



Environmental Defenders Office

NSW Heritage Law

Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our [website](#).

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

This factsheet was last updated on 5 May 2015

Overview

Natural, cultural and built heritage is protected in NSW.¹ Heritage items or places can be listed on the State Heritage Register, or interim heritage orders can be made to protect heritage items or places. Approval must be obtained from the Heritage Council or local council before work can be done which might damage a protected item or place. Indigenous heritage items or places are protected under specific laws,² although these things can also be listed for protection on the State Heritage Register or under an interim heritage order.

Read: EDO Factsheet on **Aboriginal Culture and Heritage** for more information on how Aboriginal & Torres Strait Islander heritage is protected

Local councils play an important role in protecting local natural and cultural heritage as part of their responsibilities for establishing land use zones in their local environmental plans and approving development.³

Items and places which are of national heritage significance, Commonwealth heritage places, or world heritage are protected under Commonwealth law.⁴

Read: EDO Factsheet on **Commonwealth Heritage Protection Law** for more information

¹ See the [Heritage Act 1977 \(NSW\)](#) (**Heritage Act**) and the [Heritage Regulation 2012 \(NSW\)](#) (**Heritage Regulation**).

² See the [National Parks and Wildlife Act 1974 \(NSW\)](#).

³ Under the [Environmental Planning and Assessment Act 1979 \(NSW\)](#) (**EP&A Act**).

⁴ See the [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#).

State Heritage Protection

There are three types of protection available at the State level:

- Listing on the State Heritage Register;
- Interim heritage orders, and;
- Emergency orders.

Also, archaeological excavations require a permit if the person knows, or has reasonable cause to suspect that they might discover, expose, move, damage or destroy a relic.⁵

Historic shipwrecks are also protected, but are not addressed in this factsheet.⁶

Responsible Minister and Department

The Minister for Heritage is responsible for the laws protecting heritage in NSW. The Minister is supported by Heritage NSW.

Visit: [The Heritage NSW website](#) for more information

Heritage Council of NSW

The work of Heritage NSW is guided by the Heritage Council of NSW. The Council was established under the [Heritage Act 1977 \(NSW\)](#). It is an advisory body whose members are appointed by the Heritage Minister,⁷ including representatives from the community, Director-General of the Department of Planning, Industry and Environment, a person with qualification and skills in Aboriginal Heritage, and the National Trust of Australia.

The functions of the Heritage Council include:⁸

- making recommendations (including carrying out investigations, research and inquiries) to the Minister with respect items of environmental heritage;
- maintaining a database (called the State Heritage Inventory) listing items of State and local heritage significance;
- conducting community education concerning the State's environmental heritage;
- making submissions on things such as draft local environmental plans, State environmental planning policies or environmental impact statements;
- providing opinions or statements on environmental heritage (e.g. to the Land and Environment Court) if the Council considers it appropriate to do so.

⁵ Heritage Act, s 139(1).

⁶ Ibid, ss 47–52.

⁷ Ibid, s 8.

⁸ Ibid, s 21.

State Heritage Register and database

The Heritage Council keeps a public register of:

- all interim heritage orders made;
- all orders made;
- all notices served; and
- any heritage agreements entered into.

Visit: [The Heritage NSW State Heritage Inventory portal](#) to search for declared Aboriginal Places, items listed on the State Heritage Register, Interim Heritage Orders and items of local heritage significance.

Listing on the State Heritage Register

Listing on the State Heritage Register provides some protection for a heritage item. The effect of a listing is that a person cannot damage, destroy, alter or move the item, building or land without approval from the Heritage Council.⁹

Minister decides whether to do list

The Heritage Minister decides whether an item is of State heritage significance and should be placed on the State Heritage Register, but can only do so if the Heritage Council recommends the listing.¹⁰

The Heritage Council can make such a recommendation to the Minister:¹¹

- at the request of the Minister;
- on the Heritage Council's own initiative;
- at the request of the owner of the item concerned; or
- at the request of the relevant local council.

What is an item of State Heritage significance?

Items of State heritage significance include places, buildings, works, relics, moveable objects or precincts which are of historical, scientific, cultural, social, archaeological, aesthetic or natural significance to the State.¹² The criteria that the Heritage Council uses to make decisions about whether or not an item is of State heritage significance must be published by the Minister in the NSW Government Gazette.¹³

⁹ Heritage Act, s 57(1).

¹⁰ Ibid, s 32(1).

¹¹ Ibid, s 32(2).

¹² Ibid, s 4A(1).

