

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

**Organisation:** The National Trust of Australia (NSW)

**Date Received:** 11 July 2021

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PROTECT



# Standing Committee on Social Issues Inquiry into the *Heritage Act, 1977* (NSW)

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Submission by the National Trust of Australia (NSW)  
July 2021



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National Trust Independent Forum on the Heritage Act Review



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# Executive Summary

The NSW Heritage Act (1977) is of fundamental importance to the identification, protection, promotion and conservation of heritage in NSW. Any proposed amendments must result in better heritage outcomes, rather than a weakening of heritage protection.

The National Trust of Australia is the oldest and largest independent conservation organisation in Australia. Our Register formed the basis of the current State Heritage Register and the majority of Local Environmental Plan listings in NSW, and since 1945 the New South Wales National Trust has been the leading advocate for the protection of the built and natural heritage in this State.

The Minister has asked the Standing Committee on Social Issues to undertake a review of the *NSW Heritage Act, 1977*, focussing on the effectiveness of this legislation within today's context – a context that is dominated by massive infrastructure projects focussed on economic development and job creation, a growing population, greater concern for the impacts of climate change, and threats to the cultural heritage of NSW on a scale that has never been seen before.

Our heritage is a very precious thing. Whether it be a building or an ecosystem, once it has been destroyed it cannot be re-created. To prevent this irretrievable loss, our heritage must be identified and protected – the very aims of those who wrote the Heritage Act.

In many cases the Heritage Act has been very successful since it was gazetted in 1977, and has aided in the protection of numerous places in NSW from inappropriate development, through either listing processes or the advice of the NSW Heritage Council. A perverse, and unintended, outcome of these effective conservation measures however, has been that it is precisely those large areas of land with significant buildings and landscapes, often in Government ownership, that are now routinely promoted as opportunity sites for redevelopment.

The Heritage Act may have identified and protected Sydney's Central Railway Station as a place of great cultural and historic value for the people of NSW, but it has been powerless to stop the procession of "Unsolicited Proposals" and "State Significant

Developments" that simply bypass that key piece of heritage legislation in NSW, and which are poised to wreak havoc on this precinct, forever destroying many of the heritage values that led to it being protected in the first instance.

This submission is the result of extensive community and professional feedback, including the outcomes of a well-attended Heritage Forum hosted by the National Trust on 9 June 2021, which specifically focussed on the Heritage Act Review. The overwhelming response was that the objectives and principles of the *Heritage Act, 1977* remain appropriate and relevant, yet that our cultural heritage is at immense risk from State Significant Developments which effectively turn off and override the provisions of the Heritage Act in situations where it is needed the most. There was also consensus that the long-promised contemporary legislation to protect and conserve Aboriginal Cultural Heritage must remain a priority over amending this heritage legislation.

The actual application of its requirements, combined with strong leadership and adequate resourcing to facilitate its administration, are the keys to ensuring the ongoing effectiveness of the Heritage Act.

Our built and natural heritage needs more protection now than ever before. The National Trust will continue to identify and advocate for the protection of the unique heritage of NSW, but it is the *Heritage Act, 1977* which must ultimately preserve and protect that which has been passed down to us. Those undertaking this review need only ask one question of each suggested change: will this maintain or decrease the values of that which we will pass on? The answer must be clear, because once it's gone, it's gone.

Debbie Mills, Executive Director



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## The National Trust (NSW)

The National Trust (NSW) is the largest independent conservation organisation in Australia. Founded in 1945, the National Trust's vision is to bring the heritage of New South Wales to life for future generations.



National Trust property, Old Government House (Parramatta)



## THE NATIONAL TRUST'S REACH AND IMPACT

With over 22,000 members across NSW, our 2,000 volunteers provided 104,800 hours of service to assist us in welcoming over 139,000 visitors to our properties (in 2018–2019).

The National Trust is the custodian of 35 heritage properties, including the World Heritage Listed Old Government House, Parramatta, worth more than \$43million. We also care for and conserve natural areas, gardens and more than 60,000 collection items.

Of our 35 heritage properties:

- 29 are listed under the *Heritage Act, 1977* on the State Heritage Register;
- 33 are listed under the Environmental Protection & Assessment Act on Local Environmental Plan Heritage Schedules;
- 1 is listed under the EPBC Act on the National Heritage List; and
- 1 is listed under the World Heritage Convention as an inscription on the World Heritage List.

# 22,000

Members across NSW

# 104,800

Hours of Volunteer service

# 139,000

Visitors

# 29

Properties listed on the State Heritage Register

As a united organisation of loyal members, dedicated volunteers, staff, Branches and Committees, we advocate for the protection of New South Wales' built, natural and cultural heritage to ensure its preservation for future generations.

### IN 2019–2020, THE NATIONAL TRUST:

- Made over 60 submissions to Government to safeguard and protect the built, natural and cultural heritage of New South Wales.
- Has 12 Board-appointed taskforces and technical committees, which provide professional expertise, technical and specialist advice on matters of advocacy, collection management, curatorial direction, finance, property and cemeteries conservation.
- Was supported by 29 regional branches and committees, which provide advocacy and fundraising support for the organisation in regional areas.
- Undertook conservation and restoration of 203 natural areas throughout greater Sydney.
- Generated immense community support with more than \$8 million of donations through trusts, bequests, foundations and individual giving.
- Supported 40 community-owned heritage places with tax-deductible Heritage Appeals, facilitating \$2.98 million in tax deductible donations for the conservation and restoration of these important community heritage places.

# Why Heritage Matters

New South Wales has a rich, vibrant heritage represented by places, landscapes, stories and people that make a vital contribution to our community and our economy.

Our heritage places make a significant contribution to our identity, creating a sense of place and representing the State's story, its people and its shared connections. From buildings to landscapes, songlines to character areas, trees to shipwrecks – the heritage of NSW is important.

Of 3.5 million land parcels in New South Wales, less than 1% are listed heritage items, including less than 30,000 total heritage items.

(NSW Heritage Council, 2010).

## HERITAGE LISTINGS IN NSW

There are numerous heritage lists, all of which have the ultimate goal of preserving the heritage of NSW.

**40,000**

Items on Local Government Registers

**11,782**

Items on National Trust Register

**1,750**

Items on State Heritage Register

**130**

Items on Commonwealth Heritage Register

**29**

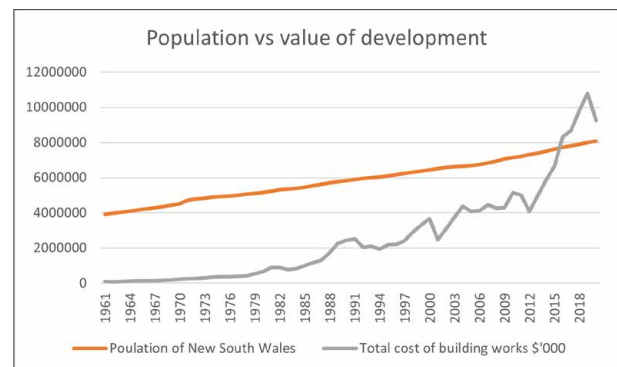
Items on National Heritage Register

**16**

Items on World Heritage Register

## DEVELOPMENT PRESSURE

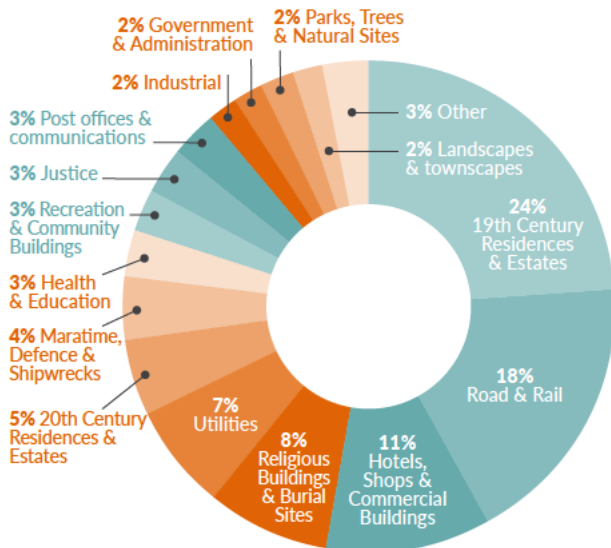
Since 2012, NSW has experienced a dramatic upsurge in building activity. The heritage of NSW has never been under such pressure.





