

**Submission
No 305**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Rail, Tram and Bus Union, Retired Members Association

Date Received: 1 September 2021

NSW Heritage Act Review –RTBU RMA Submission

The Rail, Tram and Bus Union Retired Members Association have 250 members and represents retired rail, tram and bus workers.

The Association has been active in pursuing heritage issues in recent years in the following areas:

- Current and former railway employees are active in the railway heritage sector in a number of occupational capacities.
- Railway heritage is a significant component of heritage conservation in NSW whether it be railway depots, roundhouses ,workshops, stations, signal boxes or the machinery collections and assemblages that manufactured, repaired ,assembled and repaired the states locomotives and rolling stock for generations.
- The Association has been active in seeking the heritage listing of the former ARU headquarters in Redfern and this is currently under active consideration by the NSW Heritage Council.
- The Association has been closely involved in the repurposing of the Eveleigh Locomotive Workshops following the privatisation of the ATP in late 2015 and its sale to property developer Mirvac. The Association has made several submissions and appeared several times before the IPC in relation to heritage issues at South Eveleigh. It is represented on the South Eveligh Community Liaison Group pursuing the application of the labour movements' social, political and industrial history in the repurposing of the former Eveleigh locomotive Workshops, one of NSWs most important heritage listed sites.
- The recent focus of the Association has been advocating for the recognition of the labour movements "*intangible cultural history.*"^{1,2} at former railways workshop industrial sites.

¹ In 2002 UNESCOs World Heritage Convention formally recognised that industrial sites "*are important milestones in the history of humanity because they testify to the ordeals and exploits of those who worked in them*". A year later the International Committee for the Conservation of Industrial Heritage went one step further by acknowledging that "*human memories and customs are unique and irreplaceable resources that form an integrated component of industrial heritage because they record the lives of ordinary men and women*". UNESCO at its General Conference in October 2003 adopted a Convention for the Safeguarding of Intangible Cultural Heritage. The Convention defines Intangible Cultural Heritage as "*the practices, skills, representations, expressions as well as the knowledge and skills that communities, groups and in some cases, individuals, recognise as their cultural heritage. Sometimes called living cultural heritage, intangible cultural heritage is manifested in: oral traditions, social practices, and traditional craftsmanship*". From paper presented by Professor Lucy Taksa: *Issues pertaining to the absence of attention to the Intangible Cultural Heritage associated with the NSW Eveleigh Locomotive Workshops,*" October 2008

²Professor L. Taksa: *Machines and Ghosts: Politics, Industrial Heritage and the History of Working Life at the Eveleigh Workshops.*" Professor Taksa argues "*Eveleigh has been recognised as one of Australia's important sites of industrial heritage.*" The article "*highlights the process by which industrial heritage is reduced to a narrow association with factory buildings, mechanical relics and technological history. Conservation strategies focussed on its tangible heritage and a failure to formulate and implement a comprehensive interpretation strategy which could enhance popular understanding of the context in which Eveleigh's material culture was created and also its rich history of working life*"

2. Purpose of the Heritage Act 1977

Forty four years have elapsed since the then pioneering legislation was introduced and over twenty years since a major review was undertaken in 1999. Community attitudes and narratives have changed. NSW has become a much more cosmopolitan and diverse society made up of many ethnic communities with different cultures. Their stories need to be told. There has been a sea change in the way aboriginal culture is understood and recognised.

A parallel economic development has been the restructuring of the NSW economy as it transitions from an industrial/manufacturing economy to a service economy built on new technologies and the increasing economic importance of tourism both domestic and international.

The Association argues the framework of the original Act is overwhelmingly focussed on built fabric. This is reflected in the functions of the Heritage Council. The Glossary terms section of the Committees Discussion Paper is taken from the Act and is overwhelmingly concerned with built fabric as can be seen from an examination of the definitions of activation, adaptive reuse, heritage owners and managers, item, moveable heritage, Interim heritage orders, preservation and restoration.

The Review of the Act is timely and presents an opportunity to examine developments about the preservation and conservation of heritage and changing community expectations. Heritage in the 21st century is fundamental to evolving questions of development, land use, ownership, sustainability participation and design. Key themes shaping the future directions of heritage include social and racial justice, indigenous heritage, intangible heritage and environmental sustainability.

