

**Submission
No 34**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Committee for Sydney

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Standing Committee on Social Issues Inquiry into the NSW Heritage Act 1977

Submission from the Committee for Sydney

June 2021

About the Committee for Sydney

The Committee for Sydney is an independent think tank and champion for the whole of Sydney, providing thought leadership beyond the electoral cycle. We bring people together to solve the problems of today and tomorrow.

With over 150 member organisations, we work on behalf of Sydney, not the interest of any industry or sector. Our goal is to build on our already strong history of shining a light on critical issues shaping our city and developing a suite of actions for a better future.

Executive Summary

- The Committee for Sydney believes that landmark NSW Heritage Act has served the people of NSW well. That we see areas where the Act can be improved and modernised but see no need for its repeal or wholesale replacement.
- The way Aboriginal heritage is managed and protected needs to be determined in consultation with indigenous communities. This issue should be resolved before any changes to the Act are contemplated.
- The interaction between the Heritage Act and the EP&A Act needs to be clarified and processes streamlined.
- The Act should recognise that different categories of heritage required a more tailored and responsive regulatory regime. The current “one size fits all” is no longer fit for purpose when managing our heritage.
- The protection of the States heritage needs significantly more resources and new funding mechanisms, including an expansion of the Heritage Floor Space Trading Scheme.

Guiding policy principles and objectives

In preparing this submission, the Committee consulted widely with its members and convened a workshop with people experienced with the operation and history of heritage reform in NSW.

Our members determined some guiding principles and policy objectives which should be considered when reviewing the way Heritage is managed and protected.

1. The State’s significant heritage should be conserved and protected. However, Heritage listing should not sterilise a place, thing, or building from life and activity nor deprive it of an economic, social, or cultural purpose. It is not a museum piece. A thing to be preserved in aspic or behind a glass pane, but something to be celebrated, respectfully acknowledged, cherished, and enjoyed.

- Heritage buildings are better with people in them. They are better when they can be easily accessed by all.
- Heritage landscapes are better with people in them and are loved and enjoyed by all.
- Heritage and community values change over time and our conservation practice should reflect and support these changes.

2. State heritage items have several roles to play in the life of our citizens and future generations.

- They have a cultural role - telling the story of our past, explaining who we are and where we have come from.
- They have a social role – outlining the many facets and peoples that have made up our society and reflecting to the world what we value.
- They have an economic role - adding to the productivity and economic wellbeing of citizens.
- They have a placemaking role – framing human-scaled, timeless public places that are often well-loved by residents and visitors.

3. The governance of State Heritage items should ensure they can continue to play their various roles in a sustainable and ongoing fashion.

- Heritage protections should be robust to ensure the ongoing retention of assets, but also to allow assets to evolve and to reflect changes in society.
- The identification, registration, preservation and use of heritage assets should be actively incentivised, facilitated and encouraged.
- Heritage controls should be credible and consistently applied and the community should have confidence that the administration of the NSW Heritage Act is fair, transparent, and independent.

Our response the Committee’s Terms of Reference.

- (a) ***the need for legislative change to deliver a heritage system that is modern, effective and reflects best practice heritage conservation, activation and celebration.***

The Committee questions the need for wholesale legislative change – the Act is generally working well — but believes there are some areas where the operation of the Act can be improved. The NSW Heritage Act was a landmark reform which has mostly served the people of NSW well. It remains a credible process and has the confidence of our citizens.

We welcome the suggestion in the Discussion Paper that the operation of the Act be changed to allow greater flexibility in how items are managed and protected. In particular:

- Moving away from prescriptive regulatory and compliance mechanisms towards a more outcomes focused approach.
- Acknowledgment that a “one size fits all” approach should be replaced with four distinct types of heritage listings, reflecting the different types of heritage assets.
- Streamlining some of the regulatory hurdles and requirements, such as requiring consent from multiple agencies for minor changes, which can inhibit heritage items from adapting and changing over time.
- A more tailored and flexible should not however remove the heritage protections afforded by the Act.

(b) the adequacy of the Act in meeting the needs of customers and the community and the protection of heritage

The Act currently imposes restrictions and obligations on owners of heritage items which can be prohibitively expensive. Most owners, public and private, resist having their property listed and find the process expensive and complex.

The process of listing can sterilise a property from future economic or social uses. We note that some of the items currently listed have little social, cultural or economic role to play (such as the Roxy, Victoria and Regent Theatres) or are struggling to find a suitable future use or purpose. Some sit empty or at risk through neglect.

The listing process is often reactive with heritage values only considered when a place or building is threatened with demolition. In some cases, Government has not adequately identified historic assets through proactive surveys; in other cases, claims for preservation may stem from local opposition to development.