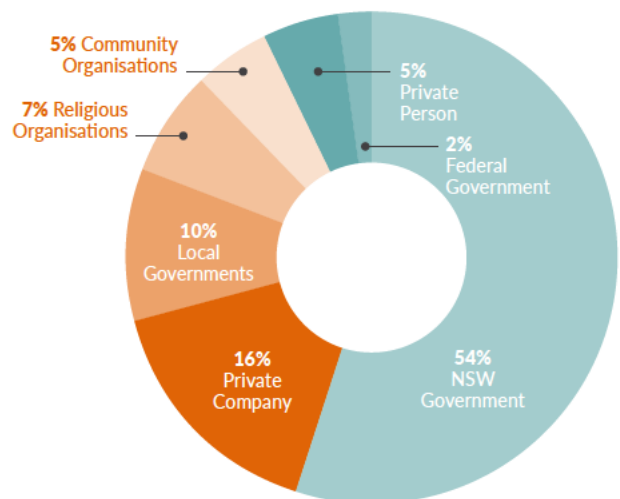
## THE NSW STATE HERITAGE REGISTER

The State Heritage Register reflects the focus of heritage analysis and perceived needs for protection (Heritage NSW figures as at 2017).



## OWNERSHIP AND MANAGEMENT OF THE STATE HERITAGE REGISTER

Government is the largest owner of listed heritage in NSW, owning a combined 66% of all heritage places, with community groups and individuals owning 10% of listed places.

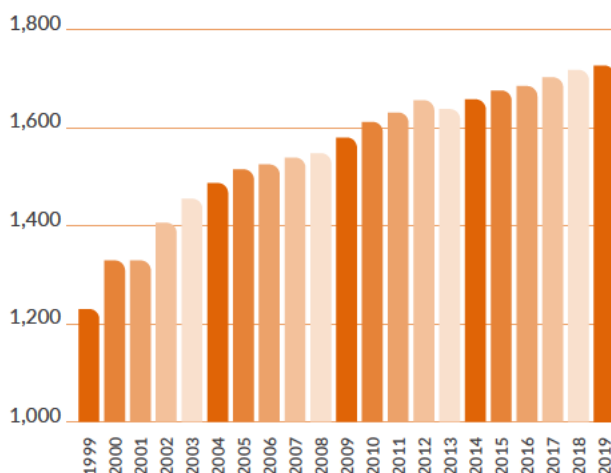


## GROWTH OF THE REGISTER

The State Heritage Register was established in 1999 as an amendment to the Heritage Act. An initial large group of 1329 items were immediately listed in the Register's first year.

Since then, progressive to develop a representative and robust list has slowed, with only 399 places listed over the following 18 years since 2001. An average of 22 items added per year.

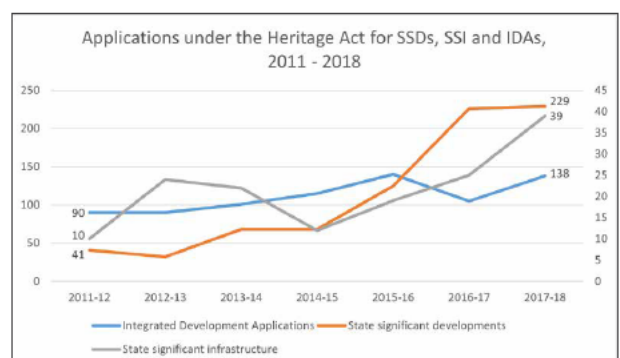
### LISTINGS



## TURNING OFF THE HERITAGE ACT

The EP&A Act requirements for State Significant Development (SSD) and State Significant Infrastructure (SSI) for change to places listed on the State Heritage Register do not require approval under the *Heritage Act, 1977*. They effectively "turn off" the controls of the NSW Heritage Act.

In 2003, there were a total of 51 SSDs and SSI projects affecting state heritage places that did not require approval under the Heritage Act. In 2018 this dramatically rose to a total of 268 SSD and SSI projects.





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# National Trust Independent Forum on the Heritage Act Review

On the 9 June 2021, the National Trust convened an Independent Forum in response to the Parliamentary Review of the NSW *Heritage Act, 1977*.

An independent forum of 277 experts, professional heritage organisations, community groups, individuals, and National Trust members was hosted by the National Trust of Australia (NSW) in response to the Parliamentary Review of the NSW Heritage Act, 1977.

The Forum was supported by:

- Australia ICOMOS
- Australasian Society for Historical Archaeology
- Australian Archaeological Association
- Historic Houses Association
- Engineering Heritage Australia

The Forum AFFIRMED the fundamental importance of the role of the Heritage Act to identify, protect, promote and conserve cultural heritage places in NSW and identified a number of issues as critical to the success of the Review

By far and away, the most common feedback was that while the Heritage Act and its regulations may benefit from small updates and amendments, its objectives and principles remain appropriate and relevant. The forum agreed that any proposed amendments should result in better heritage outcomes, rather than a weakening of heritage protection.

The Forum also agreed that greater resourcing to enable the Act's effective implementation is fundamental, and that the NSW Heritage Council should be an independent public champion of heritage comprised largely of recognised heritage experts and organisational representatives.

**Q: Are you a member of any of the following type of organisations?**

**120:** Professional Heritage Organisation

**75:** National Trust

**60:** Resident / Community Group

**35:** Local Historical Society

**Q: What are you hoping to get out of the Forum?**

**68:** Learn more about the Review of the Heritage Act

**65:** Have an impact on the Outcomes of the Review

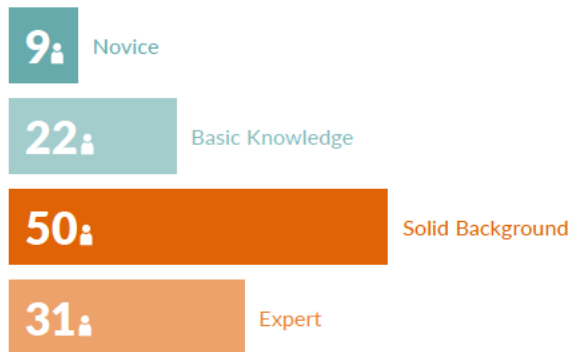
**51:** Gain information for a submission on the Heritage Act

**18:** Learn more about the Heritage Act

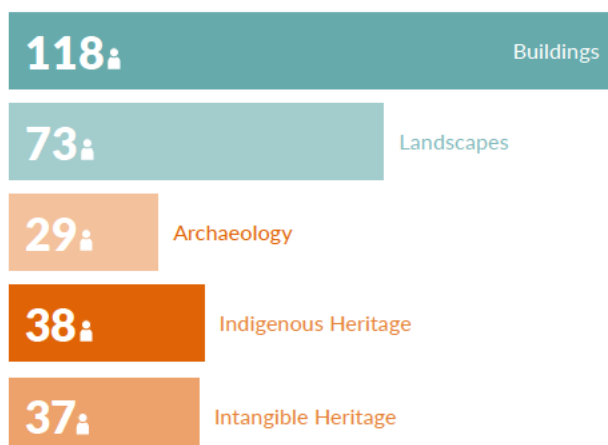
**15:** Network



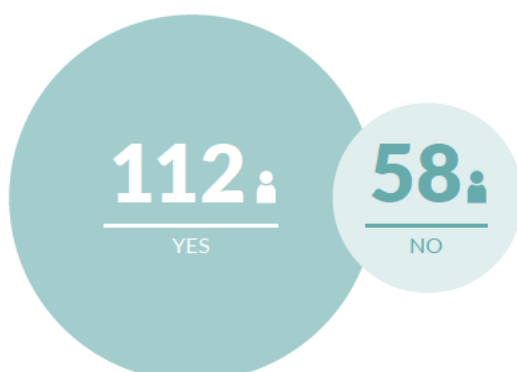
**Q: How familiar are you with the Heritage Act and its application?**



**Q: What type/s of heritage are you most interested in?**



**Q: Have you ever made a submission on a heritage matter as an individual?**



The results of the audience Q&A and comments (compiled via an audience app, slido) showed the following issues of concern and interest:

ISSUES OF CONCERN & INTEREST	
<u>Legislative Unity</u>	80
<u>Managing Different Types of Heritage</u>	66
<u>Procedure and Practice</u>	65
<u>Resources and Funding</u>	61
<u>Heritage Council</u>	60
<u>Politics and Policy</u>	59
<u>State Significant Developments</u>	54
<u>Legislative Power</u>	50
<u>Institutional Power and Functions</u>	44
<u>Community Engagement</u>	43
<u>Local Heritage</u>	38
<u>Indigenous Heritage</u>	38
<u>Planning Process</u>	23
<u>Purpose of Review</u>	18

The National Trust strongly urges the Social Standings Committee to heed the high level of community interest in the Review and give appropriate weight to their concerns and input.

