

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: GML Heritage

Date Received: 4 July 2021

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Peter Poulos, Chair
Standing Committee on Social Issues
Review of the Heritage Act 1977

Re: Review of NSW Heritage Legislation, Standing Committee on Social Issues

Dear Chair

GML Heritage is pleased to have this opportunity to provide a submission to the Inquiry of the Standing Committee on Social Issues regarding the review of the Heritage Act 1977 (the Act). We commend the government's efforts to consider the statute's effectiveness and the commitment to ensuring that the State's irreplaceable environmental heritage is conserved. We have considered the terms of reference of this Inquiry and structured a detailed submission in response to the Discussion Paper.

GML is a strong advocate for best practice conservation, management, planning and presentation of our heritage. The company has expertise and experience in the provision of heritage advice to all levels of government, the private and not-for profit sectors. Our services span a range of areas including planning, public history, Aboriginal heritage, the built environment, historical archaeology, community heritage, cultural landscapes and interpretation.

GML Heritage has some concerns regarding the rationale and guiding themes underpinning the review of the Act. In our opinion, the review is neither urgent nor pressing. We see no evidence in the Discussion Paper that clearly and objectively demonstrates the 'problem' with heritage.

Much of the 'problem' is circumstantial and when one considers the comparatively modest number of places subject to heritage provisions, we do not regard the scale of the 'problem' to be material. In our view, some targeted legislative and non-legislative reform might be sufficient to improve heritage processes while retaining the important functions of the NSW heritage management system.

We see the 'problem' is not the Act itself, rather, its interpretation and application combined with the depletion of resourcing, and a general lack of support for a culture that encourages an appreciation of heritage as a vital part of our historical distinctiveness and contemporary community life and wellbeing.

We note with interest that the Heritage Council of Victoria has recently released its *Strategic Plan 2021-25*. The Council's mission is 'to lead in the recognition

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and conservation of Victoria's cultural heritage'. Four key values underpin the Heritage Strategy including 'respect for heritage', 'collaboration', 'innovation' and 'skilled practice'. The Council aspires to have:

- Victorian communities, landowners and custodians understanding and valuing our heritage and its contribution to enriching culture.
- A heritage system that protects, sustains, and enhances our heritage.
- Coherent and integrate heritage processes across all levels of government.
- Transmission of heritage values to current and future generations through effective stewardship and inspirational storytelling.

We would be pleased the outcome of this review into the Heritage Act 1977 provide the opportunity for the NSW Government to demonstrate its leadership and sustainable stewardship of our State's cultural heritage.

GML would be most willing to expand on any aspect of this submission and can be contacted by phone on 9319 4811 or by email at sharonv@gml.com.au

Yours sincerely,
GML Heritage Pty Ltd

Sharon Veale
CEO

Attachments:

- GML Heritage—Submission Review of the Heritage Act 1977

GML Heritage—Submission to the Review of NSW Heritage Legislation, Standing Committee on Social Issues, 4 July 2021

Some cities keep their historic buildings and use them for museums. Some cities set aside their historic buildings for the exclusive use of tourists. Some cities don't care at all about heritage and raze it with enthusiasm for mediocre new buildings. Which city is Sydney and State is NSW? Across a wide spectrum—government, private developers, community organisations, development authorities, local government—the citizens of NSW should simply adopt 'a general policy which gives the protection, conservation and presentation of heritage a function in the life of the community and integrates that protection of heritage into comprehensive planning programs'. (See Article 5, Convention Concerning the Protection of the World Cultural and Natural Heritage, 2019)

Introduction

GML Heritage was incorporated in Sydney, NSW in 1989. At that time, it was one of Australia's first specialist heritage consultancies. Over more than thirty years, GML Heritage has provided planning, management, and conservation advice for many of the State's most significant heritage places. We have contributed to assessment, policy, legislative reform, guidelines, standards and actively shaped the State's heritage system. We have worked for and with Commonwealth, State and local governments as both suppliers and staff and have seen heritage through the eyes of both government and the private sector. We have borne witness to profound changes in attitudes to the 'value' of our collective cultural heritage as the political, economic, social, cultural, and environmental circumstances of our lives have shifted.

The NSW Heritage Act was borne out of a period of momentous change. The 'hitherto almost unfocussed idea'¹ of heritage had been aroused by the unprecedented scale and pace of urban development in Australian cities during the late 1960-70s. At this time, the number and strength of conservation and resident action groups grew exponentially.² New forms of social activism and unlikely alliances were galvanised determined to conserve our significant natural and cultural environments. The involvement of the Builder's Labourers Federation and the shrewd application of Green Bans to landscapes and historic buildings under the threat of destruction captured widespread public and political attention.

The *Heritage Act 1977* had its genesis at this time. Since then, the Act has been subject to periodic review and amendment. The State Heritage Register was created in 1998 when several other major amendments were enacted. In April 2006, the *Productivity Commission Inquiry Report on the Conservation of Australia's Historic Heritage Places* was released. The scope of that inquiry included the pressures on historic heritage places; the economic, social, and environmental benefits and costs of conservation of historic heritage; the roles and contributions to conservation by state and other tiers of government; and the positive or negative impacts of regulatory, taxation, and institutional arrangements on the conservation of heritage places and other impediments and incentives that affect outcomes. In July 2007, the then NSW Minister for Planning, Frank Sartor, appointed an independent panel of experts to conduct a review of the Heritage Act. That Expert Panel was focused on many similar terms of reference to the current review including duplicative and overlapping provisions with other legislation; strengthening the integration of heritage provisions with the *Environmental Planning and Assessment Act 1979*, State heritage provisions and practice including the listing process, public benefits of outcomes, the role of property owners and stakeholders and appeal rights; the approvals process for alterations to items on the SHR, including the rights of property owners, resourcing and time efficiency; and the functions and constitution of the Heritage Council

¹ *Report of the National Estate*, Australian Government Publishing Service, Canberra, 1974, p20.

² *Ibid*, p24.

What is difficult about heritage? Is it that conservation, repair and maintenance may require more time, or particular specialist skills or traditional trades? Some owners/developers do not value heritage as part of our history and culture, but rather seek to maximise the 'value' through economic return and exert their 'rights' as property owners in a State where property values, regardless of heritage listing, double in every cycle. As a direct consequence, sometimes approvals take longer because proponents often seek to demolish or overdevelop, rather than respect and adapt. Or is it that our strategic planning and heritage listings have not kept up with community views and values around heritage? We observe that many listings are reactive, as opposed to being well resourced and integral to planning processes.

Making ownership of heritage easy means what? That people will not be subject to specific heritage planning controls that regulate and manage development. Do we just want economic growth and fast track development because we believe that it will improve liveability, the character of places, social cohesion and belonging, simultaneously improving the balance sheet?

Heritage is a significant driver of economic growth. Sydney's heritage places are perpetually being demolished, adapted, and changed. Many of Sydney's heritage precincts and places are key tourism attractions. Heritage is a key feature of highly sought-after suburban areas where residents enjoy significant amenity and historic character. Many of these localities are destinations in themselves. The Rocks, Paddington, Newtown, Millers Point, Elizabeth Bay, Potts Point, Haberfield and Surry Hills to name but a few, are highly desirable neighbourhoods that command premium prices.

The guiding themes for this legislative review of the *Heritage Act 1977* are intriguing. The Discussion Paper presents heritage as a 'problem'. Yet the Discussion Paper has no robust or rigorous evidence base. It simply implies, perpetuates, and promotes long held myths regarding heritage, including that heritage listing potentially reduces development potential and economic growth, heritage listing is an unfair interference, heritage listing complicates works and activities, development approvals for heritage take longer, and heritage listing negatively impacts value.

