

**Submission
No 1**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Historic Houses Association Australia

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REVIEW OF HERITAGE ACT

The Historic Houses Association of Australia has been identified as a stakeholder and invited to contribute to the review of the *Heritage Act* by the Upper House Standing Committee on Social Issues:

The basis of this review is to look at what sort of regulatory model would facilitate the preservation, activation, and celebration of our State's heritage to ensure that heritage preservation, adaptive re-use and community enjoyment are fully realised in NSW.
[Discussion Paper – page 3]

The Historic Houses Association (HHA) recognises the values we hold as a society should be reflected in the laws that govern us. To this end HHA acknowledges and supports the continuing protection of our heritage through the *Heritage Act*.

For the duration of this review, HHA requests that it has opportunities to be in dialogue with Heritage NSW and with the Upper House Standing Committee on Social Issues.

HHA has an abiding interest in all aspects of heritage in New South Wales, and residential buildings in particular. HHA focuses on:

- advocacy to protect our heritage;
- support and representation for owners of residential heritage;
- events that promote this heritage to members and beyond.

The HHA Properties Committee is providing an initial response to the review. This response will be shared amongst members and supporters, and their responses will inform further responses to this review.

HERITAGE ACT AND GUIDING THEMES

The *Heritage Act* and its implementation determine what Heritage Listing means at both the State and the Local level. The guiding themes outlined on page 7 of the *Discussion Paper* begin by announcing the State wants to make heritage ownership easy. The guiding themes are:

1. Making heritage easy

Making heritage ownership and administration simple and cost-effective

2. Putting heritage to work

Making heritage a viable opportunity for economic growth, employment and community enjoyment

3. Making heritage relevant

Making heritage a cornerstone of NSW communities, quality local environments and beautiful public spaces



These are good guiding themes and are relevant to all State Heritage Listed historic houses. HHA members feel that these guiding themes have been more aspirational than reflecting current practice in relation to heritage home owners.

For someone not running a business in relation to their heritage home, the equation suggested by these guiding themes is that heritage home owners are providing community enjoyment and contributing to a quality local environment and in return the State government is offering to make heritage ownership simple and cost effective.

Many heritage home-owning HHA members and prospective members have been involved in major repairs and renovations, and typically have found the processes neither easy nor cost effective. Having to prepare a 1000-page Conservation Management Plan, or simply to follow its requirements is a major undertaking. Added to this are the multiple applications required to both Heritage NSW and local council.

In the case of residential heritage properties in the City of Sydney, recently the process has been streamlined, with City of Sydney gradually being given oversight of most aspects of heritage development applications. The move towards local council overseeing heritage development applications for residential heritage buildings seems a good one. Already local councils oversee heritage development applications for items of local heritage significance. It is hoped Heritage NSW could work with local councils to ensure councils have appropriate procedures and expertise to oversee heritage development applications.

In recent years, it appears Heritage NSW and the Heritage Council have spent a lot of time reviewing residential heritage development applications. In many cases, elements under consideration were minor. Freeing Heritage NSW from this administration would appear to be a good outcome for Heritage NSW (because it could then focus on more significant issues), for owners (who would no longer have two consent authorities to deal with), and for the local councils (because they would no longer need to liaise with Heritage NSW on minor developments). It is hoped this approach can be adopted throughout the state.

Regarding the wider implementation of returning heritage development applications back to local government, an issue to resolve would be what to do with municipalities without a dedicated heritage team.

If in the future local government administers residential heritage development applications and Heritage NSW has more time for more significant issues, we request that it focus on activities that support the guiding principles and that support State-listed heritage home owners.



PURPOSE OF THE ACT

Page 9 of the *Discussion Paper* outlines the seven Objects of the Act's purpose...

The Act contains seven high-level Objects as a general guide to the Act's purpose. These are:

- (a) to promote an understanding of the State's heritage,
- (b) to encourage the conservation of the State's heritage,
- (c) to provide for the identification and registration of items of State heritage significance,
- (d) to provide for the interim protection of items of State heritage significance,
- (e) to encourage the adaptive reuse of items of State heritage significance,
- (f) to constitute the Heritage Council of New South Wales and confer on it functions relating to the State's heritage,
- (g) to assist owners with the conservation of items of State heritage significance

It appears that the Government, through its Heritage Division, has not been a strong voice in promoting an understanding of the State's heritage, and there have been insufficient mechanisms for Heritage NSW "to assist owners with the conservation of items of State heritage significance".

Heritage NSW might reply that it does this through its NSW Heritage Grants program. However, these grants support only a small proportion of State Heritage home owners. In the past few rounds of these bi-annual grants, Heritage NSW has ensured that at least a small proportion of grants is provided to private home owners, but this is only a handful of grants. Across-the-board support for State-Listed Heritage residences is requested.