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# Response to Terms of Reference

This submission responds to the Terms of Reference issued by the Standing Committee on Social Issues for their Review of the *Heritage Act, 1977*. The responses to each of the Terms of Reference refer to issues raised in the Discussion Paper where relevant.



National Trust Heritage Awards Winner 2019 – Anzac Memorial



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## Response to Terms of Reference

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

Much has been made in this review process and Discussion Paper that the *Heritage Act, 1977* is perceived to be old and out of date, and that by its very nature this existing legislation does not permit best-practice heritage conservation, activation of historic spaces, and celebration of our historic places and stories.

**The National Trust are of the view that the current provisions of the Heritage Act are generally well-resolved and could, if they were administered effectively and in a timely fashion, be very workable.**

All of those who are involved in the NSW Planning System want a level of certainty that will enable them to progress with, or no longer invest further resources in, any given project. Projects with a heritage component are no different in this regard.

From a community perspective however, there appears to be great inconsistency in the way heritage is dealt with and protected in NSW. While the owner of a terrace house in Millers Point may wait for years to gain approval for a relatively modest extension or alteration on the basis that it may affect the State Heritage Listed Millers Point Conservation Area, at the same time the Crown Casino Tower has been approved and built directly on the axis of Lower Fort Street. The same issue has occurred at the Parramatta North Historic Site, where efforts to repair and conserve the government-owned buildings (that have been for many years neglected by NSW Health) have been hampered by heritage approval processes, while at the same time the highly destructive route of the new Parramatta Light Rail which cuts straight through the site and demolishes significant buildings and trees was fast-tracked.

The last example is highly applicable to this review. The very works that were completely acceptable under

the existing Heritage Act legislation, and which would have resulted in the “conservation, activation and celebration” of numerous highly significant buildings, were seemingly hampered through a lack of resources in implementing the relevant provisions of the Act, while the project that resulted in destructive, unnecessary, and detrimental heritage outcomes for the site (all noted by Heritage NSW) was permitted because the Parramatta Light Rail project was classified as State Significant Infrastructure and the Heritage Council of NSW were only able “to comment and provide recommended conditions of approval.”

Every year, the National Trust Heritage Awards recognise numerous projects that conserve, activate and celebrate heritage in NSW, from new extensions to the Anzac Memorial and Australian Museum, through to private home renovations and very successful adaptive re-use projects in regional NSW – all achieved under the existing legislation. There is no doubt that some small refinements could be made to existing legislation, but it is the overwhelming opinion that a “modern and effective” heritage system can only come about through an appropriately empowered and enforced, properly trained, and adequately resourced administration of the Heritage Act.

We build and staff our hospitals based on the number of patients they expect. It is only through proper application and administration of the existing Heritage Act that its effectiveness can be judged. This must be the first step in any moves towards heritage reform in NSW.

### THE NATIONAL TRUST RECOMMENDS:

- Best practice heritage conservation, activation and celebration is possible under the existing Act.
- The existing Act must be properly resourced and its provisions implemented to ensure its effectiveness.



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## Response to Terms of Reference

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

The expectations of the community and customers are reflected in the Act but these expectations are not met by the way in which it is implemented and operated. The adequacy of the Act should always focus on how effectively it meets its Objects, the primary one of which is the protection of heritage. If the Act is functioning in the way its Objects intended, then the needs of the community, stakeholders and customers would be met.

The NSW Government's study *NSW Community Attitudes to Heritage* (Office of Environment and Heritage, 2016, p.24) found that 36% of people felt current heritage regulations were 'about right,' while another 24% felt they were too weak.

**Meaning 60% of people do not support an assumption that the heritage regulations are onerous or too strict.**

Importantly, the study also showed that having a heritage listing or conservation status was generally seen to be positive, with 83% of those who live in, and 61% of those who work in one of these properties, indicating that the listing was somewhat or highly positive; only 10% of those who lived or worked in

a heritage place felt that it was somewhat or highly negative for their property. This study clearly indicates that the community supports adequate heritage protections and heritage listing – the primary purpose of the Act.

In order for the Act to fulfil its Objects (that is, to meet the needs of the community and customers and for the protection of heritage) there needs to be a change in approach in the resourcing and administration of the Act to ensure that the Act is "modern, effective and reflecting best practice heritage conservation, activation and celebration".

Community and customer concerns do not relate to a failure of the Act and generally relate to:

- Individual cases of inappropriate development and inappropriate changes to heritage places that do not reflect the significance of the place;
- A conflict between community expectations that the Act will protect places listed on the State Heritage Register and the "turning off" of the Act for State Significant Development and Infrastructure projects;
- Inability to access up-to-date, user-friendly guidelines, frameworks and advice from Heritage NSW; and
- Individual cases of lengthy delay and conflicting advice from the consent authority, usually due to severe under resourcing.

Perceived issues related to heritage most often stem from the consequences of listing (the management of change process) or the adequacy of the significance assessment, not from the listing itself. This issue cannot be resolved by changes to the Act, but can be improved by changes to the resourcing and administration of the Act.

Good decision making requires good information. There is a fundamental need to improve communications with customers and the community so that any misunderstandings of the heritage system can be resolved and improved.



National Trust Independent Forum on the Heritage Act Review



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## Response to Terms of Reference

(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*.

Intersections with other Acts, in particular the EP&A Act, are critical to the effectiveness of the Heritage Act and the planning system more broadly. This must be addressed.

There are considerable overlaps between the *Environmental Planning and Assessment Act, 1979* (EP&A Act) the Act and some areas of inconsistency between the two. The EP&A Act outlines when other legislation does not apply (ie: other legislation is effectively turned off). Under this section of the EP&A Act, the Heritage Act does not apply for State Significant Development and Infrastructure (as discussed in many other areas of this submission). This is fundamentally incompatible with the Objects of the Heritage Act and the expectations of the community. For context, in 2018 there were 268 SSD and SSI applications affecting state heritage listed places that did not require approval under the Heritage Act.

**The ‘turning off’ of the Heritage Act is having disastrous outcomes for heritage places and is causing immense levels of community distrust in government, in the planning system and in the processes that are supposed to protect places the community values.**

The National Trust strongly urges the removal of this provision in the EP&A Act. This situation is mirrored by the EP&A Act also **turning off the requirement for Aboriginal Heritage Impact Permits (a permit to destroy or remove an Aboriginal site or object)** for State Significant Development and Infrastructure projects. It has always been a failure of the planning system that these provisions are in place; and in the post-Juukan Gorge era, it is a disgrace that they are still in place.

The EP&A Act does not set minimum requirements for Environmental Impact Statements and other such documents, but rather it requires the Planning Secretary to set these out on a project-by-project basis. These project requirements (known as SEARs) are often in conflict with the Heritage Act and with expectations of the community. For example, they often fail to require appropriate assessment of a development on the setting and context of nearby heritage places, they often fail to require a broad scale, in depth study of potential heritage places within an area (at times even accepting “preliminary” assessments as the basis for approvals) and generally only require an EIS to assess its impact on already listed heritage places and placing an over reliance on incomplete statutory registers. This could be solved by the EP&A Act requiring rigorous EIS’s that considered heritage in more holistic terms as a valued and scarce resource rather than simply being a box ticking exercise relying on incomplete studies and incomplete heritage registers. Incorporating a strategic evaluation of potential heritage assets in a project area would align with the way other environmental factors – such as geology, biology or contamination – are researched, documented and evaluated.

### THE NATIONAL TRUST RECOMMENDS:

- The National Trust strongly urges that the EP&A be amended so that it ensures that SSDs and SSIs require approval under the Heritage Act, and under the NPW Act.

