

**Submission  
No 71**

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

**Organisation:** Sydney Living Museums and the State Archives and Records  
Authority of NSW

**Date Received:** 27 June 2021

---



**SYDNEY  
LIVING  
MUSEUMS**

Historic Houses Trust of NSW

**The Mint**

10 Macquarie Street  
Sydney NSW 2000

**T** 02 8239 2288

**F** 02 8239 2299

ABN 33 412 983 678

info@slm.com.au

[slm.com.au](http://slm.com.au)

25 June 2021

The Hon Peter Poulos MLC  
Chair, Legislative Council Standing Committee of Social Issues  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Chair,

**REVIEW OF THE *HERITAGE ACT 1977* – SUBMISSION FROM ADAM LINDSAY,  
ON BEHALF OF SYDNEY LIVING MUSEUMS AND THE STATE ARCHIVES AND  
RECORDS AUTHORITY OF NSW**

We are grateful for the opportunity to respond to the policy outcomes under consideration as part of the review of the *Heritage Act 1977*.

This submission is made in my capacity as the Executive Director of the Historic Houses Trust of New South Wales (trading as Sydney Living Museums, 'SLM') and the State Archives and Records Authority of NSW (SARA).

*Sydney Living Museums (SLM)*

SLM was established under the *Historic Houses Act (NSW) (HHT Act)*. It became known publicly as Sydney Living Museums in 2013 for marketing and branding purposes and maintains and opens to the public 12 museums: Elizabeth Bay House, Elizabeth Farm, Hyde Park Barracks, Justice & Police Museum, Meroogal, Museum of Sydney on the site of first Government House, Rose Seidler House, Rouse Hill Estate, Susannah Place, The Mint and the Caroline Simpson Library & Research Collection, and Vacluse House. All the museums are listed on the NSW State Heritage Register with the Hyde Park Barracks and the site of First Government House at the Museum of Sydney included on the National Heritage List. In 2010 the Hyde Park Barracks was inscribed on UNESCO's World Heritage List.

SLM cares for portfolio assets valued at more than \$305 million, including buildings, land and museum collections. Its built assets comprise a number of historic buildings dating from between 1793 and 1950, and include some of the earliest surviving colonial buildings in Australia, as well as major public buildings of the Macquarie era. SLM collects, catalogues and conserves material relating to the organisation's core themes of domestic material culture, the history of art, architecture and design, and aspects of Sydney's social history related to our sites and the people who lived there. SLM's purpose is to enrich and revitalise people's lives through history, and to hand the precious places and collections in their care on to future generations to enjoy.

*State Archives and Records Authority of NSW (SARA)*

SARA is one of Australia's pre-eminent Archives and Records Authorities with a vast collection of historical records and archives pre-dating European settlement of Australia in 1788. SARA is the custodian and advocate for the State Archives Collection, which is one of the most complete and important collections documenting colonisation in the world. This vast cultural collection of approximately 14 million items, valued at over \$1 Billion, details the construction of NSW and the wielding of

**ONE KEY**  
**12 MUSEUMS**  
**MANY LIFETIMES**

[slm.com.au](http://slm.com.au)

colonial power. Multiple series of documents in the Collection are now inscribed on the UNESCO Memory of the World Register.

Please find our response to the proposed policy outcomes in Attachment 1, noting that while the response is from both entities, SARA is only explicitly referenced in responses specifically relevant to its operations, whereas SLM takes a slightly broader and more wide-ranging interest, although one that is still aligned closely with its own legislative mandate.

Once again, I appreciate the opportunity to provide this submission for your consideration.

Please do not hesitate to make contact should you wish to discuss the submission further.

Yours sincerely

Adam Lindsay  
Executive Director  
**Sydney Living Museums & the State Archives and Records Authority of NSW**

## Attachment 1

### A. Response to the Terms of Reference

1. *That the Standing Committee on Social Issues inquire into and report on the Heritage Act 1977 (NSW) (the Act), with particular reference to:*
  - (a) *the need for legislative change to deliver a heritage system that is modern, effective and reflects best practice heritage conservation, activation and celebration*

SLM and SARA consider the current *Heritage Act 1977 (NSW)* to be effective and largely fit for purpose and therefore change to deliver a more effective heritage system can occur without significant alteration to the Act.