Many home owners would benefit from being able to access information about appropriate ways to look after their heritage properties. Relevant information can be difficult to find. Is it because Heritage NSW does not want to commit to information that it remains unable to do so? Is there a role for HHA here? For the most part, HHA members and in particular Property Members are not heritage professionals, and any information we share amongst our members or more widely can be exactly that — sharing information amongst people with a common interest rather than providing authoritative (and accountable) heritage advice. Is there a role for HHA to be a conduit for disseminating advice for heritage home owners? Could we republish information or provide links to online resources (e.g. ICOMOS papers)? Such an approach would be useful only if information is structured and easily available when needed, otherwise it would remain inaccessible.

In common with other occasions when heritage home owners interact with Heritage NSW, reporting and compliance issues relating to the NSW Heritage Grants Program appear to be unnecessarily onerous. This is in spite of the efforts of Heritage NSW officers who are positive, open, helpful, and generally enthusiastic about all things heritage.



INCENTIVES

If Heritage Grants are not a good way to “incentivise” heritage home ownership, the other way suggested in the discussion paper is tax relief. For owner-occupiers, Property Valuations are discounted 10–20%, and this reduced amount is used to calculate rates in participating council areas. Again, a welcome reduction but not a substantial one.

Other tax incentives are mentioned in the discussion paper. HHA supports tax deductions and/or rebates for a portion of repairs, maintenance and restoration of historic houses.

In particular, relief from the high cost for heritage home owners to prepare and administer Conservation Management Plans would be welcome. Reduced and simplified requirements for domestic properties would be preferred. If privacy concerns could be addressed, could heritage home owners share with the community aspects of their heritage management in lieu of some aspects of CMP provisions?

COMPLIANCE & ENFORCEMENT

The *Heritage Act* “establishes a series of mechanisms that aim to provide proactive and reactive protections” for State Listed heritage properties. The focus of these mechanisms in relation to owning a State Listed Heritage home seem to be on compliance and enforcement, and in these areas the discussion paper advocates expanding the arsenal available to Heritage NSW, so that not only could it prosecute people through the courts, but also adding an ability to give out infringement notices and fines for non-compliance.

Many heritage home owners feel compliance and enforcement have been the focus of Heritage NSW and would not like to see further powers given to them in this area unless these were accompanied by a change in focus by Heritage NSW. The *Discussion Paper* notes that:

The Act is now widely considered to be out-of-step with trends in heritage conservation and land use planning and development. It reflects an outdated reliance on prescriptive regulatory measures and compliance mechanisms to achieve its objectives, and is generally considered onerous, procedurally complex and adversarial.

Why are there few mechanisms for promoting an understanding of the State’s heritage, or broad incentives for owners to conserve items of State heritage significance?

HHA supports retaining and using existing mechanisms to protect heritage-listed properties from demolition or major damage, especially at the hands of developers, whether these are private or government agencies. In recent years, HHA advocacy has focused on saving threatened heritage, from Willow Grove to Windsor to the Sirius apartments, and many more.



Could the *Heritage Act* provide ways for Heritage NSW to develop partnerships with heritage home owners? The discussion paper acknowledges that heritage home ownership is uneconomic, and indeed the government has been divesting itself of properties deemed too expensive to maintain. It seems unreasonable that the same government relies on onerous compliance and enforcement procedures to ensure new owners look after the residential heritage properties that the government was unable to.

HHA would welcome opportunities to facilitate partnerships between Heritage NSW and heritage home owners.

LEVELS OF SIGNIFICANCE

If Local Heritage Listing is sufficient to protect heritage homes, then does State Heritage Listing provide any advantage over statutory Heritage Listing at the local level?

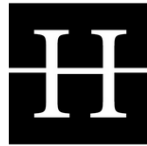
State Heritage Listing and the ways Heritage NSW interacts with heritage home owners appears to be onerous, expensive, complicated, bureaucratic, inconsistent, unsupportive and generally undesirable. In most cases, heritage home owners are the great advocates and protectors of their heritage properties, but there is little sense they are in partnership with Heritage NSW in this endeavour. Greater recognition and support should be available to owners, but preferably not in the form of awards or competitive applications.

The *Discussion Paper* proposes four levels of significance...

