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STANDING COMMITTEE ON SOCIAL ISSUES

## Review of the Heritage Act 1977



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Standing Committee on Social Issues

# **Review of the Heritage Act 1977**

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## Terms of reference

1. That the Standing Committee on Social Issues inquire into and report on the *Heritage Act 1977* (NSW) (the Act), with particular reference to:
  - (a) the need for legislative change to deliver a heritage system that is modern, effective and reflects best practice heritage conservation, activation and celebration
  - (b) the adequacy of the Act in meeting the needs of customers and the community and the protection of heritage
  - (c) how the Act could more effectively intersect with related legislation, such as heritage elements of the *Environmental Planning and Assessment Act 1979* and the *National Parks and Wildlife Act 1974*
  - (d) the issues raised and focus questions posed in the Government's Discussion Paper, in particular:
    - (i) a category approach to heritage listing to allow for more nuanced and targeted recognition and protection of the diversity of State significant heritage items
    - (ii) consideration of new supports to incentivise heritage ownership, conservation, adaptive reuse, activation and investment
    - (iii) improvements to heritage compliance and enforcement provisions
    - (iv) streamlining heritage processes
  - (e) any other related matter.

The terms of reference were referred to the committee by the Hon Don Harwin MLC, Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, on 7 April 2021. The committee resolved to request amendments to the terms of reference on 12 May 2021. The committee formally adopted the revised terms of reference on 13 May 2021.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 13 May 2021, p 2234.



## Committee details

### Committee members

<b>The Hon Peter Poulos MLC*</b>	Liberal Party	<i>Chair</i>
<b>The Hon Mark Buttigieg MLC**</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>The Hon Ben Franklin MLC</b>	The Nationals	
<b>The Hon Shayne Mallard MLC</b>	Liberal Party	
<b>The Hon Taylor Martin MLC</b>	Liberal Party	
<b>The Hon Fred Nile MLC</b>	Christian Democratic Party	
<b>The Hon Peter Primrose MLC***</b>	Australian Labor Party	
<b>Mr David Shoebridge MLC****</b>	The Greens	

- \* The Hon Peter Poulos MLC replaced the Hon Natalie Ward MLC as a substantive member of the committee and appointed as Chair from 16 June 2021.
- \*\* The Hon Mark Buttigieg MLC replaced the Hon Daniel Mookhey MLC as a substantive member and Deputy Chair of the committee from 21 June 2021.
- \*\*\* The Hon Peter Primrose MLC replaced the Hon Rose Jackson MLC as a substantive member of the committee from 21 June 2021.
- \*\*\*\* Mr David Shoebridge MLC substituted for Ms Abigail Boyd MLC for the duration of the inquiry.

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## Chair's foreword

It would be difficult to overestimate the importance of our significant places and sites to the people and economy of New South Wales.

Our rich and varied heritage encompasses all the things that make our State unique – aesthetically, historically and culturally – and in the course of our development over time. It bears witness to our technological achievements, our creative and cultural endeavours, our notable identities and personalities, and the beliefs and practices of communities with shared social and cultural traditions. They reveal to present generations something about what our State was like at different points in time – not just in urban and metropolitan Sydney but also in rural and remote New South Wales. Of course, this narrative did not commence with the arrival of Europeans but stretches much further back to the State's First Nations inhabitants.

The places, objects and sites that tell these important stories are not only significant for their physicality, but also for their less tangible, socially-mediated values. As the committee heard in evidence to this inquiry, these less tangible values derive from the purposeful interactions between social and cultural beings and the physical places they worshipped in, worked in, played in and transacted business in.

We have a shared responsibility to be diligent custodians and stewards of the State's heritage, so it is protected and passed on to future generations in the same or better state in which we inherited it. This important inquiry was an opportunity to assess, with the benefit of expert testimony, whether the *Heritage Act 1977* remains a fit-for-purpose instrument to support or facilitate this shared responsibility.

There is little doubt that many of the Act's provisions and controls are still workable and well-resolved, providing a robust framework for the identification, management and protection of State-significant heritage in New South Wales. And yet, it was also exceedingly clear that on a more fundamental level, some of the concepts and assumptions implicit in the Act no longer reflect the way we think about heritage and contemporary conservation practice.

Equally inescapable was the realisation that some aspects of the State's heritage system are currently failing owners of heritage items. Owner insights and perspectives shone a light on the uncertainties, delays, expenses, and frustrations some owners and others affected by the Act experience when navigating the system. Perceptions of heritage ownership as onerous, costly and burdensome certainly rang true for at least some of the owners who so generously volunteered their thoughts and experiences to the committee. Less clear was whether such systemic issues are a direct result of the Act's architecture or are owing in large part to the way in which the Act is currently being interpreted, administered and applied in practice.

In any event, owners and custodians of the State's significant heritage places deserve a better deal. They should be supported and rewarded in recognition of the immense public benefit heritage provides to the broader community. At a minimum, this must start with enhanced financial and non-financial assistance, much higher standards of customer service and an attitudinal shift in the prevailing regulatory culture for changes to State-listed items.

Additionally, the committee has recommended several other actions to improve support for heritage owners, including:

- increasing resources for Heritage NSW,

- re-instating pre-lodgement meetings,
- providing an option for heritage assessors to carry out site visits,
- renewing the NSW Heritage Grants Program and exploring additional financial incentives,
- addressing duplication and overlap in the heritage approvals process.

Like many other committee recommendations, some of these actions will require legislative change, others might be more effectively implemented through non-legislative interventions.

On the issue of protecting Aboriginal cultural heritage, this unquestionably warrants its own stand-alone legislation. The separate Aboriginal cultural heritage reform process (currently afoot within the NSW Government) was top of mind throughout the committee's deliberations, and we were careful to respect the independence of that process. These important reforms should be progressed on a priority basis.

On balance, the *Heritage Act 1977* has been, and continues to be, an extremely important piece of legislation for our State. So many of the cherished and celebrated places that define us and make us distinct owe much to the Act's enduring strengths in identifying and celebrating our State's heritage, and the protections that listing under the Act affords. However, its continuing strengths should not make us complacent or oblivious of areas where significant improvements and gains can be made to modernise the Act and better align it with contemporary, best-practice approaches to heritage conservation.

I am delighted to present this – my inaugural committee report as Chair of the Standing Committee on Social Issues – to the NSW Parliament. Like many other aspects of our lives, the conduct of this inquiry was complicated by the onset of the Sydney outbreak of COVID-19 (delta strain). In many respects, that this inquiry was able to continue (safely) through the worst of the outbreak is a remarkable testament to the resilience and adaptability of the Upper House committee system – and to the professionalism of my honourable committee colleagues, Parliamentary Services staff and the committee secretariat in particular, Sam Griffith, Tina Higgins, Anthony Hanna, Madeleine Dowd, Angeline Chung and Rachel Buist.

I am proud to have chaired the first ever *fully* virtual hearings of any committee of the NSW Upper House – an innovation born of necessity which enabled the committee to perform its inquiry functions without compromising the safety of members, witnesses and staff.

To the casual observer, Upper House inquiries can appear effortless and seamless. The effort that goes on behind the scenes is often hidden from view. To everyone who contributed their thoughts, insights and perspectives – or who gave so generously of their time at the committee's hearings – I owe a significant debt of gratitude. A special thanks also to my committee colleagues for their professionalism, patience and tireless public service under less than ideal circumstances.

I hereby commend this report to the parliament.



Hon Peter Poulos MLC  
**Committee Chair**

## Recommendations

- Recommendation 1** **15**  
That any legislative reform of the *Heritage Act 1977* have as its guiding principles the need to protect, conserve and celebrate the State's heritage, and that the guiding policy themes in the government's discussion paper of making heritage easy, putting heritage to work and making heritage relevant, must be secondary to these principles.
- Recommendation 2** **29**  
That the NSW Government amend the *Heritage Act 1977* to explicitly reflect and accommodate a more varied, inclusive and nuanced concept of what constitutes the State's heritage, especially beyond conventional understandings of heritage as buildings and structures. This should reflect contemporary concepts, thinking and approaches to heritage conservation including (but not limited to) intangible cultural heritage and cultural landscapes.
- Recommendation 3** **29**  
That the NSW Government undertake a review and/or comparative analysis of approaches to the identification, management and protection of intangible cultural heritage in other jurisdictions in Australia and internationally.
- Recommendation 4** **29**  
That, in concert with legislative reform, the NSW Government prioritise improvements to the administration and implementation of the *Heritage Act 1977*, including targeted recruitment of staff with relevant qualifications and skills, improved customer service, and initiatives to promote a cultural and attitudinal change in the regulatory approach.
- Recommendation 5** **29**  
That the *Heritage Act 1977* provide increased opportunity for community participation and co-design in the identification, protection and management of heritage and that this participation and co-design include Indigenous members of the community.
- Recommendation 6** **30**  
That State Significant Developments are only able to override heritage concerns after the Minister has consulted with the Heritage Council of NSW and is satisfied that there is a clear net benefit to the community for proceeding with a State Significant Development which results in a diminution of an item's heritage value.
- Recommendation 7** **37**  
That the NSW Government amend the *Heritage Act 1977* to mandate that:
- at any given time, there is always a majority of members on the Heritage Council of NSW with qualifications, experience and expertise in relevant heritage disciplines
  - two members of the Heritage Council of NSW must be an Aboriginal man and an Aboriginal woman, with expertise in Aboriginal cultural heritage
  - the Heritage Council of NSW is to include a representative from local government who possesses skills and experience in heritage.
- Recommendation 8** **49**  
That the NSW Government further investigate the use of categories as a way of promoting greater consistency in the heritage approvals process, to give heritage owners a much better understanding of the changes or alterations that might be possible to their State-listed properties. Locally listed items of heritage should be mandatorily listed and consolidated on to the State Heritage Inventory so that applications can be more readily made for State significance if necessary.

- Recommendation 9** **50**  
That the NSW Government introduce, on a trial basis, a community-driven, early round nomination process calling for potential State Heritage Register nominations for preliminary consideration by the Heritage Council of NSW.
- Recommendation 10** **50**  
That, in order to address gaps in the State Heritage Register, the NSW Government review its thematic listing programs and give consideration to initiatives that may facilitate a more representative State Heritage Register.
- Recommendation 11** **51**  
That the NSW Government amend the *Heritage Act 1977* to provide for an abridged delisting process for removing items from the State Heritage Register, to cater for situations where an item's significance has been significantly diminished, for example, as a result of fire or some natural calamity.
- Recommendation 12** **51**  
That the NSW Government design and implement a streamlined process for updating existing listings on the State Heritage Register either through legislative change, a tailored policy solution or both.
- Recommendation 13** **61**  
That the NSW Government, as part of the heritage permit approval process:
- reinstate pre-lodgement meetings with proponents as part of a broader commitment to improved customer service,
  - carry out site visits where this would assist in understanding an application for works, taking into account whether a site visit is practical and whether it would add value to an application,
  - update the current standard exemptions and fast-track approval pathways to ensure non-impactful activities can be undertaken to assist with the conservation of items and reduce unnecessary assessment,
  - increase the resources available to Heritage NSW and to the Heritage Council of NSW to improve the timeliness of the process, and
  - work with stakeholders to publish expected time frames within which heritage permits will be determined.
- Recommendation 14** **65**  
That the NSW Government amend the *Heritage Act 1977* to provide for intermediate enforcement powers.
- Recommendation 15** **66**  
That the NSW Government remove the requirement for a Section 60 approval for works to State-listed items where an Integrated Development Application has already been made, in situations where the requirements of Section 60 have already been satisfied.
- Recommendation 16** **75**  
That, as a matter of priority, the NSW Government progress the reform of Aboriginal cultural heritage legislation in tandem with the review of the *Heritage Act 1977*.
- Recommendation 17** **75**  
That the NSW Government allocate specific funding for an Aboriginal War Memorial Museum and work with Aboriginal people across New South Wales, including traditional owners and the NSW Aboriginal Land Council, to progress this proposal.

- Recommendation 18** **85**  
That the NSW Government renews its commitment to the NSW Heritage Grants Program, including by:
- increasing its funding, improving promotion and community awareness of the program, and making it easier and more attractive for owners to apply for grants
  - targeting promotion of the program to owners in regional and remote New South Wales, alongside the establishment of a dedicated grants stream for these owners.
- Recommendation 19** **86**  
That the NSW Government improve the support it provides to owners of State-listed heritage items, in order to incentivise ownership and make activation and adaptive re-use of heritage items easier and more viable, without compromising the protection of the item’s heritage value.
- Recommendation 20** **86**  
That the NSW Government, with the benefit of experience and learnings from the City of Sydney, investigate the feasibility of:
- extending the heritage floor space scheme to Local Government Areas beyond the current Sydney CBD boundary such as Parramatta, North Sydney, Newcastle, Wollongong and other parts of the City of Sydney Local Government Area
  - establishing a heritage floor space trading scheme or equivalent at the State level for items listed on the State Heritage Register.
- Recommendation 21** **87**  
That the Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts make representations to the Commonwealth Government regarding the potential introduction of tax-based incentives for owners of State-listed items.
- Recommendation 22** **92**  
That the NSW Government
- ensure agency collaboration on cultural tourism, to stimulate economic growth, promote heritage understanding and awareness in the community, and contribute to the long-term conservation and enhancement of heritage places, sites and landscapes
  - develop a state led strategy for the activation of heritage assets with specific actions for the promotion of local and state heritage, including consideration of listing relevant local items on the State Heritage Register.
- Recommendation 23** **92**  
That the NSW Government further investigate the United Kingdom’s Heritage Enterprise Grants Scheme and consider the feasibility of creating a fund to assist with the adaptive reuse of public and private heritage properties – consistent with the Burra Charter – and which meets the contemporary needs of local and, in particular, disadvantaged communities.
- Recommendation 24** **93**  
That the NSW Government further develop the NSW Blue Plaques Program to engage communities with heritage and provide for cultural tourism opportunities, including the development of a mobile phone app in order to maximise and facilitate use, as the scheme in the United Kingdom provides.
- Recommendation 25** **101**  
That the NSW Government take immediate steps to improve compliance with section 170 of the *Heritage Act 1977*, including ensuring that State government agencies update their section 170 register within 12 months, wherever reasonably practical.

**Recommendation 26**

**101**

That the NSW Government allocate specific funding for digitisation and video recording preservation of archives, records and artefacts in Libraries, Galleries and Museums.

## Conduct of inquiry

The terms of reference were referred to the committee by the Hon Don Harwin MLC, Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, on 7 April 2021. The committee resolved to request amendments to the terms of reference on 12 May 2021. The committee formally adopted the revised terms of reference on 13 May 2021.

The committee received 306 submissions and 4 supplementary submissions.

The committee heard from 43 witnesses over 5 public hearings, which were the first ever fully virtual hearings by a Legislative Council committee.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.



# Chapter 1 Background

This chapter provides an introduction to the NSW Government's review of the *Heritage Act 1977*, setting the scene for detailed analysis of the issues for legislative reform in subsequent chapters. It begins by detailing the history and lore of the Act's genesis, with particular attention to the social and historical specificities which gave rise to early attempts to protect the State's important places. This is followed by an overview of the New South Wales heritage system and the Act's key provisions. The chapter concludes with an outline of the NSW Government's recent discussion paper, which sets out the rationale for the Act's review and case for change.

## Announcement of review

- 1.1 The NSW Government's review of the *Heritage Act 1977* was formally announced on 7 April 2021 by the Hon Don Harwin MLC, Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts.<sup>2</sup>
- 1.2 The review was billed as an opportunity to modernise the State's heritage legislation with a view to making it 'easier, more affordable, and more desirable to own a State significant heritage property'.<sup>3</sup>
- 1.3 As a first step in the review process, the NSW Government released a discussion paper to promote discussion on the key issues for reform. Entitled *Review of NSW heritage legislation: Discussion paper*, the paper elicits community and stakeholder views on a number of focus questions and reform proposals.<sup>4</sup>

## Ministerial reference

- 1.4 On 7 April 2021, Minister Harwin referred the NSW Government's discussion paper and proposed terms of reference to the Standing Committee on Social Issues for inquiry and report.
- 1.5 Following committee consideration of the referral, the committee made representations to Minister Harwin requesting that additional matters be included in the terms of reference, chief amongst which was the case for stand-alone First Nations heritage laws.<sup>5</sup>
- 1.6 In response to the committee's correspondence, Minister Harwin issued amended terms of reference, accepting some but not all of the committee's amendments. Importantly, with respect to the reference about First Nations heritage laws, Minister Harwin noted that the NSW

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<sup>2</sup> Media release, Hon Don Harwin MLC, Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, 'NSW to modernise heritage protections – new discussion paper sets stage for Heritage Act review,' 7 April 2021.

<sup>3</sup> Media release, Hon Don Harwin MLC, Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, 'NSW to modernise heritage protections – new discussion paper sets stage for Heritage Act review,' 7 April 2021.

<sup>4</sup> NSW Government/Heritage NSW, *Review of NSW heritage legislation: Discussion paper*, April 2021.

<sup>5</sup> Correspondence from the Chair to the Hon Don Harwin MLC, Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, 12 May 2021.

Government is currently consulting with key Aboriginal stakeholders on the management and protection of Aboriginal cultural heritage and it would be 'inappropriate to supplant the important role of that consultative process'.<sup>6</sup>

1.7 The committee formally adopted the revised terms of reference on 13 May 2021.

## Genesis of the *Heritage Act 1977*

1.8 The review positions the *Heritage Act 1977* (the Act) as an artefact or product of its historical milieu. One of its central contentions and justifications for reform is that the unique set of historical circumstances which gave rise to the Act no longer define its present day operating context. An understanding of the Act's genesis is therefore pertinent to the issues and stakeholder perspectives discussed in subsequent chapters of this report.

1.9 The Act was born out of a period of momentous change.<sup>7</sup> Prior to the advent of the Act, there was little legislative protection for heritage items in New South Wales, one forerunner being the County of Cumberland Planning Scheme (1951), which was considered to be one of the earliest attempts to protect historic places by proclamation by the Governor.<sup>8</sup>

1.10 The idea of heritage coalesced against a backdrop of urban development of unprecedented scale and pace in Australian cities during the late 1960-70s.<sup>9</sup> This was the catalyst for a growing awareness of and concern to protect the State's heritage. At a 'grass roots' level, the number and strength of conservation and resident action groups grew exponentially. New forms of social activism and alliances were formed to conserve the State's significant natural and cultural environments.<sup>10</sup> The Heritage Council of NSW characterised this time as an 'era of bulldozers at midnight and a community alarmed about the actual and potential loss of our built heritage'.<sup>11</sup>

1.11 Instrumental at this time was the Builder's Labourers Federation which, under the leadership of Jack Munday from 1968, led the Green Bans movement in the 1970s. A total of 42 bans were placed on construction sites across the State, representing projects deemed to be socially or environmentally unjust. The movement captured widespread public press and political attention, with much of the commentary from the media and politicians at the time being extremely critical of the actions of the union and its supporters. Nevertheless, the Green Bans movement was credited with saving some of Sydney's most quintessential places, preserving the historic character of areas such as the Rocks, Woolloomooloo, Darlinghurst and Glebe.<sup>12</sup>

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<sup>6</sup> Correspondence from the Hon Don Harwin MLC, Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, to the Chair, 12 May 2021.

<sup>7</sup> Submission 90, GML Heritage, p 3.

<sup>8</sup> NSW Heritage Office, *Heritage information series: Heritage listings in New South Wales – A brief history*, p 6; Submission 27, Friends of Fernhill and Mulgoa Valley Inc, p 3.

<sup>9</sup> Submission 90, GML Heritage, p 3.

<sup>10</sup> Submission 90, GML Heritage, p 3.

<sup>11</sup> Submission 37, Heritage Council of NSW, p 2.

<sup>12</sup> Submission 90, GML Heritage, p 3; The National Trust of Australia (NSW), *The National Trust (NSW) pays tribute to Jack Munday*, 13 May 2020, <https://www.nationaltrust.org.au/news/national-trust-nsw-pays-tribute-to-jack-munday/>.

- 1.12** The Green Bans movement generated widespread community interest and debate and was a key influence in recognising the need for heritage legislation.<sup>13</sup> Adding to this impetus was the legal recognition of the National Trust under its own enabling legislation in 1960 and the pressure it applied on the government of the day to legislate to protect the State's heritage.<sup>14</sup>
- 1.13** Against this backdrop, the first attempt to legislate to protect the State's heritage came with the introduction in Parliament of the Environmental Planning Bill on 24 March 1976, just a few days before the State election. The heritage provisions within this bill were restricted to cultural and archaeological items and were regarded as having limited application.<sup>15</sup>
- 1.14** In May 1977, following a change in government, separate comprehensive legislation was drafted under the then premier Neville Wran, and with the assistance of the National Trust. This went on to become the NSW Heritage Act.<sup>16</sup>
- 1.15** The Heritage Bill was debated in the NSW Legislative Assembly in November 1977. During its second reading speech, the former member for Maroubra, the Hon Bill Haigh, positioned the bill as a response to the Federal Report of the Committee of Inquiry into the National Estate, also known as the 'Hope Report':

The report on the national estate emphasised the prime importance of compiling an inventory of the various assets of Australia's cultural and natural heritage. This is a principal task of the Australian Heritage Commission, which is required by statute to identify items included in the national estate and to prepare a public register in respect of those items. The significance of the bill now before the House to the conservation of the national and State heritage can be appreciated in the light of the conclusion of the report on the national estate that the most important legislative powers which are directly available to achieve the goals of conservation of the heritage are vested in the States and are beyond the Commonwealth's legislative competence. The bill, therefore, represents the Government's resolve to ensure that the cultural and natural heritage of this State is adequately identified, appreciated and conserved. The proposals of the bill, to a large degree, reflect the influence of the report on the national estate which, though chiefly directed to issues of federal responsibilities and initiatives in respect of the conservation of the national estate, in addition contains helpful suggestions for action by the States within the field of their legislative competence.<sup>17</sup>

- 1.16** The bill was nearly withdrawn after the opposition sought 18 amendments which were considered within some quarters to dilute the Act. In response, the National Trust took out a half page advertisement in the *Sydney Morning Herald* expressing its dismay at the proposed amendments and appealing to the public to lobby their local member to support the bill in its present form. The opposition dropped the majority of its proposed amendments and the bill was finally passed by Parliament on 30 November 1977 with just three amendments.<sup>18</sup>

<sup>13</sup> Reece McDougall, Public address: 40 Years of the NSW Heritage Act, 18 April 2017.

<sup>14</sup> Reece McDougall, Public address: 40 Years of the NSW Heritage Act, 18 April 2017.

<sup>15</sup> *Hansard*, NSW Legislative Assembly, 17 November 1977, p 9865 (Keith O'Connell); Reece McDougall, Public address: 40 Years of the NSW Heritage Act, 18 April 2017.

<sup>16</sup> Reece McDougall, Public address: 40 Years of the NSW Heritage Act, 18 April 2017.

<sup>17</sup> *Hansard*, NSW Legislative Assembly, 16 November 1977, p 9792 (Bill Haigh).

<sup>18</sup> Reece McDougall, Public address: 40 Years of the NSW Heritage Act, 18 April 2017.

