

Regulatory Impact Statement

Proposed Heritage Regulation 2012



Office of
Environment
& Heritage

Regulatory Impact Statement

Proposed Heritage Regulation 2012

Submissions

The Office of Environment and Heritage welcomes written comments on the draft Regulation and Regulatory Impact Statement.

The closing date for submissions is **18 May 2012** and these should be mailed to:

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During this consultation period, this Regulatory Impact Statement is available on the Heritage Branch website at www.heritage.nsw.gov.au/09_subnav_03.htm

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Abbreviations

CMPs	Conservation Management Plans
EPHC	Environment Protection and Heritage Council
FTE	full-time equivalent
HB	Heritage Branch, Office of Environment and Heritage
NPV	net present value
OEH	Office of Environment and Heritage NSW
PAC	Planning and Assessment Commission
RIS	Regulatory Impact Statement
SHR	State Heritage Register
WTP	willingness to pay

1. Introduction

Regulation: Heritage Regulation 2012

Enabling Act: *Heritage Act 1977*

Responsibility: The Honourable Robyn Parker, Minister for Environment and Heritage

The Heritage Regulation 2005, made under the *Heritage Act 1977*, is due for staged repeal on 1 September 2012. It is proposed to remake the Regulation as the issues it addresses remain relevant.

The remaking of the Regulation will produce a number of social and economic benefits and costs to government, property owners and the community. In line with the requirements of the *Subordinate Legislation Act 1989*, this Regulatory Impact Statement (RIS) has been prepared as a prelude to the remaking of the Regulation.

A RIS assesses the social and economic costs and benefits relating to a proposed regulation and examines other possible options to ensure that the final approved regulation is the preferred course of action in achieving stated policy objectives.

1.1 Approach used to prepare the RIS

The RIS was prepared in accordance with the Subordinate Legislation Act and followed the requirements of the Better Regulation Statement issued by Better Regulation Office (BRO).

The RIS describes the incremental additional costs and benefits of options to achieve stated policy objectives over and above a 'base case'. The base case is the situation that would exist if the Regulation were allowed to lapse. The Heritage Act would remain in place.

The Regulation will be finalised after consideration of feedback received during the exhibition of this RIS and the draft Regulation. Cost benefit analysis of regulatory options was completed using the NSW Government Guidelines for Economic Appraisal prepared by the NSW Treasury.

2. Background to the regulatory proposal

2.1 Current Regulation

The Heritage Regulation 2005 provides for minimum standards of maintenance and repair of buildings, works and relics listed on the State Heritage Register. It also provides for the collection of fees to contribute to the equitable funding of heritage protection.

2.2 Proposed Regulation

It is proposed that the new Regulation will consist of the same four parts as the existing statutory instrument:

- **Part 1** provides for the name of the Regulation, its commencement date, definition of the Act under which it is made (*Heritage Act 1977*) and the fact that notes included in the Regulation do not form part of the Regulation.
- **Part 2** of the proposed Regulation specifies the level of fees and format of certain application forms under the Act. These include application fees for approvals, excavation permits, certificates of authority and evidentiary certificates, and fees for reviews of conservation management plans.
- **Part 3** of the proposed Regulation imposes minimum standards of maintenance and repair of buildings, works and relics that are listed on the State Heritage Register or within a precinct that is listed on the register. Part 3 also deals with inspection, weather protection, protection from fire, security, and essential repairs and maintenance.
- **Part 4** provides a time period for reviews of recommendation for listings, items to be included in Heritage and Conservation Registers, repeal of the current Regulation and savings provisions.

2.3 Regulation-making powers under the *Heritage Act 1977*

The Heritage Act provides wide-ranging regulation-making powers. Part 7: Implementation and Enforcement, Division 4 Regulations, section 165 provides for:

- (1) The Governor to make regulations with respect to any matter required to give effect to the Heritage Act.
- (2) A regulation to be made to apply differently according to such factors as may be specified in that regulation.
- (3) A regulation to be made to authorise any matter or thing to be from time to time determined, applied or regulated by any person or body specified in that regulation.

Part 6: Other measures for the conservation of the environmental heritage, section 118 provides for:

- (1) Regulations to impose minimum standards of maintenance and repair for buildings, works and relics.
- (2) Regulations to make provision for minimum standards for maintenance of ruins or moveable objects.

Part 8: Miscellaneous, section 166A provides for:

- (1) Regulations to make provision for or with respect to the fees that may be charged for the services provided by the Heritage Council.
- (2) The services in respect of which such regulations may be made include the following:
 - a. The supply of a service, product or commodity
 - b. The review of a conservation management plan
 - c. The provision of a service in connection with the exercise of the Heritage Council's functions with respect to applications under the Act (including the carrying out of inspections).

Section 170(4) allows classes of items to be prescribed in the regulations.

Other Heritage Act provisions that allow regulations to be made, but so far have not been applied, include:

- Section 34: Time Frame for Planning and Assessment Commission advice to the Minister (as amended and commenced on 1 March 2012)
- Section 40: Heritage Agreements
- Section 104: Heritage Conservation Fund
- Section 148: Prescribed Form for Authorising Persons to Conduct Inspections.

These are the regulation-making powers of the Heritage Act.

2.4 The need for intervention

Heritage items of state significance are recorded on the State Heritage Register. In January 2012 there were 1612 (say 1600) items on the register.

The Heritage Council of NSW is responsible for adding items to the register which is forecast to grow by 30 items per annum over the next five years.

To be eligible for addition to the register, an item must, in the opinion of the Heritage Council of NSW, meet two or more of the following criteria at www.heritage.nsw.gov.au/docs/criteria.pdf:

- (a) An item is important in the course, or pattern, of NSW's cultural or natural history
- (b) An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history
- (c) An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW
- (d) An item has strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons
- (e) An item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history
- (f) An item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history
- (g) An item is important in demonstrating the principal characteristics of a class of NSW's
 - cultural or natural places, or
 - cultural or natural environments.

