

**Submission  
No 304**

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

**Organisation:** Shoalhaven City Council

**Date Received:** 16 July 2021

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16/07/2021

Standing Committee on Social Issues

By email only: [socialissues@parliament.nsw.gov.au](mailto:socialissues@parliament.nsw.gov.au)

Dear Sir/Madam,

### **Submission – Review of NSW Heritage Legislation**

The opportunity to provide comment on this important matter and the principle aims of the *Review of NSW Heritage Legislation* is appreciated.

Considerable documentation was required to be reviewed in order for Council to provide a thorough and appropriate response to the proposals. As you can appreciate, the submission process takes time to coordinate comments from multiple sections in Council and for the submission to be considered by the elected Council. As such, more time in the future is requested.

Council formally resolved (MIN21.457) on 13 July 2021 to make this submission and request further consultation and dialogue on possible amendments to the legislation that could result.

The following feedback is provided on the identified focus questions:

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

It is appreciated that membership of the Heritage Council of NSW is guided by the criteria under the Heritage Act and includes members possessing a broad range of qualifications, knowledge and skills in various determined areas. Ideally however, the composition of the Heritage Council NSW should include at least one member with qualifications, knowledge and skills relating to social justice, with the aim of advocating for equitable community access to heritage and equitable impacts of managing heritage.

In addition to members possessing a variety of qualifications, knowledge and skills, it is suggested that the Council should encompass a mixed representation of people (ages, cultural heritage, education, profession, location etc.). A variety of members promotes innovative ideas and opportunities to revitalise and repurpose heritage items in addition to promoting heritage.

Furthermore, the COVID-19 pandemic has highlighted how people in different locations can easily meet via video conference, the potential for the Heritage Council of NSW to meet via video conference could enable the potential for committee members to be selected from across New South Wales, promoting a broad range of heritage views and dialogue.

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

The NSW Government was previously proposing standalone Aboriginal cultural heritage legislation and undertook detailed work and consultation in this regard. However the status of this proposed legislation is currently unknown.

Assuming that the standalone legislation is not proceeding, there is significant need for Aboriginal Cultural Heritage to be acknowledged and more fully considered within the Heritage Act. However, this should be determined subsequent to the outcomes of the NSW Government's consultation with peak Aboriginal bodies. Aboriginal Cultural Heritage should be addressed by those who understand Aboriginal Cultural Heritage.

The main law protecting Aboriginal heritage in NSW is currently the *National Parks and Wildlife Act 1974*, which does not adequately reflect that Aboriginal Cultural Heritage must be recognised, valued and managed as heritage, but instead considers it in the context of the natural landscape.

Aboriginal Cultural Heritage should be acknowledged and considered within the Heritage Act in a way that recognises the important cultural heritage arising from the long-standing occupation, management and spiritual connection to places that Aboriginal peoples had and continue to have.

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

The objectives of the Heritage Act are definitely still relevant, as they highlight the need to identify, promote and conserve the State's heritage and to encourage adaptive reuse potential. However, the objectives could be amended to include promoting the understanding and conservation of the State's Aboriginal heritage.

Additionally, the objects of the Heritage Act should be expanded to promote community connection and access to the State's heritage, rather than only promoting the understanding of the State's heritage. The objects should also aim to provide education and understanding to those who do not utilise the legislation for commercial activity.

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

Contemporary NSW community has come to acknowledge social and cultural heritage (including the aesthetic value, historic value, scientific value and social value), however this is largely not protected or considered under current legislation. Furthermore, the Heritage Act needs to consider environmental heritage and its integration with built heritage items.

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

Further to Division 2 of the Heritage Act, the legislation should aim to promote the ownership of heritage items, through increased incentives of financial aid for private conservation efforts, such as stewardship payments. Payments out of the fund should include the grants or loans for the purpose of activation and adaptive reuse of heritage items. However, legislation needs to be clear and preference heritage preservation. NSW heritage legislation needs to increase

awareness of opportunities to access already available grants and loans, in addition to proposed support programs such as the establishment of a revolving conservation fund that assists communities to acquire, restore and operate items for profit.

Furthermore, Heritage NSW could support local governments to provide effective local heritage incentives by providing guidelines and templates for local grant programs, and sharing best practice examples, for example the prioritisation of main street and gateway or landmark location revitalisation.

