

**Submission  
No 264**

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

**Organisation:** Property Council of Australia

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Australia's property industry

## Creating for Generations

4 July 2021

The Hon Shayne Mallard MLC  
Chair  
Standing Committee on Social Issues  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Email – [socialissues@parliament.nsw.gov.au](mailto:socialissues@parliament.nsw.gov.au)

Dear Mr Mallard

### Inquiry into the Heritage Act 1977

The Property Council of Australia welcomes the opportunity to provide comments to the Standing Committee on Social Issues (the Committee) to assist with its current Inquiry into *the Heritage Act 1977* (the Heritage Act).

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes.

The following comments detailed in the attached submission are provided for your consideration.

Should you have any questions regarding the content of this submission, please do not hesitate to contact me

Yours sincerely

**Lauren Conceicao**  
**Acting NSW Executive Director**  
**Property Council of Australia**

**Submission to the Legislative  
Council Standing Committee on  
Social Issues**

**Inquiry into *Heritage Act 1977***

**4 July 2021**

## 1.0 Executive Summary

The Property Council of Australia welcomes the opportunity to provide our views to the NSW Parliament's Social Issues Standing Committee Inquiry into the NSW *Heritage Act 1977*.

The Act remains the cornerstone of the NSW Government's approach to the protection of built and natural heritage assets of State significance in NSW – with the intended purpose of conserving our rich cultural, built and natural history so that it can be carried forward for the enjoyment, appreciation and use (where appropriate) of future generations of Australians and international visitors to our State.

The Property Council believes that if people are to experience and gain deep appreciation of our magnificent State, then the fabric of modern architecture and buildings, historic places, its natural beauty and other areas of cultural significance must be interwoven.

We are about honouring the structures, buildings and artefacts that help us interpret the story of where we have come from, while building cities and communities with soul, character and meaning. An essential element to us achieving an accurate reflection of our past while forging a strong and diverse future, is to respect and formally recognise the aspirations of First Nations people for self-determination and custodianship over aboriginal heritage assets.

At its core, the Property Council's submission recommends a discrete strengthening of the NSW Heritage Act that must be matched by a renewed commitment by the NSW Government to further invest in effective heritage protection. There is also a critical need to improve coordination and consistency in the application of guidelines by consent authorities and local government, while ensuring a renewed focus on providing heritage education to property owners, consent authorities, agencies, local government and the public – this should be tackled through a NSW Heritage State Environmental Planning Policy (SEPP).

Best practice heritage conservation in NSW will also be achieved through the Government supporting enhancements to the resourcing and expertise of the Heritage Council and Heritage NSW to facilitate streamlined processes that result in speedier protection of heritage of State significance. Efficient and timely decision-making processes that secure bona fide' heritage protection will also unlock appropriate development that can be stalled by unnecessarily lengthy heritage assessments and determinations.

Other important points for consideration have been provided below and are elaborated upon in this submission.

- Objectives of the Heritage Act are still relevant and adequate; however, administration of the Act requires streamlining to expedite heritage protection.
- The leadership of the Heritage Council in the conservation of the State's heritage can be enhanced through reforms to lift the transparency of decisions and by bolstering the number of informed & skilled practitioners in heritage conservation that sit on the Council.
- Focus of process – be proactive instead of reactive when an application is made.
- Establish a system that includes a place on the heritage register for real significant values and reasons.
- Encourage adaptive reuses and utilisation of conservation incentives (similar to Cl. 5.10 (10) of the Standard Local Environmental Plan) as essential part of 'Heads of Consideration' for adaptive reuse of heritage places to remain viable.
- Focus on understanding of NSW's heritage will create a better systematic review of the listing registers.
- Applications are at times not reviewed by appropriately skilled people, which limits the ability of Heritage NSW to facilitate faster assessment of applications and ensure good heritage outcomes that balances the needs of the applicant and the key aspects of the item's heritage significance.

- Explore establishment of heritage lottery similar to that of UK National Lottery Heritage Fund <https://www.heritagefund.org.uk/>
- Greater financial incentives should be provided involving government at State and Federal levels to enable such incentives (such as improved tax incentives).
- Explore options for government seeding funds and private investment to activate the buildings for a multitude of commercial and community uses. Examples include the activation of the former military buildings in the lands administered by the Sydney Harbour Federation Trust.

## 2.0 Introduction

The Property Council of Australia is the leading voice of the property industry. As Australia's largest industry we directly account for \$235 billion or 12.8 percent of the nation's economic activity. In NSW this equates to \$87.9b or 15 percent of Gross State Product.

We champion the property industry which employs 1.4 million Australians and shapes the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

Through our research, data insights and advocacy, decision-makers gain the benefits of our expertise and experience to create vibrant, liveable communities, great cities and strong economies. We embrace smarter planning, better infrastructure, sustainability and globally competitive investment and tax settings which underpin the contribution our members make to the economic prosperity and wellbeing of Australians.