¹³ Ibid, s 4A(3).

Procedure before making recommendation for listing

There is a detailed procedure which the Heritage Council must follow before it can make a recommendation to the Minister that an item be placed on the State Heritage Register.¹⁴

The procedure includes the following requirements:

- the Heritage Council must give each person that it considers to be an affected owner or occupier written notice of its intention to consider a listing;
- within 14 days after that, the Heritage Council must publish notice of its intention in a newspaper circulating in the area where the item is located;
- the notice must invite submissions on the proposed listing, with a closing date for submissions (which is at least 14 days after publication of the newspaper notice);
- the Heritage Council must consider any submissions received, and must decide whether or not to recommend that the item be listed within 30 days of the closing date of submissions.

Any person can object to a proposed listing on any ground they wish. Some common grounds include that the item is not of State Heritage significance, the long-term conservation of the item is not necessary, a listing would render the item incapable of reasonable economic use, or a listing would cause undue financial hardship to the owner.¹⁵

After the closing date for submissions, the Heritage Council must then notify its decision to all affected owners or occupiers, as well as all those who made a submission during the submission period.¹⁶ The Heritage Council then makes its recommendation to the Minister (if it recommends a listing).

Heritage NSW assists the Heritage Council with its technical and administrative work.

Action by Minister

After receiving a recommendation from the Heritage Council that an item be listed, the Minister, within 14 days, must:¹⁷

- decide whether or not to list the item;
- refer the matter to a Ministerial Review Panel for advice; or
- request the Planning Assessment Commission to review the matter.

If the matter is referred, the Minister must decide whether to list the item within 14 days of receiving a report from the Ministerial Review Panel or Planning Assessment Commission.¹⁸

¹⁴ Heritage Act, s 33.

¹⁵ Ibid, s 33(2).

¹⁶ Ibid, s 33(1)(e).

¹⁷ Ibid, s 34.

¹⁸ Ibid, s 34(2).

Heritage Council notifies affected landowners

Within 14 days of being notified by the Minister that the Minister has decided to list an item, the Heritage Council must notify in writing each person that it considers to be an affected owner or occupier, and publish a notice in the NSW Government Gazette.¹⁹ A failure to give notice will not invalidate the listing.²⁰

Appeals

There is no right to appeal the Minister's decision to make a listing on the State Heritage Register on the merits. This means that you cannot appeal the decision because you disagree with it.

However, if the Minister has not followed the correct legal process in making the listing, a person can bring judicial review proceedings in the Land and Environment Court challenging the validity of the decision.²¹

Read: [EDO Factsheet on \(the\) Land and Environment Court of NSW for more information on merits appeals and judicial review](#)

Removal of items from the State Heritage Register

The Minister can direct that an item be removed from the State Heritage Register if the Minister is of the opinion that the item is no longer of State heritage significance.²² As with a listing, this can only be done on the recommendation of the Heritage Council. The procedure for removing an item from the State Heritage Register is the same as for making a listing.²³

Heritage Agreements

If an item has been listed on the State Heritage Register, the Minister can enter into a heritage agreement with the owner of the item to assist in the conservation of the item.²⁴

A heritage agreement can include provisions relating to:²⁵

- the conservation of the item;
- a review of the valuation of the item or the land on which it is situated;
- the restriction on the use of the item or the land on which it is situated;
- the requirements for carrying out further work on the item or land, including any restrictions; and

¹⁹ Heritage Act, s 37.

²⁰ Ibid, s 37(3).

²¹ Ibid, s 153.

²² Ibid, s 38(1).

²³ Ibid, s 38(3).

²⁴ Ibid, s 39.

²⁵ Ibid, s 40.

- the availability of the item for public inspection, including any charges for admission.

The owner of the item or land can receive financial, technical or other professional advice or assistance from the government.²⁶ The financial assistance may only be in the form of assistance to pay land tax, duty or council rates. Heritage agreements can be registered over the title of a property and, if so, run with the land (i.e. they can bind future owners of the property).²⁷ Only the Minister can enforce a heritage agreement in Court.²⁸

Owner must maintain and repair heritage items

The owner of a building, work or relic which is listed on the State Heritage Register has a legal duty to maintain and repair the item.²⁹ There are minimum standards of maintenance and repair which must be met, which include weather-proofing, fire protection and security.³⁰

The Heritage Council can issue an owner with an order to maintain or repair a heritage item, but must first give the person notice and an opportunity to comment.³¹ The owner can appeal against the notice to the Land and Environment Court within 28 days.³² Failure to comply with an order may mean that the land cannot be used or developed for up to 10 years, or that the government can compulsorily take over the land.³³

Interim heritage orders

An interim heritage order is a temporary form of protection over an item or land that can be made while further investigation of the heritage value of the item is carried out. The effect of an interim heritage order is that a person cannot damage, destroy, alter or move the item, building or land without approval from the Heritage Council.³⁴ The majority of interim heritage orders are made in response to concerns raised by community members or local government.

