

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Better Planning Network Inc

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To: Committee Members, Standing Committee on Social Issues

Re: Submission on the review of the Heritage Act 1977

The Better Planning Network (BPN) is a state-wide, not-for-profit, volunteer-based organisation. Founded in 2012, BPN acts as an umbrella organisation for a wide network of member and affiliated groups from across NSW.

The aim of the BPN is to foster the development of a robust and visionary planning system for NSW - one that promotes best practice environmental, heritage, social sustainability and design outcomes. Importantly, BPN believes that best practice planning is achieved through authentic community engagement.

Focus Question 1: What should be the composition, skills and qualities of the Heritage Council of NSW?

Recommendations

- The composition of the Heritage Council of NSW should be restored to its original 1977 composition, which included a representative from local government, a representative from the Australian Historical Society, the NSW Government architect, and a representative from the relevant union. The Government should not be allowed to appoint 8 of the 9 members as it does currently, as it creates the appearance that this important body is not operating at arm's length to government.
- Heritage Council members should have a deep knowledge of heritage-related matters. More committees are needed to add depth of experience and knowledge. Community members need to serve on advisory panels, and their knowledge and expertise must be better respected at all levels of government.
- The status of the Heritage Office within Government needs to be elevated and better resourced so that the Heritage Council does not have to rely as much as it does on outside consultants for guidance and advice.
- The Minister for Heritage should be required to follow the advice of the Heritage Council. It needs to be reshaped as an independent body with clout.

Focus Question 2: How should Aboriginal Cultural Heritage be acknowledged and considered within the Heritage Act?

Recommendations

- Stronger recognition in the Heritage Act of the Burra Charter would help to ensure that Aboriginal Cultural Heritage is better acknowledged and protected. The Burra Charter's emphasis on recognition of the cultural significance of heritage and its role in providing a deep and inspirational sense of connection to community and landscape speaks to Aboriginal experience of how they see and interact with the world.

Focus Question 3: Are the objectives of the Heritage Act still relevant?

Recommendations

- Protecting heritage through a separate Act gives it a well-deserved status, but heritage conservation should also be an integral part of the Environmental Planning & Assessment Act 1979 (EP&A).
- Provisions for the Heritage Council to work with the government on strategic planning schemes, which were removed from the Act in 1998, need to be restored. Too often, heritage conservation is considered an afterthought when new precincts or urban redevelopment projects are developed.
- The objectives of the Act need to take into account that the definition of heritage has evolved. The Burra Charter, for example, emphasises the importance of conserving places of cultural significance but, for the most part, the Heritage Council focuses on individual buildings or sites even though the Act's definition of heritage items is quite broad and includes places, buildings, works, relics, moveable objects or precincts.
- The objects of the Act need to be strengthened to recognise the importance of conserving whole areas instead of just individual buildings/places. These areas can't be considered as an afterthought, especially when the Government designates new precincts for redevelopment. Plans for multiple rows of high rise towers in North Parramatta, for example, will destroy the ambience and integrity of one of the oldest and most historically significant areas of Sydney.
- An additional object should be added to the Act to encourage the state government to actively seek world heritage-listed status for NSW's most important sites. This would afford these items additional protection and funding, and lift the profile of heritage in Australia.
- Whilst overall the objectives of the Act are quite comprehensive, heritage conservation needs to be better resourced at all levels of government to ensure that the objectives can be met.

Focus Question 4: Does the Act adequately reflect the expectations of the contemporary NSW community?

Recommendations

- The Government needs to engage in genuine consultation with the community about heritage issues. The community is disappointed with the overall lack of protection for heritage items in recent years. The failure to properly protect both the historic house of Willow Grove in Parramatta and the historic town of Windsor from the impact of major infrastructure projects are just two recent examples of public alarm about the Government's seemingly lack of interest in protecting the state's heritage.

- The Government needs to be a lot more active in adding items to the State Heritage Register (SHR). The number of items added has plateaued in recent years (around 22 new listings per year). Important buildings like the Art Gallery of New South Wales are still not listed.
- Heritage committees with community representation need to be restored at the council level and councils should be made to heed their advice.

Focus Question 5: How can the NSW Government legislation better incentivise the ownership, activation and adaptive reuse of heritage?

