

**Submission
No 267**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Edwards Heritage Consultants Pty Ltd

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ABN: 42 162 609 349

Office: 19A Fitzgerald Street, Windsor
Correspondence: PO Box 4189, Pitt Town NSW 2756
Phone: (02) 4589 3049
Email: enquiry@edwardsheritage.com.au
Web: www.edwardsheritage.com.au

The Standing Committee on Social Issues
Review of the Heritage Act 1977
Upper House Committees
Legislative Council
Parliament of New South Wales
Macquarie Street
Sydney, NSW 2000

1 July 2021

Attention: The Hon. Peter Poulos, Chair Review of the Heritage Act 1977

Review of the Heritage Act 1977

Please accept the following submission to the proposed review of the Heritage Act 1977

Edwards Heritage Consultants ('EHC'), is a consultancy practice based in Sydney. Established in 2008, EHC provides a variety of heritage services to an extensive client base, ranging from private property owners, corporations and not-for-profit organisations, church groups and local and state government agencies.

EHC has extensive experience operating within the ambit of the Heritage Act 1977, which directly affects, guides, informs and directs our work on a daily basis

We recognise that the Heritage Act 1977 is vital to the guiding and protecting items and places of cultural significance within New South Wales. We welcome the proposed review, providing opportunity to further strengthen existing protections. However, we would like to emphasise that any proposed changes to heritage legislation must be carefully considered in order to ensure that these protections are not jeopardised in any way.

We set out our responses to some of the focus questions posed in the Discussion Paper of April 2021 as below:

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

Given the role and function of the Heritage Council, it is important that it's composition be made up of senior professionals, who's skills and expertise encompass all areas of heritage conservation practice, including architects, planners, historians, archaeologists. Appointment to the Heritage Council should not be on the basis of political convenience or allegiance, but purely on the demonstrated expertise and experience of the individuals and their involvement within the heritage industry.

It is important that members of the Heritage Council have demonstrated and proven experience within the heritage industry and have the necessary skills to be able to make informed decisions, provide expert advice and guidance and to collaboratively work together for the promotion of heritage conservation.

Recommendations:

1. The Heritage Council should comprise senior professionals that have demonstrated expertise and encompass all areas of heritage conservation practice.
2. Appointment to the Heritage Council must not be based on political convenience or allegiance.

3. The members of the Heritage Council must have the demonstrated expertise and experience to make informed decisions regarding cultural heritage management.

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

It is noted that currently, very few Aboriginal sites and places are listed on the State Heritage Register under the Heritage Act 1977. However, Creating a separate Aboriginal Heritage Act or integrating Aboriginal Cultural Heritage into the existing Act should be the highest priority of the Review.

There is often confusion regarding what legislation applies and the statutory obligations and requirements when dealing with Aboriginal cultural heritage. This complication is compounded all the more when there is much secrecy around the disclosure of Aboriginal sites and places, which makes identification, management and protection difficult and uncertain.

The Committee should consider ways in which heritage legislation can highlight and celebrate Australia's unique Aboriginal heritage and culture. Presently, the *Heritage Act 1977* and the *National Parks and Wildlife Act 1974* do not 'speak' to each other. The existing legislation does not allow for efficient or effective coordination in managing sites with both European and Indigenous heritage significance. Therefore, it is paramount that the Aboriginal Cultural Heritage be appropriately managed and respected under a new or integrated Act.

Recommendations:

1. Aboriginal cultural heritage should be afforded its own stand alone legislation, which dovetails into the Heritage Act.
2. Consider mechanisms in which the identification of Aboriginal sites are appropriately mapped and identified just as archaeological sites and built heritage items are.

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

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

EHC are dealing with the Heritage Act 1977 on a daily basis in our work, including in our capacity as Heritage Advisors to multiple Councils across NSW. We consider that the Heritage Act 1977 remains relevant and robust.

Data analysed by the National Trust and presented at their Independent Forum on the Review of the Heritage Act has shown that development pressure is higher than ever. However, local councils are often inadequately resourced to provide detailed and efficient heritage services. There is a greater need for increased funding than major changes to the Heritage Act. Research has shown that when applied diligently and supported by both state and local government the Heritage Act adequately addresses the core values and best practice identified in the ICOMOS Burra Charter. Minor amendments could address the importance of sustainability and the role that retention and adaptive reuse play in furthering the contemporary notion of sustainability.

Currently, the Heritage Act 1977 does not contain by provisions for development within the vicinity of a heritage item and often there is development occurring within the vicinity of state listed heritage items which has the potential to adversely impact on the cartilage and significance of those items.

Recommendations:

1. The existing objectives of the Heritage Act 1977 are sufficient but could be expanded to reference the Burra Charter.
2. The Act should be expanded to include provisions that protect and guide development in the vicinity of State listed heritage items and precincts.

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

Focus Question 6: How can we improve incentives within the taxation system to help mitigate the cost of private heritage ownership?

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

The legislation does not ultimately need to be amended to better 'incentivise' ownership and care of our heritage, rather there is a clear need for improved funding and resourcing within the sector as whole. The common misconception that heritage is 'expensive' and 'time consuming' could be addressed through a number of ways, all of which stem from the inadequate number of resources, whether that be lack of personnel, funding, inappropriate time frames or education.

There is opportunity for the Government to expand the heritage grants program, reintroduce the highly successful 'Heritage Near Me' program, and to increase funding provided to local councils for the Heritage Advisory program.

Other potential initiatives for 'incentives' could include;

- Land rates reductions would help to incentivise ownership of heritage.
- An increase in funding for local and state heritage grants schemes would encourage the restoration and maintenance of heritage items.
- Increased education on owning, working and developing within the context of a heritage site.
- Investment in the conservation of heritage could be tax-deductible.
- Many of the state listed items on the SHR are owned by Government agencies, with only a small number of privately owned properties. Additionally, heritage at the 'coalface' is at the local level, with over 30,000 locally listed heritage items. Tax incentives should therefore be considered for locally listed heritage items also.

Recommendations:

1. Increase funding to local councils to support the provision of specialist heritage advice and guidance through the Heritage advisory program.
2. Increase grant funding and make funding more attractive and eligible to a wider audience / project scope.
3. Increase tax incentives for both local and state listed items to offset the cost of maintenance and repair.

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

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

As a consequence of the subjectivity of heritage significance assessments, tailored heritage protections could endanger our built and landscape heritage. It is important to understand the significance of an item or place first before making decisions of on change. Currently, the provision of 'site specific exemptions' provides for a 'tailored' series of heritage protections! Insofar as providing for specific works or uses that may be exempt from s60 approval.

The proposed category scheme carries a risk of diminishing the importance of local heritage in comparison with items that are identified as belonging to higher-value categories. The current three-tiered system of local, state and national heritage is adequate and provides a clear understanding of the significance of an item or place.

Recommendations:

1. We do not recommend introducing tailored heritage protections as the scope is too broad and introduces a resource intensive approach, whereby tailored protections require each individual item or place to have been assessed. Resources are currently already at a critical shortage.

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

We support the reform proposal which suggests a community-drive nomination process involving community-based 'early-round nominations.' This would encourage proactive heritage listing as opposed to reactive listings (i.e. Interim Heritage Orders), that often become politicised and pressure is placed to accommodate development as opposed to considering what is best for the site or item.

However, this must be considered with a balanced approach. If nominations for listing on the SHR are only driven by community nominations, the community may only nominate certain types or categories of items, which may mean certain items or places are missed.

The Government would need to commit to considering community nominations and listening to the community. Currently, the experienced approach is that the Government will only list items and places that it has no immediate plans for redevelopment or divestment of assets.

Community-based heritage studies are already provided for, however, this could be expanded to involve and encourage broader community involvement. For instance, Heritage NSW could call for specific themes or categories for nominations, such as places of significant achievement, technological advancement, socially significant sites, etc.

Community engagement will only come from good and effective communication. Currently there is a real sense of disconnect with the community's wants and desires and what the Government prioritises. From past experiences, the process for Nominating items for listing on the SHR is onerous and takes far too long to progress. This increases frustration, distrust in the process as disconnect. The delays in reviewing nominations (some nominations are understood to sit with Heritage NSW) for multiple years before they are progressed. Ultimately, it is the potential heritage item or place that suffers.

There must also be consistency in the Heritage Councils approach to listing. It is widely known that the Heritage Council will not proceed with recommending to the Minister for the listing of an item or place on the SHR if the asset or property owner objects. Listing should not be about whether the owner provides support or not. The decision making power should be in the hands of the Heritage Council – not the property owner.

Recommendations:

1. Community involvement needs to be developed through good communication.
2. Nominations for listing on the SHR need to be processed more efficiently and in a more timely manner.
3. Listing should not be based on whether the property owner objects to listing.

Focus Question 11: Would streamlining enhance the listing process?

It is important that the integrity of heritage listings is maintained.

The early heritage studies of the 1980s and 1990s often are scrutinised as 'drive by listings' whereby the listings are informed by a primitive and often unhelpful assessment of significance.

Streamlining the listing process could lower the quality of heritage assessments as well as increasing ambiguity for decision making at change points. When assessing proposed changes to heritage items, it is necessary to take a long-term perspective that considers the impacts of proposals on the ability of future generations to experience and appreciate significant places.

Recommendations:

1. The integrity of heritage listings must be maintained.
2. Introducing a streamlined listing process should be balanced by increasing resourcing for Heritage NSW, with increased staffing to process the backlog of existing nominations as well as review new and future nominations.

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

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

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

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

EHC consider that the current approval permit system would be sufficient and would function well if Heritage NSW was adequately resourced. Over the past number of years, we have observed the gradual decline in staff numbers, the gradual decline in services provided and the steady increase in delays in processing statutory applications under the Heritage Act 1977. Put simply, we consider the process would work well and Heritage NSW would be able to fulfil its statutory obligations and functions, together with proactive advocacy, training and industry leadership if the agency was appropriately staffed and resourced.

Heritage cannot be managed on a shoestring budget.

Furthermore, there is a need to have suitably qualified expert staff at Heritage NSW with a range of skills and expertise. From our own experiences, there presently appears to be a large and often unhelpful focus on archaeology, given the large number of archaeologists employed with Heritage NSW, with archaeologists making decisions and interpreting planning or architectural issues for instance.

The recent changes in December 2020 to the Standard Exemption process whereby introducing a 'self-assessed' process is welcomed, particularly as the exemptions themselves have been expanded and tightened up. However, there is real concern for the skills and competency of some practitioners in undertaking a self assessment, particularly as the heritage industry is not accredited. It is accepted that the s57 process should only be for very minor works which have no more than a minor or inconsequential impact, however, there remain concerns on the protection of state significant items and the appropriateness of what is being self-assessed and how the works are being recorded and documented.

The desire to streamline the process is appreciated, but it should not come at the cost of inappropriately documented or work completed in a detrimental manner. This again, further emphasises the need for appropriate funding and support to the heritage sector. An increase in staff, expertise, education, and funding would all benefit the process of assessment for individual projects.

Heritage could be better improved within the landuse planning system by supporting and funding proactive heritage studies and follow through with heritage listings rather than rely on Interim Heritage Orders (IHO) or emergency orders under the Heritage Act. IHO provisions should be retained, but proactively undertaking regular studies and listing items and places will provide greater certainty to property owners.

Heritage also needs to be considered at the strategic level and considered carefully in terms of compatible zoning, introducing and applying building height or minimum lot size controls that are appropriate to the significance and sensitivity of the item or place. Often, local councils or state government will rezone land or apply a significant uptake in development rights which introduces conflicts and tensions as such zoning and controls place expectations and developmental pressure on heritage items. Consideration should be given to introducing a heritage zone within the Standard Instrument LEP and reintroduce controls for development within the vicinity of heritage items. Often there is greater protection of buildings in Heritage Conservation Areas than heritage items, with respect to what development occurs next door or in the vicinity.

Recommendations:

1. Increase staffing and funding for Heritage NSW.
2. Ensure staffing at Heritage NSW are adequately and appropriately skilled, with a range of skill sets and expertise, including architecture and urban design.
3. Introduce an accreditation process for heritage professionals.
4. Introduce heritage zone controls to LEPs.
5. Reintroduce controls in the LEPs for 'development in the vicinity'.

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

As suggested in the Discussion Paper (p. 19), the Heritage Council should be given investigative powers and the ability to issue penalty or infringement notices. The Heritage Council needs to be able to function as an independent body, free of political obligations to ensure and enforce appropriate heritage conservation.

EHC consider that it is important to have a strongly worded Heritage Act, with strong enforcement procedures and provisions as a deterrent to inappropriate actions or breaches of the Act.

However, from experience, there is no clear process for reporting suspected breaches and enforcement appears to be centred upon 'catching the culprit in the act', which is often difficult, whereby breaches go unreported or unresolved.

The Heritage Act also provides for minimum standards of maintenance and repair to state listed items. However, there is rarely any known enforcement of such standards. For instance, EHC have previously reported to Heritage NSW the gradual collapse of a c1815 former inn building which is state listed, however no action or investigation is understood

to have ever been undertaken. No formal acknowledgement has ever been received of the notice to Heritage NSW. Since being reported, the wall has collapsed. It is the heritage items which suffer.

There needs to be increased funding and staffing at Heritage NSW, with a dedicated team for education and awareness for property owners, but also a dedicated compliance officer/s to ensure enforcement of compliance with the Heritage Act. The lack of enforcement in previous years sends a message to property owners and developers that no action will be taken or is unlikely to be taken.

Recommendations:

1. Increase funding and staffing at Heritage NSW to ensure the existing regulatory functions of the Heritage Act are enforced.
2. Retain compliance provisions in the Heritage Act to ensure a strongly worded legislative framework is maintained for the management and protection of heritage.
3. Develop a clear process for reporting and investigation of alleged breaches of the Act.

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

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

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

Fostering a deeper understanding heritage could be achieved through reintroducing regular training events, publications and guidelines and education / advocacy by Heritage NSW.

Engaging and educating the community is key before prioritising tourism. Activating heritage sites does not need to occur on a large scale, it is the adaptive reuse of former dwellings as cafes and shops, it is utilising former industrial areas as cultural hubs and it is opening significant landscapes as parks and rest areas.

Arguably, this is something that members of the community attempt to do daily. If the priority is only to activate spaces for significant financial benefit, the core value of adaptive reuse is lost. Instead, there should be encouragement from the top down to embrace our heritage, to invest in it at all levels of government and all levels of significance and support those in our community who continually fight to see it preserved. This will not necessarily come from amending the current Heritage Act, instead it will come from embracing the existing Act as a robust and effective piece of legislation.

Recommendations:

1. Increase incentives available to heritage items and encourage adaptive reuse where the original use cannot be maintained.
2. Ensure greater flexibility with the application and enforcement of Australian Standards, BCA and NCC requirements which often stymie adaptive reuse.
3. Increase public consultation when considering the adaptive reuse of public buildings. Ensure public consultation is not merely lip-service but genuine consultation.

Thank you for the opportunity to provide a submission to the review of the Heritage Act 1977.

Yours faithfully,

EDWARDS HERITAGE CONSULTANTS

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Michael Edwards B.Env.Plan, M.Herit.Cons, M.ICOMOS, JP
Director & Principal Heritage Consultant / Advisor

Bethany Robinson B.A, M.Mus&Herit
Heritage Consultant

Isabelle Adamthwaite B.A, M.Herit.Cons
Heritage Consultant