The process for making an interim heritage order is much faster and less complex than making a listing on the State Heritage Register.

Interim heritage orders are made by the Minister if the Minister thinks that an item or land may be found (after further inquiry) to be of State or local heritage significance.³⁵ Unlike

²⁶ Heritage Act, ss 40(b), 45.

²⁷ Ibid, s 43.

²⁸ Ibid, s 44.

²⁹ Ibid, s 119.

³⁰ Ibid, s 118; Heritage Regulation, cl 10–18.

³¹ Ibid, ss 120, 120A.

³² Ibid, ss 120F, 120L. These appeals are heard in Class 2 of the Land and Environment Court.

³³ Ibid, s 121.

³⁴ Ibid, s 57(1).

³⁵ Ibid, s 24.

listing on the State Heritage Register, the Minister is not required to give anybody notice before making an interim heritage order.³⁶

The Heritage Council should provide advice to the Minister on whether to make an interim heritage order, and can do so either at the request of the Minister or on its own initiative.³⁷ The Minister can authorise local councils to make interim heritage orders for items which are of local heritage significance.³⁸

Notification of interim heritage orders

Once an interim heritage order has been made, the order must be published in the NSW Government Gazette and in a newspaper circulating in the area, and affected owners or occupiers must be notified.³⁹ Failure to notify will not invalidate the order.⁴⁰

An interim heritage order remains in force for 12 months, unless the order specifies a shorter period.⁴¹

Appeal by affected owner or occupier

An affected owner or occupier can appeal to the Land and Environment Court against an interim heritage order which is made by a local council.⁴² There is no appeal if the interim heritage order was made by the Minister.

The appeal must be brought within 28 days of the date that the interim heritage order was published in the Government Gazette.⁴³ The appeal will be heard as a merits appeal.⁴⁴

If the Minister has not followed the correct legal process in making the interim heritage order, any person can challenge the validity of the order in the Land and Environment Court.⁴⁵

Approvals to damage or demolish environmental heritage

A person who wishes to demolish, move, alter or in some way develop a place, building or land covered by an interim heritage order or a State Heritage Register listing must first obtain approval from the Heritage Council.⁴⁶ Any activity which might damage or destroy

³⁶ Heritage Act 1977, s 26.

³⁷ Ibid, s 24(2).

³⁸ Ibid, s 25.

³⁹ Ibid, s 28(1).

⁴⁰ Ibid, s 28(3).

⁴¹ Ibid, s 29(2).

⁴² Ibid, s 30(1).

⁴³ Ibid, s 30(2).

⁴⁴ [Land and Environment Court Act 1979 \(NSW\)](#), s 17(e) (**LEC Act**). Such appeals are heard in Class 1 of the Court's jurisdiction.

⁴⁵ Heritage Act, s 153. These are judicial review proceedings and are heard in Class 4 of the Court's jurisdiction.

⁴⁶ Ibid, s 57(1).

a tree or other vegetation on land or within a precinct relating to a heritage item also requires approval.⁴⁷

These approvals are not required for State significant developments that have been granted development consent.⁴⁸

Public notice and submissions

If the Heritage Council is of the opinion that the application, if granted, would materially affect the significance of the item of environmental heritage, the Heritage Council must publish notice of the application in a daily, State-wide newspaper.⁴⁹

The application for approval must be made available for public inspection for at least 21 days, during which period any person can make a written submission, which must be considered.⁵⁰

Notice is not required if the application relates to certain developments that are being assessed under planning law because the community will have a chance to comment when the proposal goes on public exhibition.⁵¹

Heritage Council decides application

The Heritage Council must refuse approval if the application will result in the whole of a work or building being demolished.⁵² This is subject to some exceptions, such as where the building constitutes a danger to the public, or can be relocated to other land.⁵³

Appeal to Minister

An applicant who is dissatisfied with a decision of the Heritage Council can appeal to the Minister. The appeal must be brought within 12 months of the applicant being notified of the decision, or after there has been a deemed refusal.⁵⁴ If the approval relates to development, then the appeal goes to the Land and Environment Court, and not the Minister. The appeal will be heard as a merits appeal in the Land and Environment Court.⁵⁵

For appeals which are made directly to the Minister, the Minister can request the Planning Assessment Commission to review the decision, and to make recommendations as to whether the appeal should be dismissed or allowed.⁵⁶ The appellant, Heritage Council, or any person who made a written submission during the

⁴⁷ *Heritage Act 1977* (NSW), s. 57(1)(h).