Recommendations

- Adaptive reuse of heritage-listed items is possible and important, but decisions need to be integrated into the planning process and should not denigrate the aesthetic value or cultural significance of the heritage item by an overemphasis on activation, which can become a byword for commercialisation.
- The Government should also see the maintenance of heritage items as a benefit, not a cost. An overemphasis on making heritage items pay for themselves could lead to inappropriate uses and over-commercialisation, both of which devalue the item's cultural and aesthetic significance.
- A Productivity Commission Report on [Conservation of Australia's Historic Heritage Places](#) noted that some state governments have complained that the high costs associated with adaptive reuse of heritage buildings can make the projects uncompetitive. The City of Sydney also mentioned constraints associated with adapting heritage premises to meet contemporary living and working standards. They include a desire by developers to provide for car parking and additional amenities and a need to upgrade heritage buildings to meet the Building Code of Australia and Equitable Access requirements. These issues highlight the need for generous state grants and tax incentives to encourage appropriate and sensitive adaptive reuse. Exemptions from some BCA regulations should be considered, as is the case with some of the stairs at the Sydney Opera House. Compliance with BCA would require unacceptable alterations to the SOH. Similar exemptions should be applied to other heritage items.
- An over-emphasis on activation and commercialisation can also lead to a loss of the historic curtilages of heritage items resulting in negative impacts on their setting, amenity and significance. Protecting the ambience around heritage buildings and sites is key to maintaining their cultural significance and aesthetic appeal.

Focus Question 6: How can we improve incentives within the taxation system to help mitigate the cost of private heritage ownership?

Recommendations

- Existing provisions in the Act that encourage heritage conservation need to be better utilised. As the Discussion Paper acknowledges, the current system of financial assistance and incentives for private owners is too difficult to navigate and access, and, as a consequence, most of them are rarely or inconsistently used.

The Discussion Paper's recommendations, as listed below, for incentivising private heritage conservation are positive, but the economic contribution of heritage activation should not be overstated because it risks diluting the cultural significance of the heritage items through over-commercialisation.

- Assist with the cost of adaptive reuse and heritage activation to encourage commercial or community ventures that will stimulate economic growth and have indirect economic and social benefits
- Provide owner incentives such as access to transferrable heritage floor space schemes. (*Note: This scheme has [proven so popular](#) in the City of Sydney that the supply of transferable heritage floor space has not been able to keep up with demand. Unfortunately, however, the City of Sydney's building boom, which has seen countless new high rise towers go up, has spoilt the ambience around important heritage buildings like the Customs House.*)
- Provide stewardship payments to heritage owners seeking to activate a heritage item for a community or business opportunity
- Establish a revolving conservation fund that could help communities acquire, restore and operate items for profit
- Offer tax incentives, grants or other concessions for private conservation or philanthropic heritage investment.

Focus Question 7: What sort of initiatives might encourage activation and conservation of heritage through commercial and philanthropic investment?

Recommendations

- We agree with the Discussion Paper's recommendation to expand the Commonwealth Cultural Gifts Program to encourage more philanthropy for heritage-listed items.

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

Recommendations

- The Discussion Paper proposal for different categories, for heritage listings, as highlighted below, has merit only if it doesn't devalue protections. The key is to make listing heritage items in Category 4 easier so that more areas of local character/heritage can be protected before they are steamrolled over by development.
 - 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)
- We broadly agree with the Discussion Paper's view that by "removing some of the perceived constraints associated with heritage listing...more people would seek heritage listings."
- We don't support the Discussion Paper's recommendation that "before deciding to add an item to the State Heritage Register, the Minister should consider not only if reasonable and economic use would be affected by the listing but also what opportunities there are for adaptive reuse and activation." The Minister already has too much discretion over what items are listed. Management issues should not influence heritage listing decisions.

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

Recommendations

- We agree with the Discussion Paper's view that a one-size-fits-all approach to regulatory controls is too constraining and does not take into account very different circumstances.
- The New York heritage framework, which protects private residential building exteriors while allowing the updating and remodelling of their interiors, has merit and could facilitate the protection of more heritage houses in local government areas that are under increasing threat from developers. However this must not come at the expense of retaining internal period features that contribute to the heritage value of the item.
- Facadism (retention of the facade of a building) is not a valid heritage outcome and must not be considered whether for residential or commercial properties.

