State heritage assets

The roles and responsibilities of the Auditor-General, and hence the Audit Office, are set out in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

We conduct financial or 'attest' audits of state public sector and local government entities' financial statements. We also audit the Consolidated State Financial Statements, a consolidation of all state public sector agencies' financial statements.

Financial audits are designed to add credibility to financial statements, enhancing their value to end-users. Also, the existence of such audits provides a constant stimulus to entities to ensure sound financial management.

Following a financial audit the Audit Office issues a variety of reports to entities and reports periodically to Parliament. In combination, these reports give opinions on the truth and fairness of financial statements, and comment on entity internal controls and governance, and compliance with certain laws, regulations and government directives. They may comment on financial prudence, probity and waste, and recommend operational improvements.

We also conduct performance audits. These examine whether an entity is carrying out its activities effectively and doing so economically and efficiently and in compliance with relevant laws. Audits may cover all or parts of an entity's operations, or consider particular issues across a number of entities.

As well as financial and performance audits, the Auditor-General carries out special reviews, compliance engagements and audits requested under section 27B(3) of the *Government Sector Audit Act 1983*, and section 421E of the *Local Goverment Act 1993*.

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In accordance with section 38EC of the *Government Sector Audit Act 1983,* I present a report titled **'State heritage assets'**.

Margaret Crawford PSM
Auditor-General for New South Wales
27 June 2023

audit.nsw.gov.au

The Audit Office of New South Wales pay our respect and recognise Aboriginal people as the traditional custodians of the land in NSW.

We recognise that Aboriginal people, as custodians, have a spiritual, social and cultural connection with their lands and waters, and have made and continue to make a rich, unique and lasting contribution to the State. We are committed to continue learning about Aboriginal and Torres Strait Islander peoples' history and culture.

We honour and thank the traditional owners of the land on which our office is located, the Gadigal people of the Eora nation, and the traditional owners of the lands on which our staff live and work. We pay our respects to their Elders past and present, and to the next generation of leaders.

audit office
OF NEW SOUTH WALES

Banner image: 'Yarning Circle' by Caitlin Liddle, Audit Office Indigenous Internship Program participant used with permission.

contents

State heritage assets

Section one

Oversight and administration of state heritage assets

Executive summary

The Heritage Act 1977 (the Heritage Act) and accompanying regulation provide the legal framework for the identification, conservation and adaptive re-use of heritage assets in New South Wales.

The Department of Planning and Environment (Heritage NSW) has responsibility for policy, legislative and program functions for state heritage matters, including supporting the Minister for Heritage to administer the Heritage Act.

Heritage assets that are rare, exceptional or outstanding beyond a local area or region may be listed on the State Heritage Register under the Heritage Act. These assets include places, buildings, works, relics, moveable objects and precincts, and assets that have significance to Aboriginal communities in New South Wales. Assets nominated for and listed on the State Heritage Register ('listed assets') may be owned privately or publicly, including by local councils and state government entities.

The Heritage Act establishes the Heritage Council of NSW (the Heritage Council) to undertake a range of functions in line with its objectives. Heritage NSW provides administrative support to the Heritage Council, for example providing advice on assets that have been nominated for listing on the State Heritage Register. Many of Heritage NSW's core activities also relate to exercising functions and powers under delegation from the Heritage Council. These include making administrative decisions about works affecting listed assets, and exercising powers to regulate asset owners' compliance with requirements under the Heritage Act.

Heritage NSW states that heritage:

> …gives us a sense of our history and provides meaningful insights into how earlier generations lived and developed. It also enriches our lives and helps us to understand who we are.

According to Heritage NSW, an effective heritage system will facilitate the community in harnessing the cultural and economic value of heritage.

The objective of this audit was to assess how effectively the Department of Planning and Environment (Heritage NSW) is overseeing and administering heritage assets of state significance.

For this audit, 'heritage assets of state significance' refers to items (including a place, building, work, relic, moveable object or precinct) listed on the State Heritage Register ('listed assets'), and those which have been nominated for listing.

Conclusion

The Department of Planning and Environment (Heritage NSW) does not have adequate oversight of state significant heritage assets. Information gaps and weaknesses in certain assurance processes limit its capacity to effectively regulate activities affecting assets listed on the State Heritage Register. These factors also constrain its ability to effectively support voluntary compliance and promote the objects of the Heritage Act, which include encouraging conservation and adaptive re-use.

Heritage NSW has adopted a focus on customer service and recently improved the timeliness of its advice and decisions on activities affecting listed assets. But Heritage NSW has not demonstrated how its customer service priorities will address known risks to its regulatory responsibilities. It could also do more to enable and promote effective heritage management among state government entities that own listed assets.

The information that Heritage NSW maintains about assets listed on the State Heritage Register ('listed assets') is insufficient for its regulatory and owner engagement purposes. Data quality and completeness issues have arisen since the register was established in 1999. But Heritage NSW's progress to address important gaps in the register, and its other information systems, has been limited in recent years. These gaps limit Heritage NSW's capacity to detect compliance breaches early and implement risk-based regulatory responses, and to strategically target its owner engagement activities to promote conservation and re-use.

Heritage NSW makes decisions on applications for works on listed assets, requiring technical skills and professional judgement. But Heritage NSW does not provide its staff with adequate guidance to ensure that consistent approaches are used, and it lacks sufficient quality assurance processes. There are similar weaknesses in Heritage NSW's oversight of decisions on applications that are delegated to other government entities.

Heritage NSW has prioritised the implementation of customer service-focused activities, policies, and programs to reduce regulatory burdens on asset owners since 2017. For example, Heritage NSW has refreshed its website, introduced new information management systems, and implemented new regulation for the self-assessment of exemptions for minor works. However, Heritage NSW has not taken steps to mitigate oversight and quality risks introduced with the reduced regulatory burdens. Heritage NSW has made some, but to date insufficient, progress on a key project to update its publications. These documents (over 150 publications) are intended to play an important role in promoting voluntary compliance and supporting heritage outcomes. Heritage NSW started a new project to update relevant publications in April 2023.

Heritage NSW has recently implemented processes to improve its efficiency, such as screening new nominations for listing on the State Heritage Register. Heritage NSW has also reported improvements in the time it takes to decide on applications for works affecting listed assets. In the third quarter of 2022–23, 87% of decisions were made within the statutory timeframes. This compares to 48% in 2021–22. Heritage NSW has similarly improved how quickly it provides heritage advice on major projects, with 90% of advice reported as delivered on time in the third quarter of 2022–23, compared to 44% in 2020–21.

Assets owned by state government entities comprise a large proportion of State Heritage Register listings. These assets are often of high heritage value or situated within large and complex precincts or portfolios. But Heritage NSW does not implement targeted capability building activities to support good practice heritage management among state government entities and to promote compliance with their obligations under the Heritage Act.

The expected interaction between Heritage NSW's strategic plans and activities, and the priorities of the Heritage Council of NSW, is unclear. Actions to clarify the relevant governance arrangements have also been slow following a review in 2020 but this work re-commenced in late 2022.

Heritage NSW has been progressing work to draft reforms to the Heritage Act. This follows recommendations made in a 2021 Upper House Inquiry into the Heritage Act. To build preparedness for future reforms, Heritage NSW will need to do more to address the risks and opportunities identified in this audit report. In particular, it will need to ensure it has sufficient information and capacity to implement a risk-based regulatory approach; clear and effective governance arrangements with the Heritage Council of NSW; and enhanced engagement with government entities to promote the conservation and adaptive re-use of listed assets in public ownership.

1. Key findings

Heritage NSW lacks adequate oversight of state heritage listed assets, presenting risks to its capacity to promote the objects of the Heritage Act

Heritage NSW has not adequately defined what information needs to be maintained in the State Heritage Register, or its other information systems, to effectively oversee and regulate activities affecting listed assets. This is a key administrative issue for Heritage NSW because the Heritage Act does not specify what information is required to be kept in the register by the Heritage Council, and Heritage NSW under delegation.

The objects of the Heritage Act include providing for the identification, registration, conservation and adaptive re-use of 'items' (assets) of state heritage significance.

Heritage NSW performs administrative and regulatory functions under delegation from the Heritage Council for activities relating to the 1761 assets[1] listed on the State Heritage Register. The register includes assets in public and private ownership. There are gaps in the currency and completeness of important data in the register. Heritage NSW has only updated nine per cent of records in the register since 2015.

Heritage NSW does not routinely collect data on the use or status of listed assets. It does not undertake risk-based monitoring to identify asset owners' compliance with minimum standards of maintenance required for certain asset types under the Heritage Act. Heritage NSW has also not assessed the likelihood of breaches going undetected.

Heritage NSW does not have information on whether asset owners' details and contacts are current. It has determined that updating this and other data in the register would require significant additional resources.

Heritage NSW's low visibility of the use and condition of listed assets includes those owned by state government entities. These entities are required under the Heritage Act to maintain a 'Heritage and Conservation Register' that lists their assets of heritage significance. Heritage NSW started a program in 2019 to improve compliance with this requirement, but its program had limited impact on the quality or number of entities' registers. In 2021, Heritage NSW identified ten priority entities that would still require a very high level of support to prepare or update their registers. Heritage NSW has since reduced strategic focus on and resourcing of this program.

Heritage NSW has been delivering on some customer service priorities, but has not sufficiently progressed key initiatives nor addressed oversight and compliance risks

Heritage NSW has been pursuing an organisational focus to improve its customer service and reduce inefficiencies in its administrative and regulatory activities since at least 2017. Heritage NSW considers asset owners and managers, industry professionals, and consultants as 'customers' as they access information and interact with Heritage NSW's staff and systems. Over the same period, Heritage NSW's operations have been impacted by two machinery of government changes and two organisational restructures.

Heritage NSW has progressed some customer service initiatives. These include a refreshed website, new information management systems, a new team to streamline processes to deliver more timely advice and decisions, and revised processes to reflect policy changes that reduce regulatory burdens on asset owners. Generally, customer service initiatives have been designed to respond to recommendations from the 2021 Upper House Inquiry into the Heritage Act.

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[1] State Heritage Register data exported in December 2022

However, other key initiatives have not progressed. For example, Heritage NSW has lacked a clearly resourced plan to review and update its publications to ensure they are fit-for-purpose. Its publications are a core source of guidance for the heritage industry and asset owners and managers. These groups need to understand Heritage Act requirements, and the policy or procedural requirements and expectations of Heritage NSW and the Heritage Council. Heritage NSW has over 150 publications online: most (111 publications) have not been updated in ten years and some have not been updated in 20 years. Those which have been updated recently are now targeted to a general audience. Heritage NSW started a new project in April 2023 to assess the ongoing need for and relevance of its publications, and to create a schedule for updating these.

Heritage NSW has also not adequately addressed how oversight and compliance risks associated with its customer service focused approaches will be managed. For example, Heritage NSW has not fully implemented strategies to mitigate risks associated with it no longer being able to track the cumulative impacts of minor changes on listed assets, nor to readily detect the incorrect use of exemptions for approvals for minor works. This follows from a policy that was introduced in 2020 to reduce regulatory burdens by enabling owners to self-assess their eligibility for minor works exemptions.

Heritage NSW does not currently implement targeted support to promote voluntary compliance and build state government entities' capability to maximise heritage values. This is a key gap in its customer service approach because nearly half of the assets listed on the State Heritage Register are owned by local or state government entities, including large, complex precincts and iconic or high-profile assets. Furthermore, six government entities have agency-specific exemptions in place allowing them to conduct routine works without needing to seek approval from Heritage NSW.

Overall, Heritage NSW has not clearly delineated its customer service and regulatory functions. This creates a risk that customer service priorities are insufficiently focused on promoting compliance, or come into tension with enforcing regulatory requirements.

Heritage NSW has implemented some measures to screen nominations for listing, but lacks guidance for staff engaging with the asset owners

Heritage NSW completed a project in December 2020 to screen approximately 200 'legacy nominations' for listing, some dating back over ten years. Heritage NSW then worked with a Heritage Council committee to identify 58 nominations to progress to the detailed assessment stage. It also implemented a process to screen new nominations.

Heritage NSW conducts detailed assessments of nominations. This includes historical research and developing a statement of heritage significance. However, there is considerable variability in how long it takes Heritage NSW to assess whether a nominated item meets Heritage Council criteria for listing on the State Heritage Register. For example, assessment can take from three months to 17 years, or five years on average. Heritage NSW staff lack clear guidance to support consistent, efficient approaches to undertake this work. This variability can create uncertainty for asset owners.

Several factors, some within and others outside the direct control of Heritage NSW, can affect which nominations are prioritised for assessment, and when. Owner engagement can be a key factor. Heritage NSW may undertake extended negotiations to build owner support for a listing. Heritage NSW advises that a responsive approach to owner engagement may improve heritage outcomes by reducing the risk of non-compliance with minimum standards of maintenance.

However, Heritage NSW has not developed clear policies or guiding principles for staff engaging with owners. If an owner has concerns about listing, Heritage NSW may 'park' a nomination to be reassessed later, so long as the Heritage Council committee agrees and there is no imminent threat to the asset. Heritage NSW's lack of clear guidance creates a risk that nominations are inconsistently progressed, and that the listing and regulation of some assets of state heritage significance is not prioritised. This includes nominations for publicly owned assets.

Heritage NSW has commissioned a review of its listings assessment processes which is due to conclude in mid-2023.

Heritage NSW does not have sufficient quality assurance over decisions about applications for works on listed assets, including over decisions made by other government entities

Asset owners wanting to undertake work on or make changes to a listed asset generally need to apply to Heritage NSW for approval, depending on the significance and extent of the works. Heritage NSW makes decisions on these applications under delegation from the Heritage Council.

Heritage NSW's reporting to the Heritage Council contains only high-level summary information of decisions made. Examples of these summary reports reviewed for this audit were also found to contain errors and data inconsistencies that limit reliability. These factors limit assurance over the quality of decisions made by Heritage NSW, and over whether approaches are consistent with expectations.

Heritage NSW provides training and guidance to staff on the use of these delegations. Its Heritage Management System has controls around approvals of applications for works. But there are gaps in Heritage NSW's guidance to support staff to apply consistent approaches. Also, Heritage NSW does not conduct systematic assurance or auditing to test the consistency in approach and quality of its decisions. Heritage NSW's decisions on applications for works require a high level of technical expertise and professional judgement.

Following a commissioned review of its assessments work, Heritage NSW plans to introduce a new team structure to support more consistent approaches. This is planned for implementation later in 2023.

Three other government entities can make decisions on minor works for their listed assets, under delegation from the Heritage Council. Heritage NSW lacks a structured process to monitor these delegated decisions. The entities are required to submit reports on delegated decisions. Heritage NSW has not implemented quality assurance processes for these reports to ensure that decisions meet expectations and are made in line with requirements. Requirements include that delegated decisions are limited to applications for works with a minimal impact on heritage values.

Heritage NSW reports recent improvements in its timeframes for assessing applications for works on listed assets

In 2021–22, Heritage NSW received 404 applications for works on listed assets under the Heritage Act. The total estimated cost of these works is reported to be around $2 billion.

In the third quarter of the 2022–23 financial year, Heritage NSW data shows it assessed 87% of applications within the statutory timeframes (between 21 and 60 days, depending on application type). This is an improvement from 2021–22, when Heritage NSW assessed 48% of applications on time. A fast-track stream was introduced in 2021 to provide a shorter turnaround time for minor works. Heritage NSW completed 90% of fast-track assessments within this 21-day timeframe in the third quarter of 2022–23, compared to 49% in 2021–22.

Heritage NSW has dedicated resources and strategic focus to improving its performance on timeliness indicators since 2021. It initiated a temporary 'streamlining' program in 2021 to lead this work, including introducing manual reporting processes. This has contributed to these reported improvements in the timeliness of decisions on Heritage Act applications, and to the timeliness of providing advice on projects referred under the *Environmental Planning and Assessment Act 1979* (noted below). Sustaining improvements and strengthening data controls once the temporary program ends will be important.

Heritage NSW reports recent improvements in its timeframes for providing advice on heritage impacts

Heritage NSW has timeframes for providing advice on heritage issues related to state significant infrastructure and development ('major projects') under the *Environmental Planning and Assessment Act 1979.* These timeframes are important given the costs that can be associated with delays to these projects.

In 2021–22, Heritage NSW received 463 referrals for advice relating to major projects. In 2021–22, Heritage NSW improved its timeliness for providing advice. By the end of the 2021–22 financial year, it reported 91% of advice delivered on time, compared to 44% in 2020–21. This was also maintained at the third quarter of 2022–23, with 90% of advice delivered on time. Heritage NSW's improved timeliness has been enabled by executive-level coordination and better information sharing across the department about the pipeline of upcoming projects.

Heritage NSW's reported performance in meeting timeframes for providing terms of approval/ refusal to local councils on Integrated Development Applications also improved in 2021–22 to 76%, compared to five per cent in 2020–21.

Heritage NSW introduced a new information management system in 2021–22, but functionality and implementation issues mean that it is exploring alternatives

Heritage NSW implemented the Heritage Management System, a custom-built information system, in 2021–22 at a cost of around $9 million. The new system introduced an online platform for the customer-facing and internal processing of applications and assessments. The system has provided procedural improvements including digitising decision-making and introducing enhanced controls and reporting compared to Heritage NSW's previous systems.

Heritage NSW is now exploring alternatives to the Heritage Management System. This is due to functionality issues, a lack of uptake when processing nominations for listing, and integration challenges with other Heritage NSW and departmental systems, such as the NSW Planning Portal. There may be benefits of Heritage NSW exploring integration with this portal, such as reduced reliance on external IT support.

Further departmental analysis is required to accurately assess expected costs and resource impacts of a transition to a new information management system. A transition away from the Heritage Management System will involve some risks and has costs for Heritage NSW. It also represents wastage in the initial investment.

Governance arrangements for Heritage NSW and the Heritage Council have not been clearly defined until 2023, and the interaction between each entity's plans and priorities is unclear

Heritage NSW has lacked adequate governance arrangements to support it to deliver Heritage Council functions, in addition to its role in supporting the delivery of the Minister's functions under the Heritage Act. Recommendations to address this and related governance issues were made in a 2020 governance review but were not fully implemented.

In 2023, Heritage NSW worked with governance teams in the Department of Planning and Environment and with the Heritage Council to clarify and document arrangements including roles and responsibilities, and key probity procedures. A new code of conduct and a terms of reference for Heritage Council members were endorsed at its May 2023 meeting.

Heritage NSW conducts strategic planning in parallel with the Heritage Council. The Heritage Council has authority to develop its own plans but no staff or funds to implement them. Heritage NSW has allocated resources to do this. Inadequacies in governance arrangements between these two entities contribute to a lack of clarity around the expected interactions between their strategic plans. This also creates resourcing and delivery risks to their plans.

2. Recommendations

By December 2023, the Department of Planning and Environment (Heritage NSW) should:

1. implement more robust quality assurance and improvement processes with respect to decisions about applications for works affecting listed assets that are made under delegation from the Heritage Council of NSW, including decisions made by Heritage NSW staff and by other entities

2. provide guidance and training to Heritage NSW staff to support transparent and consistent approaches to:

    •   assessing the heritage significance of nominated assets and preparing information to inform State Heritage Register listing decisions

    •   engaging with the owners of assets that have been nominated for listing, including assets owned by state government entities, local councils, individuals or other entities.

By June 2024, the Department of Planning and Environment (Heritage NSW) should:

3. implement a plan to update and maintain accurate information in the State Heritage Register against defined minimum data requirements

4. develop a multi-year strategy to ensure the collection and maintenance of supplementary information about assets listed on the State Heritage Register that is sufficient to inform a risk-based regulatory approach

5. publish a statement of regulatory intent that sets out Heritage NSW's monitoring, compliance and enforcement approach, and the activities by which it will meet its responsibilities under the Heritage Act. This statement should be underpinned by a strategic assessment of the key threats and opportunities to heritage values of the State Heritage Register.

6. consolidate a program of interagency activities to strengthen capability among state government entities to support the objects of the Heritage Act, including by meeting compliance obligations. Heritage NSW should partner with NSW Treasury and other relevant agencies in the delivery of this program to ensure a strategic approach to heritage asset management.

7. define arrangements for information sharing and strategic resource planning to sustain the timely provision of heritage advice on proposed developments being assessed under the *Environmental Planning and Assessment Act 1979*

8. implement a heritage engagement strategy with targeted actions for owners, heritage professionals, the local government sector, and key stakeholders, including actions to:

    •   build awareness of Heritage NSW's priorities, projects, processes, and expectations

    •   gather insights about risks and opportunities to inform Heritage NSW's strategic and operational planning

    •   enhance the relevance of Heritage NSW's publications and other supports to promote voluntary compliance.

1. Introduction

1.1 Heritage in New South Wales

Heritage listing provides formal recognition and protection under law for a place or object of heritage significance.

According to the Department of Planning and Environment (Heritage NSW), an effective heritage system protects the cultural and economic values of heritage assets. The importance of recognising and protecting heritage assets is expressed by Heritage NSW as follows:

> Our heritage in New South Wales is valuable and diverse.
>
> Heritage includes the places, objects and stories that we have inherited from the past and want to protect for future generations. It gives us a sense of our history and provides meaningful insights into how earlier generations lived and developed. It also enriches our lives and helps us to understand who we are.
>
> Our heritage includes tens of thousands of years of Aboriginal culture and landscapes, and historic buildings, monuments, gardens, archaeological sites, shipwrecks, bridges, industrial structures, streetscapes, conservation precincts and intangible heritage from post European settlement.

There are four statutory lists for heritage assets: local, state, national and world heritage. These lists indicate the context in which a heritage asset is important, rather than a ranking of value or importance, and each listing type has separate requirements. A heritage asset may be protected under more than one of these statutory lists.

The Heritage Act

The *Heritage Act 1977* (the Heritage Act) and Heritage Regulation 2012 (the Regulation) provide the legal framework for the identification, conservation and adaptive re-use of heritage in New South Wales. The Heritage Act protects natural, cultural and built heritage assets considered to be of significance to the State.

Exhibit 1: Objects of the Heritage Act (section 3)

(a) to promote an understanding of the State's heritage

(b) to encourage the conservation of the State's heritage

(c) to provide for the identification and registration of items of State heritage significance

(d) to provide for the interim protection of items of State heritage significance

(e) to encourage the adaptive reuse of items of State heritage significance

(f) to constitute the Heritage Council of NSW and confer on it functions relating to the State's heritage

(g) to assist owners with the conservation of items of State heritage significance

Source: Heritage Act 1977, section 3.

The Minister for Heritage is responsible for administering the Heritage Act. The Heritage Council of NSW (the Heritage Council) is a statutory body established under the Heritage Act with core functions to support its objectives.

Aboriginal objects, significant sites and Aboriginal Places are primarily managed and protected under the *National Parks and Wildlife Act 1974*.

The State Heritage Register

In New South Wales, heritage that is rare, exceptional or outstanding to the state beyond a local area or region may be listed under the Heritage Act and recorded on the State Heritage Register. A state heritage listing is made under the Heritage Act by the Minister for Heritage at the recommendation of the Heritage Council.

State Heritage Register items are defined under the Heritage Act as including a place, building, work, relic, moveable object or precinct of state heritage significance. In this audit report, these items are referred to as 'listed assets'.

Any person or organisation can nominate an asset for listing by completing the State Heritage Register nomination form. An asset of significance to Aboriginal people and communities can be listed on the register with support of the Aboriginal community.

The Heritage Council uses seven criteria for assessing nominations for listing (Exhibit 2). For a listing to be considered, an asset must meet one or more of these criteria.

Exhibit 2: Assessment criteria for State Heritage Register nominations

Whether the asset:

1. is important in the course, or pattern, of NSW's cultural or natural history
2. has strong or special association with the life or works of a person, group of persons, of importance in NSW's cultural or natural history
3. is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW
4. has a strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons
5. has potential to yield information that will contribute to an understanding of NSW's cultural or natural history
6. possesses uncommon, rare or endangered aspects of NSW's cultural or natural history
7. is important in demonstrating the principal characteristics of a class of NSW's cultural or natural places, or cultural or natural environments.

Source: Heritage NSW manual 'Assessing Heritage Significance'.

The Minister has 14 days after receiving the Heritage Council's recommendation to make a decision, or can request the Independent Planning Commission first to review the matter. In making a decision to list on the State Heritage Register, the Minister must consider:

- the recommendation of the Heritage Council that an asset should be listed
- whether the long-term conservation of the asset is necessary
- whether the listing would render the asset incapable of reasonable or economic use
- whether the listing would cause undue financial hardship on the owner, mortgagee or lessee of the asset or the land on which it is situated.

The State Heritage Register was first populated in 1999 with around 620 assets that were already protected under Permanent Conservation Orders. At December 2022, there were 1,761 assets listed on the register. Of these, 59% are built heritage and 21% complex/group heritage (for example, railway yards or school sites containing multiple buildings). See Exhibit 3.

Exhibit 3: Summary of State Heritage Register listed assets in December 2022

Heritage type	Number of assets
Built heritage	1,041 (59%)
Group listings such as a precinct or group of buildings	379 (21%)
Landscapes including natural and created	240 (14%)
Archaeological (on land)	51 (3%)
Moveable heritage/Collections of items	37 (2%)
Archaeological (Maritime)	13 (1%)
Total	**1,761**

Source: Audit Office analysis of SHR data.

Asset owners' obligations under the Heritage Act

Owners of assets listed on the State Heritage Register include state government entities, local governments, companies, community groups and private individuals. Around half of the assets listed on the register ('listed assets') are owned by local or state government entities.

The Heritage Act controls certain activities affecting listed assets, and these apply to owners, tenants, and anyone using or accessing a listed asset. Owners of listed assets also have responsibilities under the Heritage Act and associated Regulation to ensure that minimum standards of maintenance and repair are met for buildings, works, relics, including those within a precinct, and that these are regularly inspected for compliance with standards. The minimum standards include ensuring the listed asset has weather and fire protection and security, and conducting essential maintenance and repair to prevent serious or irreparable damage or deterioration.

There are no routine reporting requirements on owners associated with state heritage listing. However, an owner must obtain approval before undertaking certain activities in relation to a listed asset, such as altering buildings or developing the land on which the asset is situated, or changing the use of the place. This is done through an application for approval to conduct works. In some circumstances, proposed works may meet criteria for an exemption from needing approval.

Owners of listed assets may also be required to apply to more than one authority for approval to conduct works. For example, if proposed works require development approval from a local council or if works affect an item also listed on a council's Local Environmental Plan. These applications would be submitted under an integrated development application for works, and then referred to Heritage NSW by the relevant council.

State government entities have additional responsibilities under section 170 of the Heritage Act. These are to maintain, and provide to the Heritage Council, a Heritage and Conservation Register that includes assets of local and state heritage significance.

1.2   Key roles and responsibilities

Heritage Council of NSW

The Heritage Council of NSW (the Heritage Council) is a statutory body established under the Heritage Act. It consists of nine members: eight appointed by the Minister for Heritage and the other member is the Department of Planning and Environment Secretary (or delegate). The Heritage Council's functions include:

- making recommendations to list assets on the State Heritage Register and determine applications to make changes to State Heritage Register listed assets
- maintaining the State Heritage Inventory database that includes the State Heritage Register, assets under interim heritage orders, and items of local heritage significance
- carrying out relevant investigations, research and inquiries
- conducting community education concerning the state's environmental heritage.

Two committees have been established to oversee the delegated functions of the Heritage Council: the State Heritage Register Committee, which assesses listing nominations and makes recommendations to the Minister, and the Approvals Committee, which makes decisions on proposed alterations to listed assets. There is also a grants and sponsorship committee that provides advice to the Heritage Council and Heritage NSW on the grants program, a heritage advisory panel and a technical advisory panel.

Department of Planning and Environment (Heritage NSW)

The Department of Planning and Environment (DPE or 'the department') is the primary department with responsibility for policy, legislative and program functions for heritage matters.

Heritage NSW sits within the department's Environment and Heritage Group. Heritage NSW describes its role as working with the NSW community and heritage custodians to celebrate, commemorate, conserve, use and protect heritage for the current and future generations.

Many of the functions of Heritage NSW are delegated from the Heritage Council. These include:

- administering databases including the Heritage Management System, a system for lodging and managing applications to the Heritage Council, and the State Heritage Inventory, which includes the State Heritage Register
- conducting assessments on nominations for listing items on the State Heritage Register and making recommendations to the Heritage Council for decision
- making decisions on applications for works on listed assets
- providing advice on developments under the *Environmental Planning and Assessment Act 1979* including major projects (such as state significant developments), and general terms of approval or refusal on integrated development applications
- endorsing Conservation Management Plans
- advising the Minister on the making of interim heritage orders to enable full heritage assessment to be undertaken.

Heritage NSW's compliance and enforcement powers are also delegated from the Heritage Council and the Minister, and include:

- authorising a person to enter and inspect buildings or other listed assets
- issuing stop work orders for works that will harm or are about to harm assets with heritage value
- issuing orders to remedy a failure to maintain or repair, and directing rectification work (and recovering costs).

Legal proceedings for an offence against the Heritage Act may be taken. Proceedings require the written consent of the Minister.

Heritage NSW has additional roles including to promote community awareness and value of heritage, and to work with communities to help them identify their important places and objects. This includes administering the Heritage Grants Program and supporting community heritage projects through funding and advice.

Machinery of Government changes

Heritage NSW has been the subject of two Machinery of Government changes since 2017.

Machinery of Government changes effective 1 July 2019 abolished the Office of Environment and Heritage in the former Department of Planning, Industry and Environment. Heritage functions were transferred to the Department of Premier and Cabinet. The Department of Premier and Cabinet became responsible for administering the state's heritage policies and programs from July 2019 to April 2022.

A second round of Machinery of Government changes effective 2 April 2022 saw Heritage NSW's functions move into the Environment and Heritage group of DPE.

Heritage Act reforms

The Legislative Assembly Social Issues Standing Committee completed a review of the effectiveness of the Heritage Act in October 2021 (the 'Upper House Inquiry into the Heritage Act').

The Standing Committee made 26 recommendations for reforms, and the previous Government supported 25 of those recommendations. The previous Government commenced drafting a new Heritage Bill in 2022. Heritage NSW advises that the current Government is considering how to implement the recommendations.

1.3   About the audit

The objective of the audit was to assess how effectively the Department of Planning and Environment (Heritage NSW) is overseeing and administering heritage assets of state significance. The audit assessed whether Heritage NSW:

- is effectively administering the delivery of advice, recommendations and decisions on heritage issues to support heritage management outcomes
- supports and oversees asset owners to ensure heritage assets are being effectively managed to deliver heritage management outcomes
- has established clear strategic priorities for heritage management and can demonstrate preparedness to implement these.

The audit scope covers Heritage NSW activities, programs and services since 2017. This includes Heritage NSW's activities performed under the Heritage Act, and other activities affecting heritage assets of state significance.

For the purpose of this audit, 'heritage assets of state significance' includes all items listed on the State Heritage Register ('listed assets'). It also covers processes related to the nomination and recommendation of these assets.

Assessing the activities and decisions of the Heritage Council was not in scope, but commented on where contextually relevant.

Items of local heritage under the *Environmental Planning and Assessment Act 1979,* and Aboriginal cultural heritage under the *National Parks and Wildlife Act 1974,* were also not in scope.

For further detail on our audit procedures see Appendix two.

2. Oversight and support

This chapter assesses the effectiveness of Heritage NSW's oversight of state heritage assets, including its visibility of listed assets, and its oversight of regulatory decision-making. It also assesses Heritage NSW's activities to engage with owners to meet their obligations under the Heritage Act and to support heritage outcomes.

2.1   Information about state heritage assets

Most State Heritage Register listings contain incomplete or inconsistent information, and many require updating, but Heritage NSW has made limited progress to address this

Heritage NSW is responsible for maintaining the State Heritage Register under delegation from the Heritage Council. Data quality issues and information gaps have arisen over the decades since the register was established in 1999, but Heritage NSW has made limited progress to address this. Incomplete data fields and important but out-of-date information limits Heritage NSW's visibility of listed assets, which is relevant for regulatory and owner engagement purposes.

According to our analysis of Heritage NSW data, only 151 records (nine per cent of 1,761 listed assets) have been updated since 2015. Only 24 records have been updated in the last three years. Heritage NSW report that staff regularly receive information on the condition and use of listed assets when receiving applications for works on those assets. However, Heritage NSW does not routinely use this information to update the State Heritage Register listings.

Heritage NSW's data on the heritage significance and physical condition of listed assets is important but contains gaps. Around 203 (12%) records do not contain a statement outlining why the asset is of heritage significance to the State (Exhibit 4). All of these 203 assets were listed prior to 2002. Nearly 90% (1,583) of the listed assets do not include a physical condition rating (that is, a rating from 'poor' to 'excellent'), and 35% (625) lack a detailed physical condition description. An asset may be in poor condition at the time of listing, but still be of high heritage significance.

Heritage NSW conducted an assessment in 2017 of the listings with incomplete information. This assessment identified that most of these gaps relate to assets owned by state government entities, with smaller numbers relating to local councils and private owners.

Exhibit 4: Information gaps for State Heritage Register listed assets, 2022
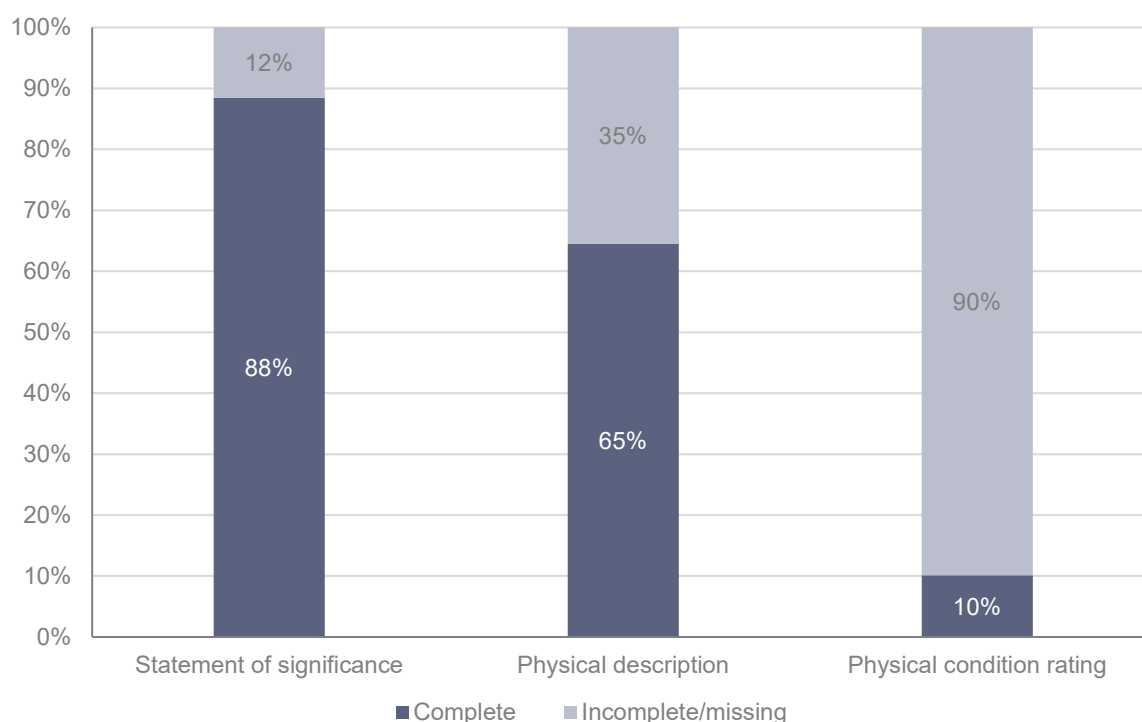
Source: Audit Office analysis of SHR data from December 2022.

Many of the information gaps for listed assets relate to older listings, that is former Permanent Conservation Orders that were added in bulk to the register when it was established. Around 30% of older listings do not include an overall statement of significance, and 50% do not include any assessment of heritage significance. This does not suggest these items lack heritage significance, but that there is incomplete documentation of this significance in the register. Heritage NSW advises that the completeness of listings has varied over time due to changes in internal procedures and Heritage Council requirements for making listings.

Heritage NSW started a project in 2016 to address incomplete and out-of-date information in the register, focusing on updating older listings. This project did not result in any listings being updated. Updates to 50 listings were drafted, against a target of 150. Funding for this project ended in 2019. The draft updates were not finalised due to procedural barriers to amending listings.

Heritage NSW has determined that fully updating the incomplete data fields for existing listings in the State Heritage Register, particularly the older listings, would require significant resources and may divert staff from other functions.

Heritage NSW has not defined clear and efficient procedures for maintaining information on the State Heritage Register

The Heritage Act does not specify the types of information to be contained in the State Heritage Register. The Heritage Council's delegated power to keep the State Heritage Register does not limit how Heritage NSW must exercise the power or specify in what form the register must be kept. Heritage NSW has not created clear and efficient administrative procedures to support routine updates of relevant information.

Heritage NSW's procedures only specify that updates to an item's name and location are to be gazetted by the Minister. This should mean that other data fields can be updated directly, or with Heritage Council approval. But Heritage NSW has advised that most amendments require gazettal by the Minister: the source of this stated obligation is not clear.

Heritage NSW have advised they are seeking legal advice about any minimum information requirements of the State Heritage Register and any limits on amending listed assets.

Heritage NSW undertakes limited risk-based monitoring of the use and condition of listed assets to identify compliance risks and conservation opportunities

Heritage NSW does not routinely collect information on the use or condition of assets listed on the State Heritage Register, such as by making use of provisions under the Regulation relating to asset owners' obligations to conduct regular inspections. This is relevant because unused assets may be at increased risk of not meeting minimum maintenance standards.

Heritage NSW does not conduct risk-based monitoring of listed assets or routine public domain inspections and site visits. These activities could be used to proactively gather information on the condition of listed assets or to identify compliance risks and potential breaches. Compliance breaches could include carrying out unauthorised development or failing to maintain an asset in accordance with minimum standards required for certain asset types (buildings, works, relics and precincts) under the Heritage Act. For example, failing to conduct essential maintenance and repairs to prevent irreparable deterioration.

Heritage NSW relies, to a large extent, on members of the public reporting potential compliance breaches. Public reporting (including self-reports) accounted for around one third of compliance notifications between 2019 and 2022. Reports from other government entities accounted for almost one quarter of notifications, and intelligence from Heritage NSW assessment officers for 15% of notifications. Source information was not recorded for 29% of notifications.

The total number of non-compliance notifications received by Heritage NSW has declined by around 70% in the past five years, from 84 in 2017–18 to 23 in 2021–22. Exhibit 5 shows declines in both public reports and Heritage NSW staff reports between 2019 and 2022. Heritage NSW does not have information to understand the reasons for this decline in notifications. For example, it has not assessed whether this decline reflects reducing rates of non-compliance, or the risk of breaches going undetected.

Exhibit 5: Number of Heritage Act compliance breach notifications by source, 2019 to 2022
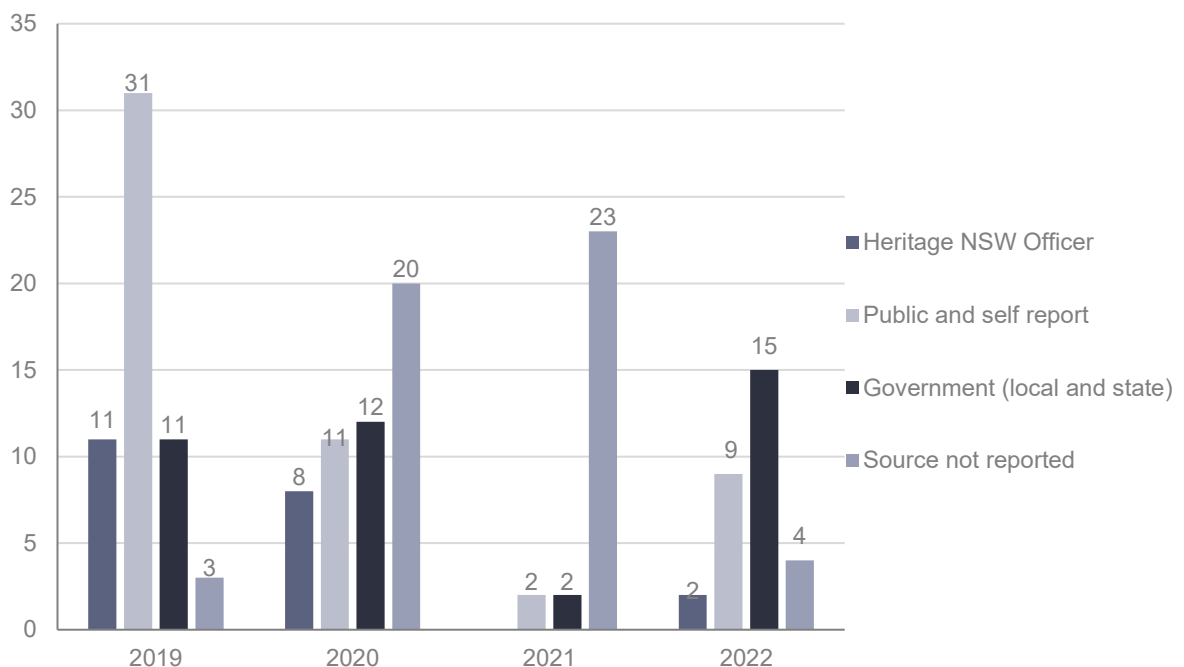
Source: Audit Office analysis of compliance data.

Heritage NSW's limited visibility over the condition of listed assets, and other core information gaps, present risks to its capacity to promote the objects of the Heritage Act

Information gaps and inconsistencies in the State Heritage Register, combined with a lack of up-to-date information from asset owners, limits Heritage NSW's visibility over listed assets. In turn, this limits Heritage NSW's ability to effectively oversee and regulate listed assets, and to identify potential risks and opportunities to heritage values.

Heritage NSW does not have processes to ensure that the contact details for the owners of listed assets is current. It lacks procedures for identifying incorrect contact information, or when the owner of an asset changes.

Heritage NSW has not defined the minimum information it needs to maintain in the State Heritage Register or other information systems to have effective oversight of listed assets. In 2022, Heritage NSW explored options for obtaining land title information on asset owners but has indicated this was cost prohibitive. Overall, Heritage NSW's information gaps in the State Heritage Register and other information management systems mean that:

- many listed assets lack baseline information on asset use, condition and significance against which to assess the impact of proposed works, and to identify opportunities to enhance conservation activities or promote the activation of listed assets and precincts in line with the objects of the Heritage Act
- Heritage NSW has limited capacity to contact asset owners, to encourage voluntary compliance (such as education about new policies and requirements) and to advise on opportunities such as grant programs
- Heritage NSW has limited information to inform targeted voluntary compliance initiatives and undertake a risk-based regulatory approach, in line with the recommendations of the 2021 Upper House Inquiry into the Heritage Act.

Heritage NSW's low visibility of listed assets includes those owned by state government entities. Gaps in Heritage NSW's information about listed assets that are owned by state government entities is partly related to these entities' non-compliance with legislative requirements to keep their own Heritage and Conservation Registers, and to provide these to the Heritage Council (see Chapter 2.2).

2.2   Owner engagement and support

Heritage NSW has delivered several initiatives in line with its customer service priorities, but these could be strengthened with more targeted engagement

Heritage NSW has been pursuing an organisational shift towards better customer service, streamlining processes to improve timeliness, and removing inefficiencies in administrative and regulatory activities. Many of these activities align with the priorities of the previous NSW Government for improving customer service, and with recommendations from the 2021 Upper House Inquiry into the Heritage Act.

Heritage NSW's recent initiatives to improve its customer service include:

- creating a 'customer concierge' team in January 2022 to triage inquiries
- introducing a 'streamlining' team in 2021 to improve the efficiency of its assessment and approval functions, including to deliver assessments more quickly and within timeframes
- introducing a customer relationship management system in late 2022 to better enable communications and engagement with asset owners, industry professionals, and other stakeholders
- expanding its pre-lodgement meeting service for owners preparing to submit an application for works
- refreshing the content of its website with updated information and links.

Heritage NSW considers asset owners and managers, industry professionals and consultants to be their 'customers' as they access information and interact with Heritage NSW's staff and systems (to make an application, for example). These groups need to understand Heritage Act requirements, and the policy or procedural requirements and expectations of Heritage NSW and the Heritage Council.

Uptake of Heritage NSW's pre-lodgement meeting service increased from 47 meetings in 2018–19 to 138 meetings in 2021–22. Our consultations with stakeholders identified scope for Heritage NSW to improve the relevance of this service to asset owners and industry professionals. That is, to make the service more useful in the early stages of developing a works application, and where there are complex issues to be resolved prior to applying. This complexity can arise where there are multiple assets, owners and stakeholders within a heritage precinct, and is often a challenge faced by state government entities.

Heritage NSW has reduced its program of face-to-face engagements, such as workshops and seminars for heritage professionals or government stakeholders. These were paused during the COVID-19 pandemic in 2019 and most have not recommenced.

Heritage NSW does not have a system for managing service-related feedback from external parties. Such a system would be consistent with its customer service focus, departmental requirements, and could better enable it to use such information for continuous improvement.

Heritage NSW has not adequately mitigated the risks to its regulatory role associated with a focus on customer service

Heritage NSW has not adequately addressed risks that a focus on customer service may create for its duties as a regulator. A number of initiatives that are consistent with streamlining and improving customer service create risks to Heritage NSW's capacity to oversee listed assets and support heritage values. Heritage NSW has not adequately implemented plans to manage these risks. For example:

- Heritage NSW has increased its focus on delivering assessments more quickly, and within statutory timeframes. However, there are gaps in its quality assurance mechanisms over decisions (see Chapter 2.3).
- Heritage NSW's policies prioritise voluntary compliance but it conducts limited proactive monitoring of listed assets (see Chapter 2.1). It also offers limited targeted supports for owners and managers of listed assets to support compliance.
- The introduction of new permit exemptions for minor works sought to reduce regulatory burden on owners. However, Heritage NSW has not fully implemented strategies to address related risks to its oversight of the cumulative impacts of changes and the ability to detect the incorrect use of the exemptions (see Chapter 2.3).
- Heritage NSW has issued guidance on Conservation Management Plans in the context of these no longer being reviewed and endorsed. However, Heritage NSW has not assessed the impact of this shift on the quality of these plans and any associated benefits and risks (see Chapter 2.3).

Heritage NSW's strategic planning documents do not sufficiently address core areas of activity and known risks relating to its regulatory responsibilities. There is inadequate detail about how Heritage NSW plans to deliver its customer service priorities, including reduced regulatory burdens, while ensuring that it can meet obligations under the Heritage Act. This includes a need to have a certain level of assurance that the owners of listed assets, which include state government entities, are meeting their obligations.

Heritage NSW provides limited customer supports or voluntary compliance activities targeted to government entities that own and manage listed assets

Government entities make up the largest group of asset owners. Approximately 50% of assets on the State Heritage Register are publicly owned by local or state government entities. Many publicly owned listed assets are large, complex items, and many are iconic or high-profile items with high heritage value. Some are based within a precinct or group of assets that pose additional challenges for their effective management. Six government entities have negotiated agency-specific exemptions with Heritage NSW allowing them to conduct routine works without needing to seek approval. However, Heritage NSW's strategic and business planning lacks specific actions to engage with government asset owners.

While a customer service focus could support voluntary compliance by government entities through well-targeted education and outreach, such activities have not featured in Heritage NSW's approach. Heritage NSW paused its knowledge and practice-sharing forums in 2019 due to COVID-19 and has not restarted these. It does not run other programs of targeted support or capability building for government entities that own or manage listed assets.

Our consultations identified varying levels of heritage management capability within state government entities. Some have dedicated teams of heritage professionals, and others manage their heritage obligations within the general asset management team. The priority given to heritage value also varies. Where maintaining a listed asset does not align well with their core business, its maintenance may not be prioritised. Divestment might also be identified as an option.

There is opportunity for Heritage NSW to engage more strategically across government to improve strategic planning and long-term asset management for complex or underutilised listed assets.

Heritage NSW's efforts to collate information about state-owned heritage assets have not been effective, although entities are required to maintain and provide their own registers

All state government entities are responsible for maintaining a 'Heritage and Conservation Register' under section 170 of the Heritage Act. Registers should include their assets of state heritage significance. Entities are required to provide their register to the Heritage Council so it can be inspected, and included on the State Heritage Inventory. Heritage NSW's recent activities to support state government entities' compliance with these requirements, and in turn improve its visibility of state-owned listed assets, have had limited success.

Heritage NSW initiated a program in 2019–20 to assess and improve state government entities' compliance with section 170 requirements. This followed findings from an internal audit in 2017–18. As part of this program, Heritage NSW conducted a risk assessment that identified ten entities with significant heritage asset portfolios that would still require a very high level of support to prepare or update their registers ('Tier 1'). These included several DPE cluster entities. An additional 47 entities had a 'very out-of-date' register, or no register at all. These entities are also likely to require a high level of support but were considered a lower priority in view of the nature of their asset portfolios ('Tier 2'). Heritage NSW also introduced an annual 'check-up' document to make it easier for entities to verify the currency of their register. It also created a dedicated liaison role to provide direct support to entities.

By October 2021, according to Heritage NSW data, only 50% of 73 state government entities had returned the 'check-up' document and only 14% were preparing their registers for submission.

Despite Heritage NSW's targeted engagement between 2020 and 2021, none of the high-risk (Tier 1) entities showed any change to their risk assessment level. This means that Heritage NSW's program may not have been adequately designed to meet the needs, challenges and varying levels of capability and priority given to heritage issues across state government entities. Delays in transitioning government entities onto Heritage NSW's new information management system in 2021 (see Chapter 4.2) also created a barrier by preventing entities from submitting or updating their registers.

Heritage NSW is not on track to meet delivery targets it set for its engagement with government entities on their section 170 requirements by 2024. It has reduced its strategic focus and resource allocation to supporting entities' compliance with section 170.

Heritage NSW has made some progress, but not sufficiently addressed gaps in its publications intended to support heritage outcomes and promote voluntary compliance

Heritage NSW's publications are a core source of guidance for the heritage industry and asset owners. But Heritage NSW has not updated most of its currently available publications in ten years (111 publications) and some have not been updated in 20 years. It does not have a clearly resourced plan to update these publications, nor to ensure they are targeted to the most relevant users.

Many of Heritage NSW's publications are complex technical documents that will require an investment of resources to update and maintain. This work has been identified as a strategic priority since at least 2019, but gaps remain in its suite of over 150 publications and resources. Many documents have inaccurate or outdated descriptions of systems and processes, non-functional hyperlinks, and references to entities and organisations that no longer exist.

Since 2020, Heritage NSW has published around 20 new or revised publications, including fact sheets and other resources. This includes six publications that were updated following a review project in 2020, before the project's funding ended. A further two publication updates have recently been drafted but not released.

Most of the updated publications were developed to support the implementation of new policies, such as the reform of standard exemptions and the review of Conservation Management Plan practices in 2021. However, Heritage NSW did not concurrently update related publications, resulting in incomplete or inconsistent guidance across the suite of resources. Heritage NSW did update its website content in 2022 to reflect machinery of government changes, and to support those engaging with the heritage system with information about processes and requirements.

Heritage NSW's new publications have been created for a general audience. It is important that information is accessible to a range of audiences, and there may be further value in a suite of publications tailored to different levels of expertise, or for different types of heritage. This would help ensure sufficient and appropriate information is available, particularly those needing technical details or guidance on how to meet policy expectations. The relevance and currency of Heritage NSW's publications is particularly important to asset owners and managers and to industry professionals.

Heritage NSW started a new project in April 2023 to assess the ongoing need and relevance of its publications and to create a schedule for updating these.

The Heritage Grants Program supports the conservation and promotion of listed assets, but more work is required to understand its outcomes

Heritage NSW administers the Heritage Grants Program to support conservation or management works on privately-owned heritage assets, including assets listed on the State Heritage Register. The program has a funding pool of around $6 million over two years and is generally focused on delivering small grants (ranging from $1,000 to $150,000).[2] The program has set objectives for supporting conservation and management activities across the various funding categories.

Funding priorities for the program have not changed substantively since 2017, with the exception of the Activating State Heritage Grant (see Chapter 4.3), and are broadly consistent with the objectives of the Heritage Act. Noting the gaps in Heritage NSW's publications and targeted education activities, and a limited proactive compliance program (see Chapter 3.3), an effective grants program becomes critical.

Heritage NSW data indicates that the program is routinely oversubscribed: in previous funding rounds, around half of the applicants were successful and received funding. In the 2021–23 funding round, Heritage NSW received 433 applications and awarded 231 grants.

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[2] Funding available for the 2023–25 grant round was reduced by around one third ($1.8 million) due to the new Activating State Heritage initiative ($1 million) plus an additional $0.8 million of expenses carried over from the previous funding period.

However, there is a lack of information about the intended (and measurable) outputs and outcomes of the program. Heritage NSW provides limited public reporting beyond listing grant recipients in agency annual reports. There has been no public reporting on the achievement of improved heritage values for particular listed assets or types of assets, or program-level outcomes for the funding. Public reporting would improve transparency around the program.

2.3   Quality control and risk management

Delegations of Heritage Council functions are clearly defined, but there are gaps in Heritage NSW guidance to staff to support the delivery of quality advice and decisions

Many of the functions of Heritage NSW are delegated from the Heritage Council. The current instrument of delegation, gazetted May 2022, clearly outlines the Heritage Council functions delegated to Heritage NSW staff. Heritage NSW provides training and guidance to its staff on the use of delegations, but there are gaps in its resources to guide staff in the exercise of professional judgement.

Heritage NSW's staff training and guidance focuses on identifying whether a delegation is being exercised at the appropriate level. Its Heritage Management System also includes controls around delegations and authorisation of approvals. But Heritage NSW's staff training and guidance does not focus on promoting consistent approaches in the provision of advice and decision making across Heritage NSW staff, or consistency with expectations of the Heritage Council.

Assessing applications for works on listed assets requires professional judgement in the context of each asset, but consistency in approaches remains important to ensuring transparency in the decision-making process. Heritage NSW only provides informal and ad hoc opportunities for staff to engage in practice sharing discussions. In mid-2022, Heritage NSW initiated a drop-in system for staff seeking advice on archaeology matters. Other routine opportunities for practice sharing or peer review are lacking.

Following a commissioned review of its assessment work, Heritage NSW plans to introduce a new team structure to improve the consistency of advice and decisions. This is planned for implementation later in 2023.

Heritage NSW does not have sufficient assurance about decisions made under delegation on applications for works on listed assets

Heritage NSW has reporting requirements for decisions it makes under delegation from the Heritage Council. Heritage NSW presents quarterly reports to the Heritage Council on activities relating to applications for works completed and received. This includes reporting on its performance against statutory timeframes. These reports provide high-level summary information of decisions made under delegation. Examples of these reports from 2020–21 examined as part of this audit contained data errors and inconsistencies, limiting their reliability.

A delegations protocol requires Heritage NSW implement an annual audit program of their processes for assessing and determining applications for works. This has not occurred during the period of this audit. Heritage NSW does not conduct systematic quality assurance or random auditing to test the quality of decisions on applications, or to monitor the application of the 'material effect' threshold.

This material effect threshold is in place to ensure that staff are assessing applications at the correct level of delegation. Management and executive staff of Heritage NSW have a higher level of authority for making decisions on works that will have a more significant impact (a 'material effect') on the heritage values of a listed asset. Officer-level staff have delegation to make decisions for works with a minimal impact on the heritage values of a listed asset (below the 'material effect' threshold).

Heritage NSW introduced some system controls and automated processes in relation to decisions on applications for works in 2021 when the Heritage Management System was implemented. There is also a structural separation of duties with the assessments and decisions made by different staff. These provide assurance that delegations are being exercised at the appropriate level: although they are initiated only after staff complete an assessment of the 'material effect', and this assessment is not routinely monitored by managers.

Heritage NSW staff can escalate complex or contentious applications for works for discussion and decision-making at higher delegation levels, including to the Heritage Council or to its Approvals Committee. The delegations protocol identifies a range of circumstances that would require a decision to be escalated to a higher level of authority. Heritage NSW procedures state that staff complete training and meet capability requirements to be authorised to exercise delegation.

Heritage NSW does not maintain adequate oversight of external entities making decisions under delegation for works on listed assets

Under section 169 of the Heritage Act, the Minister can consent to the delegation of Heritage Council functions to any person(s). In addition to the functions delegated to Heritage NSW staff, Heritage Council functions have been delegated to two state government entities and one local council.

Current delegations are in place for Place Management NSW (since 2017), Sydney Water (since 2007) and the City of Sydney (since 2019). The Place Management NSW and Sydney Water delegation instruments were updated in 2021–22 following a Heritage NSW review identifying variation between the delegations instruments. In 2018, the Minister also gave consent for the Heritage Council to delegate some of its functions to local councils. Currently the City of Sydney is the only local council with Heritage Council delegation.

The delegation of Heritage Council functions enables those entities to make decisions on their own applications for works. These delegated decisions are limited to works that do not exceed the 'material effect' threshold (described above). Before exercising delegations, these entities must determine whether an application meets Heritage NSW's 'material effect' threshold. This decision requires a degree of professional judgement. Heritage NSW has not established mechanisms to provide assurance that the threshold is being correctly applied.

Heritage NSW lacks a structured process to monitor decisions made by external entities about applications for works under delegation. These entities are required to submit summary reports on these decisions quarterly for the first year, and annually thereafter. Heritage NSW has not implemented quality assurance processes for these reports to ensure that decisions meet expectations and are made in line with requirements, including that decisions are limited to works with minimal impact on heritage values.

Delegation protocols additionally require that state government entities complete an annual audit program of their internal processes for assessing and determining applications. They are required to provide the Heritage Council with an annual audit report when requested. Heritage NSW did not provide any examples of these audits.

Heritage NSW advises that the decision to delegate Heritage Council functions externally is associated with a rigorous capability assessment of the entity. Evidence of this has not been provided. Heritage NSW does not have processes to oversee whether entities' capability is maintained, for example if capability is lost due to staff turnover.

Heritage NSW has taken some steps to provide entities with delegations training and support. It has held regular check-ins and provided a 'buddy' system during early implementation to support the City of Sydney to exercise delegations. This level of support has not been consistently applied to all entities with delegation.

Heritage NSW commenced a review of the delegations arrangements in 2020, which resulted in updates to the existing delegations instruments. This project was discontinued in 2021 due to operational changes. Heritage NSW restarted the review in 2023. It is now seeking to review the effectiveness of agency delegations, along with other agency-specific exemptions that are in place.

Heritage NSW has not fully implemented strategies to mitigate risks introduced by new permit exemptions for minor works

In 2020, the Minister, on the recommendation of the Heritage Council, introduced a revised regulatory instrument enabling owners to self-assess whether certain activities are exempt from requiring a permit from Heritage NSW. These exemptions are available for minor works with no or limited impact on the heritage significance of listed assets. Examples include general maintenance or cleaning and non-significant alterations or repairs. The list of exemptions was expanded in 2022 to include changes to asset use, and additional activities related to certain excavations, painting, signage, safety and security. Additional provisions are in place for approved government entities and certain listed assets to negotiate agency- or site-specific exemptions, allowing them to conduct routine works without needing to seek approval from Heritage NSW.

Overall, the revised regulation aims to reduce administrative and regulatory burdens on asset owners. It also sought to address stakeholder concerns that the previous system required applicants to seek approval to use an exemption, which is not consistent with the intent of an exemption.

In delivering the revised exemptions, Heritage NSW published a fact sheet on the standard exemptions and a record-keeping template for owners. It held two information sessions to support the implementation of the exemptions, one for Heritage NSW staff, and one for a state government agency. However, Heritage NSW did not provide targeted outreach to other asset owners or system users. Stakeholders have reported lacking clarity about how to self-assess for minor works. This has created challenges for heritage professionals when advising asset owners on the policy. Also, Heritage NSW did not consult with all the relevant state government entities that own or manage large portfolios of listed assets when developing the standard exemptions policy.

Heritage NSW has limited ability to identify when the standard exemptions are applied. Owners do not report to Heritage NSW on their use of these exemptions, although they must retain relevant records. The Regulation does not define what a 'reasonable time' is for owners to retain records of works completed under exemption. This creates a risk that Heritage NSW cannot detect the incorrect use of exemptions, or the cumulative impacts that minor changes can have on heritage significance over time. This is a particular risk when ownership of the asset changes. Heritage NSW has information about applications to use exemptions prior to 2020, submitted under the previous system. Data from 2018–19 shows that about 20% of applications for exemption under the previous approach were refused because exemptions were incorrectly applied.

Heritage NSW's planning documents identified several strategies to mitigate risks of the new approach. Strategies included an audit program to assess the use of standard exemptions, and further consultation and education for stakeholders. These strategies have not been implemented.

Heritage NSW advises that it plans to review the implementation of the new approach during 2023. It is not clear whether this review, or another process, will seek to implement risk mitigation strategies such as an audit program, or to assess the application of exemptions.

Heritage NSW has not adequately assessed risks or benefits associated with the shift to unendorsed Conservation Management Plans

The Heritage Act enables the Heritage Council to endorse Conservation Management Plans for listed assets. Guidelines produced by Heritage NSW and the Heritage Council state that these plans are a best practice heritage management strategy. Endorsement provides an independent assessment of acceptable future works, levels of impact on heritage significance, and site-specific exemptions.

Between 2017–2020, over 130 Conservation Management Plans were endorsed. The number was highest around 2016 and 2017 in the lead up to the sale of residences in the state heritage listed precinct at Millers Point (over 120 endorsements related to this). Numbers were notably lower in subsequent years (Exhibit 6).

Exhibit 6: Number of endorsed Conservation Management Plans (CMPs) per year, 2015 to 2019
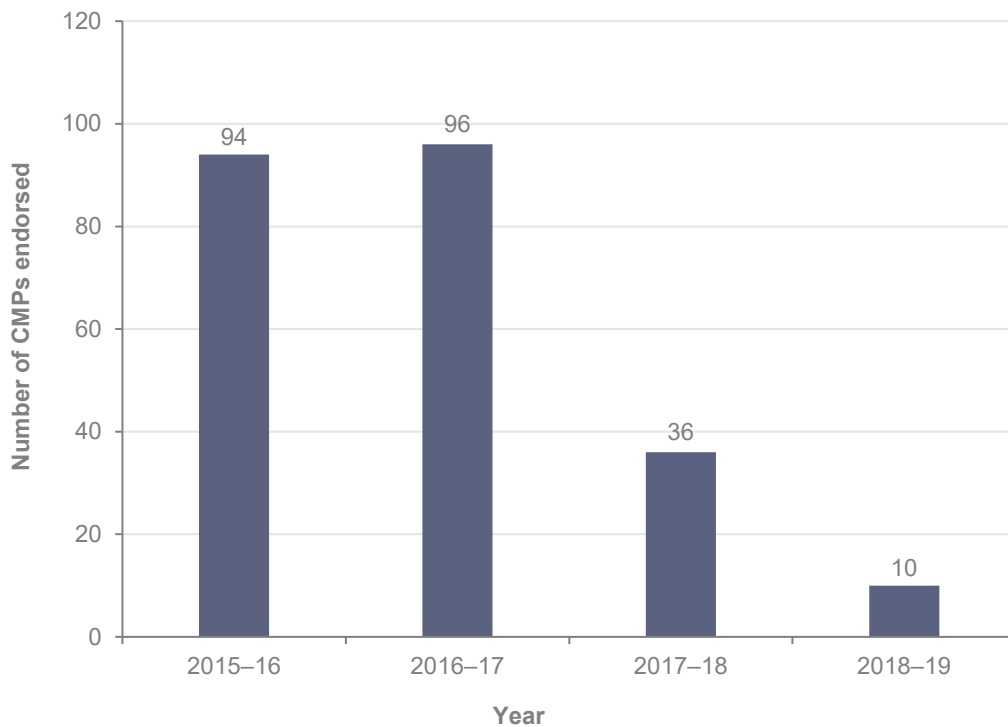
Source: Heritage Council 2018–19 annual report.

In June 2020, the Heritage Council ceased endorsing plans. This was in line with the recommendations of an externally commissioned review. Previously, owners of listed assets could have a plan endorsed following a review by Heritage NSW on a fee-for-service basis. This was discretionary and not all plans received endorsement.

The decision to cease endorsing plans sought to reduce resource impacts on Heritage NSW, and respond to concerns that plans were expensive (as much as $100,000 for a complex asset) and 'unwieldy' documents. There were also concerns about the timeliness of Heritage NSW's review, which could delay approvals.

Heritage NSW developed resources in 2021–22 to support heritage professionals to prepare Conservation Management Plans in line with best practice guidelines. This was done in recognition that the change in practice introduced a risk by removing the quality assurance that endorsement provided. Heritage professionals can be engaged by an asset owner to prepare a Conservation Management Plan, and to prepare applications for works affecting listed assets. Heritage NSW may still require a Conservation Management Plan as a condition of approval for heritage works.

Heritage NSW has not taken steps to evaluate if there has been a change in the uptake or quality of plans since 2020. Heritage NSW has also not reviewed whether the change has had resourcing implications for other parts of its processes, such as whether assessing applications for works using unendorsed plans is more time intensive. Site-specific exemptions are now gazetted individually, rather than being specified in endorsed Conservation Management Plans.

There is some evidence that Heritage NSW staff place less reliance on unendorsed Conservation Management Plans when assessing the impact of proposed works and may require additional information before making a decision or recommendation.

3. Administration of advice and decisions

This chapter assesses the timeliness of Heritage NSW's provision of advice, recommendations, and decisions on heritage issues to support heritage management outcomes with respect to listed assets.

3.1   Nominations for new heritage listings

Heritage NSW conducts detailed assessment of the heritage significance of assets nominated for listing on the State Heritage Register, and supports the Heritage Council to make decisions on which assets to recommend for listing. This involves conducting research against the seven assessment criteria (see Introduction). As any person can make a nomination, Heritage NSW publishes nomination guidelines and recommends the use of heritage professionals to support preparation of eligible nominations.

The number of new listings each year has been used to measure Heritage NSW's performance, but this lacks relevance to thematic priorities for new listings

Heritage NSW has a performance indicator to make 20 recommendations per year to the Minister to list an asset on the State Heritage Register. Heritage NSW advises that this indicator was originally set as part of the NSW Treasury budgetary process, and more recently it has related to Ministerial preferences.

Responsibility for the process to deliver these recommendations to the Minister is shared between Heritage NSW and the Heritage Council, and its State Heritage Register Committee. Heritage NSW supports the delivery of recommendations in two key stages. The first is by conducting assessments and preparing advice to the committee regarding nominations for listing. The second is by progressing recommendations to the Minister following a committee decision to recommend an item for listing.

The previous Minister responsible for administering the Heritage Act has also had a target to list 20 new items per year on the State Heritage Register. Heritage NSW tracks progress against its listing indicator in monthly reports to the State Heritage Register Committee. The committee decides which nominations are recommended to the Minister to make a decision on listing. The committee resolved to make thirty-four recommendations to list between 2020 and 2022: that is about 11 per year on average. Not all of these have yet progressed to the Minister.

The Heritage Council has strategic priorities for new, thematic listings which may have an impact on the number of recommendations for new listings. For example, in 2020, the Heritage Council decided to prioritise First Nations and LGBTQIA+ heritage listings to improve the representativeness of the State Heritage Register in these areas.

Heritage NSW advises that more complex thematic listings are expected to take additional time to progress, but that pursuing these listings is also important to improve the representativeness of the register.

Consistent with this thematic approach, Heritage NSW supported the delivery of a number of new listings and assessments aligning with Heritage Council priorities. During 2021–22, seven LGBTQIA+ nominations progressed to a preliminary assessment, and three existing listings were identified as suitable for updating to reflect LGBTQIA+ heritage significance. However, these updates have not been completed (see Chapter 2.1). In February 2023, the Mardi Gras Parade Route was added to the register. Since 2021, there were also three new listings relating to the First Nations priority area, including the Appin Massacre Cultural landscape and the Arrawarra Headland and stone fish traps, and the Billagoe (Mount Drysdale) cultural landscape. A further four First Nations priority nominations have progressed for assessment.

Heritage NSW has improved the process for screening nominations for listing, and has reduced a large pool of open nominations for heritage listing

Heritage NSW has taken some steps to improve efficiencies in its screening of nominations for listing. In 2020, Heritage NSW introduced a new process to reduce the list of 'legacy nominations' and improve the efficiency of triaging new nominations. This involves Heritage NSW providing the State Heritage Register Committee with a preliminary assessment of the nomination within one month of submission. The committee then determines which nominations are to be fully assessed, closed off or de-prioritised.

According to Heritage NSW, of the 40 nominations received since 2020, eight resulted in an item being included on the State Heritage Register. Thirty-two nominations (80%) were not progressed by the committee following Heritage NSW's preliminary assessment.

Heritage NSW also screened approximately 200 'legacy nominations' for listing, some dating back over ten years. Nominations that are not considered for extended periods can create uncertainty for owners, and increase the risk that nominations are only escalated as a priority once a threat to the asset's heritage significance arises.

Heritage NSW worked with the State Heritage Register Committee to reduce the pool of open nominations (legacy and recent nominations) under active consideration to 62 nominations in December 2020. A further 66 nominations were identified as likely to be of state heritage significance but do not fall within the Heritage Council priority areas, so have not been further progressed. These nominations may be reactivated if they meet a future Heritage Council priority area or are identified as being under imminent threat. In May 2023, there were 53 items on the current list of nominations under active consideration for new listings.

Heritage NSW lacks guidance for staff to ensure consistent and efficient approaches to assessment and negotiation with owners, creating risks to the timely listing of assets

There is considerable variability in how long it takes Heritage NSW to assess and advise the Heritage Council on whether a nominated item meets the criteria for listing. For new listings since 2020, the assessment period ranged from three months to 17 years (with an average time of five years, and a median time of two years). Heritage NSW's assessments include detailed historical research and consultation to develop statements of heritage significance, determining the boundaries of the listing (where relevant), and engaging with asset owners.

Heritage NSW has established processes and templates setting out the steps for this assessment. However, Heritage NSW does not provide staff with clear guidance to support consistent and efficient approaches to deciding how much research is required, and how much detail should be included in its assessments. This means that assessment times vary, which creates efficiency risks. It can also contribute to extended period of uncertainty for asset owners.

Several factors, some within and others outside the direct control of Heritage NSW, can affect which nominations are prioritised for listing, and when. Heritage NSW prioritises nominations based on advice from the State Heritage Register Committee. For example, a nomination may be prioritised if it falls within thematic categories (LGBTQIA+ or First Nations heritage). A nomination may also be prioritised if there is an 'unmitigated threat' to the asset's conservation, such as imminent development.

Heritage NSW may also undertake extended negotiations to build owner support for a listing. Owner objection is not a criterion for assessing heritage significance under the Heritage Act. However, in making a listing, the Minister must consider whether the listing would cause undue financial hardship on the owner. Heritage NSW's engagement with owners includes providing information about permissible activities and negotiating site-specific exemptions to encourage voluntary compliance. Owners may also be invited to meet with the Heritage Council or State Heritage Register Committee during this period.

Heritage NSW advises that a responsive approach to engaging with asset owners, such as undergoing extended negotiations, may improve heritage outcomes by reducing the risk of future non-compliance with the minimum standards of maintenance required under the Heritage Act. If an owner has concerns about listing, Heritage NSW may 'park' a nomination to be reassessed later, so long as the State Heritage Register Committee agrees and there is no imminent threat to the asset.

However, Heritage NSW does not have clear policies or guiding principles for staff undertaking owner engagement to ensure consistent approaches and advice to the Heritage Council. This creates a risk that nominations are inconsistently progressed, and that the listing and regulation of some assets of state heritage significance are not prioritised due to owner opposition. This includes nominations for publicly owned assets.

There are tensions in DPE's role as both the owner and potential regulator of nominated assets if they are listed. This poses potential risks for the addition of new state heritage listings. There are instances of challenges or delays in the listing process for assets that are owned by state entities, including within the DPE cluster. These challenges may be exacerbated if asset owners have priorities that are not readily aligned with the obligations of a heritage listing. It is important that Heritage NSW effectively manages this risk through its guidance to staff.

Heritage NSW has commissioned an external review of its listings processes and procedures to identify opportunities to improve efficiency. This review is expected to conclude later in 2023.

3.2 Assessing and advising on applications for works

The application and approval process is the main way that Heritage NSW regulates activities affecting listed assets. This is required under the Heritage Act for works that have, or have the potential to have, an impact on the significant heritage values of a listed asset. This could include proposals to develop or alter a heritage building, make repairs to a moveable heritage item, excavate land on a heritage site, or damage or remove any vegetation on a heritage landscape.

Heritage NSW also has a role in providing advice under the *Environmental Planning and Assessment Act 1979* on a range of planning activities. These include providing general terms of approval or refusal on Integrated Development Applications, and providing advice on planning proposals, development assessment referrals, and major projects including state significant development and infrastructure.

The total volume of applications and referrals to Heritage NSW declined by around 40% between 2017–18 and 2021–22 (Exhibit 7). A substantial proportion of the decline in volume can be attributed to the removal of assessments relating to standard exemptions under newly introduced regulation.

Exhibit 7: Number of assessments completed by Heritage NSW by application type, 2017 to 2022
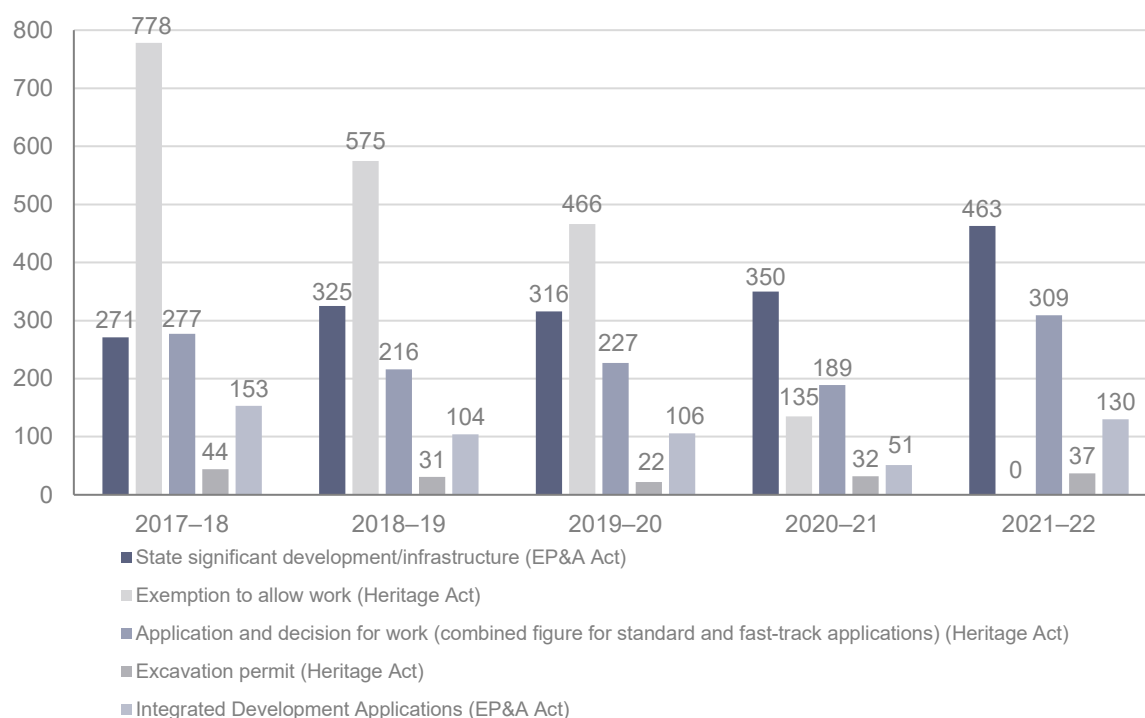
Note: The category for exemption assessments was removed in 2020–21.

Source: Audit Office analysis of Heritage NSW reporting on selected assessment types.

Heritage NSW reports recent improvements in its timeframes for assessing applications for works on listed assets

Heritage NSW tracks its performance against statutory timeframes for making decisions on applications for works affecting listed assets. Under the Heritage Act, Heritage NSW is required to make decisions on applications for works within 40 days, or within 60 days where public notice is required (and 21 days for excavation permits). Heritage NSW's performance indicator is to meet statutory timeframes for 75% of applications.

In 2021–22, Heritage NSW reports it received 404 applications relating to works on listed assets, with a total estimated cost of around $2 billion. Heritage NSW assessed 48% of these applications within statutory timeframes. Heritage NSW had not been meeting target timeframes since at least 2020. Assessments that do not meet these timeframes can result in uncertainty and additional costs to asset owners.

In 2023, Heritage NSW has made improvements to its performance against the relevant timeframes for most applications. For applications received in the third quarter of the 2022–23 financial year, Heritage NSW data shows that 87% were assessed within the statutory timeframes.

Heritage NSW has dedicated resources and strategic focus to improving its performance on timeliness indicators since 2021. It initiated a temporary 'streamlining' team to improve the efficiency, effectiveness and consistency of its statutory assessment and approval functions. Heritage NSW also introduced detailed reporting on application activity and performance against timeframes in 2021–22, but this requires manual updating. Heritage NSW's focus on streamlining has also contributed to improvements in the timeliness of providing advice on projects referred under the *Environmental Planning and Assessment Act 1979* (discussed below).

Heritage NSW commissioned a review of its assessments processes in 2022. Heritage NSW is planning to implement a new team structure for assessments in 2023. This aims to sustain the recent improvements, and to improve consistency in approaches across application types (as discussed in Chapter 2.3). Heritage NSW will need to implement a change management process and manage related risks. This includes strengthening data controls and mitigating risks to sustaining improvements in timeliness across other application types (discussed below).

Memoranda of Understanding to fund positions dedicated to transport-related applications

Heritage NSW has had Memoranda of Understanding in place with transport-related agencies since 2015 up until 2022 and is currently negotiating a new consolidated Memoranda of Understanding with Transport for NSW. These arrangements have funded positions dedicated to assessing their applications for works. This is because transport projects can require a large number of complex, technical applications requiring Heritage NSW's assessment at any point in time. The arrangements in the Memoranda of Understanding have been clearly established. There are positive views about the usefulness of these arrangements for supporting efficient and quality decisions, but evidence of reviews to confirm this have not been provided.

Heritage NSW has not measured whether the funded positions have improved performance on timeliness of assessments for the relevant agencies, or had an impact on Heritage NSW's overall volume or timeliness of assessments.

The fast-track pathway for minor works could improve efficiency, but has not been well communicated

Under the new standard exemptions regulation (discussed in Chapter 2.3), exemptions from requiring an approval under the Heritage Act are available for minor works with no or limited impact on the heritage significance of a listed asset.

For minor works affecting significant parts of a listed asset (including some that were eligible for exemption under the previous notification system). Heritage NSW introduced a fast-track pathway as part of the standard exemptions reform. For example, certain cleaning and maintenance works, or undertaking minor repairs to parts of the asset that contribute to its heritage significance.

Fast-track applications involve less administration on the part of the applicant than a full works application, but more administration compared to the former notification system. Unlike the exemptions, Heritage NSW can recover some costs via fast-track application fees.

Heritage NSW has improved its performance against timeframes for determining applications for works under the fast-track pathway. For applications received in the third quarter of the 2022–23 financial year, Heritage NSW data shows that 90% were assessed within the target timeframe of 21 days. In the 2021–22 financial year, Heritage NSW completed 49% of fast-track assessments within the target timeframe.

Heritage NSW has developed some resources about the new application pathways and conducted some stakeholder engagement to support the implementation of the new exemptions (discussed further in Chapter 2.3). Stakeholders including heritage professionals report a lack of clarity around the application of the fast-track pathway and the standard exemptions. They also report some reluctance to provide advice to asset owners on whether proposed works are eligible to use standard exemptions, or whether a fast-track or full application is required. This suggests that Heritage NSW's resources and outreach activities may have not been sufficient to meet the information needs of asset owners and heritage professionals.

Heritage NSW reports improved performance in meeting timeframes for providing advice on major projects, and ongoing focus is important to sustain these improvements

Development that is important to the state for economic, environmental or social reasons can be classified as state significant development or infrastructure under the *Environmental Planning and Assessment Act 1979.* Heritage Act provisions are 'turned off' for these projects. This means that Heritage NSW does not have a decision-making role in relation to these major projects.

DPE coordinates the whole-of-government assessment of state significant projects, including advice from Heritage NSW. Heritage NSW provides comments on major projects through the NSW Planning Portal.

The target timeframe for Heritage NSW to respond to major project referrals varies depending on the phase of the project, but most require a response within 7-14 days. Delivering responses within this timeline is resource-intensive for Heritage NSW, but a failure to respond quickly creates risks to the delivery of major project timelines. Heritage NSW data indicates that the number of referrals for heritage advice on major projects has increased over 70% since 2017 (Exhibit 7).

Heritage NSW has a target to meet 100% of the departmental timeframes for major projects, established through a DPE framework for inter-agency engagement. Heritage NSW was not routinely meeting this target between 2019 and 2021. In 2021, Heritage NSW increased its focus on major project referrals as part of its 'streamlining project'. DPE also initiated executive-level coordination and information sharing, including quarterly meetings with Heritage NSW and other departmental staff to discuss major project assessment pipelines. It has been reported that these meetings have improved coordinated responses and the quality of advice on major projects. Heritage NSW also has access to DPE's dashboards that forecast project pipelines. Heritage NSW advises that these dashboards do not provide sufficient information to be useful for operational or budget planning.

Recently there have been improvements to Heritage NSW's timeliness in providing advice on major projects. In 2021–22, Heritage NSW received 483 referrals relating to major projects. In the fourth quarter of 2021–22, Heritage NSW met the timeframe in 91% of cases, up from the 2020–21 annual average of 44%. Heritage NSW has sustained this improvement to date in 2022–23, reporting 90% on time in the third quarter of the financial year. Ongoing attention will be required to ensure these improvements can be sustained alongside focus on other application types.

Heritage NSW reports recent improvements in its timeframes for assessing integrated development applications

Under the integrated development application process, Heritage NSW provides local councils with general terms of approval or refusal on development applications for works that also impact on a listed asset.

Heritage NSW's target timeframe for responding to integrated development applications is 21 days (if advertised) or 40 days (if not advertised). These timeframes are set out in in legislation and in a service level agreement with the department. Heritage NSW has a performance indicator to meet these timeframes for 75% of applications.

Following Heritage NSW's implementation of its streamlining project in 2021, 76% of integrated development applications referrals received in 2021–22 were delivered within target timeframes. This is an improvement since 2020–21, when Heritage NSW met its target timeframes for five per cent of integrated development applications.

Despite these improvements, the integrated development application process is duplicative due to statutory requirements. That is, Heritage NSW provides general terms of approval or refusal to the relevant council for inclusion in development consent conditions. Following this, owners are then required to submit a works application for Heritage NSW approval. In effect, Heritage NSW assesses multiple applications for the same works. Heritage NSW advises it is seeking to address this issue in line with the recommendations of the 2021 Upper House Inquiry into the Heritage Act.

3.3   Enforcement decisions

Heritage NSW's 2018 compliance framework outlines the compliance and enforcement strategies available to Heritage NSW. These range from encouraging voluntary compliance to litigation, with a focus on education and awareness strategies. The compliance framework states that it should resolve non-compliance at the lowest level to encourage self-reporting and voluntary compliance. The framework is supported by a compliance policy and manual, a tool to evaluate the level of risk of a potential breach, and a training guide.

Heritage NSW uses most of its available compliance and enforcement powers infrequently

Heritage NSW uses most of its available compliance and enforcement powers infrequently. These include powers to inspect premises and to issue stop work orders, orders to remedy failure to maintain or repair, and orders to restrict harm. Heritage NSW data on non-compliance between July 2019 and November 2022 shows that the largest category of non-compliance matters (40%) related to unauthorised development. Another 23% were related to a failure to maintain minimum standards.

Heritage NSW conducted site visits to investigate potential compliance breaches in 37% of reported matters between 2019 and 2022. On 56 non-compliance matters in 2019–20, Heritage NSW reports issuing eight warnings, three requests for information, and 48 notifications relating to non-compliance or to breaches of the Heritage Act. No stop work orders, orders to remedy failure to maintain, or orders restricting harm were issued in relation to these matters.

There are provisions in the Heritage Act for the Minister to make heritage agreements. These can provide for the conservation of an item, and enable the use of enforcement powers if breached. There are currently 12 Heritage Agreements in place: the most recent was established in 2011. Heritage NSW advises that agreements are generally too resource intensive to establish, relative to the benefits they may deliver. In 2019, the Heritage Council identified a strategic priority to expand the use of voluntary heritage agreements, but this has not been implemented. Heritage agreements may represent an underutilised regulatory tool for Heritage NSW to negotiate agreed outcomes with asset owners, for example in cases of owner objection to heritage listing.

Heritage NSW lacks clear escalation processes to address identified cases of non-compliance in a timely way

Heritage NSW's compliance framework and its supporting documentation lacks clear thresholds for investigating or escalating compliance breaches and taking enforcement action. This creates a risk that compliance matters are not responded to in a timely and effective way that is aligned to policy and informed by community expectations. Without intervention, the condition of a listed asset could worsen, or unauthorised development or demolition could proceed.

Heritage NSW reporting indicates that over 70% of 47 open compliance matters had been open for over 270 days (around nine months), at October 2022. Heritage NSW has an internal performance indicator to close compliance matters within 180 days on average. It does not track performance against this indicator or report on the average number of days matters are open. Heritage NSW data does show that 45% of matters were closed within 180 days in in 2020–21 compared to 73% in 2019–20.

Of the 23 non-compliance matters reported to Heritage NSW in 2021–22, three related to local government assets, seven to assets owned by state government entities, and 13 to privately owned assets. Heritage NSW compliance data from 2019 to 2022 also indicates that around 22% of open compliance matters were considered 'contentious', highlighting the importance of a defined escalation pathway.

Litigation is a last resort under Heritage NSW's compliance framework. Heritage NSW advises that it also follows guidance in the 1997 Premier's Memorandum on litigation involving government authorities. This guidance states that 'litigation between Government authorities is undesirable and should be avoided whenever possible' but recognises that, 'in some circumstances, the only appropriate course is to commence prosecutions against Government authorities as a way of enforcing compliance with environmental, safety and other standards.'

In this context, it is important that Heritage NSW appropriately escalates compliance breaches by state government entities effectively. But Heritage NSW does not provide staff with sufficient guidance to do so. In some instances, action has been slow and limited. For example, Heritage NSW documentation indicates that a state entity intentionally demolished a building within a State Heritage Register listed item in 2015, while being investigated for demolishing a different heritage listed asset. The matter resulted in the entity making non-binding commitments to avoid future recurrence, in a letter signed by executive staff in 2017. It is unclear whether Heritage NSW has since made inquiries to ensure this commitment is upheld, and whether it has reviewed the efficacy or strategic impact of its enforcement response.

Heritage NSW has not undertaken an assessment of the overall level of compliance risk to listed assets, or its tolerance to compliance risk. Heritage NSW also has limited visibility and oversight of listed assets (see Chapter 2.1). Together, this means it is difficult to determine whether Heritage NSW's restrained use of compliance and enforcement powers is consistent with its stated position on encouraging voluntary compliance.

Heritage NSW's compliance model does not readily support a risk-based approach

Heritage NSW has not assessed the likelihood of compliance breaches going unreported, or the effectiveness of different activities for encouraging voluntary compliance or deterring breaches. This is relevant to the application of its compliance framework, which focuses on assessing risks and taking action once matters come to Heritage NSW's attention.

Heritage NSW delivers compliance functions within a distributed model of staff responsibilities. This means that some staff with responsibilities for compliance also undertake assessments or provide advice on applications for works, with customer service priorities including timeliness targets. This creates a risk that compliance work is deprioritised due to competing demands, or that staff face a conflict in duties between customer service priorities and enforcing regulatory requirements.

The Legislative Assembly's Standing Committee on Social Issues published its review of the Heritage Act in October 2021. This Upper House Inquiry found the Heritage Act contains a lack of provision for intermediate compliance options between strong enforcement provisions such as litigation, and weaker provisions such as warning letters. It recommended an amendment to the Heritage Act to provide for intermediate enforcement and investigatory powers, including powers to gather evidence and issue infringement notices.

Since 2022, Heritage NSW has been working to implement a response to these recommendations. For Heritage NSW to improve its effectiveness within the current legislative framework or to build preparedness for potential reforms, it will need a risk-based approach to identifying and responding to compliance breaches.

4. Strategic planning and governance

This chapter assesses whether the Department of Planning and Environment (Heritage NSW) has established clear strategic priorities to effectively oversee and administer activities related to listed assets, and its preparedness to implement reforms. It also assesses the adequacy of planning activities and governance arrangements to support the achievement of strategic directions.

4.1   Strategic and business planning

Heritage NSW's record for successfully delivering initiatives has been inconsistent, and its plans lack well defined outcomes

Heritage NSW's record of successfully delivering strategic initiatives has been inconsistent. Since 2017, Heritage NSW has delivered some initiatives with a customer-service focus. These include a custom-built heritage information management system, a project to prioritise legacy nominations for the State Heritage Register, processes to improve timeliness of assessment, and new policies that aim to reduce regulatory burdens.

However, there are also multiple instances of Heritage NSW commencing key initiatives but discontinuing them early as priorities change, or where key initiatives have continued for multiple years with limited or unclear progress. Examples include initiatives to:

- update incomplete information on the State Heritage Register: funding commenced 2016–17 but ceased 2019 with limited progress (see Chapter 2.1)
- improve state government entities' engagement with heritage and update guidance for state agencies: funding commenced 2018 but limited progress before funding ceased 2021 (see Chapter 2.2)
- update Heritage NSW publications and resources: funding commenced 2020 but limited progress before funding ceased 2021, with ongoing work ad hoc (see Chapter 2.2).
- review and update external entity delegations: commenced in 2020 and made some progress before it was ceased in 2021 (see Chapter 2.3).

Heritage NSW's strategic and business planning documents do not clearly present the relative priority of different initiatives. Heritage NSW's 2022-24 strategic plan includes five priority areas with 19 actions, but most actions are not associated with a defined output or outcome. None of the business plans for Heritage NSW's teams include clear delivery timeframes or adequate measures of success. Overall it is uncertain what new initiatives need to be delivered and when in the context of Heritage NSW maintaining business-as-usual to an acceptable level of service.

Heritage NSW did not finalise a business plan for 2020–21. It advises this was due to concurrent machinery of government changes and an organisational restructure. Over the past five years, Heritage NSW's operations have been impacted by two machinery of government changes and two organisational restructures, including a 13% reduction in full-time equivalent workforce in 2021.

Use of consultants

Heritage NSW has engaged external consultants to support or advise on initiatives. The use of consultants can be appropriate and helpful, but there are instances of duplication across these engagements. Between 2017 and 2022, Heritage NSW commissioned at least 13 reviews or evaluations of its processes and activities, including four reviews of its regulatory processes and systems, and three reviews related to its structure and governance. It also commissioned three research projects looking at the value of heritage, and two evaluations of assets listed on the State Heritage Register.

The Audit Office's 2023 performance audit 'NSW government agencies' use of consultants' found that most audited agencies (which included DPE and the Department of Premier and Cabinet) did not have a clear strategic approach to how and when consultants were used, or a clear framework for evaluating the consultants' work.

The interaction between Heritage NSW's plans and activities and Heritage Council priorities is unclear, and some key risks are not well reflected as areas of strategic focus

Heritage NSW's 2022-2024 strategic plan is being implemented alongside the Heritage Council's 2019–2022 strategic plan and newly endorsed 2023-2025 strategic priorities. The two entities do not have a defined mechanism for joint strategic or business planning. The Heritage Council has the authority to develop its own plan but no staff or funds to implement it: Heritage NSW resources have been allocated to do this. A lack of clarity around the expected interactions between Heritage NSW and the Heritage Council's strategic directions creates resourcing and delivery risks to both entities' plans.

Between 2019 and 2022, Heritage NSW and the Heritage Council each identified strategic priority areas and initiatives, with some areas of alignment. These include a focus on:

- improving the State Heritage Register nominations and priority lists process
- customer service (including a digital strategy such as updating its website and publications)
- the timeliness of providing advice and making decisions on applications for works
- recognising Aboriginal cultural heritage.

Several areas of focus are not consistently reflected in both entities' plans. These include improving governance arrangements, promoting awareness and celebration of heritage, and delivering certain research projects (such as heritage tourism and values, economic impacts of heritage listings, and climate risks to heritage).

For example, while developing a climate change action plan was a strategic priority in the Heritage Council 2019–2022 plan, it is not included in the Heritage NSW's 2022-2024 plan. Heritage NSW drafted a Climate Change Preparedness Action Plan and presented this to the Heritage Council in November 2022. The plan contains 27 actions, 11 of which are a 'high priority' for 2023, including some that will require but do not yet have resources. Heritage NSW advises the plan will undergo consultation and refinement prior to finalisation. There is an opportunity for Heritage NSW to prioritise its finalisation and take a leadership role in building climate change preparedness in the heritage sector.

There are additional opportunities for Heritage NSW to address risks to its effectiveness and further promote the objects of the Heritage Act that are not well reflected in its strategic plans. These risks include:

- insufficiently clear governance arrangements with the Heritage Council (see Chapter 4.3)
- not regulating listed assets strategically and with a risk-based approach, noting in particular the gaps in its information about the use and condition of listed assets
- not effectively supporting state government entities' compliance with Heritage Act requirements and good practice heritage management, particularly through targeted engagement, interagency capability building, and leadership.

4.2　Information management systems

Heritage NSW partially implemented a new information system in 2021 with improved features for customers and quality controls

Heritage NSW implemented the custom-built Heritage Management System in 2021 at a cost of around $9 million. The new information system introduced an online platform for customer-facing and internal processing of applications and assessments for works, online submissions of applications and payments, and a spatial mapping function. Implementation of the information management system started when Heritage NSW was part of the Department of Premier and Cabinet.

The Heritage Management System introduced enhanced governance and reporting capability and quality assurance mechanisms for processing applications for works. For example, data validation controls such as standardised templates, limits on editing documents once approved, and restrictions on which staff can make approvals. This is an improvement on previous arrangements, which staff report involved fewer standardised processes and a higher degree of variability, such as in customised communication materials.

However, Heritage NSW has not fully realised the intended benefits of the Heritage Management System. A fully fit-for-purpose system was not procured and developed within the available budget. Various system features have only been partially implemented, including a self-audit function to oversee the use of delegated decision-making functions. The system is also not being used consistently across the business. It has not been taken up for processing State Heritage Register nominations, despite custom-built workflows: the former Heritage Office Database system continues to be used for this process.

Heritage NSW is exploring options for its information management given functionality issues and implementation challenges with its current system

Implementation and functionality issues have led Heritage NSW to explore alternative options for its information management. The Heritage Management System is not currently well integrated with other Heritage NSW or current departmental systems, such as the NSW Planning Portal, which hosts a range of digital services related to development applications.

Heritage NSW is assessing the risks and costs of continued investment into a system that has, to date, not met expectations. These risks and costs relate to:

- ongoing work to allow full implementation of the system across the business
- enhancements to improve functionality
- parallel works to develop or upgrade other organisational systems such as the Maritime database and Aboriginal Cultural Heritage Information Portal.

In early 2023, Heritage NSW underwent a system architecture review to reassess its requirements. These include customer and user needs, system integration requirements, and support requirements of legacy systems. This review identified an opportunity to integrate with the NSW Planning Portal. It may have been premature for Heritage NSW to pursue this option in 2018, when first developing its system requirements, because the portal was at an early stage of development.

There may be efficiency benefits from Heritage NSW integrating its information management systems into the broader departmental systems, for example, reduced reliance on external IT support. However, this requires further analysis of the expected costs and resource impacts of the transition.

A transition away from the Heritage Management System also involves risks and costs for Heritage NSW and represents wastage in the initial $9 million investment. For example, Heritage NSW is still actively implementing the Heritage Management System. In early 2023 it was part-way through rolling out the system to state government entities for managing their Heritage and Conservation (s170) Registers. A second major shift in information management systems in under two years would extend disruptions to system users and stakeholders.

4.3 Governance and probity

Governance arrangements have not been adequately defined until 2023 to support effective operations between Heritage NSW and the Heritage Council

The functions of the Heritage Council are defined in the Heritage Act, and Heritage NSW responsibilities are allocated through instruments of delegation. Governance arrangements have not been adequately established to support Heritage NSW in the delivery of Heritage Council functions in addition to its role in supporting the delivery of the Minister's functions. Key examples are listed below.

- Heritage NSW has a role in providing administrative and secretariat support to the Heritage Council, and in making certain decisions under delegation from the Heritage Council. An instrument of delegation (and related protocols) set out Heritage NSW's responsibilities. There is no service agreement or memorandum of understanding between the two entities.
- Heritage NSW lacks procedural guidance on how to manage potential tensions in its duties to provide advice to the NSW Government, the Heritage Council, and the Minister in its own capacity or as a delegate of the Heritage Council.
- The Heritage Council did not have its own terms of reference or code of conduct guiding its activities until 2023. These were endorsed by the Heritage Council at its May 2023 meeting. Prior to this, it did have a series of supporting documents that outlined probity and conduct expectations for Heritage Council members.
- Heritage NSW has not effectively supported the Heritage Council to establish and document clear probity procedures consistent with relevant government or departmental policies. For example, induction materials prepared for Heritage Council members in 2022 contained inconsistent information about the relevant codes of conduct and conflicts of interest policies that members must uphold.

Challenges created by inadequate governance arrangements were detailed in a 2020 review commissioned by the Heritage Council. At that time, Heritage NSW was part of the Department of Premier and Cabinet. The objective of that review was to develop an effective governance and operating framework to clarify roles and responsibilities and support relationships between the Heritage Council and Heritage NSW.

There had been limited progress on implementing recommendations from the 2020 governance review until late 2022. In November 2022, Heritage NSW started work with DPE to reconsider the 2020 review, and to develop and update governance arrangements and probity procedures. This work is being done in consultation with the Heritage Council and in line with current departmental structures, policy and procedures. This resulted in the Heritage Council endorsing a terms of reference and a code of conduct in May 2023.

Heritage NSW's compliance with DPE's probity policies has improved but remains an area of risk to be monitored

In February 2023, 47% of Heritage NSW staff had not submitted a conflict of interest declaration, required of all staff annually under the DPE Code of Ethics and Conduct. Around half of these staff were in decision-making roles, including management and regulatory staff. Furthermore, 40% of staff had not submitted a declaration against the code, also required annually.

In March 2023, Heritage NSW took steps to address this non-compliance. Reminders were issued to staff about their obligations to complete the annual DPE Code of Ethics and Conduct and conflict of interest declarations, and to declare any actual, potential, or perceived conflicts of interest.

Updated data from May 2023 indicates improvements in staff compliance with these policies. The proportion of staff that had not submitted a conflict of interest declaration in the last 12 months fell to ten per cent. The proportion of staff that had not submitted a declaration against the DPE Code of Ethics and Conduct fell to 16%.

For those staff that submitted a conflict of interest declaration as of May 2023, around four per cent (six of 160 declarations) indicated they had an actual, potential or perceived conflict. The quality of these declarations varied widely, in the level of detail provided about the nature of conflicts, and in the adequacy of proposed management actions. A further nine declarations indicated that the staff member had external paid or unpaid commitments but did not declare a conflict. Furthermore, around 20% of the 160 declarations made as of May 2023 had not been approved by a manager.

Staff performing a regulatory role are identified in the DPE Code of Ethics and Conduct as engaged in a high-risk activity for potential conflicts of interest. A potential source of conflict is their interactions with owners of listed assets or consultants in the heritage industry. It is mandatory for Heritage NSW staff to declare they do not have any conflicts of interest for each heritage application they assess. This provides some mitigation of the risk but does not remove the requirement for an annual declaration.

Heritage NSW trialled a new grant initiative in 2022 but there were critical gaps that must be addressed if it is to be continued

The activation of heritage value is a new strategic direction for Heritage NSW. Heritage NSW trialled a $1 million Activating State Heritage grant in 2022, the largest single grant awarded by Heritage NSW. The funding for this initiative came from the existing Heritage Grants Program pool, reducing the funding available for the other grant categories by one third for 2023.

The initiative was delivered within tight timeframes by the end of 2022. It involved applicants making a five-minute pitch that was judged by a panel and a live online audience ('PitchFest'). It also required the successful recipient to commit co-funding of an additional $1 million. Heritage NSW reports seeking support from other government entities with experience implementing this type of award, including advice on good practice, templates and guidelines. However, Heritage NSW did not finalise an overarching probity plan and insufficiently documented probity assessments of shortlisted applicants. According to the 2022 NSW Grants Administration Guide, these are core elements of good grants administration.

Heritage NSW also did not establish minimum requirements or guidance to the panel for considering the relevance of the benefit/cost ratio for proposed projects. One project progressed to the final PitchFest stage, despite having a benefit/cost ratio of less than one, which meant that the cost outweighed the expected benefits.

Heritage NSW evaluated the program in early 2023, reviewing its delivery processes, outputs and media reception. The evaluation identified risks associated with the PitchFest event structure. The online platform used to collect votes from the public was not controlled: it could not prevent individuals from posting multiple votes, or prevent individuals with conflicts of interest from voting. The public votes contributed to five per cent of the overall score, but the approach created challenges for Heritage NSW in managing perceptions about how the decision was made. Recommendations arising from Heritage NSW's evaluation also highlighted the need for:

- more effective advertising and support to increase the pool of eligible applicants, especially around Aboriginal cultural heritage
- more transparent public communication about the purpose, weighting, and outcome of online voting, and more effective systems for enabling controls over online voting
- establishing monitoring and evaluation around the initiative's impact over time.

Funding for the continuation of the program has not been confirmed. Heritage NSW advises that it intends to evaluate the success of the winning grant in two years, which will inform future funding proposals to continue the initiative.

If the initiative continues, other important steps will be required to address the core gaps identified above, and other issues raised in the program evaluation. These include:

- documenting probity measures taken with respect to applicants
- implementing additional elements of good practice grants administration including finalising core probity documentation, and clearer documentation of panel decision and scoring
- setting minimum requirements for cost/benefit assessments for proposed projects, and/or additional guidance on how costs and benefits are to be considered by the panel
- applying recent Heritage NSW research into the economic value of heritage in evaluating the objectives and impact of the initiative.

Section two

Appendices

Appendix one – Response from agency

Department of Planning and Environment

ED23/58

Ms Margaret Crawford
Auditor-General for New South Wales
GPO Box 12
SYDNEY NSW 2001

By email:

Subject: Audit – State Heritage Assets

Dear Auditor General

Thank you for your report regarding Heritage NSW's (DPE) (HNSW) oversight and administration of State heritage assets. I appreciate the opportunity to work with the Audit Office to review these important functions which will assist HNSW in its ongoing work to improve performance.

I wish to acknowledge that the period under audit (2017-2022) coincides with a period of considerable change for HNSW, including four organisational restructures, two of which related to Machinery of Government changes. While these disruptions were carefully managed each time, they had undoubted impacts on the operation of the agency.

I would also like to note a number of significant achievements made by HNSW during this period, including:

- support for the Heritage Council and Minister in listing 89 new items of State heritage significance on the State Heritage Register (SHR) since 2017;
- commencement of a world heritage nomination process for the Parramatta Female Factory;
- roll out of the Blue Plaques program; and
- support for and progression of a response to the 2021 Parliamentary Inquiry review of the Heritage Act, including strong progress towards development of new heritage legislation.

The report emerging from the 2021 Parliamentary Inquiry noted that owners and custodians of heritage items had experienced uncertainties, delays and frustrations when navigating the heritage system. I am pleased to note your report's acknowledgement of the significant improvements HNSW has made over the past 18 months to both the timeliness of approvals made under the Heritage Act and the provision of advice provided on major projects.

Heritage NSW has been proactive in identifying actions that could be undertaken ahead of legislative reform to further address these issues, with the intent of improving customer service and enhancing efficient and consistent approvals and advice. As you are aware, streamlining initiatives put in place to deliver performance and customer service improvements over the past several quarters, include:

- promoting early engagement with applicants;

- customer education initiatives;
- improving monitoring and reporting systems to better understand performance and system issues and supporting more timely problem resolution; and
- improving the systems HNSW uses to provide advice and assessment.

As acknowledged in your report, HNSW has been developing an improved culture of customer service. Improvements in customer service have taken place alongside work to improve our regulatory approach, to bring it into step with modern risk-based approaches. When implementing policy and regulatory initiatives, HNSW now undertakes considered assessment to effectively manage risks and monitor outcomes.

In relation to the Heritage Grants Program 2023-25 funding round (which included the Activating State Heritage category), it is relevant that the funding round opened before the NSW Government Grants Administration Guide was released on 19 September 2022. Nevertheless, HNSW was aware that the guide was in development and ensured compliance with its requirements. The probity plan, declaration of interests, funding guidelines and judging panel terms of reference for the program were endorsed by DPE Governance. Heritage NSW has also complied with all record-keeping requirements.

As recently committed by the Minister for Heritage, the Hon Penny Sharpe MLC, a NSW Heritage Strategy will be developed which will build on these achievements.

I thank you, in particular, for the recommendations below, which will be a strong focus of HNSW's forward work plan. The recommendations are well framed to assist HNSW to improve its focus and delivery of heritage services and regulation under the Heritage Act. We accept all the recommendations and have either commenced the work or have progressed planning towards delivery. I look forward to progressing these initiatives and reporting back to you on our progress.

Audit Office recommendations

Recommendation	Comment
1. Implement more robust quality assurance and improvement processes with respect to decisions about applications for works affecting listed assets that are made under delegation from the Heritage Council of NSW, including decisions made by Heritage NSW staff and by other entities.	*Accepted – work underway* Delegated decision-making within HNSW has recently been reviewed. A new work model is being implemented with the objective of improving consistency of decision-making.

Department of Planning and Environment

Recommendation	Comment
2. Provide guidance and training to Heritage NSW staff to support transparent and consistent approaches to: • assessing the heritage significance of nominated assets and preparing information to inform State Heritage Register listing decisions • engaging with the owners of assets that have nominated for listing, including assets owned by state government entities, local councils, individuals or other entities.	*Accepted - work underway* An external review of State Heritage Register listing processes and practices is currently being conducted. This review is expected to assist HNSW to improve the internal efficiency and consistency of future listings, as well as improve the clarity and transparency of consultation during the listing process, consistent with available resources.
3. Implement a plan to update and maintain accurate information in the State Heritage Register against defined minimum data requirements.	*Accepted – work planned* HNSW will work with the Heritage Council to define minimum data and information requirements for State Heritage Register listings to ensure consistency moving forward. HNSW will continue to work with the Heritage Council to ensure that high quality information is held and made publicly available.
4. Develop a multi-year strategy to ensure the collection and maintenance of supplementary information about assets listed on the State Heritage Register that is sufficient to inform a risk-based regulatory approach.	*Accepted - work planned* HNSW will develop a strategy to ensure, consistent with available resources, it collects and maintains information it considers necessary to inform its regulatory activities.
5. Publish a statement of regulatory intent that sets out Heritage NSW's monitoring, compliance and enforcement approach, and the activities by which it will meet its responsibilities under the Heritage Act. This statement should be underpinned by a strategic assessment of the key threats and opportunities to heritage values of the State Heritage Register.	*Accepted – work planned* HNSW will publish a statement of regulatory intent as per the recommendation.

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Recommendation	Comment
6. Consolidate a program of interagency activities to strengthen capability among state government entities to support the objects of the Heritage Act, including by meeting compliance obligations. Heritage NSW should partner with NSW Treasury and other relevant agencies in the delivery of this program to ensure a strategic approach to heritage asset management.	*Accepted - work planned* HNSW will, consistent with available resources, work to strengthen existing engagement with state agencies to help agencies manage their heritage assets and meet their compliance obligations under the Heritage Act.
7. Define arrangements for information sharing and strategic resource planning to sustain the timely provision of heritage advice on proposed developments being assessed under the Environmental Planning and Assessment Act 1979.	*Accepted - work underway* HNSW will continue to work with the Department of Planning and Environment to build on existing information sharing and strategic resource planning to sustain the timely provision of heritage advice on proposed developments. HNSW considers 90% on time advice for strategic SSI/SSD referrals for Q3 2022/23 financial year is clear evidence that the current process is delivering good results and will continue work to further embed current processes and practices.
8. Implement a heritage engagement strategy with targeted actions for owners, heritage professionals, the local government sector, and key stakeholders, including actions to: • build awareness of Heritage NSW's priorities, projects, processes, and expectations • gather insights about risks and opportunities to inform Heritage NSW's strategic and operational planning • enhance the relevance of Heritage NSW's publications and other supports to promote voluntary compliance.	*Accepted - work underway* Work on an engagement strategy is already significantly progressed. It will be finalised and implemented, consistent with available resources.

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Department of Planning and Environment

If you have any further questions about this response, please contact Sam Kidman, Executive Director, Heritage NSW, on

Yours sincerely

Kiersten Fishburn
Acting Secretary, Department of Planning and Environment
19 June 2023

Appendix two – About the audit

Audit objective

This audit assessed how effectively the Department of Planning and Environment (Heritage NSW) is overseeing and administering heritage assets of state significance.

For the purpose of this audit, 'heritage assets of state significance' includes all assets listed on the State Heritage Register. It also covers processes related to the nomination and recommendation of these assets for listing.

Audit criteria

We addressed the audit objective by assessing whether Heritage NSW:

1.   is effectively administering the delivery of advice, recommendations and decisions on heritage issues to support heritage management outcomes
2.   is supporting and overseeing asset owners to ensure heritage assets are being effectively managed to deliver heritage management outcomes
3.   has established clear strategic priorities for heritage management and can demonstrate preparedness to implement these.

Audit scope and focus

The audit scope included Heritage NSW's activities performed under the Heritage Act, and other activities such as advice on major projects affecting heritage assets of state significance. The audit assessment against the criteria included checking:

- governance, controls and systems supporting the preparation of advice, recommendations and decisions on nominations for heritage listing, and applications for works affecting listed items
- systems for ensuring accuracy and currency of information on the State Heritage Register and systems to maintain this
- compliance and enforcement guidelines and approaches
- supports for asset owners' compliance with obligations under the Heritage Act
- strategic priorities and business planning activities, and progress towards implementing.

The audit scope covered the relevant Heritage NSW activities, programs and services since 2017.

Audit exclusions

The audit did not include:

- examination of individual assessments, decisions or outcomes
- examination of the sale or proposed sale of any State Heritage Register listed assets
- examination of individual state significant development and state significant infrastructure approvals
- items of local heritage under the *Environmental Planning and Assessment Act 1979*
- Aboriginal cultural heritage under the *National Parks and Wildlife Act 1974*.

Audit approach

Our procedures included:

- interviewing
  - relevant Department of Planning and Environment staff including from Heritage NSW
  - Chair and members of the Heritage Council
  - staff from state government entities that own or manage heritage assets
  - sector stakeholders, groups and subject matter experts
- examining a range of documents held by the department, including documents about
  - strategic planning
  - governance and reporting arrangements
  - performance reporting
  - policies and procedures for administrative and regulatory activities
  - guidance documents developed by Heritage NSW
- examining case studies relating to state significant projects, new heritage listings, applications for works and compliance and enforcement
- analysing website submissions.

The audit approach was complemented by quality assurance processes within the Audit Office to ensure compliance with professional standards.

Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standard ASAE 3500 Performance Engagements and other professional standards. The standards require the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with requirements specified in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

Acknowledgements

We gratefully acknowledge the constructive cooperation and assistance provided by the Department of Planning and Environment (Heritage NSW). We also acknowledge the Heritage Council of NSW, other state government agencies, as well as heritage industry professionals and subject matter experts for their time and input.

Audit cost

The estimated cost of this audit including disbursements is $470,000.

Appendix three – Performance auditing

What are performance audits?

Performance audits determine whether State or local government entities carry out their activities effectively and do so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of an audited entity, or more than one entity. They can also consider particular issues which affect the whole public sector and/or the whole local government sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in section 38B of the *Government Sector Audit Act 1983* for State government entities, and in section 421B of the *Local Government Act 1993* for local government entities.

Why do we conduct performance audits?

Performance audits provide independent assurance to the NSW Parliament and the public.

Through their recommendations, performance audits seek to improve the value for money the community receives from government services.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, State and local government entities, other interested stakeholders and Audit Office research.

How are performance audits selected?

When selecting and scoping topics, we aim to choose topics that reflect the interests of parliament in holding the government to account. Performance audits are selected at the discretion of the Auditor-General based on our own research, suggestions from the public, and consultation with parliamentarians, agency heads and key government stakeholders. Our three-year performance audit program is published on the website and is reviewed annually to ensure it continues to address significant issues of interest to parliament, aligns with government priorities, and reflects contemporary thinking on public sector management. Our program is sufficiently flexible to allow us to respond readily to any emerging issues.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team develops an understanding of the audit topic and responsible entities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the audited entity, program or activities are assessed. Criteria may be based on relevant legislation, internal policies and procedures, industry standards, best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork, the audit team meets with management representatives to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with management representatives to check that facts presented in the draft report are accurate and to seek input in developing practical recommendations on areas of improvement.

A final report is then provided to the head of the audited entity who is invited to formally respond to the report. The report presented to the NSW Parliament includes any response from the head of the audited entity. The relevant minister and the Treasurer are also provided with a copy of the final report. In performance audits that involve multiple entities, there may be responses from more than one audited entity or from a nominated coordinating entity.

Who checks to see if recommendations have been implemented?

After the report is presented to the NSW Parliament, it is usual for the entity's Audit and Risk Committee / Audit Risk and Improvement Committee to monitor progress with the implementation of recommendations.

In addition, it is the practice of NSW Parliament's Public Accounts Committee to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report received by the NSW Parliament. These reports are available on the NSW Parliament website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian standards.

The Public Accounts Committee appoints an independent reviewer to report on compliance with auditing practices and standards every four years. The reviewer's report is presented to the NSW Parliament and available on its website.

Periodic peer reviews by other Audit Offices test our activities against relevant standards and better practice.

Each audit is subject to internal review prior to its release.

Who pays for performance audits?

No fee is charged to entities for performance audits. Our performance audit services are funded by the NSW Parliament.

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website www.audit.nsw.gov.au or contact us on 9275 7100.

OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

OUR PURPOSE

To help Parliament hold government accountable for its use of public resources.

OUR VALUES

Pride in purpose

Curious and open-minded

Valuing people

Contagious integrity

Courage (even when it's uncomfortable)

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