An item is not to be excluded from the register on the ground that items with similar characteristics have already been listed on it.

Items on the register include commercial buildings, residential buildings, historic precincts, terrestrial and marine archaeological sites, landscapes, bridges, moveable heritage (such as book collections and vehicles) and European and Aboriginal heritage and graves.

Because of their significance to the people of NSW, items on the State Heritage Register require pro-active preservation, that is, guaranteed minimum standards of maintenance and repair whether the item is a building or a ruin or a moveable object.

In the absence of some form of policy intervention, it is likely that some items of state significance will not be properly maintained, thus falling into disrepair and eventually deteriorating.

Identification, placing items on a register and occasional spot inspections to ensure appropriate maintenance and repairs incurs a cost which must be funded.

The Heritage Branch of the Office of Environment and Heritage is reliant on consolidated funds, grants, investment income and application fees to fund the identification and assured maintenance of heritage items. Application fees to 'carry out an activity' which affects a heritage item assists the branch with cost recovery and contributes towards identification and preservation of heritage items.

It is important that heritage assessments are made in a timely manner. The Planning and Assessment Commission has three months to conduct its review and provide a report to the Minister.

2.5 Policy objectives

The Heritage Act provides for maintenance and repair of heritage items to a standard specified by regulation and the charging of fees.

The objectives to be met are:

- (1) To set a general enforceable minimum standard for maintenance and repair of items on the State Heritage Register
- (2) To contribute to equitable and adequate funding of heritage protection activities
- (3) To provide for timely decisions regarding listing of state heritage items

2.6 Relevant stakeholders

Stakeholders relevant to the remaking of this Regulation include government, property owners and the community as follows:

Government

- Heritage Branch (executive to the Heritage Council)
- Department of Planning and Infrastructure
- The Government Architect
- Historic Houses Trust
- Local Government and Shires Associations of NSW

Property owners

- National Trust of Australia (NSW)
- Australian Property Institute (NSW)
- Property Council of Australia (NSW)
- owners of listed items (including government owners)
- owners making applications under sections 140 and 167 of the Heritage Act
- building, development and property industries

Community

- property rights of citizens
- Royal Australian Historical Society (NSW)
- Royal Australian Institute of Architects (NSW)
- Planning Institute of Australia (NSW)
- Aboriginal communities
- Australia ICOMOS
- Institution of Engineers (NSW)
- AusHeritage – network of cultural heritage management organisations
- moveable heritage expertise
- rural interests (NSW Farmers Association)
- general community

A number of the above stakeholders are represented on the Heritage Council.

3. Options to achieve the policy objectives

Specific options to address the policy objectives were identified:

- (1) Base case: do nothing and allow the Regulation to lapse
- (2) Fully prescriptive Regulation: heritage protection fully funded by item owners
- (3) Proposed Regulation: remake the current Regulation with relatively minor changes

A non-regulatory option – that is, reliance on voluntary guidelines and education – was also considered and fully assessed in the RIS for the Heritage Regulation 2005 (AgEconPlus 2005). This option neither met the policy objectives nor was it sufficiently different from the base case.

The implications of the three options for maintenance standards, fee-setting and time frames for the Planning and Assessment Commission (PAC) (the three policy objectives) are summarised in Table 1.

Table 1: Options to achieve policy objectives

	Maintenance standards	Fee-setting	PAC time frames
Base case	No maintenance standards for heritage items Relies on voluntary compliance with industry standards	No capacity to set and collect fees	No time frame
Fully prescriptive Regulation	Higher standards set for maintenance, including ruins and moveable objects	Highest level of fees collected from property owners	Time frame stated
Proposed Regulation	Maintenance standards that cover heritage items, including ruins and moveable objects	Fees set and collected from property owners	Time frame stated

3.1 Base case: do nothing

The base case is the situation that would exist if the current Heritage Regulation 2005 were allowed to lapse without a policy response. In this situation the provisions of the *Heritage Act 1977* would be more difficult to enforce. The base case is the ‘do nothing’ situation.

The base case means that there would be no regime of maintenance for items listed on the State Heritage Register (SHR). Maintenance would be entirely at the discretion of the owner of the heritage item or would depend on voluntary adherence to standards. The owner would determine the level of maintenance and associated costs.

Furthermore there would be no revenue from application fees to assist the Heritage Branch of the Office of Environment and Heritage with heritage activities. The current Heritage Regulation provides for owners of items listed on the SHR to pay fees under:

- Section 60 of the Heritage Act when an application is made to carry out an activity on an item listed on the SHR – A sliding schedule of fees is included in the Regulation based on both the type of item (owner-occupied private house or not) and the cost of carrying out the activity.

- Section 140 of the Heritage Act when an application is made for an excavation permit affecting an item on the SHR – Again, the Regulation includes a sliding schedule of fees based on the type of item and the cost of carrying out the activity.
- Section 38A of the Heritage Act where reviews of conservation management plans (CMPs) are undertaken for the purpose of their endorsement by the Heritage Council.
- Section 167 of the Heritage Act for the provision of an evidentiary certificate – A single flat rate fee is prescribed for provision of an evidentiary certificate. In addition to affecting items on the SHR, this section is relevant to the transfer (sale) of all NSW heritage property items.

Under the base case, the Heritage Branch would incur the costs of processing applications which would need to be funded from consolidated revenue.

There would be no time frame for PAC assessments and it is reasonable to assume that there would be delays in processing applications.

3.2 Fully prescriptive Regulation

Under this approach to heritage regulation, detailed individual maintenance and repair prescriptions would be developed for each item on the SHR. The Heritage Branch would incur costs for processing applications as well as additional costs for preparing individual maintenance programs for each item.