## 3.0 Reform Proposals

### 3.1 Improving the listing process

The Property Council of Australia agrees that the listing process is lengthy and complex primarily because there are not enough resources within Heritage NSW to process the nominations in a speedy manner. There are examples of major series of listing nominations being prepared by professional bodies that are not processed as the current level of resourcing is not adequate. This puts the whole listing process into disrepute. The current process is, in particular, reactive to development proposals rather than being based on a coordinated framework supporting NSW's heritage that then provides specific context for individual projects and development proposals. Focus on further developing the framework of NSW's heritage so that it is more strategic and fosters greater understanding of heritage will create a better systematic review of the listing registers. As referred to earlier, the creation of a Heritage SEPP could play an instrumental role in facilitating the shift away from a reactive approach to heritage conservation to one that is more consistently applied and directed towards achieving the State's overall heritage conservation goals.

Mechanisms in the system must be established to ensure that the proposed listing is significant for real reasons and is not being listed as a reaction to a development proposal.

The Property Council supports the retention of Interim Heritage Orders (IHOs) as a necessary tool to intervene quickly to restrain development or other activity that poses an immediate threat to the heritage conservation value of buildings and other structures. IHO's exist to perform this function, they should not be used as a vehicle by individuals or groups to disrupt, delay or derail appropriate development that would affect land, buildings or structures with little or no heritage value.

If an interested party wishes to challenge an IHO, the main recourse available is take the matter to the Land and Environment Court. Legal actions of this nature can involve the expenditure of significant time and money before, if the challenge is upheld, the DA can proceed.

We believe there is an opportunity to introduce a new review mechanism of IHOs by a panel of heritage experts where advice can be provided to the Heritage Council and the Minister within one month of the making of the IHO, if evidence is found that the IHO is too broad in its application or if the experts conclude the IHO has been inappropriately made, then the Minister may recast or revoke the IHO.

The inception of an early review process can only improve the transparency of decisions on heritage protection and potentially avoid costly court proceedings for Governments and stakeholders.

### **3.2 Amending existing listings on the State Heritage Register**

The Property Council of Australia supports reforming the listing process to update the heritage register in a periodic review and systematic manner. This will allow for updating the information on the listing, correction of errors, reassessment of state significance values whether the values considered for listing of an item on the State Heritage Register (SHR) still valid or not. Listing and management of heritage places should be kept separate.

The delisting process should be carefully considered and be equally simple. If an item no longer meets the listing on the SHR its significance values for retention or inclusion on the local heritage listing should be considered under the same process. Such delistings should involve community consultation and be referred to the Heritage Council.

### **3.3 The heritage permit process**

The heritage approvals process under the *Heritage Act 1977* as noted in the objectives of the Act encourages adaptive use of the heritage items.

It is acknowledged that there is a need for review of the existing approval process and the new Exemptions process in the form of self-assessment is a welcomed change to the Section 57 (2) Standard Exemptions process provided that supporting educational workshops are held to ensure adequate implementation of the self-assessment process and use of appropriately skilled professionals in the documentation and carrying out of the works under the Exemptions.

Skills and knowledge of the staff/officers assessing the applications is important in streamlining the approval process. Often a decision is not made by the allocated person due to the lack of suitable knowledge and collaboration with the other relevant divisions of the Heritage NSW. Putting the relevant divisions of the Heritage NSW staff in one section so that they can collaboratively consider the applications to improve the process and faster decisions in the approvals process.

Improvement in the relationship of the Heritage Council and the Heritage NSW with the community and applicants is essential for the consultation prior to the applications are made for a streamlined process and positive outcomes. The pre-development application consultation with the Heritage NSW is no longer as open as it used to be and requires consideration.

### **3.4 Heritage within the planning system**

It is acknowledged that there are areas for improvement for heritage within the planning system in particular the overlapping process for an Integrated Development Application (IDA) under the *Environmental Planning & Assessment Act 1979*. Currently, once the approval is granted under the IDA process a separate application in the form of Section 60 is required to be made for the same approved development proposal under the *Heritage Act 1977*. This is a double-up and time consuming process. A system should be established so that there is one IDA process and any applications fees for the consideration/application under the Heritage Act is also embedded in the IDA fees to prevent any financial loss for the Heritage NSW and Heritage Council's assessment.

Another area of consideration should be realigning the Heritage NSW back into the Department of Planning cluster so that they work more efficiently and updates to these Acts considered collaboratively.

### 3.5 Compliance and enforcement

The Property Council of Australia only supports the introduction of intermediate enforcement powers if the availability of resources (who are skilled and adequately trained) are available to ensure suitable conditions of consents are put in place at the approval stage for regular monitoring.

### 3.6 Aboriginal Cultural Heritage

The Property Council maintains its broad support for the NSW Government's aspiration for reform that produces effective Aboriginal cultural heritage protection that has self-determination and custodianship at its heart. To this end, we reiterate our support for the thrust of the Government's proposed Aboriginal Cultural Heritage Reforms 2018 including Aboriginal Cultural Heritage Management Plans, the creation and maintenance of data maps and information systems and dispute resolution pathways.

## 4.0 Focus Questions

In addition to the specific reform proposals, the discussion paper identifies nineteen focus questions for response. Several of these raise important issues for further consideration. We have provided responses to several of these questions below.

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

The composition set out in Section 8 of the Heritage Act is appropriate and provides for variety of skills and knowledge in heritage conservation. However, the Act does not require the balance of skills in the composition that make up the Heritage Council. As a result, the current composition of the Heritage Council, which is essentially appointed by the Minister (8 members of the total 9 members) does not incorporate the variety of skills and knowledge required to ensure it operates effectively.

The current size of the Heritage Council should be increased to the original size of 14 in order to increase the diversity of skills required for adequate administration of the Heritage Act and policy making.

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

As described above the objectives of the Heritage Act are still valid and relevant for the adequate protection and management of the heritage places of State significance. The matter is for the administration and implementation of these objectives rather than the Act itself.

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

The community in NSW is diverse and the understanding of the cultural heritage values of NSW may differ between the communities who may understand and appreciate less or more than the actual stakeholder of a particular heritage place. The Act and its objectives currently provide appropriate protection of these diverse cultural heritage values and expectations of the community in NSW. However, the government's approach to protection of its own heritage assets, which make up the 66% of the State Heritage Register items, requires a renewed effort to deliver lasting heritage conservation. This is particularly evident in the divestments of the public buildings and loss of heritage places for State Significant infrastructure projects and developments to the detriment of the heritage values and over-riding the provisions of the Heritage Act.

### **Focus Question 7: What sort of initiatives might encourage activation and conservation of heritage through commercial and philanthropic investment?**

The Property Council of Australia agrees that there is a need for greater financial support and incentives to be provided to the owners of the SHR heritage items. Although there is a Heritage Council grant scheme, it is limited in funding and requires to explore additional options and ways to support the protection and ongoing maintenance and use of the heritage places. Such examples to explore could be:

- establishment of heritage lottery similar to that of UK National Lottery Heritage Fund <https://www.heritagefund.org.uk/>
- provision of greater financial incentives involving Government at State and Federal levels to enable such incentives (Such as improved Tax incentives to encourage owners to conserve their heritage properties).
- options for government seeding funds and private investment to activate the buildings for a multitude of commercial and community uses. Such as the activation of the former military buildings in the lands administered by the Sydney Harbour Federation Trust is an excellent example.

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

Site specific exemptions could provide tailored heritage protection and allow for a more affordable heritage conservation. Appropriate measures should be put in place to support such site specific exemptions in the absence of an endorsed conservation management document (including Conservation Management Plan or Strategy) .

### **Focus Question 9: How should heritage items that are residential properties be accommodated under a proposed category scheme?**

The purpose of the categorisation reform system as it is proposed in not clearly understood as the existing levels of significance and listing registers at National, State and Local levels provide adequate protection for all type of heritage items. The residential properties are largely fall under the state and local heritage and are protected under the Heritage Act and the EP&A Act respectively.

The residential properties that are listed on the SHR could easily be managed though new exemptions, site specific exemptions and fast tract s60 to streamline the process for appropriate changes in a timely manner.

The residential properties that are listed on Schedule 5 of an LEP could be managed though Development Control Plan that specifically tailored for the respective site to inform its future development in a balanced approached to enhance the presentation and appreciation of its heritage values.

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

A greater level of community engagement at the strategic level is encouraged as it will provide better understanding of what the community values in terms of importance to the state as a whole. The community-based heritage studies undertaken by local governments and lead by a suitably qualified heritage professional and a working group with diverse range of skills and community and heritage organisations provide a more robust and comprehensive heritage listing outcomes. Such studies include nominations for SHR listing beside the local listing.

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

As noted in section 3.2 above, the streamlining of the listing process is supported to review and update the register in a regular and systematic manner. However, any delisting from the



SHR should be carefully considered and should involve community engagement for submissions and comments on the proposed delisting.

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

The following points should be investigated and measures put in place for improvement of the current approval system.