An example of the incorporation of intangible cultural history into the mainstream historic environment can be seen in the policy and practices of Historic Environment Scotland (HES), the lead public body established to investigate, care for and promote Scotland's historic environment.³

The HES policy document states:

- The historic environment is about more than physical things. It provides a platform to understand and celebrate Scotland identity and place in the world
- Intangible cultural history is a significant driver of tourism
- Sets out mechanisms for integrating Intangible cultural history into the work program of HES including corporate plans and a key performance indicator i.e. *"evidence that our work is safeguarding ICH in Scotland."*

The NSW economy has undergone significant structural change since the 1977 Heritage Act was introduced. Major railway facilities which provided the backbone for the industrial development of the NSW economy have closed .e.g Eveleigh Locomotive and Carriage Works in Sydney, Civic Workshops in Newcastle and the railway workshops in Goulburn. The Association argues the NSW heritage Legislation and institutions have not been sufficiently dynamic to implement policies which comprehend the significant NSW intangible cultural history represented in these former industrial

³ Historic Environment Scotland: Intangible Cultural Heritage Policy Statement, 2018.

sites. ICH covers a wider canvass than industrial sites. It promotes respect for cultural diversity and human creativity. It is summed up in the HES document “ *fully understand the tangible through reference to its intangible aspects and vice versa.* “

Focus Qs 1-4

The Association recommends that the Heritage Act high level Objectives should include:

- A specific recognition of intangible cultural heritage thus going beyond the traditional focus on the built fabric
- The inclusion of intangible cultural heritage as an integral component in adaptive reuse.
- The involvement of local communities in decision making affecting the identification, registration and reuse of both tangible and intangible history. Community involvement to be built on effective consultative mechanisms.
- To assist both owners and communities with the identification, recording and conservation and of both tangible and intangible heritage
- Reference to the importance of the promotion of heritage tourism.
- The importance of the interaction of Heritage Act and the EPA Act including the explicit recognition of intangible cultural heritage as an issue in Development Applications.

The Association suggests the recognition of Intangible Cultural Heritage in the high level objectives of the Act should necessitate a number of consequential changes to other legislative clauses within the Heritage Act. Given the complexity of the interaction of various sections of the Act and potential changes which may arise from the implementation of the Committees findings and the Government White Paper the following list is not exhaustive but rather indicative.

The Association recommend changes to the Definitions Clause; 4A Heritage Significance,8 Members of Heritage Council-to include a representative with intangible cultural heritage expertise and a local community representative;Div 2 Functions of the Heritage Council to include research ,recording and programs for ICH,21(b) data base to include ICH practices,22Registers: to include ICH practices;24 Interim Heritage Orders: to include ICH practices, 32(1)Minister can direct listing on State Heritage Register- to include ICH practices.

The Association recommends that the composition, skills and qualities of the Heritage Council of NSW be changed in the following manner: provision for a representative with intangible cultural history expertise and a representative representing local communities; inclusion within the Heritage Council Corporate plan and provision in its work program which identifies priority areas where the Heritage Council can make a significant contribution to ICH in NSW.

The Associations recommendations for alterations/additions to the high level objectives of the NSW Heritage Act and a range of clauses is based on our heritage experiences of recent years that the current Heritage Act does not adequately reflect the expectations of the NSW community.

3. Activating Our Heritage

The Association notes the Discussion Paper indicates “*at a state level there are no systematic incentives to encourage commercial reuse.*” The Association recommends that:

- A distinction is drawn between entities such as corporations and not for profit groups and social enterprises. Generally corporations have access to financial resources including borrowings facilities. Commercial organisations are motivated by profit and returns to shareholders whereas not for profits and social enterprises are often run on the smell of an oily rag, extensively make use of volunteer labour and can lack expertise in financial planning, budgeting and promotional activities. The Association observes that different sectors have different needs and does not support a one size fits all approach.
- Caution is exercised when approaching incentives to encourage commercial reuse. Many different circumstances are in operation. For example, the sale of the 13 hectare ATP/Eveleigh Locomotive Workshops site in Redfern by the Government returned \$260m. The Company invested some \$500m in 3 large commercial buildings on site and some \$160m in repurposing the heritage listed Eveleigh Locomotive Workshops for retail and commercial purposes. As Mirvac is listed on the ASX as Australia’s 40th largest publicly listed company the Association believes it is difficult to persuasively argue that large corporations should be able to access financial incentives for commercial reuse.

