

**Submission
No 221**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

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Date Received: 4 July 2021

Dear Committee

Submission to the NSW Heritage Act Review 2021.

Introduction

The review of the NSW Heritage Act offers an opportunity to reframe and reset the current regulatory framework. Our interdisciplinary research project, the Mind the Gap project funded by the University of Canberra, Faculty of Arts and Design on the legal environment for utilitarian heritage protection, has identified that for utilitarian heritage participants, the current environment is fragmented, subject to often contradictory aims and objects of various pieces of legislation and regulation and difficult to navigate. It is arguable that the current Act focuses on built, cultural and aesthetic heritage to the detriment of movable and industrial heritage. Dr Wain is an Assistant Professor at the University of Canberra with a background in materials conservation and heritage. Ms Rooney is a legal research assistant for Mind the Gap with a background in public sector reform and management.

Both academically and practically, there is increased focus on the preservation of utilitarian cultural heritage, including the intertwined intangible heritages associated with it. Utilitarian heritage items not for aesthetic reasons but for practicality; they are frequently not a single or clearly bounded entity but consist of multiple components, often connected by lineal assets such as pipes or train lines; and their significance is strongly associated with functionality, their potential to be activated to perform a task. Therefore utilitarian heritage is objects and landscapes, including movable and operating machinery, that are designed to be useful, in the domestic, industrial and scientific domains. This theoretical focus encompasses a complex interweaving of heritage domains often with competing or contradictory needs. Further, it includes a strong focus on intangible heritage, that is the associated skills, knowledges, practices and cultures as well as the sensory experience of that heritage in operation. Also vitally important is the educative and tourism value that such heritage provides to the NSW community. Thus, while much of the current application and implementation of the Act has focused on large sites, built heritage and “elite” heritage, the reviews offers the opportunity to strengthen and extend similar protections to movable and utilitarian heritage.

In supporting such protections for movable and utilitarian heritage, we recognise that this heritage is often owned and managed by private collectors and small volunteer organisations who operate outside the existing formal heritage protection establishment. The opportunity for individuals to participate in the preservation, and particularly the operation of, such heritage plays an important role in developing and supporting their individual and the broader community well-being.

In particular, utilitarian heritage is at present predominantly located in an older male demographic, usually as men retire from occupations that involve modern equivalents to heritage machinery, including the skills and knowledges for the preservation of utilitarian heritage in working order. Operating heritage machinery and associated sites become places where they can celebrate their shared interests and identity, share and learn occupational skills, mentor younger people currently involved in the trades, and enjoy important social and mental interaction. In addition, the adaptive reuse of utilitarian sites and objects offers an opportunity for a broader community conversation about the role of utilitarian heritage in

building NSW and the broader implications of scientific and technological change as industries adapt to future use. Thus, utilitarian heritage offers the opportunity for articulating changes in technology over time, and the impact of technological change on the workforce, the broader society and the environment. This helps to provide perspective on current developments in technology, including for education.

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

We would like to see the current composition of the Heritage Council of NSW broadened to include both a dedicated position for a community member and a dedicated position for a person with acknowledged skills in the preservation of operating utilitarian heritage. We applaud the increased focus on Aboriginal Cultural Heritage, and recommend that representation of Aboriginal Cultural Heritage on the Heritage Council recognise not only traditional Aboriginal cultural sites and artefacts, but places and artefacts that reflect the contribution of skilled Aboriginal workers to trades and professions in post-settlement NSW.

Historically the membership of the Council has been comprised of members from a built heritage, institutional protection, or public sector background. This has meant that the work of the Council has been centred in these domains. As noted above, a significant amount of movable heritage is held in private ownership or by volunteer community groups, and is therefore often underfunded, and with community and legal interests which diverge from institutional or built heritage. Strengthening Council membership to reflect these non-institutional communities would encourage a broader heritage protection regime and provide an opportunity for such communities to become more involved in the development and implementation of heritage policy and regulatory frameworks. It would also facilitate the streamlining of the often-burdensome regulatory regime that is imposed on operating heritage by a framework largely designed for, and by, people who are predominantly expert in built and structural heritage.

