

**Submission
No 102**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Planning Institute of Australia

Date Received: 2 July 2021

2 July 2021

The Hon. Peter Poulos MLC
Chair, Standing Committee on Social Issues
NSW Parliament

Via email: Committee.SocialIssues@parliament.nsw.gov.au

Dear Chair,

Planning Institute of Australia Submission - Review of the Heritage Act 1977

Thank you for the 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).

The Planning Institute of Australia (PIA) NSW Division has convened a working group of expert members to develop the recommendations contained within this submission.

PIA supports efforts to ensure that the NSW heritage system operates effectively to protect and enhance our state's unique heritage. However, a wholesale review of the Act is not required, and instead targeted legislative and non-legislative reform is sufficient to improve heritage processes while retaining the important existing elements of the NSW heritage system.

PIA has considered the terms of reference of this Inquiry and structured a detailed submission in response, provided at **Appendix A**.

The major issues and recommendations of our submission are outlined below:

- The addition of **new listing categories** is not supported and is likely to add complication without improving heritage outcomes.
- A one-size-fits-all approach to management via **asset class exemptions** for Category 3 items should not be pursued as it would undermine the management of some of the state's most significant heritage items.
- A consistent administrative process should be implemented for **site-specific exemptions** to ensure regular review and update.

- Improvements to **Heritage Council** nominations should be pursued to ensure a regular diversity of skills.
- Slated **Aboriginal cultural heritage reforms** should be pursued as a priority.
- A **State Heritage Strategy** should be created to guide future listing priorities on the State Heritage Register.
- A fully resourced **heritage compliance team** should be created within Heritage NSW.
- A range of processes which should be **streamlined and improved**, including s 57 and s 60.
- Work with local government and state agencies to identify strategic opportunities for publicly owned state heritage listed sites in **local and regional planning processes**.

We would be pleased to expand on this submission at any time and can be contacted

Yours sincerely

Audrey Marsh
Senior Policy and Campaigns Officer

Appendix A: Detailed Submission

Term of Reference A: The need for legislative change to deliver a heritage system that is modern, effective and reflects best practice heritage conservation, activation and celebration.

Term of Reference B: The adequacy of the Act in meeting the needs of customers and the community and the protection of heritage.

The objects of the Act should be strengthened

PIA believe that objects of the Act remain relevant, however s3(b) of the Act should be strengthened. Currently this object reads: *"The objects of this Act are as follows ... (b) to encourage the conservation of the State's heritage"*. This object should be strengthened and reflect the wording of the Long Title of the Act: *"An Act to conserve the environmental heritage of the State."* This object should also be listed as the first object of the Act at s3(a). The objects of the Act could be further reviewed following the development of a State Heritage Strategy.

Recommendation

Amend s3(b) of the Act to read *"to ~~encourage the conservation of~~ **conserve** the State's heritage"* and elevate this object to s3(a).

Aboriginal culture heritage reforms should be prioritised

PIA has strongly supported the direction of Aboriginal cultural heritage (ACH) reforms. Detailed comments from PIA on the ACH reforms can be found [here](#). PIA understands that there has been little progress on the Aboriginal Cultural Heritage Bill 2018 and recommends that relevant stakeholders be reengaged on this policy process as a matter of priority.

Recommendation

Reengage relevant stakeholders on the Aboriginal Cultural Heritage Bill 2018 and associated policy processes as a matter of priority.

The Heritage Council should have a greater range of skills

PIA strongly supports the role of the Heritage Council NSW as an advisory body on state heritage matters. The Heritage Council should always include a balance of skills to provide the most robust advice regarding the state's heritage. Improvements could be made to the member appointment process to ensure a wider range of skills are represented on the Council.

Currently, the Act identifies 14 skills under s 8(3) that five of the Heritage Council members must possess. Presently, there is no need for all these skills to be represented on the Heritage Council. PIA believes that a model, similar to the constitution of the Heritage Council of Victoria, should be pursued. Namely, that the number of listed skills in the Act be consolidated and that a member should be appointed who has expertise in each of these areas. The language of the *Heritage Act 2017 (Vic)* s 10(2) could be used as a model.

Skills that could form part of this consolidated list include the management of heritage places, Aboriginal heritage (addressing s 8(3A) of the Act), urban and regional planning, archaeology, architectural conservation or history, engineering and building construction, law (heritage, planning or property), financial management or property economics and history. PIA supports the ongoing appointment of the Secretary of the Department of Planning, Industry and Environment and the nominated members from the National Trust of Australia.

Greater transparency in the nomination process would also improve the standing of the Heritage Council within the community, and the open nomination process used by the Government Architect NSW in establishing the State Design Review Panel could be used as a model.

