

## INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

**Name:** Name suppressed

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Partially  
Confidential

## Heritage Act Review submission

### Response to focus questions

- Focus Question 1: What should be the composition, skills and qualities of the Heritage Council of NSW?
  - A range of heritage specialists including:
    - Aboriginal representative (in addition to any who may also fill any of the other categories below)
    - Architect (built)
    - Architect (landscape)
    - Archaeologist
    - Movable heritage (eg Museums)
    - Materials Conservator
    - Planner (with heritage specialty training/experience)
    - Heritage legislation specialist
  - There should be no Ministerial appointments to the Heritage Council. The Council should be selected on merit in terms of heritage training and experience. The Heritage Council provide independent advice to the Minister and to the community and in the interest of heritage conservation. The Minister should receive that advice and, if choosing to adopt a decision contrary to that advice, explain the reasoning for that choice to the public.
- Focus Question 2: How should Aboriginal Cultural Heritage be acknowledged and considered within the Heritage Act.
  - Difficult to say in the absence of the much delayed Aboriginal Heritage Act.
  - Aboriginal consultation will be essential in answering Focus Question 2.
  - The chair of an Aboriginal Heritage Council for an Aboriginal Heritage Act should also be a joint Chair of the Heritage Council formed under the NSW Heritage Act – not just a member of the Council.
- Focus Question 3: Are the objectives of the Heritage Act still relevant?
  - Yes
- Focus Question 4: Does the Act adequately reflect the expectations of the contemporary NSW community?
  - No.
  - The separation of State heritage and local heritage under two separate Acts is counter-productive to cohesive heritage management. It is not only confusing when communicating heritage messages but marks local heritage as an easily disposable item subject purely to the whims of developer dominated local councils.
  - The implementation of the Act and, importantly, the effective communication of the community value of heritage, has been severely compromised by powerful, monied, developers and political interests. This has led to consistent disruption of Heritage NSW's projects and programs for community engagement, undermining of advice from the NSW Heritage and unconscionable destruction of highly significant heritage sites across the State but particularly in Sydney, Parramatta and the greater Sydney Region.
- Focus Question 5: How can the NSW Government legislation better incentivise the ownership, activation and adaptive reuse of heritage?
  - By avoiding destruction of established heritage urban environments that, at best, leave a single property isolated while being surrounded by high rise.

- By significant tax incentives
  - By supporting local councils
  - By removing local heritage from the Planning Act and incorporating it into the Heritage Act
- Focus Question 6: How can we improve incentives within the taxation system to help mitigate the cost of private heritage ownership?
    - Tax incentives for any listed property (local, State, Aboriginal)
    - Tax incentives for works designed to enhance identified heritage values of a property
- Focus Question 7: What sort of initiatives might encourage activation and conservation of heritage through commercial and philanthropic investment?
    - Significant government funding for positive promotion of heritage on media outlets, including support for private media programs
    - Consistent and positive messages from Government Ministers about the importance of heritage related to the wide range of ethnic groups in the NSW urban and regional areas.
    - Cessation of Government attempts to circumvent heritage processes and protocols.
- Focus Question 8: How could tailored heritage protections enhance heritage conservation?
    - All current heritage protections are tailored as site specific protections. It is the prevention of efforts to circumvent those protections that is currently the issue.
- Focus Question 9: How should heritage items that are residential properties be accommodated under a proposed category scheme?
    - The proposed category system is flawed. It cements the notion that as soon as a category is represented on a heritage register, by one or a few examples across the State, then that is all that is required and the rest can be demolished. This is counter to any notion of to community or cumulative effect. Each community is special and should be able to expect to have its heritage acknowledged and preserved regardless of whether there is a similar site in some other location somewhere else in the State. Retention of a small sample does not allow for cumulative losses through accident (fires, floods, storms) or arson.

REFORM PROPOSAL: Introduce a community-driven nomination process. Community based 'early-round nominations' would be submitted for Heritage Council consideration. The Heritage Council could then invite more detailed nominations from promising applications. Heritage NSW could provide assistance in preparing nominations.