The Heritage Act is not broken. Instead, the government should focus on strong leadership, adequate resourcing, and supporting the creation of a culture that respects and values heritage because it special and part of our unique story and identity. Reform needs to begin with the State placing priority on helping people understand why heritage is important, improved resourcing and developing a stronger culture of support for heritage generally. It is our view that the 'problem' with heritage is the direct result of administrative, resourcing, and educational shortcomings rather than the Act itself, or the broader heritage management system. The vision, values and strategies from the Heritage Council of Victoria Heritage Strategy 2021-25 are worth considering (Figure 1.0).

Four values

RESPECT FOR HERITAGE

We value Victoria's heritage places and objects as assets to be enjoyed as expressions of the traditions, identities and achievements of our diverse communities and cultures.

COLLABORATION

We value the knowledge others bring to heritage conservation, and encourage the sharing of experience and information.

INNOVATION

We value exploring new approaches to ensure a more sustainable future for Victoria's cultural heritage.

SKILLED PRACTICE

We value the skills and resources that enable high-quality heritage management across the state.

The vision: 2021–25

Victorians connect with and value our diverse cultural heritage. We aspire to have:

- » Victorian communities, landowners and custodians understanding and valuing our heritage and its contribution to enriching culture
- » a heritage system that protects, sustains and enhances our heritage
- » coherent and integrated heritage processes across all levels of government
- » transmission of heritage values to current and future generations through effective stewardship and inspirational story telling.

Five strategies

The Heritage Council's strategies for achieving its vision over the next five years are:



O1

Wider understanding of cultural heritage



O2

Effective and representative Victorian Heritage Register



O3

Innovative and sustainable heritage practice



O4

Shared responsibility for heritage conservation



O5

Improved Heritage Council operations

Figure 1.0 The values, vision and strategies from the recently released *Heritage Council of Victoria Strategic Plan 2021-25*, accessed on 26 June 2021, at https://heritagecouncil.vic.gov.au/wp-content/uploads/2021/06/HCV-Strategic-Plan-2021-25_FINAL-compressed_high.pdf

Purpose of the Heritage Act 1977

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

The Council is not currently recognised as a trusted independent public voice on heritage matters. The Heritage Council should set the standards for the State's exemplary leadership in heritage management and conservation. The Functions of the Heritage Council (Section 21) should be amended to include the requirement that the Heritage Council function as an independent statutory expert body. It should understand and appreciate that heritage is a 'public good', is irreplaceable and that each generation has a custodial role to conserve and protect the places that demonstrate the course and pattern of the State's history.

The composition of the Heritage Council should include specialist skills, capability and capacity in heritage matters. There is currently a significant lack of diversity around the NSW Heritage Council table. It is noted that appointments to the Heritage Council are political. In recent years, the subject matter expertise and experience in heritage has been reduced. This has not delivered better outcomes for heritage, nor increased public understanding, or more effective or efficient management and regulation. The qualifications skills and knowledge in the areas of Aboriginal heritage, archaeology, architecture, environmental heritage, history, engineering, movable heritage, cultural landscapes, natural heritage, rural/vernacular heritage, are relevant. Cultural diversity, gender balance and inclusion are important considerations, as is living heritage, climate heritage, digital heritage, etc. The provisions for Heritage Council appointment should also be amended to provide more community representation.

As is the practice in some other states, the Heritage Council should determine whether to list a place on the SHR, not the Minister. The focus on listing should be heritage significance of the item. Currently the significance of the item is only one matter considered. Increasingly other economic or financial considerations are given equal or greater attention, leading to decisions not to list significant State heritage items. This is out of step with the community of NSW and heritage acts in other jurisdictions.

RECOMMENDATIONS

- Ensure most members of the Heritage Council are recognised experts in one or more of the following suggested areas: Built Heritage Public History, Aboriginal Heritage (eg Aboriginal people), Archaeology, Cultural landscapes, Historic Urban Landscapes, Moveable Heritage, Shipwrecks, Maritime Archaeology, Cultural Tourism, Climate Heritage.
- Consideration should be given to increasing the size of the Heritage Council to include additional positions for Aboriginal and broader community representation.
- Establish a transparent and politically independent appointment process. Ensure that Council's processes and procedures are transparent and accountable.
- Amend the *Functions of Heritage Council* (Section 21) to include the requirement that the Heritage Council function as an independent statutory expert body with the obligation to provide the Minister with robust objective and timely advice on heritage matters.
- Resource and support the Heritage Council to ensure it functions effectively and efficiently. Ensure the Heritage Council has a more highly skilled workforce to provide advice support its activities and heritage owners.

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

This question is not for non-Aboriginal people to answer, it is for Aboriginal people to self-determine with government. Aboriginal people are the rightful determiners of their history and heritage. They need be given authority to act and responsibility for their heritage. The Discussion Paper talks of putting the customer at the centre of everything the NSW Government does. In this instance, Aboriginal people need to be at the centre.

Australia is a signatory to the *United Nations Declaration on the Rights of Indigenous People*, among many things this includes the 'right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, etc.'³ Aboriginal people need to be asked if and how they want their heritage acknowledged and considered as part of the Heritage Act, if indeed they do. Yet this must be done with regard to the proposed reform to Aboriginal heritage as outlined in the *Draft Aboriginal Cultural Heritage Bill 2018*. Clarity about the objects of each Act and how they will operate in relation to each other is critical. There will be complex overlaps regarding culturally sensitive collection and use of information about Aboriginal cultural heritage, and there is a strong distrust of NSW Government among many Aboriginal communities.

We consider the concepts in the discussion paper of 'making heritage easy', 'putting heritage to work' and 'making heritage relevant' offensive. Heritage is not easy for Aboriginal people. The impact of colonialization on First Nations people, their lands, waters and culture has been profound. The continuing destruction is also a cause of ongoing cultural harm.

The vexed 'management' and 'control' of Aboriginal culture and heritage and the 'authority to speak' sanctioned through the Native Title and Land Council systems creates forms of power which give rise to ongoing division within communities.

The various pieces of heritage legislation in NSW, combined with the protective mechanisms as well as the continuing emphasis on some aspects or types of heritage have created and perpetuated artificial divides between Aboriginal and non-Aboriginal (historic) heritage. Aboriginal archaeology and historical archaeology is a case in point. Objects and relics continue to be administered and regulated under two separate Acts. Yet both forms of material evidence may have value to the State and contribute to our understanding.

Regulation between the *NPW Act 1974* and the *NSW Heritage Act* need to be addressed. For example, contact sites represent are not well provisioned for in either Act. The regulators will only take an active role to regulate or approve a permit where they are:

- a) a listed Heritage Place/Aboriginal site under the NPW Act; or
- b) listed on SHR– Heritage NSW

The current definitions of Aboriginal 'objects' under the *National Parks and Wildlife Act 1974* versus 'relics' under the *Heritage Act 1977* creates an invidious situation where 'objects' and 'relics' become one and the same during the contact and post contact period. This significant period of the State's history is not well understood, defined, or effectively regulated to ensure conservation and protection.

³ *United Nations Declaration on the Rights of Indigenous People*, Australian Human Rights Commission, accessed on 21 June 2021, at <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/un-declaration-rights>

Aboriginal people in NSW have long been promised improved statutory protection for their cultural heritage. The NSW government has equivocated on this matter for over a decade. Other states and territories have progressed and delivered legislative reform in this area well in advance of NSW.

RECOMMENDATIONS

- Prioritise the passage of the Aboriginal heritage reform legislation.
- Engage with First Nations People with rights and interests in the State's heritage to determine how Aboriginal Cultural Heritage should be best acknowledged and considered within the Heritage Act.
- Consider the definitions of 'objects' and 'relics' to ensure improved conservation and regulation of the State's significant contact period history and material evidence.

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

The fundamental aim of the Act is to conserve the State's environmental heritage.

Definitions of 'heritage' have changed since the passage of the Act, yet the Act's objects remain broadly relevant. We note other matters have become increasingly significant since 1977, including the conservation of Aboriginal cultural heritage, 'living' or 'intangible' heritage, and climate heritage.

The current object (b) should be redrafted to read 'to conserve and protect the state's heritage', rather than merely 'encourage' it.

