

**Submission
No 120**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Wollongong City Council

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Submission to NSW Heritage Act Review 2021

Wollongong City Council

Staff Submission

June 2021

NOTE

This submission has been prepared by Wollongong City Council's Heritage Staff, with input from the organisation. It outlines a response to the Discussion Paper prepared by the NSW Governments Standing Committee on Social Issues. This submission represents a staff response and has not been reported to Council for formal consideration or endorsement due to the lack of time available within the consultation period.

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INTRODUCTION

The NSW Heritage Act 1977 is the cornerstone of NSW Heritage Conservation system and has served NSW in providing management of the States Heritage for over 40 years. The Act acknowledges the important place of heritage within the Community and acknowledges the importance of conserving important aspects of our past for the benefit of future generations.

This submission frames a response to the Discussion Paper into the Review of NSW Heritage Legislation, prepared by the Standing Committee on Social Issues in April 2021.

The response is broken into sections to respond to the key aspects of the review and to outline a range of key issues for consideration within the review. These sections include:

1. A discussion of State Heritage Register Facts relevant to the Wollongong LGA,
2. A discussion of the Tone and Focus of the Discussion Paper
3. A detailed discussion of Key issues relevant for consideration in the review.
4. Responses to the Discussion Paper Focus Questions
5. Recommendations for consideration in the Review

The recommendations of this submission focus on ensuring a review that is focussed on achieving the enhanced conservation of the State's most significant heritage sites. The need to renew focus on ensuring the Aboriginal Cultural Heritage system is progressed as the key priority for review is also a core focus.

FACTS RELEVANT TO WOLLONGONG CITY COUNCIL'S SUBMISSION

The following facts related to Wollongong's State Heritage Portfolio are of note in considering this submission:

- The Wollongong Local Government Area contains 27 State Heritage Items.
- These items include three precinct/cultural landscape listings that cover multiple heritage features and buildings/structures:
 - Wollongong Harbour Precinct
 - North Beach Precinct
 - Hill 60/Illohra Battery
- Wollongong City Council is the owner or caretaker for the following State Heritage Items:
 1. Wollongong Harbour Precinct (parts of) including the old Wollongong Court House, the Smiths Hill Fort, Flagstaff Hill Fort, the Ladies, Nuns, Continental, Gents and Toddlers Baths, the remains of the Mount Keira Tramway Bridge and former alignment, the Mount Pleasant Tramway Cuttings and alignment, and the Brighton Lawn and Flagstaff Hill landscapes
 2. North Beach Precinct including the North Beach Bathers Pavilion, the North Beach Kiosk and surrounding landscape
 3. Hill 60/Illohra Battery (largely Crown Land in Council's Care and Control)
 4. Original Wollongong Post & Telegraph Office (now Illawarra Museum)
 5. Gleniffer Brae and Gardens (incorporated within the Wollongong Botanic Garden)
- Wollongong's privately owned State Heritage Items include:
 - 2 private dwellings (Little Milton and Horsley)
 - 2 privately owned commercial premises (87 Crown Street – Former shop now used as a Cafe, 91 Crown Street – former Wollongong East Post Office used as legal offices)
 - 1 privately owned Hotel (Bulli Family Hotel)
 - 1 privately owned theatre (Regent Theatre – currently used as a church but under application for conversion back to a theatre/performance venue)
 - 1 Church and Rectory (St Michael's Cathedral & Rectory)

All of these sites are occupied and reasonably well maintained.

- State Government and Agency State Heritage listings in the Wollongong LGA include:
 - 9 Railway related items (NSW Transport and Rail)
 - Wollongong Hospital former Nurses Home (NSW Health)
 - Royal National Park Coastal Cabin Communities (NSW National Parks)
 - Former Balgownie Migrant Hostel Huts – used as pre-school within the University of Wollongong Innovation Campus
 - Wollongong Harbour Precinct (part of) – Working Harbour Area (RMS)
- The Wollongong LGA includes 3 declared Aboriginal Places managed under the National Parks and Wildlife Act 1974 including the Sandon Point Aboriginal Place which is managed by Council.
- It is understood that the following State Heritage Nominations are under consideration within the LGA by Heritage NSW:
 1. Mount Kembla Mine Site and Village (under consideration since approx. 2015)
 2. Port Kembla No. 2 Mine Site including Edna Walling Garden (under consideration since approx. 2015)
 3. Throsby Track Aboriginal Dreaming Trail (under consideration for some 10 years?)

4. Corrimal Coke Works Site (Nominated by Council in December 2019)

Council's previous State heritage nomination for the Waterfall Sanitorium (Garrawarra Hospital Site) and Cemetery is understood to not be being progressed on the basis that an objection was lodged by NSW Health to the proposed listing, and due to "lack of resourcing" within Heritage NSW.

THE DISCUSSION PAPER – TONE AND REVIEW FOCUS

The Government's discussion paper, "intended to provoke community discussion" (page 8) which has been prepared to inform the review unfortunately sets a somewhat concerning tone for the review of the primary Heritage Conservation instrument in NSW.

The Heritage Act 1977 is an important piece of legislation that's core focus is on ensuring the conservation of significant places throughout the state that have values worthy of conservation for future generations.

The introductory paragraph within the Discussion Paper presents a provocative critique of the Act that attempts to point to a failure of the legislation to keep pace with recent events such as the NSW Fires, Covid-19 and perhaps more understandably, the impacts of climate change.