Focus Question 10: Would greater community engagement deliver a more robust State Heritage Register?

Recommendations

- Comprehensive reviews of heritage items in NSW should be conducted regularly and community input should be mandatory
- We agree with the Discussion Paper's position that the current heritage listing procedure is lengthy and complex, with some items taking more than a year to be listed on the State Heritage Register (SHR).
- Comprehensive analysis of local heritage by local governments is desperately needed and must be supported by the state government.
- We agree with the Discussion Paper assessment that "there is no current process to engage the broader community in identifying items of value for potential listing, or for ensuring that future listings reflect the broad and diverse interests of the NSW community."
- We would welcome an easier, more efficient listing system that would enable the Heritage Council to understand community interest and support for future listings.
- We recommend that the Government mandates councils to establish local heritage committees with strong community representation. Too often councils rely upon in-house heritage officers or outside consulting firms that do not have the depth of local knowledge and experience to make decisions in the best interests of the community.
- We agree with the Discussion Paper's proposal to introduce a community-driven nomination process with early-round nominations that would be submitted to the Heritage Council for consideration. As the Discussion Paper acknowledges, however, Heritage NSW would have to provide both practical and financial assistance to help local communities prepare nominations. Unfortunately, too many heritage societies are struggling financially and/or not coping with generational change.

Focus Question 11: Would streamlining enhance the listing process?

Recommendations

- The proposed new categories must not weaken existing protections for items in the lower categories. Some of the recommendations in the Discussion Paper seem to be designed to diminish the importance of local heritage. For example, under “Category 4”, the reform proposes that “this category would clearly identify that these items are of local heritage significance only.” Developers are always searching for loopholes in the law and they will likely use a low category listing as an argument that they should be given more leeway to modify or even demolish their properties.

Focus Question 12: How could we improve the current approval permit system?

Recommendations

- We have reservations about the Discussion Paper’s following suggestion to bypass council approval for development applications of heritage items:

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 needs, making it easier for heritage owners to maintain and conserve their properties.

This suggested reform follows a familiar pattern of expanding the categories of development eligible for approval under the complying development route. The extension of complying development to heritage items could result in insensitive renovations that may be difficult if not impossible to reverse.

Focus Question 13: Are the current determination criteria for heritage permits still appropriate?

Recommendations

- We generally agree with the Discussion Paper’s view that:

The listing of a building or place on the SHR should not mean that the item cannot be changed. Rather it should simply ensure that any work carried out is compatible with and complements the heritage significance of the item and supports its long-term viability. To support ongoing sustainable conservation outcomes, we should consider the sustainability of the entirety of the heritage building or place rather than focussing on its individual elements when managing change.

However this must not come at the expense of retaining period features that contribute to the heritage value of the item.

- The Discussion Paper notes that:

“many activities and works are exempt from the heritage permit process. This includes works such as general maintenance, repainting, installation of telecommunication infrastructure and alterations to parts of the site considered to be non-significant. Other activities that would have no, little or minor impact on heritage significance, with a total cost less than \$150,000, can usually access a fast track permit process, with applications determined within 21 days. More major works, including any works exceeding \$150,000, must obtain a standard permit under Section 60 of the Act.”

- Nevertheless, the Discussion Paper notes that some heritage owners can find the permit processes to be confusing, costly and time-consuming. Owners can also face uncertainty about what types of change are permissible, as well as additional costs involved in ensuring that any approved works meet the heritage standards required.
- The Discussion Paper argues that “managing change to a heritage item should not feel adversarial,” and a new permit system should be adopted “that embraces an approach to heritage conservation in which change is permissible if it is sensitive to the heritage significance of the place (a ‘yes if’ approach).”
- While a less prescriptive approach may be warranted, it would need to be carefully considered by heritage experts to ensure that heritage protections aren’t too significantly downgraded.

Focus Question 14: How could we improve heritage consideration within land use planning systems?

