

**Submission
No 79**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Australasian Society for Historical Archaeology

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Hon Shayne Mallard MLC
Chair, Standing Committee on Social Issues
Upper House Committees, Legislative Council
Parliament of New South Wales
Macquarie Street
Sydney NSW 2000
E: Committee.SocialIssues@parliament.nsw.gov.au



Re: Review of the *Heritage Act 1977* (NSW)—Submission

Dear Mr Mallard,

Australasian Society for Historical Archaeology Incorporated (ASHA) thank the NSW Legislative Council's Standing Committee on Social Issue and Heritage NSW for the opportunity to provide comments on the review of the *Heritage Act 1977* (the Heritage Act, the Act). In this letter we provide our response to the selected focus questions raised in the Standing Committee's Discussion Paper (April 2021) and pertinent to the Terms of Reference.

In terms of the background of our organization, ASHA was founded in 1970 to promote the study of historical archaeology in Australia. ASHA encourages archaeological research on historical sites, buildings and artefacts by relevant means including historical research, examination of scientific documents, survey, recording, excavation and analysis and the publication of the results of such research. Our members work in the private sector, education, government, and include community members with an avocational passion for archaeology.

As a key industry group ASHA welcomes the opportunity for further discussions and opportunities to input as the process continues, and would particularly welcome any opportunity to participate in any workshops, comment on draft legislation, bills or guidance material produced.

Yours faithfully,

Anita Yousif
President

Inquiry into the *Heritage Act 1977*

ASHA notes that the review has not mentioned archaeology and it is unclear what, if any amendments are proposed to protect and manage the archaeological resource.

ASHA notes that there are 51 items listed on the State Heritage Register (SHR) specifically identified as having Archaeological – Terrestrial values and eight (8) items listed on the SHR specifically identified as having Archaeological – Maritime values. ASHA notes this does not capture the full range of archaeological sites across the SHR, simply those listed on archaeological values alone.

Other sites such as the Female Factory at Parramatta North, or the multitude of residences at Millers Point, that contain some of the earliest and most significant domestic archaeology in that State, are included as part of the main listing of these properties.

It is critical, therefore, that any legislative reform ensures that the protection and management of archaeological values is also considered in the context of sites with multiple heritage values.

Response to the discussion questions

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

The current legislated composition of the Heritage Council, Division 1, s.8 (3) (a), if fully appointed, provides a comprehensive diverse range of skills that ensures the Heritage Council is well equipped to identify, protect and manage the State's significant heritage.

However, ASHA notes that the current size of the Heritage Council (nine) makes it increasingly hard to represent across the that range of skills and there is a danger in some of the skills being lost. It is recommended that the option of having a larger Heritage Council, where multiple skills cannot be found in single individual, would provide a more diverse skill set assisting in better decision making.

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

ASHA notes that the reform of Aboriginal Cultural Heritage legislation has been underway in some form or another since 2009 with the goal of a stand-alone Aboriginal Heritage Act – ASHA strongly supports this.

ASHA supports the NSW government completing the reform of Aboriginal Cultural Heritage, and the finalisation of a standalone Aboriginal Heritage Act as a priority, before diverting attention and resources to amending the Heritage Act. A stand-alone Aboriginal Heritage Act would clarify any response to this question.

The question would then become 'how do the two heritage acts work together to protect and manage shared heritage values?'

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

Yes, the objectives of the Act are still relevant but they could be strengthened by adding to the objectives of the Act: protection, sustainability and intergenerational equity.

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

We suggest that Heritage NSW conduct a survey and perhaps establish a consultation process with workshops, open forums and other measures to better understand the general community feel (both urban and regional), and particularly vis-à-vis the diversity of the migrant community.

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

There are several parts in the current Act that are not commonly used or widely known, including Heritage Agreements, taxation incentives, grants and loans. These measures were included precisely with the view to incentivise ownership and activation of heritage. These need to be either made more visible or better explained to heritage site owners.

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

ASHA is unable to comment to this question.

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

ASHA is unable to comment to this question.

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

The proposed listings categories assume that the most significant heritage will always be in ownership of the State, or potentially local, government.

The current standard, whereby a place is managed in accordance with its assessed heritage values, is strongly recommended.

The current listings system already allows great flexibility. It provides for up-front exemptions and is tailored to the significance of an item. Under the current system, it is the wording of a listing (what is significant about a place) that is critical for managing change. Therefore, the current system is not a one size fits all approach – not all aspects of an item or a place form part of the significance of a place, and hence the ability under the current act to have standard and site-specific exemptions.

It is unclear how what is proposed would differ from this current process.

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

A blanket change for residential properties is not recommended. The current standard, whereby a place is managed in accordance with its assessed heritage values, is strongly recommended.