Of particular concern are statements made on page 7 of the discussion paper, where a rationale for the Heritage Act review is outlined. Within this discussion the following claim is made:

"The Act is now widely considered to be out-of-step with trends in heritage conservation and land use planning and development. It reflects an outdated reliance on prescriptive regulatory measures and compliance mechanisms to achieve its objectives, and is generally considered onerous, procedurally complex and adversarial to adaptive re-use."

This unreferenced statement provides no evidence for the claim, and the discussion paper fails to back up the claims made by providing examples or information about how the Act itself is "out-of-step".

Whilst it is certainly our experience that there are failures in the Heritage management system, some examples of which are discussed within this submission, it is unclear how the Act itself is to blame for these failures. Instead, it appears to us that the major failures within the heritage management system stem from under resourcing of the sector, and a lack of suitably experienced and qualified staff that has probably derived from years of continuous changes, reviews, restructures and reconfigurations of the organisation now known as Heritage NSW.

Whilst there are certainly matters that could be improved and considered within a review of the NSW Heritage Act, it is important that this review process is considered with an approach that acknowledges the important role of the Act as the primary legal instrument for heritage conservation in NSW. The tone of the discussion paper gives a very negative perception of the Act and appears at face value to give an indication of an intention to water down and move away from the core focus of the Act from Conservation.

For example, the discussion paper outlines "key themes" that indicate the primary focus of the review as follows:

1. "Make heritage easy"
2. "Put heritage to work"; and
3. "Make Heritage relevant"

It is our view that the primary focus of any review of the NSW Heritage Act 1977 should not be on these aspects, but rather on ensuring the ongoing conservation of NSW's significant heritage sites and places. Whilst a review could certainly consider options to streamline process, to ensure heritage sites are activated and used in an economically viable fashion, and should encourage broader appreciation and engagement in the community with our heritage, these should only be considered with a focus on achieving the core goal of conservation of our cultural heritage.

KEY ISSUES AND MATTERS FOR CONSIDERATION IN THE REVIEW

The following discussion outlines a range of key issues that should be addressed and considered in the progression of a review of the NSW Heritage Act 1977.

1. INTEGRATION OF ABORIGINAL CULTURAL HERITAGE MATTERS

It is noted that the review of the NSW Heritage Act 1977 is proposed to occur separately, yet concurrently with the ongoing progression of the separate review of Aboriginal Cultural Heritage Legislation in NSW. Further, we note that since the exhibition of the draft Aboriginal Cultural Heritage bill in 2018 little public information and updates in relation to the progress of the Bill and the likely passage of any legislation has been provided. Wollongong Council has previously made detailed submissions in relation to the review of Aboriginal Cultural Heritage Legislation.

The newly announced review of the NSW Heritage Act, and the stated objectives around broadening inclusion within the new legislation raise a significant question in relation to appropriate timing, given the lengthy delays in finalising progression of a new Aboriginal Cultural Heritage system.

It is our view that the progression of a new Aboriginal Cultural Heritage Management System, which has been promised for some 20 years, to remove the insensitive approach to management of Aboriginal Cultural Heritage matters from the National Parks and Wildlife Act 1974, should remain the priority for Heritage Reform by the NSW Government.

The prioritisation of integration of Aboriginal Cultural Heritage sites and considerations into the review of the NSW Heritage Act 1977 is strongly supported but it is difficult to see how this can occur properly without a level of amalgamation of process with the separate review of the Aboriginal Cultural Heritage system.

The review should be guided by the input of NSW Aboriginal Communities in this regard and give strong consideration to the views of peak Aboriginal organisations.

2. ONE HERITAGE (OUR SHARED HERITAGE)

With the prioritisation of Aboriginal Heritage noted and given the concurrent review of the two heritage management systems, it appears appropriate at this juncture to consider whether NSW is ready to move to a single cultural heritage legislation.

The operation of two entirely separate bodies of legislation, which separates and distinguish two aspects of our shared cultural heritage is inherently divisive and would appear to be inconsistent with best practice and with cultural shifts towards inclusiveness. It is our view that strong consideration should be given (with the support of the Aboriginal Communities) to moving, potentially in a staged manner, toward a single Cultural Heritage Act. This would acknowledge NSW's shared Heritage values, which includes acknowledgement of Aboriginal Country, and sites of Aboriginal Cultural significance which did not cease to be used or to have cultural significance at the time of European invasion. Instead, the story of NSW continued, with differing values, views, interpretations and stories attached, for better or worse, to build and develop a Shared Heritage as it should be acknowledged and embraced today.

A single Cultural Heritage Act which provides for the management of one heritage would in our view have significant benefits, including:

- a) Acknowledging our shared cultural heritage and history;

- b) Removing the division of ‘them’ and ‘us’ from the cultural heritage management landscape;
- c) Acknowledge the continuous timeline of our history, including the hurts, pains and varying views of early invasions and interactions and allowing for acknowledgement of ongoing cultural connections beyond ‘settlement’; and
- d) Provide a single legislative system, potentially with a single approval process that considers both Aboriginal Cultural Heritage matters and broader Heritage values which could in turn significantly reduce red-tape and streamline necessary approvals.

This would bring Australia’s Heritage Management System in line with other nations such as the UK, where different historic periods are not treated with entirely different legislative systems.

Any consideration of this suggestion should be guided by the NSW Aboriginal Community through the Peak Aboriginal organisations.