The identification and the registration of items of State Heritage significance remains an important object, yet perhaps consideration could be given to providing for recognition of 'practices, representations, expressions, knowledge, or skills', that might include performing arts, customs, traditions, language, and beliefs, etc that are part of our living heritage.⁴

The establishment of the Heritage Council and functions related to the State's heritage remains a core object.

Beyond Interim Heritage Orders, object (d) could be amended to include orders, offences, and other enforcement measures.

Object (e) the promotion and encouragement of adaptive reuse of items of State heritage significance has long been supported under the Heritage Act. Historic buildings are also storehouses of embodied energy. Many listed items have been successfully adapted for private and public purposes. Many guidelines and standards have been developed to support this activity including *Design in Context* and *Design for Heritage*. Consideration could be given to linking this object to the sustainable development goals (SDGs),

The promotion of an understanding of the State's Heritage is important. Some of the issues and misinformation about heritage, which incidentally are also evident in the Discussion Paper are not based on fact. Many of the issues that emerge regarding heritage planning and development arise because in many instances places are not subject to heritage listing and the community reacts when demolition or change threatens places that they regard as important. Frequently, items of significance have not been identified, formally assessed or listed. This is typically due to the lack of resourcing for strategic planning, at both state

⁴ See Article 2 Definition of Intangible heritage in *The Convention for the Safeguarding of the Intangible Cultural Heritage*. The General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), meeting in Paris, from 29 September to 17 October 2003, at its 32nd session, accessed on 21 June 2021 at <https://ich.unesco.org/en/what-is-intangible-heritage-00003>

and local government levels where heritage is concerned. Further, agencies and private owners want to be able to develop their property without being subject to specific heritage controls and actively avoid heritage listing. These behaviours are very often 'out of step' with what the community values as heritage. Contentious issues emerge when resident action groups and likeminded organisations are apprised of development affecting unlisted items where the impacts of the development proposal or disposal are adverse and material.

Consideration should be given to establishing a fund to provide for the conservation and management of the State's heritage. Object (g) could be given greater focus and rather than as is currently stated 'to assist owners with the conservation of items of State heritage significance' it be amended to read 'to establish a heritage fund to provide for the conservation and management of the State's heritage'.

RECOMMENDATIONS

- Consider strengthening the current object (b) to read 'to conserve and protect the State's heritage' and make this object (a).
- Broaden object (d) to include orders, offences, and other enforcement measures.
- Consider linking object (e) to sustainable development and seek to credit the embodied energy in existing buildings.
- Redraft object (g) to read 'to establish a heritage fund to provide for the conservation and management of the State's heritage'.
- Consideration could be given to incorporating the recognition of living heritage into the objects of the Heritage Act.

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

The Act has a broad definition of heritage which can generally reflect the expectations of the contemporary community in NSW. This focus question causes one to ask, 'what are the expectations of the contemporary community where heritage is concerned?' Do the people of NSW expect the NSW government to regulate to protect our natural and cultural heritage from destruction, natural decay, and changing social and economic conditions? The Discussion Paper certainly suggests that the Act is 'out of step', 'outdated' 'onerous' 'procedurally complex' and 'adversarial'. At least on the face the Act must failing at least some members of the contemporary community.

There is a significant corpus of research that documents what the community values about heritage. Surveys demonstrate that there is a high level of interest and engagement with heritage places, and there is a strong regard for the protection of natural and cultural heritage. Many people within the community value heritage as part of the unique expression of our nation, identity and culture. In 2012 the *Who Cares about the Environment* a survey of 2006 people noted that 51 percent of respondents thought when considering population growth and development and the protection of historic buildings, places and items in NSW, that the balance was about right (Figure 3.0). Other responses included 12 percent thought that there was too much emphasis on protecting and conserving historic things and 35 percent who thought there was not enough emphasis on protection and conservation of heritage.⁵ In 2016, the Office of Environment and

⁵ *Who Cares about the Environment 2012?* Office of Environment and Heritage, Social Research Series, Office of Environment and Heritage, Department of Premier and Cabinet, 2013. Accessed on 21 June 2021 at <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Research/who-cares-about-the-environment-in-2012-130265.pdf>

Heritage NSW *Community Attitudes to Heritage* report was released. That report provides some insight into what the expectations of the contemporary community are through the attitudes expressed about heritage. In a sample of 1000 people in NSW the key findings suggest that the public see that the Government is overwhelmingly responsible for protecting heritage. For reference, the Executive Summary and Key Findings from the report are included below (Figure 2.0).

Executive summary

Background to the research

As part of its commitment to protect, celebrate and share heritage in NSW, OEH has worked with EY Sweeney to undertake a social research program, developed to enhance understanding of how heritage is perceived and valued by the people of NSW. The research program was undertaken in two stages.

In the first stage of the program (conducted by OEH), qualitative research was undertaken with focus groups drawn from the NSW community. This research was used to explore key themes and inform the development of a second stage of the research.

In the second stage, a quantitative survey was undertaken with the NSW community. This included a robust and representative sample of n=1,000 people from across NSW, n=45 people from the Aboriginal community and n=50 people from outer regional and remote NSW. This document outlines the results of the second stage of the research.

Please note, where this report refers to "Aboriginal" or "Indigenous" interviewees, the term refers to individuals who identified as belonging to a NSW based mob (e.g. the Wiradjuri) and does not include people from the Torres Strait Islander community.

Key findings

A number of key themes were identified in the research. A summary of these themes is provided over the following two pages:

Defining and engaging with heritage

- Heritage means many different things to different people, but is considered valuable by almost everyone... For example, males are more likely to associate heritage with phrases such as: "colonial/since 1788", while females were more likely to associate heritage with intangible concepts, such as heritage being something to pass on to future generations. Despite these differences, heritage is considered highly valuable by the vast majority of the NSW community.
- Heritage is seen to offer value for both individuals and the community... when asked

about the benefits of heritage to the community, answers could broadly be grouped in to three key categories:

- **Preservation...** of traditions and culture
- **Connections...** between a person and their local community
- **Economy...** the ability of heritage to boost tourism in an area

At an individual level, heritage provides a sense of personal or spiritual connection with an area:

- "Ancestry and family, I am who I am because of my heritage, I am where I am because of my Elders"
 - member of the Wiradjuri mob
- "Learning about the...stories of those who came to Australia after WWII is...a connection to my...family's personal story"
 - female aged 15-24 from Sydney

- Perceptions of heritage are substantially different for Aboriginal interviewees... intangible heritage such as "connections between a place and a person" and "Aboriginal dreaming" had more resonance amongst Aboriginal interviewees than other forms of heritage. In particular where heritage related to the post contact period in Australian history.
- Overall, there are four broad types of heritage that draw public interest...
 - **Natural heritage...** such as nature reserves, native animals, gardens and parks, etc.
 - **Man-made heritage...** such as the Sydney Harbour Bridge, historic public or commercial architecture, etc.
 - **Practices and rituals...** intangible behavioural-based heritage such as Aboriginal cultural practices, celebrations, festivals and sporting traditions
 - **Culture and icons...** involving cultural heritage such as family/ancestry, historical periods (e.g. the gold rush), multiculturalism, etc.

- People interact with heritage in a multitude of ways... Interaction with heritage among the NSW community is high with both direct and indirect forms of engagement common over the past 12 months. Direct activities undertaken include:
 - visiting a heritage site
 - participating in cultural festivals/activities
 - taking a holiday for specific cultural/heritage purposes
 - conservation and support-based behaviours such as:
 - donating money to heritage related causes
 - playing an active role in heritage protection/preservation activities
 - volunteering at a heritage place or event

Indirect methods of engaging with heritage were also common and include:

 - watching a TV show related to heritage
 - reading a book or article related to heritage
- Building public engagement with heritage should start with education... there is a significant relationship between a person's understanding and knowledge of heritage and their engagement and interest in heritage. With that in mind, it will be critical to build awareness of heritage across NSW (particularly awareness of heritage within a person's local community) in order to build community awareness and eventual visitation to heritage at a local level.

