

**Submission  
No 223**

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

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# Review of the Heritage Act 1977 (NSW)

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I am pleased to have the opportunity to provide brief comment on the Review of the Heritage Act and the Discussion Paper which I have read carefully.

I was actively engaged in the review of the Heritage Act in 1996 and 1999, and therefore in the establishment of the State Heritage Register and associated processes, and in the administration of the Act and support to the Heritage Council during my period establishing and leading the then new structure of an independent Heritage Office, reporting directly to the Minister. I do not have a contemporary close involvement in the administrative challenges the Act may present but I have maintained a general informed member of the public close interest in heritage issues in NSW over the last 20 years. It is from this perspective that I wish to make a few observations.

1. **The objects of the Heritage Act remain valid** and appear to align with the purpose of the review and I believe adequately reflect the expectations of the contemporary NSW community. I am unclear how the three themes of the review are necessarily linked to the primary object of the Act “the protection and conservation of heritage”. From the discussion paper and from my observations there are several problems with the implementation of the Act, but I think the three themes identified could lead the Review astray if it is framed by them.
2. **Inadequate Resourcing** The problems I have observed with the implementation of the Act seem to come down to the inadequate resourcing of the Heritage Office and the consequent limited range of skills to manage heritage at the state significant level, and inadequate resourcing and skills in local government areas.
3. **Aboriginal Cultural Heritage** The 1996 Heritage Review recognised that it was inappropriate that Aboriginal Cultural Heritage was managed under the NPWS Act and recognised that the NSW Heritage Act should be inclusive of all NSW heritage places and the umbrella for its management subject to indigenous self-determination and custodianship being safeguarded. An Aboriginal Member of the Heritage Council was appointed, Aboriginal staff were employed in the Heritage Office, liaison with NPWS was strengthened. I am dismayed to read the statement on page 7 that in 2021 Aboriginal Cultural Heritage is managed under the NPWS Act and we are back where we were 25 years ago.
4. **Integrity of the State Heritage Register** At the time of the establishment of the State Heritage Register (SHR), a decision was taken to import all items which had Permanent Conservation Orders (PCO) into the Register as a way of ensuring their conservation. At the time it was clear that not all these items really had State Heritage Significance, and that some of them had been granted PCOs because of political and local pressure when they were under threat due to unsympathetic

development proposals or demolition proposals in the period 1977 - 1998. All had at least local and community value but a review of the then 700+ items was precluded at the time due to **lack of resources** and the urgency of establishing the Register and maintaining protection for the very many items of genuine state significance.

It remains the case that the foundation items on the SHR should be reviewed as to the level of their significance, for the clear anomalies on the Register undermine its integrity and can call into question all the processes around their management. Rather than having this problem persist for another 20 years, it would be good public policy and practice to have an intensive appropriately funded time limited review period now and ensure the items on the SHR are only those with State significance.

5. **Streamlining of heritage processes** Increased funding and increased heritage skilled staffing will be the surest way to streamline heritage processes and meet modern customer service expectations. Integrating heritage management decisions in the overall planning process is best done at local government level, in cases where there is adequate heritage expertise at the local government level. This can be seen to have worked well in the delegation to the City of Sydney of most heritage management decisions. All DAs for heritage items which are residential properties should be assessed at Local Council level. Local Councils with large numbers of State Heritage Significant items should be incentivised to build the heritage expertise in their planning departments and funded to engage additional heritage expertise when developments involving state heritage listed items are to be considered.
6. **There should be more community engagement** in the listing process, and this would deliver a more robust State Heritage Register and assist the Council and the Minister in the listing decision. The SHR was established so that the community could identify items of heritage significance and have confidence that their heritage values would be retained in any future developments. A series of systematic regional heritage surveys were commenced which encouraged full community participation and it was expected that over a period of 10 – 15 years the SHR would be a comprehensive State-wide listing of valued items of State significance. This would address Focus Question 10 and should be done now as foundation SHR listings are reviewed.

Interim Heritage Orders (IHO) should be rarely needed and the level of animosity towards and politicisation of heritage would be reduced. Last minute heritage interventions at the time of development applications should be avoided as this invites anger (and sometimes subverting of sound heritage management) from owners and planning regimes.

7. **Tailored solutions** All items on the SHR should have Heritage Council endorsed conservation management plans (CMPs) which identify their significance clearly and can allow for appropriate development balanced against this significance. Effectively CMPS should offer the frame for the tailored solutions that the Review seeks. Applications should be assessed against the heritage significance of the place. There is not a one size fits all process. CMPs should be public documents, digitally available and reviewable in the event of significant change to the context of the item or

community values. When a development is declared State Significant, the CMP and Heritage Significance of an item or a landscape should not be cast aside except in exceptional circumstances and should be carefully weighed in consideration of the proposed development

8. **The proposed additional NSW heritage listing categories** will not improve or streamline processes, rather they will complicate them and waste resources making such new category decisions. Proposed Category 1 items are clearly nationally significant, should be listed on the SHR and on an equivalent National Register and managed through delegation to state agencies attracting additional resources from the Commonwealth for this. Categories 2 and 3 would already have tailored regulation through the CMPs endorsed by the Heritage Council at the time of listing. Category 4 already exists as local heritage listings
9. **State Government as custodian of state significant assets.** Government should lead by example in the listing, conservation, and management of state significant assets. Section 170 of the Act provides sound principles for this and needs to be integrated into overall asset management requirements for government agencies.
10. **Incentives** The amount of funding and other incentives available to heritage owners in NSW is woeful. There are so many examples of excellent schemes in the UK and elsewhere where reductions in local government and other state government taxes can be significant incentives for owners. Heritage Grants do not appear to have increased greatly since 2002 when I was last associated with them, and they were derisory then.
11. **Saving places which would otherwise fall into disrepair.** The several case studies in the discussion paper, if funded to an appropriate level, would be good to emulate in NSW and would “save” more places. There are examples ranging from Rose Bay Cottage to Bronte House to the Broken Hill Regional Art Gallery in Sully’s Emporium where careful and thoughtful NSW and local government partnerships have previously led to long term and lively use of state significant places which would otherwise have been lost.
12. **Public engagement, publications, web-based resources, celebrating heritage** The NSW Heritage Office must again be resourced to produce and make available resources to assist heritage management, fully documented SHR listings, CMPs, heritage surveys and public information. It should be the place which the NSW public can turn to for consolidated and heritage expertise. Hazel’s Hawke’s appointment as Chair of the Heritage Council was inspired in terms of increasing public engagement and interest in heritage. Appointing similar Ambassadors for Heritage, with appropriate status but not necessarily as members of the Heritage Council, would be constructive in developing a long-term strategic campaign to build heritage awareness and celebrate our heritage places.