A further factor is that often heritage listed buildings attract a commercial premium and are seen as desirable high end retail /commercial premises. This has been a feature of the Eveleigh Locomotive workshops retail and commercial redevelopment which has attracted high end retailers. The heritage listed commercial premium referred to have been recognised in various literature.⁴

- In considering activation of heritage assets the focus to date has been on reuse/ repurposing of built fabric. There are a number of issues to consider in activating our heritage. The Association requests the Committee to give attention :
 1. All aspects of heritage activation are given consideration including the built fabric, machinery collections and intangible cultural heritage.
 2. Recommending that a. a component of the sale proceeds of the government sites e.g North Eveleigh be established for the type of revolving conservation fund that could help communities acquire ,restore and operate heritage items as referred to in the Committees Discussion Paper b. The Redevelopment of the NSW Government owned Redfern /North Eveleigh heritage assets include a pilot program for recording and developing, as part of heritage activation, the sites considerable intangible cultural heritage and this be included as a precondition for the sale of these site/sites.
- The Committees Discussion Paper refers to current private owner financial supports in the Act and how these are difficult to access. The Association recommends that the Committee

collect data which outlines the extent of the incentives that are currently used and by whom they have been accessed.

The Box 1 case example referred to in the Committees Discussion Paper merits further exploration and is generally supported by the Association as it “*generates economic growth and creates jobs and opportunities in the local community ...and Not for profits groups or social enterprises must lead the projects , although they can work in partnership with commercial enterprises.*” The Association in the UK example quoted, supports the caveat that residential developments are excluded and priority is given to projects in disadvantaged areas.

The Box 2 and 3 case studies referred to in the Committees Discussion paper i.e. The Endangered Houses Trust Fund and the Working Heritage Program in Victoria are supported by the Association. The Association as part of this section referred to the forthcoming redevelopment of the Redfern/North Eveleigh site, the potential for many tens of millions to be realised by the sale of these properties(similar circumstances apply to the proposed White Bay Development and Tec Central in the heart of the Sydney CBD) and the opportunity to build the capital base of funds such as the Endangered Houses Fund and the establishment of a similar fund in NSW referencing the Working Heritage Fund in Victoria to transform suitable heritage properties onto affordable, rent paying community assets.

Focus Q7 concerning investment incentives has been referred to in the Associations response to this section of the Committees Discussion Paper.

4. Heritage Identification and Listing

This section refers to the various heritage listings of world, national, state and local listings of place, objects and heritage items. The Association in our submission has referred to the need to recognise and incorporate changing concepts of heritage conservation, particularly intangible cultural history

Recent decades has seen the application of international conventions and mechanisms for the identification of world significant heritage. Some 20 sites in Australia have received UNESCO World Heritage listing. They are highly prized for both heritage conservation and economic reasons and as tourism magnets for international visitors. The work of UNESCO Committees in developing a Convention for the Safeguarding of Intangible Cultural History and recognising the importance of industrial sties was referred to earlier in our submission.

The Committees Discussion Paper explains the heritage listing process in NSW. The Association suggests the Committee have prepared information as to how many recommendations for SHR listing have been made by the Heritage Council to the Minister over the last five years together with a breakdown by category/asset class. Additional information could include the number of times, if any, where the Minister has refused a recommendation from the Heritage Council and the reasons for the refusal.

The Committees Discussion Paper suggests the State Heritage Register categories could provide tailored protections. It argues a nuanced approach provides protections. No evidence of the operation of such a system operates was presented. The example quoted refers to a New York heritage framework which protects private residential building exteriors.

The proposed four category heritage listing proposal is based on broad brush, generalised arguments which are difficult to respond to.

Reference is made to low regulation options that could be negotiated where straightforward or low risk exists. What issues are covered by low regulations and what regulations would be removed in this scenario?

The Discussion Paper envisages a framework of four categories of heritage listings. The Minister, before deciding to add an item to the SHR would 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 Association makes the point that many heritage listings cannot be reduced to economic and adaptive reuse calculations. The Association notes that the current high level objectives of the Act refer to the promotion of reuse.

