

# Material Threshold Policy



Sugarcane Farmland, Richmond Valley, Rose Nicolai / OEH

## Summary

### What

Under the *NSW Heritage Act 1977* (the Act), the Heritage Council of NSW (Heritage Council) must consider the term “materially affect/effect” when exercising functions regarding the *public notice of an application* (s61(1)), and the *determination of application* (s63(3)).

The Heritage Council has also delegated some of its functions under the Act through Instruments of Delegation that allow certain delegates to grant approvals for changes to State Heritage Register (SHR) listed places where the works would not “materially affect” state heritage significance.

The material threshold is reached when State heritage significance is considered to be “materially affected/effectuated”.

### Who

This policy has been prepared for:

- NSW Heritage Council and Heritage NSW
- NSW state agencies and local councils with delegated approval powers
- heritage specialists; including planners, architects, archaeologists and heritage consultants
- owners and managers of SHR listed places

### Why

This policy provides clarity to decision makers, heritage specialists, owners and managers of SHR listed places about the use of the material threshold when measuring impacts to State heritage significance under the Act.

### How

This document:

- 1 describes the overarching legal framework
- 2 defines the material threshold
- 3 details how to assess material impacts to State heritage significance
- 4 describes how to assess and determine applications for changes to SHR listed places
- 5 provides references to relevant legislation and policies

# 1 Legal Framework

## 1.1 How the material threshold applies to the Act and Delegations

The material threshold applies to the following functions under the Act and related Instruments of Delegation:

Function	Legislation
<p>✓ <b>Public notice of certain applications (s61(1))</b></p>	<p>“Where an application for approval is made in respect of an item of the environmental heritage and that application, if approved, would, in the opinion of the approval body, <b>materially</b> affect the significance of that item as an item of the environmental heritage, the approval body shall cause public notice of that application to be given in a manner that the approval body is satisfied is likely to bring the notice to the attention of members of the public.”</p>
<p>✓ <b>Determination of an application (s63)(2) - (3)</b></p>	<p>“(2) Where</p> <ul style="list-style-type: none"> <li>(a) an application for approval is made to demolish the whole of a building or work, or</li> <li>(b) an application for approval is made which would, if it were approved, necessitate the demolition of the whole of a building or work,</li> </ul> <p>the approval body shall determine that application by refusing approval.</p> <p>(3) Nothing in subsection (2) prevents the approval body from approving an application referred to in that subsection if:</p> <ul style="list-style-type: none"> <li>(a) it is of the opinion that the building or work constitutes a danger to the users or occupiers of that building or work, the public or a section of the public, or</li> <li>(b) it is a condition of the approval that the building or work be relocated on other land, or</li> <li>(c) the building or work is situated (whether wholly or partly) in a place or precinct that is an item of State heritage significance, but is not itself such an item, and the approval body is of the opinion that the demolition of the whole of the building or work will not have a <b>materially</b> detrimental effect on the heritage significance of the place or precinct.” </li></ul>
<p>✓ <b>Delegated Approval Functions under the Act</b> (to Heritage NSW)</p>	<p>“the power is only delegated in relation to application for approval to do something that will not <b>materially</b> affect the significance of that item as an item of environmental heritage”</p>
<p>✓ <b>Instrument of Delegation under the Heritage Act 1977</b> (to City of Sydney Council)</p>	<p>“General Limitations on the exercise of a delegated function The delegated functions can only be exercised where:</p> <ul style="list-style-type: none"> <li>a) in the opinion of the Council, the application if approved, would not <b>materially</b> affect the significance of that item as an item of the environmental heritage;... </li></ul>

## 2 Defining the material threshold

### 2.1 What does 'material' mean under the Act?

#### The material threshold is triggered by the degree of impact to significance

In this context, the word 'material' relates to the degree of impact to the State heritage significance of an SHR listed place.

It is often misinterpreted as implying changes to material or physical components of a SHR listed place. However, unlike the threshold for Standard Exemptions (s57(2) of the Act) versus Approval (s60 of the Act) under the Act, the material threshold does not correspond to the degree of change. It's triggered by potential adverse impacts to State heritage significance only.

The following table demonstrates where the material threshold applies, irrespective of the degree of change proposed. It also indicates when Standard Exemptions and approvals are required to demonstrate the difference in where the material threshold applies.