(c) how the Act could more effectively intersect with related legislation, such as heritage elements of the Environmental Planning and Assessment Act 1979 and the National Parks and Wildlife Act 1974

The stand-alone protection of Aboriginal heritage in NSW is long overdue. While we note Aboriginal heritage is being considered through a separate process, this needs to be resolved as a priority and prior to any changes being introduced to the Heritage Act and only after consultation with Indigenous communities. The relationship between the Heritage Act and the conservation of Aboriginal heritage needs to reflect the rights and interests of Aboriginal people and augment the new legislation to ensure improved recognition, respect and awareness of Aboriginal history and heritage in NSW. Aboriginal voices should have primacy in all matters of Aboriginal heritage.

The interaction of the Heritage Act and the EP&A Act also needs greater clarification and streamlining. Often the objectives of one Act can be undermined by the other, and vice versa. While the Standard Instrument makes provision for the Heritage Act to override local planning controls, these are not always consistently applied and are subject to the opinion of the relevant Consent Authority.

Similarly, the approval processes for DA's involving items of heritage can become unnecessarily complex, with multiple approvals required from both Heritage NSW and the local consent authority. These approvals should be streamlined, and duplication removed. Delegating more heritage powers to Local Council's is one obvious solution. Heritage considerations should be addressed up front in the DA process and the need for further approvals, such a post DA Section 60 approval, reconsidered.

For items of State Heritage, it might be appropriate for Heritage NSW to assume the role of consent authority. If an item of heritage is to evolve and assume new roles and purposes, this might be best managed by Heritage NSW to ensure the heritage significance of a place or structure is protected.

(d) the issues raised and focus questions posed in the Government's Discussion Paper, in particular:

(i) a category approach to heritage listing to allow for more nuanced and targeted recognition and protection of the diversity of State significant heritage items

We support the move to adopt four heritage categories of heritage protection. However, it is important that this reform makes the operation of the Act easier to navigate and simpler to apply and does not add bureaucratic complexity.

(ii) consideration of new supports to incentivise heritage ownership, conservation, adaptive reuse, activation and investment

The current suite of incentives available to the heritage owners needs to be significantly expanded. Notwithstanding improvements and streamlining the Act, many places and properties will still need significant resources if their values are to be protected and they are to fulfill their important and diverse roles in our society.

There are two parts to this:

- For private owners, Government needs to provide more incentives and concessions to renew and restore their properties. These could include expanding existing assistance such as tax concessions, direct grants, and technical assistance.
- For heritage items in the ownership of government agencies — which is currently 66 % of listed items — we think Government should consider an ongoing capital works funds to renew and protect publicly owned items of heritage.

The activation and re-use of publicly owned heritage items needs to be balanced to prevent the alienation of significant public spaces.

Expanding the Heritage Floor Space Scheme:

The “Heritage Wars” of the 1970s, which prompted the 1977 Heritage Act, also prompted a response from Local Government. The Heritage Floor Space trading scheme in Sydney CBD has been a successful policy tool in providing an ongoing funding mechanism for renewing items of heritage importance. Its operation is well understood by landowners, developers, and heritage professionals and its longevity is testimony to its worth.

While it’s not applicable everywhere, the Committee believes other CBDs in NSW, (such as Parramatta, Newcastle, and Wollongong), would benefit from a similar scheme and the State Government should work with these Councils to examine how a Heritage Floorspace scheme might work.

The Committee notes that almost every single item of listed built heritage in Sydney CBD has been restored, renewed, and put to new purposes, contributing to the economic, social, and cultural vitality of our city.

We also note that many of the listed items of built heritage in Parramatta, Newcastle and Wollongong CBD's have been boarded up, in some cases for decades, and are at risk of destruction by neglect. It need not be like this.

The Committee would welcome the opportunity of working with the relevant government agencies on how the Scheme could be expanded to other areas in NSW.

(iii) improvements to heritage compliance and enforcement provisions (iv) streamlining heritage processes

The Committee welcomes any streamlining in the regulatory process. Reconsideration of the regulatory threshold for standard exemptions, fast track applications and standard applications for permits would be welcome. The Committee however questions why this process should be transferred to the relevant Minister and not remain within the Council's remit. The discussion Paper is not clear on why this change would be an improvement nor how it would speed up the process. It is critically important that the community retains confidence in the process and the Committee thinks these decisions are best left in the hands of the Heritage Council.

The introduction of a series of intermediate enforcement powers to allow a graduated response to non-compliance is supported. Likewise, allowing Heritage NSW to have investigative powers and to impose penalties or improvement notices is a welcome proposal.

The current system, particularly the reliance on Stop Work Orders and Interim Heritage Orders is often draconian and prohibitively expensive.

(e) any other related matter.

The 1999 reforms to the Heritage Act provided for an ongoing and hypothecated funding mechanism to support the operations of the Heritage Council. While this mechanism was abandoned (following the Dot Com bust), a similar mechanism should be considered to support both the independence of the Council and ensure it has suitable resources to undertake its work.

Other issues?

Conclusion

The Committee believes that our precious heritage can play a much greater role in the life of our city. It can help activate our public places, teach us about who we are and where we have come from. Importantly, it reflects to the world and future generation, what we value as a society.

We welcome the review of the Act and stand ready to help the Committee in their deliberations. We look forward to hearing of your recommendations and findings.