The Committees Discussion Paper does not refer to the current mechanism for listing which is based on seven points which are considered by the Heritage Council when addressing a particular listing. Presumably initial decisions would be made by the Heritage Council based on these categories and a recommendation would go the Minister. If this process is jettisoned the Association would oppose a singular and narrow condition referred to as the sole basis for consideration by the Minister.

The Discussion Paper outlines the four categories and gives broad definitions and examples for each of the four categories. Is it envisaged that a process would be undertaken whereby all items on the SHR would be allocated to each of these 4 categories? How would this be done and would it be a public process which enables community participation?

The proposed category 1 items would be conserved to the highest standards, how would these differ to the current standards? The current NSW heritage legislation is predicated on the listing of state heritage assets. Separate mechanisms and process apply to world heritage and national listings. It would be problematic in a number of senses for them to be included under the aegis of state based legislation. In addition listing potential world heritage listings has the ability to interfere if not undermine a world heritage listing. How would such a potential listing be assessed?

No doubt many organisations would ask how such and such current listing is affected by the four category proposal. For example, how would the Eveleigh Locomotive Workshops and Eveleigh Carriage Works is affected by the proposals? Could the Eveleigh Railway Workshops precinct be included in Category 2 as a state significant heritage landscape?

The Association requests that details be provided as to how the Category 2 and Category 3 dividing lines were drawn and in particular why heritage landscapes were afforded a separate category.

Categories 3 and 4 contain reference to easy to understand regulatory mechanisms and tailored regulatory settings. In regulatory and legislative reform the devil is in the detail. The Association is not convinced of the merits of the proposed four category proposal and requests it be rejected by the Committee.

Concerning the wider question of heritage identification and listing the Association recommends that as part of heritage legislative reform and its implementation intangible cultural heritage could become a category for listing on the state heritage register.

Focus Q 8 and 9. On the evidence presented in the Committees Discussion paper the Association has not been convinced tailored heritage protections would enhance heritage conservation. The Association lacks expertise in the complex area of heritage residential properties to provide a comment.

5. Streamlining Heritage Processes.

General statement is made without any evidence that *“these processes are time consuming ...current heritage listing procedures has been described as lengthy and complex.”*. The Association requests the Committee have prepared materials which examines the evidence behind this statement.

Improving the listing process

The Association agrees that a process needs to be developed to engage the broader community in identifying and notifying items for potential listing. The Association supports a community driven nomination process as set out in the Reform proposal. It suggests that if such a proposal proceeds they would incur new responsibilities for the Heritage Council and NSW heritage and extra funding for these bodies would be most likely required.

Focus Q10; from the above comments made by the Association we believe greater community engagement could deliver a more robust State Heritage Register.

Amending Existing Listings on the State Heritage Register.

The point is made that the current process delivers a point of time listing which may not fully reflect the actual significance of each site. Significant site aspects may become apparent over time. This particular comment could potentially apply to an intangible cultural heritage listing.

The Reform proposal suggested has two aspects: a streamlined process to update heritage listings and an abridged delisting process with examples referring to natural events such as bushfire or flood.

Focus Q11. The Associations gives *“in principle”* support to a mechanism that introduces a streamlined process to update existing heritage listings and an abridged delisting process which would apply to limited circumstances as outlined. The Association would ask for a further opportunity to comment once the details of the streamlining process are available.

Heritage within the Planning System

The Association has been involved in a number of Development Applications for the redevelopment of the ATP /Eveleigh Locomotive Workshop site in Redfern. There are multiple interactions between the Planning system and the Heritage Act including the involvement of the Heritage Council. Thus the Heritage Interpretation Plans developed for the site have been processed through the DA process.

The Association in its submission and appearances before the IPC focussed mainly on the intangible cultural history of the former Eveleigh Locomotive Workshops site. The experience of the

Association was that the IPC does not have the appropriate heritage legislative tools and expertise to consider heritage issues applying to intangible cultural history.

The disconnect between the EPA Act, 1979 have become magnified with the passage of time. For example the differences between the objectives of the two Acts. The Association has suggested a number of changes to the objectives of the Heritage Act a number of which were drawn from the objectives of the EPA Act.