3. RESOURCING

Whilst the Heritage Act review discussion paper indicates that the NSW Heritage Act is outdated and points to timeframe issues and over-regulation. Our experience of the key issues arising out of the Heritage Act in terms of project delays, application processing timeframes, and other failures in the system generally stem from a seeming lack of resources and of experienced staff who have knowledge of listed State Heritage Sites or experience in dealing with highly complex heritage matters.

Heritage NSW has been through a long period of change with regular changes in name, departments, reporting lines, Ministerial responsibilities and senior management structures. Further, the location of the Heritage NSW offices, positional structures, job security and other factors have seemingly been heavily impacted resulting in a significant turn-over of staff and a loss of key experienced personnel.

It is our experience that Heritage NSW staff often do not have the time or ability to travel to regional areas to visit and experience State Heritage sites for which they are making assessments, or considering for listing etc. As such, decisions are often being made with minimal knowledge of site characteristics, based on desktop assessments and with limited comprehension of often complex site attributes.

A key aspect of any attempt to “cut red tape”, or to “reduce delays” or timeframes for assessments and hold ups during assessment of applications (be it a nomination for listing or a proposed development) is to ensure adequate staffing, with a range of skillsets and levels of experience to ensure efficient and informed decision making.

Additional funding to support Heritage promotion and education projects, and to build synergies and remove duplications and doubled work through the separation of Aboriginal heritage from broader heritage considerations should also be a key consideration.

4. RELICS PROVISIONS AND MANAGEMENT OF ARCHAEOLOGY (Section 138 to 146C)

The review discussion paper makes virtually no mention of the provisions of the NSW Heritage Act 1977 which relate to the management and conservation of Archaeological Heritage (relics). It is noted that over recent years a significant shift has occurred in the regulation of Archaeological heritage which has resulted in many archaeological sites previously regarded as “relics” now being treated as “works” and not being subjected to the legislation.

Much of our archaeological heritage is currently managed in a reactive setting, and local government areas with early historic settlements and archaeological potential receive little support from the State in developing tools to identify and manage the archaeological elements of our history.

Further, entirely separate legislative systems are used to manage “Aboriginal Archaeology” as opposed to “relics” and no effort to provide synergies, or to manage the archaeological significance of sites with layered histories has been made. This can create situations where two sets of documents, approvals, and procedures are applied to one site, often by the same archaeological companies, to manage in the ground archaeological evidence.

Consideration should be given to this as an opportunity to cut red tape and streamline procedures to provide management of our shared archaeological heritage.

5. STATE GOVERNMENT HERITAGE ASSET MANAGEMENT PROVISIONS (Section 170 & 170A)

The Discussion Paper provides no discussion of issues pertaining to the provisions of the Act that relate to the management of State Heritage Assets (Section 170 & 170A) and the requirements on State Government Agencies to maintain registers and a Strategy related to the management of their heritage assets.

Given that the NSW Government owns approximately 54% of State Heritage Listed sites, these provisions should be a core consideration of any review of the Act. Consideration should be given to further strengthening the requirements to strategically manage and conserve State owned Heritage Assets as part of any review.

It is noted that over recent years a seemingly increased number of State Government Assets listed on the State Heritage Register have come under threat from proposed demolition or other inappropriate management such as relocation, to allow for the progression of State infrastructure projects.

It is also our experience that State Government Departments are often the strongest advocates against the proposed State Heritage Listing of their assets. For example, Council previously nominated the former Waterfall Sanatorium (Garrawarra Hospital) site for listing on the State Heritage Register and this listing was not progressed as a result of an objection being received from the NSW Department of Health.

The NSW Government should aim to set an example in relation to heritage management and should embrace its important place in the management of many of the States most significant Heritage Sites.

6. CROWN HERITAGE ASSETS (CROWN LANDS) IN LOCAL GOVERNMENT CARE AND CONTROL

Wollongong City Council is responsible for the management and day-to-day upkeep and operation of broad areas of Crown Land. Many of these lands are currently subject to Native Title Claims and Aboriginal Land Claims. Further, these Crown Land areas often include complex heritage sites that become the responsibility of Council in terms of day to day upkeep and management. Several sites also include areas that are State Heritage Listed.

Examples of such complex sites include:

- Parts of the Wollongong Harbour State Heritage Precinct (including 1880's Military Fortifications)
- Parts of the North Beach Precinct State Heritage Area

- Hill 60/Illowra Battery (A complex site of great Aboriginal Cultural Heritage significance with overlying WWII Military Fortifications).

These areas present significant challenges for management and due to the complex overlay of Aboriginal Cultural values with shared historic values present significant complexities in terms of day to day management, maintenance and upkeep as well as in the progression of any improvement projects.

It is our experience that Council's receive minimal support and funding to support the important work being undertaken to manage these complex sites. Consideration should be given to putting in place a State Government fund to support Local Council's in the development of management tools and associated approvals to ensure appropriate and viable management of key complex cultural landscape sites that include Crown Land to ensure strategic and considered management.

7. CONSERVATION MANAGEMENT DOCUMENTS

In recent years, Wollongong Council's Heritage Staff provided input and had involvement in a number of forums that informed a review of the procedures of the NSW Heritage Council related to the development and endorsement of Conservation Management Plans. This review process was initiated as the process of developing Conservation Management Plans for endorsement by the NSW Heritage Council had become an unworkable and drawn out process that resulted in huge expense to site owners and significant resourcing by NSW Heritage. The outcome of this process was a decision that no new CMP documents would be progressed through the review process for endorsement. It is essentially our understanding that this was a resourcing decision on the part of the NSW Heritage Council and Heritage NSW.