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

The objects of the Act remain current; however, they should be updated to recognise and protect utilitarian and intangible heritage. Further, it is arguable that the definitions contained in the Act should be updated to provide additional clarity, particularly for movable heritage, local and State significance, and to recognise the diversity in protection needs across heritage domains and types.

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

The Act currently focuses on built or tangible heritage. It is arguable that it does not adequately reflect the expectations of the NSW community, particularly in its interactions with other legislation or land use. Ongoing community concerns that heritage protections are being overridden by alternative land uses, particularly unsympathetic development for housing and infrastructure that fails to balance the heritage of a site with the development aspirations, suggest that the community does not feel that heritage is adequately protected.

In particular, the current Act does not address intangible heritage for non-static (operating) heritage. For operators and owners of utilitarian heritage, the intangible skills and knowledges required to maintain and operate the machinery are in short supply and often such operation is not supported or is burdened by interacting legislation. Making such heritage protections explicit in the Act would acknowledge the cultural importance of such heritage to participants, the visiting public and acknowledge the important roles such working communities both in their original operation and now have played in the development of NSW. Similarly, the Act does not address the intangible sensory experience of non-static heritage, that is the sound, smell, visual and bodily impact of such machines, which are an important part of the visiting experience for the contemporary community. Thus, we would argue that the Act should explicitly recognise such aspects, particularly in balancing options for conservation, such as reinterpretation or adaptive reuse.

In considering changes to the Act, clarity should be provided about the interactions of the Act with other legislation within the regulatory framework. For example, for owner/operators of vehicular heritage such as vintage cars, their preservation of the heritage item is often constrained by other regulatory environments designed for modern technologies. To on-road a vehicle often means structural or mechanical changes that destroy the heritage of the item, whereas consideration could be made of the purpose or use of the item need clarifying. Thus, again for example, a special licence provision could be made as part of the Road Traffic Act for heritage vehicles being transported to and from heritage functions that would preserve both the heritage considerations and the broader community road safety expectations.

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

Our research has demonstrated that the regulatory environment is difficult to navigate and fragmented. Operating heritage, in particular, may be subject to a wide range of legislative instruments including work, occupational and safety legislation, public insurance and liability schemes, environmental legislation amongst many others. Consideration should be given to the streamlining of such regulations, particularly for operating heritage.

Further, heritage listing, land use and development frameworks often focus on preservation of the aesthetically pleasing aspects of utilitarian heritage, such as architect designed organisational headquarters, rather than reflecting the wider heritage of a process or industry by including such features as machinery sheds and their embedded contents, and transport infrastructure for raw materials and products.. Elevating the protection levels for a whole site would ensure that consideration is given to the full cultural and utilitarian heritage of such sites, preserving its value for future generations.

As noted above, a significant proportion of operating heritage is preserved by volunteer and community groups. Providing funding and education resources to such organisations to ensure they are meeting their legal requirements would ensure that they are supported in such endeavours. Such funding could also be utilised to archive and document the history of such organisations, and to support intergenerational transfer of the intangible skills and tacit knowledge that can only be preserved by embodied learning. Similarly, extending and clarifying the *Civil Law (Wrongs) Act* to accurately cover such organisations, such as in other jurisdictions, would ensure that risks are proportionally addressed for volunteer organisations to continue to operate and maintain the machinery, allow community involvement and enjoyment, such as from vehicular machinery shows.

Consideration should also be given to implementing, at least on a jurisdiction level, the recommendations of the *Borders of Culture: Review of the Protection of Movable Cultural Heritage Act*. Highlighting many of the issues in protecting movable heritage, the Review suggests a robust scheme for identifying and managing movable heritage assets. Although the review was focused on international movement, it is noted that many of the same issues relate to heritage items moving in and out of the NSW jurisdiction. Although a longer-term goal, consideration should be given to ensuring a reciprocal scheme between jurisdictions, whereby movable heritage protections granted in NSW, or another jurisdiction are transferrable, allowing private owners to maintain their connections to heritage items when life changes require them to move interstate.

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

Tailored heritage protections would enhance conservation and adaptive reuse by recognising that different heritage domains have different needs and outcomes. What is practical and sustainable for one form of heritage protection may limit and constrain the heritage protections of another, particularly for movable and operating heritage. The absence of tailored protections for utilitarian heritage has meant that such heritage is traditionally shoe-horned into categories such as “scientific” heritage without a recognition of the unique value of utilitarian heritage, in and of itself. Similarly, for operating heritage that continues to fulfil a valuable community function such as state-operated heritage utilities such as water or railways, heritage considerations are often lost or devalued compared to efficiency or technological advancement. Consideration should be given to ensuring that heritage considerations are given an equal footing in such circumstances and robust risk assessments conducted that allow for alternatives to be considered and implemented.

Focus Question 11: Would streamlining enhance the listing process?

Currently the registration process is cumbersome and weighted towards aesthetic, social and artistic cultural significance and static use heritage, rather than the cultural significance of utilitarian heritage, particularly that of working communities. It also fails to adequately address domestic technologies and vehicular heritage. It also lacks an effective review mechanism and is often seen as an impediment to adaptive re-use. Due to the regulatory burden, it imposes, it is acknowledged that many owners and operators do not seek registration fearing that it will unnecessarily prevent or limit the use and operation of their heritage items. However, without listing historical items and heritage are vulnerable to loss degradation and/or not being conserved appropriately.

It is arguable the listing process should include a process for delisting and for ensuring sensible management of operating machinery, especially in view of changing environmental factors, ensuring that the operation continues, even as it is adapted. Thus, operating machinery may need to have major changes such as replacing the motive power to run the machinery more efficiently, safely or in line with changing availabilities of parts or fuel sources. Therefore, the listing process should include consideration of not only the heritage value of an item, but the purpose of conserving it, and the requirements of that purpose. For example, for operating machinery, it is not always possible to conserve the item completely in its “original” or “authentic” condition, yet it may still be possible to preserve other worthwhile aspects of the original experience of the item. While static preservation may be necessary to preserve increasingly rare items, an important part of the heritage of such items is their operation, and the sensory experience of operation. Preservation that allows for

sensitive change as required to ensure operation should be considered as part of the listing to enable such items to continue to operate.

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

While institutional conservation and preservation recognises the important role in documenting the histories and stories surrounding heritage, such documentation and interpretation is often ignored or undervalued by private or small organisational owners of heritage. Encouraging and supporting the development of tools for such interpretation that could be easily transferred between different domains of heritage would go a significant way to enhancing the broader understanding of such heritage. Similarly, providing funding and support for heritage trades teaching either through technological adult education providers or the development of new models of trades teaching that are economically viable in a modern economy, including through online modules, work integrated learning and the targeting of upskilling of senior trades people. This will enable them to add value to their current business, providing additional employment opportunities and supporting skills transfer to younger apprentices. In addition, for those on the verge of retirement from their trade, it can provide a valuable opportunity to maintain their community and social involvement, supporting their psychological well-being through this transition period.

Similarly, recognising and explicitly extending the protections for movable and operating heritage would enhance the understanding of the valuable role they have played in the historical development of NSW. Moving beyond an elite or built heritage perspective to recognise and provide professional support to local communities and small organisations seeking to preserve critical historical industrial infrastructure and items would ensure that the full cultural and historical significance of such heritage is preserved for the community, including allowing adaptive reuse and reinterpretation to ensure that such heritage remains an important tourism and educative tool for those communities. It is noteworthy that operating heritage when on display, such as in vintage car or air shows for example, draws broad community participation and involvements. Events such as the Temora Air Show also incorporate a range of community business and services that provide economic benefits and opportunities beyond those typically associated with the presentation of heritage as a static, musealised display. Similarly, working environments with significant heritage elements such as Broken Hill remain a significant tourism site, demonstrating the importance to people of understanding how such sites contributed to the continued development of NSW.

Given the current restrictions due to the Covid19 pandemic, investment in such communities to increase internal tourism and participation recognises the significant contribution that they make, not only to the well-being of a community but also to its economic and fiscal sustainability.