

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the Heritage Act 1977 (the Heritage Act) and the Environmental Planning and Assessment Act 1979 (the Planning Act) as follows:

- (a) to insert objects into the Heritage Act,
- (b) to require criteria used by the Heritage Council to determine whether a place, building, work, relic, moveable object or precinct (an item) is of State heritage significance to be approved by the Minister for Planning (the Minister),
- (c) to reduce the membership of the Heritage Council from a maximum of 15 members to a maximum of 11 members and to remove the appointment of members nominated by particular organisations (other than the National Trust of Australia (New South Wales)),
- (d) to require the Minister, when considering the inclusion or removal of an item on or from the State Heritage Register, to consider whether the item should be conserved and other specified effects of the listing,
- (e) to provide for the endorsement by the Heritage Council of conservation management plans for items listed on the State Heritage Register and other matters related to those plans,

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- (f) to enable the Minister or Chairperson of the Heritage Council to make stop work orders to prevent an item that is subject to an interim heritage order or is listed on the State Heritage Register from being harmed,
- (g) to provide for the referral by councils of disputed proposals to list items as heritage items in local environmental plans to independent hearing and assessment panels,
- (h) to prevent a consent authority from refusing a development application for integrated development on heritage grounds if the development is the subject of a relevant approval under the Heritage Act,
- (i) to make other minor amendments and amendments of a law revision, consequential or savings and transitional nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, other than provisions related to certain amendments made by the Environmental Planning and Assessment Amendment Act 2008.

Schedule 1 Amendment of Heritage Act 1977 No 136

Heritage Council

Schedule 1 [9] substitutes sections 8 and 9 of the Heritage Act and repeals other provisions currently relating to the membership and procedures of the Heritage Council. The proposed sections reduce the maximum membership of the Council from 15 to 11, replace the Director of the Heritage Office with the Director-General of the Department of Planning as a statutory member of the Council and remove those members who were formerly appointed by organisations (other than the member appointed from nominations made by the National Trust of Australia (New South Wales)). The amendments retain the 3 statutory members and provide for up to 8 appointed members, while widening the qualifications, knowledge and skills such members may possess before being appointed.

Schedule 1 [2] and [7] make amendments consequential on the amendment made by Schedule 1 [9].

Schedule 1 [8] gives the Heritage Council the status and privileges of the Crown by declaring it to be a NSW Government agency.

Schedule 1 [10] amends section 21 of the Heritage Act to update the functions of the Heritage Council to reflect changes to plan-making processes under the Planning Act.

Schedule 1 [43] inserts proposed Schedule 2 into the Heritage Act, containing provisions relating to the membership and procedure of the Heritage Council.

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State Heritage Register and items of State heritage significance

Schedule 1 [6] amends section 4A of the Heritage Act to require the criteria that the Heritage Council uses to make decisions about whether an item is of State heritage significance to be approved by the Minister before the Minister publishes them in the Gazette and to require only those published criteria to be used by the Council.

Currently, the criteria must merely be notified to the Minister before they are published in the Gazette.

Schedule 1 [13] amends section 32 of the Heritage Act to require the Minister, when determining whether to direct that an item be listed on the State Heritage Register, to consider whether the long-term conservation of the item is necessary, whether listing would render the item incapable of reasonable or economic use and whether it would cause undue financial hardship.

Schedule 1 [14] amends section 33 of the Heritage Act to provide that before making a recommendation for the listing of a precinct the Council must publish a notice of intention to consider listing in at least one metropolitan newspaper and one local newspaper circulating in the precinct, rather than giving written notice to each owner or occupier of land in the precinct, as is currently the case.

Schedule 1 [16] amends section 33 of the Heritage Act to prohibit the Heritage Council from recommending that an item be listed on the State Heritage Register unless it is satisfied that the item satisfies at least one of the criteria established under section 4A of that Act and also provides that the Council may consider whether the long-term conservation of the item is necessary, whether listing would render the item incapable of reasonable or economic use and whether listing would cause undue financial hardship. Schedule 1 [15] and [26] make consequential amendments.

Schedule 1 [17] amends section 34 of the Heritage Act to make it clear that the Minister may refer a recommendation for the listing of an item on the State Heritage Register to a review body on the Minister's own motion or at the request of an affected owner, mortgagee, lessee or occupier.

Schedule 1 [24] amends section 37 of the Heritage Act to require notice of the Minister's decision on a proposed State Heritage Register listing to be given in the same manner as notice of an intention to consider the listing by the Heritage Council.

Schedule 1 [25] amends section 38 of the Heritage Act relating to the power of the Minister to direct that an item be removed from the State Heritage Register on the recommendation of the Heritage Council. Under the amended section, the Minister may make such a direction, after considering a recommendation by the Heritage Council, if of the opinion that the item is not of State heritage significance or that the long-term conservation of the item is not necessary and if either the listing would render the item incapable of reasonable or economic use or if the listing would cause undue financial hardship to the owner, mortgagee or lessee of the item or land on which it is situated.

Schedule 1 [27] inserts proposed section 38A into the Heritage Act to enable the Heritage Council to endorse conservation management plans for items listed on the State Heritage Register and to enable regulations to be made for or with respect to conservation management plans.

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Controlled activities

Schedule 1 [28] amends section 57 of the Heritage Act to exempt a person from having to obtain approval to work on an item that is listed on the State Heritage Register if the work is exempted from the operation of Part 4 of that Act by a conservation management plan endorsed by the Heritage Council.

Schedule 1 [29] amends section 62 of the Heritage Act to require the relevant approval body to consider any applicable conservation management plan when determining whether to grant approval to carry out work on an item listed on the State Heritage Register.