- Exceptional state significant heritage to be identified and rigorously managed to ensure our most iconic items are conserved to the highest standards [Category 1]
- State significant heritage landscapes and areas with large curtilages, which could include farms, gardens, Aboriginal cultural landscapes and urban precincts [Category 2]
- Most items of state heritage significance to be covered by consistent and easy to understand protections that support conservation, activation and celebration [Category 3]
- Items of local significance that are identified by local governments would be recorded consistent with the arrangements in place for the State Heritage Inventory [Category 4]

HHA is focused on residential properties, and it appears most heritage residential properties could be considered for any of these categories:

- It appears Category 1 would include residential properties that Heritage NSW considers to have National or World Heritage significance.
- It appears Category 2 would include farm-based residential properties.
- It appears Category 3 would include the bulk of residential properties that are considered to be of State significance but not higher significance.
- It appears Category 4 would include residential properties that are considered to be of Local significance.



The purpose of these categories is unclear:

- If NSW considers an item to be in Category 1 and the Australian government does not record the same item as having National Heritage significance, or vice versa, what does this mean? Recently, when a Macquarie Street precinct was designated to be of National Heritage significance, the State government objected, responding that the listing would require management too onerous for the State government.
- If Category 1 items are to have heightened regulatory controls, could owner-occupied residences be excluded from this category?
- For residential properties in Categories 2 and 3 – is there the same level of protection and are the categories tailored to accommodate the different needs of farms and smaller properties that include residences?
- Are items in Category 4 treated the same as items in Categories 2 and 3?
- Why include farms with significant sites such as Bondi Beach?
- Are categories listed in order of significance? Is Category 2 higher than Category 3?

The focus questions in this section seem to muddy the meanings of these categories:

Focus Question 8: How could tailored heritage protections enhance heritage conservation?

Focus Question 9: How should heritage items that are residential properties be accommodated under a proposed category scheme?

HHA proposes that residential heritage properties be grouped in a single category and then items within this category could have tailored material to suit their level of significance and particular circumstances. Houses, terraces, farm-based residences and residential units could be included in this category.

Currently, most heritage-listed residential properties are either State listed, Locally listed, or within a Conservation Area. It would be useful to know what proportion of State-listed heritage items are residential. If the majority of listed properties are residential, then it is individual home owners who are providing the majority of care and protection for built heritage in New South Wales. In this case it would seem appropriate for Heritage NSW to provide broad-based support for these heritage properties. HHA would like Heritage NSW to promote a greater understanding of these properties as a major part of the State's heritage, and to encourage the conservation of these properties through active and positive collaboration with the owners of these properties.

An example of a highly significant heritage residential streetscape is Lower Fort Street. It includes the 22 residences from 1–43 Lower Fort Street (including Milton Terrace 1–19 Lower Fort Street, described as the finest terrace in the Colony, the townhouses built for Captain Nicholson at numbers 21–23 and townhouses designed by John Verge at numbers 39–41); there are also the Flavelle terraces 57–61 LFS; 20–22 LFS; the thirty-three Workers Flats designed by Walter Liberty Vernon; the Hero of Waterloo Hotel; and the other buildings in the street that contribute to the heritage of this street.



The owners of these mostly residential properties have been the people who have repaired and restored these properties after more than a century of neglect under government ownership. The residents are also encouraging visitors to the precinct, and to adjoining heritage precincts of The Rocks and Walsh Bay.

Owners of these residential properties would prefer them to remain in a single heritage category, and for none of them to be subject to the heightened regulatory controls of the proposed Category 1.

On the other hand, it would seem appropriate for the entire Millers Point and Dawes Point Heritage Precinct to be recognised as being of National Heritage Significance, along with the adjoining areas of The Rocks and Walsh Bay. For example, if the entire area had been under the protection of heritage legislation, the State government might not have been proposed an eight-storey building immediately to the north of number 1 Lower Fort Street, the new Cumberland Street currently under construction might have been less than its current eight storeys, and the Sirius building might have had a different outcome.

This example of heritage in the Millers Point area has been discussed at some length in order to highlight the importance of maintaining heritage in an entire precinct when this is appropriate. It also highlights our request that heritage residential properties be in a single category in which tailored support might be provided for those properties deemed to be of higher significance instead of requiring more rigorous management of these properties. Similar discussion could have been put forward for the City of Broken Hill, in which listing of the city on the National Heritage Register could be considered the primary listing, and in the case of individually listed properties, HHA would prefer residential properties to be in a single category in which compliance and regulatory issues were secondary to supporting these owners so that Heritage NSW and the owners could be considered to be in partnership in maintaining the heritage significance of their homes.

HHA hopes these comments are helpful. We look forward to providing additional responses and when opportunities arise, and discussing the review of the *Heritage Act* with Heritage NSW and the Upper House Standing Committee on Social Issues. In the meantime we are surveying and requesting additional feedback from our membership and more widely.

Regards

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Historic Houses Association of Australia