Whilst the benefits of the transferrable heritage floor space scheme can be observed in larger cities such as Sydney, it may not be appropriate across regional towns of New South Wales and may lead to poor planning outcomes.

The three examples provided, the UK Enterprise Grants scheme, the NSW Endangered Houses Fund and the Victorian Working Heritage scheme, are successful programs that facilitate heritage investment and activation. These models have the potential to be adapted and utilised across NSW, requiring initial investment by the NSW Government, however, becoming subsequently economically self-sufficient utilising the revenue raised from previously restored heritage items to restore and conserve future items.

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

Donations should be encouraged to not-for-profit heritage organisations, that are endorsed as a Deductible Gift Recipients, that disperse the funds to private owners of heritage items for conservation and maintenance works. Allowing the value of donations to be deducted from the taxable income of donors.

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

Initiatives such as the establishment of programs that encourage philanthropic investment to organisations that disperse the funds to private owners of heritage items could assist owners with costs associated with conservation and maintenance works.

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

The proposed four heritage listing categories are supported as they are considered to enable a more tailored heritage protection approach to be applied to items to suit their individual circumstances. This acknowledges that the current one-size-fits-all approach does not adequately respond to the diverse range of heritage items within New South Wales. There is a significant need for appropriate conservation strategies to be tailored to the individual heritage item, or type of items, to ensure they are appropriately protected and managed. As the Burra Charter details, the significance of an item should determine how it is conserved and what changes are appropriate (including new works) and will not detract from the significance of the item.

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

Consistent and easy to understand regulatory mechanisms for heritage listed residential properties are crucial to promote and encourage heritage conservation. The current provisions can be perceived as overly complicated and onerous, which creates barriers to potential purchasers of heritage items as they are considered too difficult to own and manage.

Tailored regulatory settings for items or groups in the proposed NSW Heritage Listing Category 3 are considered to be beneficial in ensuring regulatory mechanisms and management are specific to the type of item. Specifically in regard to residential properties that are heritage listed, it is important to ensure regulatory mechanisms are not overly onerous, while still protecting the significance of the item. It is important that the regulatory mechanisms enable the residential use and potential for alterations and additions to be undertaken that do not impede the heritage value.

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

The proposed reform to introduce a community-driven nomination process is supported. However, it is noted that this can only be achieved with a streamlined process for the listing of State Heritage Register items. The Heritage Council currently has a substantial volume of State Heritage Register nominations that they are attempting to process, and subsequently only nominated items that the Committee consider to be currently not adequately protected or managed are prioritised for listing.

There are significant benefits to greater community engagement to facilitate community participation in heritage processes and assist in delivering a more robust and diverse State Heritage Register. Continuous community consultation will ensure all heritage values are understood and represented. Additionally, the introduction of community nominations has the potential to increase the community's awareness, interest and connection to heritage items.

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

Council staff support the proposed introduction of a streamlined process to update heritage listings and allow them to be periodically reviewed and amended, to address site changes and ensure the site's full significance is protected. There is a significant need for the State Heritage Register to be continually reviewed at regular intervals, to ensure listings remain relevant, or those that have lost their value are removed. A streamlined process enabling the ability to make amendments to State Heritage Register items will ensure that heritage significance that may arise overtime is able to be adequately protected in a timely manner.

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

It is agreed that listing a building on the State Heritage Register should not mean that the item cannot be changed, rather it should ensure that any work carried out is compatible with and complements the heritage significance and supports its long-term viability. There is a considerable amount of information and webpages on Heritage NSW's 'Permit' page which may be perceived as overly complex and onerous for heritage owners and may deter heritage owners from carrying out work on their property. Information should be presented in a clear, easy-to-understand manner to ensure that owners of heritage items do not feel deterred from applying for permits to undertake work. Enabling the Minister to determine permits under the Heritage Act and subsequent fast tracking of applications will reduce timeframes and hopefully assist heritage owners to maintain and conserve their properties.

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

We were unable to find the current determination criteria for heritage permits, and additionally found the information on the website with regard to permits hard to navigate and extract the relevant information. The inability to locate and analyse relevant information can only be assumed to be exacerbated for members of the public and owners of heritage listed items. There is a significant need to improve the website useability.