- 1.17** In the early years of the Act, its policy objectives were implemented primarily through the making of a range of statutory orders often in instances where items were under threat. Such orders, as provided for in the original Act, included Permanent Conservation Orders (PCOs), Interim Conservation Orders (ICOs) and other orders to flag or stop work that could impact or cause harm to a potential heritage item. The reactive, threat-driven nature of the Act's provisions and mechanisms was alluded to in its second reading speech:

Recent experiences involving the demolition or attempted demolition of historically important buildings demonstrate the necessity for swift action to prevent a threatened demolition of a building that may comprise an item of the environmental heritage. Once it is appreciated that the loss of an item of the heritage is usually irretrievable, the necessity for efficient and swift administrative and legal action of a holding nature is apparent.<sup>19</sup>

- 1.18** The shift from thinking about heritage management and conservation as regulation and control to one of recognition and celebration came much later with the 1999 amendments to the Act, as will be discussed below.<sup>20</sup>

### **Previous amendments to the Heritage Act**

- 1.19** The Act has been subject to several amendments since its commencement, some minor and others having more substantive effect on the State's heritage management framework.
- 1.20** In 1996, a number of changes to the constitution of the Heritage Council of NSW were effected by the *Heritage Amendment Act 1996*.
- 1.21** More substantial amendments came in 1999 with the passage of the *Heritage Amendment Act 1998*, the object of which was to:

... amend the *Heritage Act 1977* to provide for interim heritage orders, the State Heritage Register and heritage agreements and to make further provision with respect to the conservation of items of the environmental heritage, financial incentives, the role of local councils and government instrumentalities, excavation permits, and in other respects; and for other purposes.<sup>21</sup>

- 1.22** Most significantly, this amending legislation established the State Heritage Register as a statutory list of items and places of particular importance to the people of New South Wales. Prior to the advent of the State Heritage Register as a specific statutory list, the original Heritage Act enacted in 1978 contained a provision requiring the inaugural Heritage Council of NSW to keep a publically accessible register of buildings, works, relics and land subject to conservation instruments, orders made or notices issued under the Act (such as those outlined at paragraph 1.17 above).<sup>22</sup>

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<sup>19</sup> *Hansard*, NSW Legislative Assembly, 16 November 1977, p 9795 (Bill Haigh).

<sup>20</sup> Reece McDougall, Public address: 40 Years of the NSW Heritage Act, 18 April 2017.

<sup>21</sup> *Heritage Amendment Act 1998*, p 1.

<sup>22</sup> *Heritage Act 1977*, s 22.

**1.23** In differentiating between State and local significance, the *Heritage Amendment Act 1998* reserved the State Heritage Register (exclusively) for items that meet the threshold of State significance. State heritage significance is defined in the Act as follows:

State heritage significance, in relation to a place, building, work, relic, moveable object or precinct, means significance to the State in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item.<sup>23</sup>

**1.24** According to a NSW Heritage Office publication, the advent of the State Heritage Register signaled a fundamental shift in attitudes and thinking around heritage conservation:

The establishment of the State Heritage Register reflected a fundamental change in attitude to heritage conservation. Prior to its establishment, items were often listed to provide emergency protection when they were threatened. In contrast, items added to the State Heritage Register are listed on the basis of their significance. By identifying items that are significant, the government aims to provide protection and certainty before a threat arises.<sup>24</sup>

**1.25** Upon its establishment, all items or properties previously subject to Permanent Conservation Orders were transferred in bulk to the State Heritage Register to become its foundation listings.<sup>25</sup>

**1.26** While the 1999 amendments represent the Act's last major reforms,<sup>26</sup> it was subject to comprehensive review in 2007 led by an independent expert panel appointed by the then NSW Minister for Planning, the Hon Frank Sartor.<sup>27</sup>

**1.27** The terms of reference for the 2007 review included consideration of: duplicative and overlapping provisions with other legislation; strengthening the integration of heritage provisions with the *Environmental Planning and Assessment Act 1979*; State heritage provisions and practice including the listing process, public benefits of outcomes, the role of property owners and stakeholders and appeal rights; the approvals process for alterations to items on the State Heritage Register, including the rights of property owners, resourcing and time efficiency; and the functions and constitution of the Heritage Council.<sup>28</sup>

**1.28** In 2005 the *Environmental Planning and Assessment Act 1979* was amended to provide a new part 3A. This had the effect that protections under the Heritage Act for listed items were turned off when a project was declared to be State Significant Development. It had the same effect for the Aboriginal heritage protections under the *National Parks and Wildlife Act 1974*. Under these provisions the planning authority would still consider the significance of a heritage item but was permitted to consent to its destruction or alteration regardless of the protections that were otherwise found under the Heritage Act. When Part 3A was repealed in 2011 the same basic provisions were transferred over to what was then a new Part 4 of the Act. Despite amendments

<sup>23</sup> *Heritage Act 1977*, s 4A.

<sup>24</sup> NSW Heritage Office, *Heritage information series: Heritage listings in New South Wales – A brief history*, pp 8-9.

<sup>25</sup> Submission 223, Ms Rosalind Strong AM, p 1.

<sup>26</sup> NSW Government/Heritage NSW, *Review of NSW heritage legislation: Discussion paper*, April 2021, p 7.

<sup>27</sup> Submission 90, GML Heritage, p 3.

<sup>28</sup> Submission 90, GML Heritage, p 3.

and renumbering since, these provisions remain in the *Environmental Planning and Assessment Act 1979*.

## The New South Wales heritage system: An overview

**1.29** This section presents an overview of the current New South Wales heritage system, including the Act's key provisions and regulatory framework. This is not an exhaustive account of the Act and the State's heritage system, but a summary of its key provisions and features as they relate to the issues at hand.

### Different levels of heritage identification and listing

**1.30** At the heart of the heritage system is a differentiated framework which recognises varying levels of significance, each level with its corresponding statutory lists, consent authorities and management arrangements. This approach reflects the varying thresholds and contexts in which an item's significance can be assessed and from which an item's meanings and values are derived. The different levels are not about rankings or degrees of importance. They are more accurately about context.<sup>29</sup> This framework consists of four recognised levels:

- Local heritage significance
- State heritage significance
- National heritage significance
- World heritage significance.

**1.31** **Local heritage items** are identified and protected via listings on the heritage schedule of a council's Local Environmental Plan (LEP) made under the *Environmental Planning and Assessment Act 1979*. Listing on an LEP recognises the item's significance in a local context or setting and affords appropriate protections for those values. The local council is the consent authority for changes to these items. These matters are strictly not the subject of this review but are nevertheless relevant in considering the scope of the Heritage Act and the broader protection of heritage in New South Wales.

**1.32** **State heritage items** are listed on the State Heritage Register and are identified as being of significance or importance to the whole of New South Wales. Items on the State Heritage Register are assessed against – and are considered to have met – the Heritage Council of NSW's assessment criteria (shown at Appendix 1). They are protected and managed under the Heritage Act. The Heritage Council of NSW, or Heritage NSW as its delegate, is the approval body for changes to State-listed items.

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<sup>29</sup> Heritage Council of NSW, *Levels of heritage significance*, 2008, p 1, <https://www.heritage.nsw.gov.au/assets/Uploads/a-z-publications/j-l/levels-of-heritage-significance-2008.pdf>.

- 1.33 National heritage items** are listed on the National Heritage List by the Commonwealth government on recommendation of the Australian Heritage Council. They are places or items of outstanding natural, Indigenous or historic heritage value to Australia as nation.<sup>30</sup>
- 1.34 World heritage items** are inscribed on the World Heritage List by United Nations Educational, Scientific and Cultural Organisation (UNESCO).<sup>31</sup>
- 1.35** A heritage place may have one or more levels of significance and thus may be protected under more than one statutory list.<sup>32</sup>
- 1.36** The *Heritage Act 1977* is primarily concerned with items of State heritage significance.

### Listing on the State Heritage Register

- 1.37** Under section 32 of the Heritage Act, the Minister may direct the listing of an item on the State Heritage Register following recommendation by the Heritage Council of NSW:

32 Minister can direct listing on State Heritage Register

(1) The Minister may direct the listing on the State Heritage Register of a place, building, work, relic, moveable object or precinct that the Minister considers is of State heritage significance, but only if the Heritage Council has recommended that the item be listed and the Minister has considered the following—

- a) the recommendation of the Heritage Council that the item should be listed,
- b) whether the long-term conservation of the item is necessary,
- c) whether the listing would render the item incapable of reasonable or economic use,
- d) whether the listing would cause undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated.<sup>33</sup>

- 1.38** Once an item or object is listed on the State Heritage Register, it is an offence under the Act to carry out a range of 'controlled activities' prescribed by section 57 unless approval has been granted by the relevant approval body. Specifically, a person must not:

- demolish the building or work,
- damage or despoil the place, precinct or land, or any part of the place, precinct or land,
- move, damage or destroy the relic or moveable object,
- excavate any land for the purpose of exposing or moving the relic,

<sup>30</sup> Heritage Council of NSW, *Levels of heritage significance*, 2008, p 4, <https://www.heritage.nsw.gov.au/assets/Uploads/a-z-publications/j-l/levels-of-heritage-significance-2008.pdf>.

<sup>31</sup> Heritage Council of NSW, *Heritage listing explained: What it means for you*, <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Heritage/heritage-listing-explained-2011.pdf>.

<sup>32</sup> Heritage NSW, *Difference between state and local heritage*, NSW Government, <https://www.heritage.nsw.gov.au/about-our-heritage/understanding-the-different-levels-of-heritage/>.

<sup>33</sup> *Heritage Act 1977*, s 32.

- carry out any development in relation to the land on which the building, work or relic is situated, the land that comprises the place, or land within the precinct,
- alter the building, work, relic or moveable object,
- display any notice or advertisement on the place, building, work, relic, moveable object or land, or in the precinct,
- damage or destroy any tree or other vegetation on or remove any tree or other vegetation from the place, precinct or land.<sup>34</sup>

**1.39** Owners or their representatives must therefore seek development approval under the Heritage Act for certain changes or alterations to State Heritage Register items – commonly known as a Section 60 works application. This is required for works that have, or have the potential to have, an impact on the heritage significance of a State-listed item. Changes are assessed on their merits. In assessing applications, the consent authority determines whether the proposed works will have an acceptable impact on the heritage significance of the place.<sup>35</sup>

**1.40** Under subsection 2 of section 57, certain activities and works – for example, maintenance and cleaning undertaken in accordance with prescribed standards – are exempt from approval under the Heritage Act. Such activities and works must have little to no impact on the item's heritage significance and support its management.<sup>36</sup> These are referred to as 'standard exemptions'.

**1.41** Additionally, site-specific exemptions – exempting owners or their representatives from the need to seek Heritage Council approval for certain works – may be recommended by the Heritage Council, approved by the Minister and formally gazetted. They provide for 'certain activities and changes to be carried out without the need for formal approval that are specific to the heritage item'.<sup>37</sup> They can be tailored to respond to the unique requirements or circumstances of individual listings.

**1.42** Section 118 of the Act provides for minimum standards of maintenance and repair for items on the State Heritage Register, specifically with respect to the following:

- the protection of the building, work or relic from damage or deterioration due to weather (including such matters as the weatherproofing of roof, doors and windows),
- the prevention of and the protection of the building, work or relic from damage or destruction by fire,
- security (including fencing and surveillance measures to prevent vandalism),
- essential maintenance and repair (being maintenance and repair necessary to prevent serious or irreparable damage or deterioration).<sup>38</sup>

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<sup>34</sup> *Heritage Act 1977*, s 57.

<sup>35</sup> Heritage Council of NSW, *Heritage listing explained: What it means for you*, <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Heritage/heritage-listing-explained-2011.pdf>.

<sup>36</sup> Heritage NSW, *Standard exemptions*, Department of Premier and Cabinet, <https://www.heritage.nsw.gov.au/applications/state-heritage-items/standard-exemptions/>.

<sup>37</sup> Submission 75, Lucas, Stapleton, Johnson and Partners, p 3.

<sup>38</sup> *Heritage Act 1977*, s 118.



### Interim heritage and 'stop work' orders

- 1.43** Under section 24, Interim Heritage Orders can be made to protect items (places and objects) potentially of heritage significance that are under immediate threat. The order provides up to a 12-month period where the item cannot be harmed while an in-depth heritage assessment is carried out for listing on an appropriate register.
- 1.44** Interim Heritage Orders are made by the Minister on recommendation of the Heritage Council of NSW, or by local councils under delegation.<sup>39</sup>
- 1.45** The effect of an Interim Heritage Order is similar to listing on the State Heritage Register. The controlled activities which must not be carried out to items on the State Heritage Register (except in pursuance to a permit or approval) also apply to items subject to an Interim Heritage Order.
- 1.46** Additionally, under section 136, the Minister or Chair of the Heritage Council can issue a Stop Work Order where they are of the opinion that an item is being or is about to be harmed, and where that item is not currently listed on the State Heritage Register or subject to an Interim Heritage Order. The effect of a Stop Work Order is to immediately cease all work to the subject item for a period of 40 days.<sup>40</sup>

### Archaeology: Relics provisions

- 1.47** Local and State significant relics (historical archaeology) are afforded blanket protection under the Heritage Act.<sup>41</sup>
- 1.48** The Act defines a relic as any deposit, artefact, object or material evidence that:
- relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
  - is of State or local heritage significance.<sup>42</sup>
- 1.49** Under section 139, a person must not disturb or excavate land where it is known (or likely to be known) that it will result in a relic being discovered, exposed, moved, damaged or destroyed, unless carried out in accordance with an excavation permit issued under the Act.<sup>43</sup> Some exceptions apply in limited circumstances.

### Offences against the Act

- 1.50** In accordance with section 156, any person is guilty of an offence against the Act if that person offends against:

<sup>39</sup> Heritage NSW, *Current interim heritage orders*, Department of Premier and Cabinet, <https://www.heritage.nsw.gov.au/protecting-our-heritage/interim-heritage-orders/>.

<sup>40</sup> *Heritage Act 1977*, s 136.

<sup>41</sup> Submission 90, GML Heritage, p 25.

<sup>42</sup> *Heritage Act 1977*, s 4.

<sup>43</sup> *Heritage Act 1977*, s 139.

- any matter or thing either directed to be done or forbidden to be done under the Act; or
- any matter or thing either directed to be done or forbidden to be done by the Minister, the Heritage Council or any other person or body authorised by or under the Act.<sup>44</sup>

**1.51** The maximum penalty for an offence against the Act is 10,000 penalty units or imprisonment for a period not exceeding 6 months, or both.<sup>45</sup>

### **The NSW Heritage Grants Program**

**1.52** Established under section 105A, the NSW Heritage Grants Program is administered by Heritage NSW on behalf of the Heritage Council. It is the main incentives-based support available to some owners of items on the State Heritage Register as well as Aboriginal Places declared under the *National Parks and Wildlife Act 1974*. It is a rolling/ongoing program.

**1.53** Grants to communities and local government are also administered under this program. This stream provides funding to local government for community engagement projects, local government heritage studies, small grants to conserve local heritage items and for local councils to establish a Heritage Advisor Service.<sup>46</sup>

**1.54** The 2021-23 grant round saw \$5.9 million awarded to 231 projects across three broad categories of Aboriginal Cultural Heritage, Caring for State Heritage and Community Heritage. At an average of approximately \$25,000 for each grant this is an important, but modest, contribution to the conservation and maintenance of State heritage.<sup>47</sup>

### **The Heritage Council of NSW**

**1.55** Section 7 and 8 establish the Heritage Council of NSW and provide for its constitution and functions. In accordance with these provisions, the Council is to consist of nine members, eight of whom are to be appointed by the Minister. The ninth member is to be the Secretary of the Department of Planning, Industry and Environment.<sup>48</sup>

**1.56** Among the eight appointed members, five are to be individuals who, in the opinion of the Minister, possess qualifications, knowledge and skills in any of the following areas: archaeology; architecture; the building, development and property industries; conservation of the environmental heritage; engineering; New South Wales or Australian history; local government; moveable heritage; natural heritage; planning; property, planning or environmental law; property economics; rural interests; cultural landscapes.<sup>49</sup>

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<sup>44</sup> *Heritage Act 1977*, s 156.

<sup>45</sup> *Heritage Act 1977*, s 157.

<sup>46</sup> Heritage NSW, *Apply for a grant*, Department of Premier and Cabinet, <https://www.heritage.nsw.gov.au/grants/applying-for-a-grant/>.

<sup>47</sup> Heritage NSW, *Apply for a grant*, Department of Premier and Cabinet, <https://www.heritage.nsw.gov.au/grants/applying-for-a-grant/>

<sup>48</sup> *Heritage Act 1977*, s 7 and s 8.

<sup>49</sup> *Heritage Act 1977*, s 8.

- 1.57** Of the remaining appointed members, one is to be an individual who, in the opinion of the Minister, possesses knowledge and skills relating to Aboriginal heritage. Another is to be nominated by the National Trust of Australia (NSW), and the final member is to be appointed as Chairperson by the member's instrument of appointment or a subsequent instrument executed by the Minister.<sup>50</sup>
- 1.58** The functions of the Heritage Council are set out in section 21 of the Act. They are:
- a) to make recommendations to the Minister for or with respect to the exercise by the Minister of any functions conferred or imposed on the Minister by or under this Act or the regulations,
  - b) to make recommendations to the Minister relating to the taking of measures for or with respect to the conservation, exhibition or display, provision of access to, and the publication of information about items of 'environmental heritage,'
  - c) to carry out investigations, research and inquiries relating to the matters referred to in paragraph (b),
  - d) to arrange and co-ordinate consultations, discussions, seminars and conferences relating to the matters referred to in paragraph (b),
  - e) to maintain a database (to be called the State Heritage Inventory) listing items of State and local heritage significance,
  - f) to conduct community education concerning the State's environmental heritage,
  - g) to exercise such other functions as are conferred or imposed on it by or under this or any other Act or the regulations.<sup>51</sup>
- 1.59** For the purposes of section 57, the Heritage Council is the 'approval body' for Section 60 applications for works likely to impact on significance of a State-listed items. The Council delegates some of these functions and responsibilities to Heritage NSW and its authorised officers.<sup>52</sup>
- 1.60** With respect to listings on the State Heritage Register, the Heritage Council makes recommendations to the Minister based on an assessment of the nominated item's significance. Following consideration of the Council's recommendation, it is ultimately a matter for the Minister whether or not to direct the listing.

## The NSW Government's discussion paper

- 1.61** The NSW Government's discussion paper constructs the case for change and sets the scene for the various reform proposals foreshadowed in the report.

<sup>50</sup> *Heritage Act 1977*, s 8.

<sup>51</sup> *Heritage Act 1977*, s 21.

<sup>52</sup> Heritage NSW, *Pre-lodgement services*, Department of Premier and Cabinet, <https://www.heritage.nsw.gov.au/assets/Uploads/files/Pre-Lodgement-Services-Policy-for-customers.pdf>.

**1.62** In the paper's foreword, Minister Harwin describes the State's heritage laws as some of the oldest legislation in Australia – 'barely changed' in twenty years – while drawing attention to the perception that a heritage listing is burdensome and costly.<sup>53</sup>

**1.63** Bolstering the case for reform, the discussion paper refers to a number of changes, developments or events that, in its narrative, have fundamentally altered the operating context of the Heritage Act over the past decade. Most immediately, the narrative points to the 2019 bushfires as shining a light on how climate change may affect heritage conservation, and also the COVID-19 pandemic which it credits with sharpening the focus on the role of heritage in job creation and economic recovery.<sup>54</sup>

**1.64** More broadly, the paper implies there are opportunities to better align the current heritage system with the NSW Government's overarching policy priorities. In particular, it states:

The NSW Government's policy priorities of customer service, a strong economy and well-connected communities with quality local environments have also highlighted shortcomings of the current heritage system.<sup>55</sup>

**1.65** Demographic changes in the community since the 1970s also figure highly as part of this narrative, highlighting to readers that the State Heritage Register has not kept pace with the increasing social and cultural diversity of New South Wales:

The NSW community of today looks vastly different to that of the 1970s, when the Heritage Act was first introduced. Greatly increased cultural diversity and a renewed focus on Aboriginal culture and heritage, mean that many of the items protected by the SHR may no longer fully reflect the many different narratives and values that underpin our communities of today and tomorrow. Many places and sites of Aboriginal cultural heritage are iconic and significant, and they should be acknowledged for their special place in our collective history.<sup>56</sup>

**1.66** In explaining the rationale for the review, the discussion paper characterises the Act as outdated, antiquated or otherwise out-of-step with current trends and approaches in heritage conservation and related disciplines. Moreover, it is considered to reflect an 'an outdated reliance on prescriptive regulatory measures and compliance mechanisms to achieve its objectives, and is generally considered onerous, procedurally complex and adversarial to adaptive reuse'.<sup>57</sup>

**1.67** According to the discussion paper, the consequences for owners or developers affected by the Act have contributed to a negative perception of heritage listing and act as a disincentive to ownership:

Heritage owners, developers and administrators face uncertainty, expense, duplication and delays in relation to heritage listing and approvals. This has led to a perception that heritage listing can be a burden rather than a celebration of our history. These issues represent a significant disincentive to heritage ownership, conservation, maintenance

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<sup>53</sup> NSW Government/Heritage NSW, *Review of NSW heritage legislation: Discussion paper*, April 2021, p 3.

<sup>54</sup> NSW Government/Heritage NSW, *Review of NSW heritage legislation: Discussion paper*, April 2021, p 6.

<sup>55</sup> NSW Government/Heritage NSW, *Review of NSW heritage legislation: Discussion paper*, April 2021, p 6.

<sup>56</sup> NSW Government/Heritage NSW, *Review of NSW heritage legislation: Discussion paper*, April 2021, p 6.

<sup>57</sup> NSW Government/Heritage NSW, *Review of NSW heritage legislation: Discussion paper*, April 2021, p 7.

and adaptive reuse, which are the cornerstones of the heritage conservation system in NSW.<sup>58</sup>

- 1.68** The review is therefore considered a timely opportunity to assess whether the legislation remains 'the most effective, relevant and best practice way of recognising and conserving the important heritage of NSW'.<sup>59</sup>
- 1.69** The discussion paper puts forward three key policy themes to underpin the legislative review process, being:
- **Making heritage easy:** making heritage ownership and administration simple and cost effective
  - **Putting heritage to work:** making heritage a viable opportunity for economic growth, employment and community enjoyment
  - **Making heritage relevant:** making heritage a cornerstone of New South Wales communities, quality local environments and beautiful public spaces<sup>60</sup>
- 1.70** Throughout the inquiry, there was a significant amount of debate about these guiding policy themes, with a large number of inquiry participants noting that identifying, protecting and conserving the State's heritage – the fundamental reasons for the Act's existence – has not been included as a guiding policy theme. This was considered by some to be a significant omission.<sup>61</sup>
- 1.71** The discussion paper contained 19 focus questions for consultation. These are reproduced in full at Appendix 2. The various reform proposals canvassed in the discussion paper are addressed in detail in each chapter of this report.

## Committee comment

- 1.72** The committee notes the wide-ranging nature of evidence gathered in the course of this inquiry and is encouraged by the enthusiasm and passion with which inquiry participants shared their insights and perspectives. In undertaking this inquiry, the committee's scope and remit was limited to matters relevant to the *Heritage Act 1977* and, by implication, matters concerning the identification, protection and management of items of State heritage significance only. For the

<sup>58</sup> NSW Government/Heritage NSW, *Review of NSW heritage legislation: Discussion paper*, April 2021, p 7.

<sup>59</sup> NSW Government/Heritage NSW, *Review of NSW heritage legislation: Discussion paper*, April 2021, p 7.

<sup>60</sup> NSW Government/Heritage NSW, *Review of NSW heritage legislation: Discussion paper*, April 2021, p 7.

<sup>61</sup> See for example: Submission 47, Docomomo Australia, p 3; Submission 120, Wollongong City Council (Staff Submission), p 5; Submission 223, Mrs Rosalind Strong AM, p 1; Submission 90, GML Heritage, p 2; Submission 103, Mr Chris Betteridge, p 4; Submission 41, Central Coast Council, p 2; Evidence, Mr David Burdon, Conservation Director, National Trust of Australia (NSW), 13 August 2021, p 13; Evidence, Mr Peter Romey, former Executive Committee Member, Australia ICOMOS, 13 August 2021, p 13; Evidence, Cr Linda Scott, President, Local Government NSW, 24 August 2021, pp 2 and 4; Evidence, Mr Terry Tredrea, Strategic Planner, Lane Cove Council, 24 August 2021, p 7; Evidence, Ms Kate Denny, Partner and Heritage Planner, Lucas Stapleton Johnson and Partners, 17 August 2021, p 12; Evidence, Professor Richard Mackay AM, private individual, 2 September 2021, p 4; Evidence, Ms Sharon Veale, Chief Executive Officer, GML Heritage, 2 September 2021, pp 17 and 18; Evidence, Ms Lisa Newell, Principal Strategic Planner, Hornsby Shire Council, 24 August 2021, p 7.

avoidance of doubt, matters concerning the management of local heritage items protected under the *Environmental Planning and Assessment Act 1979*, did not form a significant part of the committee's deliberations despite being raised in evidence to the committee. This is consistent with the NSW Government's review which is not proposing any reforms to the way local heritage items are managed under that Act.