The full cost of preparing prescriptions would be recovered through fees payable for applications made under the Heritage Act. Fees would be set at a much higher level than under the proposed Regulation to cover all costs. This means that the regime of maintenance for items listed on the SHR would be fully prescribed by the Heritage Branch which would determine the cost of maintenance.

3.3 Proposed Regulation

The proposed Regulation is the current 2005 statutory instrument with minor amendments.

The proposed Regulation provides for the charging of fees under the Heritage Act with fees set at a lower rate than under a fully prescriptive Regulation. The Heritage Branch would incur costs for processing applications and this would be partially offset by fee revenue.

A minimum maintenance regime is described and enforced for items on the SHR.

The following minor amendments to the current Regulation are proposed for the remade instrument:

- Inclusion of **minimum standards of maintenance for ruins and moveable objects** listed on the SHR – These standards relate to protection, security and essential maintenance. As a result of the unique nature of ruins and moveable objects, generic minimum standards cannot be set and will need to be specified on a case-by-case basis by gazettal. Some additional costs will be incurred by the owner if professional advice and physical work are required. This will be offset in the long term as pro-active maintenance will reduce the likelihood of catastrophic failure. The owner of the heritage item will benefit from a clearer understanding of what work is required and the management regime can be tailored specifically to the item. The community will benefit as the state's heritage will be better conserved for future generations.

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- Enabling the Heritage Council to request owners of heritage items to carry out inspection outside existing time frames for cyclic inspection and provide a report identifying any faults and works to meet minimum maintenance and repair requirements – There will be additional costs to owners if professional advice is required to write a report. However, the report will enable the Heritage Council to provide specific technical advice to owners allowing them to prioritise necessary repairs. Often short- to medium-term maintenance issues left unidentified lead to increased maintenance and repair costs in the longer term. For example, the cost of repair or replacement of one piece of corrugated roof sheeting is relatively minor compared to the cost of replacing internal ceilings, structural roof timbers and other elements that may be damaged due to water ingress. In addition a well-maintained heritage item may retain its property value better than one that is poorly cared for. The community will benefit as the state's heritage will be better conserved for future generations.
- Provide a time frame for the Planning and Assessment Commission to provide advice to the Minister under section 34 (as amended)

4. Regulatory impact assessment framework

4.1 Identification of costs and benefits for each option

A brief description of the cost and benefit items associated with each of the policy options is provided in this section and summarised in Table 2.

Table 2: Cost and benefit items associated with Heritage Regulation options

Costs	Benefits
Quantified	Quantified
Administration and compliance costs: Heritage Branch	Additional heritage (measured by willingness to pay)
Costs to prescribe maintenance: Heritage Branch	Unquantified
Costs of assessing new items: Heritage Branch	Impact of listing on property value: owners
Compliance costs – SHR items and section 167 (fees): owners	Increased certainty about repairs and maintenance: owners
Repair and maintenance costs: owners	Increased certainty from section 167 applications: owners

4.2 Cost items

Administration and compliance costs: Heritage Branch

The Heritage Branch (HB) consumes resources when administering listings, grants, exemptions and approvals in association with sections 60, 140 and 167 of the *Heritage Act 1977* and reviewing conservation management plans (CMPs). The HB also employs staff to maintain the database of items on the State Heritage Register (SHR) and State Heritage Inventory. This cost item is relevant to all policy options.

The HB achieves compliance with maintenance standards through availability of the enforcement option. Most owners of heritage items can be prompted to comply without actual prosecution. Prosecution is only rarely necessary with the cost absorbed as part of HB administration. This cost is relevant to both the fully prescriptive Regulation and the proposed Regulation.

Costs to prescribe maintenance: Heritage Branch

The HB will incur costs to prepare individual repair and maintenance programs for each item on the SHR if a fully prescriptive approach to maintenance is adopted. This cost is only relevant to the fully prescriptive Regulation.

Costs of assessing new items: Heritage Branch

Resources are consumed by the HB when assessing items for their heritage significance for listing on the SHR (no fees charged). Resources are required to identify items, process applications and make field assessments. This cost is relevant to all policy options.

Compliance costs – SHR items and section 167 (fees): owners

Fees are paid by owners of items on the SHR when applications are made under sections 60 and 140 of the Heritage Act and for certain reviews of CMPs. Fees are paid by all owners of property potentially affected by heritage listing under section 167 of the Act. These costs are relevant to the fully prescriptive Regulation and the proposed Regulation.

Repair and maintenance costs: owners

Expenditures incurred by owners of items on the SHR to comply with repair and maintenance standards above those that they would otherwise incur are costs associated with regulation. These costs are relevant to the fully prescriptive Regulation and, to a lesser extent, to the proposed Regulation.

4.3 Benefit items

Additional heritage (measured by willingness to pay)

Heritage protection is ultimately a ‘public good’ driven by demand from the broader community. With regulation, public benefits are created by additional heritage protection over what would be achieved under the base case.

Both owners of heritage items and the broader community enjoy public benefits. The public benefits of heritage protection include:

- existence values – the satisfaction that the community derives from simply knowing that certain heritage items exist
- bequest values – the economic value created by maintenance of heritage items for the benefit of future generations
- vicarious use values – values gained by people from the knowledge that others may enjoy the heritage asset
- option values – recognition of the future uses that a heritage item might be put to (such as future research to improve our understanding of the past)
- quasi-option values – the welfare obtained from the opportunity to gain better information by delaying a decision that may result in irreversible damage to a heritage asset
- use values – the benefit gained by members of the public and the owners of heritage items from viewing, using or experiencing them.

The public benefit associated with heritage protection can be measured by the maximum amount of money that individuals in a community would be willing to give up in order to obtain protection for a particular heritage item. This is often referred to as ‘willingness to pay’ (WTP).

