

**Submission  
No 111**

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

**Organisation:** Hunters Hill Council

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# HUNTER'S HILL COUNCIL

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## **Review of the Heritage Act 1977**

### **Submission from Hunter's Hill Council to the Standing Committee on Social Issues**

The Hunters Hill local government area has a special character that is emphasised by the numerous and mature trees, its stone walls, natural landscape and foreshore, including heritage listed reserves and the numerous State and local heritage listed buildings. These features contribute to the attractiveness of the area; with its leafy streets, its water glimpses between its old buildings and its rock-lined foreshore walks. Council actively seeks to ensure that new development is sympathetic to the existing environment to maintain the character of Hunters Hill for present and future generations.

It is important that the Heritage Act continue to provide protection for the State's heritage and that it is not "watered-down". It is also important that any changes to the Heritage Act ensure that it provides for work to be undertaken in accordance with *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance, 2013*.

Responses below are made to the focus questions in the discussion paper prepared by Heritage NSW *Review of NSW Heritage Legislation. Discussion Paper. Standing committee on Social Issues, April 2021*.

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

The members of the Heritage Council should have professional heritage expertise at a high level, and preferably also specific heritage qualifications. Appointments to the Heritage Council should be made by a non-political body, and based on merit.

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

Aboriginal cultural heritage should be protected under an Act separate to the Heritage Act. NSW is the only state in Australia without stand-alone Aboriginal cultural heritage legislation. It is important that Aboriginal people have the authority to make decisions about Aboriginal cultural heritage. A draft model for new Aboriginal culture and heritage laws was released on 11 September 2017 and a consultation draft Bill on 23 February 2018. This matter should be progressed.

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

The discussion paper states that the high level Objects of the Heritage Act are:

(a) to promote an understanding of the State's heritage,

- (b) to encourage the conservation of the State's heritage,*
- (c) to provide for the identification and registration of items of State heritage significance,*
- (d) to provide for the interim protection of items of State heritage significance,*
- (e) to encourage the adaptive reuse of items of State heritage significance,*
- (f) to constitute the Heritage Council of New South Wales and confer on it functions relating to the State's heritage,*
- (g) to assist owners with the conservation of items of State heritage significance*

The objectives of the Act should be clearly stated at the start of the Act.

The primary objective must be to conserve the State's heritage. Having an Act that only "encourages" its conservation, would place the State's heritage at risk.

The objective "to encourage the adaptive reuse of items of State heritage significance" should be deleted as it emphasises only one aspect of conservation, thus potentially putting heritage places at risk of inappropriate work.

The objective "to assist owners with the conservation of items of State heritage significance" is strongly supported.

An objective of the Act should be to promote excellence in heritage conservation.

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

Hunters Hill Council has not undertaken research on this matter. However, the Hunters Hill community has told Council that they would like Council to focus on the preservation of heritage and character as a priority (refer the Hunters Hill Community Strategic Plan). Hunters Hill seeks to be a champion in heritage conservation, and to ensure that the heritage of Hunters Hill LGA is conserved. To meet the expectations of the community, the Heritage Act should likewise champion heritage conservation of the highest standard.

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

Comprehensive research should be undertaken by the State government on this matter. In addition, research should also investigate how the State's heritage can best be conserved. The limitation on only looking at activation and adaptive re-use skews the focus away from the range of conservation approaches available and has the potential to put heritage places at risk.

Support, financial as well as technical, for owners of heritage places is strongly encouraged.

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

This matter should be thoroughly researched.

The cost of private heritage ownership is also worthy of research as Council has no evidence that owning a heritage item is more expensive than owning a similar place which is not heritage listed.

There are other incentives than taxation incentives, some of which would provide employment opportunities. Other incentives which could be considered include: making applications to the Heritage Council work to heritage places free; and, providing free technical advice from relevant experts in Heritage NSW for the owners of private heritage places.