Perceived threats to, and future management of, heritage

- Three key threats to heritage were identified by NSW residents...
 - **Development...** almost one in five (18%) NSW residents indicated new property development as the greatest threat to heritage in the state (the highest noted)
 - **Apathy...** just over one in 10 (12%) indicated that a lack of interest from the community was a key risk
- Erasure of culture... a further 1 in 10 also highlighted that the erasure of indigenous culture and the forgetting of history was also a critical threat
- Government overwhelmingly seen to be responsible for protecting heritage... with 7 in 10 indicating that the protection and management of heritage in the state belonged to local, state and federal departments. However, respondents do not want to be excluded from this process altogether, with around 3 in 10 feeling the protection and management of heritage should also belong to the community. Seeking proactive engagement from the community and highlighting what they can do to help protect heritage may assist to increase awareness of, and engagement with, heritage.
- Important to build awareness of current protection efforts and focus on delivering at a community level... when asked to indicate if current protection strategies were effective, around 4 in 10 said they did not know - highlighting a need to build awareness of current efforts amongst the community. People who did have knowledge of current strategies were more likely to view local efforts positively compared to broader state-wide initiatives - suggesting that current efforts should focus on delivering at a community level.
- Future strategies should find a balance between protecting and promoting heritage... when asked about future strategies that could help protect the NSW heritage, respondents indicated they would like to see stricter controls and better management of heritage by the government. Education, the distribution of information about heritage and hosting more events that celebrate culture were seen to be critical for the promotion of heritage both for state tourism as well as at a local level.

NSW Office of Environment and Heritage
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NSW Office of Environment and Heritage
Final Report: NSW Community Attitudes to Heritage, November 2016 | 4

Figure 2.0 NSW Community Attitudes to Heritage, the Executive Summary and Key Findings, Office of Environment and Heritage, accessed on 21 June 2021 at <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Heritage/community-attitudes-heritage-2017.pdf>

It is our view that the more significant issue is that the identification, management, listing and conservation of heritage places that reflect the communities of NSW has not kept pace with contemporary values and attitudes. There are many instances where decisions made under the Heritage Act by the Heritage Council and by the Minister do not adequately reflect the expectations of the contemporary community of NSW. This occurs when significant items are not listed, the provisions of the Heritage Act are switched off under State Significant Development, or development proposals are approved that do not conserve the significance of a heritage item.

Segment highlights

Emphasis on protecting and conserving historic things

Note: comparisons are made either to the whole sample or, where there are two categories only, to the other (e.g. males and females).

Gender

- > Men (15%) are more likely than women (8%) to think there is **too much emphasis** on protecting and conserving historic things.

Age

- > People aged 45+ are more likely to think there is **too little emphasis** on this issue (42% vs. 35% community-wide), while younger people under 35 are more likely to think the balance is **about right** (61% vs. 51%).
- > In between, 35 to 44 year olds are more likely to think there is **too much emphasis** on protecting and conserving **historic things** (17% vs. 12%).

Employment

- > Retirees are more likely to think there is **too little emphasis** (42% vs. 35%), but students are more likely to think the balance is about right (62% vs. 51%).

Children

- > Those without children (56%) are more likely than people with children (48%) to believe the balance is **about right**.

Region

- > Those from the Hunter region are more likely to think there is **too much emphasis** on protecting and conserving historic things (21% vs. 12% state-wide).

Concern about environmental problems

- > Those with high environmental concern are more likely to think there is **too little emphasis** (46% vs. 35%), while those with little or no concern are more likely to think there is **too much** (15% vs. 12%).

Figure 3.0 Highlights from *Who Cares about the Environment Report 2012*, Office of Environment and Heritage, 2013, which provides some insight in the how gender, age, geographic location, etc varies relative the degree of emphasis on conservation of heritage.

RECOMMENDATIONS

- Ensure Heritage NSW is responsive to the community and the information, guidelines and tools that are update to date, publicly accessible and provide clarity regarding the NSW government's role and responsibility for the identification, conservation, management, and presentation of the State's heritage.
- The Heritage Council and the NSW Heritage should periodically survey the community of NSW to understand their expectations of government relating to heritage conservation and management.
- The heritage significance of items and listing of SHR items should be delegated to the Heritage Council. The consideration of economic and financial hardship should not be a matter considered at the time listing but rather at development approval.
- The identification and statutory recognition of community based living heritage (eg traditions, events, music, song, dance, performances, languages, etc) should be considered to better reflect the diversity and significance of the State's heritage. This 'category' of listing would not need to be subject to the same regulatory requirements as tangible items.
- Commission research to inform the development of a strategic programmatic response to the recognition of living heritage within the community of NSW.

Activating Our Heritage

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

Victorian and NSW planning legislation provide conditions that allow local government to levy property developers for a contribution towards the provision or improvement of amenities or services.⁶ These levies are either in the form of the dedication of land free of cost, monetary contributions or both, and are used as contributions towards open-air space, community facilities such as libraries, child and health care centres and parking areas.

Section 7.11 infrastructure contributions of the *NSW Environment Planning and Assessment Act, 1979* allows the consent authority approving the development to accept 'the provision of a material benefit' instead of monetary contributions or free dedicated land. With Ministerial approval, the Development Fund into which levy revenue is collected may also be used for programs that improve public amenities, enhance open space or the public domain or provide suitable infrastructure or facilities at a regional or local level. It is primarily through these parts of the Act that the development levy could be applied to heritage sites and archaeological resources in NSW.

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

In the United States of America (USA) there is a federal tax incentive for preserving historic properties. The Historic Rehabilitation Tax Credit (commonly referred to as the Historic Tax Credit HTC) encourages private investment in the adaptive reuse and conservation of historic buildings including social housing or derelict empty buildings, among others. In addition to this Federal tax scheme various States also have some heritage tax incentive program.

Since its creation in 1976, the federal HTC has leveraged off over \$173 billion in private investment to preserve over 45,000 buildings. Administered by the Internal Revenue Service, with the National Park Service (NPS) in partnership with State Historic Preservation Officers (SHPO), the programme has contributed to job creation to the tune of some 2.8 million jobs and is recognised broadly as both cost effective and integral to many community revitalisation programmes.

A twenty percent income tax credit is available for the conservation of historic, income-producing buildings that despite the difference in terminology are effectively heritage listed properties. In the USA, the properties are referred to as 'certified historic structures'. A tax credit of ten percent is also available for buildings in operation prior to 1986. The credit is available to any individual or entity that holds the title to the income-producing property. Various expenses qualify for the credit, including structural components, walls, partitions, ceilings, floors, windows, doors, services, and other features related to the operation and maintenance of the building. 'Soft' costs are also included such as architectural, engineering or consulting fees.

The HTC supports projects of varying scales. In 2019, 49 percent of all projects were under \$1 million dollars. In the *Federal Tax Incentives for Rehabilitating Historic Buildings Annual Report* for 2020, a breakdown of the rehabilitation projects and the economic impact is included (Figure 4.0) The cumulative economic impact is also reported from 1977 to 2020.⁷

⁶ In NSW, this occurs under Section 94, Division 6 of the *Environment Planning and Assessment Act 1979* and in Victoria under Part 3B of the *Planning and Environment Act 1987* as development contribution plans (DCPs).

⁷ *The Federal Tax Incentives for Rehabilitating Historic Buildings Annual Report for Fiscal Year 2020*, National Park Service U.S. Department of the Interior Technical Preservation Services, accessed on 27 June 2021, at <https://www.nps.gov/tps/tax-incentives/taxdocs/tax-incentives-2020annual.pdf>

The Federal tax scheme is subject to certain conditions. Proposed rehabilitation work is subject to review by the National Parks Service to ensure it is consistent with the Secretary's Standards for Rehabilitation, of which there are 10 including, that the property is used for its historic purpose or that its new use requires minimal change to the defining characteristics of the building, its site, and the environment.