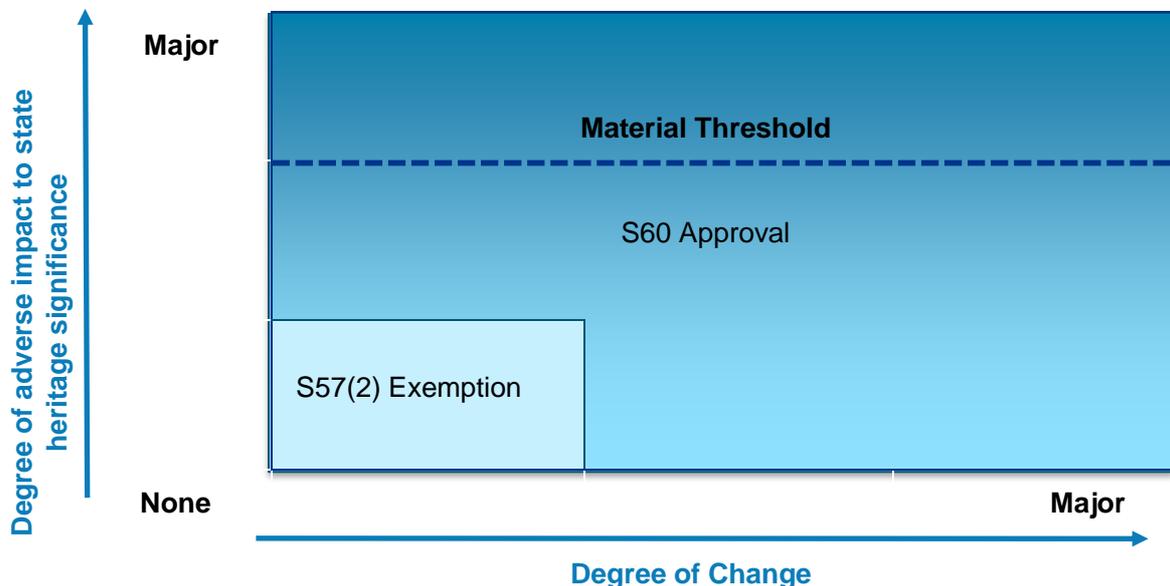


Table 1: Graph showing the relationship between the degree of adverse impact versus change, showing when Standard Exemptions and the material threshold apply.

#### What is State Heritage Significance?

State heritage significance is the reason for a place's listing on the SHR.

Places can be listed on the SHR if they meet one or more of the following NSW heritage assessment criteria (or values) at a State level:

- a) Historical
- b) Association
- c) Aesthetic / Technical
- d) Cultural / Social
- e) Research Potential
- f) Rarity
- g) Representation

Under section 4A(4) of the Act, this is the only criteria that can be used when making a decision whether or not an item is of State heritage significance. While all seven criteria are considered during the SHR listing process, most of the SHR listed places are listed under one or two criteria at a State level. This is known as the listed criteria.

The state heritage significance is reflected in the assessment criteria for listing on the SHR (listed criteria).

Adverse impacts to State heritage significance occur when proposed changes adversely impact on the ability to demonstrate those values (the listed criteria).

For example, an application that adversely impacts on the cultural/ social values of a place is likely to have an adverse impact on State heritage significance if the place is listed under that criteria. The application may not have an adverse impact if the place is not listed under that criteria.

Further information on applying the NSW heritage assessment criteria is available in the Heritage Council policy [Assessing Heritage Significance](#).

### When is the material threshold reached?

The degree of impact to State heritage significance resulting from changes to SHR listed places can range from positive impacts that enhance its ability to demonstrate State heritage significance, to a total loss of significance.

While some applications for changes to SHR listed places can have little to no impact, or a positive impact, most applications for change sit within the scale of adverse impact to State heritage significance. Within that scale, the degree of adverse impact can range from relatively minor adverse impacts, to major adverse impacts.

The scale of impact provided in Table 2 (below), uses gradings of heritage impact commonly applied in the heritage industry as a guide to indicate when the material threshold is reached.

Impact	Definition
<b>Total loss of significance</b>	Major adverse impacts to the extent where the place would no longer meet the criteria for listing on the SHR.
<b>Adverse impact</b>	Major (that is, more than minor or moderate) adverse impacts to State heritage significance.
	Moderate adverse impacts to State heritage significance  Minor adverse impacts to State heritage significance
<b>Little to no impact*</b>	An alteration to State heritage significance that is so minor that it is considered negligible.  * Little to no impact (as opposed to no impact) acknowledges that any change will result in some level of impact/alteration to State heritage significance.
<b>Positive impact</b>	Alterations that enhance the ability to demonstrate the State heritage significance of an SHR listed place.