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

Council has not investigated this matter, however the utilisation of commercial and philanthropic investment for conservation should be thoroughly researched. The emphasis on “activation” is a concern as the use of a place should not take priority over the conservation of a place.

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

A category approach to heritage listings is not supported. It could lead to the de-valuing of places not in Category 1 and the loss of their heritage values, eg through inappropriate changes. All State heritage places should be rigorously managed to conserve their heritage values.

The introduction of categories would unnecessarily complicate the protection of the State’s heritage.

A better way to manage different types of heritage places is to prepare specific guidelines for the management and development of different types of places. The use of guidelines – such as development control plans - is commonly accepted, and so would be familiar to most.

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

There should not be a category scheme.

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

Greater community engagement would not necessarily deliver a more robust State Heritage register. Community involvement is important and the community should be encouraged to nominate places and to comment on nominations, however the identification and assessment of potential new State heritage places requires professional heritage expertise. It

is usual for State government to use experts for a broad range of activities rather than to limit activities to only those nominated by the community, and heritage should not be treated differently. To limit places listed on the State Heritage Register to only those nominated by the community would result in many worthy places being missed. The community looks to the government to provide leadership and good governance – which includes using experts with relevant qualifications and expertise.

There are other ways to engender community support for heritage, including the State Heritage register, than by limiting the identification of potential new heritage places to a community driven nomination process.

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

An efficient listing and delisting process is important. However, it is not clear if the existing process is inefficient. Certainly, the Minister responsible for heritage should make prompt decisions about listing or delisting. The efficiency of the current process and points of delay should be investigated and the findings made public, as it would be useful to understand if the existing system is inefficient and what exactly is causing delays. This could lead to a refinement of the existing process rather than a complete change.

Consideration should be given to a non-political entity reviewing and deciding on nominations for listing on the State Heritage Register. This may also have the benefit of eliminating delays.

It is understood that heritage inventory sheets for places listed on the State Heritage Register can be updated at any time and delays would only be due to lack of staff available to do this work. Therefore, consideration should be given to providing additional staff to work on listings.

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

Currently development to places listed on the State Heritage Register, requires both approval under the Heritage Act as well as integrated development approval under the Environmental Planning and Assessment Act. This is time consuming as well as costly. It is recommended that this matter be investigated. For instance, s60 approval and integrated development approval could be concurrent. Or development need not to be referred to the Heritage Council (integrated development) in the case that a development application is lodged with council accompanied by a s60 approval.

The Minister should not be responsible for determining regulatory thresholds for standard exemptions. This is a technical consideration which should not be politicised.

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

The introduction of guidelines setting out the nature of change that is appropriate or inappropriate for the State's heritage places would greatly assist heritage owners by providing more certainty. However, guidelines cannot cover every conceivable situation and so an assessment by professional staff is required to determine heritage impacts.

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

Development in the vicinity of state heritage items should be required to be referred to the Heritage Council. This is a requirement for local heritage items as development can affect the setting of heritage items. It should be extended to State heritage places.

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

There are opportunities to enhance consideration of heritage at the strategic level. Strategic planning work should be required to include a strategy for heritage places within the subject area. Heritage places are important to the community and provide local identity and character. They can be a springing point for the creation of places that people like.

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

The focus should be on supporting owners of the State's heritage places to do the right thing rather than on penalising them when they do the wrong thing. Although, the ability to impose penalties and to undertake prosecutions provides a useful deterrent to activities which would harm the heritage values of a place.

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

This matter warrants detailed investigation. Any reports and findings should be made public.

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

This is a very broad question, and why it would be a focus question in relation to the Heritage Act is puzzling. However, it is a good question and worthy of detailed research. As heritage places are attractive to visitors and can be a valuable tourism resource. Any research undertaken should be made public.

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

This is a very broad question, and why it would be a focus question in relation to the Heritage Act is puzzling. The activation of heritage buildings should not be a focus of the Heritage Act. The focus should be on the conservation of public buildings listed on the State Heritage Register, especially as many of these buildings are very fine, as well as irreplaceable.