

## INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

**Organisation:** Heritage Council of NSW

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**HERITAGE COUNCIL OF NEW SOUTH WALES**

**Supplementary Submission**

**to the Upper House committee hearing on the  
Review of the NSW Heritage Act 1977**

**August 2021**

The Heritage Council's vision is that the people of New South Wales should be able to celebrate, conserve and protect their heritage, tangible and intangible, large and small. The importance of that heritage goes far beyond simply conserving buildings and important sites. It is about conserving our culture - Indigenous and non-Indigenous - so we can reflect on where we have come from, and to better shape our future. It gives heart and soul to our communities and places, and fosters health and wellbeing. It's an economic driver through things like cultural tourism, and reduces our environmental footprint through preserving and adaptively reusing materials and places. Celebrating, conserving and protecting our heritage in a thoughtful way also enables creation of the heritage of the future.

We note that a significant number of submissions to this Inquiry have argued that the current Heritage Act is adequate and needs no change. The Heritage Council disagrees. The Act was a creature of its time, the 1970s, and reflects an outdated view of heritage that is focused on buildings and objects. The Act also reflects the imperative of the time – being to avoid the all-too-common midnight demolition by bulldozer of our State's built heritage. We can look at the current Heritage Act like a car of the 1970s. Yes, it will still work and get you round but it is far from being a modern framework to take us into the future.

The Heritage Act is deficient in a number of important areas. For example, the Act is effectively silent on Aboriginal cultural heritage, tacitly assuming that that is appropriately managed by the provisions in the National Parks and Wildlife Act. That regime is also very flawed and requires a substantial overhaul. In our submission, we suggest that Aboriginal cultural heritage should be recognised and regulated under one new Heritage Act. We also endorse the principle that Aboriginal people should be the primary determinants of Aboriginal cultural heritage. These two principles can and should work together.

A good example of why this is important and of the layering of heritage significance is Central Station, where that land was traditionally very significant to Aboriginal people prior to invasion, and then the Station itself became and remains the most significant rail transport hub in Australia. The whole precinct also has contemporary Aboriginal cultural significance through its role in the transport of the stolen generation. The Heritage Council believes we should aspire to creating a heritage system that is able to work with this layering, including a strong Aboriginal cultural heritage voice.

We're aware of the view among many Aboriginal groups that there should be separate Aboriginal cultural heritage legislation. However, we believe it is far better to integrate all heritage legislation in the one statute which allows for Aboriginal people to consider and manage Aboriginal cultural heritage. Everyone of us has a shared heritage and we should recognise and celebrate that.

In our submission we list a number of other recommendations which relate to the need to update the Heritage act.

We note that the concept of significant heritage itself requires updating as the current expression "environmental heritage" sounds too much like natural heritage and we believe that a term like "cultural heritage" better represents the depth and breadth of current concepts and heritage, including as they do, intangible heritage, and landscape scale heritage.

Many on the Council are also concerned that the current Act assumes that once a place is determined to be of State significance, then everything inside the place's curtilage is deemed to be of uniformly high significance, unless formally exempted. This leads to difficult and complex debates with owners when they want to make changes. In drafting a new Act, the pros and cons of reversing

this presumption should be considered, so that what is of significance is clearly defined within the listing, leaving anything else subject to reasonable change at the owner's discretion. The Heritage Council has been making various changes within the terms of the current Heritage Act to increase flexibility for owners and to provide more opportunities for exemptions and fast track approvals. This reflects the need for private owners of heritage to modernise and adapt their buildings and places without having to deal with onerous red tape. This theme should be expanded and incorporated into any new statutory framework.

We also believe that the composition of the Heritage Council itself could be improved by having a mix of heritage specialists and community members who share a passion for heritage. Specialist heritage advice should continue to be available from advisory committees. We also recommend that there should be at least two Aboriginal members of the Council, one man and one woman, to better reflect Aboriginal cultural heritage.

The current Heritage Act prevents the Council from employing its own staff. This creates administrative problems in that the Council cannot be properly independent of Government. Currently the Council relies on Heritage NSW, which is a division of the Department of Premier and Cabinet for advice and support, but the Council has no formal power or control over the agency that is responsible for implementing the decisions of the Council. We believe the Council should be able to employ a small number of staff accountable directly to the Council.

The Council also supports a more refined category system for heritage in New South Wales. The current one-size-fits-all "state significance" designation is a rather blunt instrument. We can learn from the English multi-tier system which allows more nuanced management of heritage. The Heritage Council proposes a system which includes a category of the most significant State Heritage, which will probably also be of national and potentially international significance. We believe that it should not be possible for the listing of places at this level of significance, like the Opera house or the Harbour Bridge, to be overridden by other legislation. We support a second category that has two parts, one akin to the current system focused primarily on single buildings, and a second subcategory more appropriate to landscape and suburban scale, focused primarily on preserving exteriors, facades and streetscapes and less on the interiors, and very closely tied into the planning system.

We also support a category that is more celebratory in nature, not having the heavy regulatory overlay of the first two categories. It is more akin to the newly announced blue plaques system. We support the local heritage designation staying essentially as it is.

The Council believes that the nomination system for heritage listing should be simpler and faster with the twin benefit of making it less onerous for nominators and the Heritage Council.

Related to this is the strong perception in certain areas that heritage listing is onerous and financially disadvantageous to owners. We recognise this is true in many situations. We therefore consider that the new Act should include a range of incentives to heritage property owners to reduce that burden and hopefully counter any resistance to listing. This could include things like a heritage conservation investment fund which could solicit government and public contributions, and could potentially purchase Heritage properties in need of work, and/or directly fund heritage conservation works.

The Act review should also consider measures such as long-term leases on government owned heritage properties to support adaptive reuse.

As well as those “carrots”, the Act should also have a much better compliance and enforcement framework including, for example, provisions that enable the issuing of penalty infringement notices similar to those used in the Protection of the Environment Operations Act and other environmental legislation. Such compliance measures should equally apply to public and private owners of heritage items.

The final section of our submission suggests that in drafting any new Heritage Act it would be very useful to better understand the economic impacts of heritage listing, ranging from large scale matters like the benefits of heritage related tourism, through to the economic impact on property owners. Currently, we have a somewhat perverse situation in which an owner might suffer an economic penalty from having a property listed, while the value of their neighbour’s properties will probably rise.

In summary, the Heritage Council believes that we need to update the Heritage Act to better reflect the 21<sup>st</sup>-century view of heritage, particularly including Aboriginal cultural heritage, and better enable the people of New South Wales to celebrate, conserve and protect their heritage in all its forms.

Frank Howarth AM PSM

**Chair of the Heritage Council of NSW, on behalf of the full Council**