Heritage and environmental WTP studies that measure consumer surplus completed in other time periods or jurisdictions can be ‘transferred’ to other cost benefit analyses to provide an estimate of WTP for additional heritage. This process is called ‘benefit transfer’ and is detailed in the economics literature. The Office of Environment and Heritage environmental valuation database ‘Envalue’ provides a full explanation of the benefit transfer technique: www.environment.nsw.gov.au/envalueapp/

A review of the economics literature on heritage WTP studies reveals a number of relevant examples (see Table 3).

Table 3: WTP for heritage protection (per person per annum)

WTP for/to	Country	Author	A\$ (2012)
Hartley House Site	NSW, Australia	Christiansen 1997	75.35
Temples of Paestum	Italy	Colombino et al. 2002	48.84
Preserve agricultural land	Sweden	Drake 1987	149.29
Preserve a view	USA	Johnson & Haspel 1983	104.64
Urban amenity	Australia	Lockwood & Tracy 1995	14.30

Source: Adapted from Department of Infrastructure, Planning and Natural Resources (2005) and Envalue with per person estimates derived assuming the Australian average of 2.96 persons per household

The studies reported in Table 3 show a WTP for heritage protected of between \$14 and almost \$150 in 2012 equivalent values.

The most relevant example shown in Table 3 is the WTP for Hartley Historic Site, an item listed on the SHR and located at the base of Victoria Pass, 140 kilometres west of Sydney. The NSW National Parks and Wildlife Service study showed that WTP for Hartley Historic Site was the equivalent of \$75.35 per person per visit, a total annual value of \$2.5 million.

Arguments for using this estimate of WTP for additional heritage protection include:

- credibility of the study – an authoritative report prepared by the NSW National Parks and Wildlife Service (Christiansen 1997)
- relevance of the study – the site is an SHR-listed site
- importance of items listed on the SHR to the people of NSW – a relatively high value of \$2.5 million would seem reasonable given the ‘state heritage significance’ of register listings.

Arguments against use of this apparently high value include:

- It is a heritage property-based estimate and many items on the SHR are less ‘iconic’ in their appeal, for example, book collections and simple graves.
- The lack of information available on future SHR listings and whether they will have the same broad appeal as Hartley
- Diminishing marginal returns – each additional heritage asset protected is likely to be valued less as the body of protected heritage increases.

While the Hartley estimate is in the mid range of other WTP estimates shown in Table 3, it would, on balance, seem prudent to discount annual value estimates to the lower end of Table 3 estimates.

A total annual WTP value of \$340,000 to measure the additional public benefit of each extra item protected by heritage regulation (when compared to Hartley with a total annual value of \$2.5 million) is considered to be a relatively conservative assumption that may somewhat underestimate the benefit of regulation.

Impact of listing on property value: owners

In addition to the WTP for additional heritage enjoyed by the owners of heritage items and the broader community, changes in the value of property as a result of listing on the SHR need also to be considered.

A number of studies contained in the heritage and economics literature have examined the issue of purely private benefits for property owners associated with heritage listing.

- Western Research Institute, Charles Sturt University (2010) concluded that inclusion of the town of Braidwood on the SHR in April 2006 had neither a positive nor negative impact on residential or commercial property values in the town and that sales from 2006 to 2010 were determined by prevailing economic conditions.
- Deodhar (2004) was able to conclusively establish that heritage-listed houses in the Ku-ring-gai local government area of Sydney enjoy a market premium compared with unlisted houses. After controlling for other property attributes, houses on the local heritage register commanded an average premium of 12%. This reflected the combined value that the market places on their heritage character, architectural style elements, and status as a result of listing. Only that portion of the premium attributable to a property's statutory listing is relevant to current considerations.
- Informal research among real estate agents by Byrne (2004) indicated that additional economic benefits were available for heritage-listed streetscapes and precincts – such as Ku-ring-gai – but individual houses that are heritage listed in isolation may not enjoy the same benefits. In fact isolated houses or buildings may incur a cost in association with heritage listing associated with the opportunity cost of foregone development opportunities.
- Dominy (2001) concluded that heritage listing of commercial buildings increased development costs by only a 'mild degree'. However, these costs were inevitably recovered, even counterbalanced and far exceeded, by the commensurate increases in project value. These increases were associated with concessions granted to developers of commercial heritage buildings by consent authorities to offset limits imposed by heritage preservation. A financial benefit to the developer rather than an economic benefit to the community is a transfer payment from the community to the developer.

The above literature provides only marginal evidence that heritage listing results in a benefit to the owner of a heritage item. From this evidence, it could be hypothesised that heritage listing functions like a 'certificate of quality'. It results in the differentiation of housing product and encourages the payment of a premium. There is also evidence that listing imposes a cost on owners (see Byrne 2004).

If listing were to result in a net benefit to owners of items on the SHR, it could reasonably be argued that a regulation forcing compliance with minimum maintenance standards and imposition of fees to fund inspection and other HB activities would not be required. This is because the market itself provides incentive enough for owners to maintain their heritage properties to at least minimum standards. The counter argument to this in favour of regulation is that poor information flows may mean that owners of heritage assets (particularly buildings in areas undergoing redevelopment) may not be aware of the private benefit associated with preservation.

Depending on the development potential of a site, there may be an incentive for owners not to maintain items, making demolition inevitable. Maintenance standards under the Heritage Act do not require restoration but only minimum works to prevent deterioration.

On balance, it is concluded that regulation does not confer an economic benefit in the form of increased property values on the owners of heritage items and regulation is therefore required to ensure they are maintained.

Because of this, increased property values are not included as a benefit in any of the analysed policy options.

Increased certainty about repairs and maintenance: owners

Specification of repair and maintenance standards in a policy option provides the owners of heritage items with certainty in relation to their legal requirements for maintaining their asset. The benefit is relevant to all policy options except the base case.

It has not been possible to quantify this benefit. Quantification would only be possible if a cost- and time-prohibitive non-market valuation study were undertaken.

