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## **Notice of listing Art Gallery of New South Wales on the SHR No. 02096 under the *Heritage Act 1977***

In pursuance of section 37(1)(b) of the *Heritage Act 1977 (NSW)*, the Heritage Council gives notice that the item of environmental heritage specified in Schedule “A” has been listed on the State Heritage Register in accordance with the decision of the Minister for Heritage made on 25 October 2024 to direct the listing. This listing applies to the curtilage or site of the item, being the land described in Schedule B.

The listing takes effect on the date this notice is published in the NSW Government Gazette.

### **Heritage Council of New South Wales**

#### **SCHEDULE A**

The item known as the *Art Gallery of New South Wales* SHR No. 02096, situated on the land described in Schedule “B”.

#### **SCHEDULE B**

All those pieces or parcels of land known as Lot 102 DP 854472, Lot 1001, and part Lot 1002 DP1249710, Lot 4 DP259027, part Lot 1013 DP1199151, part Lot 108 and Lot 109 in DP 1105308 and part Lot 52 in DP1105375, Parish of St James, County of Cumberland, shown on the plan catalogued HC 3327 in the office of the Heritage Council of New South Wales.

## **Exemption Order for Art Gallery of New South Wales listing on the SHR No. 02096 under the *Heritage Act 1977***

I, Penny Sharpe, the Minister for Heritage, on the recommendation of the Heritage Council of New South Wales dated 3 September 2024, make the following order under section 57(2) of the *Heritage Act 1977* (the Act) granting an exemption from section 57(1) of the Act in respect of the engaging in or carrying out of any activities described in Schedule C by the owner, manager, mortgagee or lessee (or persons authorised by the owner or manager) of the item described in Schedule A on the land identified in Schedule B.

This Order takes effect on the date it is published in the NSW Government Gazette.

Dated this 25 day of October 2024.

The Hon Penny Sharpe MLC

**Minister for Heritage**

## SCHEDULE A

The item known as *Art Gallery of New South Wales* SHR No. 02096, situated on the land described in Schedule B.

## SCHEDULE B

The item known as *Art Gallery of New South Wales* SHR No. 02096, located as identified on the plan catalogued HC Plan 3327 in the office of the Heritage Council of New South Wales.

## SCHEDULE C

The following specified activities/ works to an item do not require approval under section 57(1) of the *Heritage Act 1977*. While the specified activities/ works do not require approval under Section 57(1) of the Act, this does not exempt the specified activities/ works from any requirements for landowners' consent or other approvals under the Precinct Management Agreement, as agreed under the Development Deed dated 2018 (or its successor) (PMA) or other legislation.

The follow exemptions apply in addition to the 'standard exemptions' for items listed on the State Register (SHR) made under section 57(1) of the *Heritage Act 1977*, and published in the *NSW Government Gazette*.

## GENERAL CONDITIONS

These general conditions apply to all the site specific exemptions:

- a) In these exemptions, words have the same meaning as in the *Heritage Act 1977* or the relevant guidelines, unless otherwise indicated. Where there is an inconsistency between relevant guidelines and these exemptions, these exemptions prevail to the extent of the inconsistency. Where there is an inconsistency between either relevant guidelines or these exemptions and the *Heritage Act 1977*, the Act will prevail.
- b) Curtilage is taken to have the same meaning as in the *Heritage Act 1977*, being the area of land (including land covered by water) surrounding and including a listed item which contributes to its heritage significance, and which is regulated under the Act.
- c) A Conservation Management Plan (CMP) must meet the following conditions:
  - i. It must be prepared by a suitably qualified and experienced heritage professional.
  - ii. It must be prepared in accordance with the requirements for a detailed and best practice CMP as outlined in the Heritage Council of NSW document *Statement of best practice for conservation management plans (2021)*.
  - iii. It must be consistent with the *Heritage Council of NSW documents: Guidance on developing a conservation management plan (2021)*.
  - iv. It must be independently reviewed and approved by a heritage expert appointed by the Art Gallery of New South Wales (the Art Gallery).
- d) Anything done under the site specific exemptions must be carried out by people with knowledge, skills and experience appropriate to the work (some site specific exemptions require suitably qualified and experienced professional advice/ work).
- e) The site specific exemptions do not permit the removal of relics or Aboriginal objects. If relics are discovered, work must cease in the affected area and the Heritage Council of NSW 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 must be notified in accordance with section 89A of the *National Parks and Wildlife Act 1974*. Aboriginal object has the same meaning as in the *National Parks and Wildlife Act 1974*.

- f) Activities/ works that do not fit within the exemptions described in this document or the 'standard exemptions' for items listed on the State Heritage Register made under section 57(1) of the *Heritage Act 1977*, and published in the *NSW Government Gazette* would require an application under section 60 and approval under Section 63 of the *Heritage Act 1977*.
- g) The site specific exemptions are self-assessed. It is the responsibility of a proponent to ensure that the proposed activities/works fall within the site specific exemptions.
- h) The proponent is responsible for ensuring that any activities/ works undertaken by them, or with their permission, meet all the required conditions and have all necessary approvals.
- i) Proponents must keep records of any activities/ works for auditing and compliance purposes by the Heritage Council of NSW. 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, being not less than seven years.
- j) Authorised persons under the *Heritage Act 1977* may carry out inspections for compliance.
- k) The site specific exemptions under the *Heritage Act 1977* 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*).
- l) The site specific exemptions under the *Heritage Act 1977* do not constitute satisfaction of the relevant provisions of the National Construction Code for ancillary works.
- m) Activities or work undertaken pursuant to a site specific exemption must not, if it relates to an existing building, cause the building to contravene the *National Construction Code*.
- n) Where relevant *The Heritage Manual* (1996, Heritage Office and Department of Urban Affairs & Planning) and *The Maintenance Series* (1996 republished 2004, NSW Heritage Office and Department of Urban Affairs & Planning) guidelines must be complied with when undertaking any activities/works on an item.
- o) Activities/works exempted below should consider and respect the broader setting and significance of the Royal Botanic Gardens and the Domain SHR item (SHR No. 01070) (overlapping with this curtilage (boundary) at Lot 1001 and 1002 DP 1249710 and Lot 1013 DP1199151).
- p) The meaning of 'temporary' is to be determined at the discretion of the Art Gallery of New South Wales Trust and must be consistent with the most recent CMP prepared in accordance with these general conditions.

## **EXEMPTION 1: APPROVED WORKS**

### Specified activities/works:

- (a) All works which form part of the existing approval for State Significant Development SSD-6471 and its various modifications.

## **EXEMPTION 2: NAALA BADU (NORTH BUILDING)**

### Specified activities/ works:

- (a) All internal works for any purpose to Naala Badu, also referred to as the Art Gallery's North Building (Lot 1001 and part Lot 1002 DP124971), including but not limited to the subterranean tank gallery space.
- (b) All external modifications or alterations for any purpose to Naala Badu which do not increase the building envelope.
- (c) Installation and removal of plants, horticultural infrastructure, landscape features such as paths or paving, and temporary exhibits within landscaped forecourts between Naala Badu and Naala Nura, formerly referred to as the Art Gallery's 'South Building' (being Lot 102 DP 854472).

## **EXEMPTION 3: OPERATIONAL ASPECTS – EXTERNAL WORKS WITHIN CURTILAGE BOUNDARY)**

### Specified activities/works:

- (a) All works external to *Naala Nura* and *Naala Badu* which do not negatively impact the heritage significance of the place, within the curtilage of the item relating to:
  - (i) maintenance, repair, replacement with like-for-like or sympathetic alternative, or re-positioning of signage, lampposts, bus stops, parking, other signage and other similar works;
  - (ii) maintenance, repair, upgrading or re-positioning of skateboard deterrents, bike racks, bollards, flagpoles, rubbish bins, external lighting (including temporary lighting installations), benches, other seating and other similar items;
  - (iii) maintenance repair and/or upgrading of rainwater goods;
  - (iv) pest management such as, but not limited to, bird or rodent deterrents;
  - (v) maintenance, redesign or replacement of plants and landscaping schemes in accordance with the PMA and landscape plans; and
  - (vi) maintenance, upkeep and ongoing use of the reflecting pools outside *Naala Nura*.

## **EXEMPTION 4: EASTERN DISTRIBUTOR**

### Specified activities/ works:

- (a) The following activities/ works are exempt in connection with the Eastern Distributor Land Bridge and associated roads (irrespective of whom they are undertaken by):
  - (i) The operation and use of the roads.
  - (ii) All development and works, associated infrastructure, utilities, services, landscaping, foundations and rock strengthening supports within the curtilage (boundary) of the item, including survey works, subdivision, contamination management, maintenance (structural or otherwise), road works, traffic control, excavation, and other works which do not impact on the significance of the Art Gallery as stated in the statement of significance, and the erection of hoarding and other temporary structures or signage required for the purposes of carrying out those development and works, associated infrastructure, utilities, services, foundation and rock strengthening supports.

## **EXEMPTION 5: NAALA NURA – EXTERNAL DISPLAY OF ART WORKS, EXHIBITIONS AND PRESENTING PUBLIC PROGRAMS**

### Specified activities/ works:

- (a) All curatorial and public programming activities external to *Naala Nura* that require work of a minor nature which do not negatively impact the heritage significance of the place, including but not limited to temporary signage, lighting and installations.
- (b) Works and activities associated with the use of the external areas to *Naala Nura* within the curtilage (boundary), for display of artworks, exhibitions and presentation of public programs, including but not limited to: installation of any equipment and fixtures and such other temporary alteration(s) to facilitate those things that support the ongoing functions of the Art Gallery, being neither permanent nor resulting in damage to the exterior fabric.

#### **EXEMPTION 6: NAALA NURA – INTERNAL DISPLAY OF ARTWORKS, EXHIBITIONS AND PRESENTING PUBLIC PROGRAMS**

##### Specified activities/ works:

- (a) Minor internal works such as hanging systems for display of artworks, installation of shelving, installation of signage or lighting, provided this work does not negatively impact the heritage significance of the place and is undertaken in accordance with a CMP prepared in accordance with the general condition C).
- (b) Works and activities within *Naala Nura* for display of artworks and exhibitions including but not limited to: installation of equipment and fixtures; temporary alterations; reconfiguration of exhibition spaces, surfaces and volumes in *Naala Nura*, that do not negatively impact or permanently affect the heritage significance of the place.
- (c) Any temporary curatorial or public programming activities that require internal work of a minor nature to *Naala Nura* including, but not limited to: temporary signage, temporary lighting, temporary structures and installations that do not negatively impact the heritage significance of the place.

#### **EXEMPTION 7: COLLECTION MAINTENANCE**

##### Specified activities/ works:

- (a) Installation, upgrade, repair or replacement of lighting, electrical, plumbing, audio-visual, air-conditioning, fire safety and security services in all internal areas of *Naala Nura* that support the ongoing functions of the Art Gallery which do not significantly alter the heritage fabric of the place, noting that:
  - (i) the installation of new services in the Vernon Wing must not involve penetrations through significant fabric or conceal architectural features (including but not limited to the archaeological remains of the Art Barn), and
  - (ii) in areas with masonry walls, new services appropriate for collection maintenance purposes should be fixed into mortar joints and not directly into masonry blocks.

#### **EXEMPTION 8: EXTERNAL ART CONSERVATION TREATMENT**

##### Specified activities/ works:

- (a) Conservation work or treatments on outdoor art works (whether temporary or not), whether external to *Naala Nura*, *Naala Badu* or otherwise within the curtilage (boundary) of the item, including temporary removal or relocation (in whole or part) and the use of plant and equipment to carry out the works, as required.

#### **EXEMPTION 9: ACCESSIBILITY**

Specified activities/ works:

- (a) Modifications and alterations, to provide disability access in accordance with the Disability (Access to Premises – Buildings) Standards 2010 or as required to comply with any other applicable accessibility legislation, where works and activities also comply with a CMP prepared in accordance with general conditions:
  - (i) with regard to *Naala Nura*, where this work is reversible and does not adversely affect exterior fabric or significant Vernon Wing interiors (including but not limited to the archaeological remains of the Art Barn); and,
  - (ii) for *Naala Badu* and other areas within the curtilage (boundary), where the work is sympathetic to the aesthetic values of the place.

**EXEMPTION 10: EMERGENCY WORKS**

Specified activities/ works:

- (a) Activities/works required immediately in an emergency, including but not limited to:
  - i. preventing imminent serious damage to significant building or landscape fabric; and
  - ii. preventing imminent serious damage to any item within the Art Gallery's collection;
  - iii. urgent repairs to rainwater goods;
  - iv. urgent works to prevent or divert flooding; and
  - v. actions required to ensure public safety.



## **Exemption Order for Royal Botanic Gardens SHR No. 01070 under the *Heritage Act 1977***

I, Penny Sharpe, the Minister for Heritage, pursuant to section 57(2) of the *Heritage Act 1977* (the Act), on the recommendation of the Heritage Council of New South Wales dated 3 September 2024, do by this Order:

1. Revoke the order made on 17 November 2000 and published in the NSW Government Gazette No. 150 of 17 Nov 2000 and the order made on 20 July 2011 and published in the NSW Government Gazette No, 111 of 18 November 2011.
2. Grant an exemption from section 57(1) of the Act in respect of the engaging in or carrying out of any activities described in Schedule C by the owner, manager, mortgagee or lessee (or persons authorised by the owner or manager) of the item described in Schedule A on the land identified in Schedule B.

This Order takes effect on the date it is published in the NSW Government Gazette.

Dated this 22 day of October 2024.

The Hon Penny Sharpe MLC

**Minister for Heritage**

## SCHEDULE A

The item known as *Royal Botanic Gardens and Domain* SHR No. 01070, situated on the land described in Schedule B.

## SCHEDULE B

The item known as *The Royal Botanic Gardens and Domain* SHR No. 01070, located as identified on the plan catalogued HC Plan 2468 in the office of the Heritage Council of New South Wales.

## SCHEDULE C

It is recommended that the following specified activities/ works to an item do not require approval under section 57(1) of the Act.

### GENERAL CONDITIONS

These general conditions apply to the use of all the site specific exemptions and must be complied with:

- a) A Conservation Management Plan (CMP) for the site must meet the following conditions:
  - i. It must be prepared by a suitably qualified and experienced heritage professional.
  - ii. It must be prepared in accordance with the requirements for a detailed and best practice CMP as outlined in the Heritage Council of NSW document *Statement of best practice for conservation management plans* (2021).
  - iii. It must be consistent with the *Heritage Council of NSW documents: Guidance on developing a conservation management plan* (2021) and *Conservation Management Plan checklist* (2021).
- b) Anything done under the site specific exemptions must be carried out by people with knowledge, skills and experience appropriate to the work (some site specific exemptions require suitably qualified and experienced professional advice/work).
- c) The site specific exemptions do not permit the removal of relics or Aboriginal objects. If relics are discovered, work must cease in the affected area and the Heritage Council of NSW 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*. Aboriginal object has the same meaning as in the *National Parks and Wildlife Act 1974*.
- d) Any works/activities undertaken under these exemptions should have consideration for the archaeological value of the place. Excavation and ground disturbance including but not limited to for services, drainage or signage, should only occur in areas of low or lesser potential as determined by an archaeological assessment or zoning plan, prepared by a suitably qualified archaeologist.
- e) Activities/works that do not fit strictly within the exemptions described below require approval by way of an application under section 60 of the *Heritage Act 1977*.
- f) The site specific exemptions are self-assessed. It is the responsibility of a proponent to ensure that the proposed activities/works fall within the site specific exemptions.

- g) The proponent is responsible for ensuring that any activities/works undertaken by them meet all the required conditions and have all necessary approvals.
- h) Proponents must keep records of any activities/works for auditing and compliance purposes by the Heritage Council of NSW. 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.
- i) 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.
- j) 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*.
- k) Authorised persons under the *Heritage Act 1977* may carry out inspections for compliance.
- l) The site specific exemptions under the *Heritage Act 1977* 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*).
- m) The site specific exemptions under *the Heritage Act 1977* do not constitute satisfaction of the relevant provisions of the National Construction Code for ancillary works.
- n) Activities or work undertaken pursuant to a site specific exemption must not, if it relates to an existing building, cause the building to contravene the *National Construction Code*.
- o) In these exemptions, words have the same meaning as in the *Heritage Act 1977* or the relevant guidelines, unless otherwise indicated. Where there is an inconsistency between relevant guidelines and these exemptions, these exemptions prevail to the extent of the inconsistency. Where there is an inconsistency between either relevant guidelines or these exemptions and *the Heritage Act 1977*, the Act will prevail.
- p) *The Heritage Manual* (1996, Heritage Office and Department of Urban Affairs & Planning) and *The Maintenance Series* (1996 republished 2004, NSW Heritage Office and Department of Urban Affairs & Planning) guidelines must be complied with when undertaking any activities/works on an item.