Qs 14 and 15 The Association recommends:

- That as there has been an evolution in heritage conservation that now include intangible cultural heritage and that this should be reflected in appropriate changes to the Heritage Act.
- The objectives of the Heritage Act should be modernised. The Association supports the increased focus on community driven planning. However whether the current processes deliver this objective in the planning system is a contentious issue. The Association urges the Committee to examine whether the community driven strategic planning has been effective and if so what are the current systems' strengths and weaknesses. A reference point could be the use of the IPA2 consultative model.
- The experiences of the Association in pursuing heritage issues within the planning system has been a negative one with an outcome which does not take into account community driven heritage outcomes and where the playing field is heavily biased to the DA applicant.
- The Association notes that in the five years it has been advocating for intangible cultural history at the South Eveleigh site there has only been one minor example of interaction between the Heritage Office and the Association. Heritage NSW as far as we know has not made any comment about intangible cultural history. They have been active in arguing about issues which affect the built environment. The Association endorses a proposal in the Discussion Paper that suggests that the role of the Heritage NSW include the provision of assistance to community driven heritage.
- Improving the linkages between the Heritage Act and the EPA Act are seen by the Association as crucial. Part of the process should include Commissioners and IPC staff with expertise in heritage, including intangible cultural heritage and the ability of the IPC to exercise on going involvement and supervision of conditions of consent which involve heritage conservation issues.
- The Association argues there needs to be better inter-agency cooperation in relation to heritage. For example, the Association and other community organisations have been actively pursuing the need for the NSW government to make decisions about the declaration and implementation of a combined North and South Eveleigh railway historic precinct. This has been a long standing issue and is supported by the SHR listing of the Eveleigh Precinct and the 2013 Conservation Management Plan (CMP) for the Australian Technology Park.⁵

⁵ ATP, Conservation Management Plan Vol1, December 2013. At p 93 7.7.2 Curtilage assessment *"the SHR curtilage for the Eveleigh Railway Workshops includes the entirety of the ATP site as well as North Eveleigh , the former Macdonaldtown Gas Works, RailCorp's property to the west of ATP and a section of the Great Western Railway between the two sides of Eveleigh..."* and at p94 under the 7.7.3 the setting of the ATP site :*" while the Eveleigh Locomotive Workshops are significant in their own right , this significance is greatly increased when considered as with former Carriage and Wagon workshops at North Eveleigh...changes to the ATP should not*

- A government agency in 2017 asked property owners in the district for their views on the Eveleigh Precinct. It did not inform community organisations. We made submissions anyway though they were not responded to by the government agency. There have been a number of agency reorganisations in the intervening period. Community organisations and others have raised this issue on a number of occasions but have met the response that in the agency reshuffle the file has not been able to be located. In early 2021 TfNSW released for public comment a strategic vision plan for the Redfern –North Eveleigh precinct which did not include a reference to implementing the hitherto agreed need for there to be an Eveleigh Precinct Plan. The Association recommends that a heritage co-ordination mechanism across government agencies be enhanced together with community driven outcomes and the Eveleigh Precinct Plan be treated as a priority. It should also be included as a key component of the Redfern-North Eveleigh Strategic Vision.

6. Heritage Promotion and Engagement

The Association agrees with the thrust of the Committees Discussion Paper that there needs to be considerable attention given to dedicated programs to promote community heritage understanding as the current focus is on heritage listing.

The Association requests that the Committee examine the heritage grants program and the National Trust Heritage Awards to gain an appreciation of the current heritage education funding, in both a quantum sense and the elements of these programs with an objective of ascertaining whether there needs to be an increase in and /or a reallocation of resources.

