

Division 9 Protection of relics not subject to interim or permanent protection

138 Definition

In this Division, ***excavation permit*** means a permit issued by the Heritage Council under section 141 (1) (a) which is in force.

i. Excavation permit required in certain cases

1. A person must not disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed unless the disturbance or excavation is carried out in accordance with an excavation permit.
2. A person must not disturb or excavate any land on which the person has discovered or exposed a relic except in accordance with an excavation permit.
3. This section does not apply to a relic that is subject to an interim heritage order made by the Minister or a listing on the State Heritage Register.
4. The Heritage Council may by order published in the Gazette create exceptions to this section in respect of any of the following:
 - a) any relic of a specified kind of description,
 - b) any disturbance or excavation of a specified kind or description,
 - c) any disturbance or excavation of land in a specified location or having specified features or attributes.

140 Application for excavation permit

1. A person may make an application to the Heritage Council for the issue to the person of an excavation permit.
2. The application shall be in the prescribed form and shall be accompanied by such fee as may be prescribed.

141 Determination of application

1. The Heritage Council may determine an application for an excavation permit:
 - a) by issuing an excavation permit, either unconditionally or subject to such conditions as it thinks proper to impose, or
 - b) by refusing to issue an excavation permit.
2. Where the Heritage Council fails to determine an application for an excavation permit within 21 days after the date of that application, it shall, for

the purpose only of section 142, be deemed to have determined that application by refusing to issue an excavation permit.

142 Appeals arising from applications for excavation permits

An applicant dissatisfied with a determination of the Heritage Council with respect to his or her application for an excavation permit may appeal to the Minister.

143 Minister's decision

1. The Minister may, with respect to an appeal made under section 142:
 - a) dismiss the appeal,
 - b) allow the appeal, either unconditionally or subject to such conditions as the Minister thinks proper to impose, or
 - c) where the appeal is against the imposition of conditions, refuse to approve the application for an excavation permit from the determination of which the appeal has been made.
2. The decision of the Minister under subsection (1) shall be final and shall have effect as if it were a determination of the Heritage Council.

144 Variation or revocation of excavation permit

The Heritage Council may, by notice in writing to the holder of an excavation permit:

- (a) where that excavation permit has been issued unconditionally, impose conditions to which that excavation permit shall be subject,
- (b) where that excavation permit has been issued subject to conditions, vary the conditions of that excavation permit, or
- (c) revoke that excavation permit.

145 Appeals arising from variation or revocation of excavation permits

1. The holder of an excavation permit dissatisfied with the variation or revocation of that excavation permit may appeal to the Minister.
2. Section 143, section 143 (1) (c) excepted, applies in respect of an appeal made under subsection (1) in the same way as it applies in respect of an appeal made under section 142.

145 Notification of discovery of relic

A person who is aware or believes that he or she has discovered or located a relic (in any circumstances, and whether or not the person has been issued with an excavation permit) must:

- (a) within a reasonable time after he or she first becomes aware or believes that he or she has discovered or located that relic, notify the Heritage Council of the location of the relic, unless he or she believes on reasonable grounds that the Heritage Council is aware of the location of the relic, and
- (b) within the period required by the Heritage Council, furnish the Heritage Council with such information concerning the relic as the Heritage Council may reasonably require.

146A Disposition of certain relics

- 1 As soon as practicable after a relic is obtained from an excavation carried out by the holder of an excavation permit, the holder shall notify the Minister of the existence of the relic.
- 2 The holder shall furnish the Minister with such information concerning the relic as the Minister may reasonably require.

146B Power of Minister to direct conservation of relic

- 1 The Minister may give a direction in writing to a person who is or was the holder of an excavation permit, or who the Minister is satisfied excavated land in contravention of section 139 (Excavation permit required in certain cases), direct that a relic obtained from an excavation carried out by the person under the permit or in contravention of that section be given to a specified museum, body or person who in the opinion of the Minister is able to conserve the relic.
- 2 A direction can be given to a person under this section on the ground that the person excavated land in contravention of section 139 whether or not the person has been prosecuted for or convicted of an offence in respect of the alleged contravention.

146C Forfeiture of certain relics

- 1 A relic the subject of a direction under section 146B shall be forfeited to the Crown.
- 2 No compensation is payable to any person as a consequence of the forfeiture of a relic under this section.