Schedule 1 [32] inserts proposed Division 5 of Part 4 (proposed section 79C) into the Heritage Act. The proposed Division enables the Minister or the Chairperson of the Heritage Council to make a stop work order (being an order that work on an item cease for a period of 40 days) if of the opinion that an item that is subject to an interim heritage order or listed on the State Heritage Register is being or is about to be harmed. Only one stop work order may be made in relation to any work and other remedies under the Heritage Act may be pursued in relation to the work. An order may not be made if approval for the work has been given under Part 4 of the Heritage Act. Schedule 1 [11] makes a consequential amendment.

Other amendments

Schedule 1 [1] inserts proposed section 3 into the Heritage Act to set out the objects of that Act.

Schedule 1 [3] amends section 4 of the Heritage Act to update definitions.

Schedule 1 [4] amends section 4 of the Heritage Act to omit a redundant definition.

Schedule 1 [5] amends section 4 of the Heritage Act to substitute the definition of relic, so that a relic under that Act must be of State or local heritage significance but is no longer required to be more than 50 years old. Schedule 1 [33] makes a consequential amendment.

Schedule 1 [12], [34] and [35] make minor amendments consequential on the inclusion of the Heritage Council in the Department of Planning.

Schedule 1 [18], [20]–[23], [36] and [37] make law revision amendments.

Schedule 1 [19] amends section 36 of the Heritage Act to enable regulations to be made to remove or change the right of a party to legal or other representation at a review by the Planning Assessment Commission of a recommendation that an item be listed on the State Heritage Register.

Schedule 1 [30] amends section 72 of the Heritage Act to enable regulations to be made to remove or change the right of a party to legal or other representation at a review by the Planning Assessment Commission of an appeal against a decision by the Heritage Council about an application for approval of actions in relation to an item that is subject to an interim heritage order or listed on the State Heritage Register.

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Schedule 1 [31] amends section 79 of the Heritage Act to enable regulations to be made to remove or change the right of a party to legal or other representation at a review by the Planning Assessment Commission of an appeal under the Planning Act or other Act that is to be determined by the Minister for Planning.

Schedule 1 [38] amends section 170 of the Heritage Act to require government instrumentalities to enter on their Heritage and Conservation Registers items of the environmental heritage that are required to be listed on the Registers in accordance with the regulations. Currently, items subject to interim heritage orders or listed on the State Heritage Register, or that could be subject to such an order or listing, or that are listed in environmental planning instruments, are required to be entered on the

Registers.

Schedule 1 [39] amends section 170A of the Heritage Act to remove the requirement for government instrumentalities to include information about matters related to Heritage and Conservation Registers in their annual reports.

Schedule 1 [40] inserts proposed section 170B into the Heritage Act. The proposed section enables a council to refer a submission about the inclusion of an item as an item of heritage significance in a proposed local environmental plan to an independent hearing and assessment panel established under the Planning Act.

Schedule 1 [41] amends Schedule 1 to the Heritage Act to enable regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 1 [42] amends Schedule 1 to the Heritage Act to insert savings and transitional provisions consequential on the enactment of the proposed Act.

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979 No 203

Schedule 2 [1]–[3] amend uncommenced provisions of the Planning Act as proposed to be inserted by the Environmental Planning and Assessment Amendment Act 2008 (the 2008 Act).

Section 23G (2) (a) of the Planning Act (as proposed to be inserted by the 2008 Act) confers on joint regional planning panels (regional panels) functions as a consent authority that are conferred on it under an environmental planning instrument.

Schedule 2 [1] clarifies that the relevant functions as a consent authority that may be conferred on a regional panel under section 23G (2) (a) are any of the consent authority functions of a local council. This enables the council to retain certain functions as a consent authority for development applications determined by a regional panel.

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Schedule 2 [2] resolves a technical issue concerning the entity to which a regional panel's exercise of a local council's functions as consent authority conferred on the panel under section 23G (2) (a), is to be attributed. The effect of the amendment is to deem a regional panel to be the applicable local council in the exercise of those functions, subject to the regulations. The amendment also clarifies that a regional panel is to exercise functions conferred on it under section 23G (2) (a) to the exclusion of the applicable council.

The amendment also allows proposed section 23G (5A) and (5B) to apply in relation to the functions conferred on a regional panel under an environmental planning instrument that are conferred on the Planning Assessment Commission under section 23D (1) (d) of the Planning Act (as proposed to be inserted by the 2008 Act).

Schedule 2 [3] specifically provides for a power to make regulations for or with respect to the functions conferred by the Planning Act on a regional panel.

Schedule 2 [4] amends section 90 of the Planning Act to apply the provisions of that Act relating to procedures for integrated development to development made by or on behalf of the Crown if it is development that requires an approval to carry out work under section 57 (1) of the Heritage Act (a heritage approval).

Schedule 2 [5] amends section 90A of the Planning Act to insert a definition of heritage approval.

Schedule 2 [6] inserts proposed section 92 into the Planning Act. The proposed section prohibits a consent authority from refusing development consent on heritage grounds if a heritage approval has been granted in respect of the same development.

Schedule 2 [7] amends section 118 of the Planning Act to enable the functions of preparing, making and approving development control plans to be conferred on panels appointed under Division 1AA of Part 6 of that Act to exercise planning

functions of councils.

Schedule 2 [8] amends section 118 of the Planning Act to enable the functions of preparing and approving contributions plans to be conferred on panels appointed under Division 1AA of Part 6 of that Act to exercise planning functions of councils. Schedule 2 [9] amends section 158 of the Planning Act to exclude committees, or members of committees, established under section 22 of that Act, from personal liability for things done or omitted to be done for the purposes of that Act. The amendment will be taken to have commenced on the same day as the removal of the previous provision relating to the liability of such committees (see proposed section 2 of the proposed Act).