Focus Q17 Celebrating local heritage and community education programs are supported by the Association. The Association notes that community driven outcomes are a prime focus of many of the suggestions contained in the Committees Discussion Paper. The Association suggests that there are many threads that need to be brought together in an overarching, comprehensive plan which will result in successful implementation of community driven heritage program. The Association recommends that mechanisms for community engagement and community driven outcomes be informed by the IPA2 Consultative Model

Heritage Tourism

The Association has many links through its member’s involvement in various railway heritage organisations to rail tourism heritage. Much has changed in the rail heritage tourism sector in recent years following a 2013 review and the establishment of Transport Heritage NSW Ltd. It manages a portfolio of rail heritage assets owned by the NSW Government on behalf of TfNSW and provides a leadership role delivering a range of services to the transport heritage sector on behalf of the NSW Government.

be considered without consideration of the heritage impact on the former railway workshops as a whole, and understanding the sheer size of the Eveleigh Railway Workshops and the scope of functions which occurred within them should not be compromised by treating each component as a separate identity that does not relate to the whole.”

The 2017 -18 Annual Report of Transport Heritage NSW reveals

- That over 55,00 people visited the NSW Rail Museum ,up nearly 30%
- Over \$1.7m in funding allocated to heritage transport groups
- Record of 66,000 passengers carried on heritage trains ,up by nearly 30%

Much more could be done to promote railway heritage tourism. There have been a number of new entrants supplying railway heritage services. HERITAGE PAPER. REFORMULATE.

Q18 The Association makes the following comments.

The benefit of a robust and expanding rail tourism sector for regional NSW communities is important. The Association endorses the positive comments made in the Committees Discussion Paper about the compelling opportunity presented for heritage tourism.

The redevelopment of the ATP/ Eveleigh railway workshops has included the development of a heritage tourism plan which is an integral component of the company's Heritage Implementation Plan. Taking a holistic approach to heritage interpretation makes not only good economic sense in driving potential customers to the company's retail offering but has demonstrable opportunities to deepen both local and international tourist understanding of and engagement with heritage.

The importance of Cultural heritage Tourism to the repurposed South Eveleigh site is highlighted by figures from Destination NSW which show for the year ended December 2018 the share of Cultural and Heritage visitors for: visit history/heritage buildings sites or monuments is 68% for international visitors ; domestic overnight visitors 37% and domestic Daytrip visitors 36%. South Eveleigh and its surrounds has a multitude of cultural and heritage attractions.

Carriageworks across the rail line is the former railway workshop which was transformed into a contemporary arts centre by the NSW Government in 2005.It is the largest multi -arts organisation in Australia attracting over 400,000 visitors per year.

This section makes a brief reference to a recently released Heritage Tourism strategy. Box 4 refers to that strategy. However in view of the broad brush focus on regulatory issues and the major idea of adaptive reuse for commercial activity it yields little value from a NSW perspective.

Focus Q 18. The Association supports the suggestion that the Heritage Act be structured to provide incentives, concessions and grants to support or encourage heritage tourism.

The failure of the Government to progress the Eveleigh precinct as a whole is a major drawback for the future of heritage tourism in the Eveleigh precinct and NSW generally.

At the strategic level there needs to greater inter –agency co-operation.

7. Publicly Owned Heritage

The Committees' Discussion Paper underscores the importance of NSW Government being the largest holder of heritage assets with over two thirds of the states heritage items/ assets. The contribution of these assets in both an economic and social sense has been highlighted in the Discussion Paper.

Reference is made to most public heritage building being in public use however with the caveat “*Many may now be considered surplus to requirement to need due to changing service delivery needs ,expensive maintenance costs or other reasons.*”

There have been a number of recent examples in the railway industry which are covered by these observation e.g The Eveleigh Locomotive Workshops. The Association observes that the current policy appears to be ad hoc and focusses on the built fabric. The Association referred to the many heritage issues not addressed in the current TfNSW Strategic Vision for the Redfern/ North Eveleigh Precinct.

The Association requests the Committee to arrange for the collation of data which would enable a detailed picture of public heritage buildings, how many are considered surplus and the financial and other reasons which would lead to a better understanding of the public sector position

The Association argues the future of state owned heritage assets is a complex issue which should be subject to a specific inquiry and public investigation by the state government. The focus of the Committees Discussion Paper has been the Heritage Act and how it may be modernised.

The Association is concerned that to include a one page reference to publicly owned heritage which consist of the substantial majority of the states heritage assets and potential policy directions which will reverberate for decades is both on the evidence provided not an appropriate forum and should be the subject of a thorough, stand-alone inquiry.

Focus Q19. The Associations submission has made a number of comments throughout the submission concerning the activation of public buildings.

30th August 2021