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## Response to Terms of Reference

(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.**

#### **Categorisation**

When the National Trust prepared its first list of *Places Worthy of Preservation* in July 1946, it in fact created two lists, with "List A being more important places than List B". The Trust has long since abandoned such distinctions and now has a single Register with all entries given the same weighting.

The Discussion Paper has put forward a Reform Proposal that NSW adopts a "more nuanced set of four heritage listing categories" that would "allow for more tailored heritage protections to be applied to items to suit their individual circumstances." Surely an item in the proposed "Category 1" which is already covered by World or National heritage listing would already have heightened regulatory controls, whilst the urban precinct listings proposed in "Category 2" could readily be achieved by the listing of additional Heritage Conservation Areas on the State Heritage Register (there are currently only six, including two in Millers Point and Thompson Square in Windsor which has been subject to great change and permanently disfigured by a new bridge) to augment that more than 400 that are listed in Local Environmental Plans.

It has been well established during this review process that Heritage NSW, as currently resourced, struggles to meet the demands placed upon it with just State and Local heritage categories.

**The establishment, let alone the administration and management, of numerous additional categories with tailored regulations, asset classes and exemptions, is not supported by the National Trust.**

The whole proposal is fraught with complexity and will lead to decreased, rather than increased, heritage protection. For example, to what category would a significant church building be allocated – depending on whether it is consecrated, in use for worship, deconsecrated, used as a hall, is part of a school, converted to a residence, or maintained as a stabilised ruin?

In place of categorisation, nuances are available within the existing listing system that could facilitate improved outcomes – and which do not require amending the legislation. Standardised exemptions, prepared for various types of heritage, could be developed which may improve the application and approval process for owners and managers of heritage places.

#### **THE NATIONAL TRUST RECOMMENDS:**

- Other established examples would be assist Heritage NSW in its decision making processes, such as developing an "Operational Guideline" for the Heritage Act similar to the World Heritage Convention's Operational Guidelines, which set out the background, rationale and process for the consistent application of the Convention. Alternatively, Scotland Heritage approach of developing detailed "Managing Change" guidelines for different heritage places assists heritage owners to make reasoned decisions specific to the type (not class) of heritage place they own, be it a landscape, industrial site, house or ruin – importantly applying the use of type only to management decisions and not to the state listing process which is purely based on significance assessment.





The Discussion Paper suggests that *"There are benefits to exploring nuanced approaches to heritage conservation, for example, the New York heritage framework, which protects private residential building exteriors while allowing the updating and remodelling of their interiors."* The National Trust note that the New York City Landmarks Preservation Commission do designate "interior landmarks," but generally do not review interior work unless it requires a permit from the Buildings Department or when an interior affects the exterior. The Trust would strongly argue against such broad changes which we fear would lead to a culture of facadism and the destruction of many significant interior elements. As early as 1985 in New York, Paul Goldberger was already cautioning against this approach, arguing that:

*"while facadism pretends to a certain earnestness, it is at bottom rather pernicious. For the compromise it represents is not really preservation at all. To save only the facade of a building is not to save its essence; it is to turn the building into a stage set, into a cute toy intended to make a skyscraper more palatable. And the street becomes a kind of Disneyland of false fronts."* ("Facadism on the rise: preservation or illusion?", New York Times, 15 July 1985).

Specific elements of an item that contribute to its significance should be included within a listing, and this would ensure those important elements are protected. For example, the state listing for "Science House (including original interiors)" at 157-169 Gloucester Street, The Rocks, makes very clear that the interiors are a key element of this buildings significance, while the recent listing of the Robin Boyd-designed "Lyons House" at Dolan's Bay also makes specific mention of the Marion Hall Best interiors and Bruce Mackenzie landscaping that are key elements of the place's significance. When adequate resources do not allow rigorous significance assessment that identifies how the values of the place manifest, uncertainty in the later management of the place occurs.

The proposal goes on to argue that "by removing some of the perceived constraints associated with heritage listing, this change could encourage more people to seek heritage listing and better enable the long-term conservation of heritage." The National Trust has nominated countless buildings, landscapes and items for listing on the State Heritage Register since 1999, yet with an average of just 22 items added to that list each year, it is clear to see that the biggest constraint to listing is in fact having an application processed by Heritage NSW, let alone approved by the Minister - even in situations where an owner supports listing. The National Trust (in 2017) submitted an extensive list of pre-1840 buildings which highlighted those places not on the State Heritage Register, and very few have been added since.



Lyons House, Dolans Bay, designed by Robin Boyd with landscaping by Bruce Mackenzie.

The Reform Proposal also states that "before deciding to add an item to the State Heritage Register, the Minister should consider not only if reasonable and economic use would be affected by the listing but also what opportunities there are for adaptive reuse and activation." The National Trust would argue strongly against such a consideration. The Heritage Act states very clearly in its objectives that it encourages both the conservation and the adaptive reuse of items of State heritage significance, and (in 32(1)(c)) directs the Minister to consider whether a listing would render an item incapable of reasonable or economic use. We also bring attention to recent Land and Environment Court decisions that clearly differentiate between "financial loss" (far more common and a risk inherent in any property investment that is not considered in these decisions to be reasonable grounds for appeal) and "undue financial hardship", a much higher bar that is very high to reach.

**The established "NSW Heritage Assessment Criteria" should continue to be the basis for determining if a place or item should be included on the State Heritage Register – not its future development opportunities.**

The future adaptation and use for a place must not be a reason for the Minister to direct listing (or not listing) an item on the State Heritage Register. The significance of an item must first be established, and then adequate protections put in place to preserve that significance. Then, and only then, can discussions about future use and adaptation can occur, in line with the mantra "make the use fit the building, not the building fit the use." ►



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## Response to Terms of Reference

### Diversity

In 2017 the National Trust participated in a “State Heritage Register Listings Framework” briefing with Heritage NSW, at which the under-representation of certain types of heritage was noted. It is a problem shared by the National Trust Register, and something we are continually seeking to address.

Of the 1750 listings currently on the State Heritage Register:

- 1037 (59%) are for buildings
- 244 (14%) are for landscapes
- 37 (2%) are moveable heritage or collections
- Two boats are on the State Heritage Register, and
- One listing for an individual tree (a Port Hacking Fig in Rose Bay).

Even in terms of built heritage the State Heritage Register cannot be considered representative. Of the 1037 built items listed, 364 (35%) were within the City of Sydney Local Government Area, while the historic towns of Forbes and Parkes have just two each (their Post offices and Railway Stations). Just 26 (2%) were constructed after 1950. (All of the above figures have been obtained using the State Heritage Inventory advanced search function).

**There is only one way to address the issue of diversity on the State Heritage Register, and that is to resource targeted heritage surveys to identify places of value and then add them to the Register in a timely fashion.**

In its 2017 correspondence with the Heritage Office, the National Trust suggested such deficiencies can sometimes be easily remedied without declaring priorities and turning back nominations. For example, the process had already been put in place for National Parks and Nature Reserves to be listed on the State Heritage Register, in bulk, with standard exemptions for the day to day National Parks management and construction processes. In this way, it would be possible to greatly increase the number of listings annually from

the current average of 22 listings. This current listing rate will take decades for the State Heritage Register to become a comprehensive and representative list of the State’s important heritage places. With the actual status of a listing now a very important factor in historic preservation, thousands of places will be demolished if this pace continues.

The Discussion Paper suggests a reform proposal to “introduce a community driven nomination process” involving “early-round nominations” that could be submitted to the Heritage Council for consideration. This reform proposal has nothing to do with the Heritage Act (which deals only with procedures for recommendation for listing, not the way nominations are obtained) and as such this reform proposal should be ignored.

Indeed, there is nothing, aside from an obvious lack of resources, that is currently stopping Heritage NSW from asking the community for nominations for Heritage Council consideration, and streamlining the lengthy and detailed nomination form for this purpose.

As a community organisation, the National Trust did in fact submit a list of 54 State Heritage Register listing suggestions to Heritage NSW in 2017 following our State Heritage Register Listings Framework briefing, only to be informed that the usual, lengthy process must be followed. Happily, some of these (including St John’s Church at Camden, and the Mudgee Regent Theatre) have since been added to the register, while others (despite the obvious State Significance of the Art Gallery of New South Wales, and the c.1820 Macquarie Watchtower at La Perouse) have not.