Wollongong Council is still attempting to progress the endorsement of a Conservation Management Plan for Gleniffer Brae (an SHR Item). This CMP and endorsement process commenced 4-5 years ago and has resulted in significant expense, frustration and angst between the Council staff involved, the consultant engaged to prepare the CMP for the site, and the Heritage NSW staff (and consultants) involved in the assessment of the CMP. It is our understanding that this endorsement process is nearing finalisation however the delays in the process at each stage have been extensive (3-9 months from submission to response).

Council's development of a CMP in this particular instance was intended to support decision making related to future planning related to the asset and consideration of new uses. Further, the CMP endorsement process was seen as a vehicle to deliver site specific heritage exemptions that in theory, would simplify the approval processes related to ongoing maintenance and repairs.

Unfortunately, the delays in the process have caused substantial delays to the project and resulted in lack of consideration to the future use and management of this important SHR site, resulting in its underutilisation and the need for further repairs and maintenance. We continue to await the response of Heritage NSW and the NSW Heritage Council in relation to the finalisation of the endorsement process.

It appears to us that the removal of the CMP endorsement process by Heritage NSW is an unfortunate symptom of the systemic resourcing issues within NSW Heritage, and whilst our experience with regard to the endorsement of the Gleniffer Brae CMP has signalled the need for this reform, the loss of this process and the benefits it can create if done well (in allowing an agreed set of exemptions for works undertaken in accordance with clear conservation policy guidance) is unfortunate.

8. ROLE OF LOCAL GOVERNMENT

The review process should give consideration to the fact that the majority of NSW listed Heritage items are managed under the local heritage listing process through the Environmental Planning and Assessment Act 1974. This responsibility has been handed to Local Government and presents a significant resourcing issue for many Council's. Wollongong City Council employs two full time heritage staff, whilst other Council's attempt to manage this responsibility with part time staff and/or with reliance on consultant heritage advisors. It is also noted several South Coast Council's including Shoalhaven, Kiama and Shellharbour (until recently) had no heritage staff or advisors.

Existing Heritage funding and support arrangements are in place between the NSW Heritage Council and Heritage NSW and local government heritage staff. These supports have however been gradually reduced over the past 15 years with reductions in funding and training opportunities provided by the State. Consideration should be given to opportunities to expand the support offered to local government in the management of local heritage items.

The review may also consider opportunities for well resourced local governments to be given some further local management responsibilities by Heritage NSW under delegation though this would need to be attached to funding, training and resourcing to ensure more responsibility without funding is not handed to Local Government.

9. MANAGEMENT OF COMPLEX CULTURAL LANDSCAPE SITES AND NEED FOR LOCAL KNOWLEDGE

It has been Council's experience in the management of the North Beach Precinct, Wollongong Harbour Precinct and Hill 60/Illohra Battery State Heritage Listings that the management of these complex cultural landscape listings under the NSW Heritage Act can be highly complex. The management of these complex cultural landscape sites requires staff with a broad range of heritage skills, strong local knowledge and an understanding of the need for ongoing day to day management to be able to occur without long, drawn out and complex approval processes.

Council's experience in progressing the Port Kembla Hill 60 Master Plan project and the necessary Aboriginal Heritage Impact Permit (AHIP) process, as well as the Section 60 Application processes to allow for the progression of the project has been that the assessment process has been significantly frustrated by a lack of understanding of the site and local conditions, a lack of acknowledgement of the broader conservation objectives being achieved by the project through upkeep and improvement of public reserve infrastructure and interpretation, and a lack of synergy between the entirely separate approval processes and mechanisms for Aboriginal Cultural Heritage and SHR Heritage Listings.

Consideration should be given to funding and specialised teams that can be on the ground, and work with local government heritage experts to inform, understand and approve management plans, master plans and day-to-day works relevant to complex State Heritage sites with layered heritage values such as these three examples.

Council would be happy to provide further background and information in relation to our experiences to inform the discussion of these issues.

10. EXEMPT AND COMPLYING DEVELOPMENT CODES AND STATE SIGNIFICANT DEVELOPMENT

There are a number of external pieces of legislation in NSW that are impacting on robustness of the NSW Heritage Act 1977 to meet its objectives.

Recent updates to the operation of SEPP Exempt and Complying Development Codes Clause 1.16(1B) and Clause 1.17A(3) allows Exempt and Complying development to occur on land that may be on the same lot as a State Heritage item or adjacent, if the area is not mapped on the SHR. These provisions can allow for medium density development to occur without any Council Approval or consultation with Heritage NSW on the same site as an SHR item. The continued expansion of the Codes SEPP is of concern in terms of the ability of the NSW Heritage Act to manage change on sensitive sites.

Additionally projects deemed State Significant Development under Division 4.7 of the EP&A Act effectively 'turns off' the provisions of NSW Heritage Act and undermines any protection afforded to SHR sites.

It is unclear how the aims of a Review to create a robust Heritage management system in NSW can be reconciled with the expansion of such powers under other State Government Planning Reforms, or whether this Review will also have the effect (intended or unintended) of reducing heritage protection for NSW's State Heritage items.

RESPONSES TO DISCUSSION PAPER FOCUS QUESTIONS

PURPOSE OF THE HERITAGE ACT

Focus Question 1 - Heritage Council Composition

The Heritage Council should be comprised of Heritage professionals with a broad range of expertise across the field. There has been a tendency for the Heritage Council membership, as well as on its Committees to prioritise Architects over other disciplines. Representation of a wide range of skills, including Geographers, Local Government Reps, Archaeologists, Urbanists and Heritage Consultants is essential to ensure that all facets of heritage ‘values’ are properly considered. Consideration should also be given to ensure the diversification of the Membership to ensure that women, Aboriginal and Torres Strait Islander people, young people and migrant communities (among others) are well represented on the Heritage Council. Quotas could be considered to ensure an appropriate mix of representation on the Heritage Council. This may require additional places being added (noting the Council has gone from 14 down to 9 members). The requirement for a single representative of Aboriginal or Torres Strait Islander Background does not seem sufficient to ensure a diversity of views on the Council.

Additionally, consideration should be given to ensuring that the NSW Heritage Council have autonomy in their decision making to prevent political interference.

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

Refer to Points 1 and 2 within the previous discussion of Key Issues for the review.

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

Yes – the objectives of the NSW Heritage Act 1977 remain relevant and should be maintained within any review process. It is noted that the objects of the Act already include a focus on several of the key criticisms of the Act outlined within the Discussion Paper. For example, the discussion paper claims that the present Act is “adversarial to adaptive reuse”, yet objective (e) of the Act is ***to encourage the adaptive reuse of items of State heritage significance***.

It is further noted that the discussion paper appears to place the primary focus of the review on the following three key themes:

1. “Make heritage easy”
2. “Put heritage to work”; and
3. “Make Heritage relevant”

It is our view that the primary focus of a review of the Heritage Act 1977 should not be on these aspects, but rather on ensuring the ongoing conservation of the States Significant heritage sites and places. Whilst a review should certainly consider options to streamline process, to ensure heritage sites are activated and used in an economically viable fashion, and should encourage broader appreciation and engagement with heritage, these should be considered within a framework of achieving conservation of our cultural heritage.

It is our view that the discussion paper, and the framework outlined for the review loses focus on the intent of a Heritage Act, instead focussing the broader government agenda of “cutting red tape”, “creating jobs” and “achieving growth”. It is essential that this is balanced within a framework that does not lose focus of what the intent of the Heritage Act is.

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

Whilst property owners, business and developers have increasingly developed an expectation of unencumbered development rights and property values and moved into a world where any perceived loss should be compensated for, it is important to acknowledge that heritage items have inherent values that are broader than an individual. Further it is important to acknowledge that Communities throughout NSW demand that sites, buildings, and places with heritage values should be conserved and protected.

Heritage decision making is inherently vexed, and generally results in opposing views as a result of value attachments on behalf of individuals, communities and groups dependant on perspective. It is therefore inevitable that a portion of the population will consider that the NSW Heritage Act does not reflect the expectations of the NSW Community. However, many others will hold the opposing view.

It is important to note that the NSW Heritage Act 1977 generally manages the more significant heritage sites throughout the State, with an entirely separate system in place to manage items of local significance. As such, it is necessary and appropriate that the NSW Heritage Act 1977 sets a high bar in terms of expected Heritage Conservation outcomes.

It is equally important that the implementation of the Act is adequately resourced (this is discussed separately in this submission).

ACTIVATING OUR HERITAGE

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

The NSW Heritage Act 1977 already encourages activation and adaptive re-use of heritage items. Additional funding, and continued use and expansion of incentives such as:

- The waiver of Development Contribution Fees for Adaptive Reuse projects
- The reimbursement/non charging of State Heritage Application fees for suitable projects that provide positive conservation outcomes
- Expansion of the NSW Heritage Grants Program
- Provide targeted Tourism project funding for projects that provide for the conservation and activation of key State Heritage Register sites

With 66% of State Heritage items owned by Government Organisations (54% by the NSW Government), and from Wollongong Council’s own experience with SHR items within State Care and Control within our LGA there appears to be significant issues with management of State-owned heritage assets.

As such, any review of the NSW Heritage Act 1977 should:

- Ensure accountability around the development, maintenance and ongoing upkeep of Agencies Section 170 Registers
- Ensure accountability around the development of Heritage Asset Management Strategies to guide the management of State Agency Heritage Asset Portfolios and monitoring of implementation.
- Ensure State Government Agencies are accountable for minimum standards of maintenance and repair being maintained.

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

It is important to acknowledge that not all Heritage sites trigger significant economic challenges for their owner, especially if they are regularly and well maintained. Further, many State Heritage sites have an inherent value attachment that makes them an attractive proposition for business tenants and at times, can demand premium rents due to the unique offer of the property.

Further, it is of note that aside from the potential impact of a new heritage listing being put in place, an already listed SHR item is generally acquired under the knowledge and assumption that a Conservation objective will be required. As such, purchasers of already listed Heritage sites should generally be purchasing a property cognisant of the relevant constraints and limitations relevant to future development options.

Where a property has fallen into a state of disrepair, or requires significant investment to become viable for conservation, incentives that might encourage conservation outcomes could be considered.

It is noted that the Heritage Grant Fund provided to local governments to facilitate local heritage grant programs (which in the Wollongong LGA also applies to privately owned SHR items) has decreased in value over the last 5 years down to \$5,500 for the whole Wollongong LGA in 2021/22. This shows a lack of commitment to provided incentives and funding to assist in cost of ongoing maintenance of private heritage properties.

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

The review should consider the fact that the majority of State Heritage sites are well used and well maintained and consider focussing funding and/or other incentives for conservation works and adaptive re-use on “heritage at risk” sites, through a thoughtful process of consideration or at risk listing process similar to the process put in place by UNESCO for World Heritage sites.

This would allow targeted consideration of big wins and targeted and considered conservation outcomes rather than broad brushed reforms that potentially encourage unneeded and uncalled for proposals on heritage sites that are already well used and well maintained.

HERITAGE IDENTIFICATION AND LISTING

Focus question 8 – how could tailored heritage protections enhance heritage conservation?

The Discussion Paper highlights an intention to split the State Heritage Register into four categories. These categories and the approach are discussed below:

1. Category 1 appears to highlight recognition of sites of elevated heritage significance “exceptional and iconic value” as if these should be given higher order conservation treatment. It is noted that all items listed on the State Heritage Register are already considered to have higher order heritage values and that sites of greater significance are often already acknowledged on the National Heritage Register and/or the World Heritage List. The risk of an approach that splits SHR sites on significance is to play down the significance of items not acknowledged within this higher category. Given that few items meet the threshold for State Heritage Listing, all SHR items should be regarded with a strong conservation focus.
2. There appears to be some merit to specific controls and recognition of sites which fit within the proposed Category 2: State Significant Heritage Landscapes. It is our experience that landscape listings require complex management Plans and Strategies and locally informed and nuanced management with input from diverse teams of specialists. This is discussed elsewhere within this submission. As such, there is merit in considering specific management responses to complex cultural landscape sites under the review process.
3. Category 3 indicates it is likely to apply to “the majority of SHR items”, yet the example given is only “Standard Residential Properties”. It would be assumed that this category would also capture the many other building and site typologies that do not fall into Categories 1-2.
4. Category 4: “Local Heritage” refers to heritage items that are not managed under the NSW Heritage Act 1977 and therefore appears irrelevant to the categorisations provided under the NSW Heritage Act.

The resourcing capacity of Heritage NSW to consult with owners and local Councils to categorise all existing items on the SHR is considered a likely constraint to this approach. Categorisation will also likely require additional rigour to the nomination and listing process, which this Review is attempting to streamline.

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

Only 6% of all SHR listings are privately owned. There are a number of residential properties in the Wollongong LGA that are privately owned, which seems to be well managed this is likely due to the sites having an appropriate ongoing use and less development potential or aspirations. Issues arise in confusion regarding the legislative rules and a lack of support being able to be provided from Heritage NSW. Council often provides information and support on processes to local owners.

It can be difficult to encourage Heritage NSW staff to attend site visits to provide advice to owners, even within the Wollongong LGA which is not an onerous journey. Regional NSW is no doubt impacted by a lack of resourcing to allow staff to build relationships with SHR owners and gain familiarity with the local community and the specific challenges faced in an area. High staff turnover and a lack of organisation knowledge also impacts on assessments of applications and timeframes. These issues however again appear to be a resourcing issue.

STREAMLINING HERITAGE PROCESSES

Reform Proposal: Introduce a community-driven nomination process.

Council has experienced extremely long and untransparent waiting times spanning years and over a decade for assessment of Heritage nominations, many of which are community driven such as Garrawarra Cemetery and Kembla Heights Village. There has also been no outcome to these nominations, in the case of Garrawarra the advice received from Heritage NSW was not that the site did not meet the SHR criteria for listing, rather that the Agency was too under resourced to make a determination. Although the Community is active in advocating for the listing of these sites, this has not assisted in obtaining a listing for the sites, so it is questionable whether this is the key issue or again whether resourcing to assess nominations is the cause of the backlog.

Where State Government agencies or owners such as mining companies, object to nominations of their own sites the process is seemingly derailed. Heritage NSW and the Heritage Council has no power to make determinations where it is politically unfavourable to do so. This issue can be complicated by the Minister holding the final authority. It can be perceived that decisions (or lack thereof) can be motivated by political interests rather than assessment of heritage values.

Taking a proactive approach to listings through Community engagement to deliver strategic outcomes for SHR listings and to encourage communities to identify what they value in their own community is of course a positive outcome. However, a commitment to resourcing heritage studies and capacity building for communities should be provided. If this responsibility falls to local Council's to deliver strategic studies or nominations without significant resourcing this will exacerbate the existing issues. A commitment to the timely assessment of nominations is also required. If community nominations are actively encouraged additional resourcing will be required to assess the any increase in the number of nominations.

In our experience resourcing of Heritage NSW and the influence of owners (and particularly State Government Agency owners) are the key constraints to the progression of State Heritage nominations.

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

See above.

Focus Question 11 – Would streamlining enhance the listing process?

Allowing a simpler process to update SHR Listings as new information or studies come to light is supported. As an example the SHR listing for Hill 60/Illowra Battery did not capture the full layering of the sites history.

A simplified process for updating State Heritage Listings to better capture a broadened understanding of significance within an already defined curtilage is supported.

HERITAGE PERMIT PROCESS

Reform proposal – The Minister could be responsible for determining in consultation with the Heritage Council the thresholds for exemptions, fast track applications and standard applications to allow flexibility and make it easier for heritage owners to maintain and conserve their properties

Providing the Minister with additional responsibility to determine thresholds for permit types and ultimately approvals is not supported. As discussed above having the Minister as the head of power under the Act allows decisions to be politicised and leaves the door open for powerful lobbyists to use

this 'flexibility' to bypass usual processes. The provisions should provide for certainty rather than flexibility.