Owner-occupied residential properties do not qualify for the credit. There are other streams for Historic Tax Credits including voluntary legal agreements, mostly by way of deed, for historic properties whereby an owner who donates an easement may qualify for tax credits.

In Canada there are also various forms of tax relief to encourage the conservation and protection of historic buildings. The program involves compensating owners of listed heritage buildings for the cost of the rehabilitation or restoration project. This is not through a grant system, but rather via the local authority providing a one off credit on property taxes. There are also property tax abatements.

In the United Kingdom, there are no particular incentives for the acquisition or conservation of historic properties. There are, however, some tax exemptions available for the transfer of historic properties in certain circumstances.

Consideration could also be given to providing exemption or concessions from Stamp Duty on the sale of SHR listed properties. Alternatively, a percentage of stamp duty payable on the transfer of a heritage listed property could be paid into a State Heritage Fund.

RECOMMENDATION

- Undertake a review of historic tax incentive programs operating successfully overseas to determine whether they would be applicable to NSW and assist in offsetting the cost of private heritage ownership.
- Consider options to either create concessions from stamp duty payable on the sale of SHR listed properties, or establish a State Heritage Fund and require a percentage from the stamp duty payable to be contributed to the fund.



Figure 4.0 Summary of the Federal Historic Tax Credits in the USA for 2020, and the cumulative economic impact and reach of the incentive (Source: *The Federal Tax Incentives for Rehabilitating Historic Buildings Annual Report for Fiscal Year 2020*, National Park Service U.S. Department of the Interior Technical Preservation Services)

Heritage Identification & Listing

Composition of the State Heritage Register

There are around 1739 items currently listed on the SHR, the majority in State Government ownership (Figure 5.0). These items have been included for their significance to the people of NSW. Items can include landscapes, places, buildings, works, relics, movable objects, or precincts—all of state heritage significance. The creation of the SHR assessment criteria in 1998 was significant. Since 1999 the seven criteria have continued to underpin assessments and decisions about whether items are of heritage significance and meet the threshold at either state or local level. The composition of the SHR provides important insights. The analysis of the listed items reveals the geographic concentrations, the skew towards specific kinds of places or features, the percentage of public and private ownership, and that some state historic themes are more strongly represented than others. Overwhelmingly listings are concentrated in urban areas, with 1033 in metropolitan Sydney. By contrast there are 624 SHR listed items in rural and regional locations throughout NSW. In terms of the item types the table below evidences a significant and strong bias towards built heritage items (1008), with complexes or groups (413) and landscapes (138) the next largest cohorts. Maritime archaeology (6) and conservation areas (5) are the least represented types.

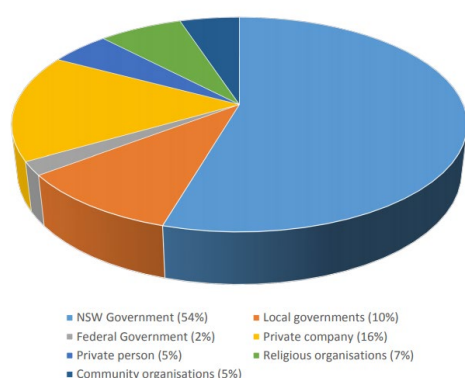


Figure 5.0 Ownership breakdown of places listed on the State Heritage Register in 2015 (Source: NSW National Trust)

Controls for State Heritage Register Listed Heritage

The Discussion Paper states that ‘every heritage item listed on the SHR is treated the same way’, with one ‘standard set of regulatory controls’ applied. This is simply not true. While it is true to say that there is a set of regulatory controls, owners and proponents use these controls variously depending on the scale, nature and type of proposed work or activity. There is considerable variation and nuance that reflects the diversity of activities and uses of SHR properties and the current heritage management system is not a one size fits all but responsive to protecting the heritage values and cultural significance of listed places. The system is already nuanced.

Summary Overview of State Heritage Register Listings Programs

Since the establishment of the SHR, key drivers of listings on the SHR include a range of initiatives and programs. Strategies and initiatives have varied depending on resourcing, the interests of government, Ministers, the membership of the Heritage Council of NSW, and the priorities, threats, and issues of the day. Regional land use and strategic planning has also influenced the listings program. In the early 2000s a pilot study focused on the Central West was supported by the Department of Planning’s 1996 *Regional Histories* publication, as well as a comprehensive Thematic History of the Central West prepared by well-known

professional historian Terry Kass. Development pressure in Sydney's growing metropolitan region stimulated responses too. Identified growth precincts in the southwest of Sydney turned the Heritage Council of NSW's attention to historic cultural landscapes and colonial estates. This project, which included seminal research and analysis work on Colonial Landscapes by Geoffrey Britton and Colleen Morris, resulted in several listings between 2006 and 2015.

The ICONS project was publicly launched in 2004. This was a community focused program that invited the community to nominate their favourite heritage places. During a four-month public submission period over 400 nominations were received. The range of nominations was eclectic and many of the places nominated were either already listed, subject to multiple nominations, or were not considered to be of state significance. Unlisted heritage 'icons' such as the Queen Victoria Building and Sydney Town Hall were not picked up and nominated through this process. Yet over several years the program did prompt, and result in, several listings.

Noting an underrepresentation of migrant heritage on the SHR, in a Heritage Week Directions Statement issued in 2000, heritage items of importance to NSW's migrant communities were identified for priority listing. Listings in this thematic area were supported by a series of thematic studies of Greek, Chinese, Italian and Dutch settlement in NSW. It was intended that listings officers would work with migrant communities to garner nominations from the various groups, yet this did not result in listings to the SHR. Since that time, various programs and other responses have endeavoured to address underrepresentation in this thematic area on the SHR, with varying results.

From 2001 to 2008, contributions from the Australian Institute of Architects, Engineers Australia, and the National Trust (NSW) were a key source of listings. During this period progress was made on non-contentious nominations that had owner support. This foreshadowed what would become a more prevalent approach over subsequent years following repeated ministerial rejection of nominations based on owner objections, financial considerations, or curtilage matters. Between 2006 and 2015 a total of 11 nominations were rejected by various ministers.

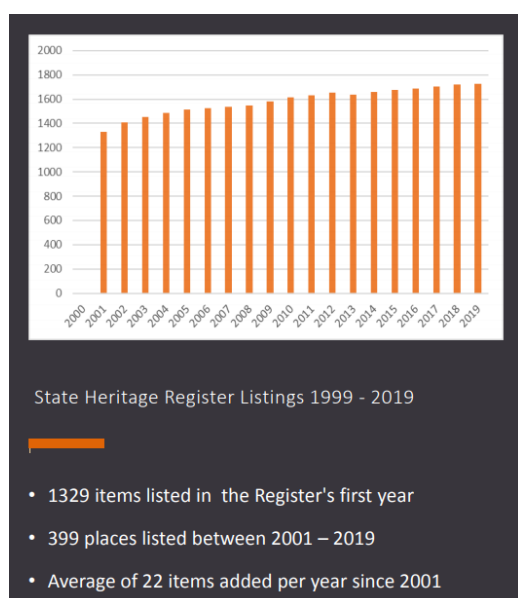


Figure 6.0 Number of SHR listings from 1999-2019 (Source NSW National Trust)

Overall, the range of programs and initiatives between 2000 and 2015 have resulted in varying degrees of 'success', if success is measured by the number of SHR listings achieved (Figure 6.0). It is apparent that there is little appetite to progress listing of items where this is not supported by owners, and unlike in other jurisdictions, considerations other than heritage significance exert considerable influence on the composition of the SHR. The other 'lesson learnt' is that while community listings programs can elicit engagement, programs need to be carefully focused and structured to ensure they deliver effective outcomes for the

community and for Heritage NSW. Based on this analysis if a robust State Heritage Register means, a register that better conserves and protects the State's significant course and pattern of history, in all its geographic and cultural diversity, it is not a given that greater community engagement would deliver this outcome. Rather, a well-planned and researched program of strategic SHR listings needs to be devised targeting unrepresented listing areas. To support and deliver listings in these areas, community engagement programs tailored to the specifics of the concerned communities also need to be developed.