- 1.73** The committee heard compelling evidence about how understandings of heritage – including community priorities for what we value, celebrate and wish to hold on to – have evolved significantly since the Act's commencement. In particular, heritage increasingly involves the recognition and celebration of narratives, identities, practices and achievements outside the white male Anglo-Celtic tradition which has dominated heritage lists in Australia. In particular, it is apparent to the committee that much greater attention must be given to public policy questions about First Nations heritage, women's heritage and migrant stories, as they relate to the pattern or course of the State's development over time. In considering such questions, those groups, communities and custodians of heritage must have a strong presence, voice and influence in the public policy process. The committee is acutely aware of our limitations and lack of representation in that regard. It would be disingenuous of the committee to pretend otherwise.
- 1.74** In the committee's view, the next steps for the review of the *Heritage Act 1977* should give greater priority to the principles of protection, conservation and celebration as the bedrock principles to guide any review of heritage legislation. Stakeholder commentary on the Government's guiding policy themes for the review served as an important reminder that these principles must be front and centre. In the committee's opinion, subsequent steps of the legislative review processes should be recalibrated to reflect the foundational importance of heritage identification, protection and conservation. While noble and worthy outcomes in and of themselves, the guiding policy themes of making heritage easy, putting heritage to work and making heritage relevant must be secondary considerations to the primary purpose of protecting and conserving the State's important heritage.
- 1.75** The committee notes that a separate co-design process is underway to look at the most effective legislative framework or model for the management and protection of Aboriginal cultural heritage within New South Wales, with the NSW Government and Aboriginal stakeholders working together to advance these important reforms. While we welcomed evidence about issues surrounding Aboriginal cultural heritage, and have outlined some of the key issues in Chapter 3, the committee does not wish to pre-empt or otherwise prejudice the outcomes of that process by making specific recommendations beyond this inquiry's remit. The committee's deliberations were therefore limited to how Aboriginal cultural heritage could be better protected under the *Heritage Act 1977*. We do, however, add our support to the need for more modern and culturally sensitive Aboriginal heritage legislation, one that empowers Aboriginal people to determine and make decisions on the protection and management of their heritage. In the committee's view, it is unacceptable that Aboriginal heritage is still primarily protected under the State's flora and fauna laws.

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**Recommendation 1**

That any legislative reform of the *Heritage Act 1977* have as its guiding principles the need to protect, conserve and celebrate the State's heritage, and that the guiding policy themes in the government's discussion paper of making heritage easy, putting heritage to work and making heritage relevant, must be secondary to these principles.

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## Chapter 2 Key issues for legislative reform

This chapter considers stakeholder perspectives on the key issues for legislative reform as outlined in the NSW Government's discussion paper. It begins with an overview of stakeholder views on the adequacy of the *Heritage Act 1977* – including its objects, principles, definitions and the extent to which the Act currently meets community expectations for heritage protection and conservation. It then turns its focus to the constitution of the Heritage Council of NSW, followed by a discussion of issues relating to the State Heritage Register, including an evaluation of the NSW Government's proposed category system for listings.

The chapter then considers the heritage permit/approval process under the Act, looking at the experience of some heritage owners in navigating the approval process, before turning to stakeholder perspectives on the NSW Government's proposed reforms to the heritage permit process. Finally, the chapter ends with a discussion on issues surrounding compliance and how heritage could be better integrated into the planning system.

### The adequacy of the Act

**2.1** This section presents a summary of stakeholder views on the adequacy and relevancy of the *Heritage Act 1977* (the Act) in meeting its policy objectives and community expectations for the identification, protection and management of the State's heritage. Central to this evidence was the question of whether the Act remains a fit-for-purpose statute in its present operating context, and whether wholesale changes are necessary.

#### Overall adequacy and relevancy of the Act's objectives

**2.2** A view shared by many inquiry participants was that the problem is not with the Act itself but with how the Act is interpreted and administered. Generally, this view was connected to the uncertainties, expenses, frustrations and delays that owners, proponents and other 'users' experience in navigating the heritage system, with many attributing this to the way in which the Act is administered rather than anything intrinsic to the legislative provisions themselves.

**2.3** The concerns with the administration of the Act also expressly raised the need for more resources to be available to Heritage NSW and the Heritage Council to undertake their roles in identifying and protecting State heritage. This lack of resources was said by numerous stakeholders to cause undue delay and frustration in the listing, assessment and management of State heritage.<sup>62</sup>

**2.4** A chief exponent of this view – and indeed a voice for the heritage community – was the National Trust of Australia (NSW). Referring to a forum it hosted to elicit community and

<sup>62</sup> See for example: Submission 200, Ms Caitlin Allen, p 4; Submission 78, National Trust of Australia (NSW) – Blue Mountains Branch, p 1; Submission 80, History Council of NSW, p 1; Submission 84, Haberfield Association, p 5; Submission 86, Ms Polly Seidler, p 8; Submission 28, Placemaking NSW, Department of Planning, Industry and Environment, p 2; Submission 45, Penrith City Council, p 2; Submission 47, Docomomo Australia, p 1; Submission 51, Blue Mountains City Council, p 4; Submission 23, Sue Rosen Associates, p 2; Submission 102, Planning Institute of Australia, p 7; Submission 120, Wollongong City Council (Staff Submission), p 7.

stakeholder views on the present review, the Trust maintained that the consensus view among forum participants was that the Act's principles and objectives remain appropriate and relevant:

The Forum affirmed the fundamental importance of the role of the Heritage Act to identify, protect, promote and conserve cultural heritage places in NSW and identified a number of issues as critical to the success of the Review. By far and away, the most common feedback was that while the Heritage Act and its regulations may benefit from small updates and amendments, its objectives and principles remain appropriate and relevant.<sup>63</sup>

- 2.5** On this basis, the Trust dismissed suggestions that the complications and delays which the review purports to remedy are being caused by the Act itself, this idea being a core premise of the NSW Government's discussion paper:

The Discussion Paper for the Heritage Act is based on the assumption that it is the Act itself that is causing the issues it is seeking to address. ... The National Trust strongly argues that it is not the Act causing these complications, rather it is the lack of resourcing for the implementation of the Act that is at the core of these issues. The Objects of the Heritage Act are still relevant and their core role in the identification, conservation and promotion of the State's heritage are just as applicable as they were 45 years ago.<sup>64</sup>

- 2.6** The Trust's assessment accords with the position put forward by Australia ICOMOS, a non-government professional organisation that exists to promote best practice in the conservation of cultural heritage. Australia ICOMOS maintained that the reputed uncertainties, delays and expenses are more likely a result of administrative, resourcing and attitudinal issues than any structural issues with the Act. It explained:

It is likely that any uncertainty, expense, duplication and delays are the result of administrative, resourcing, education and attitudinal shortcomings rather than structural problems with the Act itself or the broader heritage system. The proposition that major changes are required to the Heritage Act to address these issues is not substantiated.<sup>65</sup>

- 2.7** Many witnesses, including the National Trust of Australia (NSW), expressed concern regarding the use of State Significant Developments in the *Environmental Planning and Assessment Act 1979* to effectively turn off the provisions of the Heritage Act. The strong theme of the evidence and submissions was that this interaction between the Environmental Planning and Assessment Act and the Heritage Act was unbalanced and inappropriately compromises heritage where State Significant Developments are able to override all heritage concerns.<sup>66</sup>

- 2.8** The Australian Institute of Architects referred to feedback from members of its NSW Chapter to advance a similar argument, reporting to the committee that their main concerns relate to the Act's implementation.<sup>67</sup> It concluded that, notwithstanding some minor amendments, the Act

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<sup>63</sup> Submission 292, National Trust of Australia (NSW), p 8.

<sup>64</sup> Submission 292, National Trust of Australia (NSW), p 26.

<sup>65</sup> Submission 291, Australia ICOMOS, p 1.

<sup>66</sup> See for example: Submission 292, National Trust of Australia (NSW), p 13; Evidence, Mr David Burdon, Conservation Director, National Trust of Australia (NSW), 13 August 2021, p 10; Submission 25, Tanner Kibble Denton Architects Pty Ltd, p 1; Submission 47, Docomomo Australia, p 5; Submission 83, The Astor Pty Ltd, p 2; Submission 264, Property Council of Australia, p 6.

<sup>67</sup> Submission 290, Australian Institute of Architects, p 6.

is largely adequate in meeting the needs of the community and that greater attention should instead be given to its administration and resourcing:

We believe the Act itself is largely adequate in being able to meet the needs of customers and the community and protect our heritage assets. There are relatively minor amendments that could improve the Act further, but we do not see the Act itself as the largest issue, rather we believe that the administration and resourcing of the Act fails to support the legislation effectively.<sup>68</sup>

**2.9** Similarly, GML Heritage, Australia's largest heritage consultancy, was definitive in its assertion that the 'problems' are not with the Act itself, but lie elsewhere:

We see the 'problem' is not the Act itself, rather, its interpretation and application combined with the depletion of resourcing, and a general lack of support for a culture that encourages an appreciation of heritage as a vital part of our historical distinctiveness and contemporary community life and wellbeing. ... It is our view that the 'problem' with heritage is the direct result of administrative, resourcing, and educational shortcomings rather than the Act itself, or the broader heritage management system.<sup>69</sup>

**2.10** This was a view also shared by Professor Richard Mackay AM, heritage expert, former member of the Heritage Council of NSW and Commissioner of the NSW Independent Planning Commission. According to Professor Mackay, the main elements of the Act are 'well resolved' and 'highly workable' but the administration of the Act leaves something to be desired:

The current Act, although not subject to major reform for nearly two decades, is not particularly problematic. Indeed, its objectives, fundamental principles and processes and the protection and consent provisions are well resolved and could be highly workable. However, the Act is not currently administered as effectively as it might be.<sup>70</sup>

**2.11** A number of heritage consultants who participated in the inquiry submitted that the objectives of the Act are still highly relevant and adequate, suggesting that the focus of the review should be elsewhere. For example, Curio Projects Pty Ltd considered the objectives to be 'extremely relevant', and so too did City Plan Heritage, advising the committee that 'the objectives of the Heritage Act are still relevant and adequate and do not require amendment'.<sup>71</sup> This was largely echoed by Dr Anne Warr, Director of Ann Warr Heritage Consulting, who observed that '[g]enerally, the spirit and intent of the 1977 Act is as relevant today as when it was created. It's the implementation of the Act that needs attention'.<sup>72</sup>

**2.12** This view was also reinforced by Ms Sheridan Burke, heritage consultant and former staffer of the then Heritage Branch which serviced the inaugural Heritage Council, who stated:

[T]he major problems that inhibit its ability to deliver modern and best practice outcomes lie in its ineffective operation and inadequate and poorly prioritised

<sup>68</sup> Submission 290, Australian Institute of Architects, p 2.

<sup>69</sup> Submission 90, GML Heritage, pp 1 and 4.

<sup>70</sup> Submission 59, Professor Richard Mackay AM, p 3.

<sup>71</sup> Submission 88, City Plan Heritage, p 1.

<sup>72</sup> Submission 180, Dr Ann Warr, p 1.

resourcing, not a need for legislative change. The effective delivery of the Act's objectives are prevented by inadequate resources and strategic planning.<sup>73</sup>

- 2.13** Providing important insights from an owner's perspective, Dr Kate Sullivan asserted that the objects of the Act are still relevant and fit-for-purpose and that, by and large, the Act:

... is capable of delivering strong and effective identification, protection, promotion and conservation of heritage in NSW provided it is funded adequately and administered in good faith.<sup>74</sup>

- 2.14** As such, Dr Sullivan formed the view that the Act requires 'little change'. In her view, the 'apparent red tape' is a direct result of administrative inefficiencies and inadequate skills and resources to support the Act's administration.<sup>75</sup>

- 2.15** While this position was repeated in many submissions and in testimony before the committee,<sup>76</sup> it was not, however, unanimous. Other inquiry participants highlighted a number of perceived deficiencies, inadequacies and omissions in the Act, or otherwise questioned the extent to which it currently meets community needs and expectations.

- 2.16** One individual, Mr Paul Rappoport, heritage architect and consultant, described the Act (as it is currently written) as 'flaccid', difficult to understand and removed from to the general public and those affected by it. Emphasising the importance of 'cultural built heritage' and its benefits to the community – as well as the policy and legislative prerequisites for delivering good heritage outcomes – Mr Rappoport explained:

It is my opinion that as it stands, the Act is remote, flaccid and unintelligible to the general public, owners and many sectors of society that are affected by it. Currently, there is insufficient community engagement and political commitment to the Act and thereby; [cultural built heritage] in society. It needs to be made into a dynamic, user-friendly piece of legislation with much more promotion as to the benefits to society by having heritage idealised as a public good. We only have to look at the recent community campaigns for Sirius and Willow Grove to see where the sentiment lies. To correct this problem, I would suggest that the Act get re-written to include much more activation, promotion and political commitment to [cultural built heritage] as a public good in society.<sup>77</sup>

- 2.17** Taking a slightly different perspective, Urban Taskforce Australia, representing property developers and equity financiers, considered the current application of the Act to be an

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<sup>73</sup> Submission 229, Ms Sheridan Burke, p 1.

<sup>74</sup> Submission 181, Dr Kate Sullivan, p 2.

<sup>75</sup> Submission 181, Dr Kate Sullivan, p 2.

<sup>76</sup> See for example: Submission 41, Central Coast Council, p 2; Submission 104, Australian Association of Consulting Archaeologists, p 2; Submission 28, Placemaking NSW, Department of Planning, Industry and Environment, p 1; Submission 33, EJE Heritage, p 1; Submission 56, Professor Richard Mackay AM, p 3; Submission 77, Urban Development Institute of Australia, p 1; Submission 80, History Council of NSW, p 1; Submission 87, Curio Projects Pty Ltd, p 3; Submission 88, City Plan Heritage, p 1; Submission 90, GML Heritage, p 1; Submission 91, Millers Point Community Resident Action Group, p 2; Submission 120, Wollongong City Council (Staff Submission), p 7.

<sup>77</sup> Submission 143, Mr Paul Rappoport, p 1.

impediment to 'much needed new development', stating it does not meet the needs and expectations of the New South Wales community.<sup>78</sup>

- 2.18** In a similar vein, Business Western Sydney placed on the public record its support for the reform and modernisation of the Act to reflect more contemporary heritage practice and changes in social and community attitudes about values and significance.<sup>79</sup> Acknowledging that the regime has served Western Sydney well, Business Western Sydney nevertheless saw some scope for improvement:

The NSW Heritage Act 1977 established a robust regime for protecting and managing our valuable heritage. This regime has served Western Sydney well and we do not believe it should be repealed or replaced with a new regime. However, we do support the Act being reformed and modernised to reflect best practice in heritage conservation and changes in how society values these places and spaces. The current Act is often overly prescriptive, treats all type of heritage in the same way, and can be difficult for the community to understand and use.<sup>80</sup>

- 2.19** The Heritage Council for NSW, the State's independent statutory advisory body and consent authority for changes to listed items, identified significant gaps and omissions in the Act which, in its view, warrants attention through legislative reform. Principally, the Heritage Council identified Aboriginal cultural heritage, landscape-scale heritage and intangible heritage as key issues which have gained increasing focus in more recent times and are either missing from or inadequately addressed in the Act as it is currently written.<sup>81</sup>

- 2.20** Labelling it a 'major missing element' of the current Act, the Heritage Council outlined its case for reforming the Act to afford priority to Aboriginal cultural heritage and embed in legislation the principle that any assessment of contemporary significance must start with the recognition of Aboriginal cultural heritage values. It observed:

All of New South Wales is Aboriginal land and has Aboriginal cultural significance in some form. With this in mind, any assessment of contemporary cultural heritage values must start with recognition and assessment of Aboriginal cultural heritage values. Yet the Act is effectively silent on this. The Heritage Council believes very strongly that a revised Heritage Act, accompanied by independent Aboriginal cultural heritage legislation, must not only recognise, celebrate and conserve Aboriginal cultural heritage, but also protect it where necessary and key decisions about that heritage must be guided by Aboriginal people.<sup>82</sup>

- 2.21** The Aboriginal Cultural Heritage Advisory Committee, a statutory committee providing advice to the NSW Government on the identification, assessment and management of Aboriginal cultural heritage, advanced a similar argument. The Committee observed that the existing Act is silent on Aboriginal cultural heritage and recommended that the Act be amended in order to affirm Aboriginal cultural heritage as the foundation from which all other New South Wales

<sup>78</sup> Submission 98, Urban Taskforce Australia, p 10.

<sup>79</sup> Submission 24, Business Western Sydney, p 2.

<sup>80</sup> Submission 24, Business Western Sydney, p 2.

<sup>81</sup> Submission 37, Heritage Council of NSW, p 3.

<sup>82</sup> Submission 37, Heritage Council of NSW, p 3.

heritage is derived.<sup>83</sup> The protection of Aboriginal cultural heritage is further discussed in Chapter 3.

**2.22** GML Heritage agreed that the objects of the Act remain largely relevant, but noted that definitions of heritage have changed since its enactment. In particular, it drew attention to a number of matters that have become increasingly significant since 1977 including the conservation of Aboriginal cultural heritage, 'living' or 'intangible' heritage and climate change.<sup>84</sup>

**2.23** Following publication of submissions to this inquiry, the Heritage Council of NSW offered an emphatic repudiation of the majority view that the Act is still largely relevant and requires little change. Using a motoring analogy to bolster its argument, the Council wrote:

We note that a significant number of submissions to this Inquiry have argued that the current Heritage Act is adequate and needs no change. The Heritage Council disagrees. The Act was a creature of its time, the 1970s, and reflects an outdated view of heritage that is focused on buildings and objects. The Act also reflects the imperative of the time – being to avoid the all-too-common midnight demolition by bulldozer of our State's built heritage. We can look at the current Heritage Act like a car of the 1970s. Yes, it will still work and get you round but it is far from being a modern framework to take us into the future.<sup>85</sup>

**2.24** In its further submissions, the Heritage Council of NSW enumerated a series of matters where it saw the current Act as deficient, they included:

- the failure to protect Aboriginal Heritage
- the inability of the Heritage Council to employ its own staff and be seen as fully independent of Heritage NSW
- the need for greater diversity on the Heritage Council including at least two Aboriginal members and a mix of heritage specialists and community members who share a passion for heritage
- the need for more financial incentives for the owners of heritage items
- the need for improved compliance and enforcement powers
- the need for simpler and faster listing mechanisms, and
- the potential benefits of a more refined category system including for the protection of environmental heritage.<sup>86</sup>

**2.25** In their evaluation of the adequacy of the Act, several inquiry participants went beyond broad characterisations and observations to focus on some of the Act's specific detail, to which this chapter now turns its focus.

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<sup>83</sup> Submission 38, Aboriginal Cultural Heritage Advisory Committee, p 1.

<sup>84</sup> Submission 90, GML Heritage, p 6.

<sup>85</sup> Submission 37a, Heritage Council of NSW, p 2.

<sup>86</sup> Submission 37a, Heritage Council of NSW, pp 2, 3 and 4.

## Suggested amendments to the Act's objects, definitions and principles

**2.26** Echoing the Heritage Council of NSW's evidence, the committee heard arguments that the Act is premised on a rather narrow understanding of heritage and is out of step with broader and more contemporary concepts and definitions of heritage, with this bias currently being reflected in the Act's objects, definitions and principles. Such arguments formed the basis for calls to amend the Act to better reflect practices, approaches and understandings that have risen to prominence since the Act's inception.

### *Cultural landscapes*

**2.27** A community organisation established to protect the natural and cultural heritage values of Fernhill Estate and the Mulgoa valley submitted that the Act is predicated on a rather narrow understanding of heritage as tangible, discrete objects, sites and relics, especially buildings and archaeology, and is out of step with broader understandings of heritage which include intangible values, movable heritage and landscape-level significance:

The Heritage Act (as exemplified by the State Heritage Register) seems to be more concerned with tangible objects (buildings, places and precincts; archaeological sites and relics), rather than the broadly accepted meaning of heritage which includes landscape, environment, gardens and trees; movable heritage (artefacts) and intangible heritage (customs, language, stories, beliefs).<sup>87</sup>

**2.28** The same inquiry participant further suggested that the Act should include 'an objective to protect cultural landscapes'.<sup>88</sup>

**2.29** Similarly, the Australian Garden History Society Sydney recommended the Act be revised to recognise the importance of natural and cultural landscapes in object and definition, and that the definition of environmental heritage include reference to both natural landscapes and cultural landscapes.<sup>89</sup>

**2.30** The National Parks Association of NSW also favoured a broader definition of heritage, with a particular focus on places and landscapes imbued with exceptional natural and cultural values – what it referred to as a 'more integrated legislative approach to places and landscapes of exceptional indigenous, natural and historic value'.<sup>90</sup>

**2.31** The differences and relative merits of *site-based* versus *landscape-scale* approaches to heritage identification and protection was elucidated in evidence from Herbert Smith Freehills, a commercial law firm with environmental planning expertise in energy and resources, infrastructure and urban development projects. This evidence highlighted the poor heritage outcomes that may result from approaches to heritage identification and protection which treat heritage as 'discrete' or 'atomised' sites – akin to unconnected dots on a map – rather than seeing them as part of landscape or larger terrain, which implies attention to the question of cumulative impacts:

<sup>87</sup> Submission 27, Friends of Fernhill and Mulgoa Valley Inc, p 6.

<sup>88</sup> Submission 27, Friends of Fernhill and Mulgoa Valley Inc, p 6.

<sup>89</sup> Submission 59, Australian Garden History Society Sydney, p 2.

<sup>90</sup> Submission 100, National Parks Association of NSW, p 1.

As experts have recognised since the 1970s, communities expect that heritage protection upholds the broader character of our landscapes, not just discrete items or sites within a locality. Merely protecting the façade of a historic building, or one part of a larger terrain, while allowing the rest of the landscape to be altered beyond recognition, can render the remaining items or sites absurd and irrelevant, especially when the significance of the area is derived from the community's relationship with that space generally.<sup>91</sup>

- 2.32** Correspondingly, Herbert Smith Freehills expressed support for better identification and protection of cultural landscapes in New South Wales through the application of the Heritage Act:

The Heritage Act should facilitate and encourage the protection not just of singular and atomised sites, but of environs and terrains generally and contextually. These environs and terrains might be, for example, a street, a town, a defined agricultural area or a place of Aboriginal cultural significance. We support the use of the Heritage Act to protect cultural landscapes in NSW. The term 'cultural landscape' refers to the 'physical areas with natural features modified by human activity resulting in patterns of evidence layered in the landscape.'<sup>92</sup>

- 2.33** Whether or not this required legislative change was something of an open question, with Herbert Smith Freehills conceding that cultural landscapes can in theory be listed on the State Heritage Register but have not typically been well protected under current and previous approaches. In its opinion, New South Wales should look to and leverage the success of other jurisdictions, such as Victoria, in setting up frameworks for the identification and management of cultural landscapes.<sup>93</sup>

**Case study: Heritage recognition for Hunter Valley vineyards cultural landscape<sup>94</sup>**

The Hunter Valley Wine and Tourism Association outlined its work to try and get heritage recognition for the cultural and agricultural aspects of the Hunter Valley vineyards, noting that despite it being the birthplace of the Australian wine industry, with some of the oldest wine stocks in the world, it is 'virtually impossible for the industry to be considered for State Heritage listing'. The Association commented:

To gain listing for an area of around 600 individual landholders all with varying degrees of heritage value requires a virtually impossible process under the current rules. Meanwhile the rest of the world are recognising agricultural landscapes and ensuring their preservation and protection.

