Submission No 135

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Dr James Lesh

Date Received: 25 June 2021

THE UNIVERSITY OF MELBOURNE

Australian Centre for Architectural History, Urban and Cultural Heritage
Faculty of Architecture, Building and Planning

25/06/21

Hon Shayne Mallard MLC
Chair, Standing Committee on Social Issues
Upper House Committees | Legislative Council
Parliament of New South Wales
Committee.SocialIssues@parliament.nsw.gov.au

Dear Mr Mallard,

Thank you for the invitation to make a submission to the Review of the Heritage Act 1977.

From my research and collaborations, I am acquainted with the heritage policy arena in various Australian and international jurisdictions. By way of background, I am a historian specialising in heritage conservation. I currently hold a research fellowship at the University of Melbourne and have previously held a research appointment at the University of Sydney. I have a forthcoming academic monograph that examines the development of Australia's heritage system since the start of the twentieth century. It has a strong emphasis on NSW.

I have considered the Terms of Reference for the Review and the discussion paper. I have also taken the time to reflect on both the opportunities and challenges facing heritage governance at a state level, including with colleagues in NSW and Victoria. In response to the Review, I have published an article in *The Conversation* with A/Prof Cameron Logan (University of Sydney) called 'War on the demolishers? Probably not, and timing of NSW heritage review is curious', 25/05/21.

I see two potential pathways arising from this review:

1. A recommendation for a 3-to-5-year policy development programme to create a new heritage governance framework for the twenty-first century.
2. Recommendations for a series of incremental changes to improve the performance of existing heritage legislation and associated policy frameworks.

Pathway 1: A new heritage governance framework

There is a case to be made to pursue pathway 1. The NSW heritage governance framework is now approaching fifty years old. It emerged in the 1970s in response to the dramatic economic, social, and cultural transformations of that era. The legislation equates the protection of cultural, aesthetic, historic, social, and scientific significance with the protection of cultural heritage. It is possible that heritage might be more appropriately protected through re-evaluating the role of heritage governance. For instance, the objective of cultural heritage protections may be more closely aligned to questions of cultural, social, economic, and environmental sustainability.

To re-establish the purpose of heritage governance will require a multi-year policy development programme. By way of comparison, Scotland with its statutory agency Historic Scotland, has spent much of the past decade pursuing a whole-of-government effort to re-consider the role of heritage in Scottish society, culture, and economy. Under UK devolution, the Scottish Parliament is responsible for urban planning and for cultural heritage in a jurisdiction with 5.4 million people.

Still continuing, the policy development programme has proceeded with the following key outputs:

1. Historic Environment Scotland, *Our Place in Time*, 2014.
2. Historic Environment Scotland, *What's Your Heritage?*, 2017.
3. Historic Environment Scotland, *Historic Environment Policy for Scotland*, 2019.
4. Revision to Planning (Scotland) Act 2019.
5. Infrastructure Commission for Scotland, *A Blueprint*, 2020.

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Some themes emerging from the Scottish policy programme:

1. Moving beyond the development/heritage oppositional binary
2. Community Engagement and Participation
3. Sustainability and Heritage intersections

Scotland is emerging as a world-leader in heritage policy. It points to the opportunity before NSW to similarly take the initiative by investing in policy capacity to rethink the heritage governance model for the middle decades of the twenty-first century. The Act cannot be substantively transformed and continue to protect heritage without multi-year policy work.

Pathway 2: Incremental Revisions to Heritage Act (1977)

If the Committee adopts pathway 2, I note the following:

1. Many of the issues identified in the discussion paper are caused by administrative issues rather than the legislation itself. The responsible area of government lacks sufficient resources to satisfactorily perform its duties within the Act. It relies on outdated and cumbersome policy instruments that should be revised in line with contemporary heritage principles, including around cultural significance assessment.
2. The heritage system would work more efficiently for all clients should the above point be addressed.
3. New classification system frameworks are strongly ill-advised. These are a terrible model that have been consistently demonstrated in the literature to produce poor heritage, community, and development outcomes. Rather heritage policy instruments need to be revised in line with contemporary heritage principles, including around cultural significance assessment.
4. The 're-use first' principle adopted by the Infrastructure Commission for Scotland (2020) is a potential approach that could be used across government asset classes towards both heritage and sustainability objectives.
5. The Heritage Council might be reformed along the Victorian model. An independent, diverse Heritage Council provides the opportunity for day-to-day leadership in the administration and advancement of heritage.
6. To improve interfaces between the Act and related planning and heritage legislation will require substantial policy work. The issues have not been resolved in *any* Australian state jurisdiction since first noted in the 1990s.
7. Public participation could be better enshrined across the administration of heritage legislation. Heritage authorities and advisors should re-imagine their role as facilitators of cultural heritage continuity on behalf of communities. This would be a meaningful step towards engaging and inspiring the public in favour of protecting heritage.

Finally, the priority of heritage legislation and policy in NSW should be the development and implementation of standalone First Nations heritage legislation. In the past two decades, several Australian jurisdictions have shown leadership in this area. This would address a historical failing and provide opportunities for linking heritage policy across the state.

I am available to provide further advice should I be requested to do so.

Sincerely,

Dr James Lesh
Research Fellow, University of Melbourne

ATTACHMENT: 3 x *The Conservation* articles

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THE CONVERSATION

Academic rigour, journalistic flair

War on the demolishers? Probably not, and timing of NSW heritage review is curious

May 25, 2021 2.40pm AEST

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The New South Wales government has released a discussion paper expressing its ambition to review and "modernise" the Heritage Act (1977). Announcing the review, Arts Minister Don Harwin said:

> *"Too often we see once cherished heritage properties experience dilapidation by neglect."*

Harwin was alluding to the troubling practice known as demolition by neglect. This is when property owners fail to maintain historic buildings in order to hasten their demise and leave no option but demolition.

So, is the review designed to crack down on this cynical exploitation of an apparent loophole in the system, paralleling recent reforms in Victoria? Probably not.

Read more: ***Stuck in the past: why Australian heritage practice falls short of what the public expects***

One way to understand what has really prompted the review is to turn to the purpose of heritage legislation generally. Its primary stated objectives are to protect and promote heritage.

If we can all agree about what heritage is, that seems straightforward. But do we?

Another way of discovering what heritage legislation does is to ask what problems it sought to fix in the first place. This requires some historical context. We should also consider what the future role of heritage could be.

War on the demolishers

In 1825, French writer and politician Victor Hugo launched his public career with a powerful essay, War on The Demolishers. It was arguably the first major political broadside launched on behalf of architectural and urban conservation.

Notre Dame Cathedral was one of the inspirations for Victor Hugo's essay. Shutterstock

While Hugo's war raged in France and Britain, it lacked a prominent Australian battleground until the mid-20th century. In Sydney, between 1971 and 1974, the Builders' Labourers Federation famously launched a militant campaign of work bans: the Green Bans. This direct-action advocacy tool, on behalf of community groups, was then applied to places across Australia, frustrating developers.

Read more: ***Our cities owe much of their surviving heritage to Jack Mundey***

State and Commonwealth governments mediated. The NSW Heritage Act (1977) was the new Wran Labor government's attempt to achieve peace in this local war on the demolishers. It built on the legislative precedent set by the Victorian Liberal government in 1974.

Competing outlooks

Almost half a century later, we need to reflect on the system while charting new directions for it. The NSW discussion paper explores no less than 19 "focus questions". Many appear to be well founded, but will be challenging to resolve all at once.

Existing legislation is not the underlying cause of all the identified concerns. Rather, authorities responsible for heritage are under-resourced and rely on dated policy and practice instruments. As well

as acting on these issues, the inquiry will need to articulate a clear vision for heritage governance and management.

Embedded in the discussion paper are two overarching – but competing – outlooks for heritage. First, adopting a traditional view, the government promises to renegotiate the peace with "the demolishers". Second, acknowledging shifting public and development attitudes, the discussion paper recognises heritage has an unrealised capacity to better respond to social, environmental, economic and cultural opportunities.

Read more: ***Why heritage protection is about how people use places, not just their architecture and history***

In the traditional view, heritage values are always implicitly of the past. Any change to a designated place can only diminish its established aesthetic, historic and social qualities. Basically, this means legislation must act as the strongest possible barrier to materially changing places, to accrue wins for heritage against the demolishers: a zero-sum game.

In the emerging view, the value of heritage lies in its capacity to enhance places. Although historic sites and areas remain our past inheritance, the objective becomes to promote the sustainability and continuity of places and their evolving values. In this view, the law can direct change and development, as guided by public participation, design interventions and cultural values. In this way heritage policy and process can amplify the significance of places.

Confidence in conservation

Heritage is grappling with the inherent tensions between traditional and emerging views. Even if new legislation is developed, its translation into meaningful policies will prove challenging, particularly if these are still tied to traditional assumptions within governance and management.

Public confidence is paramount. Understandably, some suspect the hidden agenda of the NSW review is to fast-track development. Recent public comments by the state treasurer about the White Bay Power Station and government actions in connection with the Sirius Building, Willow Grove in Parramatta and WestConnex in Haberfield erode confidence in the protection of heritage and urban governance more broadly.

The state's attitude to preserving the social heritage represented by the Sirius building in Sydney does not inspire confidence. Shutterstock

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Read more: ***Saving Sirius: why heritage protection should include social housing***

The timing of the inquiry is also curious. For more than a decade, the NSW government has been examining the antiquated structure in which Aboriginal cultural heritage is largely administered under

the National Parks and Wildlife Act (1974). Instead of completing that important work, attention has prematurely shifted to the less troubling Heritage Act.

This century, Queensland and Victoria have modernised their Aboriginal heritage legislation to bring Aboriginal decision-making to the fore. The passage of standalone Aboriginal heritage legislation in NSW should be the first priority. Not only could that correct a fundamental historical failing, but it would also provide a set of policy precedents and pathways for linking up heritage policy in the state.

Read more: What kind of state values a freeway's heritage above the heritage of our oldest living culture?

New models

Adapting heritage governance for the 21st century calls for a long-term view and substantial consultation.

Scotland, for instance, has spent much of the past decade engaging with the heritage and development sectors and the wider public about its legislation. Its Infrastructure Commission has recommended a "re-use first" principle for its assets. Moving away from the instrument of heritage listings, property owners might instead have to justify demolition against sustainability principles.

Authorities should be developing models of heritage governance that enhance public participation and the inherited environment. Heritage conservation needs to be reimagined to renew its mission as a centrepiece of aspirations towards social, environmental, economic and cultural sustainability. If our leaders and policymakers can achieve this, they might be able to declare, at least temporarily, a halt to hostilities between communities and the demolishers.

The National Trust of Australia (NSW) is holding a public forum to discuss the review on June 9 2021.

The NSW Parliament's Standing Committee on Social Issues is accepting submissions on the review of the Heritage Act 1977 until June 27 2021.

Cultural heritage Urban heritage heritage listing demolitions Historic heritage heritage sites heritage laws Aboriginal cultural heritage

THE CONVERSATION

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Stuck in the past: why Australian heritage practice falls short of what the public expects

March 2, 2021 6.09am AEDT

Kelly Barnes/AAP

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Knowledge of local heritage protection measures and support for these are often lacking, according to a recent Heritage Council of Victoria report. The report suggests this points to a need for public education.

Our research proposes another solution: reshape heritage governance and practice to take account of community interests and priorities. Heritage conservation should be people-centred, rather than rely too heavily on past practices.

Read more: How can a 17-year-old place gain heritage status? What this means for

Melbourne's Fed Square

The report, State of Heritage Review: Local Heritage 2020, includes Australia-wide comparisons. It is part of an ongoing assessment of conservation approaches by the Heritage Council, an independent statutory body.

Local heritage is the mechanism for conserving the vast majority of places of significance across Australia. In Victoria, local heritage overlays protect 186,000 properties. In New South Wales, local environment plans cover 40,000 primary sites and thousands more of lesser importance.

The major take-away from the report is that many local councils lack the incentives, resources and expertise to adequately conserve heritage places. It recommends sensible measures such as increased state government funding, training and promotion of heritage.

Give people a stake in their heritage

Significantly, the report identifies that knowledge and support for heritage measures are often lacking in the community, but does not speculate why. The report does not consider (and it's beyond its terms of reference) engagement with the potential of heritage – what it could be for people.

Key themes shaping heritage research, policy and community surveys include social and racial justice, Indigenous heritage, intangible heritage and environmental sustainability. No longer can it be assumed that the key heritage policy objectives are to formulate comprehensive heritage lists or to prevent urban development.

Indeed, an expanding body of research recognises a growing divide between professional and public perceptions of heritage. The report suggests public education could bridge this divide by:

> *[…] ensuring the community understands the local heritage system and promoting the value of this local heritage to the public.*

But this overlooks the place of community interests and priorities in *reshaping* heritage governance and practices.

In the past, Australia has been recognised for its innovative approaches. Today, approaches seem to have become too reliant on existing ways of doing things.

The existing system is not responsive enough to the powerful and evolving interactions between cultural heritage, social, cultural and environmental imperatives, and people and place. For instance, conservation should not be a barrier to the sustainable re-use and recycling of buildings, nor should it hinder people from shaping heritage places.

Read more: Sustainable re-use and recycling work for heritage buildings and places too

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Our new research on people-centred conservation proposes that the deep relationship between communities and their historic places has the potential to reshape heritage processes. An approach is needed that centralises the ever-changing issues that affect human relationships to existing places.

People have long cared about heritage

In the postwar period, communities sought to shape their heritage places. They protested to conserve the Hyde Park Barracks in Sydney, the historic Barracks in Perth and Salamanca Place in Hobart.

And in Melbourne in 1963, as many as 10,000 people gathered at Ripponlea Estate to oppose its "seizure" by the ABC, with federal government backing, so it could expand its Elsternwick television

studio. The historic 19th-century mansion was later bequeathed to the National Trust.

Despite public protests and the SA Heritage Council supporting its listing, Shed 26 on the Port Adelaide waterfront was demolished in 2019. David Mariuz/AAP

In 1972, under the Liberal Hamer government, in line with international trends, Victoria became the first Australian state to introduce historic buildings legislation. Two years later, the federal Labor Whitlam government proposed the objective of heritage was to safeguard "the things that you keep".

Over the next two decades, every Australian government followed Victoria's lead. The result was a mosaic of local, state and national heritage protections.

Read more: Preserving cities: how 'trendies' shaped Australia's urban heritage

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Subsequently, the field of heritage clarified the 1974 objective, heralding a shift in emphasis from community to expert perspectives. Victorian legislation advanced the values-based approach:

> *to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value.*

By the late 1990s, the field had standardised criteria and historic themes – incorporating periods, architectural styles and customary narratives – to guide consultants and authorities and their assessment of cultural heritage value.

Heritage practices can't be set in stone

The reliance on these ostensibly objective and seemingly stable instruments creates distinctive challenges. Integrated with the planning system, local heritage too often seems to conflict with evolving questions of development, land use, ownership, sustainability, participation and design.

Yet heritage in the 21st century is fundamental to all those issues. Many are highlighted in the terms of reference of a forthcoming state parliamentary inquiry into local planning and heritage.

Overall, local heritage appears to be neither sufficiently dynamic nor adequately democratic. A number of issues identified in the recent report are almost identical to those suggested in a similar local heritage survey in 2003-04.

Public interest in heritage remains strong. The media report daily about historic buildings and neighbourhoods. People power saved Sydney's Powerhouse Museum and Melbourne's Federation Square. Reflecting public opinion, new laws in Victoria aim to prevent a repeat of the illegal demolition of the historic Corkman pub.

The illegal demolition of the Corkman Irish Pub in Melbourne in 2016 led to a change in the law. Tracey Nearmy/AAP

Read more: Once a building is destroyed, can the loss of a place like the Corkman be undone?

Historic sites, museums and galleries, adopting new technologies, have recorded strong online and in-person attendance. Innovative local platforms such as PastPort for metro Melbourne and the Historic Urban Landscape in Ballarat offer glimpses of new modes of heritage practice guided by concerns of diversity, inclusion and equity.

Local heritage can promote community empowerment, social and racial justice, and sustainability. People-centred conservation is a way to place the community at the heart of heritage.

Local government **Heritage** **Cultural heritage** **Heritage conservation** **Urban community** **Local councils** **Urban heritage** **heritage listing** **Heritage protection** **heritage sites** **Heritage preservation** **heritage laws**

THE CONVERSATION

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Why heritage protection is about how people use places, not just their architecture and history

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The roar of the crowd at the stadium. Jostling to see the New Year fireworks in the public square. Captivated by the band at the pub. Meeting mates outside the train station. These experiences conjure sites of importance for each of us.

As a Melburnian, places that come to mind for me are the MCG, Federation Square, Flinders Street Station and Festival Hall. Sydneysiders could be thinking about the Opera House, Central Station, the Enmore Theatre and Homebush Stadium.

It's people that make these places important. Without crowds, an idling Gabba in Brisbane or an empty Cottesloe Beach in Perth is a less exciting place.

Read more: ***How can a 17-year-old place gain heritage status? What this means for Melbourne's Fed Square***

Each of the above places possesses outstanding social value. It's why state heritage laws and local planning schemes can protect places of community importance.

However, this does not happen enough. Of more than 2,300 items on the Victorian Heritage Register, for instance, about 10% are listed for their social value.

Although data are scarce, the numbers are likely similar for heritage lists across Australia. This leaves treasured meeting places – neighbourhood pubs are a prime example – at risk.

Interactions between people and places over time give places their cultural heritage significance. Joel Carrett/AAP

With restrictions on public gatherings, urban heritage places of social significance have more allure than ever. Just as we are distanced from each other, we are separated from these places. Their temporary absence in our lives, and the sense of community and comforting memories we associate with them, only add to their cultural significance.

Read more: ***We don't know what we've got till it's gone – we must reclaim public space lost to the coronavirus crisis***

However, heritage typically gives more priority to the historic and aesthetic integrity of older fabric, buildings and structures than to ongoing social and cultural relationships between people and built places.

A lack of participatory methods to involve the public in heritage decisions is another problem with how authorities and the private sector manage the cultural values of historic places.

Two landmark cases

For more than a century, authorities typically safeguarded monumental architecture and places embodying the apparent progress of the Australian nation, such as public buildings and memorials.

Read more: ***What kind of state values a freeway's heritage above the heritage of our***

oldest living culture?

Since the 1970s, additional cultural values – social, scientific and spiritual – have been inscribed in heritage practice. Yet, as I explore in my research, traditional ideas of aesthetic and historic value have been privileged in conservation. Other significant cultural values have not been treated as equally important.

Heritage systems have traditionally performed well when managing grand 19th century public buildings. Luis Enrique Ascui/AAP

Read more: How the internet is reshaping World Heritage and our experience of it

The introduction of social value saved Flinders Street Station when it was threatened with demolition in 1972 for high-rise development.

Model of Flinders Gate Project, 1974. Wolfgang Sievers/State Library of Victoria (reproduced with SLV permission)

The National Trust wanted to preserve the train station. But its committee of architects perceived it as an "architectural monstrosity" because its Edwardian Baroque style was out of favour.

After long deliberations, the National Trust deemed the station a

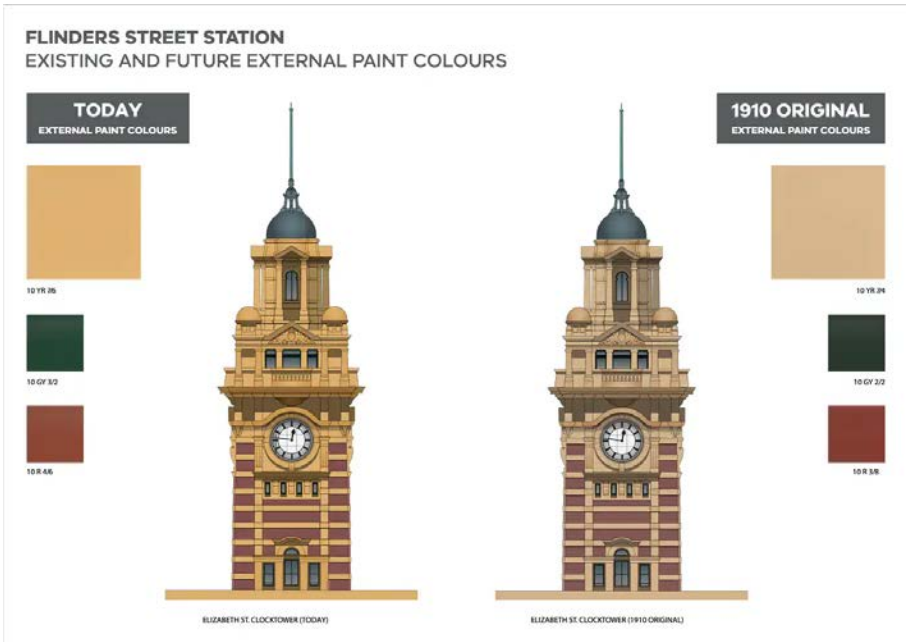
> *landmark [...] a major focal point of Melbourne's city life [with] the Clocks! section [sic]*

> *inextricably bound to the social fabric of Melbourne and Victoria.*

The famous clocks overlook the intersection of Flinders and Swanston streets, pictured here in the early 1970s. Rennie Ellis/State Library of Victoria (reproduced with SLV permission)

So Flinders Street Station was protected for its lasting importance to Melburnians. Only later would it be recognised for its architecture.

Despite its social value, when the station was repainted in original colours in 2017, there was little public engagement in this decision. Research on people's perceptions of historic places has shown they often prefer agedness and wornness over traditional conservation works that make places look new again: the patina of age has value. Public participation could have resulted in a different conservation decision based on Melburnians' preferred colours and textures.



Flinders Street Station was preserved because of its social value for Melburnians, but they weren t consulted about restoring the original colour scheme. AAP/Victorian government

Another landmark case involves the MCG. Authorities rejected a comprehensive heritage listing for the stadium in the 1980s, when the Great Southern Stand was developed, because a listing might have prevented redevelopment.

The MCG designation was reconsidered, however, in the lead-up to the 2006 Commonwealth Games. It then met revised thresholds to be fully state-listed. It was "the matches and public not the buildings" that created the heritage importance.

And to retain the cultural importance of the MCG in the future lives of Melburnians, flexibility on the stands was required. With the support of club members and heritage authorities, the 1928 Members' Pavilion made way for the new Northern Stand.

Ian Harrison Hill, 'Demolition of Members' Stand [Melbourne Cricket Ground]', photograph, 2004. State Library of Victoria, Pictures Collection, H2004.24/4 (reproduced with the permission of the State Library of Victoria and Ian Harrison Hill)

Read more: Heritage value is in the eye of the beholder: why Fed Square deserves protection

Social value in the past, present and future

At the MCG, social value was projected into the future, allowing for flexibility during redevelopment.

At Flinders Street Station, social value was perceived as developing in the past. The recent station works demonstrated that, even when public places are heritage-listed, their management often does not include participatory methods.

Neighbourhood pubs, which are being rapidly redeveloped, are another form of at-risk public place with great social value. Pubs become important to people for their longevity as gathering places, often more so than for their architecture, facades and interiors.

The now-demolished historic Greyhound Hotel in St Kilda had potential to inspire the public realm in future development works. National Trust of Australia (Victoria)

Read more: Once a building is destroyed, can the loss of a place like the Corkman be undone?

The National Trust is seeking to conserve some pubs. However, authorities have far more power to mandate the continuity of historic places' built fabric rather than ensuring redevelopments retain community spaces.

Even when this does happen, opportunities can be missed to use historic elements of the demolished buildings. Participatory and social approaches to heritage have unrealised potential to guide the design and use of the future public realm.

A major step towards placing people at the heart of heritage would be to mandate and fund a diversity of participatory methods in state and local heritage governance. It's important, too, to embed community participation across private sector heritage practice. Only by working towards more holistically conserving the broader cultural values of historic places can heritage achieve cultural stewardship for people.

Heritage **Pubs** **Cultural heritage** **Heritage approvals** **Urban community** **Urban heritage** **heritage listing** **Heritage protection** **heritage sites**