Recommendation

Improve the nomination process of the Heritage Council by:

- Consolidating the list of required skills under s8(3).
- Mandating that a person must be appointed who satisfies each of these skills.
- Improving transparency in the appointment process.

The State Heritage Register should be more diverse and contemporary

The State Heritage Register (SHR) does not currently reflect the diversity of NSW's community or heritage. There is a need to review the SHR itself to better reflect the contemporary NSW community - particularly places of heritage significance relating to migrant communities, Indigenous communities, women and other social groups. Additionally, NSW lags behind other states and territories in the volume of state heritage listings (potentially due to the relative lack of contemporary listings), risking places of state heritage significance being unrecognised and appropriate protection not ensured.

A State Heritage Strategy should be pursued to identify gaps in state heritage items and improve strategic approaches to listing by instituting a thematic listing program, for instance places of significance for migrant communities, Indigenous communities or women. This approach would both allow proactive listings to be sought out by Heritage NSW which meet identified gaps in the SHR and provide some guidance for community groups looking to list items in their local communities. The quality of community nominations should also be improved by updating tools, guidance and standards available to individuals seeking to nominate items.

Recommendation

Develop a State Heritage Strategy to identify gaps in the SHR, improve strategic approaches to listing and institute a thematic listing program.

Recommendation

Improve tools, guidance and criteria available to community members seeking to nominate items for listing.

The information contained within the State Heritage Register should also be displayed in a more engaging manner – with more detailed and interactive mapping which includes identifying heritage sites and describing key heritage values.

Recommendation

Modernise SHR mapping to ensure it is easy to interpret and access.

Term of Reference C: How the Act could more effectively intersect with related legislation, such as heritage elements of the *Environmental Planning and Assessment Act 1979* and the *National Parks and Wildlife Act 1974*

As legislative reform proposals are pursued, the following legislative interfaces require attention:

- The ACH reform intersection with the *National Parks and Wildlife Act 1974* should be considered as a priority.
- The Act's intersection with the *Environmental Planning and Assessment Act 1979* (EP&A Act) should be considered in full following EP&A Act updates.
- The intersection between state significant development assessment and state heritage considerations.
- The intersection between heritage processes and the *Local Government Act 1993*.

Term of Reference D: The issues raised and focus questions posed in the Government's Discussion Paper

The new category approach adds unnecessary complexity

PIA understands that current listing system is sufficiently flexible to deal with items with complex management systems, although improvements could be made. The proposal outlined in the Government's Discussion Paper adds additional layers of complexity and seems contrary to the stated aims of streamlining processes. PIA's expert members have advised that the listing process is currently working well, criteria are appropriate, and the addition of new categories is likely to only complicate existing processes without better conserving the state's heritage.

Recommendation

The addition of new categories should not be pursued as it is likely to create additional complexity in the heritage system without improving conservation outcomes.

In particular, PIA does not support the one-size-fits-all approach recommended for the proposed Category 3 items. Asset class exemptions based on typology will see unique heritage items lose specific attributes and significant features without appropriate consideration and should not be pursued. Items of state heritage significance cannot be separated from the site, context and place which defines their significance. Article 6.2 of the Burra Charter states: "Policy for managing a place must be based on an understanding of its cultural significance." The introduction of blanket asset class exemptions, which separate understandings of place and cultural significance would not accord with this principle.

It is noted, for instance, that train stations are identified as a standard heritage items in the Government's Discussion Paper. It would be a poor policy outcome for every state heritage listed train station in NSW to have blanket exemptions placed on their management, given the unique attributes of each site, unique management requirements and different contextual settings.

Items of state significance are identified as such due to their unique heritage value and conservation requirements. It is appropriate that items of this significant heritage value be given the attention required to ensure their ongoing conservation. The creation of blanket asset class exemptions will undermine the attention required in the management of NSW's most significant heritage items.

Recommendation

Asset class exemptions should not be pursued as this process will see significant heritage items treated with a one-size-fits-all approach and state heritage significance undermined.

Site specific exemption processes work well to remove regulatory burdens where appropriate, while recognising the unique characteristics of a site. The site-specific exemption process should be refined to improve administration and interpretation. Regular review and updates of exemptions should be required to ensure that development assessment officers and others are supported in understanding the exemptions and their application.

Recommendation

A consistent administrative process should be implemented for site-specific exemptions to ensure regular review and update.

Incentives which facilitate preservation, protection and conservation should be pursued

PIA notes that there are several national and international models for financial incentives for heritage ownership and management, but any that is pursued in NSW must not just be a bonus or compensation for ownership, but a genuine way to preserve, protect and conserve.