### THE NATIONAL TRUST RECOMMENDS:

- The proposed set of four listing “categories” should not be proceeded with.
- Improved processes should be developed to allow for an increased number of listings on the State Heritage Register.



## Case Study: What happens when you 'turn off' the Heritage Act?

### CENTRAL STATION

Central Station is a building of the highest architectural importance to Sydney, and its construction was directly responsible for the surrounding environment. The National Trust listed the Central Station / Haymarket Urban Conservation Area in June 1981, and it was listed on the NSW State Heritage Register under the NSW Heritage Act as "Sydney Terminal and Central Railway Stations Group" in April 1999.

Current proposed and approved towers for the new "Western Gateway" to the station are all located within the State Heritage Register boundaries of the listing, and one tower is to be located directly on top of the Former Inwards Parcels Shed, with its construction to involve the complete destruction of major original access ramps and walls. The great height of the towers will dominate the Central Clock Tower, and will mean that the entirety of Railway Square will be overshadowed every morning as commuters use the space.

The Statement of Significance for the precinct is very comprehensive, and notes that the Station was: *"a major terminal by world standards... the largest formally planned addition to the urban fabric of Sydney prior to World War 1, intended to form a gateway to the city... the terminus and clock tower are familiar Sydney landmarks"*

Because this proposed development has been designated "State Significant", the Heritage Act has not been able to protect the heritage values of this most significant place, because consent is not required under the Heritage Act for State Significant Developments.



Sydney Central Railway Station. The largest railway station in Australia and a Sydney landmark.



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## Case Study: When changes to places are not based on their significant values

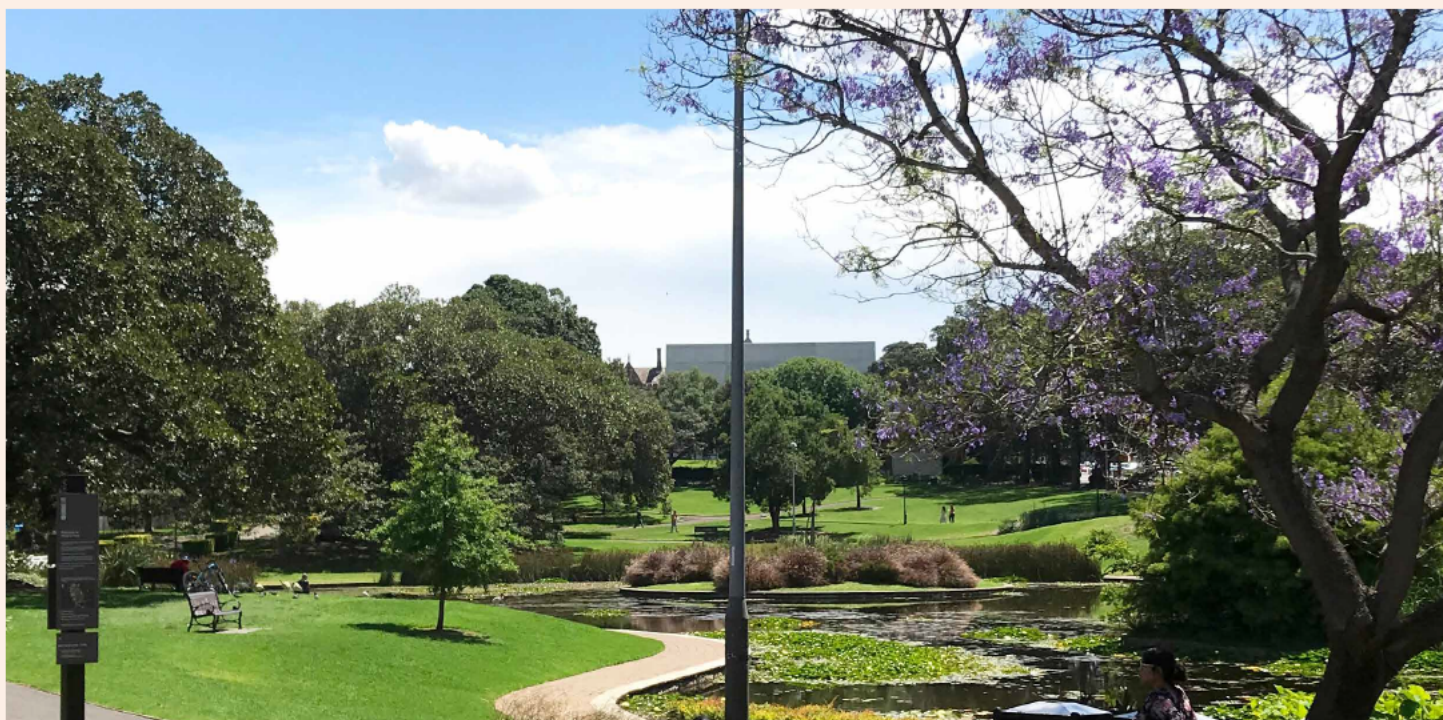
### THE UNIVERSITY OF SYDNEY

On 31 August 2018, NSW Heritage Minister added the The University of Sydney, University Colleges and Victoria Park would be added to the State Heritage Register. In making the announcement Minister Upton said, "It is only fitting that Australia's oldest university should be on our State Heritage Register... This is a time to celebrate, to reflect on the history and the culture of this unique cultural landscape, and to preserve and protect the heritage values of the University of Sydney, University College and Victoria Park for years to come."

There is no doubt that The University of Sydney would grow and develop as required in the future, however the Statement of Significance prepared for the SHR listing made very clear the special qualities of the university that must be "preserved and protected" into the future:

"The cultural landscape is aesthetically significant at a state level... in particular, Blackett's location of the Great Hall and East Range of the Quadrangle (1854–1862) utilised the site's topography to provide a dramatic presentation of the University on approach from the city, a setting with planning axis that still remains."

Since it was listed on the State Heritage Register, the new Chau Chak Wing Museum has been constructed, completely blocking the view of the Great Hall as seen from Victoria Park – a key view that had been identified in the listing. So instead of the State Heritage Register listing protecting the key values of the place, they have continued to be eroded due to poor decisions not based on the significance of the place. This is a failure of the administration of the Act rather than the Act itself.



The obstructed view of Sydney University's Great Hall, seen from Victoria Park.



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## Response to Terms of Reference

### ii. Consideration of new supports to incentivise heritage ownership, conservation, adaptive reuse, activation and investment

The Discussion Paper states that “private conservation efforts are critical to maintaining and conserving the heritage of NSW” and argues that a “lack of financial and other supports, coupled with the perceived expense and complexity of heritage conservation, contributes to a public view that heritage ownership and development is difficult, time consuming and cost prohibitive.”

**The National Trust, as a registered charity and the custodian of a large number of historic buildings and sites, including 29 which are listed on the State Heritage Register, knows only too well what is involved in maintaining and caring for the heritage of NSW.**

The long-term cost savings associated with regular maintenance have been well established, and indeed have formed the basis of much of our conservation efforts over 75 years it is these aspects of looking after heritage places that need to be supported and promoted to other heritage owners.

#### Incentives

Much has been made in the Discussion Paper about tax-incentives for heritage. It is important to note that through our the National Trust’s highly successful tax-deductible Conservation Appeal Program (which allows for tax deductible donations to community organisations for the conservation of their heritage item), we have directly facilitated over \$40m worth of conservation and repair work to countless churches, community buildings and cemeteries across NSW.

Other tax concessions and funding could and should be possible for heritage, but it is unclear how the Heritage Act itself could facilitate such change. Numerous schemes, from the expansion of the NSW Historic Houses Trust’s “Endangered Houses Fund”, through to the UK’s “Heritage Lottery” scheme could all be readily

implemented without legislative change. Indeed, these programs have long been advocated for over two decades, and the Heritage Office itself has undertaken many research programs into their feasibility – it is not so much about “what could we do” but “will we actually do it?” It would appear that, as far as the Heritage Act is concerned, the granting of concessions or assistance hinges on one key fact: whether an item is eligible – that is, whether it is listed or not.

A parallel consideration worth noting is also the environmental benefits that heritage brings, and the ways that this can provide beneficial economic as well as conservation outcomes. A recent report, “*Growing back better: putting nature and net zero at the heart of the economic recovery*”, by the UK House of Commons Environmental Audit Committee, noted the considerable benefits of adaptive reuse in terms of construction emissions, and that existing UK tax law often incentivises new build over repair.

