be reinstated where possible.

Specified activities/works:

- (g) **Repairing SHR/IHO items** which are required because of arson or vandalism.

Relevant standards:

- (h) Repairs to SHR/IHO items must be below the material threshold.
- (i) The repair must maximise protection and retention of significant fabric and conserve existing detailing.
- (j) The repair must match existing fabric in appearance, material and method of affixing.
- (k) The composition of elements of the fabric (such as renders, mortars, timber species and metal types) are to remain the same.

Specified activities/works:

- (l) **Removing mercury, heavy metals and contaminants** from machinery, devices or equipment, if required for health and safety reasons which cannot be adequately mitigated.

Relevant standards:

- (m) Removing mercury, heavy metals and contaminants must not damage significant fabric and may only be undertaken if the machinery, devices or equipment can be otherwise preserved and maintained.

EXEMPTION 2: TEMPORARY ACTIVITIES/WORKS

Specified activities/works:

- (a) **Temporary scaffolding** can be erected to provide safe access and to undertake maintenance or repair works.

Relevant standards:

- (b) The scaffolding must not be located where it could:
 - i. damage (including through use of the structure) significant fabric or
 - ii. endanger significant fabric, including landscape or archaeological features

- (c) Temporary scaffolding may be installed for no longer than 12 months, after which it must be removed or approved under the Act.

Specified activities/works:

- (d) **Re-surfacing existing roads and pathways**

Relevant standard:

- (e) Re-surfacing must not disturb significant road or pathway surfaces, kerb or guttering which may lie underneath. 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.

Specified activities/works:

- (f) **Installing protective equipment/material** to temporarily prevent water ingress as a result of storm or hail damage.

Relevant standards:

- (g) Activities/works must be temporary in nature with the aim to minimise the damage and allow time for the assessment of any impacts to significant fabric before more permanent works/activities to address any impacts are undertaken.
- (h) Activities/works must be below the material threshold.

EXEMPTION 3: SECURITY AND/OR SAFETY SIGNAGE

Specified activities/works:

- (a) **Installation or relocation of signage** for security or safety purposes

Relevant standards:

- (b) Installing or relocating signs must not obscure, affix to, penetrate or otherwise damage significant fabric (including landscape or archaeological features) or obstruct significant views (as described in a statement of significance and/or Statement of Heritage Impact) to and from the SHR/IHO item. Reusing existing fixing points is permitted.
- (c) Installing or relocating signs is for the sole purpose of providing security or safety information.
- (d) The signs must be able to be later removed without causing damage to the significant fabric of the SHR/IHO item.
- (e) The signs must not be a modular or cantilever structure, or over 2 square metres in size.
- (f) Installing or relocating signs must not require excavation.

EXEMPTION 4: EXCAVATION

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.
- (d) Bore-holing must not compromise the structural integrity of any structure listed on the SHR or subject to an IHO, including significant landscape elements, as identified in a SHR listing, statement of significance, Conservation Management Plan (CMP) and/or CMS.

Specified activities/works:

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

Relevant standards:

- (f) Test pits must be no greater than 500mm x 500mm.
- (g) Test pits must occur totally within an area of previous disturbance and outside of areas assessed as having archaeological significance.
- (h) Test pits must not compromise the structural integrity of any structure listed on the SHR or subject to an IHO, including significant landscape elements, as identified in a SHR listing, statement of significance, CMP and/or CMS.

Specified activities/works:

- (i) **Removing contaminated soils.**

Relevant standard:

- (j) 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.

Specified activities/works:

- (k) **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 SWC infrastructure and assets (including dams and fences) and/or survey markers.

Relevant standards:

- (l) Excavation or disturbance of land is only permissible within existing trenches, or within an area of previous disturbance.
- (m) Excavation or disturbance of land is not permitted in areas assessed as having archaeological significance.
- (n) Excavation or disturbance of land must not compromise the structural integrity of any structure listed on the SHR or subject to an IHO, including significant landscape elements, as identified in a SHR listing, statement of significance, CMP and/or CMS.

Specified activities/works:

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

Relevant standard:

- (p) Minor excavation works may only be undertaken where fill layers are confirmed to exist through prior archaeological assessment and the fill layers have no archaeological significance.
- (q) Minor excavation works must not compromise the structural integrity of any structure listed on the SHR or subject to an IHO, including significant landscape elements, as identified in a SHR listing, statement of significance, Conservation Management Plan and/or CMS.

Specified activities/works:

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

Relevant standard:

- (s) 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.
- (t) Directional drilling must not compromise the structural integrity of any structure listed on the SHR or subject to an IHO, including significant landscape elements, as identified in a SHR listing, statement of significance, Conservation Management Plan and/or CMS.

Specified activities/works:

- (u) **Routine maintenance, revegetation with tube stock, minor earthworks** (such as the grading of existing tracks or excavation to expose existing assets) **and repairs** (including rock bolting) that does not impact on the significance of the SHR/IHO item.

Relevant standard:

- (v) Only applicable where work areas have been assessed as having no archaeological significance.

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 listed 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/works and SHR and IHO items owned, leased, managed or controlled by SWC.
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, with the exception of the activities/works described in Exemption 1: Maintenance and Repair in Schedule A.
6. The exemptions do not permit relics or Aboriginal objects to be damaged, destroyed or removed.
7. The exemptions do not apply to historic shipwrecks.
8. Activities/works that do not fit strictly within the exemptions described in clauses 2 and 3 of Schedule A or the Standard Exemptions will require approval by way of an application under section 60 of the *Heritage Act 1977*.
9. SWC is responsible for ensuring that any activities/works undertaken by them meet all the relevant standards and have all necessary approvals.
10. 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.

ERRATUM

HERITAGE ACT 1977

The notice published in the Government Gazette No. 636 of 10 December 2021, relating to Sydney Water Corporation (SWC) should have read:

HERITAGE ACT 1977

Consent to Delegations

I, Donald Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, pursuant to section 169(3) and section 21 of the *Heritage Act 1977* (NSW), 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 Sydney Water Corporation (SWC) including:
 - i dated 10 September 2007 and published in the New South Wales Government Gazette on 21 December 2007 titled ‘Delegation of Function of Heritage Council of NSW’; and
 - ii dated 20 April 2013 and published in the New South Wales Government Gazette on 3 May 2013 and titled Sydney Water Corporation (SWC).

- 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 *Heritage Act 1977*.

The Hon. Donald Harwin MLC
**Special Minister of State,
Minister for the Public Service and Employee Relations,
Aboriginal Affairs, and the Arts**

Date: 23 November 2021

HERITAGE ACT 1977

Delegation of Functions of Heritage Council of NSW

I, Frank Howarth, Chairperson of the Heritage Council of NSW, in accordance with resolutions of the Heritage Council **5 May 2021** do by this instrument:

- a) **revoke** all previous delegations made by the Heritage Council including:
 - i dated 10 September 2007 and published in the New South Wales Government Gazette on 21 December 2007 titled 'Delegation of Function of Heritage Council of NSW'; and
 - ii dated 20 April 2013 and published in the New South Wales Government Gazette on 3 May 2013 and titled 'Delegation of Heritage Council Functions to Manager, Liveable City Programs of Sydney Water Corporation (SWC)'.

- 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 *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.

Frank Howarth AM
Chair, Heritage Council of New South Wales

Date: 7 December 2021

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) **Heritage Council** means the Heritage Council constituted under section 7, *Heritage Act 1977*;
- (h) **Heritage Expert** has the same meaning as Sydney Water Corporation Heritage Expert defined in Schedule B of this instrument;
- (i) **Heritage NSW** is a branch within the Department of Premier and Cabinet – see clause 17, *Administrative Arrangements (Administrative Changes—Public Service Agencies) Order 2019*;
- (j) **Historic Shipwreck** has the same meaning as the term in section 47, *Heritage Act 1977*;
- (k) **Item** has the same meaning as the term in section 4, *Heritage Act 1977*;
- (l) **Local heritage significance** has the same meaning as the term in section 4A, *Heritage Act 1977*;
- (m) **Major Development** means development that is likely to reach the material threshold and impact on the significance of an item/site;
- (n) **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;
- (o) **Material Threshold Policy 2020** is a Heritage NSW policy (amended from time to time);
- (p) **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;
- (q) **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;

- (r) **Relic** has the same meaning as the term in section 4, *Heritage Act 1977*;
- (s) **SHR** means the 'State Heritage Register' as defined in section 4 of the *Heritage Act 1977*;
- (t) **State heritage significance** has the same meaning as the term in section 4, *Heritage Act 1977*;
- (u) **Senior Manager Level 2 (or equivalent role)** – meaning a role with similar responsibilities and duties as General Manager Life Cycle with heritage experts reporting directly to them;
- (v) **Senior Manager Level 3 (or equivalent role)** – meaning a role with similar responsibilities and duties as Head of Engineering & Technical Support with heritage experts reporting directly to them;
- (w) **Sydney Water Corporation (SWC)** means the Sydney Water Corporation, ABN 49 776 225 038.

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 SWC 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"> a) The delegate when endorsing a CMP has regard to the <i>Material Threshold Policy</i>. 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. c) This delegation does not apply to CMPs that contain a proposal for major development. 	<p>Senior Manager Level 2</p> <p>Senior Manager Level 3</p>
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"> a) must be in writing, and b) may specify a reasonable period within which the information must be provided to the approval body, and 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)). 	<p>Senior Manager Level 2</p> <p>Senior Manager Level 3</p>
s.63	Determine an application made under section 60 for property owned, leased, managed or controlled by SWC	<p>1. The delegate may approve an application for property owned, leased, managed or controlled by SWC provided:</p> <ul style="list-style-type: none"> 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) b) the application will not materially affect the State heritage significance of the SHR item in accordance with the <i>Material</i> 	<p>Senior Manager Level 2</p> <p>Senior Manager Level 3</p>

Column 1	Column 2	Column 3	Column 4
Section	Short Description	Limitation	Delegation
		<p><i>Threshold Policy 2020</i> (as amended from time to time)</p> <p>c) the application is consistent with a CMP endorsed by the Heritage Council or its delegate: section 38A</p> <p>d) the application would not affect an historic shipwreck</p> <p>e) 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>f) the application would not impact state significant archaeology</p> <p>g) the 'matters of consideration' in section 62 are taken into consideration when determining an application for approval</p> <p>2. The delegate may determine an application for property owned, leased, managed or controlled by SWC for the following classes of works affecting a relic (including an item of archaeological significance):</p> <p>a) monitoring (meaning where there is an expectation of only minor archaeological remains and supervision is required primarily to 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)</p> <p>c) minor archaeological works.</p>	
s.65A(1)(a)	Modify approvals to vary any aspect of the original approval issued by SWC	<p>This function can only be exercised: for an approval issued by SWC:</p> <p>1. If the delegate is satisfied that the act, matter or thing authorised by the modified approval is substantially the same as the act,</p>	<p>Senior Manager Level 2</p> <p>Senior Manager Level 3</p>

Column 1	Column 2	Column 3	Column 4
Section	Short Description	Limitation	Delegation
		<p>matter or thing authorised by the original approval: section 65A(1)(a)</p> <p>a) the delegate when determining the application has regard to the <i>Material Threshold Policy 2020</i> (as amended from time to time)</p> <p>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)</p> <p>c) 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)</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 SWC to correct a minor error, misdescription or miscalculation	The delegate may only vary a permit issued by SWC.	<p>Senior Manager Level 2</p> <p>Senior Manager Level 3</p>

Column 1	Column 2	Column 3	Column 4
Section	Short Description	Limitation	Delegation
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 SWC	<ol style="list-style-type: none"> 1. The delegate may only exercise these functions for property owned, leased, managed or controlled by SWC for the following classes of works affecting relics: <ol style="list-style-type: none"> a) monitoring (meaning where there is an expectation of minor archaeological remains only and supervision is required primarily to record archaeological information); 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 c) minor archaeological works. 2. Where excavation is required as part of the proposed works, SWC 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) 3. The delegate can approve an application for property owned, leased, managed or controlled by SWC provided: <ol style="list-style-type: none"> a) the application would not affect an historic shipwreck; b) the application would not affect an item of significance to Aboriginal people as identified on the State Heritage Inventory: section 21(1)(e); c) the application would not impact state significant archaeology; 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>Senior Manager Level 2</p> <p>Senior Manager Level 3</p>

Column 1	Column 2	Column 3	Column 4
Section	Short Description	Limitation	Delegation
s.144(b)	To vary the conditions of a permit issued by SWC where a permit has been issued subject to conditions	The delegate may only vary a permit issued by SWC.	Senior Manager Level 2 Senior Manager Level 3

Schedule B

General Conditions of Delegation

1. The following definitions apply in this Schedule B:
 - a) **Sydney Water Corporation Heritage Expert** means a person employed by SWC to provide advice on heritage matters, who must have appropriate heritage knowledge, qualifications, skills and experience
 - b) **Sydney Water Corporation Historical Archaeologist** means an historical archaeologist employed by SWC to provide advice on archaeological matters, who must have appropriate archaeological qualifications, knowledge, skills and experience.
2. A Delegate must:
 - a) before exercising any function under this delegation instrument, obtain the advice of the Sydney Water Corporation 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 2(a) above into account.
3. A Delegate must:
 - a) before exercising any function under this delegation instrument obtain the advice of the Sydney Water Corporation 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 3(a) above into account.
4. 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.
5. 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.

6. 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.
7. The preparation and submission of information required to accompany an application to which this delegation applies must not be carried out by the Delegate.
8. If the Heritage Council or Executive Director of Heritage NSW requests in writing that the Delegate not exercise delegation in relation to an application, SWC must refer the application and fee to the Heritage Council.
9. SWC 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 of NSW with the consent of the Minister.
10. SWC will be responsible for defending proceedings in any Court relating to decisions made under this delegation (including the bearing of all costs). The Delegate must notify the Heritage Council of any appeals lodged.