

**Submission
No 183**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: North Sydney Council

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The Hon. Peter Poulos MLC, Chair
NSW Standing Committee on Social Issues
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

SB8 (CIS)

2 July 2021

Dear Sir

Thank you for the opportunity to provide a submission on the review of the Heritage Act 1977 being undertaken by the Standing Committee.

North Sydney has a rich and diverse heritage. It comprises building, structures, places, aboriginal and archaeological sites, lookouts, streetscapes, urban patterns parks and reserves, all of which contribute to the area's cultural life, sense of place and identity.

This submission is made by the professional staff of Council and should not be considered as representing the views of the elected Council.

Having regard to the Terms of Reference the following comments are offered:

- a) The Biodiversity Conservation Act 2016 and the Nation Parks & Wildlife Act 1974 provide protection for native plants and animals. The introduction of state listings for habitats of native plants and animals will likely duplicate and create unnecessary confusing layers undermining the strength of the other Acts. It is noted that intersection with the Heritage Act 1977 may not be necessary and may confuse the hierarchy of the legislation.

With regard to the proposed category for Landscapes, this will create another unnecessary confusing layer.

- b) Moveable Heritage and Museums does not appear to have been considered in the review of the Heritage Act 1977.

The following are the responses to the focus questions as per the Review of NSW Heritage Review Discussion Paper prepared by Heritage NSW Standing Committee on Social Issues, April 2021:

Focus Question 1

What should be the composition, skills and qualities of the Heritage Council of NSW?

North Sydney Council supports the current appointment criteria as described at Section 8 of the Heritage Act 1977. Council would not support the replacement of members with additional members from the development industry.

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

The Aboriginal Heritage Office (AHO) has provided the following comment to North Sydney Council:

‘The Aboriginal Heritage Office supports the reform of Aboriginal cultural heritage that would provide separate legislation and a separate authority to what exists presently under the National Parks and Wildlife Act and the existing departmental structures. There are problems with the previously proposed model, and it is noted that the NSW Government has not progressed the reform process in recent years. Notwithstanding the delays and problems with the reform process, the AHO does not consider Aboriginal heritage should be included within the NSW Heritage Act as its structure and approval system would further remove Aboriginal heritage from the management and decision-making role of Aboriginal people.’

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

It is considered that the objects of the Act as noted below remain relevant:

- (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.

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

Inadequate information has been collected on the expectations of the community. There is also a conflict between those that may own a heritage listed property versus the community's expectations to be able to enjoy the benefits of heritage listed properties. It is therefore recommended the additional research is commissioned similar to that undertaken by Historic England as seen at [Heritage and the Economy 2019 \(historicengland.org.uk\)](http://Heritage and the Economy 2019 (historicengland.org.uk))

In addition, it is considered that more examples from the Modern Movement be reviewed for protected as this period of design is inadequately represented given their potential future significance in current state and local heritage listings.

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

The legislation could be amended to provide for incentives that could include the:

- a) elimination of stamp duty on the purchase of heritage items,
- b) the reduction of land tax,
- c) tax deductions for conservation works, and
- d) greater penalties for illegal works and demolition of heritage listed properties as this provides an incentive to retain the property's significance.

Focus Question 6

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

Mitigation of the costs for ownership can be by:

- a) elimination of stamp duty on the purchase of heritage items,
- b) the reduction of land tax and
- c) tax deductions for conservation works.

Focus Question 7

What sort of initiatives might encourage activation and conservation of heritage through commercial and philanthropic investment?

Commercial activation and conservation occur where there are commercial benefits however, these could be increased through incentives as noted above at Q6.

Philanthropic activation and conservation will likely only occur where the community and industry see and understands the benefits. Studies such as that undertaken by the UK Historic Heritage provide the community with a greater knowledge on the benefits of heritage and NSW has not recently undertaken and promoted such knowledge.

(See: [Heritage and the Economy 2019 \(historicengland.org.uk\)](http://historicengland.org.uk))

Focus Question 8

How could tailored heritage protections enhance heritage conservation?

The existing heritage protections within the Heritage Act 1977 provide for conservation and should not be reduced.

Previous watering down of the Heritage Act 1977 with exemptions, particularly since State Significant Development and State Significant Infrastructure legislation was gazetted, has shown that heritage protection is less than certain.

The introduction of self-assessment and/or private certification for works to heritage items will only result in the poor outcomes for heritage protection as the owner and/or certifier has a conflict of interest towards the assessment of the proposed works. This has been made clearly evident by failures in the building industry resulting in the creation of the office of the Building Commissioner. **A tailored independent merit-based heritage assessment would be the most effective in enhancing heritage conservation.**

The Heritage incentive provisions in the LEP template instrument provides opportunity to explore uses not normally permitted to improve conservation outcomes. These should not be watered down.

Focus Question 9

How should heritage items that are residential properties be accommodated under a proposed category scheme?

Authoritative commentary upon the benefits of the proposed category scheme cannot be offered as it has not been clearly explained in the information available to date. It is acknowledged that the existing system currently works well and there appears no need to further categorise state items as this will only add another unnecessary layer of confusion for owners and managers. Where properties are both significant for landscape and structures, such as the Everglades at Leura and St Leonards Park in North Sydney, this will also create more confusion.

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

It is considered that community engagement is always important to ensure that heritage listings are supported. However, it is acknowledged that not everyone's views and opinions can be accommodated. Advertising of proposed state heritage listing is not easily seen by the general public and should be placed in local newspapers or commonly read websites. However, greater community engagement on its own will not deliver a more robust SHR without the input of appropriate heritage expertise. A more robust SHR needs government leadership with a clear vision for heritage that is properly resourced.

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

The existing processes have become largely stagnant through declining resources and funding at Heritage NSW. Heritage is not about sterilising development but part of the storytelling of a place, captured as part of the listing process. Any 'abridged process' requires sufficient professionally skilled resources to 'deliver a more accurate representation of SHR items and values over time and ensure that protections are appropriately targeted, maintained and updated on an ongoing basis. Inventory sheets are a great end user resource but the resources to keep this information updated has whittled away from the earlier days of the Heritage Act. The heritage listing process and its ongoing management should be mutually exclusive processes.

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

Increasing the level of upfront, front desk customer service right at the beginning of any approval permit system much like the process often found in local government would assist the current approval system. The introduction of pre application services improves both outcome and efficiency. Heritage NSW/ Heritage Council need to be adequately funded and resourced such that they become accessible again and develop collaborative approaches to improve efficiency and clarity around expectations, outcomes, and ongoing education processes.

Heritage is a merit-based process and needs to be supported by the right resources to achieve it.

The review should focus on strengthening the existing Heritage Act to ensure it is updated and modernised to be more effective through a clearer and better integrated vision, sufficiently resourced to produce faster turnarounds with an expanded mandate that embraces modern issues of climate change, sustainability and how best to utilise concepts embodied energy.

Doing nothing creates change also, the outcome of which is more negative. Education around the fact that the heritage process is about managing change for future and ongoing uses needs to be made clear.

The process should be about informing and guiding future development to ensure appropriate, high quality design outcomes that can improve the useability, access, sense of ownership, care and connection to the present and future of a place.

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

The current doubling up of processes such as the s60 process and the integrated planning development process need to be streamlined and improve collaboration between state and local government agencies, particularly between heritage professionals to help expedite the approval system and make sure the approvals are coordinated under the Heritage Act. The CDC process sitting outside of the planning process has not made the system easy to navigate by the community or professionals. For heritage, the focus should remain as a merit-based system with clear guidelines that help clarify and understand the determination criteria centred around the Burra Charter. It is difficult to see how prescriptive controls can apply to all circumstances.

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

Increasing the levels of expertise, skills and knowledge is vital to improve heritage consideration. North Sydney's experience more recently has been that the operation of the Heritage Act is too slow – responses to requests for IHO's for example, are taking more than 12 months. Reinstating the 'in the vicinity of' provisions should be brought back into local environmental planning instruments for consideration about impacts on setting and curtilage.

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

It would be beneficial to improve funding and resources to carry out the necessary heritage studies to inform heritage listings in the Local Environmental Plans the heritage process and development processes for higher quality outcomes.

As mentioned in Q14 above, at a local level, reinstating the 'in the vicinity of' provisions should be brought back into local environmental planning instruments. At the State level, this should include referral to the Heritage Council for consideration about impacts on setting etc. The objectives of the Heritage Act should be expanded to include provisions that identify issues going into the future, such as those relating to climate change, sustainability and concepts such as embodied energy.

The number of heritage planners available is also too low in regional areas as many Councils outside the Sydney have advisors that only visit once per month to assess development applications and never have the time allocation or funding for strategic planning.

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

It is considered that there should be zero tolerance to deliberate illegal works and consideration be given to criminal proceedings in such situations. Most of the fines are so minor to be of no deterrent and are just considered as an ancillary cost of undertaking the work.

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

It is considered that there should be greater education and training for planners on heritage. The benefits for heritage tourism should also be better understood by the community and by Local Government.

More education in the community about its role and relevance and provide greater opportunities for the community to be involved in the process. Expertise and professional input need to continue to be part of the process.

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

It is considered that the review needs to focus on strengthening the existing Heritage Act to ensure it is more effectively implemented and be guided by a clearer and more integrated vision for heritage. The flow-on effects will have a positive outcome for tourism activation that is not only about visiting the past but how effectively and creatively it impacts the future of a place.

Access should be affordable/free to create positive flow-on economic impact and improve the sense of shared ownership and shared responsibility. Access and information in digital formats should also be enhanced to encourage younger participation.

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

The review needs to focus on strengthening the existing Heritage Act so that the outcomes express best practice, care and management of places showing leadership by example. Actively seeking to increase the level of understanding and education around heritage places is considered vital to ensure appropriate preservation of heritage into the future. Increasing the prestige of heritage places will increase their attractiveness for commercial and community needs.

Public heritage buildings should also have greater access to financial incentives to make their activation and adaptative re-use more accessible by communities.

Please do not hesitate to contact me should you have any inquires in regard to this submission.

Yours faithfully /

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