The discussion paper suggests the ‘category would carry consistent and easy to understand regulatory mechanisms like site specific exemptions or asset class exemptions.’ ASHA notes, however, that SHR residential properties (such as the many houses listed at Millers Point) often have significant archaeological remains associated with them. These are often unknown at the point of listing and referred to as ‘archaeological potential’ or ‘scientific values’. They can be underfloor deposits within the existing houses (including under floorboards and ceilings of upper stories) or within back or front yards or wider properties.

Archaeology could **NOT** be managed under site specific exemptions or asset class exemptions.

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

Community engagement is one of the key components of the State Heritage Register. Heritage sites, buildings and landscapes have the capacity to form, inform and reflect on the interests of local communities. Not only would greater engagement deliver a more robust register, it may also assist in the development of a more diverse and engaging selection of heritage items.

Greater community engagement could be enabled through media releases, public education campaigns, increased heritage interpretation, improved mechanisms for members of the public to nominate heritage sites, and most importantly, increased funding for NSW government departments responsible for managing the SHR.

Focus Question 11: Would streamlining enhance the listing process?

The listing process should be a well thought out and rigorous process. The significance and values of a place should be clearly identified upfront. Any listing and delisting process should be transparent. Whilst destruction by natural forces such as bush fire, flooding or earthquake can be demonstrated, the ongoing and deliberate neglect by an owner should not be rewarded by delisting.

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

The challenge of any approval system, including the current, is frequently managing competing heritage values. This can be difficult for a non-heritage property owner to navigate – particularly if the views of three or four heritage specialists they have engaged, along with the Heritage NSW team are all divergent.

The current system could be improved by ensuring that all parties to the process understand what they are up for at the beginning of the process (together with all Heritage NSW staff who are to be part of the decision-making process). All requirements should be identified upfront including assessments/ specialist reports to be undertaken, documentation to be provided, etc. Any changes to this should be clearly identified and rationale provided. This would help the property owner (often not a heritage specialist) understand what is required and not be completely reliant on a heritage specialist.

By investing in adequate resources to improve the statutory body's ability to implement the Act. This would reduce frustrations with time it takes to act on applications.

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

The determination criteria are very broad and it is not always clear how the criteria have been considered in determinations.

If the Act is amended it is recommended that the criteria for decision-making is transparent and that all decisions are made publicly available. There have been steps in this direction over the last few years where there are notes on approvals stating the reasoning for specific conditions.

We also suggest that the review considers the definition of 'work' to close the existing gap that causes ambiguity. A clear definition would assist in understanding the difference between a 'relic and 'work' and pre-empt any potential misunderstanding by applicants post approval.

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

The consideration of heritage in land use planning systems could be improved by communicating with stakeholders, taking community needs into consideration, and acknowledging the benefits (economic, social, environmental) of preserving heritage items, streetscapes and landscapes.

Various cities in the USA (New York, Cincinnati) have taken advantage of their heritage in land use planning and by doing this, reinvigorated communities and historic streetscapes in a sustainable way.

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

ASHA believes heritage sits well within the land-use planning system. Originally the *Heritage Act 1977* and the *Environmental Planning and Assessment Act 1979* were designed to work together, and have done so very well as evidenced by the embedded nature of local and State heritage, the Integrated

Development Assessment process, the Local Environmental Plans and other measures. For most of their first three decades, both acts were administered by the same department or agency. Over the last decade, as heritage has been moved out of planning and other significant changes have occurred in the Planning System this linkage has been lost.

It is important that any new or amended heritage legislation works with the broader planning system. Working with NSW Department of Planning, Industry and Environment to ensure effective strategic planning is crucial in supporting efforts to conserve our heritage assets. Decisions on where development will occur directly influence the long-term sustainability and condition of heritage assets. By making heritage a core part of the planning system, and ensuring that heritage is identified and considered up-front in the development of Strategic Plans (Regional, District, Local) at the earliest possible stages in decision-making processes. This supports the delivery of greater certainty to landowners and the community about how development and conservation objectives will be balanced.

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

We believe that hands-on post approval involvement and follow up by the statutory bodies would improve heritage compliance and enforcement.

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

As outlined in Focus Question 10, understanding of state heritage could be enhanced through media releases, public education campaigns, improved mechanisms for members of the public to nominate heritage sites, and most importantly, increased funding for NSW government departments responsible for managing the State Heritage Register.

In addition, social media outlets and technology could be used to draw attention to state heritage through increased marketing of the Heritage Near Me app and website. Funding for heritage interpretation would also assist in the enhancement of the NSW and interstate community's understanding of state heritage and what it means.

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

By promoting heritage values of NSW's assets through various cultural initiatives and events (concerts, exhibitions, festivals, dance programs etc) and cooperation with international and domestic tourist agencies.

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

ASHA feels that encouraging communities to care for heritage assets could deliver community benefits such as the opportunities to volunteer and gain new skills, environmental benefits through the activation and adaptive re-use of existing buildings or the protection of natural heritage values, and economic benefits through the contribution to cultural industries, the visitor economy, and competitiveness.