It is Council's experience that the assessment of Section 60 Applications has become extremely subjective based on particular staff or teams, which causes significant delays. The process of obtaining Section 60 Approval for Hill 60 Reserve in Port Kembla is a significant case study in the complexities and frustrations of the current capacity of Heritage NSW to effectively manage approvals for complex sites. Council has previously provided detailed feedback on the process. However it is noted that the issues stemmed from a resourcing problem, which led to new staff who had not visited the site to take over assessment of a very large Section 60 application, following years of pre lodgement discussions and background with a different team of Heritage NSW Staff.

Additionally Council's Heritage Staff have concerns with the apparent trend of delegating more NSW Heritage functions to local government (or owners) as per the new self-assessment Exemption provisions. It noted that many local Council's in our region do not have heritage officers employed or access to a heritage Advisor (Kiama, Shellharbour and Shoalhaven City Council's fell into this category until recently), which is concerning for a plethora of reasons.

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

The key improvement in speeding up approvals would be to better resource and up-skill Heritage NSW. Ensuring stability in staffing in the face of legislative reform will be key as a period of continuous reform and changes in Government structures have already significantly impacted on the staffing and resourcing of Heritage NSW.

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

Generally yes.

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

It is our experience that developers generally want to defer consideration of Heritage issues until later in the assessment process. Requirements for early reporting in relation to heritage issues should be a core requirement of the process. It is also essential that Heritage NSW and the Heritage Council prioritise consideration of key issues relevant to Planning Proposals to ensure proper consideration of Conservation outcomes and opportunities at an early stage of the process.

As an example, Wollongong City Council is currently considering a draft Planning Proposal for the former Corrimal Coke Works site and that as part of this process, Council has nominated the site for State Heritage Listing. It is noted that this nomination was progressed by Council on the advice of Heritage NSW, as the only way Heritage NSW was able to provide advice on conflicting independent heritage assessments prepared by consultants on whether the significance of the site likely met specific criteria at a State level. Council is yet to receive a response to this nomination, yet the Planning proposal is now progressing to exhibition with no response. This nomination was lodged to NSW Heritage on 16 December 2019 and to date no response or decision of the NSW Heritage Council has been received. It is also understood that Heritage NSW staff are yet to visit the site.

This delay in decision making creates risk and uncertainty related to the progression of the Planning Proposal for the developer, Council and the community and creates significant uncertainty around the likely outcome and anticipated Conservation expectations.

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

Yes – Further priority should be given to ensuring an onus on proponents for Planning Proposals to fully address heritage matters prior to progression of proposals to Gateway Determination, so as to ensure that Heritage issues form a key (informed) consideration of the strategic decision making process. This requires resourcing to and buy in from Heritage NSW to ensure that advice is provided in a timely and efficient manner during the Planning Proposal process.

COMPLIANCE AND ENFORCEMENT

Focus Question 16 - How could heritage compliance and enforcement be improved

Council's experience with the Regulation and Enforcement division of the NSW Heritage has unfortunately not been positive. There appears to be a lack of willingness to commit time and resources to taking enforcement action and a hesitancy to make orders. It is unclear whether this is an organisation culture issue, or lack of resourcing for legal advice, enforcement officers, and budget to take matters through no doubt what would be expensive litigation.

Non-compliance with the Archaeological provisions of the NSW Heritage Act is also a key issue. In recent years there appears to have been a shift in how Archaeology is managed under the Act without any practice notes or communication down to local government authorities. This creates a confusing legislative environment without clear guidelines on what constitutes a "relic" and what archaeological features are subject to the Relics provisions of the NSW Heritage Act.

Education relating to Archaeological protection and rules relating to activities such as bottle collecting in NSW is required for the community. Funding for education campaigns and partnership with local government for site specific community education programs would benefit the protection of archaeological sites.

It is also interesting to note that the majority of State Heritage sites are owned and managed by State Government, as well as by Local Council's and Federal Government Agencies. Consideration should be given to providing a stronger focus on enforcement of provisions related to State Agency Asset Management Requirements and enforcement of minimum standards of maintenance within this group of items.

HERITAGE PROMOTION AND ENGAGEMENT

Focus Question 17: How could understanding of State Heritage be enhanced?

The promotion and regular acknowledgement of State Heritage Register listings and sites in local communities and through heritage tourism promotions is encouraged. The development of further State Heritage education programs and materials such as workshops and or materials for State Heritage Owners and providing further education to Heritage and Industry practitioners would be

beneficial. Consideration should also be given to exploring opportunities for the inclusion of Heritage sites and programs within the education curriculum should also be explored.

Professional development of younger Heritage professionals and knowledge sharing across generations would also assist in succession planning for many key industry figures with extremely valuable experience and knowledge who may be nearing retirement.

It is unclear however what role the Heritage Act review might play in this process.

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

The review of the NSW Heritage Act is likely to have a limited potential to influence or promote heritage tourism. A separate process to support development of a Heritage Tourism Strategy would appear an appropriate mechanism for considering and progressing these considerations. Focussing attention on the opportunities for expansion of Heritage Tourism within the tourism sector would appear a more appropriate vehicle for consideration of this issue than through the vehicle of Heritage legislation reforms.