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

There are a multitude of ways heritage consideration can be improved within the land use planning system including:

- Standardised requirements for Development Control Plans (DCP) to consider heritage, which could be facilitated through standard instrument DCP and controls;
- Greater incentives for heritage advisors, particularly in rural and regional areas; many Councils are under resourced and are not able to provide the community with heritage advisor services;
- The introduction of heritage project control groups or committees that assist with and monitor heritage related development across New South Wales;
- The strengthening of Clause 5.10 in the Standard Instrument Local Environmental Plan (SI LEP). The SI LEP could also be strengthened through the provision of greater definitions for terms like 'curtilage' and 'in the vicinity of';
- There is a need for greater consideration within land use planning of the relationship between zoning and heritage value;
- Finally, it should be made explicit that the protection of heritage is always favoured unless the retention of the heritage site is not in the public interest.

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

Opportunities to enhance the consideration of heritage at a strategic level include conservation incentives through rezoning processes, heritage evaluation and the protection of heritage at the precinct and town levels. Furthermore, there is a significant need for contemporary heritage strategies intended to protect and conserve heritage items without preventing opportunity for repurposing and reviving.

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

The proposed reform to introduce a series of intermediate enforcement powers is supported, as is the proposal to enable heritage regulators to take a graduated and proportionate response to non-compliance, such as the issuing of infringement notices. Certain non-compliance instances may not be serious enough to evoke prosecution, however warning letters are not considered substantial enough. In these instances, infringement notices may be more appropriate to resolve the non-compliance, without the associated expenses and court requirements. Revenue raised from the issued infringement notices could potentially be paid into the Heritage Conservation Fund and utilised for grants or loans for the purpose of reactivation and reuse of heritage items.

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

It is agreed that as heritage is intrinsically values-based, it is crucial for the community to understand and appreciate its importance in order for it to remain meaningful and supported by the broader NSW community. Investing in the promotion and awareness of heritage will increase the community's understanding of heritage and its associated value. There is a significant need for a greater understanding of NSW's state heritage, both Aboriginal and non-Aboriginal. Community understanding and connection to state heritage could be enhanced through programs and resources to support local activation and placemaking activities that include connection to heritage items. This would help integrate the use of heritage items into broader community life. For example, including heritage education and connection activities as part of a local community festival.

Heritage promotion should reflect the interests and values of the community and should not entail a one-size-fits-all across NSW approach. It should be tailored to different regions across NSW, focusing on their heritage significance and the values within communities as well as the broader state's heritage. There is value in the introduction of dedicated programs to promote local community heritage understanding and engagement, as well as broader heritage programs detailing the vast heritage significance of NSW.

It is noted that Heritage NSW's website has undergone a number of improvements over the past few years, however there is still a great need for the website to be more user-friendly. The introduction of the interactive mapping is a great asset to the website, although components of the website are still difficult for community members to locate and access.

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

The Heritage Act should be amended to provide incentives, concessions or grants to support and encourage heritage tourism. Additionally, Heritage NSW should support local councils in the development of Heritage Guides and Heritage Tourism Strategies, whether through financial support or adaptive models.

Following the COVID-19 pandemic, regional travel has increased significantly. It is a perfect time to promote heritage tourism as people are looking to travel regionally and can in turn learn about the vast heritage of the state. Heritage tourism has the potential to stimulate regional economies and attract a broader range of tourists. The NSW Government should encourage the reactivation and repurposing of heritage items for tourist attractions, foods and drink venues or tourist and visitor accommodation.

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

There is significant potential for public heritage buildings to be adaptively reused and leased for community service such as community halls, function centres, indoor personal training, children's playgroups, indoor market venues etc. Income generated from the activation of heritage buildings can be utilised to conserve and maintain the heritage buildings. However, it is noted that the maintenance costs of public heritage buildings far exceed the costs of maintaining non-heritage facilities and generally cannot be met by community hire fees. Financial assistance for local councils would be a good opportunity to maintain public heritage facilities to a high standard, as well as to provide enhancements for greater use potential, such as movie-projection equipment.

**Conclusion**

Thank you again for the opportunity to provide feedback on this very important matter. Given the relevance of this matter to the Shoalhaven, Council would appreciate the opportunity to be involved in further consultation throughout the review of NSW Heritage Legislation.

If you need further information about this matter, please contact Emma Kell, City Futures

. Please quote Council's reference 31157E (D21/296603).

Yours faithfully

Gordon Clark  
**Strategic Planning Manager**