

**Submission  
No 36**

## **INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977**

**Organisation:** Hornsby Shire Council

**Date Received:** 25 June 2021

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24 June 2021

Standing Committee on Social Issues  
Public Inquiry - Review of NSW *Heritage Act 1977*

Submission - via website: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/lodge-a-submission>

Dear Sir/Madam

### **Heritage Act Review**

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Thank you for the opportunity to make a submission to the Review of the NSW *Heritage Act 1977*.

The comments contained in this letter are officer-level comments only as the matter has not been reported to the elected Council for a formal view or resolution.

We understand the purpose of the review is to see how NSW can deliver more effective, relevant and best-practice ways of recognising, conserving, re-using and celebrating the important heritage of NSW.

The Hornsby community treasures its heritage and enhancing, protecting, conserving and promoting the natural, built and cultural heritage of the Shire is a Key Priority of the *Hornsby Local Strategic Planning Statement* (LSPS). The opportunity to provide input to the Review to ensure that heritage conservation remains a primary social and environmental value of the State is appreciated.

### **Review Scope**

The cultural heritage of NSW is managed through the interrelationship of several pieces of legislation, the principal being the NSW *Heritage Act 1977*, the *Environmental Planning and Assessment Act 1979* (EP&A Act) through Local Environmental Plans (LEPs) and the *National Parks and Wildlife Act 1975* (NPW Act).

The Terms of Reference for the Review includes the need to consider how the Heritage Act could more effectively intersect with the Environmental Planning and Assessment Act and other legislation. However, the Discussion Paper and reform proposals are largely limited to the Heritage Act.

Concern is raised that the focus on Heritage Act reforms could result in legislative and operational inconsistency across the various legislation within the NSW heritage management 'system'. In turn, reactive, rather than strategic, amendments to companion legislation such as the EP&A Act and LEPs, would be required.

A more strategic approach is supported, to deliver targeted environmental, heritage, social and economic outcomes and an updated and more effective heritage management regime in NSW. It is suggested that a comprehensive whole of government (State and Local) review of all interdependent heritage legislation and coordinated heritage reforms is required.

## **Reform Proposals**

Comment on certain issues and Reform Proposals outlined in the Discussion Paper is outlined below.

### The Heritage Act and the Heritage Council

As local Councils through LEPs manage the vast majority of heritage items in NSW and co-manage those on the State Heritage Register (SHR), it is suggested that local government should be represented on the Heritage Council in an Ex-Officio capacity.

In regard to Aboriginal Cultural Heritage, it is a matter for the Aboriginal Community to determine whether and how Aboriginal Cultural Heritage may be acknowledged or considered within the Heritage Act or whether a separate Act is preferred.

### Activating Heritage

Exploring opportunities to provide incentives to own and maintain State and local heritage items including grants, conservation funds, reduced or cancelled stamp duty and land tax, insurance rebates etc has merit.

Floor space transfer schemes are suggested, however, this a complex planning matter that allows LEP building height development standards to be breached. Its broad application needs careful strategic planning consideration as its practical application is limited to dense urban areas where floorspace is a tradeable commodity and it can result in adverse urban form and poor heritage outcomes.

### Heritage Identification and Listing

#### *Listing Categories*

It is difficult to understand the proposed graded heritage listing structure and each of its categories with regard to the role of Councils and NSW Planning generally in identifying and co-managing state significant heritage.

Councils currently identify and manage, with Heritage NSW, items of state heritage significance, not just local heritage items as indicated in the Discussion Paper. Heritage Schedules of LEPs are required to include heritage items of all types and significance levels and LEP planning provisions apply to all listed items in addition to any controls and approval requirements of other legislation.

Consequently, questions about the practical implementation of the proposed graded listing structure and its categories arise.

- Is it proposed that if the new categories are introduced that items of State heritage significance are only listed and managed by the Heritage Act?
- If so, would local heritage studies for LEPs only identify items of local significance and bypass places of known and potential State significance?
- How would the lists interrelate?
- Would LEP and local Development Control Plan amendments be needed to align planning with the proposed new categories? How would this be resourced?

#### *Tailored Regulation*

Tailored regulation to suit the individual circumstances of items on the SHR is proposed, particularly for items in proposed listing Category 2 – State Significant Landscapes and Precincts. Hornsby Council employs a landscape and place-based approach to strategic planning and there would be benefit in adopting this approach for managing heritage. However, it would be imperative that any tailored regulation under the Heritage Act align with applicable State and local planning controls and permitted land uses in LEPs to ensure consistency and avoid owner and industry confusion.

Overall, Section 4 of the Discussion Paper highlights that fine-grained nexus between the Heritage Act and the EP&A Act is needed to introduce workable and efficient heritage identification and listing reforms in NSW.

## Streamlining Heritage Processes

### *Listing and De-listing*

Streamlining listing and de-listing processes in the Heritage Act may have merit. However, as noted above, Heritage Schedules of LEPs include items on the SHR. An amending LEP is required to add, remove or correct any item from an LEP and often years pass between the addition/removal/correction of a place on the SHR and the corresponding addition/removal of the place from an LEP (and vice versa). The statutory inconsistency causes confusion as one listing may be current and correct but the other is not.

Should the Heritage Act introduce streamlined listing and de-listing procedures, corresponding LEP Heritage Schedule amendment efficiencies should be explored in the EP&A Act, perhaps through a State Environmental Planning Policy (SEPP).

### *Approvals and Permits*

The Reform Proposal to introduce new thresholds for approvals and permits is supported in principle. However, it is imperative that any new thresholds are consistently applied, that processes to establish them are justified and transparent and that they integrate seamlessly with parallel approvals and exemption structures enabled through the EP&A Act.

### *Heritage in the Planning System*

The Discussion Paper and comments raised in this submission have highlighted that in recent years, the initially mutually complementary operation of the EP&A Act and the Heritage Act in heritage management has diminished and that there are many areas of inconsistency and often unnecessary overlap.

Opportunities to explore and deliver targeted and coordinated strategic heritage reforms across the NSW heritage system are supported in preference to separate, incremental adjustments to the either the land use planning system or the Heritage Act.

In summary, it is suggested that the Inquiry, in response to its Terms of Reference to review the need for legislative change and how the Act could more effectively intersect with related legislation, consider recommending a comprehensive whole of government (State and Local) review of all interdependent heritage legislation and the development of coordinated heritage reforms to frame a new and better holistic heritage management system for NSW.

Thank you once again for providing the opportunity to provide input into the Heritage Act Review. We trust that our comments may be able to assist the Inquiry as it evaluates issues and proceeds with recommending suitable reforms.

Should you require any clarification in relation to any of the matters raised, please contact Lisa Newell, Principal Strategic Planner during business hours.

Yours faithfully

Katherine Vickery  
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