



The Hon. Don Harwin MLC

Leader of the Government in the Legislative Council

Special Minister of State

Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts

Vice-President of the Executive Council

Ref: A5103339

Mr David Blunt
Clerk of the Parliaments
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Blunt

Please find enclosed the Government's response to the Standing Committee on Social Issues Report 59 – Review of the *Heritage Act 1977* for tabling in the Legislative Council.

Yours sincerely

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8 December 2021

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Attachment B

NSW Government's response to the Report of the Social Issues Standing Committee Inquiry into the Heritage Act 1977

	Standing Committee Report Recommendation	Response	Comment
1	<i>That any legislative reform of the Heritage Act 1977 have as its guiding principles the need to protect, conserve and celebrate the State's heritage, and that the guiding policy themes in the government's discussion paper of making heritage easy, putting heritage to work and making heritage relevant, must be secondary to these principles.</i>	Support	<ul style="list-style-type: none"> The NSW Government will amend the objects of the <i>Heritage Act 1977</i> to provide a stronger basis for the conservation, protection and celebration of State Significant heritage.
2	<i>That the NSW Government amend the Heritage Act 1977 to explicitly reflect and accommodate a more varied, inclusive and nuanced concept of what constitutes the State's heritage, especially beyond conventional understandings of heritage as buildings and structures. This should reflect contemporary concepts, thinking and approaches to heritage conservation including (but not limited to) intangible cultural heritage and cultural landscapes.</i>	Support	<ul style="list-style-type: none"> The NSW Government will prepare amendments to the <i>Heritage Act 1977</i> to reflect more varied understandings of State Significant Heritage including landscapes and intangible heritage.
3	<i>That the NSW Government undertake a review and/or comparative analysis of approaches to the identification, management and protection of intangible cultural heritage in other jurisdictions in Australia and internationally.</i>	Support	<ul style="list-style-type: none"> The NSW Government will undertake a review of interjurisdictional approaches to matters relating to intangible heritage.

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| 4 | <p><i>That, in concert with legislative reform, the NSW Government prioritise improvements to the administration and implementation of the Heritage Act 1977, including targeted recruitment of staff with relevant qualifications and skills, improved customer service, and initiatives to promote a cultural and attitudinal change in the regulatory approach.</i></p> | Support | <ul style="list-style-type: none"> • As part of the shift to a risk-based regulatory framework, Heritage NSW will review its operational focus to deliver improved customer outcomes. |
| 5 | <p><i>That the Heritage Act 1977 provide increased opportunity for community participation and co-design in the identification, protection and management of heritage and that this participation and co-design include Indigenous members of the community.</i></p> | Support | <ul style="list-style-type: none"> • The NSW Government will provide greater opportunity for community involvement in heritage identification, protection and management through the introduction of a two-step nomination process for listing on the State Heritage Register. • Engagement with all areas of the community in heritage celebration will also be driven through the \$5 million investment into the Blue Plaques program. |
| 6 | <p><i>That State Significant Developments are only able to override heritage concerns after the Minister has consulted with the Heritage Council of NSW and is satisfied that there is a clear net benefit to the community for proceeding with a State Significant Development which results in a diminution of an item's heritage value.</i></p> | Noted | <ul style="list-style-type: none"> • The Secretary's Environmental Approval Requirements for State Significant Developments, State Significant Infrastructure, and Critical Infrastructure, already ensure consultation with Heritage NSW and/or the Heritage Council where heritage impacts occur. • The Minister for Planning and Public Spaces will continue to consider the advice of the Heritage Council in determining consent conditions for State Significant Development. |
| 7 | <p><i>That the NSW Government amend the Heritage Act 1977 to mandate that:</i></p> <ul style="list-style-type: none"> • <i>[A] at any given time, there is always a majority of members on the Heritage Council of NSW with qualifications, experience and expertise in relevant heritage disciplines</i> | [A] – Support | <ul style="list-style-type: none"> • [A] The <i>Heritage Act 1977</i> currently specifies that the majority of members must have expertise in a relevant set of heritage-related disciplines. Any amendments to the Act will support the continuation of these provisions. • [B] The NSW Government supports the recommendation for two members of the Heritage Council to be an Aboriginal man and |