Recommendations

- The Government has allowed building works to accelerate in recent years with little regard to the impact on heritage. Local communities have had to fight hard to prevent the rezoning for higher density in high heritage value suburbs like Belmore in Sydney’s southwest.
- Protecting heritage in NSW must be urgently prioritised by the Government given these huge development pressures.
- State Significant Developments must not be allowed to turn off the Heritage Act. Too many of Haberfield’s precious heritage homes were sacrificed to make way for WestConnex, a project that caused huge community angst because of the loss of irreplaceable heritage in one of Sydney’s premier garden suburbs.
- The Discussion Paper acknowledges that:

*There are multiple interactions between the Planning system and the Heritage Act. The two key interaction points are development applications and strategic planning. The Heritage Act was designed to work in conjunction with other land use and planning regimes, such as the Environmental Planning and Assessment Act 1979 (EP&A Act). However, as these Acts have been amended over time, linkages have become less efficient. **For example, ongoing refinements to the EP&A Act, designed to deliver simpler, faster and better-quality planning outcomes, such as an increased focus on community-driven strategic planning, are not reflected in the heritage system.** Improving how these two Acts, and other land use and planning regulatory systems, work together, could deliver a range of customer service and community planning benefits.*

- We’re not exactly sure about the implications of the above statement, but it sounds like the Discussion Paper is advocating for a relaxation of requirements to properly assess heritage in the planning process in order to fast-track development? If so, we would not embrace such an approach, especially in areas where proper assessments of heritage have not been done.

We note, for example, that land surrounding the historic Mount Gilead property in Campbelltown was rezoned for residential housing before the historic homestead and its curtilage was listed on the SHR. At the time of its listing, the Minister for Heritage, Don Harwin, [explained that Mount Gilead was being listed](#) because it is “an outstanding early 19th-century colonial estate with a spectacular sweeping

landscape.” But, unfortunately, most of the sweeping landscape vistas will be ruined by the proposed new housing developments. Other First Settler rural properties in the Greater Macarthur region have also been earmarked for residential development in the draft Cumberland Plain Conservation Plan.

Focus Question 15: Are there opportunities to enhance consideration of heritage at the strategic level?

Recommendations

- Heritage must be prioritised in the strategic planning process but often local councils in the outer suburbs and rural areas often lack the will or the resources (or both) to adequately protect the heritage of their areas. The Productivity Commission noted that coastal local government areas, in particular, are under enormous development pressure due to increasing population and in these areas, tourism, and the tourist development it engenders, is often a threat to both heritage and environmental values.
- NSW needs to invest in identifying and understanding NSW heritage before major new developments or redevelopments are proposed.

Focus Question 16: How could heritage compliance and enforcement be improved?

Recommendations

- Unfortunately, the impact of neglect of heritage buildings and sites is of great concern to both local governments and the community because it can result in their demolition. There is a need for government-wide protocols regarding the protection of heritage items across both state and federal governments.
- Local government needs to be better empowered to take clear steps to rectify situations of neglect or vandalism before they become dire. The process of serving orders and notices under the NSW Local Government Act 1993, for example, is generally long and drawn-out, which usually only makes the matter worse as swift action is necessary to ensure that the heritage item is not reduced to a position where demolition is the only option.
- Where vandalism has occurred, 'make good' orders must be promptly imposed and enforced to ensure that the heritage significance of an item is not significantly reduced.
- The Discussion Paper proposes the introduction of “a series of intermediate enforcement powers to allow heritage regulators to take a graduated and proportionate response to noncompliance. 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.”
- We don't agree with the Discussion Paper's above assessment that compliance measures should be weakened to avoid "expensive and uncertain court action." Court action would be less likely if the laws were strengthened and properly enforced. Too often, councils or the heritage office won't challenge appeals or enforce existing orders/conditions because they fear losing the case in court.

Typically, developers are happy to play the odds because they either assume that orders will not be enforced or are prepared to calculate the cost of litigation for defying heritage orders into the cost of their development.

- Deterrents need to be strengthened and fines set high enough so that the anticipated profit from developing heritage land is lower than the fines or other penalties a developer would wear for defying heritage compliance orders or conditions. Legislation should permit the imposition of 'no-development' orders for a stated number of years. This would be more effective than fines that are miniscule in comparison to the millions to be made from non-compliance.

Focus Question 17: How could understanding of state heritage be enhanced?