Increased certainty from section 167 applications: owners

The owners of all property potentially affected by the Heritage Act in NSW are able to apply to the Heritage Office to check the asset's heritage status prior to renovation or sale. Provision of this service is a benefit to property owners. The benefit is relevant to all policy options.

As with increased certainty for owners about repairs and maintenance, it would only be possible to quantify this benefit with a cost- and time-prohibitive non-market valuation study.

5. Cost benefit analysis: base case – do nothing

Under the base case, no application fees would be payable by owners of heritage items. The Heritage Branch (HB) would incur the costs of processing applications which would be funded from consolidated revenue.

The base case also means that there would be no regime of maintenance for items listed on the State Heritage Register (SHR). While generally agreed maintenance regimes could be described, they would be non-enforceable. Maintenance would be entirely at the discretion of the owner of an item who would determine maintenance costs.

Under the base case, there would be a reduction in the effectiveness of the HB because of uncertainty over maintenance standards and their lack of enforceability. Spot checks on the condition of the 1600 items on the SHR would be unlikely to occur – or may occur but not improve the items' condition as there would be no enforceable standards of maintenance and repair.

Basic repairs and maintenance would be completed in the vast majority of cases, including unoccupied properties. Nevertheless some properties would fall into disrepair and items on the SHR would eventually be lost to the NSW community. The rate of loss in NSW would become the same as the loss of historic heritage in Australia. The Environment Protection and Heritage Council (EPHC) estimates the rate of loss Australia-wide could be between 10% and 15% of the total Australian stock of heritage items over the next 15 to 20 years (EPHC 2004).

Also, fewer resources to undertake assessments will be available to the HB under the base case. The addition of new items to the SHR will occur less often, at say half of the rate under the proposed Regulation. The number of items on the register that are protected will also decline as they fall into disrepair. Under the funding provided for in the proposed Regulation, the number of items on the SHR is expected to grow by 30 each year.

An estimate of how this situation is likely to develop into the future under the base case and alternative regulatory options is shown in Table 4.

Better ongoing maintenance increases the opportunity for economically feasible adaptive reuse and conservation of heritage items.

5.1 Costs: base case

Costs associated with the base case are:

- Administration and compliance costs: Heritage Branch
- Costs of assessing new items: Heritage Branch

Administration and compliance costs: Heritage Branch

Under the base case, the HB will still be required to process exemptions and approvals in association with sections 60, 140 and 167 of the Heritage Act 1977 and review conservation management plans (CMPs). It will also be required to maintain a database to ensure compliance. Table 5 summarises HB administration and compliance costs associated with these activities.

Table 4: State Heritage Register – items registered and items falling into disrepair

Option	2013	2014	2015	2016	2017
1. Base case					
Items on SHR (beginning of the year)	1,600	1,593	1,586	1,579	1,572
Items falling into disrepair through neglect	22	22	22	22	22
Total heritage items protected	1,578	1,571	1,564	1,557	1,550
New items added	15	15	15	15	15
Items on SHR (end of the year)	1,593	1,586	1,579	1,572	1,565
Net addition to the SHR	-7	-7	-7	-7	-7
2. Fully prescriptive Regulation					
Items on SHR (beginning of the year)	1,600	1,630	1,660	1,690	1,720
Items falling into disrepair through neglect	0	0	0	0	0
Total heritage items protected	1,600	1,630	1,660	1,690	1,720
New items added	30	30	30	30	30
Items on SHR (end of the year)	1,630	1,660	1,690	1,720	1,750
Net addition to the SHR	30	30	30	30	30
3. Proposed Regulation					
Items on SHR (beginning of the year)	1,600	1,630	1,660	1,690	1,720
Items falling into disrepair through neglect	0	0	0	0	0
Total heritage items protected	1,600	1,630	1,660	1,690	1,720
New items added	30	30	30	30	30
Items on SHR (end of the year)	1,630	1,660	1,690	1,720	1,750
Net addition to the SHR	30	30	30	30	30

Table 5: Heritage Branch administration costs – base case

Area administered	Total administration cost (\$)
Section 60	340,000
Section 140 and review of CMPs	85,000
Section 167	12,000
Total	437,000

Source: Heritage Branch, February 2012

Costs of assessing new items: Heritage Branch

The base case will result in an underfunding of HB activities and a significant reduction in the resources currently applied to the assessment of new items. Under the current Regulation, the two heritage officers on an equivalent full-time basis (FTE) are expected to be engaged in assessing a total of 30 new items each year.

The cost of this assessment activity is salary, on-costs and a vehicle – approximately \$113,000 per FTE for a total of \$226,000. It is assumed that half this amount would be spent under the base case.

5.2 Benefits: base case

There are no public benefits generated under the base case. Fewer items are added to the register and there are losses in assets falling into disrepair through neglect.

Owners of SHR items do not gain a benefit from having minimum repair and maintenance standards described.

The only benefit available under the base case is the benefit that owners of potentially heritage-affected items gain from being able to source a section 167 certificate and it was not possible to quantify this.

5.3 Cost benefit analysis and equity considerations

Under the base case, the HB incurs costs associated with administration and assessment of new items. These costs are not offset by owner compliance fees.

Under the base case, the public and the owners of heritage items receive the least benefit from heritage protection. There is a net loss in items protected on the SHR.

Critically, the policy objective of setting and enforcing minimum standards for maintenance and repair of items on the SHR and the equitable and adequate funding of heritage protection activities cannot be achieved.

Accordingly, the base case of doing nothing is rejected.

6. Cost benefit analysis: fully prescriptive Regulation

Under this approach to heritage regulation, individual repair and maintenance prescriptions would be prepared by the Heritage Branch (HB) for each item on the State Heritage Register (SHR).

The HB will incur additional costs for making repair and maintenance prescriptions for specific heritage items with the full cost recovered through fees payable for applications made under the *Heritage Act 1977*. Fees will be set at a higher level than under the proposed Regulation in order to recover the cost of preparing individual maintenance prescriptions.