- [B] two members of the Heritage Council of NSW must be an Aboriginal man and an Aboriginal woman, with expertise in Aboriginal cultural heritage
 - [C] the Heritage Council of NSW is to include a representative from local government who possesses skills and experience in heritage
- [B] – Support
- [C] – Support
- Aboriginal woman. However, at this stage no changes will be made to the *Heritage Act 1977* until the governance arrangements for an Aboriginal Heritage Council are determined as part of the Aboriginal Cultural Heritage reforms.
- [C] Qualifications, knowledge, and skills in the area of local government are currently outlined in the *Heritage Act 1977* as available criteria for appointment to the Heritage Council. The NSW Government will support amendments to the *Heritage Act 1977* to create a dedicated position on the Heritage Council for a member with qualifications, knowledge, and skills in the area of local government.
- 8 That the NSW Government further investigate the use of categories as a way of promoting greater consistency in the heritage approvals process, to give heritage owners a much better understanding of the changes or alterations that might be possible to their State-listed properties. Locally listed items of heritage should be mandatorily listed and consolidated on to the State Heritage Inventory so that applications can be more readily made for State significance if necessary.
- Support
- Following substantial community feedback as part of the inquiry, the NSW Government has undertaken further investigation into the use of categories.
- The NSW Government notes that s21(1e) of the *Heritage Act 1977* already requires the Heritage Council to maintain a database of local and state heritage items on the State Heritage Inventory. Any amendments to the Act will support the continuation of these provisions.
- 9 That the NSW Government introduce, on a trial basis, a community-driven, early round nomination process calling for potential State Heritage Register nominations for preliminary consideration by the Heritage Council of NSW.
- Support
- The NSW Government will provide greater opportunity for community involvement in heritage identification, protection and management through the introduction of a two-step nomination process for listing on the State Heritage Register.
- 10 That, in order to address gaps in the State Heritage Register, the NSW Government review its thematic listing programs and
- Support
- The Heritage Council is responsible for the making of recommendations list items on the State Heritage Register.

give consideration to initiatives that may facilitate a more representative State Heritage Register.

- The Minister responsible for heritage will write to the Chair of the Heritage Council of NSW and request the Council undertake a review of their thematic listing program.
- The NSW Government will introduce a two-step nomination process for listing on the State Heritage Register which will assist in facilitating a more diverse range of nominations from communities.

11 *That the NSW Government amend the Heritage Act 1977 to provide for an abridged delisting process for removing items from the State Heritage Register, to cater for situations where an item's significance has been significantly diminished, for example, as a result of fire or some natural calamity.*

Support

- The NSW Government will prepare amendments to the *Heritage Act 1977* to provide for an abridged process for removing items from the State Heritage Register where they have suffered a critical loss of heritage significance due to impacts from natural disaster or a declared state of emergency.
- The abridged delisting process will include appropriate safeguards.

12 *That the NSW Government design and implement a streamlined process for updating existing listings on the State Heritage Register either through legislative change, a tailored policy solution or both.*

Support

- The NSW Government will design and implement a streamlined process for updating existing listings on the State Heritage Register (SHR).

13 *That the NSW Government, as part of the heritage permit approval process:*

Support

- As part of system improvements, Heritage NSW will improve its pre-lodgement, site visit and application status services, along with ways to improve the quality of evidence prepared by consultants.
- An expanded range of exemptions will be developed as part of the heritage category system trial to reduce the number of permits being issued for low-risk changes and ease congestion of the heritage approval system.

- *reinstate pre-lodgement meetings with proponents as part of a broader commitment to improved customer service,*
- *carry out site visits where this would assist in understanding an application for works, taking into*

- *account whether a site visit is practical and whether it would add value to an application,*
- *update the current standard exemptions and fast-track approval pathways to ensure non-impactful activities can be undertaken to assist with the conservation of items and reduce unnecessary assessment,*
- *increase the resources available to Heritage NSW and to the Heritage Council of NSW to improve the timeliness of the process, and*
- *work with stakeholders to publish expected time frames within which heritage permits will be determined.*

- The NSW Government will review resourcing for Heritage NSW as part of the strategy to support the implementation of system changes.

14 That the NSW Government amend the Heritage Act 1977 to provide for intermediate enforcement powers.

Support

- To improve heritage outcomes the NSW Government will amend the *Heritage Act 1977* to:
 - clearly confer and define powers of entry and inspection;
 - introduce the ability to issue penalty infringement notices and restoration orders;
 - enable the delegation of compliance and enforcement functions to other suitably qualified Government bodies and agencies, such as the National Parks and Wildlife Service;
 - allow an order restricting harm to be notified verbally in the first instance and confirmed in writing; and
 - increase the statute of limitations for offences under the Act from twelve months to three years.

15 That the NSW Government remove the requirement for a Section 60 approval for works to State-listed items where an Integrated Development Application has already been made,

Support

- The NSW Government will make amendments to the *Heritage Act 1977* to remove the requirement for a Section 60 approval following an Integrated Development Application process where certain conditions have already been met.

in situations where the requirements of Section 60 have already been satisfied.

- 16** *That, as a matter of priority, the NSW Government progress the reform of Aboriginal cultural heritage legislation in tandem with the review of the Heritage Act 1977.*
- Support • The development of Aboriginal Cultural Heritage legislation is already progressing as a priority for the NSW Government and will continue to do so alongside reforms to the *Heritage Act 1977* to ensure both systems align appropriately.
- 17** *That the NSW Government allocate specific funding for an Aboriginal War Memorial Museum and work with Aboriginal people across New South Wales, including traditional owners and the NSW Aboriginal Land Council, to progress this proposal.*
- Support in principle • The NSW Government supports the establishment of an Aboriginal War Memorial Museum subject to the preparation and outcome of a Final Business Case and consultation with Aboriginal communities.
- 18** *That the NSW Government renews its commitment to the NSW Heritage Grants Program, including by:*
- Support • The NSW Government remains committed to the NSW Heritage Grants program.
- *increasing its funding, improving promotion and community awareness of the program, and making it easier and more attractive for owners to apply for grants – support in principle*
 - *targeting promotion of the program to owners in regional and remote New South Wales, alongside the establishment of a dedicated grants stream for these owners.*
- A new Heritage Fund will be proposed for establishment under legislation that will leverage opportunities for broader funding sources, including philanthropy, to support future grant programs.
- Subject to securing an appropriate revenue stream, the NSW Government will make amendments to the *Heritage Act 1977* to establish a new Heritage Fund and will target support for regional and remote NSW.
- 19** *That the NSW Government improve the support it provides to owners of State-listed heritage items, in order to incentivise ownership and make activation and adaptive re-use of heritage items easier and more viable, without compromising the protection of the item's heritage value.*
- Support • The NSW Government will pursue activation and adaptive reuse opportunities to better support owners of items on the State Heritage Register.

