

**Submission
No 59**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Australian Garden History Society Sydney & Northern NSW
Branch

Date Received: 25 June 2021

Mr Peter Poulos
Chair, Standing Committee on Social Issues



Review of the *NSW Heritage Act 1977*

Dear Mr Poulos,

The Australian Garden History Society (AGHS) promotes awareness and conservation of significant gardens and cultural landscapes through engagement, research and advocacy. Formed in 1980, the AGHS brings together people from diverse backgrounds united by an appreciation of and concern for our cultural landscapes, inclusive of parks, gardens, trees and avenues, as an unappreciated part of Australia's heritage.

The Australian Garden History Society acknowledges Traditional Owners of Country throughout Australia. We pay respect to Aboriginal and Torres Strait Islander cultures and Elders past and present.

We appreciate the opportunity to contribute to the review of the *NSW Heritage Act 1977* (the Act), especially in relation to significant cultural landscapes and their long-term protection and management.

We note the Discussion Paper is silent about landscape generally - both natural and cultural landscapes. This is our strongest concern with the Review and has been our long-held concern with the Heritage Act in its current form. The AGHS considers that the Heritage Act needs to be stronger in its listing and protection of landscape.

Aboriginal Cultural Heritage

- For the Heritage Act to be strong and relevant legislation, Aboriginal Cultural Heritage should be acknowledged and considered within the Objectives and throughout the Act.
- A single Heritage Act should cover both First Nations and European Heritage to protect and celebrate all our history as one shared history that builds on the First Peoples custodianship of the lands and waters of NSW.
- The AGHS strongly recommends the concept of caring for Country be incorporated into the Act, by:
 - stronger consultation requirements with First Nations peoples over State Heritage Register (SHR) nominations, and
 - consultation seeking joint management of places listed for their Aboriginal cultural heritage values.

Cultural landscapes

- We recommend the Act be revised to recognise landscape as the fundamental basis of all Aboriginal and non-Aboriginal cultural heritage.

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- The Objectives and Definitions of the Act should be revised to include the terms **natural landscape** and **cultural landscape**. Further, the definition of *Environmental Heritage* should include natural landscapes and cultural landscapes.
- We recommend that the Act reflect the current principles and approach of Australia ICOMOS, as expressed in: [Understanding Cultural Landscapes](#), [Understanding Cultural Routes – FINAL](#); and the [Burra Charter 2013](#).
- Provision should be made in the Act for the protection of the expanded settings of SHR items. A clause should be added to the Act similar to the *Development in the Vicinity* clause found in LEPs. Development in the vicinity of a SHR item should be a **controlled activity** under the Act.
- Additional resourcing to Heritage NSW is needed to review existing SHR listings as to the adequacy of curtilages.
- The basis for listing any NSW SHR heritage item including natural and cultural landscapes, should be heritage significance. Management considerations should be secondary factors to significance and treated as part of a separate process.

Heritage Council

- The Heritage Council should comprise a majority of heritage experts with demonstrated qualifications and/or experience in identifying, assessing and managing heritage.
- The Heritage Council should be an independent statutory body making its own decisions on SHR listings, as is the case in Victoria, independent of any Minister.
- We recommend the Heritage Council be an independent statutory body with its own guaranteed operational (ongoing) funding, with an increased ability to generate additional funding.
- We recommend the Heritage Council makes its own funding and grant decisions, as is the case in Victoria, independent of any Minister.

Legislative strength

- We recommend the NSW planning system needs to align with the Heritage Act and be rigorous and non-negotiable in its protection of heritage items, particularly cultural landscapes. **The Heritage Act must not be switched off under any circumstances** including for Critical infrastructure projects, SSI, SSD or for any unsolicited proposals.
- State significant heritage should have equal weight as State significant infrastructure or development.
- We recommend the implementation of a holistic planning approach to identify and protect natural and cultural landscapes, waterways and cultural routes as a primary consideration before development strategies are applied. Successfully working international examples include:
 - The English Landscape characterisation system, which is enmeshed in the English planning system to protect significant heritage landscapes and their settings.
 - The European Landscape Convention.
 - The Victorian heritage overlays and landscape overlays in the planning system.
- A regional perspective should inform strategic local planning statements including appropriate zoning. Former REPs and Regional Studies were valuable tools in heritage assessment and management, as well as informing regional and local planning instrument controls. Such work should be revisited, updated, supported, funded and integrated into the current planning system.
- An open and transparent process is required, regular reviews of the Heritage Act should be undertaken, informed by a meaningful, public consultative process.

Category system

- We oppose the proposed category system as:
 - it suggests downgrading landscapes, to some lesser form of protection and management through ‘negotiable’ planning tools. This is not ‘conservation’.
 - it is only of value if all state items regardless of the category are protected.
 - it will add a layer of complexity to an already complex system, and
 - we are not confident that there will be adequate planning and funding to implement it successfully.

Compliance and enforcement

- Statutory provisions in relation to Compliance need to be strengthened. Penalties in the Act need to be increased as a disincentive to breaches.
- Penalties need to be higher, should include imprisonment and the option to freeze development rights on that land for a significant period.
- Adequate funding needs to be made available to administer proper compliance with the Act.
- As more than 50% of SHR items are owned by the State government it is imperative that they demonstrate and adhere to best practice heritage asset management. State agencies obligations and requirements for heritage in their care should be strengthened, adequately resourced and more rigorously enforced.

Best practise:

- All owners including the NSW State Government should be required to manage their Heritage items in accordance with best practice principles and processes, including developing and implementing a current conservation plan (as per the Burra Charter).
- The Government particularly should demonstrate exemplary leadership through applying best practice in managing its heritage items.
- Section 38 (a) in the Act on Conservation Management Plans (CMPs) should be expanded and strengthened to identify the significance of places; and clear, unambiguous, strategies and policies developed to protect them, particularly cultural landscapes, based on the James Kerr model CMP and NSW Heritage Council current best industry benchmark guidelines.

Incentive and grants

- Heritage grants and incentives programs, as well as advice on eligibility and applying for grants, should be easily accessible to owners.
- To better incentivise the ownership, activation and adaptive reuse of heritage, greater support and ongoing funding should be provided towards promoting opportunities such as:
 - grants,
 - stewardship payments,
 - tax incentives to encourage philanthropic activity,
 - assistance for creating self-sustaining property for maintaining heritage properties,
 - a heritage lottery,
 - the updating of Heritage Council publications to better inform heritage owners and practitioners of best practice for the protection and celebration of cultural landscapes. Relevant manuals are to include those on the identification and management of cultural landscapes, heritage curtilages, landscape conservation areas, heritage conservation areas, historic gardens, trees and cemeteries.

Please include our email contact on your mailing list to keep us abreast of matters that are being addressed by the review. We are keen to continue to be part of the conversation and to contribute our Society's expectations and aspirations for the NSW Heritage Act.

Yours faithfully,

Susan Stratton
Secretary | Sydney & Northern NSW Branch
Australian Garden History Society

25 June 2021