- Focus Question 10: Would greater community engagement deliver a more robust State Heritage Register?
  - The reform proposal does not sound like a reform as such but implementation of what has been a long held notion – though one curtailed by constant budget and staff cuts and adoption of a focus on themes to try to limit the number of nominations. It is not community engagement that is the issue but one of capacity within the staffing and resources of Heritage NSW.

REFORM PROPOSAL: Introduce a streamlined process to update heritage listings to allow SHR listings to be periodically reviewed and amended to address site changes and ensure a site's full significance is protected. An abridged process would deliver a more accurate representation of SHR items and values over time and ensure that

protections are appropriately targeted. Similarly, an abridged delisting process, in certain circumstances, would ensure the SHR remains an up to date representation of State significant heritage items.

- Focus Question 11: Would streamlining enhance the listing process?
  - 'Streamlining' is generally a buzz word for undermining heritage. It has been the stated goal of endless government policies but with little or no positive effect. This is particularly concerning when 'abridged delisting' is entered into the proposal. It would be tempting for some to allow a building to deteriorate or have a fire damage or gut a building just to ease the delisting and to provide a clean slate for clearing a site.
  - Streamlining that is aimed at increasing staff undertaking approvals with Heritage NSW however, would be a positive and effective solution.

REFORM PROPOSAL: The Minister responsible for heritage could be responsible for determining, in consultation with the Heritage Council, the regulatory thresholds for standard exemptions, fast-track applications and standard applications for permits under the Act. This would ensure the application and exemption process is flexible and responds to community need making it easier for heritage owners to maintain and conserve their properties.

- Focus Question 12: How could we improve the current approval permit system?
  - Not by increasing Ministerial involvement in establishing regulatory thresholds or fast-tracking applications. Further politicisation of heritage processes is the ultimate contradiction to effective heritage management.
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- Focus Question 13: Are the current determination criteria for heritage permits still appropriate?
  - Generally yes but there need to be recognition of qualifications and experience that transcends just NSW or specific local government areas – particularly in regards to permits for Excavation Directors in archaeology.
- Focus Question 14: How could we improve heritage consideration within land use planning systems?
  - By actual, open, transparent, meaningful, community consultation
  - By integrating local heritage into the Heritage Act and Aboriginal Heritage Act and changing the Planning Act to ensure adequate, early consultation with the NSW Heritage Council.
- Focus Question 15: Are there opportunities to enhance consideration of heritage at the strategic level?

REFORM PROPOSAL: It is proposed to introduce a series of intermediate enforcement powers to allow heritage regulators to take a graduated and proportionate response to non-compliance. This would include investigative powers allowing Heritage NSW the ability to gather sufficient evidence to prove an offence, along with the ability to issue penalty or infringement notices. This change would allow Government to take more nuanced and lighter-touch enforcement approaches, as an alternative to expensive and uncertain court action.

- Focus Question 16: How could heritage compliance and enforcement be improved?
  - The proposed reform processes above would be a great improvement.
  - These reforms would require additional resources to Heritage NSW in personnel and funding.
- Focus Question 17: How could understanding of state heritage be enhanced?
  - See answer to Focus Question 7 above, ie:

- Significant government funding for positive promotion of heritage on media outlets, including support for private media programs
- Consistent and positive messages from Government Ministers about the importance of heritage related to the wide range of ethnic groups in the NSW urban and regional areas.
- Cessation of Government attempts to circumvent heritage processes and protocols.

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- Focus Question 18: How could we improve heritage tourism or help activate heritage places for tourism?
  - By avoiding the destruction of heritage to allow the construction of car parks, transport facilities, and various SSD and, instead, finding ways to incorporate heritage in the vicinity of those developments into the tourism experience.
  - Stop the ongoing destruction of the heart of heritage precincts and move new high rise development to adjacent areas (think Paris).
- Focus Question 19: How could public heritage buildings be activated to meet the needs of communities
  - Incorporate heritage into the design principles
  - Increase funding for enhancing the heritage values of streetscapes, eg, return of the Mainstreet program.
  - Stop the lazy use of grey that only emphasises the ever increasing lack of character of cities and suburbs. Make the interpretation of heritage vibrant