HCAAs and other classes are under-represented.

Aboriginal Heritage and State Heritage Register Listing

Under the Heritage Act, if Aboriginal people wish to have significant places listed on the State Heritage Register, they will need to be engaged to reform the statutory processes for assessment and listing to ensure their social, environmental, cultural, and economic interests are better provisioned and accounted for. Currently, the legislative processes enshrined in the Act are not fit for purpose. Western concepts such as 'State' significance and 'aesthetic' values create technical challenges when assessing Aboriginal heritage values under the heritage assessment criteria. The criterion applied to the assessment of Aboriginal Places under the *National Parks and Wildlife Act 1974* 'is or was of significance to Aboriginal people', is perhaps worthy of consideration as part of any change to Aboriginal heritage considerations under the Heritage Act.

Statutory consultation prescribed by the Act under Part 3A (33) is not consistent with 'best practice' principles for Aboriginal community engagement. The procedure before recommendation for listing process and timing is not considered appropriate or effective when working with Aboriginal communities. There is a general lack of understanding of the nature and composition of Aboriginal communities and the diversity and difference within them, combined with an ongoing lack of real understanding and recognition of their heritage, despite a more recent 'cultural awakening' by the broader Australian community. The current statutory regime privileges certain forms and types of heritage/material culture over others. The living and dynamic values of Aboriginal cultural heritage should be better recognised and acknowledged if Aboriginal heritage is to be included in the Heritage Act. Resources, capability, and experience in this area within Heritage NSW particularly relating to the identification, assessment, management and conservation of Aboriginal heritage is also limited and not well integrated into Heritage NSW workstreams under the Heritage Act.

State Agencies and State Heritage

The NSW Government has avoided listing government heritage assets on the SHR register for some years. With a significant reduction in resources and capability in Heritage NSW, Section 170 provisions have languished. The overall state of conservation of the State's heritage is in decline. S170 needs to be strengthened to improve heritage outcomes for State owned places such as the Art Gallery of NSW and Sydney Hospital. The NSW Government needs to demonstrate best practice leadership in heritage and work towards developing a stronger culture of recognition and support for heritage places.

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

The tailored heritage protections in the Discussion Paper are not well conceived and they do not appear to demonstrate how they would effectively enhance conservation.

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

There is little clarity in the Discussion Paper as to whether this relates to locally listed heritage items that are residential, or State Heritage Register listed items. There is no strong rationale for this and it is not supported. As at March 2015, one third of the total of 1008 SHR items that were classified as built heritage items are houses. That is a total of 336 residential SHR properties. In the scheme of things, and noting the additional SHR listings since that time, this does not appear to be an issue of significant scale or concern for the State.

RECOMMENDATIONS

- Seek to centralise, prioritise and streamline local and state heritage listings through the planning portal.
- Develop a strategic forward program for the SHR and support it with detailed context histories for each thematic area.
- Audit State Agencies to understand the current state of conservation in NSW and compliance with S170 requirements and the State Government Heritage Management Principles. Establish best practice governance and management mechanisms and determine resourcing requirements via a business case.
- Undertake a detailed review of the standard of assessments and listings on the SHR. Based on results create a forward program to update and ensure consistent standards and quality of listings.
- Understand the shared responsibility for heritage and work with local government to understand community values, heritage listing priority areas and risks.
- Maintain capacity and resourcing for emergency listings.
- Explore the provision of honorific listing programs for living heritage.
- Ensure provisions and procedures for heritage listings are responsive to the rights and interests of Aboriginal communities and their heritage.
- Consider update and reform of the Notice of Intention process for State Heritage Register listings to ensure better reach and engagement with Aboriginal communities.

Streamlining Heritage Processes

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

This focus question appears premised on the assumption that the SHR should be strong and vital. What does that actually mean? Does it mean that the register includes provision for living, or intangible heritage? Does it mean that the SHR is a comprehensive and adequate representation of the State's significant historical shaping patterns and associated individuals and communities?

Which in turn raises the question about how and whether in fact greater community engagement would deliver to that ideal. Based on the discussion and analysis presented above, especially the ICONS listings program and the current listing process as it relates to Aboriginal heritage, unless community engagement is well designed and clearly directed there is no guarantee that a more 'robust' State Heritage Register will be the outcome.

RECOMMENDATIONS

- Develop a well-planned and researched program of strategic SHR listings to target unrepresented SHR listing areas. In parallel, devise community engagement programs tailored to the specifics of the concerned and connected communities.
- Ensure that the State Heritage Register is publicly accessible, and is maintained as a credible source of information about the State's history and heritage items.
- Update and develop tools, guidelines and standards to assist those members of the community that might seek to nominate items for heritage listing.

Focus Question 11: Would streamlining enhance the listing process?

The proposed listing categories are poorly conceived. The proposed listing categories are in fact management categories for SHR items. The SHR already has many listing 'categories'.

The categories effectively duplicate the tiers of management and responsibility that are already in place at local, state and Commonwealth levels. There is no compelling or convincing rationale for the categorisation. The fact is that the SHR reflects the assessment of an item as being of 'state' significance. This 'streamlining' overlooks the fundamental principle in the Burra Charter wherein the process of determining heritage significance before deciding on appropriate change or management should apply irrespective of the level of significance, although the complexity of the process will vary accordingly. Just because an item can be 'categorised' as 'iconic', 'exceptional' or a 'landscape' does not mean it can be standardised.

The Discussion Paper provides no information about how the approval process for works applications will differ across the proposed multi-category SHR, although it is assumed that there will be less regulation for items listed on the lower categories. This could lead to unacceptable heritage outcomes, especially for lesser significance items subject to high impact works. There are already fast track processes in place for minor works (eg S57 Exemptions), and these could be developed further to avoid unnecessary process and delay.

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

The Heritage Permit Process

The Discussion Paper presents heritage as ‘frozen in time’ and subject to ‘mothballing’ by ‘onerous processes’. This is a long-outdated stereotype and inaccurate. Today heritage is about managing change sensitively and respectfully. There are few examples of heritage items that have not been adapted. Where they may be considered to ‘frozen’ in time, is often due to insufficient resourcing. Current processes do not inhibit change, in fact one of the core objects of the Heritage Act is to ‘encourage the adaptive reuse of items’. The issues outlined where some owners of heritage items find the permit system confusing can simply be addressed by clearer guidelines and provision of pre-DA advice. That is the NSW Government putting the ‘customer’ first. While this has changed in recent times, and some improvements have been made to resourcing, there was an extended period where there was no pre-DA advice provided by the Heritage NSW. We were repeatedly advised that Heritage NSW officers would only engage with applicants where there had been a reported breach. Officers were not permitted to provide pre DA advice to applicants because of the risk that the advice would later be relied upon and the Heritage Council would not necessarily support the officer or arrive at the same decision.

A ‘yes if’ approach assumes that there are consistent standards of assessment documentation and that the significance of an item and all its assessed values have been considered independently and objectively when change is proposed.

Making the Minister responsible for determining regulatory thresholds will not in and of itself streamline the process. There is already significant flexibility in the system through standard and site specific exemptions, fast track approvals.

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

Heritage within the Planning System

There needs to be better integration of heritage conservation and management into the planning system and planning legislation. It is only in recent years that the EP&A Act 1979 acknowledged built and cultural heritage and Aboriginal heritage in the objects of the Act.

The Register of the National Estate, and the subsequent drafting of the *Heritage Act 1977*, were reactions to planning decisions that for the most part ignored the significance of existing places and the communities who lived there. Planning in NSW continues to regard heritage conservation as a low order matter for consideration. This often creates issues downstream, particularly where heritage emerges later in the approval process as an issue of concern. Planners need to be better educated about the heritage system and the issues heritage professionals face in conserving significant sites and places, as well as how development can impact significant sites.