- 20** *That the NSW Government, with the benefit of experience and learnings from the City of Sydney, investigate the feasibility of:*
- *extending the heritage floor space scheme to Local Government Areas beyond the current Sydney CBD boundary such as Parramatta, North Sydney, Newcastle, Wollongong and other parts of the City of Sydney Local Government Area*
 - *establishing a heritage floor space trading scheme or equivalent at the State level for items listed on the State Heritage Register.*
- Support
- The NSW Government supports the expansion of the successful City of Sydney Transferable Heritage Floor Space scheme.
 - The NSW Government will consult with relevant local government authorities to investigate opportunities to extend the Heritage Floor Space scheme beyond the current CBD boundary.
- 21** *That the Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts make representations to the Commonwealth Government regarding the potential introduction of tax-based incentives for owners of State-listed items.*
- Support
- The NSW Government has made representations to the Commonwealth about introducing tax-based incentives for owners of items listed on the State Heritage Register.
 - The NSW Government will continue to advocate to the Commonwealth to introduce tax-based incentives.
- 22** *That the NSW Government:*
- *ensure agency collaboration on cultural tourism, to stimulate economic growth, promote heritage understanding and awareness in the community, and contribute to the long-term conservation and enhancement of heritage places, sites and landscapes*
 - *develop a state led strategy for the activation of heritage assets with specific actions for the promotion of local and state heritage, including consideration of listing relevant local items on the State Heritage Register.*
- Support
- Through the *NSW Visitor Economy Strategy 2030*, the NSW Government has committed to developing tourism opportunities associated with adaptive reuse of heritage assets, through a cross-agency collaborative approach.
 - Heritage NSW is working closely with Destination NSW on leveraging the Blue Plaques Program to drive tourism opportunities across NSW.
 - The NSW Government will examine the development of a strategy that sets the direction for activation and recognition of heritage items across NSW.

- 23** *That the NSW Government further investigate the United Kingdom's Heritage Enterprise Grants Scheme and consider the feasibility of creating a fund to assist with the adaptive reuse of public and private heritage properties – consistent with the Burra Charter – and which meets the contemporary needs of local and, in particular, disadvantaged communities.*
- Support The NSW Government will investigate the feasibility of creating a fund similar to the United Kingdom's Heritage Enterprise Grants Scheme as part of the development of future incentive programs.
- 24** *That the NSW Government further develop the NSW Blue Plaques Program to engage communities with heritage and provide for cultural tourism opportunities, including the development of a mobile phone app in order to maximise and facilitate use, as the scheme in the United Kingdom provides.*
- Support The NSW Government will develop the Blue Plaques program to provide for cultural tourism opportunities including the development of a digital engagement platform.
- 25** *That the NSW Government take immediate steps to improve compliance with section 170 of the Heritage Act 1977, including ensuring that State government agencies update their section 170 register within 12 months, wherever reasonably practical.*
- Support The *Heritage Act 1977* requires government agencies to review and, if necessary, amend their heritage and conservation registers at least once a year.
 - The NSW Government has implemented a program to support agency compliance with Section 170 requirements. This work will continue to improve the identification of heritage assets under Section 170.
- 26** *That the NSW Government allocate specific funding for digitisation and video recording preservation of archives, records and artefacts in Libraries, Galleries and Museums.*
- Support The NSW Government already allocates significant funding for the digitisation and video recording preservation of archives, records and artefacts in libraries, galleries, and museums. This includes:
 - The NSW State Cultural Institutions manage internal digitisation programs for the archives, records, artefacts and artworks in their collections.
 - The State Archives and Records Authority of NSW offers digitisation services to the NSW Public Sector through its commercial arm.

- The State Library of NSW is in the final year of its 10-year, \$72.48 million digitisation program aimed at digitising, preserving, and improving access to our best known, most vulnerable and in demand collections.
- The digitisation aspect of the Powerhouse Collection Relocation and Digitisation Project is a multi-million dollar program, and will be complete in December 2022.
- \$5 million to supporting digitisation of regional cultural collections through the Regional Cultural Fund managed by Create Infrastructure, so far supporting 21 projects, 4 of which are First Nations led.
- Digitisation is also a key theme of the NSW Museum Strategy led by Create NSW, which will provide further recommendations for digitisation programs in 2022.