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

It is the opinion of SLM that the system of administration of approvals as managed and applied by Heritage NSW, and its predecessors, is more complex and cumbersome than it needs to be, making it difficult for applicants to obtain timely and effective responses to applications.

It is our view that the focus of heritage listings should adapt and change over time to better reflect the diversity of the community and current community concerns. For example listings could display greater cultural diversity and include contested cultural narratives such as those evidenced in religious institutions and girls and boys homes. Consideration of tangible and intangible cultural heritage would create greater relevance for the broader community. Of relevance are international protocols such as the Convention for the Safeguarding of the Intangible Cultural Heritage.

- (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*

N/A

- (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*

SLM notes the existing Heritage Council's 2001 NSW Historical Themes, identified in the *Assessing Historical Importance: A Guide to State Heritage Register Criterion A*, prepared by the Heritage Office in 2006. These themes provide a

category approach to heritage listing with 39 micro narratives that could be refined to key macro narratives.

In addition, since 2006 the Australian Heritage Council has commissioned studies by independent experts on key themes relating to Australia's national heritage.

Some of these themes should be used to guide a 'category approach'.

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

The Endangered Houses Fund, run by SLM, offers one such approach to incentivise heritage conservation and adaptive reuse. A similar Heritage Fund could equally be administered by Heritage NSW to provide grant funding for owners to invest in the conservation and activation of State Heritage Register property. Such a Fund could have a number of mechanisms for incentivisation, including an expanded offering of simple grants (able to be disbursed rapidly) and funding that could be made more widely available to owners of heritage properties, proportionate to the level of heritage protection and the zoning of the asset, to incentivise improved maintenance and stabilisation of, as well as use of, heritage properties across the full spectrum of heritage classification.

- (iii) *improvements to heritage compliance and enforcement provisions*

N/A

- (iv) *streamlining heritage processes*

It is SLM's view that current heritage management and administration processes are excessively lengthy and onerous and place a significant burden on owners of State Heritage Register property. Streamlining heritage processes to deliver faster resolution of heritage applications will require significant cultural change to the responsible area of government.

Additionally Heritage NSW requires further investment in order to expedite processes and heritage approvals/permits.

- (e) *any other related matter.*

N/A

## **B. Response to Focus Questions**

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

The Heritage Council currently consists of nine members with relevant skills to assist the Council in making a full and proper assessment and determination on heritage matters. Currently one of those members must possess qualifications, knowledge and skills relating to Aboriginal heritage.



SLM and SARA suggest the Committee should consider increasing the Heritage Council from nine to ten members, where two of whom are Aboriginal persons with substantial experience or expertise concerning Aboriginal heritage, at least one of whom represents the interests of Aboriginal people.

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

SLM recommends that the State Heritage values of a State Heritage place should be revised to align with the National Heritage List criteria against which the heritage values of a place are assessed (see table below). This would better provide for Aboriginal Cultural Heritage of State Significance to be acknowledged and considered within the Heritage Act, as proposed below under criterion (i) the place has heritage value to the state because the place's importance as part of Aboriginal tradition.

An inclusive State Heritage Register for both Aboriginal and non-Aboriginal places is important and appropriate.

<b>Proposed State Heritage Criteria, based on the National Heritage Criteria</b>	<b>Existing State Heritage Criteria in relation to the proposed State Heritage Criteria</b>
a) the place has outstanding heritage value to the <del>nation</del> <b>state</b> because of the place's importance in the course, or pattern, of <del>Australia's</del> <b>NSW's</b> natural or cultural history	<b>CRITERION A</b> a) an item is important in the course, or pattern, of NSW's cultural or natural history.
b) the place has outstanding heritage value to the <del>nation</del> <b>state</b> because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history	<b>CRITERION F</b> f) an item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history.
c) the place has outstanding heritage value to the <del>nation</del> <b>state</b> because of the place's potential to yield information that will contribute to an understanding of <del>Australia's</del> <b>NSW's</b> natural or cultural history	<b>CRITERION E</b> e) an item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history.
d) the place has outstanding heritage value to the <del>nation</del> <b>state</b> because of the place's importance in demonstrating the principal characteristics of: a class of <del>Australia's</del> <b>NSW's</b> natural or cultural places; or a class of <del>Australia's</del> <b>NSW's</b> natural or cultural environments;	<b>CRITERION G</b> g) an item is important in demonstrating the principal characteristics of a class of NSW's cultural or natural places, or cultural or natural environments.
e) the place has outstanding heritage value to the <del>nation</del> <b>state</b> because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group	<b>CRITERION C</b> c) an item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW.

f) the place has outstanding heritage value to the <del>nation</del> <b>state</b> because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period	<b>CRITERION C (as above)</b>
g) the place has outstanding heritage value to the <del>nation</del> <b>state</b> because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons	<b>CRITERION D d)</b> an item has strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons.
h) the place has outstanding heritage value to the <del>nation</del> <b>state</b> because of the place's special association with the life or works of a person, or group of persons, of importance in <del>Australia's</del> <b>NSW's</b> natural or cultural history	<b>CRITERION B b)</b> an item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history.
i) the place has outstanding heritage value to the nation because of the place's importance as part of <del>Indigenous</del> <b>Aboriginal</b> tradition.	<u>Additional criterion recommended.</u>
Note: The cultural aspect of a criterion means the Aboriginal cultural aspect, the non-Aboriginal cultural aspect, or both.	

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

SLM's view is that the Objects of the Heritage Act are still relevant, but should be revised (**in bold text**) to include:

The objects of this Act are as follows—

- (a) to promote an understanding of the State's heritage,
- (b) to encourage the conservation of the State's heritage,
- (c) to provide for the identification and registration of items of State heritage significance,
- (d) to provide for the interim protection of items of State heritage significance,
- (e) to encourage **excellence in design outcomes in urban renewal and** adaptive reuse of items of State heritage significance,
- (f) to constitute the Heritage Council of New South Wales and confer on it functions relating to the State's heritage,
- (g) to assist owners with the conservation of items of State heritage significance,
- (h) to establish a Heritage Fund to provide for the conservation and management of environmental heritage.**

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

In the opinion of SLM that where a state significant heritage place/precinct forms part of a wider urban renewal proposal, contemporary NSW community expects that access and activation is at the core of the design excellence process for these outstanding places in NSW.

Therefore, it is recommended that the Heritage Council develop publications including guidelines and advice on how to achieve excellence in design, use and activation outcomes in urban renewal and adaptive reuse of items of State heritage significance.

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

SLM suggests the Committee consider adding provision in the Heritage Act to allow the Heritage Council to provide special assistance to owners of a State Heritage Register item via a Heritage Fund.

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

SLM recommends review of the Victorian *Heritage Act 2017* Part 11 Heritage Fund to inform provision in the new NSW Heritage Act.

In addition, include provision in the Heritage Fund for SLM's Endangered Houses Fund to be eligible for Heritage Fund grants to be consistent with commonwealth practice.

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

SLM suggests consideration of an initiative via the Australian Government's taxation system whereby private donations of \$10,000 or more for the conservation and presentation of a proposed Category 1 *Heritage of exceptional and iconic value* would be tax deductible for individuals and companies.

The City of Sydney Heritage Floor Space (HFS) Scheme is an interesting model for incentivising the conservation and ongoing maintenance of historic items in Sydney's CBD. SLM would encourage the expansion of this type of scheme outside the Sydney CBD, and for other Councils to consider schemes that enable the transfer and sale of unused development potential. By way of examples, the National Art School and Darlinghurst Court complex would benefit from a geographical expansion of the existing HFS scheme and Elizabeth Farm and the Parramatta Female Factory sites would have activation and conservation greatly enhanced through funding from such a scheme.

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

N/A

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

N/A

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

The recently launched Heritage Management System (HMS) goes some way towards facilitating community engagement with Heritage NSW services and heritage



information. SLM recommends further investment in the HMS to enhance the provision of digital content and drive an increased understanding of the places listed on the State Heritage Register. Other suggestions for achieving community engagement include interactive websites, public programs, property activations, availability of digital content, user-generated content opportunities etc.