The cost to owners of satisfying prescriptive repair and maintenance programs will also be greater than under the proposed Regulation. The additional heritage protection achieved may not be any greater than under the proposed Regulation. Owners will resist the high cost of repairs and maintenance even though standards are enforceable. The HB will have the same resources available to assess new items and achieve compliance. Additional resistance is likely to come from owners of new SHR items due to the higher costs. The income generated from application fees will be absorbed preparing individual repair and maintenance prescriptions.

Consistent with the proposed Regulation, no loss in items on the SHR is associated with this option. The rate of increase in new items might be approximately double that under the base case: approximately 30 new items added to the register each year. Additional fee revenue will be available to the HB to achieve this increased listing of new items.

6.1 Costs: fully prescriptive Regulation

The costs associated with the fully prescriptive Regulation are:

- Administration and compliance costs: Heritage Branch
- Costs to prescribe maintenance: Heritage Branch
- Costs of assessing new items: Heritage Branch
- Compliance costs – State Heritage Register items (sections 60 and 140 fees): owners
- Compliance costs – section 167 fees: owners
- Repair and maintenance costs: owners

Administration and compliance costs: Heritage Branch

HB administration and compliance costs for processing exemptions and approvals and database management are the same as under the base case.

Costs to prescribe maintenance: Heritage Branch

Under this option, costs will be incurred by the HB preparing site-specific maintenance programs for each item on the SHR. Four full-time equivalent (FTE) heritage officers will be required each year to complete the task. Total cost is estimated at \$452,000 per annum (four FTE at \$113,000 each).

Costs of assessing new items: Heritage Branch

Under the fully prescriptive Regulation, HB assessment of new items will increase from 15 items per annum (at a cost of \$113,000) under the base case to 30, requiring the employment of a second FTE officer. The total cost of assessment of new items will rise to \$226,000, with the increase funded through additional fee revenue.

Compliance costs – State Heritage Register items (sections 60 and 140 fees): owners

Fees charged for applications under the Heritage Act for the fully prescriptive option and the proposed Regulation are shown in Table 6.

Table 6: Fees charged for State Heritage Register items

Type of fee	Proposed Regulation	Fully prescriptive Regulation
Section 60 application		
Owner-occupied house, activity value < \$100,000	\$150	\$300
Non owner-occupied house, activity value < \$100,000	\$300	\$600
Activity value > \$100,000 but < \$500,000	\$400 + \$25 for every \$100,000 over \$100,000	\$800 + \$50 for every \$100,000 over \$100,000
Activity value > \$500,000 but < \$1,000,000	\$500 + \$100 for every \$100,000 over \$500,000	\$1,000 + \$200 for every \$100,000 over \$500,000
Activity value > \$1,000,000 but < \$2,000,000	\$1,000 + \$50 for every \$100,000 over \$1,000,000	\$2,000 + \$100 for every \$100,000 over \$1,000,000
Activity value > \$2,000,000 but < \$5,000,000	\$1,500 + \$33.33 for every \$100,000 over \$2,000,000	\$3,000 + \$66.66 for every \$100,000 over \$2,000,000
Activity value > \$5,000,000 but < \$10,000,000	\$2,500 + \$10 for every \$100,000 over \$5,000,000	\$5,000 + \$20 for every \$100,000 over \$5,000,000
Activity value > \$10,000,000	\$3,000 + \$10 for every \$100,000 over \$10,000,000	\$6,000 + \$20 for every \$100,000 over \$10,000,000
Section 140 application		
Owner-occupied house, activity value < \$100,000	\$100	\$200
Non owner-occupied house, activity value < \$100,000	\$250	\$500
Activity value > \$100,000	\$500 + \$10 for every \$100,000 over \$100,000	\$1,000 + \$20 for every \$100,000 over \$100,000

Source: Heritage Regulation 2005

The rise in fees associated with the fully prescriptive option will increase the revenue available to the HB. Table 7 shows forecast additional revenue associated with SHR items.

Table 7: Fees charged to owners of State Heritage Register items – fully prescriptive Regulation

Type of fee	Applications per annum	Average cost (\$)	Total cost (\$)
Section 60 application	88	3,000	264,000
Section 140 application	22	2,000	44,000
Total			308,000

Source: Heritage Branch, February 2012

Under the fully prescriptive Regulation, the total annual cost to all owners of items on the SHR of HB-levied fees is \$308,000.

Compliance costs – section 167 fees: owners

In addition to fees levied by the HB on owners of items listed on the SHR, fees are levied on section 167 applications. Under the proposed Regulation, these fees will be \$100. Under the fully prescriptive option, they are \$200.

Table 8: Fees charged for section 167 applications – fully prescriptive Regulation

Type of fee	Applications per annum	Cost (\$)	Total cost (\$)
Section 167 application	2,777	200	555,400
Total			555,400

Source: Heritage Branch, February 2012

Note: Includes certificates issues by Land and Property Information

The total annual cost to owners of items potentially affected by heritage listing is \$555,400.

Repair and maintenance costs: owners

Expenditures incurred by owners of items on the SHR to comply with repair and maintenance standards above those that they would otherwise incur are costs associated with a fully prescriptive Regulation. Incremental repair and maintenance costs associated with an item's specific repair and maintenance regime are estimated on the following basis:

- Each item on the register has a market value of \$1 million (there is no relationship between market value and willingness to pay for heritage protection)
- The base case annual cost of maintenance is 0.5% of capital value while a fully prescriptive Regulation increases this to 1.5% of capital value.

As a result, the annual incremental repair and maintenance cost associated with a fully prescriptive Regulation is \$10,000 and this is applicable to all items on the SHR (that is, 1600 items in 2012 increasing to 1750 items by 2017).