Table 2: Scale of impact to State heritage significance

The material threshold is reached where an application, if approved, would have a major adverse impact on the state heritage significance of an SHR listed place.

For an application to be considered below the material threshold, the adverse impacts to State heritage significance must be minor or moderate.

**Minor** adverse impacts to State heritage significance are minor enough that they are outweighed by other benefits of the application, for example sympathetic alterations to an original non-compliant balustrade to enable continued public use.

Alternatively, **major** adverse impacts to State heritage significance, such as removing significant features, obscuring key views, or removing evidence of significant historical associations, require substantial changes to the scope of works or design to sufficiently reduce those impacts. The material threshold applies when substantial changes to the application are required to reduce the adverse impacts to a moderate or minor level.

While most applications involving a great deal of change will reach the material threshold, it is important to note that:

✓ **A minor degree of change may reach the material threshold**

For example, an application to remove a small but key feature that is intrinsic to the historic values of a place (e.g. heraldry, original signage, statues or moveable heritage) could reach the material threshold because of its adverse impact on the listed criteria.

✓ **A major degree of change may not reach the material threshold**

Applications involving a great deal of change can sometimes have minor adverse or positive impact, depending on the changes proposed.

For example, a SHR listed place that is significant for its continued historical use, and not aesthetically significant, may be able to undergo major changes to enable continued use without reaching the material threshold.

✓ **Cumulative adverse impacts may reach the material threshold**

The cumulative impact of incremental minor changes can have as great an impact on the significance of a SHR listed place as a major change.

For example, a marquee erected in front of a SHR listed place has a minor adverse impact because it is small in relation to the facade of the building. However, another marquee is proposed that also independently has a minor adverse impact. Once erected, the two marquees cover enough of the facade to result in a cumulative adverse impact on the aesthetic values of the building (the criteria for listing), reaching the material threshold.

## 3 Applying the material threshold

### 3.1 Preliminary Assessment

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A preliminary assessment is required to determine the potential heritage impact and whether the application is likely to reach the material threshold. This informs the advertising requirements, and whether delegations apply.

The following steps are undertaken at the beginning of the assessment process:

1. Preliminary assessment of the application and its impacts on the State heritage significance of the SHR listed place;
2. Assigning a potential level of heritage impact in accordance with the heritage impact scale (Table 2);
3. Determining whether the application is likely to reach the material threshold.

### 3.2 Exercising delegated approval functions below the material threshold

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A person cannot exercise a Heritage Council function without appropriate delegated approval. This approval is derived from the delegation instrument, which places limitations on who can exercise certain functions. One limitation is that the power to approve an application is only delegated to certain persons where the application relates to works that would, if approved, not materially affect the significance of that item as an item of environmental heritage.

If the preliminary assessment (described in 3.1 above) determines that the application is not likely to reach the material threshold, an appropriate delegate can exercise the Heritage Council's functions and commence the assessment and determination of the application as outlined in Section 4.

If the assessor determines that the application is likely to reach the material threshold at any point in the application process, it must be referred to either the Heritage Council or a Heritage NSW officer who has been delegated the function to approve applications without the material threshold limitation (currently Manager or above). Referral must occur where an application materially affects State heritage significance.

While the preliminary assessment is a likely indicator of whether the material threshold will be reached, other impacts can be revealed during assessment that can alter the final determination. If these new impacts mean that the material threshold will likely be reached, the application must be referred.

### 3.3 Determining applications for demolition (s63(3) of the Act)

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Under s63(2)(a) of the Act, if an application is made to demolish the whole of a building or work, the approval body must determine the application by refusing approval.

However, under s63(3)(c), an application to demolish a building or work within a SHR listed place can be approved if the building or work is not itself an item of State heritage significance and the opinion is formed that demolition will not have a "materially detrimental effect" on heritage significance.

While SHR listed places are of State heritage significance overall, their boundaries (or curtilages) can include buildings or works that are not of State heritage significance, and their removal may not reach the material threshold. An example of this is the removal of a building that detracts from significance and obscures key views of the SHR listed place.

In some cases, an application to remove a building or work within a SHR listed place can reach the material threshold, even when the affected building or work is not of State heritage

significance. An example of this is when the building or work proposed for demolition makes a positive contribution to the significance of the SHR listed place, or if the proposed method of removal can damage significant fabric or archaeology.