The land use planning system in NSW regulates growth and development. Planning internationally has moved away from a strict land-use planning system towards a more strategic approach that better incorporates heritage conservation, environmental planning, sustainability, and social planning. The introduction of the Heritage Management System has created further separation between planning and heritage. The NSW Planning Portal is currently used to process development applications. The Heritage Management System will be used to process Section 60 approvals, Section 140 excavation permits and other approvals. A single system that incorporates online assessments for planning, heritage, archaeology and development certificates would provide clarity and promote awareness of planning as an integrated system working alongside each other and for the public.

A dilution of heritage management and controls will not provide an easier way forward planning and development. Heritage places in NSW are underutilised resources that could provide further economic growth for NSW. Knowledge about heritage management and investment into heritage conservation (and tourism) will improve the relationship between planning and heritage in NSW. Heritage sites provide a creative challenge, they are not an impediment to growth.

State Significant Development

The State Significant Development (SSD) approval process, where the approval role of the Heritage Council is switched off, has not given rise to the conservation of the State's significant heritage. Since the introduction of the SSD provisions the number of SSD applications has increased significantly (Figure 7.0). The process has given rise to unacceptable heritage impacts. Heritage matters are frequently not adequately or comprehensively considered until the proposed redevelopment is at the final approval stage. The Discussion Paper omits SSD altogether. The use of SSD to avoid heritage input at an early stage of the project planning is not considered acceptable and should not continue.

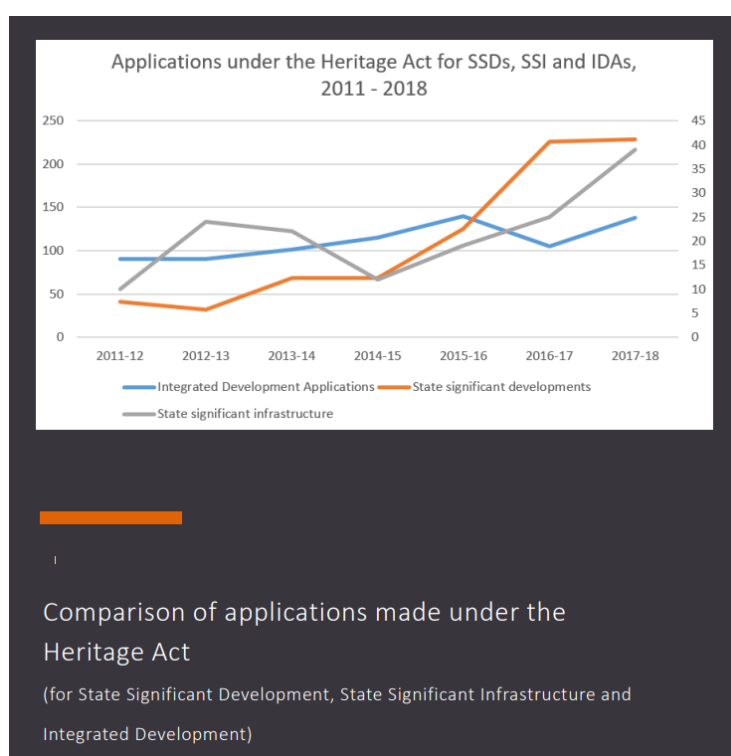


Figure 7.0 Number of SSD, SSI and IDAs from 2011-2018 (Source: NSW National Trust)

The use of the SSD and the SSD approval process is regarded as inappropriate where public heritage assets are concerned, including the Chief Secretary's building, Art Gallery of NSW, Central Railway, the Education Department Building or the Chief Secretary's Building are concerned. Where the government is both the proponent and regulatory it is especially concerning. There have been several instances where existing height and FSR controls have been amended to permit development without the appropriate regard to heritage matters. In the words of E. G. Whitlam, the NSW government needs to see itself as the curator rather than the liquidator of the State's heritage assets and ensure these places are respected and conserved.

NSW Government needs to make more provocative decisions and shake off timid avoidance. They need to act in the best interests of the people of NSW and to ensure strategically they are conserving and protecting heritage for current and future generations.

RECOMMENDATIONS

- Establish an independent expert Heritage Council and delegate determination to them, supported adequate resourcing and relevant capability within Heritage NSW.
- Delegate authority to NSW Government agencies and local government that consistently demonstrate 'best practice heritage principles, practise and processes. This would speed up the approval process for individual items.
- Review and reform SSD provisions to ensure heritage approvals are required.
- Adequate resourcing to Heritage NSW is required to support and sound strategy and to develop improved levels of customer service and understanding of heritage as part of the land use planning system.
- There should be greater delegation within strict guidelines to local government for dealing with works applications for SHR items. This increased delegation must be supported by allocating increased resourcing to local governments, including heritage advisors, training, workshops etc.

Heritage Promotion & Engagement

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

Community outreach and education are critical to promote the understanding of and encourage the conservation of the State's heritage.

A community outreach and marketing strategy for NSW Heritage needs to be developed.

A schools education kit should be developed to ensure understanding of heritage and its conservation is part of a vibrant, engaging primary and secondary school curriculum.

The annual heritage seminar should be expanded to include a series of public events and forums for the community to participate in heritage planning and conservation at state level. This would help build understanding and knowledge about State listing and its statutory implications.

Presenting interesting content and stories about SHR listed items through immersive visual essays, or podcasts etc would also help grow the understanding and appreciation and enjoyment of the State's heritage. Heritage NSW could also promote the listings at the end of each year with a special event.

It is important to also ensure that promotion and engagement recognises the community of NSW is diverse. This diversity needs to be acknowledged and respected as part of any promotion and engagement strategy. Sensitivities and cultural protocols will need to be understood, and it needs to be noted that listed Aboriginal heritage places may give rise to pain and grief for First Nations people.

Periodically surveying the community of NSW, has, in the past, revealed important information about how people define heritage and the level of understanding of the state's heritage. We consider integrating cultural heritage into existing government reporting such as the State of the Environment report, etc would be useful. This practice would help better direct resources and inform program and project design to support improved public understanding, appreciation and enjoyment of the State's heritage.

RECOMMENDATIONS

- Develop a community outreach and marketing strategy for NSW Heritage that is inclusive and recognises difference and diversity.
- Update schools' educational resources to encourage and support the growth in understanding of the state's heritage.
- Conduct periodic surveys of the community of NSW to inform the design of programs and projects to support improved understanding, appreciation, and enjoyment of the State's heritage.

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

In Australia we have long relied on our unique natural environment to provide a distinctive tourism offer. Cultural tourism has been less successful, with few exceptions.

Other countries are much better at promoting their cultural heritage than Australia. We need to strengthen cultural tourism and have an 'honest reckoning' with our history to develop a rich and meaningful cultural tourism industry through our heritage places. Yet our cultural heritage is underappreciated and undervalued. On the one hand the government wants to develop the visitor economy and understands that most visitors

engage in cultural activities, yet the investment in the development of cultural tourism experiences that speak to our history and heritage is not well understood or provided for. Beyond The Rocks, the Harbour Bridge and the Sydney Opera House there is a significant paucity of heritage destinations in Sydney. Many of our most significant historic buildings have been unimaginatively repurposed as hotels diminishing our ability to tell a distinctive story and to provide a more nuanced and special visitor experience.

In Sydney and NSW more broadly, the various agencies struggle to 'join the dots' when it comes to heritage, tourism and experiences. Planning is doing places and precincts, cultural institutions are doing exhibitions and programs, Destination NSW is doing events and tourism campaigns. We all know about wine, outback, Sydney icons, key precincts such as The Rocks, Darling Harbour, Chinatown, Parramatta, Barangaroo, Paddington, but essentially these experiences and places are not well ground in relevant or meaningful public history and storytelling, nor are they integrated into the work of government agencies with heritage assets. There appears little connection to the work of Heritage NSW and limited incentives to support development and growth in this area. Aboriginal history and heritage are something that locals and visitors alike want to understand and learn more about through visitation. Yet the tourism offer in this area is not well developed.

RECOMMENDATIONS

- Undertake rigorous and robust research to understand the strengths and weaknesses of the current cultural heritage tourism offer.
- Bring diverse stakeholders together to develop a holistic and integrated strategy or action plan for heritage tourism that includes a unique and compelling values proposition, accompanied by key objectives, policy, and delivery mechanisms to establish Sydney and more broadly NSW as a sophisticated, captivating and desirable destination.
- Look to other global cities to design digital solutions to better understand and influence visitors to visit certain cultural heritage destinations.
- Ensure the visitor economy for cultural heritage tourism is designed to revitalise areas of the city and life in the community.

Publicly Owned Heritage

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

Activation is an end game—a management response that comes having considered a range of matters. This focus question overlooks several pressing concerns with the identification, management, and conservation of publicly owned heritage in NSW.

Best practice conservation approaches that the public expect of private entities have not been demonstrated by government in recent years. Increasingly, the government is seen as a liquidator rather than a curator.⁸ The ‘churn’ in the NSW public sector and the reduction in number of technical specialists with heritage expertise has exacerbated this issue. Instead of considering heritage buildings as property for sale, or a financial or maintenance liability, the government needs to think more creatively and work more with and for the community. We need to give genuine life to the notion of participatory planning. While asset recycling demonstrates some short term economic and social benefits, there are significant longer term ‘opportunity costs’ and consequences where the ‘non-value’ criteria of culture and heritage has not considered. For example, the Bridge Street sandstones, including the Education and the Lands Department buildings being sold for luxury hotels is a lost opportunity. These buildings are profoundly symbolic and represent some of the most important pillars of the nation’s identity and society. Land is at the heart of this country, and a profoundly important subject that strikes at the very heart of nationhood. The Lands building could have been repurposed as a Museum, or Gallery of Country and Land. It could have been the place that Sydneysiders, Australians and overseas visitors went to hear and learn about our deep time stories and see our extraordinarily diverse representations and perspectives on Country and Land through time. Instead of additions to the Australian Museum, the MCA and AGNSW, we could have asked our cultural institutions to come together to enliven and activate the Lands building with programs and exhibitions that showed us all how we have perceived and created meanings and stories in Country and land. We could have had a place to have an ‘honest reckoning’. We would have had a place to inspire a deeper conversation about sovereignty and nationhood.

First and foremost, the NSW Government needs to properly resource and administer the Section 170 Heritage and Conservation Register requirements in the Heritage Act and follow the government’s own heritage management principles. The administration of the Section 170 Heritage and Conservation Register provisions under the Heritage Act has largely lapsed. Alongside this, the standard of conservation and maintenance for publicly owned heritage items has declined appreciably. While some agencies are proactive, this is the exception rather than the rule. The State Agency Heritage Guide, including the principles and guidelines that outline ‘best practice’ with respect to heritage asset management have all but been forgotten. Many agencies have not maintained their S170 lists and do not implement the government’s own heritage management guidelines when making decisions about heritage assets.

The State government needs to compel its public sector agencies to work more collaboratively with regard to heritage assets. Agencies are often working at cross purposes to deliver to various government priorities that can result in sub-optimal social and cultural outcomes for attached communities, for heritage places and our city. Beyond merely cashing in and transferring the ‘liability’ for the maintenance and conservation

⁸ E.G. Whitlam, 1970, [The Australian Government] should see itself as the curator and not the liquidator of the national estate’, in the frontispiece to the *Report of the National Estate*, Australian Government Publishing Service, Canberra, 1974, G. W. Green Printers, Melbourne, Commonwealth of Australia, 1974.

of heritage buildings to the private sector, vision, creativity, and strategy, beyond mere economics, is required.

There is lack of leadership and overarching strategy regarding state owned heritage assets. The State agencies activities where they manage significant heritage assets needs to be contextualised by a broader strategic consideration about the role that the State's heritage can play in our understanding our history and heritage, and in the cultural experience of the city. Instead, it is an ad hoc agency by agency, or project by project approach that tends to be simulated by a particular interest or expectation.

RECOMMENDATIONS

- Review heritage asset management resourcing and capability in government agencies to ensure it adequately reflects requirements and responsibilities.
- Develop a state-wide strategy for government heritage assets to ensure improved outcomes for the conservation of our history and heritage.
- Undertake a community needs analysis and activate historic public assets through 'matching' with community needs thereby ensuring enduring stewardship.

Other Matters

Relics

Local and State significant relics (historical archaeology) are afforded blanket protection under the Heritage Act. The practice of historical archaeology is subject to the Historical Archaeology Code of Practice, 2006, Excavation Director Criteria 2019, and other standards, guidelines and policy including:

- Assessing Significance of Historical Archaeological Sites and Relics, 2009
- Guidelines for Archaeological Management Plans, 2009
- Archaeological Assessments, 1996
- Historical Archaeological Sites: Investigation and Conservation Guidelines, 1993

Where development is concerned and may be likely to disturb significant State or local historical archaeology under the Heritage applications and permits are requirements. Depending on the circumstances, applications are required to be submitted accompanied by varying forms of supporting documentation. This may include an archaeological management plan, an archaeological assessment, an archaeological research design, and/or a statement of heritage impact,

Some archaeological excavations yield thousands of relics. Some large scale urban archaeological excavations have yielded over one million artefacts. These relics are each individually excavated according to the code, informed by the research design and processed by archaeologists on behalf of the proponent/owner. Following onsite excavation, the relics, comprised of glass, ceramic, bone, metal, timber, fabric, etc are each cleaned, carefully labelled, bagged, boxed and subject to detailed post excavation analysis. This process involves many different types of archaeological expertise and takes frequently more than one year to finalise following the conclusion of the onsite excavation. Ownership of the relics is vested in the site owner.

Depending on the nature and scale of the development and the excavation the material excavated can run to tens of metres of lineal shelf space that is required to be archivally boxed, conserved, and stored in perpetuity by the owner. In our experience, very few private owners, or public owners, understand how to maintain, conserve and interpret historical archaeological collections. In some instances, for various reasons the owner or the entity that is the rightful owner of the relics no longer exists and effectively the locally or state significant relics are rendered 'stateless'.

Throughout NSW there are innumerable 'stateless' archaeological collections. Currently these collections are in the care of archaeologists or held by consulting companies by virtue of the fact that they were the original archaeologists on the project. There is presently no statutory mechanism or guideline that custodians of these 'stateless' collections can use to divest themselves of these relics. We think that this is a significant area for potential reform. Where there are significant archaeological resources likely to be uncovered during development works, there should be provision for developer contributions or levies for the long term care control and management of any resultant archaeological collection. At the conclusion of the post excavation reporting on the collection, the relics could be provided to State or local government repositories for ongoing conservation, management, and interpretation. The developer's levy could be a percentage of the total cost of the development or calculated based on the volume of material excavated and the lineal metres of shelf space required for the collection's ongoing secure storage. The archaeological collections of State significance could be held in a single repository and consideration could be given to the creation of State Museum of Archaeology. For collections that are currently held in private ownership or that are otherwise 'stateless' and amnesty could be offered for period to allow the 'return' of the relics to the State.

RECOMMENDATIONS

- Conduct a review of the State's collections of relics. Call for submissions from those who have been involved in the excavation of the state's archaeological resources to understand the various dimensions of the situation. Review provisions in other States and territories, including Victoria, to inform the review.
- Review and reform the provisions of the Heritage Act 1977 to ensure that relics are afforded protection following excavation and that there are provisions requiring applicants to contribute to the ongoing secure storage of relics in a centralised public repository.
- Consider establishing a Museum of Archaeology focussed on research, conservation, management, and public presentation of the State's significant historical archaeological collections.