- New Exemptions process in the form of self-assessment is a welcomed change to the Section 57 (2) Standard Exemptions process. Heritage NSW should explore and provide supporting educational workshops to ensure adequate implementation of the self-assessment process and use of appropriately skilled professionals in the documentation and carrying out of the works under the Exemptions.
- Improve knowledge of the existing system and employ appropriately skilled staff/officers so that assessment of the applications is made in line with heritage best practice by personnel with knowledge of heritage conservation for specific type of heritage item.
- Improve the relationship of the Heritage Council and the Heritage NSW with the community and applicants for pre-application consultation for a streamlined process and good heritage outcomes.
- Provide for appropriate funding and resourcing for the management of the applications in an informed and timely manner.

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

While delegation of the Heritage NSW for making decisions on specific applications on behalf of the Heritage Council provides for appropriate determination system, there should be other determinations criteria for applications associated with works to SHR items including an Independent Commission combining members skilled in heritage conservation, the Heritage Council or its delegate for fast track s60 applications. The Heritage Council has recently delegated the City of Sydney to determine the applications within the Millers Point, which could be utilised in other LGAs where the local council has appropriately skilled heritage assessment team and resources.

The new self-assessment exemptions process will reduce the necessity for applications associated with minor works and repairs and maintenance of the heritage items. However, this streamlining process will require some guidance and education for its adequate management by the owners of the SHR items who would require to engage suitably qualified professionals to assist in the implementation of the specific minor work and provide for mitigation measures and appropriate conservation documentation for future reference.

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

The Integrated Development Application process, which requires additional application under the Heritage Act in the form of a section 60 application, could be streamlined to remove the necessity for separate approval of the already approved application under the Heritage Act.

Putting the members of the Heritage NSW who will be assessing the applications in one section so that they could collaboratively consider the applications for a faster decision making and sharing the skills required in determination of the application.

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

It is important that heritage is considered at the strategic level and guided by comprehensive heritage studies involving the community engagement and appropriately skilled multi-disciplined project team.

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

As noted in section 3.5 above, the Property Council of Australia supports, in principle, the introduction of intermediate enforcement powers. However, this is dependent on the NSW Government allowing for adequate resourcing of appropriately skilled and trained staff to ensure suitable conditions of consents are in place at the approval stage for regular monitoring during the carrying out of the approved works. Such measures will reduce and discourage unauthorised works.

Having a mechanism that follows up and sends reminders to the responsible heritage professional appointed for the respective project would assist in the provision of regular reporting or at the completion of the works and reduce dependency on Heritage NSW resources.

Under Section 170 of the Act, all State Government agencies must keep and administer a database of heritage assets. The Property Council believes that the Government should adopt and mandate such that agencies are properly resourced, including that of Heritage NSW, to carry out joint programmed inspections and audits of the Section 118 minimum maintenance requirements for any items in the Section 170 Register. We believe a number of agencies have inherited multiple heritage listed items that have not been managed appropriately. As a consequence, not having minimum maintenance standards or an appropriate asset condition to base works or lifecycle planning from severely impacts budgeting and programs of not only maintenance, but asset renewal, activation and adaptive reuse, while at the same time increasing risk/WHs issues. A supported program of audits and inspections will not only advocate and assist with identifying maintenance issues, it could also network Agencies with similar issues/assets to consolidate packages of work, resources (human and capital), as well as form a community of practice to ensure that this issue is sponsored and continually monitored into the future. The heritage value of these assets cannot be allowed to degrade any further through neglect due to poor resourcing. This provides another opportunity for NSW to show leadership by demonstrating heritage conservation best practice.

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

The following actions could assist in the enhancement of understanding of state's heritage:

- Increased community engagement through National Heritage Week and the National Trust Heritage Festival
- Exploring establishment of Heritage Council awards similar to that of the Australia ICOMOS President's awards to encourage and acknowledge the works of emerging professionals and trades people see details at <https://australia.icomos.org/get-involved/australia-icomos-presidents-award/>

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

Heritage places are essential ingredients for cultural tourism and requires greater protection by state government to ensure authenticity and integrity of the heritage places are not adversely affected by inappropriate development or changes for inadequate adaptive reuses. The Rocks and the greater Blue Mountains are two successfully protected areas that bring most of the cultural tourism visitors in to NSW.

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

Adaptive reuse of heritage places in public ownership that are no longer used for their original intent is supported and encouraged provided that the new use and associated changes are not to the detriment of the heritage significance and values associated with the place and its fabric.

There are a large number of successful adaptive reuse examples that could be used as case studies to determine the level of change for the protection of the heritage values of a place in its new phase of development. All successful adaptive reuse examples allows for heritage interpretation and telling the storey of the place's historic development in a meaningful manner integrated into the design. Such examples include but not limited to:

- the Padding Reservoir Gardens and Joynton Avenue Creative Centre by the City of Sydney
- Carriageworks Arts Centre by the Ministry for Arts
- The Fenwick, 2-8 Weston Street, Balmain by Inner West Council
- The Mint by the Historic Houses Trust