## **EXEMPTION 1: CURATION OF LIVING COLLECTIONS AND DISPLAYS**

### Specified activities/works:

- (a) Routine horticultural maintenance, management and pest and disease control in accordance with the *Biosecurity Act 2015*.
- (b) Garden bed/lawn management, including amendment, addition and/or deletion of garden beds, lawns and hard landscaping including sub surface drainage, irrigation, retaining walls, and related infrastructure to implement the Royal Botanic Gardens and Domain Trust (The Trust) Strategic Plan, Aboriginal Reconciliation Action Plan, Master Plan, Management Plans and living collections programs.
- (c) Plant curation
- (d) Tree management and arboricultural programs consistent with the Trust's (RGBDT) thematic and collections policy.
- (e) Installation, alteration, placement and maintenance of interpretative signage, artwork and plant labels.

## **EXEMPTION 2: VISITOR SERVICES PROGRAMS**

Specified activities/works:

- (a) Installation of temporary facilities for various events where the Trust is satisfied that the activity will not negatively impact the heritage significance of the site as a whole or the area in which they are to be undertaken, and where this does not cover more than 10% of the site area.
  - (i) Temporary facilities include fencing, temporary buildings and road closures, ancillary structures, exhibitions, artworks, sculptures, crowd control barriers, stages, lighting, sound, public address equipment and signage.
  - (ii) The meaning of temporary is to be determined at the discretion of the Royal Botanic Gardens and Domain Trust, and;
  - (iii) in accordance with the most recent CMP prepared in accordance with general condition a).

**EXEMPTION 3: TRAFFIC MANAGEMENT**

Specified activities/works:

- (a) Implementation of the Royal Botanic Gardens Traffic Management Plan.
- (b) Maintenance, repair, upgrade and/or resurfacing of existing roads and pathways with similar materials without altering their location, dimensions or historic character.

**EXEMPTION 4: PROTECTION OF PUBLIC SAFETY AND RISK MANAGEMENT**

Specified activities/works:

- (a) Removal or pruning of trees which are a danger to the public or staff.
- (b) Path and fence maintenance.
- (c) Prevention of catastrophic failure of geological formations and control of erosion.
- (d) Waste removal.
- (e) Installation, placement, maintenance and removal of components of directional signage or public safety or informational signs.
- (f) Installation, upgrade and maintenance of surveillance systems provided that the activity does not negatively impact the heritage significance of the area in which it is located.

**EXEMPTION 5: MAINTENANCE AND UPGRADING OF SERVICES AND UTILITIES**

Specified activities/works:

- (a) Maintenance of services and public utilities including communications, gas, electricity, water supply, waste removal, sewerage, irrigation and drainage, provided that the activity does not negatively impact the heritage significance of the area in which it is located.
- (b) Upgrade of services and public utilities including communications, gas, electricity, water supply, waste removal, sewerage, irrigation and drainage, provided that the activity does not negatively impact the heritage significance of the area in which it is located.

**EXEMPTION 6: EXCAVATION**

Specified activities/works:

- (a) In addition to the standard exemptions, excavation to:
  - (i) maintain, repair or replace footings for interpretation signage/wayfinding.

## **EXEMPTION 7: VEGETATION**

### Specified activities/works:

- (a) In addition to the standard exemptions, vegetation management activities including:
  - (i) New species or plantings, including curation of species in accordance with the need for scientific research and / or display horticulture within a botanic garden setting.
  - (ii) Tree surgery may only be performed by a qualified arborist, horticulturist or tree surgeon and must be necessary for the health of those plants or the safety of the public or staff.

## **EXEMPTION 8: ART GALLERY OF NEW SOUTH WALES**

### Specified activities/works:

- (a) All works and activities within the overlapping State Heritage Register curtilage of the Royal Botanic Gardens and the Domain (SHR No. 01070) and the Art Gallery of New South Wales (SHR No. 02096) (Lot 1001, part Lot 1002 DP 1249710 and part Lot 1013 DP1199151) which are exempt in accordance with the site specific exemptions for the Art Gallery of New South Wales.

## **EXEMPTION 9: TARPEIAN WAY**

### Specified activities/works:

- (a) All underground works to the Bennelong car park, provided there is no material impact upon the Tarpeian Way or the Royal Botanic Gardens and Domain.
- (b) All underground works to the Sydney Harbour Tunnel, provided there is no material impact upon the Tarpeian Way or the Royal Botanic Gardens and Domain.