

**Submission  
No 41**

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

**Organisation:** Central Coast Council

**Date Received:** 25 June 2021

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25 June 2021

NSW Legislative Council  
Standing Committee on Social Issues

Dear Sir/Madam

### **Review of NSW Heritage Act 1977**

Thank you for the opportunity to provide comment on the Review of the NSW Heritage Act 1977.

Central Coast Council (CCC) supports the protection, conservation, interpretation and adaptive re-use of heritage across New South Wales. This commitment to heritage is evidenced in Councils Community Strategic Plan – One Central Coast, which contains objectives relating to the preservation of heritage and in the Gosford City Centre Heritage Interpretation Strategy which received the award of highly commended in the National Trust Heritage Awards 2020 in the Education and Interpretation category.

Council staff provide the following comments on the discussion paper for your consideration. Please note the below is officer-level feedback from working with the Heritage Framework on a day-to-day basis and does not form the formal opinion of Council.

#### Aboriginal Cultural Heritage (Focus Question 2)

It is noted that the discussion paper considers that Aboriginal Cultural Heritage should be managed and cared for by Aboriginal people. For a number of years, the NSW government has been examining the structure in which Aboriginal cultural heritage is largely administered under the National Parks and Wildlife Act (1974) and considerable amount of expert work and consultation has been undertaken to move towards cultural reform and a stand-alone Aboriginal Cultural Heritage Act.

While the discussion paper invites comment on how Aboriginal cultural heritage should be acknowledged and considered in the Heritage Act, it is noted that the Government has not included consideration of standalone Aboriginal cultural heritage legislation in the terms of reference for this review.

It is recommended that this matter be clarified, and that prior work and collaboration be considered in the development of future legislation.



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### Guiding Themes to Underpin the Review

The review is using three key policy themes to guide the review process these are:

1. Making Heritage Easy
2. Putting Heritage to Work
3. Making Heritage Relevant

The review of policy themes appears to give more weight to economic growth and not enough to the criteria for significance and the conservation of heritage items themselves. While economic growth and development is an important aspect of heritage conservation it should not be the focus and driver of conservation initiatives. There should be a theme relating to protecting heritage for future generations, highlighting or celebrating our heritage.

### Objectives of the Heritage Act (Focus Question 3 &4)

It is considered that the objectives of the Heritage Act are still relevant and work well to provide a balanced approach to the consideration and protection of the State's heritage. The seven high level objectives in the current act cover the range of issues that need to be considered.

The review refers to the "expectations of the contemporary NSW community" however the review does not identify what is considered to be "contemporary expectations" or if any body of work has been undertaken to identify what the NSW community expectations are in relation to heritage conservation. The review should provide additional information and clarity in this regard.

### Activating Our Heritage (Focus Questions 5 – 7)

It is agreed that the incentives available under the Heritage Act to owners of heritage properties could be expanded and this is supported. Incentives including extended tax rebates, grants, heritage awards, rate reductions or other mechanisms through Planning Agreements should be considered. The three examples of successful programs included in the discussion paper appear to have merit and ways in which these types of programs could be incorporated into the protection of heritage in NSW is supported.

### Heritage Identification and Listing (Focus Question 8)

The reform proposal is to adopt a more "nuanced" set of four heritage listing categories:

- Category 1 – Heritage of exceptional and iconic value
- Category 2 – State significant heritage landscapes

- Category 3 – State significant heritage
- Category 4 – Local heritage

The division of State Heritage listed properties into three categories is not supported in the format described in the discussion paper. Category 1 describes State Significant heritage that is to be conserved to the highest standard. Currently all state heritage listed items are identified as being of exceptional significance and deserve the highest standard of conservation and protection. The introduction of categories could provide the circumstances for some heritage to become vulnerable in comparison.

State Heritage Register properties should be treated in a manner similar to local items that have standard legislation controls but then have specific recommendations that relate to individual properties. They do not need separate categories.

There already exists in Australia four levels of heritage significance world, national, state, local heritage which differentiates between the level of significance.

#### Streamlining Heritage Processes

##### *Improving the Listing Process (Focus Question 10)*

The reform looks to introduce a community nominated process to the identification of heritage items.

The community is already involved in the listing process through council led community-based heritage studies for both local and state register heritage items. Local councils and Heritage NSW are best placed to do this through the current processes, which include the ability for anyone to nominate an item for heritage listing. Adding another layer to an already lengthy process could create delays in the providing appropriate protection and conservation of these important places. It could also allow ambit claim listings to be proposed which could be for a non-planning purpose.