*Focus Question 11: Would streamlining enhance the listing process?*

SLM agrees with streamlining the listing process and recommends removal of the 'undue financial hardship' consideration under section 32, as the intent of the proposed Heritage Fund would assist owners in this matter.

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

SLM suggests the heritage approvals process could be significantly improved with faster and more efficient processes, introducing alerts for submission requirements and deemed approvals if milestone dates aren't met by Heritage NSW. However, it is acknowledged that the quality of the supporting documentation lodged with a heritage application can impact determination timeframes.

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

It is the opinion of SLM that the process for determination of application under Section 62 para. 1 part A of the Heritage Act is still appropriate and adequately broad in consideration.

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

The view of SLM is that the provisions of Heritage Agreement under section 40 of the Heritage Act should be expanded to include the revisions (**in bold text**):

A heritage agreement in respect of an item can include provisions relating to all or any of the following—

(j) the public **enjoyment and** appreciation of the State heritage significance of the item **and the promotion of their place in the heritage of the State.**

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

N/A

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

N/A

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

Heritage NSW would benefit from a dedicated marketing, publication and media unit to celebrate and promote the outstanding heritage of the State of NSW. SLM suggests other ways to enhance an understanding of state heritage include interactive websites, public programs, property activations, availability of digital content, user-generated content opportunities etc.

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

As a beneficiary of the Commonwealth Government's Protecting National Heritage Sites (PNHS) funding program (now Australian Heritage Grants), SLM recommends the creation of an equivalent state scheme to assist owners to renew heritage places and build tourism potential. As an example, the PNHS funding to the Hyde Park Barracks provided funds for a new Conservation Management Plan and new Interpretation and Marketing strategies that fed into the Barracks' successful 2020 renewal project and the development and creation of the awarded Convict Sydney website.

Consider how Destination NSW could work with heritage owners to activate heritage tourism and to integrate heritage experiences into their NSW tourism packages.

As part of the proposed Heritage Fund, include funding for 3D site scanning and digital activation to market heritage tourism.

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

SLM has found audience segmentation analysis to be extremely useful in understanding and engaging with our audiences as well as with those who do not yet visit our sites. We recommend consideration of audience research tools to determine the needs of communities and to better understand their motivations in visiting public heritage buildings. This knowledge would then inform a Heritage NSW policy document and ultimately, the development of successful activations to meet identified community needs.

## **C. Response specific to Sydney Living Museums (SLM)**

The key priorities for SLM in relation to the current Heritage Act are to:

- Ensure any revisions to the Heritage Act do not void SLM's standard exemptions. The current exemptions support the work of SLM in meeting the principal objects of the Trust outlined in the *Historic Houses Act 1980*, which are to maintain and conserve the historic buildings and places entrusted in our care to increase public knowledge, enjoyment of and access to these buildings and places, and in particular that our ability to research and interpret the significance of SLM's buildings and places, and to provide educational, cultural and professional services including but not limited to publications, information, public programs and other activities to increase public knowledge and enjoyment of and access to these buildings, places, objects and materials is not curtailed.
- Commercial activities are vitally important in contributing to these objects, particularly in terms of increasing access to and enjoyment of the heritage assets under our control. Additionally, commercial activities are essential in supporting the sustainability of the organisation and so it is imperative they are included as an approved use.
- Seek an extension to SLM's standard exemptions to include the Young Street Terraces, which are owned by SLM but are currently omitted.
- Ensure SLM's heritage burden and responsibilities under the Heritage Act are not increased to ensure that SLM continue to be able to fulfil the principal objects of the *Historic Houses Act 1980*.

## **D. Response specific to State Archives and Records Authority of NSW (SARA)**

SARA currently has an exemption to the application of the *Heritage Act 1977*. To eliminate any doubt that the Heritage Act may apply to SARA and its movable objects we contend that there should be an inclusion in the revised Heritage Act to the effect of:

*Nothing in this Act affects the operation of the State Records Act 1998 or applies to archives or records managed under the State Records Act 1998.*