⁴⁸ EP&A Act, s 89J (1)(c)

⁴⁹ Heritage Act, s 61(1).

⁵⁰ Ibid, ss 61(2), (3), 62(b).

⁵¹ Ibid, ss 61(1A), 63(1A).

⁵² Ibid, s 63(2).

⁵³ Ibid, s 63(3).

⁵⁴ *Heritage Act 1977*, s 70.

⁵⁵ LEC Act, s 17(e). Merits appeals are heard in Class 1 of the Court's jurisdiction.

⁵⁶ Heritage Act, s 71.

public exhibition period, are entitled, if they so wish, to appear before the Planning Assessment Commission and to make submissions.⁵⁷

The Minister must then consider the recommendations of the Planning Assessment Commission, and decide whether to approve or refuse the application. The Minister's decision is final, and there is no merits appeal to the Land and Environment Court.⁵⁸

Emergency protection orders

The Minister or the Chairperson of the Heritage Council can make an emergency order to stop work on a site if a building, work, relic or place is being harmed or is about to be harmed.⁵⁹ These orders may only be used where the item or land is not already covered by an interim heritage order or listing on the State Heritage Register.

Emergency protection orders cannot be made where the activity is State significant development that is authorised by a development consent.⁶⁰

Emergency orders last for 40 days. Within that time, the Heritage Council must assess the heritage value of the item or place and advise the Minister as to whether an interim heritage order should be made.⁶¹

Requirements for archaeological excavations

Excavation permits

A person must not disturb or excavate land if they know, or have reasonable cause to suspect, that they might discover, expose, move or damage a relic, unless they have an excavation permit.⁶² A 'relic' means any deposit, object, artefact or material evidence which relates to the non-Aboriginal settlement of NSW.⁶³

An excavation permit is not required for State significant developments that are authorised by a development consent.⁶⁴

Excavation permits are issued by the Heritage Council.⁶⁵

As soon as practicable after a person uncovers a relic from an excavation under a permit, they must notify the Minister of the existence of the relic.⁶⁶ The Minister can direct that the relic be delivered to a museum, in which case no compensation is payable.⁶⁷

⁵⁷ Heritage Act, s 72.

⁵⁸ Ibid, s 74.

⁵⁹ Heritage Act, s 136(1).

⁶⁰ EP&A Act, s 89J (2).

⁶¹ Heritage Act, s 136.

⁶² Ibid, s 139(1).

⁶³ Ibid, s 4(1).

⁶⁴ EP&A Act, s 89J(1)(c)

⁶⁵ Heritage Act, s 141.

⁶⁶ Ibid, s 146A.

⁶⁷ Ibid, ss 146B(1), 146C.

An applicant who is dissatisfied with a decision of the Heritage Council to refuse, vary or revoke a permit (or if the Heritage Council fails to make a decision about the permit within 21 days) may appeal to the Minister, whose decision is final.⁶⁸

Notification of relics

All discoveries of relics must be notified to the Heritage Council, whether or not the person has been issued with an excavation permit, and the location of the relic disclosed.⁶⁹

There are serious penalties under the Act for failing to obtain an excavation permit or failing to notify the Heritage Council of discoveries, such as a fine of up to \$1.1 million, or in serious cases, imprisonment for up to 6 months.⁷⁰

Enforcement

Civil proceedings

Any person can bring civil enforcement proceedings in the Land and Environment Court to remedy or restrain a breach heritage protection laws.⁷¹ Where a breach is established, the Court has broad powers to limit the manner in which a site can be used, or to order the restoration of a building or site.⁷²

Criminal proceedings

Minor offences can be heard in a Local Court, whereas more serious offences are heard in the Land and Environment Court.⁷³

If a criminal offence has been committed, (e.g. a person has failed to obtain an approval to damage a heritage item, or has breached the terms of an approval) the Land and Environment Court can impose a penalty of up to \$1.1 million, or imprisonment for up to 6 months, or both.⁷⁴ The maximum penalty that a Local Court can impose is \$22,000 or 3 months imprisonment, or both.⁷⁵

Offences must be prosecuted within 12 months of the alleged commission of the offence, or 12 months from when the offence first came to the attention of an authorised person.⁷⁶

Order prohibiting use and development for up to 10 years

If an owner of land is convicted of an offence which involved demolishing, damaging or despoiling a heritage item or place, the Minister can make an order directing that

⁶⁸ Heritage Act, ss 142, 145.