6.2 Benefits: fully prescriptive Regulation

The benefits associated with the fully prescriptive Regulation are:

- Additional heritage (measured by willingness to pay)
- Increased certainty about repairs and maintenance: owners
- Increased certainty from section 167 applications: owners

Additional heritage (measured by willingness to pay)

The benefit to the public and owners of a fully prescriptive Regulation is expressed through the community's willingness to pay (WTP) for each additional SHR item protected by the number of items protected: see Table 9.

Table 9: Value of additional heritage protected – fully prescriptive Regulation

	Units	2013	2014	2015	2016	2017
Fully prescriptive Regulation – addition to SHR	No.	30	30	30	30	30
Base case – addition to SHR	No.	-7	-7	-7	-7	-7
Net addition to SHR	No.	37	37	37	37	37
Community WTP per additional items	\$m	0.34	0.34	0.34	0.34	0.34
Total WTP	\$m	12.58	12.58	12.58	12.58	12.58
Net present value (NPV) @ 7%	\$m	51.58				

The fully prescriptive Regulation results in a net present value benefit at a 7% discount rate of \$51.58 million.

Increased certainty about repairs and maintenance: owners

A fully prescriptive Regulation provides a high degree of certainty for owners of SHR items. Owners have a clear site-specific statement of repair and maintenance requirements. This clarity and detail constitutes a benefit to owners. It was not possible to quantify this benefit.

Increased certainty from section 167 applications: owners

Owners of potentially heritage-affected property are able to check the heritage status of their asset by making a section 167 application. It was not possible to quantify this benefit to property owners.

6.3 Cost benefit analysis and equity considerations

Table 10 provides a summary of the above data and cost benefit analysis results at the central discount rate (7%) and sensitivity tests at 4% and 10%.

Table 10: Cost benefit analysis results – fully prescriptive Regulation (\$m)

	2013	2014	2015	2016	2017
Costs					
Administration and compliance costs: HB	0.437	0.437	0.437	0.437	0.437
Costs to prescribe maintenance: HB	0.452	0.452	0.452	0.452	0.452
Costs of assessing new items: HB	0.226	0.226	0.226	0.226	0.226
Repair and maintenance costs: owners	16.000	16.300	16.600	16.900	17.200
Total costs	17.115	17.415	17.715	18.015	18.315
Benefits					
Additional heritage (measured by WTP)	12.580	12.580	12.580	12.580	12.580
Total benefits	12.580	12.580	12.580	12.580	12.580
Benefit cost results					
Net benefits	-4.535	-4.835	-5.135	-5.435	-5.735
NPV @ 4%	-22.755				
NPV @ 7%	-20.888				
NPV @ 10%	-19.250				

The fully prescriptive Regulation results in a net present value (NPV) loss to society of \$20.888 million – owner repair and maintenance costs (\$16m) plus HB costs (\$1.115m) outweigh community WTP benefits (\$12.58m).

Table 11: Equity considerations – fully prescriptive Regulation

	Cost of HB activities (Year 1 \$m)*	Fee revenue (\$m pa)**
Fully prescriptive Regulation	1.115	0.863

* Sum of HB costs in Table 10

** Sum of HB fee revenue estimates in Tables 7 and 8

Fee revenue from the private sector contributes approximately \$0.863 million of the cost of HB administration and compliance, maintenance prescriptions and assessment of new items. The burden of funding the HB is not being met. Thus the fully prescriptive option is neither equitable nor adequate.

Accordingly, the option is rejected for failure to achieve the second policy option (see Section 2.5 of this RIS).

7. Cost benefit analysis: proposed Regulation

The proposed Regulation provides for the equitable and adequate funding of the Heritage Branch (HB) and its activities.

Under the proposed Regulation, inspection via spot checks on items on the State Heritage Register (SHR) would be maintained with the ability to take enforcement action. It also provides additional opportunities for inspection outside current time frames and preparation by owners of reports detailing works required to meet minimum maintenance and repair standards. Additional provision is made for ruins and moveable heritage items.

Resources would be made available to increase the rate of listing of heritage items over that achieved for the base case. The cost of this activity would be shared between the community and the owners of heritage items.

Under the proposed Regulation, there would be no loss of items on the SHR and the rate of increase in listings of new items would be the same as that achieved under the fully prescriptive Regulation (see Table 4).

7.1 Costs: proposed Regulation

The costs associated with the proposed Regulation are:

- Administration and compliance costs: Heritage Branch
- Costs of assessing new items Heritage Branch
- Compliance costs – State Heritage Register items (sections 60 and 140 fees): owners
- Compliance costs – section 167 fees: owners
- Repair and maintenance costs: owners

Administration and compliance costs: Heritage Branch

HB administration and compliance costs for processing exemptions and approvals and maintaining a compliance database are the same as under the base case and the fully prescriptive option.

Costs of assessing new items: Heritage Branch

Under the proposed Regulation, HB assessment of new items will be the same as under the fully prescriptive option, that is, a cost of \$226,000 per annum. This cost increase over base case expenditures will be funded through additional HB fee revenue.

Compliance costs – State Heritage Register items (sections 60 and 140 fees): owners

Fees charged for applications under the *Heritage Act 1977* for the proposed Regulation are shown in Table 6. Forecast additional revenue, associated with SHR items, is shown in Table 12.

Table 12: Fees charged to owners of State Heritage Register items – proposed Regulation

Type of fee	Applications per annum	Average cost (\$)	Total cost (\$)
Section 60 application	88	1,500	132,000
Section 140 application	22	1,000	22,000
Total			154,000

Under the proposed Regulation, the total annual cost to all owners of items on the SHR of HB-levied fees is \$154,000.

Compliance costs – section 167 fees: owners

In addition to fees levied by the HB on owners of items listed on the SHR, fees are levied on section 167 applications. Under the proposed Regulation, these fees will be \$100.