Recommendations

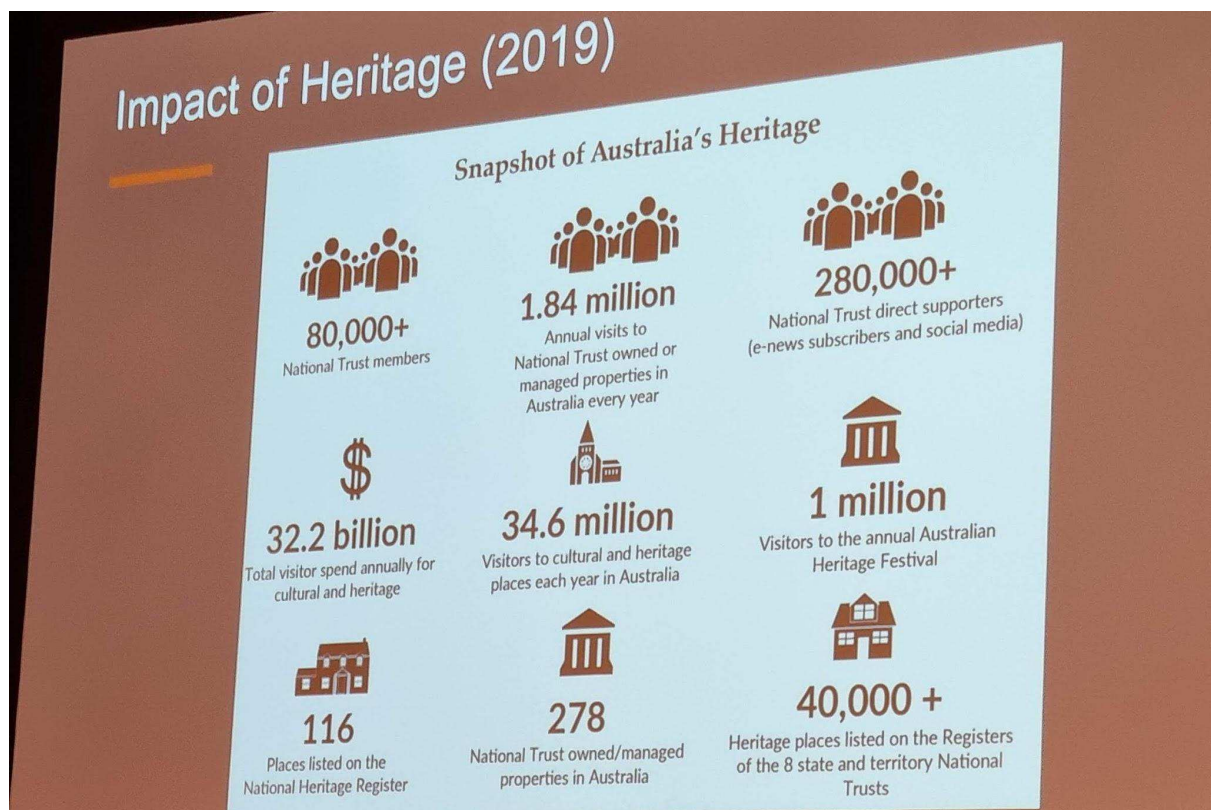
- More effort needs to be made to acknowledge and respect heritage that celebrates the contribution of migrants to the NSW community. This letter was recently printed in the Sydney Morning Herald:

As I visited a winery at Greta in the Hunter Valley, I asked one of the staff how to find the former Greta migrant camp. He told me he had never heard of it and had lived in the area his whole life. I told him my parents stayed there in 1953 and wanted to visit the site. We drove into Greta, stopping at a shop asking if they knew of the camp and one of the employees gave us directions. We eventually found it. If we had blinked, we would've missed it. To our astonishment, it was a small brick memorial with a plaque on it stating "Site of Greta Migrant Camp 1949-1960" set in bushland. An estimated 100,000 newly arrived migrants and refugees stayed at this camp. Apart from them and their descendants, very few Australians seem to know of its existence and importance. Surely, immigration is an important part of our country's history and should be taught and acknowledged and not abandoned to be remembered only by migrants. - Con Vaitas, Ashbury

- People need to be made aware of the benefits of heritage protection. It contributes to a sense of identity, especially at the local level. It benefits local economies and promotes social cohesion, especially because it can instil pride in place.
- The Discussion Paper acknowledges that "there are no dedicated programs to promote community heritage understanding, engagement or promotion." It says that the NSW Government could seek innovative ways to support and celebrate local heritage, for example, through best practice guidance on local heritage management."
- Whilst we support the above recommendation, programs will not be effective unless they are properly resourced and supported by the Government.
- The above being said, the destruction of the State's heritage is rarely to do will lack of understanding and more to do with lack of respect for heritage. The NSW Government itself must understand and prioritize preservation of the limited resources that are the State's heritage items, over the economic outcomes of commercialisation of these items.