Mr Andrew Margan, representative of the Valley Wine and Tourism Association, spoke of the oldest syrah vine root stock being present in the Hunter Valley, originally coming from the hill of Hermitage in France but lost over there due to phylloxera.

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<sup>91</sup> Submission 273, Herbert Smith Freehills, p 5.

<sup>92</sup> Submission 273, Herbert Smith Freehills, p 5.

<sup>93</sup> Submission 273, Herbert Smith Freehills, p 5.

<sup>94</sup> See Submission 3, Hunter Valley Wine and Tourism Association, p 1 and Evidence, Mr Andrew Margan, Hunter Valley Wine and Tourism Association, 13 August 2021, pp 18-20 and 23.



Mr Margan also described the challenges he has faced trying to pursue a listing, with a lack of funding available to assist with a landscape management plan, despite it being clear there is 'significant heritage value' which 'would be lost to the state and the world' if not heritage protected.

The Hunter Valley Wine and Tourism Association submitted that the heritage legislation need to be updated to enable a whole landscape to be recognised and preserved, whilst still allowing for items of non-heritage value within that area to be changed. Mr Margan also agreed that there would be benefit in having a codified set of rules for communities or organisations to follow when it comes to listing items such as cultural or agricultural landscapes.

### *Intangible cultural heritage*

**2.34** In considering possible amendments to better align the Act with more contemporary understandings of heritage, intangible cultural heritage emerged as another key area of concern among inquiry participants and as a perceived gap in the architecture of the Act.

**2.35** The UNESCO *Convention for the Safeguarding of Intangible Cultural Heritage* defines intangible cultural heritage as:

... the practices, skills, representations, expressions as well as the knowledge and skills that communities, groups and in some cases, individuals, recognise as their cultural heritage. Sometimes called living cultural heritage, intangible cultural heritage is manifested in: oral traditions, social practices, and traditional craftsmanship.<sup>95</sup>

**2.36** Arguably the most vocal advocate of this position was the Rail, Tram and Bus Union Retired Members Association, which considered the Act to be built fabric-centric, a bias reflected in its terms, definitions, objects and other elements such as the statutory functions of the Heritage Council.<sup>96</sup>

**2.37** Focussing specifically on the engineering and industrial heritage in the State's transport sector, the Association submitted that heritage legislation has not kept up with the significant structural changes in the state's economy since the Act's commencement and, as a result, the significant intangible cultural history associated with de-commissioned sites such as the Eveleigh Locomotive Workshops is not adequately comprehended or safeguarded:

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

<sup>95</sup> UNESCO, *Convention for the Safeguarding of Intangible Cultural Heritage*, cited in: Submission 305, Rail, Tram and Bus Union Retired Members Association, p 1.

<sup>96</sup> Submission 305, Rail, Tram and Bus Union, Retired Members Association, p 2.

comprehend the significant NSW intangible cultural history represented in these former industrial sites.<sup>97</sup>

- 2.38** The Association therefore recommended that the Act be updated to explicitly recognise and reference intangible cultural heritage and provide for its identification, documentation and conservation. Specifically, it recommended that the Act's high level objectives should include explicit recognition of intangible cultural heritage (beyond the traditional focus on built fabric), the inclusion of intangible cultural heritage as an integral component of adaptive re-use and several other objectives around community consultation and support for the management of both tangible and intangible heritage.<sup>98</sup>
- 2.39** Furthermore, in the Association's opinion, the recognition of intangible cultural heritage in the high level objectives of the Heritage Act should necessitate a number of consequential changes to other clauses and provisions within the Act, including section 4 (definitions), section 4A (heritage significance), section 8 (members of the Heritage Council) among other clauses.<sup>99</sup>
- 2.40** Engineers Australia had common ground with this position, calling on the NSW Government to recognise and promote the many facets of heritage – including intangible but also movable heritage:
- Engineers Australia encourages the NSW Government to recognise and promote the many facets of heritage including movable and immovable, and tangible and intangible. Intangible heritage is not yet well understood or defined, and it is recommended the revised Act include reference to intangible heritage and encourage continuing development of the concept.<sup>100</sup>
- 2.41** The City of Newcastle also identified a need to 'broaden the remit and core focus of the Act to more than the tangible of building fabric and artefacts to consider more strongly the wider but equally important intangible values of landscape, spiritual and social'.<sup>101</sup> Likewise, staff of Lake Macquarie City Council also felt there was scope for the objectives of the Act to be expanded to include intangible cultural heritage.<sup>102</sup>
- 2.42** Adding to this thread of evidence, Mr Chris Betteridge, a heritage professional with 30 years' experience in private practice, formed the view that any new objects of the Act should strike an appropriate balance between 'conservation and sustainability and managing change while maintaining heritage values', also supporting the definition of heritage to be broadened to include intangible heritage values.<sup>103</sup>

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<sup>97</sup> Submission 305, Rail, Tram and Bus Union, Retired Members Association, pp 2-3. The Association was careful to emphasise that intangible cultural heritage/history is not limited to associations with industrial sites, but is equally applicable to a 'wider canvass' as a broader manifestation of cultural diversity and human creativity.

<sup>98</sup> Submission 305, Rail, Tram and Bus Union, Retired Members Association, p 3.

<sup>99</sup> Submission 305, Rail, Tram and Bus Union, Retired Members Association, p 3.

<sup>100</sup> Submission 15, Engineers Australia, p 5.

<sup>101</sup> Submission 256, City of Newcastle, p 3.

<sup>102</sup> See for example: Submission 81, Lake Macquarie City Council (Staff Submission), p 3.

<sup>103</sup> Submission 103, Mr Chris Betteridge, p 4.

**2.43** Other miscellaneous amendments and updates to the objects, terminology and concepts of the Heritage Act were highlighted in evidence to the committee, a sample of which are summarised below.

**2.44** As noted above, the Heritage Council of NSW considered the Act to be outdated and in need of modernisation. One of the examples it highlighted related to the Act's use of the expression 'environmental heritage' which the Council argued is opaque and does not reflect current concepts of significant heritage:

We note that the concept of significant heritage itself requires updating as the current expression 'environmental heritage' sounds too much like natural heritage and we believe that a term like 'cultural heritage' better represents the depth and breadth of current concepts and heritage, including as they do, intangible heritage, and landscape scale heritage.<sup>104</sup>

**2.45** Also on the topic of definitions, the Australian Archaeological Association noted a number of problems with the way the Heritage Act defines archaeology as relics rather than sites or places in the landscape with archaeological significance:

The Act talks about relics, which are artefacts, in a sense; they are things that you can pick up. But archaeologists manage in terms of sites—places in the landscape. And so the legislation is not particularly well placed to deal with that and the definitions in the Act are somewhat vague, particularly a distinction that has been drawn from legal opinion between "works" and "relics": "works" being things like a well; "relics" might well be an old bottle that has fallen into the well. It is strange that in fact you can protect the bottle in the well but you cannot protect the well if it is empty, if that makes any sense. Those definitional things have come along as the Act has been used and as things have occurred. So I think that a lot of the discussion is really about tidying this up.<sup>105</sup>

**2.46** In terms of other issues with the current legislation, several inquiry participants raised a concern with the current wording of Object (b) of the Act which, as currently written, is 'to encourage the conservation of the State's heritage'<sup>106</sup>

**2.47** Some considered this wording too weak or passive and sought to strengthen or give greater precedence to heritage conservation as the primary policy objective of the Act and its legislative and regulatory regime. For example, Woollahra Municipal Council argued that heritage conservation should be the Act's primary aim and purpose, and it should go much further than merely 'encouraging' this outcome:

... the first objective should be 'to conserve the State's heritage', not to simply encourage its conservation. All other objectives descend from the aim to conserve NSW heritage, including the promotion of an understanding, the identification, registration and adaptive re-use of items of State heritage significance, among others objectives.<sup>107</sup>

<sup>104</sup> Submission 37a, Heritage Council of NSW, p 2.

<sup>105</sup> Evidence, Dr Iain Stuart, Member, Australian Archaeological Association, 13 August 2021, p 32.

<sup>106</sup> *Heritage Act 1977*, s 3.

<sup>107</sup> Submission 40, Woollahra Municipal Council, p 2.

- 2.48** Other inquiry participants, such as GML Heritage, the City of Canada Bay and the Planning Institute of Australia, agreed that Object (b) should be strengthened in its wording and/or given greater priority of placement within the Act.<sup>108</sup>
- 2.49** In response to questions on notice, Dr MacLaren North, Managing Director of Extent Heritage, explained that a heritage place may have 'multiple aspects' which need protecting and conserving, including the physical place itself as well as other less tangible aspects. Therefore, in his view, the objects of the Act should reflect the need to protect all aspects of significance, the tangible and the intangible. He was of the opinion that the current objects do not necessarily achieve this.<sup>109</sup>

### **Committee comment**

- 2.50** On questions about the overall adequacy of the Act, the committee acknowledges the polar nature of much of the evidence before us. A number of inquiry participants suggested the Act is by and large still adequate and relevant and requires little change, with the main problem being its administration. In contrast to this view, we heard from other stakeholders that the Act reflects outdated and antiquated views of heritage and requires modernisation. In the committee's view, the reality most likely lies somewhere between these two positions. Accordingly, to extend the motoring analogy we heard in evidence, we feel the Act is more likely to require a major service instead of wholesale trade-in for a new vehicle.
- 2.51** It is clear to the committee that while some of the Act's provisions and controls are still highly workable when applied appropriately, there is nevertheless some scope to better align it with contemporary approaches to and understandings of heritage, including more explicit recognition that heritage consists of more than just built or tangible items. Additionally, the State's principal heritage legislation should reflect best-practice approaches to heritage identification, protection and management. One obvious deficiency in this regard is its limitations with respect to cultural landscapes and landscape-scale heritage protection and management.
- 2.52** However, based on the weight of evidence, there was clear committee consensus that resourcing and implementation of the Act are both critical issues of equal or greater importance to modernising its architecture. The committee is therefore left with little question that, in order to really move the needle, any future modernised Act must be accompanied by a commitment to better resourcing, better recruitment and training of regulatory staff, enhanced customer service and outreach, better leadership and a shift in the prevailing culture or attitudes to conservation and permissible/tolerable change. Many of these things cannot be legislated for but instead require other interventions.
- 2.53** That being said, the committee recognises that the *Heritage Act 1977*, as it is currently written, does not adequately reflect concepts, approaches and understandings of heritage which have become increasingly prominent and accepted in heritage thinking and practice since the Act's

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<sup>108</sup> Submission 90, GML Heritage, p 6; Submission 129, City of Canada Bay, p 2; Submission 102, Planning Institute of Australia, p 3.

<sup>109</sup> Answers to questions on notice, Dr MacLaren North, Managing Director, Extent Heritage, 7 September 2021, p 5.

commencement. Chief amongst these are Aboriginal cultural heritage and intangible cultural heritage, both of which the Act is currently silent on.

- 2.54** The committee believes that more should be done to enable the identification, protection and management of intangible cultural heritage, but whether this is best achieved by legislating for intangible cultural heritage through changes to the Heritage Act or through policy interventions, such as the Victorian framework referred to in evidence, requires more detailed investigation.
- 2.55** Token recognition of intangible cultural heritage in the objects or definitions of the Act without workable provisions, controls and management frameworks does not go far enough. In particular, the unique challenges and issues associated with protecting the intangible require expert analysis and understanding by the right people. In particular, legislators need an in-depth understanding of these issues, informed by expert evidence, before attempting to legislate for intangible cultural heritage. As a first step to inform such an understanding, the committee recommends that the NSW Government undertake a review and/or comparative analysis of the way intangible cultural heritage is identified, managed and protected in other jurisdictions in Australia and internationally.

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### **Recommendation 2**

That the NSW Government amend the *Heritage Act 1977* to explicitly reflect and accommodate a more varied, inclusive and nuanced concept of what constitutes the State's heritage, especially beyond conventional understandings of heritage as buildings and structures. This should reflect contemporary concepts, thinking and approaches to heritage conservation including (but not limited to) intangible cultural heritage and cultural landscapes.

### **Recommendation 3**

That the NSW Government undertake a review and/or comparative analysis of approaches to the identification, management and protection of intangible cultural heritage in other jurisdictions in Australia and internationally.

### **Recommendation 4**

That, in concert with legislative reform, the NSW Government prioritise improvements to the administration and implementation of the *Heritage Act 1977*, including targeted recruitment of staff with relevant qualifications and skills, improved customer service, and initiatives to promote a cultural and attitudinal change in the regulatory approach.

### **Recommendation 5**

That the *Heritage Act 1977* provide increased opportunity for community participation and co-design in the identification, protection and management of heritage and that this participation and co-design include Indigenous members of the community.

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**Recommendation 6**

That State Significant Developments are only able to override heritage concerns after the Minister has consulted with the Heritage Council of NSW and is satisfied that there is a clear net benefit to the community for proceeding with a State Significant Development which results in a diminution of an item's heritage value.

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**The Heritage Council of New South Wales**

**2.56** One of the issues for reform outlined in the NSW Government's discussion paper related to the composition of the Heritage Council of New South Wales and, in particular, the specific skills and qualities that should be represented on the Council. This exercised a significant amount of discussion throughout the inquiry, with some stakeholders going beyond the narrow focus of the consultation questions to raise broader questions about the independence of the Council and its resourcing by Heritage NSW. Stakeholder perspectives on these issues form the focus of the following sections.

**Composition, skills and qualities of members**

**2.57** Views on the composition of the Heritage Council varied significantly. No clear consensus emerged from the evidence before the committee.

**2.58** Some inquiry participants indicated that the range of qualifications, knowledge and skills currently prescribed by the Act are generally appropriate and relevant.<sup>110</sup>

**2.59** Where there were calls for further categories of skills, qualifications or representation to be added to the Heritage Council – either by amending the provisions establishing the Council or through more effective execution of the existing categories – these generally corresponded with the particular interests of aligned stakeholder groups. For example:

- community and resident action groups lobbied for the inclusion on Council of a voice for local government or communities affected by a particular proposal or development<sup>111</sup>
- Local Government NSW pointed out that, despite there being a provision in section 8 of the Act for a member with knowledge and skills in local government, there is no dedicated voice for local government amongst the Council's membership. It recommended changes to the Heritage Act to provide for a 'mandated and dedicated voice for local government on the Heritage Council of New South Wales, nominated by LGNSW'.<sup>112</sup>

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<sup>110</sup> See for example: Submission 87, Curio Projects Pty Ltd, p 2; Submission 15, Engineers Australia, p 6; Submission 22, Goulburn Mulwaree Council, p 2.

<sup>111</sup> See for example: Submission 91, Millers Point Community Residents Action Group, p 3; Submission 94, Camden Residents Action Group, p 3; Submission 84, Haberfield Association, p 2; Submission 44, Double Bay Residents Association, p 4.

<sup>112</sup> Submission 35, Local Government NSW, p 8.

- Engineers Australia proposed that more technical professionals, such as engineers, should be appointed to the Heritage Council to add balance and diversity to its membership<sup>113</sup>
- The Aboriginal Cultural Heritage Advisory Committee recommended that section 8 of the Act be amended to require that two members of the Heritage Council (an Aboriginal man and an Aboriginal woman) must have expertise in Aboriginal cultural heritage<sup>114</sup>
- Mr Chris Betteridge called for qualifications and experience relevant to landscape heritage to be reflected in Heritage Council membership in recognition of the growing acceptance of landscape-based approaches to heritage management<sup>115</sup>
- Dr Stephen Gapps, President of the History Council of NSW, agreed that there should be an express reservation for a professional historian to be on the Heritage Council<sup>116</sup>
- The City of Sydney and Local Government NSW called for the State/Government Architect to be represented on the Council<sup>117</sup>
- The Australian Institute of Architects called for better representation of experience and expertise in built heritage/heritage architecture in recognition of the fact that a significant proportion of matters that come before the Council relate to built heritage<sup>118</sup>
- The Better Planning Network saw scope for greater community representation on the Council as well as representation from the unions 'who, as we know, over time have been very instrumental in protecting heritage in New South Wales through the green bans'.<sup>119</sup>

**2.60** An expert voice in this debate was Dr MacLaren North of Extent Heritage, who was the principal author of the chapter on the composition of the Heritage Council as part of the 2007 review of the Act. Dr North was of the opinion that the current size of the Council – that is, nine members – is appropriate and is generally consistent with practice across Australia. He also argued that the decision taken in 2007 to remove certain direct appointments (for example, the Government Architect and Unions NSW) was the right one. Dr North explained:

As the Heritage Council is a regulatory and government advisory body – not principally an advocacy body – it remains appropriate for only one designated advocacy position on the Council, in the form of the National Trust. My strong view is the current number and composition of members does not need to change, however the skills and experience of those members does.<sup>120</sup>

<sup>113</sup> Submission 15, Engineers Australia, p 6.

<sup>114</sup> Submission 38, Aboriginal Cultural Heritage Advisory Committee, p 2.

<sup>115</sup> Submission 103, Mr Chris Betteridge, p 3.

<sup>116</sup> Evidence, Dr Stephen Gapps, President, History Council of NSW, 2 September 2021, p 11.

<sup>117</sup> Evidence, Cr Linda Scott, President, Local Government NSW, 24 August 2021, p 6; Evidence, Mr Ben Pechey, Executive Manager, Strategic Planning and Urban Design, City of Sydney, 24 August 2021, p 3. See also: Submission 37, Heritage Council of NSW, p 6.

<sup>118</sup> Submission 290, Australian Institute of Architects, p 4. See also: Submission 45, Penrith City Council, p 2.

<sup>119</sup> Evidence, Ms Merrill Witt, Member, Leadership Group, Better Planning Network, 17 August 2021, pp 3-4.

<sup>120</sup> Submission 96, Extent Heritage, p 2.

- 2.61** Other inquiry participants eschewed consideration of the skills and qualifications that *ought to be* represented on the Heritage Council (via prescribed criteria in legislation) and instead turned their focus to the Council's actual current membership/incumbents.
- 2.62** Referring to the existing process whereby eight members are appointed by the Minister and one by the National Trust of Australia, the Historic Houses Association of Australia noted that a majority of the existing members possess significant capabilities in finance and business, not heritage related occupations, nor experience from an owner's perspective. According to the Association, this presents reputational risks to how the Council is perceived.<sup>121</sup> Dr North lent weight to this assertion, submitting:
- In recent years, it appears the effectiveness of the Heritage Council has in part been hampered by appointment choices which have emphasised administrative and business skills, leading to a lack of effective heritage skills and knowledge among members of the Council. I note, for example, at the moment there is only one member of the Council who has a background as a heritage practitioner and expert. This represents a significant departure from past appointment practice and is likely limiting the effectiveness of the Council.<sup>122</sup>
- 2.63** Mr Howard Tanner AM, former Chair of the Heritage Council of NSW, was equally trenchant in his assessment of current Heritage Council members, advising the committee that they possess 'extremely little (or possibly nil) significant heritage experience'.<sup>123</sup> This was reinforced in Mr Tanner's testimony to the committee:
- Quite a few of the so-called 'experts' do not have this depth of insight and experience that says 'Yes, it is possible to do that.' It is like having a building matter being resolved by somebody who knows nothing about building. These are important considerations: that this depth of knowledge is available within the Heritage Council and within NSW Heritage. It is not currently present.<sup>124</sup>
- 2.64** In the opinion of Australia ICOMOS, the problems lie in the section 8 provisions of the Heritage Act which, in its view, currently allow for a 'preponderance' of members with no understanding or commitment to heritage conservation. Accordingly, these provisions were considered to require amendment to ensure a greater range and substantial majority of members with heritage expertise, and also community representation.<sup>125</sup>
- 2.65** Similarly, the National Trust of Australia (NSW) advised the committee of a 'general consensus that the current Heritage Council lacks heritage expertise' and that the Act should be amended to ensure a majority of members with in-depth heritage experience and knowledge at all time.<sup>126</sup>
- 2.66** Urbis, an environmental planning and heritage consultancy, noted the current intention for equal representation of expertise on the Council, but contended that this is not executed rigorously, resulting in a lack of relevant expert heritage opinion:

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<sup>121</sup> Submission 1a, Historic Houses Association of Australia, p 4.

<sup>122</sup> Submission 96, Extent Heritage, p 2.

<sup>123</sup> Submission 10, Mr Howard Tanner AM, p 1.

<sup>124</sup> Evidence, Mr Howard Tanner AM, private individual, 2 September 2021, p 4.

<sup>125</sup> Submission 291, Australia ICOMOS, p 2.

<sup>126</sup> Submission 292, National Trust of Australia (NSW), p 22.



There is an intention, currently, for equal representation of relevant expertise on the Council however it is not executed rigorously. Currently there are few heritage consultants or architects on the Council. The Council comprises more community representatives and experts with broadly associated expertise. While this is valuable, a commitment should be made to include at least two dedicated heritage professionals/consultants on the Council to assist in providing an expert opinion.<sup>127</sup>

**2.67** Dr North of Extent Heritage considered that the skills mix on the Council should be majority slanted towards 'heritage experts over non-heritage experts' and any non-heritage experts should be able to demonstrate good understanding of the matters that come before the Council.<sup>128</sup> In response to questions on notice, Dr North suggested that one option to achieve this might be to split the skills list in subsection 8(3) into two parts: namely, core heritage skills (e.g. architecture, archaeology, planning) and ancillary skills (law, property interests, rural interests), and strike a balance which favours the core heritage skills.<sup>129</sup>

**2.68** According to GML Heritage, there is presently a lack of diversity around the Heritage Council table and, in recent years, there has been a decline in relevant subject matter expertise and experience, much to the detriment of heritage outcomes, public understanding of heritage and efficient management and regulation.<sup>130</sup> Ms Sharon Veale, the organisation's Chief Executive Officer, commented:

I think what we have noticed over more recent years, with the appointments to the Heritage Council, is there has been a diminution of the skill and capability with respect to heritage matters, particularly in respect to history, cultural landscapes, Aboriginal heritage, industrial heritage, movable heritage, the range and diversity, living heritage.<sup>131</sup>

**2.69** Mr Chris Betteridge referred to the original Heritage Council of 1978 as a benchmark and gold standard for the depth and spread of actual heritage knowledge and expertise that should be represented on the Council.<sup>132</sup> Other inquiry participants – such as the Property Council of Australia, Docomomo Australia, City Plan Heritage and the Australian Institute of Architects – argued for a return to its original 14 members (from a current complement of nine) to increase the diversity of skills on the Council.<sup>133</sup>

**2.70** For Professor Mackay, the question about the optimal composition of the Heritage Council – and the requisite skills, knowledge and expertise for appointments – was more fundamentally a question about the very reason and purpose for the Council's existence: that is, whether the Council would be best placed to support the Act's objectives as an advisory body or a statutory consent authority. The necessary skills, experience and expertise of the Council would depend on where the answer to this question lands. Professor Mackay explained:

<sup>127</sup> Submission 30, Urbis, p 1.

<sup>128</sup> Submission 96, Extent Heritage, p 2.

<sup>129</sup> Answers to questions on notice, Dr MacLaren North, 7 September 2021, p 2.

<sup>130</sup> Submission 90, GML Heritage, p 4.

<sup>131</sup> Evidence, Ms Sharon Veale, Chief Executive Officer, GML Heritage, 2 September 2021, p 17.

<sup>132</sup> Submission 103, Mr Chris Betteridge, p 3.

<sup>133</sup> Submission 264, Property Council of Australia, p 6; Submission 47, Docomomo Australia, p 1; Submission 88, City Plan Heritage, p 2; Submission 290, Australian Institute of Architects, p 3.

There is a fundamental question to be addressed by the Inquiry – namely, whether the NSW Heritage Council would best support the Objectives of the Act as an expert advisory body or a statutory consent authority. The answer to this question should determine the Council composition, skills and qualities. At present, the NSW Heritage Council fulfils both roles (to some extent), as do the Minister and authorised delegates. This leads to lack of clarity in listing and in consent decisions, as well as a blurring of roles and misunderstandings about the relevant matters for consideration (as revealed by the Sirius Building judgment, for example).<sup>134</sup>

- 2.71** Professor Mackay expanded upon this position under examination before the committee, expressing his preference for a model in which the Council is predominantly an expert advisory body and pointing the committee to Victoria as a case in point:

It can actually function as either and that is a matter for government decision. My concern is that it should not be an amalgam of both, either in terms of the composition of the Heritage Council itself—it should either be expert or it should be representative, and whether it is expert or representative goes to the question of its ultimate role. Is it the expert body providing advice to government at officer level and ministerial level—an expert body actually identifying what should be listed as heritage—or is it to be the consent authority? I think the mechanisms that work best are those where the State Heritage Council is predominantly the expert body providing clear and independent advice and then an associated transparent government process which is accountable. Victoria is the best Australian example of that if the Committee wants to turn its mind to examples from other jurisdictions.<sup>135</sup>

### **Stakeholder concerns about the Heritage Council's independence**

- 2.72** A number of inquiry participants voiced concerns about the Council's independence and perceived politicisation. These concerns generally touched on issues surrounding: the selection and appointment process for members to the Heritage Council; the ability of the Minister to override the Council's decisions and recommendations; and the resourcing of the Council by officers/personnel of Heritage NSW. Each of these are discussed in turn below.
- 2.73** Woollahra Municipal Council expressed concerns about the current appointment process whereby the vast majority of members are Ministerial appointments, and alluded to its optics:

The Heritage Council and its decisions must not be politicised through the Minister's appointment process. Change needs to be made to the current process whereby eight people are appointed by the Minister as this process compromises, or leads to the perception of political influence over the decisions of the Heritage Council.<sup>136</sup>

- 2.74** This accords with the views of Docomomo Australia whose submission to the inquiry stressed the importance of the Council's independence and ability to make decisions solely based on expert evidence and in the public interest, at arm's length of the government of the day:

First and foremost, the Heritage Council of NSW should be an independent body that examines issues and, based on the evidence of experts and the community, establishes

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<sup>134</sup> Submission 56, Professor Richard Mackay AM, p 3.

<sup>135</sup> Evidence, Professor Richard Mackay AM, private individual, 2 September 2021, p 5.

<sup>136</sup> Submission 40, Woollahra Municipal Council, p 1.

policy for the protection of the heritage places of NSW. The opinion of the Heritage Council should not be predetermined by the Government of the day but the Heritage Council should take a long-term view of what the citizens want to protect and pass down to future generations. In order to achieve such an independent body the appointment of the majority of members to the Council should come from professional, conservation and community organisations and not be nominees of the Government of the day.<sup>137</sup>

**2.75** This was repeated in a number of submissions and testimony to the committee.<sup>138</sup>

**2.76** Under examination, Ms Merrill Witt of the Better Planning Network's Leadership Group spoke of perceptions of the Heritage Council as needing 'better teeth' and referred the committee to the Victorian Heritage Council as a study in how a truly independent statutory heritage council should operate. Referring to a community and stakeholder forum hosted by the National Trust of Australia (NSW) specifically for the present review, Ms Witt remarked:

This was actually one of the recommendations that came out of that panel. It is not just something that the Better Planning Network is advocating. I think all of the people there—it was a real mix of community organisations, interested people in the community—feel that the Heritage Council needs to have better teeth. I think one of the examples they also looked at was in Victoria, where the Heritage Council really does operate at arm's length from government. The Minister of the day just cannot overturn a Heritage Council ruling.<sup>139</sup>

**2.77** The challenges and tensions inherent in the existing resourcing arrangements for the Heritage Council were detailed in its submission to the inquiry. Emphasising the importance of its independence and impartiality, the Heritage Council alerted the committee to potential conflicts of interest arising from the Council's reliance on officers of the NSW Government who also serve the government of the day and its policy priorities. The Council explained:

In the Council's view, to adequately perform its functions, the Heritage Council must have the statutory power to act independently, impartially and in the public interest. One of the key objects of the Act is to promote an understanding of the State's heritage and to conserve that heritage. However, because the Heritage Council cannot itself employ staff and does not have its own funding, it must delegate the bulk of its functions to the agency with responsibility for administering the Act, being Heritage NSW. ... However, being part of DPC and the wider public service Heritage NSW is tied to the shifting policies and machinery-of-government changes of the government of the day, this may result in various conflicts of interest. ...

Further, there are situations where the Minister responsible for heritage, or indeed the government in general, are on the one hand seeking independent advice from the Heritage Council on whether a place is of State Heritage significance, while at the same time other agencies may be pursuing projects which impact on places of potential State Heritage significance. In those situations, the staff of Heritage NSW is advising both

<sup>137</sup> Submission 47, Docomomo Australia, p 4.

<sup>138</sup> See for example: Submission 90, GML Heritage, p 4; Submission 201, Ms Helen Temple, p 3; Submission 129, City of Canada Bay, p 1; Submission 63, Northern Beaches Council, p 2; Evidence, Mr David Burdon, 13 August 2021, p 11; Evidence, Mr Tim Duddy, General Manager, Historic Houses Association of Australia, 17 August 2021, p 25.

<sup>139</sup> Evidence, Ms Merrill Witt, 17 August 2021, p 3.

the Heritage Council in its deliberations, and at the same time advising the Minister and government on how to achieve their policy intentions. This can create a potential conflict of interest for those staff.<sup>140</sup>

- 2.78** In testimony before the committee, Mr Frank Howarth AM PSM, Chair of the Heritage Council of NSW, clarified that it is more accurately a *perceived* conflict of interest and that 'at this point in my term as the chair, I do not think we have come across a situation of actual conflict of interest'.<sup>141</sup>
- 2.79** Several witnesses who appeared before the committee backed calls for the Heritage Council of NSW to have its own dedicated, independent resources – notably, Ms Alexandria Barnier, Associate Director of Urbis' Heritage Team, who saw benefit in this idea, and Ms Merrill Witt of the Better Planning Network, who described it as 'absolutely essential'.<sup>142</sup> Mr Tim Duddy, General Manager, Historic Houses Association of Australia, agreed that it is an 'essential part of the proper process'.<sup>143</sup>

### **Committee comment**

- 2.80** In the committee's opinion, the existing legislative provisions establishing the Heritage Council are inadequate insofar as they can be executed in a way that results in a majority of members with generalist backgrounds in areas such as finance, business or property development, but with limited heritage expertise or understanding. The weight of evidence made this clear. It is a quirk in the legislation that allows the State's pre-eminent statutory heritage body to be almost devoid of in-depth specialist knowledge and expertise in the various heritage disciplines. In the committee's view, this undermines the standing of the Council and affects public confidence in their decision making and advice to government. We therefore recommend that the relevant sections of the *Heritage Act 1977* be reworked to mandate that, at any given time, there is always a majority of eminent individuals with qualifications and experience in relevant heritage disciplines. We also agree that there should be better Aboriginal representation on the Heritage Council for reasons discussed above and in Chapter 3. Given the fact that local councils across New South Wales deal with the majority of heritage listed items in New South Wales (being those items listed under the provisions of the *Environmental Planning and Assessment Act 1979*) and the depth of experience at a council level in protecting and managing heritage, there is a strong case to include on the Heritage Council a representative from local government who possesses skills and experience in heritage.

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<sup>140</sup> Submission 37, Heritage Council of NSW, pp 6 and 7.

<sup>141</sup> Evidence, Mr Frank Howarth AM PSM, Chair, Heritage Council of NSW, 13 August 2021, p 3.

<sup>142</sup> Evidence, Ms Alexandria Barnier, Associate Director, Heritage Team, Urbis, 17 August 2021, p 5; Evidence, Ms Merrill Witt, 17 August 2021, p 5.

<sup>143</sup> Evidence, Mr Tim Duddy, 17 August 2021, p 30.

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### Recommendation 7

That the NSW Government amend the *Heritage Act 1977* to mandate that:

- at any given time, there is always a majority of members on the Heritage Council of NSW with qualifications, experience and expertise in relevant heritage disciplines
  - two members of the Heritage Council of NSW must be an Aboriginal man and an Aboriginal woman, with expertise in Aboriginal cultural heritage
  - the Heritage Council of NSW is to include a representative from local government who possesses skills and experience in heritage.
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## Heritage identification and listing

**2.81** The NSW Government's discussion paper canvasses a number of opportunities for improving and streamlining the way heritage is identified and protected through listings on the State Heritage Register. In particular, the discussion paper explores proposals for:

- new community-led processes and procedures for nominating new items to the State Heritage Register;
- introducing a simplified process for updating existing listings or removing items from the State Heritage Register; and
- introducing more nuanced and differentiated controls and protections at the time of registration which more effectively recognise different classes of items on the State Heritage Register and provide for more tailored regulatory approaches to alterations and changes.

**2.82** Inquiry participants offered their views and perspectives on the merits or otherwise of these proposals, as will be outlined in the next sections.

### Improving processes for new listings to the State Heritage Register

**2.83** In considering the proposed reforms to the State Heritage Register listing process, it is important to understand their specific drivers – that is, the policy problems they seek to overcome, address or remedy. Evidence gathered by the committee facilitated a good understanding and analysis of these issues.

**2.84** The relatively slow rate of new listings/additions to the State Heritage Register – an average of 22 items per year since the initial bulk listing of 1,300 items in 1999<sup>144</sup> – was identified in evidence as a key concern.<sup>145</sup> While the evidence was divided on why the number of new listings have stagnated, there was at least some sense that the existing nomination and listing processes is too long, cumbersome or complex. The Heritage Council of NSW viewed this as a key

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<sup>144</sup> Submission 292, National Trust of Australia (NSW), p 7; Submission 67, Walter Burley Griffin Society, p 2.

<sup>145</sup> See for example: Submission 103, Mr Chris Betteridge, p 9; Submission 48, Better Planning Network, p 3.

drawback, along with other considerations such as Heritage NSW resourcing.<sup>146</sup> Referring to the listing process at both State and local levels, the Double Bay Residents Association labelled it 'too bureaucratic, prescriptive' and lengthy.<sup>147</sup> The Property Council of Australia agreed that the listing process is lengthy and complex, but attributed this primarily to insufficient resources within Heritage NSW.<sup>148</sup> Herbert Smith Freehills similarly suggested the 'complexity of the current system' may act as a disincentive for members of the public to nominate items for listing, especially those who 'do not have the time or resources to commit to searching for, reviewing and referring to material to complete the nomination form'.<sup>149</sup>

**2.85** Adding to this evidence, Dr MacLaren North, of Extent Heritage, considered the current listing and delisting processes to be 'unnecessarily cumbersome' and pointed to mechanisms within the Act that could be streamlined. Dr North commented:

In terms of actual legislative reform the processes around listing and delisting from the State Heritage Register, which have been subject to change over the last 10 or 15 years, have become, I think, unnecessarily cumbersome. There are mechanisms that could be streamlined within the Act around the processes of listing to simplify both the addition and removal of items from the State Heritage Register.<sup>150</sup>

**2.86** For several inquiry participants, the State Heritage Register was also considered inadequate in reflecting the diverse social and cultural fabric of the community, or the different types of heritage worthy of listing and recognition. For example, Docomomo Australia concurred with the discussion paper's observation that the community today looks vastly different to that of the 1970s when the Act commenced, pointing to the large influx of Vietnamese refugees and migrants in the second half of the 20th century and their 'immense' impact on the culture of New South Wales. However, it attributed any lack of balance or representation in the State Heritage Register primarily to resourcing issues.<sup>151</sup>

**2.87** Adding to this evidence, the Planning Institute of Australia observed that the State Heritage Register does not currently reflect the diversity of the community or heritage, and recommended a review of the statutory list with specific attention to places of significance to migrant communities, Indigenous communities, women and other groups. The Institute further argued that 'New South Wales lags behind other states and territories in the volume of state heritage listings (potentially due to the relative lack of contemporary listings), risking places of state heritage significance being unrecognised and appropriate protection not ensured'.<sup>152</sup>

**2.88** Mr Frank Howarth AM PSM, Chair of the Heritage Council of NSW, acknowledged that what he termed an 'Anglo-Saxon dominant view of heritage' tends to dominate the State Heritage Register and the Council is working to redress this imbalance:

The State Heritage Register is dominated by what I might and very generally call an Anglo-Saxon sort of dominant view of heritage—a large number of railway buildings

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<sup>146</sup> Submission 37, Heritage Council of NSW, p 10.

<sup>147</sup> Submission 44, Double Bay Residents Association, p 2.

<sup>148</sup> Submission 264, Property Council of Australia, p 4.

<sup>149</sup> Submission 273, Herbert Smith Freehills, p 7.

<sup>150</sup> Evidence, Dr MacLaren North, Managing Director, Extent Heritage, 17 August 2021, p 8.

<sup>151</sup> Submission 47, Docomomo Australia, pp 2-3.

<sup>152</sup> Submission 102, Planning Institute of Australia, p 4.

and sandstone churches—and communities that have arrived more recently and their heritage is under-represented. We have started to significantly address that.<sup>153</sup>

- 2.89** Engineers Australia referred to an 'imbalance of attention' given to buildings and structures at the expense of First Nations heritage, movable items and other values:

There has been an imbalance of attention and resources given to buildings and structures. Indigenous and movable heritage has largely been overlooked. Humble or “mundane” heritage, with which most Australians are familiar in their everyday lives is also overlooked in favour of iconic or biggest, first, grandest, etc. heritage items. Pre-1900 items form the majority of items listed.<sup>154</sup>

- 2.90** The National Trust of Australia also weighed in on discussion of this issue, highlighting the paucity of post-1950 architecture and geographic concentration among items classified as 'built heritage' on the State Heritage Register:

Even in terms of built heritage the State Heritage Register cannot be considered representative. Of the 1037 built items listed, 364 (35%) were within the City of Sydney Local Government Area, while the historic towns of Forbes and Parkes have just two each (their Post offices and Railway Stations). Just 26 (2%) were constructed after 1950. (All of the above figures have been obtained using the State Heritage Inventory advanced search function).<sup>155</sup>

- 2.91** Like others, Penrith City Council saw a need for greater representation of cultural diversity and First Nations heritage in the New South Wales heritage system, on the proviso that 'these changes do not diminish the importance or relevance of the existing items recognised on the NSW State Heritage Register'.<sup>156</sup>

- 2.92** In a bid to ensure greater community engagement in listings, the NSW Government is proposing a community-driven nomination process consisting of community-elicited early-round nominations for preliminary consideration by the Heritage Council of NSW. Following preliminary consideration, the Heritage Council would then invite more detailed nominations from promising applications with the assistance of Heritage NSW.<sup>157</sup>

- 2.93** Several inquiry participants saw merit in this proposal. Woollahra Municipal Council, for instance, expressed in principle support, seeing it as a means to 'ask people what buildings, landscapes and places are significant to them'.<sup>158</sup> Likewise, Mr Francis Breen, former Councillor of Leichhardt Municipal Council, supported the proposal but noted that it must be supported by adequate resources to enable Heritage NSW to provide assistance with applications and provide objective expert advice.<sup>159</sup>

<sup>153</sup> Evidence, Mr Frank Howarth AM PSM, 13 August 2021, p 5.

<sup>154</sup> Submission 15, Engineers Australia, p 6.

<sup>155</sup> Submission 292, National Trust of Australia (NSW), p 16.

<sup>156</sup> Submission 45, Penrith City Council, p 4.

<sup>157</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 17.

<sup>158</sup> Submission 40, Woollahra Municipal Council, p 6.

<sup>159</sup> Submission 188, Mr Francis Breen, p 4.

- 2.94** Herbert Smith Freehills' support for this proposal was framed as a matter of equity. In its view, a community-driven nomination process would better engage parts of the community who might otherwise not have an opportunity to have their say about heritage protection decisions.<sup>160</sup> Herbert Smith Freehills submitted:

An issue of particular concern in the current NSW heritage protection system is the trend that heritage is more likely to be protected if it is significant to well-resourced or well-informed sectors of our community. To overcome or mitigate this trend, a community-driven nomination process must be sensitive to the differences between different sectors of NSW's community.<sup>161</sup>

- 2.95** Some stakeholders questioned whether greater community engagement would indeed deliver a more robust State Heritage Register or remove 'roadblocks' to new listings.<sup>162</sup>

- 2.96** The National Trust of Australia (NSW) also questioned whether the proposed community-driven nomination process would require any change at all to the legislation which, it noted, deals only with procedures for recommendations to list and not the way nominations are elicited or obtained.<sup>163</sup> The Trust continued:

Indeed, there is nothing, aside from an obvious lack of resources, that is currently stopping Heritage NSW from asking the community for nominations for Heritage Council consideration, and streamlining the lengthy and detailed nomination form for this purpose.<sup>164</sup>

- 2.97** Adding to concerns about delays in new listings to the State Heritage Register, Ms Alexandria Barnier of Urbis' Heritage Team placed significant emphasis on better resourcing and a more pro-active approach to listings on the Register to address issues outlined in the discussion paper. Ms Barnier told the committee:

Resourcing, I think, is the first issue and something I am sure you will hear over and over again. Certainly there have been some items that have been sitting on the nominations list for the State Heritage Register for, I think, close to 10 years in the case of a couple of buildings. I think there also needs to be a more efficient triage process. ... I think it all comes down to resourcing and potentially being more proactive with proactive heritage studies and having more faith in the process that we have. ... Yes, I do. I think the Heritage Council and Heritage NSW could be more proactive in heritage studies, absolutely. I think that on a State level and a local level that would avoid a lot of the reactive nominations that happen at present at both levels and would certainly free up some more resources to be considering those items that truly were overlooked for whatever reason and those items can be considered more efficiently and management put in place.<sup>165</sup>

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<sup>160</sup> Submission 273, Herbert Smith Freehills, p 7.

<sup>161</sup> Submission 273, Herbert Smith Freehills, pp 7-8.

<sup>162</sup> Submission 90, GML Heritage, p 17; Submission 290, Australia Institute of Architects, p 8.

<sup>163</sup> Submission 292, National Trust of Australia (NSW), p 16.

<sup>164</sup> Submission 292, National Trust of Australia (NSW), p 16

<sup>165</sup> Evidence, Ms Alexandria Barnier, 17 August 2021, p 7.



- 2.98** Echoing these sentiments, Ms Sheridan Burke encouraged the NSW Government to initiate a comprehensive heritage study of the entire State, followed by public identification of significant places.<sup>166</sup>

### **Streamlining processes to update or remove items from the State Heritage Register**

- 2.99** The NSW Government's discussion paper outlined the case for far greater ease and flexibility in updating and removing items from the State Heritage Register than is currently afforded by the existing legislation. It notes that the current process delivers a 'static, point-in-time State Heritage Register listing ... that may no longer fully reflect the actual significance of each site,' owing in part to what are considered to be onerous processes to update an existing listing.<sup>167</sup>

- 2.100** According to the discussion paper, this also applies to the requirements for delisting or removing an item from the State Heritage Register – for example, where it has been destroyed by fire or flood. The current de-listing process is considered to be equally onerous and time-consuming as it requires a repeat of the lengthy listing process.<sup>168</sup>

- 2.101** In view of these issues, the discussion paper tests support for a more streamlined process for updating listing details to enable periodic review of the entire State Heritage Register as well as an abridged de-listing process in certain circumstances such as an item being destroyed by fire or flood.<sup>169</sup>

- 2.102** The City of Newcastle expressed its support for this proposal, highlighting its potential benefits:

Agree, a new streamlined process should be introduced to allow existing State Heritage Register listings to be more readily updated to better reflect any changes that have occurred to the heritage significance of items. Not only would this new process allow consideration of any recent changes to the building fabric and use of an item but also account for any changes to the social value of an item. Social value is a criterion of heritage significance particularly prone to changes over time as to continue to meet this criterion, the heritage item needs to continue to have a strong association with a community that exists today.<sup>170</sup>

- 2.103** The Property Council of Australia also highlighted the advantages of the proposal while recommending that delisting decisions should be referred to the Heritage Council and be subject to community consultation:

The Property Council of Australia supports reforming the listing process to update the heritage register in a periodic review and systematic manner. This will allow for updating the information on the listing, correction of errors, reassessment of state significance values, whether the values considered for listing of an item on the State Heritage Register (SHR) still valid or not. Listing and management of heritage places should be kept separate. The delisting process should be carefully considered and be equally

<sup>166</sup> Submission 229, Ms Sheridan Burke, private individual, p 2. See also: Submission 129, City of Canada Bay, p 6.

<sup>167</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 17.

<sup>168</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 17.

<sup>169</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 17.

<sup>170</sup> Submission 256, City of Newcastle, p 5.

simple. If an item no longer meets the listing on the State Heritage Register its significance values for retention or inclusion on the local heritage listing should be considered under the same process. Such delistings should involve community consultation and be referred to the Heritage Council.<sup>171</sup>

- 2.104** In addition, the committee noted support for this proposal from Australia ICOMOS, with particular emphasis on its potential to address gaps in inventory details or listing information for early listings to the State Heritage Register, thereby improving the overall accuracy of the register:

The proposal for a process to update existing State Heritage Register listing information (p. 17) to ensure that the information is relevant and accurate is supported. We accept that, over time, change does occur to State Heritage Register listed places, particularly as a consequence of changes approved under the Applications or Exemptions provisions of the Act, and the State Heritage Inventory listing forms should be amended to reflect these changes. Moreover, many of the places listed on the State Heritage Register were inscribed at an early stage following the introduction of the State Heritage Register by amendments to the Act in 1999 (in some cases through transitional arrangements for places subject to 'Permanent Conservation Orders' made in response to a threat from development), and the information may be less comprehensive than would be required for listing now.<sup>172</sup>

- 2.105** Finally, Mrs Rosalind Strong AM, former Director of the Heritage Office (1996-2002) with close involvement in the establishment of the State Heritage Register, alerted the committee to 'anomalies' in the Register as a result of the initial bulk import of items and the need to re-assess foundation listings to determine their level of significance:

At the time of the establishment of the State Heritage Register (SHR), a decision was taken to import all items which had Permanent Conservation Orders (PCO) into the Register as a way of ensuring their conservation. At the time it was clear that not all these items really had State Heritage Significance, and that some of them had been granted PCOs because of political and local pressure when they were under threat due to unsympathetic development proposals or demolition proposals in the period 1977 - 1998. ... It remains the case that the foundation items on the [State Heritage Register] should be reviewed as to the level of their significance, for the clear anomalies on the Register undermine its integrity and can call into question all the processes around their management. Rather than having this problem persist for another 20 years, it would be good public policy and practice to have an intensive appropriately funded time limited review period now and ensure the items on the [State Heritage Register] are only those with State significance.<sup>173</sup>

### **Proposed listing categories**

- 2.106** The discussion paper tests support for new listing categories for the State Heritage Register with the intent of providing more tailored protections for listed items and removing some of the perceived constraints associated with heritage listing.<sup>174</sup> The proposal responds to the perception

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<sup>171</sup> Submission 264, Property Council of Australia, p 5.

<sup>172</sup> Submission 291, Australia ICOMOS, p 4.

<sup>173</sup> Submission 223, Mrs Rosalind Strong AM, pp 1-2.

<sup>174</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 14.

that *all* heritage is currently treated the same way under the Heritage Act through a 'one-size-fits-all' approach.<sup>175</sup>

2.107 The reform proposal consisted of four categories as outlined in Table 1 below.

**Table 1 Proposed listing categories**

Category	Description and management characteristics <sup>176</sup>
Category 1	<p><b>Heritage of exceptional and iconic value:</b></p> <ul style="list-style-type: none"> <li>– items of significance at a State, national and worldwide level</li> <li>– to be identified and rigorously managed to the highest standards</li> <li>– likely to have high tourism potential as icons of New South Wales and Australia</li> <li>– subject to heightened regulatory controls</li> </ul> <p><b>Examples:</b> Sydney Opera House; Harbour Bridge; Brewarrina Aboriginal Fish Traps.</p>
Category 2	<p><b>State significant heritage landscapes:</b></p> <ul style="list-style-type: none"> <li>– state significant landscapes and areas with large curtilages</li> <li>– tailored regulation to suit individual circumstances and minimise impacts to uses</li> <li>– a fairer approach that recognises complex management and operational requirements and treats items in this category accordingly</li> </ul> <p><b>Examples:</b> Bondi Beach Cultural Landscape; Myall Creek Massacre and Memorial Site; Braidwood.</p>
Category 3	<p><b>State significant heritage:</b></p> <ul style="list-style-type: none"> <li>– majority of State Heritage Register items</li> <li>– consistent and easy to understand regulatory mechanisms and exemptions</li> <li>– potential for tailored regulatory settings for items with unique or challenging management needs</li> </ul> <p><b>Examples:</b> Standard residential properties.</p>
Category 4	<p><b>Local heritage:</b></p> <ul style="list-style-type: none"> <li>– no change to existing regulatory arrangements</li> </ul>

2.108 This proposal garnered support in inquiry evidence. For example, Business Western Sydney supported it, observing: "The management regime needed for a heritage theatre or courthouse is different to the regime needed for a heritage precinct or farm and the Act should reflect this".<sup>177</sup>

2.109 Both the Urban Development Institute of Australia and the Urban Taskforce Australia<sup>178</sup> echoed these sentiments. In backing the proposal, the Urban Development Institute highlighted

<sup>175</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 14.

<sup>176</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, pp 15-16.

<sup>177</sup> Submission 24, Business Western Sydney, p 3.

<sup>178</sup> Submission 98, Urban Taskforce Australia, p 11.

the strain placed on the planning framework when all State Heritage Register items are accounted for identically:

The proposed creation of 4 separate categories of heritage identification, with tailored and appropriate regulatory controls for each category, would enable better approaches and responses to the future support of the heritage item. All items listed on the State Heritage Register are, at present, accounted for identically. This has put a strain on the planning framework, as solutions for overcoming ineffective heritage conservation are one dimensional and do not adequately apply to regulatory instruments such as Local Environmental Plans (LEPs).<sup>179</sup>

- 2.110** The Committee for Sydney agreed that the Heritage Act should recognise that different categories of heritage require a more tailored and responsive regulatory approach – as opposed to 'the current one size fits all approach'. However, the Committee for Sydney qualified their support for the proposed category system by stressing 'it is important that this reform makes the operation of the Act easier to navigate and simpler to apply and does not add bureaucratic complexity'.<sup>180</sup>
- 2.111** Friends of Fernhill and Mulgoa Valley Inc saw particular merit in Category 2 – State significant heritage landscapes – for its potential to remove constraints in listing cultural landscapes.<sup>181</sup> The Millers Point Community Resident Action Group generally supported the proposed category system as a way of supporting simpler administration of listed items, subject to further detail on the four categories.<sup>182</sup>
- 2.112** Local Government NSW also indicated broad support for the proposal in its potential to 'reduce red tape and cost, where overly or improperly applied' but reserved comment on any potential implications for local government in the absence of further details about the proposed scheme.<sup>183</sup> It further recommended that local government be consulted on any subsequent steps for the categorisation scheme. Notably, Local Government NSW cautioned that the category system 'must not remove any of the current concurrence powers of local government for development applications within their local government areas under existing concurrence and integrated development assessment processes'.<sup>184</sup>
- 2.113** For the Heritage Council of NSW, the introduction of a category approach to listing is an opportunity to better recognise and manage the diverse ways in which heritage recognition and celebration have evolved over the years. However, the Council was careful to emphasise that any category system should be driven by the priorities of celebration, conservation and protection – with the ability to differentiate levels of significance and management requirements.<sup>185</sup>
- 2.114** The City of Newcastle agreed that listings on the State Heritage Register should be more nuanced 'to encourage sensitive change' – and also viewed the proposed gradings or categories

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<sup>179</sup> Submission 77, Urban Development Institute of Australia, p 2.

<sup>180</sup> Submission 34, Committee for Sydney, pp 1 and 4.

<sup>181</sup> Submission 27, Friends of Fernhill and Mulgoa Valley Inc, p 13.

<sup>182</sup> Submission 91, Millers Point Community Resident Action Group, p 4.

<sup>183</sup> Submission 35, Local Government NSW, p 18.

<sup>184</sup> Submission 35, Local Government NSW, p 19.

<sup>185</sup> Submission 37, Heritage Council of NSW, p 7.

as sensible and to some extent akin to the tiered approach used for heritage listed buildings in England.<sup>186</sup> The City also saw potential for the category system to be tailored or adapted to also provide a grading system for the level of intactness of a listed item:

The gradings suggested for heritage building and landscape items in the Discussion Paper appears sensible and reflects to some extent the gradings for heritage listed buildings in England. These gradings should also be tailored to help readily indicate the extent to which the building or landscape is in its original condition and therefore the extent to which change can occur without adversely affecting its heritage significance. It is notable that the listing protection in England for heritage listed buildings equally applies to the internal as well as external fabric of the building. The Heritage Act could be amended so that it is also the case in NSW for built heritage items. This would provide greater clarity as to when and what internal building fabric needs to be conserved and discourage its loss and inappropriate change.<sup>187</sup>

- 2.115** References to the English grading system also resonated with Ms Natalie Vinton, Chief Executive Officer of Curio Projects Pty Ltd, in considering the rationale and purpose of the proposed category system. Overcoming her initial confusion about its purpose, Ms Vinton saw significant potential in some form of categorisation as a principle, but more appropriately re-imagined/re-cast as subcategories or 'tiers of management' similar to those used by English Heritage. For Ms Vinton, if applied within the existing overarching categories of local, State, national and world, such an approach may address some of the 'fear' and promote a much clearer understanding among all parties of which parts of a property should be the main concern. She commented:

... it [opened] my mind to thinking about whether categorisation would help in the way that it is supplied, for example, for English Heritage, where you have different tiered properties, which allow you to make different levels of adaptation to them. I think we have those four overarching categories that work well in terms of local, State, national and world, but I do believe that within those categories there are subcategories which relate to tiers of management. For example, recently I was dealing with a property in the inner west. It is a terrace and it sits within a conservation area and it is not individually listed as a heritage item ... I became involved after the application was told to be withdrawn. ... you have got a heritage officer telling them, 'No, we don't like it because of what you are doing inside your home,' not that they were changing anything to the street. ... That is where I think things like categorisation would be very healthy and useful, and help change some of the fear that sits within heritage management. It is understanding, 'Is your category related to your exterior, your interior, your front yard or your backyard'—all those sorts of things that make it easy and defined for council, property owners and heritage professionals—and then which bits you should be worrying about, whether it is at State or local.<sup>188</sup>

- 2.116** Notwithstanding these expressions of support, a number of inquiry participants either strongly opposed or were otherwise circumspect about the proposed category system. Objections were raised by stakeholders across local government, the heritage consulting industry, academia, member-based non-profit conservation organisations, professional associations and heritage

<sup>186</sup> Submission 256, City of Newcastle, p 3.

<sup>187</sup> Submission 256, City of Newcastle, p 3.

<sup>188</sup> Evidence, Ms Natalie Vinton, Chief Executive Officer, Curio Projects Pty Ltd, 17 August 2021, p 11.

owners – among other experts and interested individuals.<sup>189</sup> The basis of their concerns are summarised in the sections below.

***Categorisation is unnecessary or redundant***

- 2.117** Urbis considered that the categories outlined in the discussion paper are already addressed by the existing multi-tiered system of heritage listing and identification, each tier with its corresponding consent authority. In its view, community education on the existing categories should be the much higher priority:

The categories suggested in the Discussion Paper are already addressed by other levels of heritage listing overseen by other consent authorities. Additional categorisation risks further convoluting the process for owners and introducing more basis for inconsistencies between the interpretation of guidelines by consent authorities, which is already a fundamental issue. Instead of further categories, a focus on public education about the existing listing system should be a priority. Heritage consultants understand the level of change to be expected from each level of listing, however this is not widely understood by the public nor are the types of listings.<sup>190</sup>

- 2.118** Sounding a similar note, GML Heritage characterised the proposal as 'poorly conceived' and duplicative of the existing tiers of management and responsibility:

The proposed listing categories are poorly conceived. The proposed listing categories are in fact management categories for [State Heritage Register] items. The [State Heritage Register] already has many listing 'categories'. The categories effectively duplicate the tiers of management and responsibility that are already in place at local, state and Commonwealth levels. There is no compelling or convincing rationale for the categorisation. The fact is that the [State Heritage Register] reflects the assessment of an item as being of 'state' significance.<sup>191</sup>

- 2.119** The Property Council of Australia was similarly unconvinced of the proposal's merits or necessity. It drew attention to the adequacy of the existing system, noting that tailored regulatory approaches for residential properties on the State Heritage Register can already be achieved under the existing Act, including through better use of site specific or standard exemptions (under section 57) or approval pathways (under section 60):

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<sup>189</sup> See for example: Submission 1a, Historic Houses Association of Australia, p 2; Submission 30, Urbis, p 2; Submission 40, Woollahra Municipal Council, p 5; Submission 41, Central Coast Council, p 3; Submission 47, Docomomo Australia, p 6; Submission 51, Blue Mountains City Council, p 8; Submission 56, Professor Richard Mackay AM, p 7; Submission 84, Haberfield Association, p 5; Submission 89, National Trust of Australia (Parramatta Regional Branch), p 4; Submission 90, GML Heritage, p 17; Submission 102, Planning Institute of Australia, p 1; Submission 103, Mr Chris Betteridge, p 8; Submission 129, City of Canada Bay, p 4; Submission 181, Dr Kate Sullivan, pp 6 and 7; Submission 187, Dr Camron Logan, p 2; Submission 188, Mr Francis Breen, p 3; Submission 189, Ms Lauren Schutz, p 1; Submission 223, Ms Rosalind Strong AM, p 3; Submission 229, Ms Sheridan Burke, p 4; Submission 264, Property Council of Australia, p 7; Submission 290, Australian Institute of Architects, p 8; Submission 291, Australia ICOMOS, p 291; Submission 292, National Trust of Australia (NSW), p 14; Submission 28, Place Management NSW (Department of Planning, Industry and Environment), p 5; Answers to supplementary questions, Ms Kate Denny, Partner, Lucas, Stapleton, Johnson and Partners, 17 September 2021, pp 1-2.

<sup>190</sup> Submission 30, Urbis, p 2.

<sup>191</sup> Submission 90, GML Heritage, p 17.

The purpose of the categorisation reform system as it is proposed is not clearly understood as the existing levels of significance and listing registers at National, State and Local levels provide adequate protection for all type of heritage items. The residential properties are largely fall under the state and local heritage and are protected under the Heritage Act and the EP&A Act respectively. The residential properties that are listed on the [State Heritage Register] could easily be managed through new exemptions, site specific exemptions and fast tract s60 to streamline the process for appropriate changes in a timely manner.<sup>192</sup>

***Categorisation is confusing or unclear***

- 2.120** Some inquiry participants, such as Docomomo Australia, Willoughby City Council and the City of Canada Bay, failed to understand the value, benefit or relevance of the proposed category system, arguing instead that it would add unnecessary complexity or ambiguity to the system, and would be confusing to the general public.<sup>193</sup>
- 2.121** Like Urbis, City Plan Heritage submitted that the existing levels of recognition at national, state and local levels already provide adequate protection for all types of heritage items, including residential dwellings, and that the proposed category system may create 'unnecessary ambiguity and confusion' in this system.<sup>194</sup>

***Categorisation blurs considerations that should remain separate in heritage practice***

- 2.122** Woollahra Municipal Council opposed the category system, dismissing claims it provides a tailored approach to heritage protection and labelling it 'an oversimplified, blunt instrument'.<sup>195</sup> It stated:

[The proposal] will replace assessment of individual items with exemptions based on the asset class and category, and lead to diminished protections for [State Heritage Register] items. Heritage conservation is about identifying what is significant and what impact proposed changes are likely to have on the heritage significance of the item. The suitability of proposed work on any [State Heritage Register] item should be assessed having regard to the impact on the significance of that particular item, not according to its category. The proposed asset class provisions are directly contrary to the principals of the Burra Charter which advise to first understand the significance of the place (not the type of place) and to tailor the approach to the item on the basis of this understanding.<sup>196</sup>

- 2.123** Consistent with this evidence, Dr Kate Sullivan, owner of several heritage listed properties, maintained that the category system ignores the precepts of the Burra Charter and blurs considerations and decisions that should remain separate in heritage conservation thinking and practice:

<sup>192</sup> Submission 264, Property Council of Australia, p 7. For more on how tailored regulatory approaches can be achieved under the existing Act, see: Submission 292, National Trust of Australia (NSW), p 14.

<sup>193</sup> Submission 47, Docomomo Australia, p 6; Submission 55, Willoughby City Council, p 3; Submission 129, City of Canada Bay, p 4;

<sup>194</sup> Submission 88, City Plan Heritage, p 3.

<sup>195</sup> Submission 40, Woollahra Municipal Council, p 4.

<sup>196</sup> Submission 40, Woollahra Municipal Council, p 4.

... this proposal seems to be advanced in ignorance of the principles of the Burra Charter of Australia ICOMOS, the basic document on which heritage conservation and practice in Australia is built, including Federal and all state government legislation and practice...The approach outlined in Reform Proposal 1 demonstrates a misunderstanding of modern heritage conservation principles. The proposal creates a collision between significance assessment, listing and management decisions. These should be three separate decisions. Significance assessment should come first, listing second and management decisions third. The proposal (and the examples given) makes the mistake of treating heritage items as mere “property”, classifying properties not according to their significance but according to some unspecified criteria which sometimes seems to be “size” sometimes to be “type” of property sometimes type of management. The proposal confuses “listing” with management. The scheme assumes that the higher the level of listing the higher the protection and its application to some items marginalises the values of other items. It treats items of local significance as some kind of residual category demonstrating no understanding of the concept of local significance. All items of heritage are significant at the local level and all local heritage is collectively important to the nation. The proposal appears to try to use listing categories to tackle management issues. The proposal will not deliver better protection for heritage.<sup>197</sup>

**2.124** The National Trust of Australia – Parramatta Regional Branch cautioned against introducing non-heritage criteria, such as economics and potential for activation, to assessment of significance, arguing this would dilute the heritage significance of an item. It suggested that, by placing 'standard residential properties' in a lower category than those considered 'iconic' or 'exceptional', the proposal overlooks highly significant items that should not be treated as lesser or inferior.<sup>198</sup>

**2.125** Australia ICOMOS was pointed in its assessment of the proposal, describing it as 'simplistic'.<sup>199</sup>

***Categorisation could downgrade or dilute protections***

**2.126** This was a key concern for Woollahra Municipal Council – in particular, the possible implications for Category 3 items. In its view, the focus on conserving Category 1 items to 'the highest standards' while most other state significant items will be covered by easy to understand protections conducive to conservation, activation and celebration, represents an 'alarming' dilution of the importance of State Heritage Register listing.<sup>200</sup>

**2.127** Concerns that the category system would result in a downgrade of the level of significance and protection for certain state listed items – and in turn, poor heritage outcomes – were shared by other inquiry participants including Penrith City Council, Blue Mountains City Council and Mr Chris Betteridge, heritage consultant.<sup>201</sup>

**2.128** In response to suggestions that more prescriptive inventory sheets would be a more effective alternative to the proposed categorisation system, Dr MacLaren North, of Extent Heritage,

<sup>197</sup> Submission 181, Dr Kate Sullivan, pp 5-6. See also: Submission 188, Mr Francis Breen, p 3.

<sup>198</sup> Submission 89, National Trust of Australia (Parramatta Regional Branch), p 4.

<sup>199</sup> Submission 291, Australia ICOMOS, p 5.

<sup>200</sup> Submission 40, Woollahra Municipal Council, p 3.

<sup>201</sup> Submission 45, Penrith City Council, p 6; Submission 51, Blue Mountains City Council, p 8; Submission 103, Mr Chris Betteridge, p 8.



called into question the utility of prescriptive measures where they lead to an unhelpful regulatory pre-occupation with fabric at a micro level. In response to committee questioning, he explained:

... I do not know that prescriptive measures necessarily always work. For example, I am aware of properties in Millers Point where very detailed conservation documentation has been prepared and yet consent authorities are still specifying things like what mortar joints one can put a screw into. Frankly I do not think that is the most productive use of the time of somebody in Heritage NSW to be getting down to that micro level of detail, particularly when it does not impact on significance. There needs to be a balance in there.<sup>202</sup>

### Committee comment

- 2.129** The committee sees significant potential in the intent and rationale underpinning the proposed category system for listings on the State Heritage Register, but remains unconvinced of their specific form and expression in the NSW Government's discussion paper. It is clear from the evidence that this proposal needs further thinking, development and refinement. We support further exploration of the use of categories – potentially re-imagined as management tiers or classifications – to promote greater consistency in the approvals process and as a way of giving heritage owners a much better understanding of the changes or alterations that might be possible to their properties. Such tiers or classifications could codify, for example, the type of significance and required management approaches. Knowing exactly which tier a property falls into could reduce uncertainties for both heritage owners and regulators. Such a system should not, however, result in any diminution or dilution of significance and protection for State-listed items. Consideration must also be given to whether such a system would be 'grandfathered' or applied retrospectively to the approximately 1,750 items already listed on the State Heritage Register.

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### Recommendation 8

That the NSW Government further investigate the use of categories as a way of promoting greater consistency in the heritage approvals process, to give heritage owners a much better understanding of the changes or alterations that might be possible to their State-listed properties. Locally listed items of heritage should be mandatorily listed and consolidated on to the State Heritage Inventory so that applications can be more readily made for State significance if necessary.

- 2.130** As the inquiry unfolded, it became clear to the committee that the current make-up of the State Heritage Register is not as balanced and representative as it should be. In the committee's view, the Register has generally not kept pace with significant changes in our society over the second half of the twentieth century as well as evolving ideas and attitudes about significance – that is, the things we inherit and wish to cherish, value, celebrate and protect for future generations. The Register should be a list that reflects the diversity of our pluralistic and multicultural society and an accessible public record into which all groups – including, especially, First Nations

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<sup>202</sup> Evidence, Dr MacLaren North, 17 August 2021, p 12.

peoples and migrants and their descendants – should see their stories, achievements and narratives inscribed in culturally sensitive and respectful ways.

- 2.131** The slow rate of new listings to the State Heritage Register also gives us cause for concern. It is clear that New South Wales lags behind other states and jurisdictions in identifying and recording our important places and heritage.
- 2.132** Based on the weight of evidence before the committee, we support the Government's proposal for a community-driven early round nomination process as foreshadowed in the discussion paper. In the committee's view, a firm organisational commitment and appropriate resourcing will be critical to the success of this process. Importantly, the process should be accessible, easy to understand and transparent. It should also be subject to close monitoring and evaluation. What success looks like should be defined at the outset and periodic evaluation of outcomes should determine whether it should be pursued long term. In implementing this process, Heritage NSW should consider outreach to specific communities whose stories are currently under-represented on the Register.
- 2.133** In the committee's opinion, this should not preclude consideration of other initiatives and efforts to address gaps in the State Heritage Register such as thematic listing programs. The feasibility and benefits of such initiatives should be investigated in parallel with the trialling of a community-driven early round nomination process.
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### **Recommendation 9**

That the NSW Government introduce, on a trial basis, a community-driven, early round nomination process calling for potential State Heritage Register nominations for preliminary consideration by the Heritage Council of NSW.

### **Recommendation 10**

That, in order to address gaps in the State Heritage Register, the NSW Government review its thematic listing programs and give consideration to initiatives that may facilitate a more representative State Heritage Register.

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- 2.134** Evidence before the committee attests to the need for much greater flexibility in updating existing listings on the State Heritage Register as well as removing items that may no longer meet the threshold of State significance – for example, where their significance has been diminished as a result of fire or natural calamity.
- 2.135** As highlighted in evidence to the committee, heritage is living and dynamic – an item's significance is not cryogenically frozen at the point of registration. Over time, it's possible for new layers of meaning or values to come to the fore, thereby placing an item's significance in different perspectives or highlighting aspects of significance (aesthetic, historical, associative etcetera) that may be different to those recognised at the time of listing via the endorsed statement of significance. In the committee's view, the State Heritage Register should be periodically reviewed to ensure it is an accurate, reliable and authoritative record of the State's most significant items and places. Administrative and housekeeping amendments and corrections should also be periodically addressed. To this end, the committee supports the introduction of a streamlined process for updating existing listings on the State Heritage Register
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– a reform also broadly supported by inquiry participants. Whether this necessitates changes to the legislation or could be achieved through a tailored policy solution (for example, a Heritage Council-endorsed policy for updates to the Register) would be a matter for further investigation by Heritage NSW or the NSW Government.

- 2.136** The committee notes with concern the 'anomalies' in the foundation listings on the State Heritage Register, brought to our attention through inquiry evidence. Any doubts that some items on the Register may not actually meet the threshold of State significance (were they to be re-assessed today) serve to undermine its integrity. This alone justifies the need for an abridged de-listing process which we fully support. While this should not repeat all the process steps of the listing process, consultation with affected stakeholders and interested parties should still occur as part of any abridged de-listing process.

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### **Recommendation 11**

That the NSW Government amend the *Heritage Act 1977* to provide for an abridged delisting process for removing items from the State Heritage Register, to cater for situations where an item's significance has been significantly diminished, for example, as a result of fire or some natural calamity.

### **Recommendation 12**

That the NSW Government design and implement a streamlined process for updating existing listings on the State Heritage Register either through legislative change, a tailored policy solution or both.

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## **Managing change to State Heritage Register items**

- 2.137** The NSW Government's discussion paper seeks stakeholder views and suggestions for improving the current approval permit system for works for State Heritage Register items. This proceeds from an acknowledgement of the issues and frustrations that some heritage owners face when applying for approval under the Heritage Act to carry out works to their properties. In particular, the discussion papers notes that some owners find the process to be confusing, costly and time consuming, and there can be uncertainty about what changes are permissible. It suggests the process can sometimes feel adversarial and that instead, there should be an approach which permits sympathetic change.<sup>203</sup>

- 2.138** Characterisations of the existing process as onerous, time-consuming and costly resonated with heritage owners and owner associations who participated in the inquiry. For example, the Historic Houses Association Australia submitted:

Many heritage home-owning HHA members and prospective members have been involved in major repairs and renovations, and typically have found the processes neither easy nor cost effective. Having to prepare a 1000-page Conservation

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<sup>203</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 18.

Management Plan, or simply to follow its requirements is a major undertaking. Added to this are the multiple applications required to both Heritage NSW and local council.<sup>204</sup>

**2.139** Tanner Kibble Denton Architects added further weight to this perspective, stating '[o]wners of places with heritage value should not be penalised by long and drawn out bureaucratic processes which hinder protection, conservation and adaptive re-use. Rather, owners should be supported in their efforts to protect and conserve'.<sup>205</sup>

**2.140** Tanner Kibble Denton Architects further suggested that the approvals system is not administered equitably and there is little accountability within the system.<sup>206</sup> This was echoed by Curio Projects Pty Ltd, who stated:

[T]he process for the management of heritage, despite the legislative requirements, remains too subjective, with little to no requirement for a consistent approach by individual officers, Councils or agencies in the management, assessment and incentivisation for heritage asset owners. ... there is lack of the consistency in how officers in approvals/management roles implement and assess applications against the requirements of the Heritage Act. In particular, projects, heritage listings and developments will have a dramatically different ranges of outcomes (even within one agency) depending on who the 'assessing officer' is. This is, perhaps, the biggest weakness in how the objectives of the Heritage Act are applied – how individual officers approach the actual application of the Act, not its stated intentions or objectives.<sup>207</sup>

**2.141** Ms Polly Seidler – daughter of the late award-winning modern architect, Harry Seidler, and in-house lawyer and architectural historian for Harry Seidler and Associates – spoke of the negative perception of heritage listing in the property industry and expressed concerns about existing development approval requirements with specific reference to her mother's experience in obtaining approval for roof repairs to the State-listed Harry and Penelope Seidler House.<sup>208</sup>

**2.142** Noting that the approval process is taking a 'very long time,' Ms Seidler argued there should be an exception from these requirements in instances where the item's significance is its modern architecture and association with a certain architect, and where that architect is also the proponent for the proposed alterations. Ms Seidler explained:

I consider it serves no one that architect Penelope Seidler with her husband Harry Seidler won the state's top residential architecture Wilkinson award for her house of 1967 for Seidler House in Killara, has to lodge a DA to effect roof repairs to her own house. She is an architect and knows more about the house and roof design than any heritage officer. She knows how to uphold her own architectural integrity.<sup>209</sup>

**2.143** Elsewhere in evidence, it was argued that the prevailing mentality or regulatory culture is fundamentally resistant to change. Referring to the way in which the Act's objects are managed and applied in practice, the Urban Development Institute of Australia asserted the existence of

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<sup>204</sup> Submission 1, Historic Houses Association Australia, p 2.

<sup>205</sup> Submission 25, Tanner Kibble Denton, p 1.

<sup>206</sup> Submission 25, Tanner Kibble Denton, p 1.

<sup>207</sup> Submission 87, Curio Projects Pty Ltd, p 3.

<sup>208</sup> Evidence, Ms Polly Seidler, private individual, 17 August 2021, p 36.

<sup>209</sup> Submission 86, Ms Polly Seidler, p 4.

a 'preserve in aspic' mentality resulting in opposition to any change, rather than practical re-use.<sup>210</sup>

- 2.144** Professor Mackay also considered resistance to change to be a key factor undermining effective heritage administration under the Act's provisions. In response to the committee's questions, Professor Mackay highlighted examples which speak to the impost on owners when the focus on preserving original fabric is taken to an inappropriate degree:

I think a good suite of examples is contained in some of the terrace houses in Millers Point that were sold over recent years by the Government to private owners. Obviously these are expensive properties and it is reasonable to expect a degree of change to accommodate contemporary residential living. There are examples there—look, I am all for the conservation of original fabric and original form and ensuring that the important heritage values of that State Heritage Register precinct are retained, but that is taken to, in my view, an inappropriate degree when there are arguments about removals of small sections of floor joists, for example, in order to achieve effective transmission of food between a basement, kitchen and a first-floor dining room. There is a recent example in the New South Wales Land and Environment Court of exactly that problem. The issue there is resisting change, rather than looking behind the specifics of the change to how the values of the heritage place can be best protected, including ongoing viability.<sup>211</sup>

- 2.145** Cr Linda Scott, President of Local Government NSW, referred to anecdotal evidence from one of the Association's member councils which highlighted inefficiencies in the system and brought into focus the need for a more responsive process and better way to deal with Heritage NSW. She observed:

We have also asked for a better way to, for example, deal with Heritage NSW both for local governments acting as a proponent or as a consent authority. The example that is often cited is the Bathurst Rail Museum. Staff from the Bathurst Regional Council took two years to obtain a consent from Heritage NSW for what they describe as both a slow and vague request for information from Heritage NSW. It was only resolved by council officers travelling to Sydney to meet with Heritage NSW in person. Obviously this was pre-pandemic.<sup>212</sup>

- 2.146** This issue was also borne out in evidence from the Anglican Church Property Trust Diocese of Sydney, the owner of State-listed heritage items across twenty sites.<sup>213</sup> Under examination by the committee, Ms Penny Barletta, the Manager of the Trust's Parish Property Services Team, spoke of a number of concerns with how the regulatory framework and regime for State-listed items is not currently serving their needs or the expectations of their parish communities. Ms Barletta told the committee that, following listing of St Johns in Darlinghurst on the State Heritage Register in 1986, 'the buildings no longer responded to the needs of the people meeting on the site, rather the people had to respond to the needs of the building'.<sup>214</sup>

<sup>210</sup> Submission 77, Urban Development Institute of Australia, p 1.

<sup>211</sup> Evidence, Professor Richard Mackay AM, 2 September 2021, p 3.

<sup>212</sup> Evidence, Cr Linda Scott, 24 August 2021, p 6.

<sup>213</sup> Submission 49, Anglican Church Diocese of Sydney, p 1.

<sup>214</sup> Evidence, Ms Penny Barletta, Manager, Parish Property Services, Anglican Church Property Diocese of Sydney, 17 August 2021, p 24.

- 2.147** Evidence from the Anglican Church Property Trust Diocese of Sydney was an instructive example of how heritage listing can constrain an owner's ability to carry out updates and upgrades to facilities to respond to present day requirements. It is given detailed consideration in the following case study.

#### **Case study: The Anglican Church Property Trust Diocese of Sydney**

The Anglican Church Property Trust Diocese of Sydney is the owner and manager of over thirty State-listed heritage items across twenty sites. In its submission to the inquiry, the Trust provided a very detailed account of the realities of owning multiple State-listed items and the frustrations, delays and expenses they have incurred in managing and carrying out basic upgrades to these sites.

The Trust broadly characterised their experiences dealing with Heritage NSW as one of 'resistance, compliance and preservation of 'heritage value' over all other considerations', referring to a prevailing mentality of 'heritage for heritage's sake' which drives assessment and decision making.<sup>215</sup> For the Trust, owning heritage has been 'expensive' and 'time-consuming' with the heritage overlay limiting options for use of their buildings and thus impeding community and economic activity.<sup>216</sup> It observed:

The discussion paper talks about the perception of heritage listing as burdensome, involving costly conservation costs and constrained by regulation. Our experience is that this is not a perception, but a reality, and while Heritage NSW, who authored the discussion paper, may wish to imply that heritage ownership is without significant challenges, we note that Heritage NSW does not actually manage any heritage items, nor need to navigate Heritage NSW's systems.<sup>217</sup>

In its submission to the inquiry, the Trust detailed several specific examples of what it considered to be 'overreach, inconsistency and poor responsiveness' from Heritage NSW. These are reproduced below.

##### Proposed addition of a services building

An application was made to add a services building on a city site with two listed buildings and little free space. The application was rejected as construction would have impacted on one of the existing heritage buildings. There was no visit from a Heritage NSW assessor to discuss options or advise what would be permitted. The parish is still operating with the original substandard toilet facilities which limits its attraction for post-wedding functions, despite the church itself being a popular wedding venue.<sup>218</sup>

##### Proposed extension of a modern build element within a rural site

A country parish sought to extend a small modern building containing kitchen and bathroom facilities to accommodate an extra meeting room. The listed site previously consisted of a church and cemetery. The application to Heritage NSW took a year to be approved and required the submission of extensive additional documentation to prove to an officer, who

<sup>215</sup> Submission 49, Anglican Church Diocese of Sydney, p 1.

<sup>216</sup> Submission 49, Anglican Church Diocese of Sydney, p 2.

<sup>217</sup> Submission 49, Anglican Church Diocese of Sydney, p 6.

<sup>218</sup> Submission 49, Anglican Church Diocese of Sydney, p 3.

never visited the site, that the proposed community facility was hidden from view. The same parish also experienced a year's wait for approval on another project under \$100k in value.<sup>219</sup>

#### Church roof replacement using original materials

One of the state's pre-eminent heritage architects was retained to oversee the replacement of a church roof with the same materials as the original. Based on his extensive experience with similar projects his office submitted an exemption notification for the project. The notification was submitted in June 2015. Over a year later, when the work was underway, Heritage NSW issued an informal request for work to stop, and a direction that an application for approval be submitted, contrary to the architect's previous experience. This delay caused additional costs to the half million dollar project.<sup>220</sup>

#### Conservation Management Plan for development adjacent to a heritage listing

A Conservation Management Plan (CMP) was required as part of an approval for a development on a lot neighbouring a listed property. The requirement was only possible because of the shared ownership across both lots. While initially an update of an existing plan was requested by Heritage NSW, it was subsequently decided that an entirely new document should be created. This document has been rejected for review by Heritage NSW officers through four iterations. In the most recent edit provided by Heritage NSW, officers have proposed alterations to aspects of heritage value as assessed by the heritage architect who prepared the document.

One of the proposals from Heritage NSW would significantly impact the potential for further development on the neighbouring site. The proposal seeks to protect sightlines to the heritage item which were only opened up through the demolition of the previous building on that site as part of the new development. The original author of the document has completed his engagement with the parish – some six years after the project originally started, and it seems unlikely that a final version of the CMP will be agreed between Heritage NSW and the land owner. The checklist following the fourth review now stands at fifty-four pages.<sup>221</sup>

- 2.148** As will be discussed below, inquiry participants volunteered their views on how some of these issues and concerns might be addressed, including in response to the reform proposals outlined in the discussion paper.

### **Determination of regulatory thresholds by the Minister**

- 2.149** One of the reforms canvassed in the discussion paper is for regulatory thresholds for exemptions and approvals to be determined by the Minister in consultation with the Heritage Council. The intention of this reform is to ensure the application and exemption process is flexible and responsive to community needs, thereby making it easier for owners conserve their heritage listed properties.<sup>222</sup>
- 2.150** Hornsby Shire Council supported this proposal in principle provided 'any new thresholds are consistently applied, that processes to establish them are justified and transparent and that they

<sup>219</sup> Submission 49, Anglican Church Diocese of Sydney, p 3.

<sup>220</sup> Submission 49, Anglican Church Diocese of Sydney, p 7.

<sup>221</sup> Submission 49, Anglican Church Diocese of Sydney, p 7.

<sup>222</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 18.

integrate seamlessly with parallel approvals and exemption structures enabled through the *Environmental Planning and Assessment Act 1979*.<sup>223</sup>

- 2.151** The Urban Taskforce Australia also backed the proposal and further recommended that industry be directly consulted in the setting of thresholds.<sup>224</sup>
- 2.152** Seeing any streamlining of regulatory processes as laudable, the Committee for Sydney welcomed the proposal but was unclear on the rationale for transferring this function to the Minister rather than it staying within the Heritage Council's remit.<sup>225</sup>
- 2.153** Other inquiry participants went much further in insisting that the determination of thresholds should remain with the Heritage Council of NSW and at arm's length of the Minister or the political machinery of executive government.<sup>226</sup> Hunters Hill Council was one such stakeholder, stressing that the determination of thresholds is 'a technical consideration which should not be politicised'.<sup>227</sup> Another stakeholder in this category was the City of Sydney, who stated:

[T]he role of the Minister in facilitating the permit process should not be considered to avoid any perception of politically motivated decisions. This should only be the role of the Heritage Council only, as the independent expert body rather than the elected official.<sup>228</sup>

- 2.154** GML Heritage also questioned whether this proposal will streamline the heritage permit process as implied by the discussion paper, noting that the existing system already affords significant flexibility through standard and site specific exemptions.<sup>229</sup>

### **Resourcing of heritage approvals**

- 2.155** The resourcing of Heritage NSW was a common concern raised in inquiry evidence, not just in relation to the heritage permit process and assessment timeframes, but also in response to several other issues outlined in the discussion paper.<sup>230</sup>

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<sup>223</sup> Submission 36, Hornsby Shire Council, p 3.

<sup>224</sup> Submission 98, Urban Taskforce Australia, p 5.

<sup>225</sup> Submission 34, Committee for Sydney, p 5.

<sup>226</sup> See for example: Submission 91, Millers Point Community Resident Action Group, p 4; Submission 169, Mr Vasilij Schlusser, p 2.

<sup>227</sup> Submission 111, Hunters Hill Council, p 4.

<sup>228</sup> Submission 270, City of Sydney, p 12.

<sup>229</sup> Submission 90, GML Heritage, p 18.

<sup>230</sup> See for example: Submission 200, Ms Caitlin Allen, p 4; Submission 78, National Trust of Australia (NSW) – Blue Mountains Branch, p 1; Submission 80, History Council of NSW, p 1; Submission 84, Haberfield Association, p 5; Submission 86, Ms Polly Seidler, p 8; Submission 28, Placemaking NSW, Department of Planning, Industry and Environment, p 2; Submission 45, Penrith City Council, p 2; Submission 47, Docomomo Australia, p 1; Submission 51, Blue Mountains City Council, p 4; Submission 23, Sue Rosen Associates, p 2; Submission 102, Planning Institute of Australia, p 7; Submission 120, Wollongong City Council (Staff Submission), p 7.



**2.156** A significant proportion of inquiry participants therefore saw better resourcing of Heritage NSW – that is, not only more resources but appropriately qualified ones – as a pathway to improve the heritage permit process. Examples are covered below.

- The City of Sydney recommended that, in addition to streamlining of the heritage permit process, increased resources be made available to assist State Heritage Register-listed property owners.<sup>231</sup>
- For Penrith City Council, the best way to improve the heritage permit system and timeframes for assessment is to increase funding and staffing at Heritage NSW and integrate the Burra Charter process into the Act.<sup>232</sup>
- In considering how the permit system and timeframes could be improved, Docomomo Australia argued that: Heritage NSW staff who assess applications should possess skills relevant to the application; Heritage NSW should be better resourced in terms of the numbers of staff assessing applications; and Heritage NSW staff assessing applications must visit the site of the proposed works.<sup>233</sup>
- Curio Projects Pty Ltd considered it a matter of utmost importance that 'staff responsible for assessing permits are properly trained to review applications less subjectively, and as part of a broader, accountable, and measurable heritage management approach that has a greater level of across-the-board consistency'.<sup>234</sup>
- City Plan Heritage observed that '[t]he skills and qualifications of people reviewing the applications for the State's heritage items are not appropriate' and as a result, assessment timeframes suffer and 'good heritage outcomes' that balance the needs of the applicant and the item's significance are seldom achieved. Accordingly, improvement to the knowledge of existing staff, and employment of appropriately skilled staff, at Heritage NSW was considered essential in addressing the identified issues and improving outcomes.<sup>235</sup>
- Dr Kate Sullivan submitted: 'Fast tracking of exemptions and applications under the Act is not supported. The outcomes of 'making it easier for heritage owners to maintain and conserve their properties' which is the intention of the proposal can be achieved by a better resourced heritage office (Heritage NSW) with more qualified experts and administrative support to provide advice and support in a timely manner'.<sup>236</sup>
- North Sydney Council credited declining resources and funding at Heritage NSW as key factors in understanding current problems with the heritage permit process.<sup>237</sup>
- The Australian Institute of Architects suggested the current process could be improved by 'providing additional resourcing to speed up the approval process without diluting heritage protections and having experienced and knowledgeable staff available to discuss

<sup>231</sup> Submission 270, City of Sydney, p 12.

<sup>232</sup> Submission 45, Penrith City Council, p 8.

<sup>233</sup> Submission 47, Docomomo Australia, p 7.

<sup>234</sup> Submission 87, Curio Projects Pty Ltd, p 6.

<sup>235</sup> Submission 88, City Plan Heritage, p 3.

<sup>236</sup> Submission 181, Dr Kate Sullivan, pp 7 and 8.

<sup>237</sup> Submission 183, North Sydney Council, p 4.

potential projects related to heritage properties so that a collaborative approach can be taken to resolving issues and developing solutions'.<sup>238</sup>

- 2.157** The Property Council of Australia also reinforced the importance of better resourcing in improving assessment timeframes and streamlining the permit process, while also highlighting the potential for pre-lodgement outreach and engagement with applicants to improve outcomes:

Skills and knowledge of the staff/officers assessing the applications is important in streamlining the approval process. Often a decision is not made by the allocated person due to the lack of suitable knowledge and collaboration with the other relevant divisions of the Heritage NSW. Putting the relevant divisions of the Heritage NSW staff in one section so that they can collaboratively consider the applications to improve the process and faster decisions in the approvals process. Improvement in the relationship of the Heritage Council and the Heritage NSW with the community and applicants is essential for the consultation prior to the applications are made for a streamlined process and positive outcomes. The pre-development application consultation with the Heritage NSW is no longer as open as it used to be and requires consideration.<sup>239</sup>

- 2.158** This accorded with testimony from Mr Tim Duddy of the Historic Houses Association of Australia, who considered the current staffing of Heritage NSW with a preponderance of archaeologists to be a key drawback in the Act's implementation:

[I]t is actually not the Act that is deficient in that space; it is the design of the bureaucracy around executing that Act where you have people working in that bureaucracy that are not practitioners of the fields in which they are making the rules about. The [Office of Environment and Heritage] is very, very, very heavily weighted towards archaeology. You cannot have an archaeologist making a decision about how you deal with a damp wall. It is not the thing you do. You also have people that have got extraordinary academic qualification but very little hands-on experience in working in the field. So it is not the Act that is the problem, it is the way that the bureaucracy is designed that is surrounding it.<sup>240</sup>

- 2.159** Australia ICOMOS identified both 'the provision of administrative resources and appropriate personnel' as well as an attitudinal shift in thinking about change as fundamental requirements to reduce delays and complexities in the permit process:

A fundamental requirement to reduce unnecessary delays and complexities for owners to engage in the process of altering a [State Heritage Register] listed place is to provide the administrative resources and appropriate personnel to facilitate the process. The prevailing attitude needs to be that sensitive change is acceptable and the objective of the process is the retention of heritage significance (not resistance to change). Heritage NSW must be committed to achieving good heritage outcomes in a timely fashion.<sup>241</sup>

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<sup>238</sup> Submission 290, Australian Institute of Architects, p 9.

<sup>239</sup> Submission 264, Property Council of Australia, p 5.

<sup>240</sup> Evidence, Mr Tim Duddy, 17 August 2021, p 27.

<sup>241</sup> Submission 291, Australia ICOMOS, p 5.

### Other ways to improve the heritage permit process

**2.160** Evidence to the committee included a number of different perspectives on the most effective ways to improve the heritage permit/approval process.

**2.161** Calls for greater delegation of approvals to local government were raised in evidence by some inquiry participants including the Historic Houses Association of Australia, the Haberfield Association and Professor Richard Mackay AM.<sup>242</sup> The Historic Houses Association of Australia, for instance, submitted:

Currently, Heritage NSW and the Heritage Council manage most aspects of the implementation of the Heritage Act. We believe the Heritage Council and Heritage NSW should continue to develop policy and determine which properties are listed on the State Heritage Register, but decisions regarding development applications should be delegated to Local Government, which in turn should receive support from Heritage NSW to ensure Local Government has the resources and skills to manage these day-to-day aspects of heritage.<sup>243</sup>

**2.162** Professor Mackay also suggested the approvals system would benefit from an even greater use of exemption and exception provisions without the need for notification to Heritage NSW – essentially, a wider application of the new range of Standard Exemptions introduced by Heritage NSW in December 2020. Additionally, Professor Mackay argued that 'greater reliance could and should be placed on appropriately skilled, experienced professionals who subscribe to an appropriate Code of Ethics'.<sup>244</sup>

**2.163** Professor Mackay also formed the view that relevant considerations for the issue of approvals or permits would be more appropriately located within 'associated guidelines and regulations' rather than the Act per se, with a possible example being customised guidelines for different types of State listed places.<sup>245</sup>

**2.164** Several local councils also shared support for better use of exemptions, with Northern Beaches Council noting that 'any streamlining of permits/exemptions to enable owners to maintain their properties will be a win for heritage'.<sup>246</sup> This was similarly echoed by Local Government NSW:

The NSW Government should consider site-specific and/or asset class exemptions that would facilitate the greater use of heritage assets for small-scale cultural uses and community events, where appropriate.<sup>247</sup>

**2.165** Similarly, in the opinion of GML Heritage, clearer guidelines and also pre-lodgement advice would go a long way to addressing the confusion that some owners experience in trying to navigate the heritage approvals process:

<sup>242</sup> Submission 1a, Historic Houses Association of Australia, p 1; Submission 84, Haberfield Association, p 6; Submission 56, Professor Richard Mackay AM, p 11.

<sup>243</sup> Submission 1a, Historic Houses Association of Australia, p 1.

<sup>244</sup> Submission 56, Professor Richard Mackay AM, p 11.

<sup>245</sup> Submission 56, Professor Richard Mackay AM, p 11.

<sup>246</sup> Submission 63, Northern Beaches Council, p 4.

<sup>247</sup> Submission 35, Local Government NSW, p 13.

The issues outlined where some owners of heritage items find the permit system confusing can simply be addressed by clearer guidelines and provision of pre-DA advice. That is the NSW Government putting the 'customer' first. While this has changed in recent times, and some improvements have been made to resourcing, there was an extended period where there was no pre-DA advice provided by the Heritage NSW. We were repeatedly advised that Heritage NSW officers would only engage with applicants where there had been a reported breach. Officers were not permitted to provide pre DA advice to applicants because of the risk that the advice would later be relied upon and the Heritage Council would not necessarily support the officer or arrive at the same decision.<sup>248</sup>

- 2.166** The importance of pre-lodgement advice and services was also highlighted by North Sydney Council:

Increasing the level of upfront, front desk customer service right at the beginning of any approval permit system much like the processes often found in local government would assist the current approval system. The introduction of pre-application services improves both outcome and efficiency. Heritage NSW/Heritage Council need to be adequately funded and resourced.<sup>249</sup>

- 2.167** When pressed on the Trust's previous experience with heritage assessments and approvals, Ms Penny Barletta of the Anglican Church Property Trust Diocese of Sydney, agreed that site visits would be of benefit to applications, commenting that:

I believe that the volunteers who manage our heritage sites would very much welcome visits by Heritage advisers before decisions are made. ... certainly I know that the volunteers who manage our churches would appreciate earlier and more engagement from people undertaking those roles.<sup>250</sup>

- 2.168** This focus on better access to resources, support and expertise as a way of making heritage ownership easier was also emphasised in the discussion of non-financial incentives for owners, as detailed in Chapter 4.

### **Committee comment**

- 2.169** The committee notes with concern the difficulties and delays for owners and their representatives in navigating the regulatory system and the unacceptably long timeframes for determining applications for works. In the committee's view, the levels of service and assessment timeframes leave much to be desired and are not aligned with the NSW Government's expectations or standards for customer service. In any other arm of Government administration, this level of service would not be accepted or tolerated. The committee is left with little doubt that such unacceptable standards of service have contributed significantly to the negative perceptions of owning a heritage-listed property as being an unwanted and costly burden. Given the public benefit their properties provide, owners should be entitled to a much better standard of service. At a minimum, the committee recommends that Heritage NSW reinstate pre-lodgement meetings with proponents to ensure they are clear on all the requirements

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<sup>248</sup> Submission 90, GML Heritage, p 18.

<sup>249</sup> Submission 183, North Sydney Council, p 4.

<sup>250</sup> Evidence, Ms Penny Barletta, 17 August 2021, p 28.

of the process and on what changes are likely to be considered permissible. We also recommend that, where practicable, Heritage NSW assessment officers carry out site visits where this would assist in understanding proposed works in their settings or contexts.

- 2.170** Evidence before the committee demonstrated that the existing regulatory process and assessment timeframes for changes to State Heritage Register items is also often failing owners, their representatives and others affected by the Heritage Act, making ownership and dealing with the regulatory authority challenging. Whether this is as a result of the way in which the Act is administered and applied in practice – the reputed culture of resisting all change – or as a result of deficiencies in the Act itself could not be ascertained with the same degree of certainty.
- 2.171** The committee sees significant opportunities available under section 57 and section 60 of the Heritage Act to reduce unnecessary assessments and create more pathways for State Heritage Register items to be conserved and adaptively reused. The NSW Government should consider closely how these exemptions and exceptions provisions of the Heritage Act could be better implemented to reduce the burden on owners and make heritage conservation more viable.
- 2.172** Chapter 4 of this report deals in more detail with the need for additional support for owners of heritage properties. However, it is relevant to note at this stage that it was a repeated theme in the submissions that the time taken by Heritage NSW to deal with heritage permits is uncertain and often extremely lengthy. The absence of any statutory or administrative timeframes within which decisions are made on heritage permits means there is no accepted guide for the time frame for making decisions under the Act.
- 2.173** While we accept that the diversity of applications and State heritage matters means that express statutory time periods would not be appropriate, Heritage NSW should work with stakeholders to establish expected time periods within which applications will be determined. However, simply stating anticipated timeframes will not do the work needed to process applications thoroughly and efficiently. This, and all other recommendations about improving the approvals process, will require significant additional resourcing to be effective.

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### **Recommendation 13**

That the NSW Government, as part of the heritage permit approval process:

- reinstate pre-lodgement meetings with proponents as part of a broader commitment to improved customer service,
- carry out site visits where this would assist in understanding an application for works, taking into account whether a site visit is practical and whether it would add value to an application,
- update the current standard exemptions and fast-track approval pathways to ensure non-impactful activities can be undertaken to assist with the conservation of items and reduce unnecessary assessment,
- increase the resources available to Heritage NSW and to the Heritage Council of NSW to improve the timeliness of the process, and
- work with stakeholders to publish expected time frames within which heritage permits will be determined.

## Compliance and integration of heritage and planning

- 2.174** This section explores stakeholder perspectives on, first, the issue of compliance and, second, how heritage could be better embedded within the land use planning system.

### Compliance

- 2.175** The discussion paper identifies a gap in the Heritage Act between its 'very strong enforcement provisions', on one hand, and its 'weaker provisions' such as the ability to write warning letters, on the other. Correspondingly, the discussion paper states that the Act is deemed to lack intermediate compliance options, such as the ability to issue infringement notices where non-compliance has been established.<sup>251</sup>
- 2.176** The discussion paper goes on to test support for the introduction of intermediate enforcement powers to enable graduated and commensurate responses to breaches of the Act. This would include investigative powers to allow Heritage NSW to gather evidence to establish proof along with the ability to issue infringement notices. The advantages of this approach were considered to be a more nuanced and lighter-touch alternative to costly and uncertain court action.<sup>252</sup>
- 2.177** The Heritage Council of NSW lent its unqualified support to this proposal, arguing that:

The new Heritage Act needs to contain a similar range of investigative and enforcement provisions as contained in other environmental and planning legislation like the [Protection of the Environment Operations Act 1997] and the [Environmental Planning and Assessment Act 1979]. In addition, wider enforcement options need to be available. An urgent need is to have the ability to issue penalty infringement notices up to an amount of \$25,000 for minor offences. These tools are a far more effective and efficient means of achieving compliance than formal court prosecutions.<sup>253</sup>

- 2.178** Other inquiry participants to lend their full or 'in principle' support included Business Western Sydney, the National Trust of Australia (NSW), Docomomo Australia, Herbert Smith Freehills and Woollahra Municipal Council<sup>254</sup>
- 2.179** Some inquiry participants were less convinced of the need for intermediate enforcement powers. Blue Mountains City Council asserted that the existing offence provisions in the Act already appear to cover various scenarios and was unclear on how additional penalties would be enforced without a corresponding commitment for additional Heritage NSW resources.<sup>255</sup>
- 2.180** In considering this proposal, the City of Sydney noted its own success in recent times in enforcing non-compliance under the *Environmental Planning and Assessment Act 1979*, including several matters that were also breaches of the Heritage Act and yet were not subject to separate

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<sup>251</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 19.

<sup>252</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 19.

<sup>253</sup> Submission 37, Heritage Council of NSW, p 13.

<sup>254</sup> Submission 24, Business Western Sydney, p 4; Submission 40, Woollahra Municipal Council, p 9; Submission 292, National Trust of Australia (NSW), p 29; Submission 46, Docomomo Australia, p 7.

<sup>255</sup> Submission 51, Blue Mountains City Council, pp 9-10.

enforcement action by Heritage NSW. The City therefore supported the introduction of a range of commensurate approaches to dealing with non-compliance under the Heritage Act. It also called for better resourcing of compliance officers within Heritage NSW.<sup>256</sup>

- 2.181** Dr Kate Sullivan cautiously supported the proposal with the caveat that its implementation must not undermine the deterrence effect such that 'developers or others doing the wrong thing may be less worried by the likely consequences of their actions'.<sup>257</sup>
- 2.182** Mr Alistair Kinloch, owner and occupier of a residential property listed on the State Heritage Register, also supported the proposal. He highlighted a breakdown or failure in the enforcement of conditions of consent issued by the Heritage Council of NSW for approved developments. Consequently, he recommended that a network of regional heritage officers be established to monitor developments and ensure conditions of consent are complied with, among other responsibilities.<sup>258</sup>
- 2.183** Ms Jacqui Kirkby, owner of the State-listed Varro Ville Homestead, took a different perspective on the pre-requisites for improving compliance. Ms Kirkby suggested that compliance by homeowners will be better achieved if Heritage NSW can offer 'positive assistance through free advisory services and consultancy'.<sup>259</sup>
- 2.184** For several inquiry participants, adequate resourcing of the State's heritage regulator was considered crucial to any future efforts to improve compliance and enforcement under the Heritage Act. Many considered this a relevant consideration in both understanding the lack of prosecutions for breaches of the Heritage Act historically, but also a critical requirement for any future introduction of graduated enforcement powers.<sup>260</sup>
- 2.185** For example, the Planning Institute of Australia argued that Heritage NSW is inadequately resourced to undertake compliance and enforcement activities:

The key issue for compliance and enforcement of heritage provisions is the poor resourcing of Heritage NSW to undertake this function. Heritage NSW require a fully resourced heritage compliance team. Currently this work is being undertaken by technical staff (taking them away from their critical functions) or other agencies like the Environmental Protection Authority (who have a range of demanding functions).<sup>261</sup>

- 2.186** For the Property Council of Australia, its support for this reform proposal was conditional upon the availability of suitably skilled and trained staff to ensure any conditions of consent attached to Heritage Council approvals are suitable to begin with.<sup>262</sup> Woollahra Municipal Council also asserted that, in order to be effective, enhanced compliance and enforcement powers must be suitably resourced.<sup>263</sup>

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<sup>256</sup> Submission 270, City of Sydney, p 13.

<sup>257</sup> Submission 181, Dr Kate Sullivan, p 6. See also: Submission 87, Curio Projects Pty Ltd, p 7.

<sup>258</sup> Submission 222, Mr Alistair Kinloch, p 8.

<sup>259</sup> Submission 226, Ms Jacqui Kirkby, p 3.

<sup>260</sup> See for example: Submission 188, Mr Francis Breen, p 4; Submission 226, Ms Jacqui Kirkby, p 3; Submission 256, City of Newcastle, p 3; Submission 22, Goulburn Mulwaree Council, p 8.

<sup>261</sup> Submission 102, Planning Institute of Australia, p 7.

<sup>262</sup> Submission 264, Property Council of Australia, p 6.

<sup>263</sup> Submission 40, Woollahra Municipal Council, p 9.

### Integration of heritage and planning

- 2.187** A key contention of the NSW Government's discussion paper is that, over time, the linkages between the Heritage Act and planning legislation have become less efficient. As evidence of this misalignment, the discussion paper points to the various refinements to the *Environmental Planning and Assessment Act 1979* designed to deliver simpler, faster and better quality planning outcomes – refinements that have not been replicated within the New South Wales heritage system. The paper invites community and stakeholder comments on how heritage consideration could be better embedded within the State's planning system.<sup>264</sup>
- 2.188** By virtue of its remit, Local Government NSW was well placed to comment on the need for synergies between the State's heritage and planning laws. The Association agreed that the Heritage Act has not kept pace with approaches to strategic land use planning and the management of development, resulting in adverse consequences:
- The rate of legislative change to the Act has not kept pace with the rate of change in the way strategic land use planning and development is managed in New South Wales. This has led to inefficiencies, delays, duplication and unnecessary complexity to be able to achieve positive local planning outcomes. ... There is a need to design and develop any new heritage framework to be streamlined and reflective of, as far as possible, the *Environmental Planning and Assessment Act 1979*. This is needed to make the process of development assessment and environment management easier to understand and navigate, where referral and concurrence is required under the *Heritage Act 1977*.<sup>265</sup>
- 2.189** Woollahra Municipal Council impressed upon the committee the importance of integrating or embedding heritage considerations within strategic planning processes at both the State and local level, such that heritage should be 'at the front and centre of the planning process'.<sup>266</sup> The Council referred to the pressures and risks to heritage conservation wrought by Sydney's fast pace of development and lamented both the lack of provisions within the Act and the lack of political will to make heritage a priority at a strategic level.<sup>267</sup>
- 2.190** Australia ICOMOS and the Property Council of Australia both took issue with the requirement for proponents to lodge a separate 'Section 60' application under the Heritage Act (seeking approval for works to a State listed item) following the granting of an Integrated Development Application for the same works under the *Environmental Planning and Assessment Act 1979*. This was considered time-consuming, unnecessary, a doubling-up of approvals and adding another layer to the process – and in their view, should be removed.<sup>268</sup> Others shared the same sentiment.<sup>269</sup>
- 2.191** Likewise, Business Western Sydney saw scope for improving the way the Heritage Act interacts with the *Environmental Planning and Assessment Act 1979* and further clarification regarding which

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<sup>264</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 19.

<sup>265</sup> Submission 35, Local Government NSW, p 6.

<sup>266</sup> Submission 40, Woollahra Municipal Council, p 8.

<sup>267</sup> Submission 40, Woollahra Municipal Council, p 8.

<sup>268</sup> Submission 264, Property Council of Australia, p 5; Submission 291, Australia ICOMOS, pp 2 and 3.

<sup>269</sup> See for example: Submission 47, Docomomo Australia, p 7; Submission 88, City Plan Heritage, p 3; Submission 129, City of Canada Bay, p 5; Submission 183, North Sydney Council, p 5.



Act takes precedence. This group observed: 'Both Acts impose restrictions and controls on land uses and combined can make managing a heritage listed item complex and difficult. Double handling between a consent authority and the Heritage Office can make even a simple development proposal expensive and time consuming'.<sup>270</sup>

### Committee comment

- 2.192** The committee supports the introduction of intermediate enforcement powers to enable graduated and commensurate responses to breaches of the Act, as outlined in the NSW Government's discussion paper. The committee is concerned by evidence about the lack of enforcement action for breaches under the Act. For the Act to be effective in meeting its policy objectives and a sufficient deterrent to unauthorised works/non-compliance, it must be enforced consistently and there must be consequences for the minority of owners who do the wrong thing. Again, adequate resourcing and skills development for Heritage NSW will be critical to any future efforts to strengthen compliance and enforcement under the Act. In the committee's opinion, the introduction of new powers will not have the intended effect without a clear resolve to ensure the regulator is adequately resourced and equipped to do its job.

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### Recommendation 14

That the NSW Government amend the *Heritage Act 1977* to provide for intermediate enforcement powers.

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- 2.193** As the inquiry unfolded, it became clear to the committee that the incremental improvements and gains that have been made to the State's broader land use planning and development management framework over time have not necessarily carried through to the *Heritage Act 1977*, leading to perceptions of the Act as the 'poor cousin' of the *Environmental Planning and Assessment Act 1977*. This is significant as there are a number of touchpoints between the two Acts. It is clear that where such touchpoints occur, there is some duplication and inefficiencies as a direct result of the *Heritage Act 1977* not keeping pace with broader planning system improvements. One obvious example is the requirement for proponents to seek approval under the *Heritage Act 1977* for works already referred to Heritage NSW for assessment as part of an Integrated Development Application under the *Environmental Planning and Assessment Act 1979*. The committee is unconvinced of the value or need for proponents to essentially apply for approval for the same works twice. If exactly the same works have been assessed and conditioned by Heritage NSW as part of the Integrated Development Application, it is unclear to the committee why a further approval under the Heritage Act is necessary. It is easy to understand how this would appear duplicative, confusing and unnecessarily time consuming from a heritage owner's perspective. We therefore recommend that the NSW Government remove the requirement for a Section 60 approval for works to State-listed items where an Integrated Development Application has already been made, in situations where the requirements of Section 60 have already been satisfied.

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<sup>270</sup> Submission 24, Business Western Sydney, p 2.

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**Recommendation 15**

That the NSW Government remove the requirement for a Section 60 approval for works to State-listed items where an Integrated Development Application has already been made, in situations where the requirements of Section 60 have already been satisfied.

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- 2.194** On a final point, the committee wishes to note that some of the suggestions and proposed reforms outlined in this chapter and others may not require any change to legislation at all. In contemplating the next steps for the review, it will be important for the NSW Government to clearly identify areas that offer potential and relatively 'quick' gains through measures other than legislative intervention. As this inquiry revealed, there may be opportunities to streamline the heritage approvals process or address gaps in the State Heritage Register (as two examples only) which can be achieved through policy, regulation, guidelines or a re-orientation of thinking and practice with respect to managing change for State-listed items. These may not necessarily require amendments to the *Heritage Act 1977*.

## Chapter 3 Aboriginal cultural heritage

Although the NSW Government has a separate process underway to improve the protection of Aboriginal cultural heritage, the discussion paper specifically requested stakeholder feedback on how Aboriginal cultural heritage could be acknowledged and considered within the Heritage Act. This chapter discusses stakeholder concerns in relation to the current framework to identify, manage and protect Aboriginal cultural heritage, leading to a discussion on opportunities to strengthen the legislation.

### Current approach to the identification, management and protection of Aboriginal cultural heritage

- 3.1** A number of stakeholders contended that the existing framework in place to protect Aboriginal cultural heritage is inadequate and that significant reforms are needed. Aboriginal cultural heritage is currently protected under both the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*. Aboriginal objects and Aboriginal places are primarily protected under the *National Parks and Wildlife Act 1974*, with the relevant Minister having power to declare areas of land of special significance to Aboriginal culture.
- 3.2** As noted in Chapter 1, under the *Heritage Act 1977*, the relevant Minister can also direct the listing of items or places on the State Heritage Register following recommendation by the Heritage Council. This can include items or places of Aboriginal cultural significance. There are 32 Aboriginal sites listed on the State Heritage Register, with other sites on the register that may have shared value for both Aboriginal and non-Aboriginal people.<sup>271</sup>
- 3.3** Several stakeholders highlighted the limitations of the existing framework, including the NSW Aboriginal Land Council. It contended that Aboriginal heritage provisions are not well integrated within the planning, land use and development processes in NSW. In the Aboriginal Land Council's view, this often results in Aboriginal heritage issues not being considered until after the development process, 'when Aboriginal heritage is under immediate threat of destruction'.<sup>272</sup>
- 3.4** At a hearing, Cr Anne Dennis, Chair of the NSW Aboriginal Land Council, stated that the 'current laws relating to the protection and promotion of Aboriginal cultural heritage are outdated and ineffective'.<sup>273</sup>
- 3.5** Other stakeholders also commented on the limitations of the current legislation in protecting Aboriginal cultural heritage. The Chair of the Heritage Council of NSW, Mr Frank Howarth AM PSM, acknowledged that the 'deficiency of the current legislation is that it is 'effectively silent' on Aboriginal cultural heritage and assumes it is managed by provisions of the National Parks and Wildlife Act'.<sup>274</sup>

<sup>271</sup> Submission 38, Aboriginal Cultural Heritage Advisory Committee, p 2.

<sup>272</sup> Submission 295, NSW Aboriginal Land Council, p 2.

<sup>273</sup> Evidence, Cr Anne Dennis, Chair, NSW Aboriginal Land Council, 17 August 2021, p 16.

<sup>274</sup> Evidence, Mr Frank Howarth AM PSM, Chair, Heritage Council of NSW, 13 August 2021, p 2.

- 3.6** The Penrith City Council noted that many examples of living Aboriginal cultural heritage are not even located in National Parks. It contended that this adds confusion to the approval pathway for sites containing Aboriginal cultural heritage.<sup>275</sup>
- 3.7** In addition, Mr John McInerney AM, Executive Member and Former President, Millers Point Community Resident Action Group, argued that the Heritage Act is inadequate in protecting Aboriginal cultural heritage as the legislation is 'firmly rooted in what might be called colonial history'.<sup>276</sup>
- 3.8** In a similar vein, Curio Projects Pty Ltd highlighted that the current system centres on the preparation of written documentation 'as part of an extremely rigid assessment system'. In its view, this approach does not marry with the way in which Aboriginal people prefer to discuss, protect and manage Country. In fact, it was suggested that this was 'white ways' of doing things, not effective for Aboriginal communities, with difficulties then faced in managing both tangible and intangible Aboriginal cultural heritage values.<sup>277</sup>
- 3.9** A number of stakeholders also highlighted that New South Wales is the only state not to have stand-alone legislation for the protection and management of Aboriginal cultural heritage.<sup>278</sup> Professor Richard Mackay AM, a former member of the NSW Heritage Council and current expert cultural heritage advisor to the UNESCO World Heritage Committee, commented:

It is an appalling indictment that, in NSW, in 2021, Aboriginal cultural heritage is currently regulated and managed through the same in legislation that deals with parks, flora, fauna and geology. Separate stand-alone Aboriginal heritage legislation is required – and is long, long overdue.<sup>279</sup>

- 3.10** Many inquiry participants expressed their support for New South Wales to develop stand-alone legislation to protect Aboriginal cultural heritage, including the NSW Aboriginal Land Council and NTSCORP.<sup>280</sup>
- 3.11** Cr Anne Dennis of the NSW Aboriginal Land Council, emphasised its support for specific legislation to protect Aboriginal culture, instead of incorporating protections into the *Heritage Act 1977*. Cr Dennis stated:

We do not support incorporating Aboriginal culture and heritage protections into the Heritage Act 1997. The Heritage Act does not meet Aboriginal community aspirations for protection of and decision-making about Aboriginal culture and heritage. The NSW Aboriginal Land Council advocates that Aboriginal people must be empowered to make decisions about Aboriginal culture and heritage, both in relation to specific proposals

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<sup>275</sup> Submission 45, Penrith City Council, p 3.

<sup>276</sup> Evidence, Mr John McInerney AM, Executive Member and Former President, Millers Point Community Resident Action Group, 24 August 2021, p 22.

<sup>277</sup> Submission 87, Curio Projects Pty Ltd, p 3.

<sup>278</sup> See for example: Submission 292, National Trust of Australia (NSW), p 23; Submission 35, Local Government NSW, p 9.

<sup>279</sup> Submission 56, Professor Richard Mackay AM, p 6.

<sup>280</sup> Evidence, Cr Anne Dennis, 17 August 2021, p 16; Evidence, Ms Mishka Holt, Principal Solicitor, Native Title Services Corporation, 17 August 2021, p 17. See also: Evidence, Mr John McInerney AM, 24 August 2021, p 22; Submission 22, Goulburn Mulwaree Council, p 3; Submission 47, Docomomo Australia, p 1; Submission 129, City of Canada Bay, p 3.

and their potential impact, and in the running of the system itself. It is also important that any revised Heritage Act improves interactions with planning laws and new Aboriginal cultural heritage [ACH] laws. Resourcing Aboriginal land councils and Aboriginal communities to protect Aboriginal culture for future generations provides a key opportunity to strengthen culture and local communities. This will benefit and enrich the cultural landscape for all people of New South Wales.<sup>281</sup>

- 3.12** At a minimum, some stakeholders discussed the benefits of moving Aboriginal cultural heritage provisions out of the National Parks and Wildlife Act and into the Heritage Act. For instance, Dr Ian Stuart, Member, Australian Archaeological Association, stated that it is important to 'move the protection of Aboriginal heritage out of the National Parks and Wildlife Act, where it is muddled with flora and fauna'. In terms of whether it would be better to have one piece of legislation, incorporating Aboriginal cultural heritage, Dr Stuart noted issues in relation to both approaches. He explained that if Aboriginal cultural heritage provisions are subsumed into the Heritage Act, non-Aboriginal people would be able to make decisions over Aboriginal sites, whereas if there are two pieces of legislation, this may present administrative difficulties.<sup>282</sup>
- 3.13** The Australian Institute of Architects had a similar view, commenting that Aboriginal cultural heritage should be removed from the National Parks and Wildlife Act and either included under the Heritage Act or incorporated into specific Aboriginal cultural heritage legislation.<sup>283</sup>
- 3.14** Some stakeholders felt strongly though that there would be benefit in having one piece of heritage related legislation, incorporating provisions on the protection of Aboriginal culture heritage.
- 3.15** The NSW Heritage Council, in its supplementary submission, agreed that there are flaws in terms of the existing legislation to protect Aboriginal cultural heritage, stating that the regime is 'flawed' and requires 'substantial overhaul'. In its view though, Aboriginal cultural heritage should be recognised and regulated under one new Heritage Act, endorsing the principle that Aboriginal people should be the primary determinants of Aboriginal cultural heritage.<sup>284</sup>
- 3.16** In support of this argument, the Heritage Council contended that one piece of legislation would be better able to manage layers of heritage significance, for example, where items of heritage value may be significant to both Aboriginal and non-Aboriginal people. While the Council acknowledged the view of many Aboriginal groups that there should be separate Aboriginal legislation, it stated that it 'is far better to integrate all heritage legislation in the one statute which allows for Aboriginal people to consider and manage Aboriginal cultural heritage. Every one of us has a shared heritage and we should recognise and celebrate that'.<sup>285</sup>
- 3.17** The City of Newcastle also indicated its support for existing Aboriginal cultural heritage provisions to be relocated in their entirety to the Heritage Act, thereby having one piece of legislation for all heritage items. It said that this would provide benefits in terms of streamlining the processes, providing for better protection of Aboriginal cultural heritage. By integrating Aboriginal cultural heritage into the Heritage Act, the City of Newcastle contended that this

<sup>281</sup> Evidence, Cr Anne Dennis, 17 August 2021, p 16.

<sup>282</sup> Evidence, Dr Iain Stuart, Member, Australian Archaeological Association, 13 August 2021, p 29.

<sup>283</sup> Submission 290, Australian Institute for Architects, p 2.

<sup>284</sup> Submission 37a, Heritage Council, p 3.

<sup>285</sup> Submission 37a, Heritage Council, p 3.

would also help to broaden the remit and core focus of the legislation to cover not only tangible items like buildings and artefacts, but also intangible values such as landscape, spiritual and social.<sup>286</sup>

- 3.18** In response to these views being put forward in submissions, the NSW Aboriginal Land Council made a supplementary submission, reiterating its strong support for comprehensive new Aboriginal cultural heritage laws. While it indicated its support for the strengthening of protections within the Heritage Act, as a complementary and parallel means of protection for Aboriginal cultural heritage, it stated its preference for standalone Aboriginal cultural heritage legislation. It added:

The Heritage Act does not provide a means for Aboriginal people to control our culture and heritage, acknowledge or promote Aboriginal understandings and definitions of culture and heritage, or include the necessary safeguards to ensure cultural sensitivities are appropriately managed.<sup>287</sup>

- 3.19** On this issue, and as noted in Chapter 1, a separate process is currently underway to develop Aboriginal cultural heritage reforms, alongside the NSW Government's process to review the *Heritage Act 1977*. The NSW Aboriginal Land Council and NTSCORP is involved in this reform process, as is the Aboriginal Cultural Heritage Advisory Committee, a committee comprised of 13 Aboriginal people with expertise in Aboriginal cultural heritage, appointed to provide independence advice to the Minister.<sup>288</sup>

- 3.20** The Honourable Don Harwin MLC, Leader of the Government in the Legislative Council, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, advised the committee that the Aboriginal cultural heritage reforms are following a co-design process between major stakeholders and that it would 'be inappropriate to supplant the co-design process by attempting to canvass Aboriginal cultural heritage reforms at this stage'.<sup>289</sup> The committee was advised by the Minister that once this reform process is completed, it is anticipated that a White Paper will be released, before the reforms go to a parliamentary committee for inquiry and report.<sup>290</sup>

- 3.21** In terms of the separate process underway to develop Aboriginal cultural heritage reforms, several stakeholders called for this work to be prioritised ahead of the broader Heritage Act review, including the Planning Institute of Australia, Mr David Burdon, