

Relics of local heritage significance: a guide for minor works with limited impact



Relics from Parramatta. (Photography by F. Barry, Heritage NSW)

Introduction

This guideline sets out the requirements when undertaking minor works involving limited impact to relics of local heritage significance, relying on exception 2(b) made under section 139(4) of the *Heritage Act 1977* (exception 2(b)), published in the NSW Gazette on 18 February 2022 (the order).

Under the *Heritage Act 1977*, a '**relic**' means any deposit, artefact, object or material evidence that:

- relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
- is of State or local heritage significance.

Relics are protected under the *Heritage Act 1977*. Excavation and disturbance of land may require an excavation permit under section 140 or otherwise fall within an exception under section 139(4).

Exception 2(b) provides an exception from the requirement to hold an excavation permit for:

“Any disturbance or excavation of land that constitutes minor works involving limited impact to relics of local heritage significance, within the meaning of the '**Relics of local heritage significance: a guide for minor works with limited impact**' published by Heritage NSW.

Works conducted under exception 2(b) must comply with this guideline. The works must also meet the general conditions prescribed for the exceptions. See the [order](#) published in the NSW Gazette for full details.

This guideline sets out how to assess if works are minor, as follows:

1. how minor works are defined,
2. the activities that may be applicable, and
3. how to understand and assess cumulative impact.

These exceptions **do not** apply to relics of State heritage significance. See the [s140 application](#) information on the Heritage NSW website if relics of State heritage significance are predicted.

Archaeological relics may also be listed on the State Heritage Register. These exceptions **do not** apply to any relic that is State Heritage Register listed or subject to an interim heritage order. See the [s60 application](#) information on the Heritage NSW website for further information.

There are penalties under the *Heritage Act 1977* for failing to obtain a heritage approval, excavation permit or comply with a relevant exception, such as a fine of up to \$1.1 million, or in serious cases, imprisonment for up to 6 months. It is therefore important to ensure you understand the requirements that apply.

If Aboriginal objects are suspected to be present on the site, management under the *National Parks and Wildlife Act 1974* is required. See the Heritage NSW website for more information on managing [Aboriginal cultural heritage](#).

Defining minor works

Minor works with limited impact are works having a small or negligible impact on relics of local heritage significance. This can be demonstrated by addressing that either:

- the scale or nature of the proposed excavation, regardless of the depth, would not adversely affect the relics and deposits, such as where the excavation would:
 - only affect less important areas of an archaeological site and not areas of highest potential (e.g. cesspits, occupation deposits, wells), or
 - occur in areas previously disturbed or where relics have already been removed, or
 - verify and assess the site conditions.

or

- the scale of works is otherwise consistent with a limited impact, assessed by:
 - when the precise location of the archaeological relics is known, the area affected by the works is a small portion of the total known area of potential for relics, or
 - when the precise location of the archaeological relics is unknown, but the works only impact a small portion of the overall area and manual techniques are used, or
 - the cumulative impact of the works and any previous or proposed future works (see further below).

Considerations when determining if your works may be minor can include:

- Will the work expose, but not remove the relic(s)?
- Can your work reuse areas already disturbed, or areas of the relic(s) that are already disturbed?
- Can your work be redesigned to avoid the relic(s)?

Examples of minor works

The minor works exception **does not** apply to relics of State heritage significance, or relics subject to State Heritage Register listing or an interim heritage order.

Examples of works which are likely to be considered minor are:

- geotechnical works using small machine excavators, hand augurs, and small dimension truck mounted augers,
- contamination testing using small machine excavators or hand excavation,
- landscaping works, including creating and removing paths, planting trees and shrubs, and garden bed preparation. Generally, landscaping works will not involve the use of heavy machinery, except for concrete cutting,
- service installation, including in existing trenches and over short distances,
- pegging stakes, survey marks, or making temporary fencing using inserted posts, e.g. star pickets,
- vegetation removal not requiring pulling large root balls from soil, or
- driving wheeled or tracked vehicles where this does not dig into the ground.

Other works that could reasonably be considered as minor and involving limited impact to relics of local heritage significance as demonstrated by a heritage management document may fit within exception 2(c), which provides an exception from the requirement to hold an excavation permit for:

“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.”

See the [order](#) published in the NSW Gazette for full details.

If you are unsure if your works fall within the exceptions, the advice and support of an archaeologist will assist you to undertake works relying on an exception. Refer to the Heritage NSW website for a [directory of heritage professionals](#) where you can search for archaeologists.

If the minor works involve archaeological monitoring or test excavation you must follow the guidelines *Relics of local heritage significance: a guide for archaeological test excavation* and *Relics of local heritage significance: a guide for archaeological monitoring* both published by Heritage NSW.

Cumulative impact

As archaeology is non-renewable, ongoing or repeated excavation and disturbance of archaeology will deplete this resource. Consequently, the cumulative impact of activities/works on archaeology must be assessed. A cumulative impact assessment must carefully analyse any previous works at the site and their impact over time, along with the effect of the proposed activities/works to be undertaken now.

One project by itself may be of minor impact, however several activities/works that impact archaeology, when combined, may present an unreasonable overall impact by eroding or entirely removing the resource or heritage value. Preparation for minor works using an exception must address the cumulative impact of the works. The works will not fall under the exception if they may generate more than a limited impact to relics of local heritage significance.

Strategies that can minimise cumulative impact must be considered when planning your work, such as:

- reusing existing service trenches and utility corridors,
- consolidating ground disturbance areas, or
- building up not down.

Recordkeeping

If after reading this guideline you consider your works are minor and have a limited impact on relics of local heritage significance, you must document this decision and the works and keep your records for a reasonable time in accordance with the general conditions. See the order published in the NSW Gazette for full details.

Heritage NSW has provided a template **Record of Use form** that may be used in the recording of exceptions. Keep a copy of any professional advice received for your records.

Unexpected finds procedure

Unexpected finds can be:

- burials,
- Aboriginal objects, or
- relics not predicted in the documentation for the exception (e.g. relics of State significance, relics that are more intact than predicted, etc).

As noted in general condition (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).”

Unexpected finds procedures are important so you know what to do in the event something unexpected is discovered. An unexpected finds procedure should contain the following steps:

- if a find is identified, works will stop immediately around the find and the area will be protected,
- the find will be reported to the project manager or supervisor,
- a historical archaeologist will be contacted to identify the find,
- if the find is a relic, a mitigation strategy must be developed and implemented. This could include: avoidance of the find, test excavation or other mitigation measures. You may need to reassess your exception or apply for a s140 permit, and
- if the find is a relic, notification to Heritage Council under section 146 of the *Heritage Act 1977* will be required. See the ‘Discovery of a relic’ section below for when and how to notify the Heritage Council.

Discovery of a relic

You **do not** need to notify the Heritage Council if no relics are found. If relics are found, notification of the relic’s location under section 146 of the *Heritage Act 1977* is required. As noted in general condition (h):

“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).”

Having used either exception 2(b) or exception 2(c) the process of section 146 notification should occur within a reasonable time and take the form of an email to the Heritage Council heritagemailbox@environment.nsw.gov.au identifying that the relic was discovered when relying on the exceptions referred to above and providing:

- the GPS location of the relic, and
- a photograph of the relic in its location (for context).

No formal acknowledgement of the notification will be provided.

If the minor works identify that further archaeological work is required, e.g. a salvage excavation, then a section 140 excavation permit may be necessary. See the [s140 information](#) on the Heritage NSW website. We recommend you submit any documentation relating to the exception, such as your completed Record of Use form, with your application.

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