

**Submission
No 97**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Ms Kate Clark

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Review of NSW Heritage Legislation Standing Committee on Social Issues April 2021

Overview

The Standing Committee on Social Issues are to be congratulated for taking this opportunity to look again at heritage and the things that does for NSW.

NSW is already doing great things with heritage in [parks and open spaces](#). The recent [architectural awards](#) show that we are in the lead on the creative design and adaptive reuse of older buildings including industrial structures. These two initiatives show how heritage is about great places and good design. It is not about stopping change.

But heritage does so much more for NSW:

- our most outstanding heritage, such as the World Heritage listed Sydney Opera House - showcase our state on a global stage.
- Parliament House – the public face of the NSW State Government – and so many historic schools, court buildings, police stations and churches – continue to provide important services to the people of NSW
- looking after heritage puts more into the economy than new building because it protects the jobs of local tradies
- the adaptive reuse and continued use of older buildings can help reduce greenhouse gas emissions and is better for the environment

Here are five big ideas to make the system fairer and simpler, and better for NSW, and to build on the trust that communities place in Ministers and the State Government to protect what matters:

1. **NSW deserves great places** – NSW is in the lead on great places – now show how heritage can contribute by building a stronger link between heritage and the NSW governments place making principles. Heritage legislation does not stop development - but it does make it harder to get away with poor quality new design. Don't switch off the heritage legislation for State Significant Development - use it to drive up standards of design. Tailor LEPs to care for what matters to communities today.
2. **Discover your State** – ask Visit NSW to create a vibrant new heritage tourism strategy to support rural and regional businesses and encourage more people to take a staycation exploring the rich and diverse heritage of NSW.
3. **Remind everyone that older is greener** - give double Green Star Ratings to developments that repair and refurbish older buildings to high standards, benefiting the environment and creating more jobs for local tradies.
4. **Reward people who do the right thing**– introduce tax exemptions for people who look after their historic buildings . Fine people and business who rort the system by deliberately neglecting heritage buildings. Don't reward people and businesses who pay much for a heritage building then expect to recover their costs by over-development.
5. **Capture the economic value of heritage in cost benefit appraisal** – there is more and more evidence that looking after heritage is good for the economy, good for communities and good for the environment. Let's add the economic value of heritage into strategic government cost benefit appraisal and decision making across the board.

This response is based on experience in museums and heritage leadership in the public, private and voluntary sector in Australia and internationally. This includes overseeing the Endangered

Houses Fund, advising NSW State Government on the disposal of heritage assets and as a member of the Australian Heritage Council.

FOCUS QUESTION RESPONSES

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

Appoint the best people with a wide range of skills who are prepared to be the public face of heritage to the people of NSW.

Reason: The NSW Heritage Council are the public face of NSW heritage, and the communities of NSW trust them to care for what is important. The Council needs a wide range of skills — but the most important thing is that they are able to represent the people of NSW as voices for heritage. There are many powerful advocates for development – the Heritage Council are an important voice for the people of NSW.

Focus question 2: How should Aboriginal Cultural Heritage be acknowledged and considered with the act?

Implement the current strategic plan to reform the protection of Aboriginal cultural heritage. Then make any changes to the Act if needed.

Reason: The committee has rightly identified the need for reform. The Heritage Council has a strategic plan for what needs to be done. Sort out those reforms and then look at whether changes are needed to the Heritage Act or not - otherwise there is a risk of creating more red tape doing all of this twice.

Focus question 3: Are the objectives of the heritage act still relevant?

Keep the current objectives but strengthen or reintroduce measures to protect places in line with NSW Government leadership on place-making.

Reason: The act was written at a time when there was huge development pressure. National Trust data shows that those development pressures are even higher today. Therefore the objectives are still relevant today. The Act does not stop development – it simply asks us to pause and think carefully.

However we do need to strengthen the commitment to places and to setting. The biggest issues in heritage protection across the world is not the loss of individual buildings, but the erosion of the quality of places where we live. In order to make sure that the towns, cities and places of NSW remain great places to live we need proper protection for places, to ensure that new development of a sufficient quality to respect their character and what makes them special. As noted, NSW already has great initiatives around the value and quality of public places – now let's show how good heritage protection can play a vital role in great public places.

Focus question 4: Does the act adequately reflect the expectations of the contemporary NSW community?

Don't add extra red tape – instead update the guidance so that the act is applied fairly and reflects the expectations of the contemporary NSW community.

Reason: The 1977 Act effectively promised the people of NSW that their heritage was safe. That is still important. But the real concern is that the act is not being applied fairly. Developers and communities need to be sure that the Act is being applied in a clear and transparent matter, and that there is not one set of rules for some, and another for ordinary people. Updating the guidance is more urgent than reforming the act.

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

1. **Expand the Endangered Houses Fund** – a revolving capital fund that will enable not-for-profit organisations to rescue buildings at risk
2. **Make more use of conservation areas to protect private investment in heritage buildings** - buildings in conservation areas can attract premium prices - make sure legislation strengthens those protections through protecting places and conservation schemes.
3. **Don't subsidise developers who pay too much for older buildings** – NSW State government should not offer grants to the owners of historic buildings within 5 years of purchase. One of the biggest causes of buildings at risk is owners who pay too much for a buildings and then have unrealistic expectations of the development potential of the site and then expect either subsidy or additional development on site. This can divert support away from people who are doing the right thing.