In evidence to the committee, Geraldine Denning, Senior Lecturer at De Montfort University, suggested that “there was so much embodied carbon in buildings that even if a highly efficient new building were constructed after the demolition of an old one, it could take up to 30 years to redress the carbon balance.” Tax benefits for the conservation of heritage properties could thus be linked to carbon emission reductions, and vice-versa. This consideration could be considerable to the owners of large commercial buildings with heritage values.

In general terms, before a building can be “activated” it must be “adapted” for reuse, and before it can be “adapted” it must first be in good repair - which begins with regular maintenance. This is where investment, on a relatively modest scale, is most effective, and should be directed.

#### THE NATIONAL TRUST RECOMMENDS:

- Increased funding, appropriately directed, to help conserve, re-use, and activate heritage in NSW is welcomed.
- Such funding must have as its aim actual conservation outcomes for the heritage item.



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## Response to Terms of Reference

### iii. Improvements to heritage compliance and enforcement provisions

The Discussion Paper has raised a number of issues relating to the enforcement of and compliance with the Heritage Act, including a Reform Proposal to “introduce a series of intermediate enforcement powers to allow heritage regulators to take a graduated and proportionate response to non-compliance.” The National Trust would raise no objection to the proposal to introduce what the paper refers to as “intermediate options” for compliance if this would assist Heritage NSW in delivering the objectives of the Act.

The discussion around enforcement in the Discussion Paper appears however to focus on the issue of penalising private owners for non-compliance (presumably by illegal demolition or construction works). The National Trust is unaware of the last time, if any, that Heritage NSW actually prosecuted such an activity.

In Victoria, recent legislative changes to the *Planning and Environment Act, 1987* have been made to prevent developers from benefiting from the unlawful demolition or neglect of heritage items, with the Government able to prohibit development on these sites for up to 10 years if the owners are charged with unlawful demolition. This legislation was prompted by the unlawful demolition of the 160-year-old Corkman Irish Pub in Carlton, which was demolished over a weekend in 2016, a week after a fire was lit inside the building. The developer was fined \$1.3m and later jailed for a month.

**With only 20% of the entire State Heritage Register being privately owned either by individuals or companies, and the majority of owners being very good custodians of these items, these enforcement measures are, for the National Trust, not the most urgent reforms that are required.**



Mulgoa Valley, National Trust 2021 Heritage Award winner – currently under threat.

### Required enforcement

As has been noted previously in this report, it is not the Heritage Act itself, but the actual application of its existing provisions that is the major issue that needs to be discussed in relation to “compliance and enforcement”.

The National Trust has, for many years, identified those elements of the Heritage Act that have seemingly never been enforced, and which apply to the majority of the State’s heritage: the urgent need for each government instrumentality to maintain and regularly review a register of the heritage items under its control, and the need to properly secure and maintain these assets.

It is in the matters of regular maintenance that the NSW Government, who own 54% of the places listed on the State Heritage Register, must lead by example. Sadly, this is not the case, and a great deal of our State’s heritage is not being “put to work” because the Heritage Act’s own minimum Standards for Maintenance and Repair (s.118) are being wilfully ignored by Government Departments who are also not maintaining their own Heritage and Conservation Registers (s.170 Registers, also a requirement under the Act).

The former Bureau of Meteorology Building on Observatory Hill (proposed to be incorporated into a new Fort Street Primary School) has been without a roof for nearly ten years and now requires millions of



dollars in rectification and repair due to water damage, while NSW Health proposes extensive demolition due to the poor condition of buildings at the Garrawarra Hospital despite Wollongong Council releasing a report concluding the site should be on the State Heritage Register. There are countless other examples.

There is nothing in the current heritage legislation that is preventing repair and conservation works being carried out, and allowing these buildings to have new uses. Indeed, one of the seven main objectives of the current Heritage Act is “to encourage the adaptive reuse of items of State heritage significance.” The recent adaptive reuse of the (partly derelict) former Kings School in Parramatta to become Bayanami Public School shows what can be achieved when the existing heritage process is combined with adequate funding, and Government leads by example.

The National Trust consider this must be the key discussion point in relation to enforcement of the Heritage Act. We recommend in the strongest possible terms that the requirement for government departments to maintain Heritage and Conservation (s.170) Registers be maintained. We recommend in the strongest possible terms that the requirement for government departments to maintain Heritage and Conservation (s.170) Registers be prepared and maintained, as should the items on those registers.:

- Prepared, for those government agencies that have not yet fulfilled this obligation that came into force in 2005;
- Updated for all government departments;
- Regularly reviewed; and
- Made publicly available on the State Heritage Inventory.

As per Section 170A, each government instrumentality must be held responsible for ensuring that the items entered on its register under section 170 and items and land to which a listing on the State Heritage Register applies that are under its care, control or management are maintained with due diligence to the minimum required standard.

**The NSW government is the custodian of these public assets and the public expects that the government will not only fulfill its statutory obligations relating to them, but will properly care, maintain and conserve them.**

#### **iv. Streamlining heritage processes**

The National Trust regularly update and amend listings within our own Register, to reflect physical changes to the item or to include more detailed information that may have become available. It is also acknowledged that the significance of a place may change over time and that heritage listings should acknowledge this.

The need for the State Heritage Register to be kept up to date is an important consideration, and the Trust acknowledge that in certain situations, such as when a building has been burnt down in a bushfire, the enforcement of Heritage Act provisions will no longer be required and would add further unnecessary hardship to an affected owner.

Streamlined processes to thus update listings and an abridged delisting process are cautiously supported, with the following considerations to be taken into account:

- Provisions for an abridged delisting process must only be permitted within strictly defined circumstances, such as emergency demolition.
- Streamlined updating of existing State Heritage Register listings should only be in order to provide updated information such as recent photography and/or new information to an existing listing, not to remove previously identified heritage values.
- State Heritage Register listings must not be readily changed nor statements of significance amended to facilitate new development. This already happens regularly with Conservation Management Plan updates and generally results in poor heritage outcomes.

All other considerations, such as boundary adjustments (usually to accommodate development) must be subject to the usual processes for amending a heritage listing. This is to ensure that community expectations of consistent, accurate, defined, and legally enforceable heritage listings continue to be maintained. If heritage listings can simply be amended to suit changing circumstances or development proposals, then all faith in the existing robust system will instantly be lost.

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## Response to Terms of Reference

### (e) Any other related matter

#### i. Composition and Role of the Heritage Council

The NSW Heritage Council plays a very important role in making decisions about the care and protection of heritage in NSW.

The Heritage Council must be independent and its members must have relevant knowledge, skills and experience, because the provision of expert heritage advice is its core function.

There is general consensus that the current Heritage Council lacks heritage expertise. The Heritage Act should be amended to ensure the NSW Heritage Council at all times has a majority of members with extensive heritage experience and knowledge to help it perform its function.

##### Composition of the Heritage Council

The Heritage Council must at all times contain recognised experts in NSW's heritage and in NSW heritage practice – without recognised and respected heritage experts, the Council will not be able to serve the people of NSW in protecting the state's heritage. Equally important, it will not be able to provide certainty and guidance to those who seek its advice, be they local councils, community members, property owners, government agencies, or developers.

Professional heritage architects, historical archaeologists, indigenous heritage specialists, built heritage specialists, landscape heritage specialists, natural heritage specialists, rural heritage specialists, heritage engineers and historians can all bring this specialist knowledge to the Council, and the skill sets listed in Section 8(3) of the Act remain appropriate. It is recommended that the Heritage Act be amended to ensure that heritage and conservation professionals and experts always constitute the majority of members of the Heritage Council.

Since the establishment of the Heritage Act, the National Trust of Australia (NSW) has had a nominee on the Heritage Council. As the state's largest and oldest heritage organisation, representing 22,000 members across the state and bringing expert heritage knowledge and experience, this requirement must remain.

The current membership may need to be increased to ensure the required range of relevant heritage expertise is maintained on the Council at all times.

##### Role of the Heritage Council

The Heritage Council advises the Minister responsible for administering the Heritage Act on heritage matters in NSW. It is for this reason that it must be an expert body providing expert, independent, advice.