It is important that the level of rigour for listing and delisting be the same.

##### *Amending Existing Listings on the State Heritage Register (Focus Question 11)*

The reform proposes to introduce a streamlined process to Heritage listings and amendments to heritage listings to address site changes. It is stated that an abridged process would produce a more accurate representation of items and values. It is also suggested that an abridged de-listing process would ensure the State Heritage Register would remain an up to date representation of State Heritage items.

These amendments are not supported. It is not the case that speeding up the heritage listing/delisting process would result in a more accurate representation. If amendments to

the heritage listings are made quickly without fully understanding the places, values and heritage significance it is putting the heritage item at risk.

Similarly delisting a state heritage item should not be taken lightly and abridged de-listing process could mean that the values of the place are not fully recognised a decision be made without the appropriate level of rigour involved in the assessment.

#### The Heritage Permit Process (Focus Question 12 & 13)

This section of the discussion paper appears to make incorrect assumptions about the management of heritage properties. It is stated that *"the listing of a building or place on the State Heritage Register therefore should not mean that the item cannot be changed"* the discussion paper is implying that heritage places on the State Heritage Register are *"inflexibly bound or mothballed by onerous processes"*. This is not correct, it is only through thoroughly understanding the many layers of significance of place, its value to the community, and its history that appropriate changes, additions and adaptive reuse can be made. There is the potential that streamlining listing process as well as the processes around permits, and permissions may not provide adequate understanding of the item and proposed works and that irrevocable damage to the heritage item could occur.

#### Heritage within the Planning System (Focus Questions 14 & 15)

The review should consider strengthening both the Environmental Planning & Assessment Act and Heritage Act to improve/increase the level of influence that local government has in protecting local heritage, for example introduction of minimum standard of maintenance and repair for all heritage items to prevent the wilful neglect of heritage items or demolition by neglect.

The review mentions expanding incentives available to property owners. The expansion of incentives is supported, however. it is important that flexibility is provided in the application of incentives relating to development controls for example transferable floor space may be applicable city areas however may not be appropriate in regional areas. On-going monitoring of these schemes is also a consideration for smaller local governments with less staffing resources.

Decision makers also have the responsibility to be flexible and ensure that best practice heritage management is applied. This will assist in changing the perception that "heritage listing means you can't do anything."

#### Compliance and Enforcement (Focus Question 16)

The discussion paper proposes to introduce a series of intermediate enforcement powers to allow heritage regulators to take a graduated and proportionate response to non-compliance. It is important that there is a scale of penalties proportionate to the non-compliance. It is also considered that in instances where a heritage property is deliberately

damaged or destroyed to allow redevelopment that the severity of the consequences should be increased similar to recent controls in Victoria which limit or prevent redevelopment of a site. Controls should also be introduced to ensure a minimum standard of maintenance and repair for all heritage items and to allow adequate enforcement powers to prevent the wilful neglect of heritage items or demolition by neglect.

#### Heritage Promotion & Engagement (Focus Question Q17 & 18)

The discussion paper identifies that tourism is a priority economic activity for NSW and that heritage places can contribute to this.

Any initiative that better supports the promotion, financial support and conservation of heritage items and places is supported. It is suggested that incentives, concessions and grants could be explored and funding for marketing to support or encourage heritage tourism be expanded.

#### Activating Public Heritage (Focus Question 19)

Council supports the activation of public heritage as a means of protecting heritage items and making them relevant to today's society, however, considers that in most instances the consideration of the form the activation takes needs to be specific to each site, place and heritage item.

It is considered that the current Heritage Act generally works well when properly applied and is it is perceived as a valuable and independent means of dealing with important heritage issues and considers that there are no major issues with the operation of the Act.

Proposals that weaken the protection of heritage across the state make heritage status less secure, any lessening of existing provisions of the Act or removing the independence in the current process would generally be not supported.

While some minor amendments are supported as discussed above, the importance of providing increased funding and resources to the Heritage Office and the importance of increased funding of local heritage reviews is considered essential to address issues relating to delays and timeframes in heritage processes across the state.

Should you need any clarification on this submission please contact Peta James at [peta.james@centralcoast.nsw.gov.au](mailto:peta.james@centralcoast.nsw.gov.au).

Once again thank you for the opportunity to be part of the review of the NSW Heritage Act 1977.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'D Milliken', with a long horizontal flourish extending to the right.

David Milliken  
**Unit Manager Strategic Planning**