PUBLICLY OWNED HERITAGE

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

It is important to recognise and acknowledge that in our experience in the Wollongong LGA the vast majority of State Heritage Items are occupied and used in meaningful and economic ways. Whilst some SHR items remain vacant and/or difficult to reuse, the review process should consider the gathering of statistics around the numbers of State Heritage Register items that are unused, vacant and/or at risk due to neglect and lack of investment.

An understanding of the actual numbers and figures may provide a clearer picture of the scale of the issue, and potentially allow for a more targeted approach to addressing any identified issues. For example, the NSW Government could consider a targeted funding program and/or special mechanisms to encourage adaptive re-use projects for “Heritage at Risk” sites rather than broad reaching changes to the heritage system that may instead encourage potentially inappropriate or undesirable adaptive re-use outcomes.

It is also noted that public heritage buildings are often owned by Government Agencies. A willingness by Government Agencies to fund and explore adaptive reuse projects and identify key community needs in areas where they may be a cluster of at risk SHR items that are symptomatic of broader socioeconomic issues (identified through data collected as suggested above). There may well be innovative opportunities that become apparent through data collection and qualitative research to marry other required Community revitalisation or support services with heritage activation in many areas, particularly in regional towns and centres such as community arts programs, youth programs, meeting spaces etc.

KEY RECOMMENDATIONS

Council's Heritage staff submit the following key recommendations for consideration as part of the Review:

1. Any review of the NSW Heritage legislation should be focussed on ensuring the States significant heritage sites are identified, conserved and valued by the Community. Whilst a review should certainly consider means for simplifying the system and other noble objectives, these must be inherently guided by their ability to achieve better Heritage Conservation outcomes. A loss of focus on this objective has the potential to undermine the core intent of the NSW heritage Act 1977. The tone and language used within the Discussion Paper presents a very negative view of the NSW Heritage system and appears to have been very heavily influenced by the development sector.
2. The priority focus of Heritage Reform in NSW should continue to be on the finalisation and prioritisation of a new Aboriginal Cultural Heritage Management System. The management of Aboriginal Cultural Heritage under the National Parks and Wildlife Act 1974 is insensitive and has gone on too long. The review of Aboriginal Cultural Heritage requires urgent progression given that the draft Bill was exhibited in 2018 and the review process has been underway for many years.
3. With the support of the Aboriginal Community and peak Aboriginal organisations, strong consideration should be given to the potential amalgamation of the two heritage reform agendas with a view to creating a single Cultural Heritage Act to manage our one shared Cultural Heritage.
4. Aboriginal Community input and engagement should be a key informant of the review process and any decisions pertaining to the inclusion and consideration of Aboriginal Heritage under the NSW Heritage Act should be carefully considered in consultation with Aboriginal Cultural input.
5. The review of the NSW Heritage system must consider the funding and resourcing of Heritage NSW and the Heritage Council as a key aspect of the review. Resourcing of the State Agency responsible for the implementation of the Heritage Act appears to be an underlying issue to many of the key problems with the existing Heritage system and is in our view at the core of the issues raised by the vast majority of the focus questions.
6. The review process should give a greater focus to gathering statistics around the State Heritage Register portfolio, and should acknowledge that the NSW Heritage Register primarily manages the most significant small percentage of heritage sites in NSW. Whilst there are certainly sites confronted with significant management issues, it is our experience that the majority of State Heritage Registered sites are well used, well maintained and the vast majority are owned by Government within the Wollongong LGA. The analysis of statistics around the SHR portfolio would likely assist in focussing the reform agenda on the key issues and sites of concern.
7. Targeted provisions that focus on achieving outcomes for, and targeting resources to sites identified as being "at risk" to ensure prioritisation of resources and to focus reforms on addressing issues relevant to sites that are unutilised, in poor repair or otherwise at risk of loss.
8. Consideration should be given in the review to ensuring up-front requirements for quality reporting, and prioritisation of decision making in relation to Planning Proposals and other strategic planning projects.
9. The review process should acknowledge that the majority of NSW listed Heritage items are managed under the local heritage listing process through the Environmental Planning and

Assessment Act 1974 and consider opportunities to expand the support offered to local government in the management of local heritage items as well as exploring synergies in the management of the Local and State Heritage systems.

10. Consultation with key stakeholders including Local Government should continue to occur throughout the Review process. Transparent information should be provided, particularly where responsibility is proposed to be delegated to other authorities such as Local Councils.
11. The impacts of legislation such as the Codes SEPP and State Significant Development procedures, and their interaction with the NSW Heritage Act should be a consideration of the review.

CONCLUSION

The discussion and recommendations contained within this submission should be carefully considered within the review process. The key priority of reform in the Heritage Management system in NSW should remain the well critiqued treatment of Aboriginal Heritage under the NSW National Parks and Wildlife Act 1974. Meaningful consideration should and could be given to the potential integration of the two management systems as a meaningful way to consider the cutting of red tape. Recognition of Aboriginal Heritage values is key to ensuring our shared heritage is conserved, enhanced and championed.

Adequate resourcing of Heritage NSW and additional support being provided to local governments and private owners of Heritage items represent key issues for Heritage Management in NSW. Some minor amendments to the NSW Heritage Act will ensure the legislation may be appropriate to allow the Act to continue to provide a robust framework for Heritage management in NSW. These revisions should remain focussed on ensuring the Conservation of NSW's most significant heritage sites.