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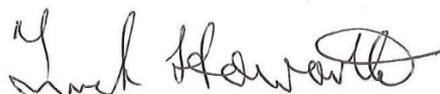
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HERITAGE ACT 1977

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

I, Frank Howarth PSM AM, Chair of the Heritage Council of New South Wales, pursuant to 139(4) of the *Heritage Act 1977* and in accordance with the resolution of the Heritage Council of New South Wales, do by this Order revoke the schedules of exceptions to subsections 139(1) and (2) of the *Heritage Act 1977* published in the Government Gazette on 5 September 2008 and create exceptions to subsections 139(1) and (2) of the *Heritage Act 1977*, described in the Schedule below, effective from 1 March 2022.



Frank Howarth PSM AM

Chair, Heritage Council of New South Wales

Schedule of exceptions to subsections 139(1) and (2) of the *Heritage Act 1977*

1 Interpretation

- (a) Words and expressions that occur in this order have the same meanings as they do in the *Heritage Act 1977*, except 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 research potential** of a site means the extent to which further study of relics which are likely to be found is expected to contribute to improved knowledge about New South Wales history which is not demonstrated by other sites or archaeological resources.
 - iii. **Heritage management document** is a document written to investigate and assess the significance of archaeological relics or heritage items, the impact of an action on their significance, and any management measures required to mitigate impacts to significance. It includes but is not limited to Statements of Heritage Impact and Archaeological Assessments.

- iv. **Archaeological Assessment** is a document written to understand archaeological sites and relics and provide options for their management.
- v. **Heritage Act** means the *Heritage Act 1977*.

2 Exceptions

The following disturbance or excavation of land does not require an excavation permit under subsections 139(1) or (2) of the *Heritage Act 1977* provided that it falls within one or more of the exceptions described at clauses 2(a) to (f) below, and is undertaken in compliance with the General Conditions prescribed at clause 3 further below:

- (a) Any disturbance or excavation of land that has limited archaeological research potential, as demonstrated by a heritage management document, such as an Archaeological Assessment, completed within the last five years.
- (b) Any disturbance or excavation of land that constitutes minor works involving limited impact to relics of local heritage significance, in accordance with '**Relics of local heritage significance: a guide for minor works with limited impact**' published by Heritage NSW.
- (c) Any disturbance or excavation of land that constitutes minor works involving limited impact to relics of local heritage significance as demonstrated by a heritage management document, such as an Archaeological Assessment, completed within the last five years.
- (d) Any disturbance or excavation of land for archaeological test excavation of relics of local heritage significance completed in accordance with the guideline '**Relics of local heritage significance: a guide for archaeological test excavation**' published by Heritage NSW.
- (e) Any disturbance or excavation of land for archaeological monitoring of relics of local heritage significance completed in accordance with the guideline '**Relics of local heritage significance: a guide for archaeological monitoring**' published by Heritage NSW.
- (f) Any disturbance or excavation of land:
 - i. for the purpose of exposing underground utility services infrastructure which occurs within an existing service trench and will not affect any other relics;
 - ii. to carry out inspections or emergency maintenance or repair on underground utility services with due care taken to avoid effects on any other relics;
 - iii. to maintain, repair, or replace underground utility services to buildings which will not affect any other relics;
 - iv. to maintain or repair the foundations of an existing building which will not affect any associated relics; or
 - v. to expose survey marks for use in conducting a land survey.

3 General Conditions

- (a) These general conditions apply to each of the exceptions to subsections 139(1) or (2) of the *Heritage Act 1977* prescribed above.
- (b) The exceptions are self-assessed. It is the responsibility of a proponent to ensure that the proposed activities/ works fall within these exceptions.
- (c) These exceptions do not apply to relics of State heritage significance or to a relic that is subject to an interim heritage order or a listing on the State Heritage Register.
- (d) These exceptions do not apply to Aboriginal objects under the *National Parks and Wildlife Act 1974*.
- (e) If any Aboriginal objects are discovered, excavation or disturbance is to cease and notification in accordance with section 89A of the *National Parks and Wildlife Act 1974* is required. Depending on the nature of the discovery, additional assessment and approval under the *National Parks and Wildlife Act 1974* may be required prior to works continuing in the affected area(s).
- (f) Proponents 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.
- (g) Anything done under these exceptions must be carried out by people with knowledge, skills and experience appropriate to the work. Some exceptions require suitably qualified and experienced professional advice/ work as set out in the guidelines '**Relics of local heritage significance: a guide for archaeological test excavation**' published by Heritage NSW and '**Relics of local heritage significance: a guide for archaeological monitoring**' published by Heritage NSW.
- (g) A person who is aware or believes that he or she has discovered or located a relic, in any circumstances (including where works are carried out in reliance on an exception under section 139(4)), must notify the Heritage Council in accordance with section 146 of the *Heritage Act 1977*. Depending on the nature of the discovery, additional assessment and approval under the *Heritage Act 1977* may be required prior to the recommencement of excavation in the affected area(s).
- (h) Authorised persons under the *Heritage Act 1977* may carry out inspections for compliance.
- (i) Activities/ works that do not fit strictly within the exceptions described above require approval, by way of an application under section 140 of the *Heritage Act 1977*.
- (j) It is an offence to do any of the things listed in section 139(1) or (2) of the *Heritage Act 1977* without a valid exception or approval.

- (k) The exceptions under the *Heritage Act 1977* are not authorisations, approvals or exemptions for the activities/ works under any other legislation local government or NSW Government requirements (including, but not limited to, the *Environmental Planning and Assessment Act 1979* and the *National Parks and Wildlife Act 1974*).