The Heritage Council must not arrive at decisions based on predetermined Government outcomes, as has occurred where it noted that the Atlassian Tower proposal "is central to the NSW Government's transformational vision for the broader Central Precinct and part of the Government's ambitions for a technology precinct at the Western Gateway sub-precinct of Central Railway Station."

To effectively fulfil its functions as described in the Act, and in line with community expectations, the Heritage Council of NSW must be an independent body comprised of recognised experts and those with a concern for the conservation and retention of significance of heritage places, that bases its decisions on best heritage practice, rigorous research and a deep understanding of the issues presented to it.

#### THE NATIONAL TRUST RECOMMENDS:

- The Heritage Council of NSW must be independent of Government.
- The Heritage Council must always have a majority of members with heritage skills and experience.
- The National Trust must continue to have a nominee on the Heritage Council of NSW.
- The Heritage Council should be heritage leaders and should play a clear and leading role in the setting of standards, guidelines and best practice heritage programs.



## ii. Aboriginal Cultural Heritage Reforms

NSW is the only state in Australia that does not have stand-alone Aboriginal cultural heritage legislation, despite a bipartisan commitment in 2010 to review our state's Aboriginal protection laws.

The current Aboriginal cultural heritage laws in NSW (contained within the *National Parks and Wildlife Act, 1974*) are recognised as failing to protect Aboriginal cultural heritage and being archaic for not providing a role for Aboriginal people in the self-determination of their heritage.

These Aboriginal heritage laws are underwhelming and flawed; worse still, their meagre protections can be 'turned off' for any development classified by the government as "State Significant" - an issue shared with the Heritage Act - with State Significant Development and Infrastructure overriding existing environmental and heritage laws and operating outside their remit.

The failure of legislation to effectively protect Aboriginal heritage has driven a reform process to provide better protection for Indigenous heritage, however the reform process, started in 2011, has been excruciatingly slow with little progress since the Draft Bill was released for consultation in 2018.

**In 2021, eleven years after the bipartisan commitment to Aboriginal Cultural Heritage Reform, there has been no further progress on this issue, and the destruction of Aboriginal sites continues.**

Data released in the NSW Senates Committee (25 February 2021) shows that in the last 5 years, every single Aboriginal Heritage Impact Permit (AHIP - an application for a permit to destroy Aboriginal heritage) in NSW was approved. In the last year alone, there were 84 approved permits to destroy Aboriginal sites.

The permits may come with "mitigation methods" to "minimise harm," however the cumulative impact on the state's collective indigenous heritage continues to grow. The prioritisation of this NSW Heritage Act Review over Aboriginal Cultural Heritage reform indicates to community that once again, the need for adequate Aboriginal cultural heritage protection has been sidelined.

### THE NATIONAL TRUST RECOMMENDS:

- The NSW Government urgently prioritise Aboriginal Cultural Heritage Reform.
- The NSW Government ensures that any stand-alone Aboriginal heritage legislation encompass an inclusive 'rights-based' approach to ensure Aboriginal people play a determinative role in decisions that affect their heritage.
- Aboriginal Cultural Heritage includes in its remit a wide definition of "heritage" encompassing Country, beliefs, the meaning of places, intangible values, storylines and connections as well as objects, places and landscapes.
- It is vital that the Heritage Act continues to apply to Aboriginal Heritage, especially as it relates to shared heritage places and places of Aboriginal significance that involve post-contact history. The two Acts will need to ensure consistency in their approach to shared heritage places.



## Response to Terms of Reference

### iii. Local Government Heritage

Local councils are responsible for the protection and conservation heritage places through obligations arising from the Environmental Planning and Assessment Act (EP&A Act). It is estimated that there are more than 40,000 local heritage items in NSW, largely managed by local councils.

Local Councils also have specific obligations under the Heritage Act, including:

- Referral of local development applications that impact on state-heritage items (under section 60 of the Act);
- Determination of development applications affecting state heritage items, where standard exemptions apply, under section 61 of the Act;
- Issuing and managing interim heritage orders (where delegated this power by the responsible minister<sup>1</sup>), under section 25 of the Act;
- Issuing stop work orders (where delegated this power by the responsible minister) under section 79C of the Act;
- Formally recommending items for inclusion on the State Heritage Register, under section 166 of the Act, and
- Identifying, assessing and managing heritage matters for Aboriginal cultural heritage in relation to planning decisions made at both a local and state level.

As stated by Local Government NSW (2021):

*Local government plays a significant role in promoting, incentivising and regulating the retention of locally significant heritage items, and in doing so, often bears significant financial and resourcing costs to run grant assistance programs, provide local heritage advice, undertake strategic planning and conservation, promote local and state heritage to a broader audience, as well as ensure compliance with heritage controls at a local level.*

The issues here stem not from the Heritage Act itself, which has reasonable requirements, but in applying its obligations and effectively resourcing them. It is imperative that Heritage NSW adequately resource and support local governments in their obligations under the Heritage Act, however this support has been declining over the last 15 years.

Some local governments have additional obligations to those noted above, due to the delegation of Heritage

Act responsibilities to local government bodies.

For example, the recent (December 2020) delegation of Heritage Act responsibilities to the City of Sydney effectively confers all applications (bar archaeological permits) under the Heritage Act from Heritage NSW to Sydney City Council. This is a significant passing of responsibility and duties from state to local government, and means that Sydney City Council is now responsible for managing a massive 24% of items listed on the State Heritage Register. Adequate funding and resourcing is thus critical to ensure the City of Sydney can adequately carry out this responsibility.

The National Trust acknowledges the identifying, protecting and conserving heritage places is a shared responsibility between all levels of government and community. Adequate resourcing is a clear priority to ensure better outcomes for heritage places and to ensure that both listing and management of heritage places can be effective, efficient and robust.

### THE NATIONAL TRUST RECOMMENDS:

- NSW Government increases the pool of grant funding available to support local government heritage advisor schemes, conservation schemes, and reviews of local government area heritage studies.
- All Councils employ a local heritage advisor one day per week, with scaling up of funds from that point to allow for greater expenses that regional Council have (in relation to increased travel costs), for those Councils with more than 150 items on their local register, and for those Councils with greater delegated authority under the Heritage Act.
- NSW Heritage reinstate a dedicated local government support team to facilitate smoother Integrated Development Applications and provide expert support to Councils operating their delegated responsibilities.
- There should be financial and practical assistance to ensure local heritage studies accurately identify heritage places with thorough significance assessments.



## Case Study: The declining resources for local heritage

### LOCAL GOVERNMENT HERITAGE FUNDING

In 2005, a fund of \$1.4 million (over two years) was made available to local councils for:

- Heritage Advisor schemes;
- Local government conservation grants for local heritage items; and
- Local government area heritage studies.

In 2021, \$1.9 million (over two years) was made available to local governments for the same programs. Taking into account inflation (with the 2005 amount equivalent to \$1.72 million today), this amounts to an increase of just \$11,250 per year spread across all Councils in NSW. This is despite there being an increase of 9,000 locally listed heritage items over this time.

The earlier scheme also granted \$12,000 (dollar for dollar) to each successful Council for the Local Heritage Advisor program, with regional Councils able to apply on a non-competitive basis. The current round of funding provides only \$5,500 per Council (dollar for dollar).

**This amount is ineffective in assisting Councils to contract expert Heritage Advisors, and is hampered further when higher travel costs are factored in for regional areas.**

The current grant pool also does not provide for every LGA. In the 2021-2023 grant program, 50 LGAs were not provided for, while the 70 funded Councils had a total of 18,432 local heritage items between them.



Leagues Club Park, Gosford Winner of the Judge's Choice and Aboriginal Heritage Awards at the 2021 National Trust Heritage Awards.

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## Response to Terms of Reference

### iv. Adequate Resourcing

The Discussion Paper for the Heritage Act is based on the assumption that it is the Act itself that is causing the issues it is seeking to address. These assumptions include that “...the Act is now considered out of step with trends in heritage conservation and land use planning... (is) generally considered onerous, procedurally complex and adversarial” and that “heritage owners, developers and administrators face uncertainty, expense, duplication and delays in relation to heritage listing and approvals”

The National Trust strongly argues that it is not the Act causing these complications, rather it is the lack of resourcing for the implementation of the Act that is at the core of these issues. The Objects of the Heritage Act are still relevant and their core role in the identification, conservation and promotion of the State’s heritage are just as applicable as they were 45 years ago.