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

1. **Stamp Duty** - Extend the Stamp Duty holiday for first time owners to existing buildings so more people can afford older buildings
2. **Reward good maintenance** - Give tax breaks to people who do the right thing by maintaining their buildings to high standards

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

1. **Older is greener** - Give double green stars (gold stars) for great conversions of older buildings because they are more energy efficient
2. **Protect people's investment** in older buildings through strong policies to protect the settings of older buildings

Focus question 8: How could tailored heritage protections enhance heritage conservation? *Don't create added layers of bureaucracy by introducing new layers of protection*

Reason: Currently the UK has a graded system for listing – in addition to multiple other tailored heritage protections. The graded system for listing has historically been used mainly to narrow down the range of buildings that might be eligible for grant aid. Today it simply used to give additional weight to some buildings in planning decisions.

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

Do not add a separate category for residential properties – instead provide clearer policy guidance for the owners of residential buildings that are listed

Reason: Other countries are moving to simplify the system not create separate categories. In the UK there is separate legislation. Monuments are currently Scheduled as Ancient Monuments under the 1979 Act, buildings are listed under planning legislation. Wales and England want to simplify this. Again providing clearer guidance would be a simpler approach that creates less red tape.

Focus question 10: would greater community engagement deliver a more robust state heritage register?

Further community engagement across the heritage system is welcome not just in listing but in caring for places.

Reason: NSW is leading the way in showing how communities can play a key role in looking after public places. There is new guidance from Aboriginal communities about how to include the qualities that make places special, in thinking about place making. Increasing community engagement in how we identify places that matter, and then manage them to care for what people value, is essential.

Focus question 11: would streamlining enhance the listing process?

Often attempts to simplify things end up accidentally creating more red tape. And rules can't replace people. Simply ensure that the Heritage Council has enough skilled people to respond to community requests.

Focus question 12: how could we improve the current approval permit system

Publish good robust guidance that makes sure that developers and applicants provide the right information, and that advisors make the right decisions.

Reason: Developers, private owners and others all have a reasonable expectation that the State government will deal fairly and rapidly with their applications. Ensuring that the Heritage Council has the staff and skills to respond to the needs of everyone, and ensuring that there is clarity and fairness is the best way to achieve this.

Focus question 13: are the current determinations criteria for heritage permits still appropriate?

The committee is right to identify this. The Heritage Council should be asked to review the guidance to make sure it is fit for the modern world.

Focus question 14: how could we improve heritage consideration within land use planning systems?

Yes – don't switch of heritage considerations for State Significant Development, and allow LGAs to tailor their LEPs to reflect what makes their area special. Both will lead to better design and better development.

Reason: The committee is right to identify this as a critical issue and proposals to improve heritage considerations are welcome. Ideas might include allowing LGAs to tailor their local plans to respect their local heritage and reflecting heritage issues and protection in planning policy at all levels.

Focus question 15: are there opportunities to enhance consideration of heritage at the strategic level?

Yes – ensure that the value of heritage is captured effectively in strategic investment decisions (as well as strategic planning decisions) in order to ensure that NSW maximises the social, economic and environmental benefits of looking after places.

Reason: There is a growing body of evidence for the social, economic and environmental benefits of caring for heritage. For example, keeping older buildings supports local jobs and local tradies. It also contributes to the environment by reducing the need for steel and concrete. Older neighbourhoods are often good for our health, good for our economy and good for communities. Cost benefit appraisals often overlook the wider economic benefits of heritage. There is a good case for the Committee to do further investigation into how heritage can play a role in economic appraisal.

Focus question 16: how could heritage compliance and enforcement be improved?

1. **Don't punish people who do the right thing** - don't let mortgage and insurance companies make it harder for people who want to buy older and care for buildings
2. **But do punish people who do the wrong thing** - include powers to fine people and businesses who deliberately neglect historic buildings

3. **Keep the system fair by operating it efficiently** – ensure the Heritage Council has sufficient staff to follow up on compliance and enforcement – as well as to provide incentives for people who do the right thing.

Focus question 17: how could understanding of state heritage be enhanced?

Improve the web site and social media presence of the NSW Heritage Council

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

Create a NSW Heritage Visitor Economy Plan and ensure that heritage businesses are eligible for support under tourism packages. The plan should include an events and activation proposals.

Reason: As a result of Covid more people are taking a ‘Staycation’ in NSW. This has been a brilliant opportunity for many people to discover the NSW they never knew – seeking out local towns heritage sites and places. Covid has also shown how important the hospitality sector is to the economy. Let’s ask Visit NSW to create a modern tourism strategy for heritage that includes great ideas for activating heritage.

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

Use NSW Asset Management principles to ensure that government departments are showing leadership by activating, maintaining and using public heritage buildings to meet the needs of local communities.

Reason: Public heritage buildings play a vital role in delivering services to the people of NSW – from much loved local school buildings to global icons such as the Opera House, to major ceremonial buildings such as Parliament House and Government House.

NSW Government is in an excellent position to show leadership in public heritage buildings. NSW Asset Management principles can be used to ensure that government departments are effectively showing leadership by managing and maintaining existing public buildings and by stopping poor disposal strategies for public buildings, that simply create buildings at risk further down the line.

Kate Clark
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