Table 13: Fees charged to section 167 applications – proposed Regulation

Type of fee	Applications per annum	Cost (\$)	Total cost (\$)
Section 167 application	2,777	100	277,700
Total			277,700

The total annual cost to owners of items potentially affected by heritage listing is \$277,700.

Repair and maintenance costs: owners

Expenditures incurred by owners of items on the SHR to comply with repair and maintenance standards above those that they would otherwise incur are costs associated with the proposed Regulation. Incremental repair and maintenance costs associated with an item's specific repair and maintenance regime are estimated on the following basis:

- Each item on the register has a market value of \$1 million (there is no relationship between market value and WTP for heritage protection).
- The base case annual cost of maintenance is 0.5% of capital value while the proposed Regulation increases annual maintenance cost to 1% of capital value.

As a result, the annual incremental repair and maintenance cost associated with the proposed Regulation is \$5000 and this is applicable to all items on the SHR (that is, 1600 items in 2012 increasing to 1750 items by 2017).

An additional cost to owners of items on the SHR is incurred as a result of the inclusion of minimum repair and maintenance provisions in the proposed Regulation. Annually this cost is between \$8 million and \$8.6 million.

7.2 Benefits: proposed Regulation

The benefits associated with the proposed Regulation are:

- Additional heritage (measured by willingness to pay)
- Increased certainty about repairs and maintenance: owners
- Increased certainty from section 167 applications: owners

Additional heritage (measured by willingness to pay)

The benefit to the public and owners of SHR items of the proposed Regulation is expressed through the community's willingness to pay (WTP) for each additional SHR item protected by the number of items protected: see Table 14.

Table 14: Value of additional heritage protected – proposed Regulation

	Units	2013	2014	2015	2016	2017
Proposed Regulation – addition to SHR	No.	30	30	30	30	30
Base case – addition to SHR	No.	-7	-7	-7	-7	-7
Net addition to SHR	No.	37	37	37	37	37
Community WTP per additional items	\$m	0.34	0.34	0.34	0.34	0.34
Total WTP	\$m	12.58	12.58	12.58	12.58	12.58
Net Present Value (NPV) @ 7%	\$m	51.58				

The proposed Regulation results in a present value benefit at a 7% discount rate of \$51.58 million – the same as achieved under the fully prescriptive option.

Increased certainty about repairs and maintenance: owners

The proposed Regulation provides certainty for owners of SHR items. Owners have a clear statement of minimum repair and maintenance requirements to comply with the legislation. This clarity and detail constitutes a benefit to owners. It was not possible to quantify this benefit.

Increased certainty from section 167 applications: owners

Owners of potentially heritage-affected property are able to check the heritage status of their asset by making a section 167 application. It was not possible to quantify this benefit to property owners.

7.3 Cost benefit analysis and equity considerations

Table 15 provides a summary of the above data and cost benefit analysis results.

Table 15: Cost benefit analysis results – proposed Regulation (\$m)

	2013	2014	2015	2016	2017
Costs					
Administration and compliance costs: HB	0.437	0.437	0.437	0.437	0.437
Costs of assessing new items: HB	0.226	0.226	0.226	0.226	0.226
Repair and maintenance costs: owners	8.000	8.150	8.300	8.450	8.600
Total costs	8.663	8.813	8.963	9.113	9.263
Benefits					
Additional heritage (measured by WTP)	12.580	12.580	12.580	12.580	12.580
Total benefits	12.580	12.580	12.580	12.580	12.580
Benefit cost results					
Net benefits	3.917	3.767	3.617	3.467	3.317
NPV @ 4%	16.155				
NPV @ 7%	14.913				
NPV @ 10%	13.819				

The proposed Regulation results in a NPV of \$14.913 million at the central discount rate of 7%.

Table 16: Equity considerations – proposed Regulation

	Cost of HB activities (Year 1 \$m)*	Fee revenue (\$m pa)**
Proposed Regulation	0.663	2.526

* Sum of HB costs in Table 15

** Sum of HB fee revenue estimates in Tables 12 and 13

Fee revenue from the private sector contributes approximately \$2.526 million to the cost of HB administration and compliance and assessment of new items. The burden of funding the HB is more fairly shared than with the fully prescriptive option. The proposed Regulation provides for both equitable and adequate funding of the HB and gives the same level of heritage protection benefit to the public as the fully prescriptive option.

This option meets the requirements of all three policy objectives.

8. Summary of results

Table 17 provides a summary of cost benefit and equity analysis results for the three regulatory options analysed.

Table 17: Summary of cost benefit and equity analysis results

Option	NPV @ 7% (\$m)	Cost of Heritage Branch activities (Year 1 \$m)	Fee revenue (\$m pa)	Comment
Base case	n/a	n/a	0	Does not achieve the policy objectives
Fully prescriptive Regulation	-20.888	1.115	5.052	Inequitable – community makes a minor contribution to the cost of heritage protection through the Heritage Branch
Proposed Regulation	14.913	0.663	2.526	Equitable and adequate funding of Heritage Branch activities

The proposed Regulation is the only option that produces a positive net benefit for the NSW community (measured through NPV) and achieves all the policy objectives. For these reasons, the proposed Regulation is the preferred option.

9. Community consultation strategy

Stakeholders with an interest in the remaking of this Regulation include government, heritage item owners and the community. Representatives from these three groups constitute membership of the NSW Heritage Council which was consulted during the drafting of this Regulatory Impact Statement (RIS).

In addition to consultation with the comprehensive set of stakeholders that constitutes the NSW Heritage Council, the following consultation is proposed:

- circulation of PDF copies of the RIS to stakeholder groups not represented on the NSW Heritage Council
- posting of the RIS on the Heritage Branch website at www.heritage.nsw.gov.au/
- advertisements publicising the consultation in NSW newspapers
- posting of an intention to remake the Regulation and the availability of the RIS in the *NSW Government Gazette*.

Comment received will be incorporated into the final Heritage Regulation 2012.

References

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