⁶⁹ Ibid, s 146.

⁷⁰ Ibid, ss 156, 157.

⁷¹ Ibid, s 153.

⁷² Ibid, s 154.

⁷³ Ibid, s 158; LEC Act, s 21(e). These matters are heard in Class 5 of the Court's jurisdiction.

⁷⁴ Heritage Act, ss 156, 157.

⁷⁵ Ibid, s 158(4).

⁷⁶ Ibid, s 158A.

the land not be used or developed for up to 10 years.⁷⁷ Before the order is made, the owner must be given an opportunity to show cause as to why the order should not be issued.⁷⁸

Local councils and heritage protection

The number of items listed on the State Heritage Register has substantially decreased in recent years, reflecting government policy that local councils take more responsibility for protecting local heritage.

Heritage items and places are described in local environmental plans (**LEPs**) and shown on the heritage maps which accompany the LEP.

Every local council has a Heritage Officer who is usually available to give information and advice on local heritage matters.

Role of Heritage Council

The Heritage Council may receive submissions to local councils in respect of draft LEPs (known as planning proposals).⁷⁹

If a local council is of the opinion that a building or place is worthy of conservation on the State Heritage Register, it can make a submission to the Heritage Council for consideration.⁸⁰ The Heritage Council can then make recommendations to the Minister about the appropriate course of action.

The NSW DPIE has produced Local Government Heritage Guidelines to assist local councils to meet their heritage responsibilities.

Visit: [The NSW DPIE's page on the Local Government Heritage Guidelines to read the Guidelines](#)

Local environmental plans

Local environmental plans can include special provisions to conserve buildings, landscapes, relics and sites, as well as larger areas like historic precincts.

Items which are protected are usually listed in Schedule 5 of the LEP. All LEPs contain a clause dealing with heritage conservation.

⁷⁷ Heritage Act, ss 160, 161.

⁷⁸ Ibid, s 160.

⁷⁹ Ibid, s 22(2).

⁸⁰ Ibid, ss 166(1) and (2)

The clause:⁸¹

- requires a council to identify all heritage items, heritage conservation areas, archaeological sites and places of Aboriginal heritage significance on a Heritage Map, and to list the location and nature of those items and places in a schedule to the LEP (Schedule 5);
- sets out when development consent is (and is not) required for work which might affect a heritage item (including any trees on or near the heritage place);
- allows a local council to require a heritage impact statement, and;
- requires a council to consider the effect of any proposed development on the heritage significance of any heritage item or heritage conservation area before granting development consent.

Read: EDO Factsheet on **Local Environmental Plans**

Development consent

If a development will have the effect of demolishing, damaging or altering any item which is covered by an interim heritage order or State Heritage Register listing the local council must refer the development application to the Heritage Council and obtain its general terms of approval before consent can be granted.⁸² If the Heritage Council indicates that it will refuse an approval, then the local council must refuse the development application.⁸³

Read: EDO Factsheet on **Development applications and consents in NSW**

State significant developments are exempt

State significant developments are assessed and approved by the Planning Minister (or the Planning Assessment Commission).⁸⁴ State significant developments are exempt from the need to obtain approvals from the Heritage.⁸⁵

Read: EDO Factsheet on **State Significant Development and State Significant Infrastructure in NSW** for more information on state significant developments

Local councils can make interim heritage orders

The Heritage Minister can authorise a local council to make interim heritage orders for items of local heritage significance in the council's local government area.⁸⁶ An item of

⁸¹ [Standard Instrument—Principal Local Environmental Plan 2006 \(NSW\)](#), cl 5.10.

⁸² EP&A Act, s 91A.

⁸³ Ibid, s 91A(4).

⁸⁴ Ibid, Part 4, Div. 4.1.

⁸⁵ Ibid, s 89J.

⁸⁶ Heritage Act, s 25(1).

local heritage significance is defined as an item or land which is of significance to an area, having regard to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item.⁸⁷ The majority of interim heritage orders are made in response to concerns raised by the community concerns held by the local council itself.