While buildings or works that are not of State heritage significance can be demolished under the Act when the application does not reach the material threshold, this does not guarantee approval. The application should be able to demonstrate other benefits that will mitigate any adverse impacts to the significance of the SHR listed place. For example, an application to remove a building that makes a neutral contribution to the significance of the SHR listed place could be approved if it proposes to convert the site into an sympathetically designed building or public park. However, it may not be approved if it is proposed to remain as an empty site, leading to degradation of the landscape, or if it's replaced by a much taller building that obscures views and detracts from the significance of the SHR listed place.

Detailed assessment is therefore required when considering the application (as outlined in Section 4) to establish the State heritage significance of the affected building or work, and the degree of impact resulting from its removal.

### 3.4 Public notice of certain applications (s61(1) of the Act)

Applications for changes to SHR listed places (s60 and s65A of the Act) are publicly notified (or advertised) when an application, if approved, would, in the opinion of the approval body, "materially affect" State heritage significance (s61(1A) of the Act).

All applications for changes to SHR listed places lodged through an Integrated Development Application (IDA) process are publicly notified by the relevant local government area (under Clause 89 of *Environment, Planning and Assessment Regulation 2000*).

Section 60 applications that have previously been publicly notified through the IDA process are not required to be notified again under the Act, even if they reach the material threshold (s61(1A) of the Act).

## 4 Assessing and determining applications for changes to SHR listed places

The following steps are undertaken when assessing and determining applications for changes to SHR listed places:

### 1. Understand the State heritage significance of the SHR listed place

It is important to understand the State heritage significance of SHR listed place (the listed criteria) as this informs its tolerance for change.

The listed criteria should be captured in the assessment of significance provided in the SHR listing for the place. However, the SHR is not always comprehensive, and in some cases may not fully reflect the significance of the place. In this case, assessors can exercise expert judgement and refer to a more recent significance assessment included in a Heritage Impact Statement (HIS) or Conservation Management Plan (CMP).

Some places are listed on the SHR as meeting certain assessment criteria at a national or world level of significance. Where this is the case, those criteria are considered exceptionally significant. Greater weight should be given to consideration of changes that could impact on those criteria.

### 2. Review the proposed changes

Assessors must understand what, and how much of it, is being affected by the proposed change. For example, is it the large-scale removal of significant fabric that contributes to aesthetic significance, or is the fabric not significant? A thorough understanding of the proposed changes will determine the degree of impact to State heritage significance.

It is also important to understand previous changes to the SHR listed place, to establish the likelihood of cumulative adverse impacts. Where there is evidence of previous adverse impacts, deliberate neglect of, or damage, to the SHR listed place, the assessment of the degree of impact should be against the original reasons for its listing on the SHR.

### 3. Consider the Heritage Impact Statement

Applications for changes to SHR listed places must be accompanied by a Heritage Impact Statement (HIS) detailing the proposed changes, a significance assessment of the affected SHR listed place (which can be an updated version where relevant), an assessment of the degree of heritage impact; and, where appropriate, recommendations, such as conditions of approval.

HIS reports are a useful tool to assist in assessing and determining the degree of impact, however independent expert judgement should be exercised when considering HIS reports, noting that heritage consultants are engaged as proponents for the application.

### 4. Impose measures to reduce any adverse impacts

The most effective way to reduce adverse heritage impacts is to request modifications or mitigation measures during the assessment stage. For example, requesting that the applicant amend aspects of the application that adversely impact on State heritage significance, or undertake additional conservation or interpretive works to mitigate adverse impacts. This is the preferred approach as it provides certainty about the approved application, reducing the risk of non-compliance. However, assessors must ensure they have appropriate delegated approval to assess the application before reducing impacts during the assessment process.

Another way to reduce heritage impact is to require mitigation measures, such as archival recordings or interpretation, in the conditions of consent.

Heritage NSW can provide a list of standard conditions that are often used to mitigate impacts.

## 5 References and Document Control

### 5.1 References

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<b>Legislation</b>	<i>NSW Heritage Act 1977</i> <i>Instrument of Delegation under the NSW Heritage Act 1977</i> <i>Delegated Approval Functions under the NSW Heritage Act 1977</i> <i>NSW Environmental Planning and Assessment Act 1997</i>
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### 5.2 Document control

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#### Change history

14 February 2020	Final report
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