The Standard Instrument Local Environment Plan currently includes the following conservation incentives provision at Cl. 5.10(10):

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

A similar provision could be included in the Act to facilitate alternative assessment pathways where development is for the conservation of a heritage item.

Heritage ownership would be improved by well-resourced government advice service with consistent advice and the ability to demonstrate and promote best practice conservation.

Recommendation

Non-financial incentives to facilitate heritage conservation should be pursued including the creation of a well-resourced government advice service for owners and tailored development assessment pathways in appropriate circumstances.

Heritage compliance and enforcement must be resourced

The key issue for compliance and enforcement of heritage provisions is the poor resourcing of Heritage NSW to undertake this function. Heritage NSW require a fully resourced heritage compliance team. Currently this work is being undertaken by technical staff (taking them away from their critical functions) or other agencies like the Environmental Protection Authority (who have a range of demanding functions).

Recommendation

A fully resourced heritage compliance team should be created within Heritage NSW.

The penalty for heritage offences under s 157 of the Act is currently a penalty not exceeding 10,000 penalty units or imprisonment for a period not exceeding 6 months, or both. This is a very significant penalty with no gradation (aside from a separate penalty for offences against the regulation). A graded penalty system should be pursued to clarify and strengthen the enforcement of the Act.

Recommendation

A graded penalty system should be created under s 157 of the Act to clarify and strengthen enforcement.

There are a range of processes which should be streamlined and improved

Section 60 Approvals

Major works (or standard) s 60 approvals are required for activities or works on a state heritage item that would have a moderate or greater impact on heritage significance. Heritage NSW officers should have the ability to require sufficient information to be submitted for s 60 in a manner similar to, and consistent with, the *Environmental Planning and Assessment Regulation 2000* (Cl. 51, 54 & 109). Section 60 applications following approval of an Integrated Development Application (IDA) are critical in ensuring the General Terms of Approval are adhered to and must continue to be approved by Heritage NSW. The following recommendations are made for improvement:

- Include “stop the clock” provisions where additional information is needed.
- There should be an initial check of the sufficiency of provided information.

- Applications without sufficient information should be able to be rejected.
- Section 60 after IDA applications should be retained.

Recommendation

Include initial completeness checks, application rejection, and stop the clock provisions for s 60 approvals.

Section 57 Processes

Under s 57 there are many works on state heritage items which are, as of 1 December 2020, not notifiable. The General Conditions for Standard Exemptions require that: "Proponents must keep records of any activities/works for auditing and compliance purposes by the Heritage Council. Where advice of a suitably qualified and experienced professional has been sought, a record of that advice must be kept. Records must be kept in a current readable electronic file or hard copy for a reasonable time."

Currently there is no requirement for works that are undertaken via a standard exemption to be recorded with Heritage NSW so an assessment of cumulative impact via exempt change can be understood. The Planning Portal should be used to require exempt works to be undertaken on state heritage items to be registered with Heritage NSW. The Regulations should also be updated to detail more specifically when audits must occur and how records should be kept. The maintenance of a strong administrative records is critical to ensure that heritage places are conserved in the long term, particularly where different parties are involved in their ownership or management.

Recommendation

Include a process on the NSW Planning Portal to register exempt works on state heritage items and specify audit and recordkeeping processes in the Regulations.

Listing Amendments and Delisting

PIA recommends that attempts to streamline delisting be reconsidered, a streamlined delisting process impedes the opportunity for restoration, reconstruction or interpretation. While some listing amendments should be streamlined, for instance Lot and DP number amendments, curtilage amendments or subdivision updates, other listing amendments should be considered more thoroughly.

Recommendation

Allow streamlined listing amendments where errors of fact require rectification or simple updates are required. Delisting streamlining should not be pursued.

Term of Reference E: Any other matters

PIA would welcome a more strategic approach to considering the community value of state heritage in both local and regional planning processes. Local and regional plans set important visions for the community and align land use with infrastructure, open space and other community assets. A deeper consideration of the strategic value of publicly owned state heritage

assets in local and regional planning processes would provide opportunities for innovative uses, exemplar conservation projects and deeper community investment in their use.

Recommendation

Work with local government and state agencies to identify strategic opportunities for publicly owned state heritage listed sites in urban and regional locations and incorporate plans for their preservation, activation and conservation in local and regional planning processes.

Given the early phase of consultation, it is appropriate that ongoing proposals for reforms to the Act or associated policy be exhibited and deeper community engagement pursued throughout the policy development process.

Recommendation

Continue to exhibit and engage with the community as reform proposals to Act and associated policies develop.