The council is required to comply with the Local Government Heritage Guidelines. The guidelines state that interim heritage orders will lapse after 6 months (but can be extended by the council), during which time the local council must decide whether to list the item in its local environmental plan, or, if the item is of State heritage significance, nominate the item for inclusion on the State Heritage Register.⁸⁸

A council does not have to give anyone notice before making an interim heritage order.⁸⁹

Visit: [The NSW DPIE's page on the Local Government Heritage Guidelines to read the Guidelines](#)

What is the effect of an interim heritage order?

The effect of an interim heritage order made by a local council is that a person cannot damage, destroy, alter or move the item, building or land without approval from the council.⁹⁰

Appeal by owner or occupier affected by interim heritage order

An affected owner or occupier can appeal to the Land and Environment Court against an interim heritage order which is made by a local council.⁹¹

The appeal must be brought within 28 days of the date that the interim heritage order was published in the NSW Government Gazette.⁹² The appeal will be heard as a merits appeal in the Land and Environment Court.⁹³

If the local council has not followed the correct legal process in making the interim heritage order, any person can bring judicial review proceedings in the Land and Environment Court challenging the validity of the decision.⁹⁴

Read: [EDO Factsheet on \(the\) Land and Environment Court of NSW for more information on merits appeals and judicial review](#)

⁸⁷ Heritage Act, s 4A.

⁸⁸ *Local Government Heritage Guidelines*, cl 5.5.2(5).

⁸⁹ Heritage Act, s 26.

⁹⁰ *Ibid*, s 57(1).

⁹¹ *Ibid*, s 30(1).

⁹² *Ibid*, s 30(2).

⁹³ LEC Act, s 17(e). Merits appeals are heard in Class 1 of the Court's jurisdiction.

⁹⁴ Heritage Act, s 153. Judicial Review proceedings are heard in Class 4 of the Court's jurisdiction.

Case study: Unsuccessful appeal by developer against an interim heritage order⁹⁵

Byron Ventilink Pty Ltd (the Company) owned some buildings in Byron Bay, part of which were formerly the Byron Shire Council Chambers and administrative offices, dating back to 1929. The Company purchased the buildings in 1996 when the council relocated.

In November 2004, the Company lodged a development application under which it was proposed to demolish all of the buildings except for the shell of some shops. The following month the council imposed an interim heritage order over the site preventing the demolition of the buildings.

The Company challenged the council's decision to issue the order in the Land and Environment Court.

The Court dismissed the Company's appeal and upheld the interim heritage order. The Court found that the council was entitled to rely on existing heritage reports to justify the making of the interim heritage order without requiring a new heritage assessment, and had complied with the Local Government Heritage Guidelines.

Approvals to damage or demolish

A person who wishes to demolish, move, alter or in some way develop a place, building or land covered by an interim heritage order which is made by a local council must first obtain approval from that council.⁹⁶

If the council is of the opinion that the application, if granted, would materially affect the heritage significance of the item or land, the council must publish notice of the application in a daily, State-wide newspaper.⁹⁷

The application for approval must be made available for public inspection for at least 21 days, during which period any person can make a written submission, which the council must consider.⁹⁸

Heritage Council decides approval

The council must refuse approval if the application will result in the whole of a work or building being demolished.⁹⁹ This is subject to some exceptions, such as where the building constitutes a danger to the public, or can be relocated on other land.¹⁰⁰

⁹⁵ *Byron Ventilink Pty Ltd v Byron Shire Council* [2005] NSWLEC 395.

⁹⁶ Heritage Act, ss 57(1), 56.

⁹⁷ *Ibid*, s 61(1).

⁹⁸ *Ibid*, ss 61(2), (3), 62(b).

⁹⁹ Heritage Act, s 63(2).

¹⁰⁰ *Ibid*, s 63(3).

Appeals against approval decisions

An applicant who is dissatisfied with a council decision regarding an application for approval can appeal to the Land and Environment Court within 12 months of receiving notice of the decision or after there has been a deemed refusal of the application.¹⁰¹

Glossary

Key terms used in this factsheet:

EP&A Act means the [*Environmental Planning and Assessment Act 1979 \(NSW\)*](#)

Heritage Act means the [*Heritage Act 1977 \(NSW\)*](#)

Heritage Regulation means the [*Heritage Regulation 2012 \(NSW\)*](#)

LEC Act means the [*Land and Environment Court Act 1979 \(NSW\)*](#)

LEP means a local environmental plan

¹⁰¹ Heritage Act, s 70A. The appeal will be heard as a merits appeal in Class 1 of the Land and Environment Court. See: LEC Act, s 17(e).