Focus Question 18: How could we improve heritage tourism or help activate heritage places for tourism?

Recommendations



- The contribution of heritage to promoting tourism needs to be better acknowledged by both the state and federal governments.
- The Discussion Paper acknowledges that:

Tourism is a priority economic activity for NSW. Heritage places can contribute to tourism in many ways, providing important character to an area, providing drawcard attractions, and aesthetically pleasing sites for cafes, bars, hotels and shops. Heritage places and experiences have been shown to encourage visitors to stay longer, spend more and connect more deeply with destinations.

- Given the important role that heritage plays in promoting tourism, the Discussion Paper's acknowledgement that "the Heritage Act currently provides no incentives, concessions or grants to support or encourage heritage tourism" needs to be urgently addressed.
- The Discussion Paper points to the Heritage Tourism Strategy of South Australia as a model that could be adopted in NSW. Its action plan outlines a range of regulatory and non-regulatory initiatives to enhance SA's heritage tourism industry:

Regulatory initiatives include removing red-tape, streamlining processes and developing incentives and guidelines to support adaptive reuse of heritage for commercial activity. Non-regulatory initiatives include marketing, experience and supply development, improved sector collaboration, and promoting the value of tourism.

- We are concerned about the above scheme's tourism emphasis on "removing red tape" and encouraging "commercial activity." We believe that the best way to enhance heritage's tourist potential is to ensure that the planning process properly respects and accommodates heritage to enhance the ambience of the area. Parts of Adelaide have been ruined and their heritage values significantly diminished by the encroachment of skyscrapers in close proximity to heritage buildings and sites.

Focus Question 19: How could public heritage buildings be activated to meet the needs of communities?

Recommendations

- The Discussion Paper acknowledges that the NSW Government, and therefore the citizens of NSW, own over 10,000 items of local, state, and potential heritage interest and value. The vast majority of these sites are owned by local governments.
- Given the slow pace to list state heritage items in recent years, we would like to see more evidence of why the Discussion Paper believes that “many may now be considered surplus to need due to changing service delivery needs, expensive maintenance costs or other reasons.”
- We are concerned that the Government underestimates the value of heritage items to society and consequently does not allocate enough money for upkeep. The state heritage-listed Prince Alfred Bridge in Gundagai, which sits on Crown land, has fallen into [a state of disrepair](#). The bridge, which was constructed between 1864 and 1867 is a popular tourist attraction because it was one of the first iron truss bridges to be built in NSW and the first major bridge crossing spanning the Murrumbidgee River.
- The Discussion Paper places too much emphasis on the need for heritage items to make an economic contribution. Alarming it goes on to say that “these surplus assets require ongoing conservation and maintenance, even when idle. At the same time, local communities across NSW are contending with population growth and development, putting pressure on existing community and commercial spaces and facilities. As the keepers of such a large portion of NSW heritage, State agencies must find ways to manage these heritage items in innovative ways that balance heritage conservation and service provision with their potential economic and social benefits.”
- We recommend that a thorough and independent audit is done of both the direct and indirect economic and social benefits of heritage items. We point to the Burra Charter’s emphasis on the immeasurable importance of heritage in enriching people’s lives and informing their sense of identity and connection with community:

Places of cultural significance enrich people’s lives, often, to the past and to lived experiences. They are historical records that are important expressions of Australian identity and experience. Places of cultural significance reflect the diversity of our communities, telling us about who we are and the past that has formed us and the Australian landscape. They are irreplaceable and precious. These places of cultural significance must be conserved for present and future generations in accordance with the principle of intergenerational equity.

- We agree with the Discussion Paper’s view that “revitalising public buildings to meet the contemporary needs of local communities” will ensure they continue to be valued, used and cared for by the communities they were built to serve”.

However we are very wary of the Discussion Paper’s over-emphasis on activation and economic contribution as justification for recognising and maintaining heritage.