The National Trust maintain that the lack of resources allocated to Heritage NSW has severely limited its ability to pro-actively research and list places of heritage significance, to process applications quickly and thoughtfully, and to provide useful and timely advice, support and assistance to owners of heritage places.

Heritage NSW needs the resources to establish and maintain a highly skilled team, to research and develop useful and current guidelines for making changes to heritage properties, and need to be empowered to give advice and make decisions. Initial investment in areas such as helpful guidelines and advice will provide greater certainty to customers and reduce staff pressures. This will then allow Heritage NSW to properly and adequately administer the NSW Heritage Act.

It is essential for owners of heritage places and proponents of changes to those places to have access to up-to-date, relevant and useful guidelines that assist and guide their work within the framework of legislative and best practice requirements. This role, previously an essential function of the state government, has now deteriorated and owners are left with conflicting advice and outdated guidelines.

Numerous key guidelines available to assist heritage owners are now out of date, and confusingly refer to legislative requirements that are no longer in force, and approvals processes that are no longer in place. These include:

- Local Government Guidelines (19 years old)
- Archaeological Assessments (25 years old)
- Assessing Heritage Significance (20 years old)
- Guide to the Heritage System (16 years old)
- Heritage Council Approvals Process (20 years old)
- Statements of Heritage Impact (19 years old)
- Planning and Heritage (25 years old)
- How to carry out work on Heritage Buildings and Sites (23 years old)

### THE NATIONAL TRUST RECOMMENDS:

- Heritage NSW must be adequately resourced (both financially and in terms of staff knowledge and experience) to properly administer and implement the requirements of the NSW Heritage Act.
- Local Government must be adequately resourced to care for the over 40,000 items on Local Heritage Lists.
- Government agencies must be appropriately resourced to manage their own heritage assets.



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## Case Study: The importance of updating heritage registers in a timely fashion

### NORTH SYDNEY MLC BUILDING

Over the past 19 years, an average of 22 places have been added to the State Heritage Register each year. The listing process is extremely protracted, and as a result Interim Heritage Orders are often required to allow for heritage assessments to take place. It directly contributes to the uncertainty that both owners and developers encounter.

The MLC Building in North Sydney was initially identified by Heritage NSW in 2013 as meeting the threshold for State Heritage Register listing.

Under-resourcing resulted in the use of a 'triage' system to process a backlog of SHR nominations and manage new nominations.

The triage system, understandable given such large resource constraints, resulted in a system whereby places protected on other heritage lists (in this case the North Sydney Heritage Schedule) and those not under immediate threat, did not have their nomination

progressed, despite their heritage values being identified as state significant.

In the case of the MLC Buildings, this resulted five years later in the owner proceeding with broad scale redevelopment applications that triggered an Interim Heritage Order issued for the site. Countless hours, resources and expense were then spent to advocate for the heritage protection of this item, not to mention the investment the owner had made in developing and documenting a very detailed proposal for the site. All of this could have been avoided, and certainty provided years earlier, if the building was simply listed when initially identified by Heritage NSW.

This scenario is regularly repeated across the state and results in poor outcomes for property owners, poor outcomes for the perception of heritage, and poor outcomes for the heritage place that often languishes while time consuming and costly legal battles are waged.

Good outcomes for both heritage owners and heritage places can result from adequately resourcing up-to-date and comprehensive heritage registers and the identification of places that can be sympathetically adapted.



MLC Building, North Sydney

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# Summary of National Trust Submission and Recommendations

The National Trust (NSW) make the following recommendations to the Standing Committee:

## SUMMARY

- The fundamental importance of the role of the *Heritage Act, 1977* is to identify, protect, promote and conserve cultural heritage places in NSW is still relevant and required.
- The Heritage Act is a generally robust and effective piece of legislation, however it is only effective when it is applied – it should never be turned off.
- The primary reason for many perceived failures with the current Act directly result from a lack of funding in the enforcement and administration of the Act.
- The Social Standings Committee should heed the high level of community interest in the Review and give appropriate weight to their concerns and input.

## RECOMMENDATIONS

### Intersections with other Legislation

- The National Trust strongly urges that the EP&A Act be amended so that it ensures that SSDs and SSIs require approval under the Heritage Act, and/or the National Parks and Wildlife Act.

### State Heritage Register

- The proposed set of four listing “categories” should not be proceeded with.
- The establishment, let alone the administration and management, of numerous additional categories with tailored regulations, asset classes and exemptions, is not supported by the National Trust.
- The established “NSW Heritage Assessment Criteria” should continue to be the basis for determining if a place or item should be included on the State Heritage Register – not its future development opportunities or economic considerations.
- Improved processes should be developed to allow for an increased number of listings on the State Heritage Register.
- Increased funding, appropriately directed, is necessary to help conserve, re-use, and activate heritage in NSW. Such funding must have as its aim actual conservation outcomes for the heritage item.



### Compliance and Enforcement

- The National Trust would support the proposal to introduce what the paper refers to as “intermediate options” for compliance if this would assist Heritage NSW in delivering the objectives of the Act.
- Enforcements should address demolition by neglect.
- Minimum standards of maintenance and repair should be enforced.

### State Government Heritage & Conservation Registers

- State government agency Section 170 registers, as required under the Act, are an immediate priority.
- All government departments should update their registers as a priority within 12 months.
- All registers, once established, must be regularly reviewed.
- All registers should be publicly available on the State Heritage Inventory, as required under the Act.

### Streamlined Heritage Processes

Streamlined processes to thus update listings and an abridged delisting process are cautiously supported, with the following considerations to be taken into account:

- Provisions for an abridged delisting process must only be permitted within strictly defined circumstances, such as emergency demolition.
- Streamlined updating of existing State Heritage Register listings should only be in order to provide updated information such as recent photography and/or new information to an existing listing, not to remove previously identified heritage values that are still applicable.
- State Heritage Register listings must not be readily changed to amend Statements of Significance to facilitate new development. This already happens regularly with Conservation Management Plan updates and generally results in poor heritage outcomes.
- All other considerations, such as boundary adjustments (usually to accommodate development) must be subject to the usual processes for amending a heritage listing.

### NSW Heritage Council

- The Heritage Council must be independent and its members must have relevant knowledge, skills and experience.
- A majority of the Heritage Council members must be recognised heritage experts.
- Heritage Council must continue to have a National Trust nomination on its membership.

### Aboriginal Cultural Heritage Reform

- The NSW Government must urgently prioritise the Aboriginal Cultural Heritage Reform.
- The NSW Government must ensure that any stand-alone Aboriginal heritage legislation encompasses an inclusive ‘rights-based’ approach to ensure Aboriginal people play a determinative role in decisions that affect their heritage.
- Any new Act must ensure that Aboriginal Cultural Heritage includes in its remit a wide definition of “heritage” encompassing Country, beliefs, the meaning of places, intangible values, storylines and connections as well as objects, places and landscapes.
- Notwithstanding the need for separate legislation, it is vital that the Heritage Act continues to apply to Aboriginal (and natural) heritage, especially as it relates to shared heritage places and places of Aboriginal significance that involve post-invasion history. The two Acts will need to ensure consistency in their approach to shared heritage places.

### Local Government Heritage

- Local listings form the bulk of heritage listings in NSW.
- There should be an increased pool of grant funding available to support local government heritage advisor schemes, conservation schemes, and reviews of local government area heritage studies.
- All Councils should be supported by grants to employ a local heritage advisor.
- NSW Heritage should reinstate a dedicated local government support team to facilitate smoother Integrated Development Applications and provide expert support to Councils operating their delegated responsibilities.

### Resourcing

- The provisions of the Heritage Act must be properly resourced and its provisions implemented to ensure its effectiveness.
- Heritage NSW must be adequately resourced (both financially and in terms of staff knowledge and experience) to properly administer and implement the requirements of the NSW Heritage Act, including updating the State Heritage Register.
- State government agencies and local government must be appropriately resourced to manage their own heritage assets.



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## Further Information

The National Trust welcome further consultation with the Standing Committee on Social Issues and look forward to the opportunity to present to the Committee as part of the Hearings associated with their Review of the Heritage Act.






Everglades House & Gardens, Blue Mountains

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