

**Submission
No 229**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Ms Sheridan Burke

Date Received: 4 July 2021

Submission from SHERIDAN BURKE

Submission into Review of the Heritage Act 1977

I am a heritage consultant based in Sydney NSW, with more than 40 years' experience in the operation of the NSW Heritage Act. I was appointed in 1978 as one of the first specialist staff of the Heritage Branch which serviced the NSW Heritage Council under Justice Hope in 1978 and worked within the Department of Planning for 19 years preparing heritage policy, publications, commissions of enquiry and approvals under the Act. Amongst my activities was the development of the NSW Heritage Study system, the NSW Heritage financial incentives program, numerous policy initiatives and Heritage Council publications, as well as managing the Heritage Act review in 1992.

From 1992-2002 I worked for the Historic Houses Trust operating delegations under the Heritage Act for 16 major historic properties open as house museums by HHT and initiating the HHT Endangered Houses Scheme. For the last 20 years I've worked as a heritage consultant, 15 as a partner and director of GML Heritage and more recently as a sole practitioner heritage consultant, experiencing the Heritage Act operations on behalf of clients, councils and owners, and developing new policies such as the tolerance for change concept, now widely used in CMPs and approvals streamlined processes.

In 2018 I was appointed as the Deputy Chair of the NSW Heritage Council and Chair of the State Heritage Register Committee. During this time, I initiated the clearance of the backlog of nominations to the SHR, devising with the SHRC a methodology for reviewing 200+ old nominations that had been accumulating within DPIE for many years and a triage policy that should prevent a similar backlog occurring ahead with HNSW. I remain a member of the Heritage Council's Heritage Advisory panel, providing technical and policy advice.

I also chair a community Trust which manages a SHR listed house and garden in Sydney. In my professional life I currently teach Conservation Management Planning courses through the Getty Conservation Institute in Los Angeles, and undertake a wide variety of heritage research, CMPs, authoring publications and consultancy projects.

I thus have long term personal and professional experience of the NSW Heritage Act as a regulator, a policy expert and as a customer of the services of HNSW as it operates the NSW Heritage Act and its regulations.

My comments on the specific terms of reference are framed by this experience and knowledge of the Heritage Act and its operation from inside, as a staff member; from outside as a heritage item manager/ owner and consultant customer; and most recently as a Heritage Councillor.

Responding directly to the terms of Reference, my comments follow.

(a) the need for legislative change to deliver a heritage system that is modern, effective and reflects best practice heritage conservation, activation, and celebration

IT'S AN OLD ACT, BUT IT'S COMPREHENSIVE AND HAS ALREADY BEEN UPDATED SEVERAL TIMES. The major problems that inhibit its ability to deliver modern and best practice outcomes lie in its ineffective operation and inadequate and poorly prioritised resourcing, not a need for legislative change.

THE EFFECTIVE DELIVERY OF THE ACT'S OBJECTIVES ARE PREVENTED BY INADEQUATE RESOURCES AND STRATEGIC PLANNING

The Heritage Act (HA) 1977 was designed as a regulatory measure to protect from harm an unknown heritage resource, which needed to be identified and managed.

It was intended that community and owners would be provided with state support via grants and ready availability of expert advice and rate/tax relief; and that State and agency owners of heritage assets would be supported internally by expert staff and externally by guidance and publications from the HC.

BUT WHAT ARE THE OUTCOMES?

The HA 1977 effectiveness relied on

Comprehensive Identification of heritage resources to be managed

IDENTIFICATION: This has not been achieved, due to lack of prioritisation and leadership by recent Heritage Councils and lack of resources to fund the research and review work. Although a state heritage strategy and regional histories were completed in the 1990s, they have not been implemented via survey, so NSW is fundamentally behind all other states and territories in its knowledge of its own heritage, a source of frustration and delay to heritage owners and managers alike.

The State Heritage Register (SHR) has not been built or consistently developed via studies and analysis for the past 20 years.

Today the vast majority of heritage places in NSW (whether state or locally significant) are managed at local level via LEPS (c. 40,000 places) compared to 1700 odd places on the SHR. In recent years extremely limited resources have been made available to build the SHR (20 items added pa in last 20 years, so the Heritage Council must now rely upon LEP listing for protection of most SHR items.

A MODERN AND EFFECTIVE HERITAGE ACT WOULD BE SUPPORTED BY ADEQUATE RESOURCES TO REVIEW AND IDENTIFY THE STATES HERITAGE

SOLUTION: Initiate a comprehensive heritage study of the state; followed by public identification of significant places. This sort of exercise has been undertaken in other states and territories and for example, in Britain by specialist teams with a short term (5 year?) project brief. This could be done regionally in NSW supporting job creation and certainty state-wide, using the existing regional histories, and resolving the unknown nature of "What is the Heritage of NSW". Building the SHR to operate with full delegation to certified LGAs with a "call in" power if more than 20 individual submissions(similar LPP) would streamline processes.

CREATE AN INTERACTIVE STATE HERITAGE REGISTER

SOLUTION: Enable public interaction in the listings process (to add, correct, question information, suitable monitored). This practice is common in museums, seeking additional voluntary research and information regarding objects. A similar process for heritage listing could be undertaken via HNSW.

(b) the adequacy of the Act in meeting the needs of customers and the community and the protection of heritage

A MODERN AND EFFECTIVE HERITAGE SYSTEM WOULD BE RESOURCED TO ENGAGE WITH CUSTOMERS

As the resources of HNSW have reduced in real terms over the last decade and been distributed regionally on more recent years, the ability of specialist HNSW staff to engage with heritage item owners and provide consistent quality advice has diminished.

In the mid-nineties, HNSW had the best collection of policies, processes and especially publications to provide consistent guidance to owners and regulations alike. Resources have not been provided to update publications or train and retain staff. Throughout the last decade major project such as the preparation for sale of the SHR listed properties in Millers Point were severely under-resourced, with HNSW being unable to undertake site inspections or negotiations with incoming owners or advisers, with resulting distancing and owner discomfort evident in recent court cases and public consultation sessions. Its time to return to engaging with customers face to face e.g., use local government processes- pre-DA)

HNSW Publication reviews have not been adequately resourced, so the ability of staff to provide owners and agencies managing heritage assets with current information is minimal. For example, the recent exemptions (2020) referenced out of date documents from 1996 NSW Heritage Manual).

SOLUTION: Prioritise and adequately resource and update HC publications and guidance for owners and agencies so they can do their work effectively and efficiently, and owners will benefit from consistency of approach at all levels.

STATE AGENCY HERITAGE OWNERS ARE CUSTOMERS TOO

SOLUTION The government must also lead by example. This requires allocating staff and resources within agencies to manage the assets listed in the Section 170 Heritage Registers required of all State departments and agencies. Although excellent guidance has been prepared by HNSW, state agencies and departments have failed to adequately plan or budget for their responsibilities of minimum maintenance e.g., Schools Infrastructure does not allocate adequate maintenance for its heritage properties.

SOLUTION: Treasury allocate 2% each agency budget against heritage maintenance for Heritage Act S 170 Register listed items

SOLUTION: Integrate heritage management in SSD and SDI requirements for all sites. Early engagement of heritage issues in major development is the key to timely success

(c) how the Act could more effectively intersect with related legislation, such as heritage elements of the Environmental Planning and Assessment Act 1979 and the National Parks and Wildlife Act 1974

ENSURE THAT THE IMPLEMENTATION OF THE EPA ACT RECOGNISIES HERITAGE ASSETS

LEPS manage the majority of heritage items in NSW and most of the state significant places, as such support through clarity and prioritising heritage values in strategic planning, SSD and SSI decisions are self-evidently of critical import. Implement recent LEP Strategy processes- build on character ID, tourism potential, HS reviews to strengthen LEP listing support “Heritage Certified” Local Government get full delegation e.g., Inner West Council has 6-person heritage team- why not delegate SHR roles more? Strategic support Local Govt could achieve wider/clearer delegations over 5 years= and a long term reduction state roles. This could begin with re-examining delegation limits.

RECOGNISE EMERGING HERITAGE IMPACT ISSUES

Major external issues such as climate change were not impacting heritage places when the Act was written. This is now a major issue in terms of rapidly increasing heritage insurance premiums for repairs following CC related events, such as storms.

In 2019 the Heritage Council adopted the ICOMOS Future of Our Past report as guidance but has not actioned research and implementation due to funding problems.

SOULTION: Prioritise CC preparedness program for SHR sites, providing a positive reengagement with owners.

CREATE AN EFFECTIVE ABORIGINAL HERITAGE RESOURCES ACT

Indigenous values in significance assessment were a later amendment to HA and has not fully engaged. An independent and specialist Act is essential.

SOLUTION: Commit to a separate Indigenous Heritage Act to provide appropriate protection supportive management requires full consultation. Integrate indigenous values in everything the Heritage Act does- e.g., name all sites with their indigenous countries

(d) the issues raised and focus questions posed in the Government's Discussion Paper, in particular:

(i) a category approach to heritage listing to allow for more nuanced and targeted recognition and protection of the diversity of State significant heritage items

Experience and evidence demonstrate that such an artificial approach to categorise or grade heritage places simply does not work. In Australia this has been abandoned for many years. Such a return to past ineffective and complex processes cannot be supported.

Understanding and assessing significance must remain the key driver of heritage listing

In 2019-2020 the new SHRC triage process has started to develop an alternative recognition process responding to the lack of SHR resourcing by partnering with local govt and state asset management. LEP/170 Registers can be alternative management partners for state or local heritage places. LEP/170 registers preferred by owners- relatively more transparent, more accessible management, timing

d(ii) consideration of new supports to incentivise heritage ownership, conservation, adaptive reuse, activation, and investment

A MODERN HERITAGE SYSTEM WOULD HAVE EFFECTIVE INCENTIVES TO SUPPORT HERITAGE ASSET OWNERS/ MANAGERS

Heritage Incentives are most easily provided via access to grants and expertise at the state level- such as heritage grant access, land tax benefits. At present, the biannual State heritage grants are accessible only to SHR listed places. Because of the limited resources allocated to SHR listing (maximum 20 sites pa), many sites that would qualify for SHR listing cannot be listed creating an unfair and inequitable situation.

Local government has limited funds for providing heritage advice and local grants and receives less and less support from the state to do so. In low-rate base LGAs no such incentives are available, so many SHR worthy items are not able to access any financial support and are adversely impacted.

For private owners, the current land valuation system has major negative impacts for heritage items.

SOLUTIONS: state valuation system creates major problems of insurance of SHR properties. This needs specialist research and analysis.

The use of the Treasury Managed Fund to provide insurance for SHR properties, indeed heritage properties generally, would be a huge support within the purview of the state government.

Research the impact of heritage valuations on insurance for heritage sites

Specific initiatives e.g., Bushfire recovery, climate change vulnerability assessments: HNSW should deliver important special projects to support heritage item owners in times of stress.

Heritage equivalent of bio-banking to use development funds for heritage gains

A MODERN HERITAGE SYSTEM WOULD PROACTIVELY SUPPORT THE INTERPRETATION AND CELEBRATION OF NSW HERITAGE:

It is said that many SHR owners do not know their properties are heritage listed, there is no regular communication with owners by HNSW and minimal public celebration of listings. Quarterly HC newsletters and regular publications celebrated HC and HNSW accomplishments 1980-2005ish. This has virtually stopped, due to lack of resources allocated to this priority. The annual report of the HC has gone from being an informative document of case studies and shared experience to being a bureaucratic tick box exercise.

SOLUTIONS: Allocate resources burst to support a HC publications review and update for 18 months- 2years. Convert and upgrade HC technical publications to electronic communications, collaboration with other state and local initiatives.

Initiate an online quarterly newsletter SHR owners, asset managers and local government to provide advice, networks, and input to enable heritage owners to do the right thing, reducing the need for government intervention

d(iii) improvements to heritage compliance and enforcement provisions (iv) streamlining heritage processes

COMPLIANCE WILL BE IMPROVED IF SUPPORTED BY USE OF NATIONAL HERITAGE PRINCIPLES TO CONSISTENTLY GUIDE ALL LEVELS OF DECISION MAKING AND PRACTICE

SOLUTION: Implement national Burra Charter principles of heritage conservation management for all sites to ensure that applicants and regulators held same objectives and methodologies

HERITAGE MANAGEMENT PRINCIPLES: This had initially been achieved via the adoption by the NSW Heritage Council of the national standard, the *Burra Charter* of Australia ICOMOS and its (subsequent) practice notes. Over its forty years of evolution and practice the Burra Charter is used in every state and territory and internationally. There is no need to reinvent the wheel. HCNSW should use national best practice. Regrettably, this has not been continued by the current Heritage Council e.g., 2020 exemptions did not reference this fundamental resource).

SOLUTION: Utilise national standards in practice e.g., when the recent the exemptions are reviewed to provide consistent decision making and messaging. Adopt Burra Charter Practice Notes rather than creating new policies.

(e) any other related matter.

Ideally, the Role of the NSW Heritage Council should be to INSPIRE CONSERVE ENGAGE, by

Implementing national heritage standards, the Burra Charter for consistency and clarity, streamlining communications and approvals processes

Engaging with indigenous values on every site

Building skills, capacity, diversity through partnership investment at state agency and local govt levels

Initiating an NSW heritage inventory review: 5 YEAR PLAN

Providing expert heritage advice, standing at court, LPPs (evidence) to support owners and local government

Reviewing the heritage valuation system, grants and incentives

Recognise emerging threats and responding e.g., proactively support SHR items Climate change preparedness

Communicating with owners, agencies, and the public about heritage issues to create cycle of understanding, valuing, caring, and enjoying heritage places

Make up of Heritage Council

Members with experience, skills, and knowledge of the heritage resources of NSW

CONCLUSIONS

In summary, I suggest that the problems the Heritage Act faces in 2021 are not dissimilar to those faced by previous Heritage Act reviews with the exception of the Climate Change emergency. The main issues include:

Heritage Identification in NSW is not comprehensive: to achieve certainty and to clarify compliance and incentives a focus on completing a state heritage survey and strategy is needed

Indigenous values not always engaged in land use planning and heritage initiatives, mandate this
Integrate indigenous values in everything the Heritage Act does- e.g., name all sites with their indigenous countries

HAct Administration is now perceived as overly bureaucratic, invasive, distant, unresponsive, uncertain, inexperienced, under-resourced, less partnership oriented and uncommunicative

Political inaction re-emerging heritage issues, distanced from issues = uncertainty.

The Heritage system is under-resourced and under funded

No real heritage incentives operate now, no biobanking equivalent for heritage (esp. rural); minimal applicability of TFSR.

NSW Valuation System, and insurance impacts of climate change = negative heritage outcomes financially.

Planning system now facilitates avoiding controls (e.g. SSD turns off HA) unsolicited proposals rather than integrating environmental heritage as a baseline planning issue;

Climate Change threatens ALL heritage places, yet preparedness is minimal for SHR.

Private certifiers without heritage knowledge present a risk (exempt heritage applications from CCD).

IHOs are needed to cover gaps; IPPs need heritage expertise represented.

Inconsistency and inequality of rural/urban advice access.

Some Heritage Asset owning agencies do not adequately resource their heritage roles e.g., MAINTENANCE funding), or are without access to expertise, and not held accountable.

POSSIBLE IMPROVEMENTS:

Invest resources to conduct/review heritage studies intensively over next 5 years for state-wide coverage

Commit to a separate Indigenous Heritage Act to provide appropriate protection supportive management requires full consultation. Integrate indigenous values in everything the Heritage Act does- e.g., name all sites with their indigenous countries

Resource and prioritise Heritage Act implementation via the EPA Act and via S 170 Register resourcing at agency level

Communicate more: social media celebrations, be accessible (e.g., use local government processes- pre-DA)

Apply national best standards BC +Practice Notes consistently, visibly via HC standards (e.g. develop a HNSW approach similar to Historic England Principles)

Incentivise heritage conservation work, investigate use of Treasury Managed Fund support SHR item insurance cover

Update HC Publications to share knowledge of heritage resources by uploading studies and lists to public websites, and make SHI interactive to build information via public (minimal moderation-partnerships)

Empower community to manage- e.g. IHO delegations to equipped councils (e.g. North Sydney), HC publications set standards, Exempt heritage applications from certifiers, ensure heritage experts on IPPs, Response to Land and Environment Court outcomes.

I attach the policy I developed called Tolerance for Change which is a useful method for streamlining heritage management decisions.

REFERENCES:

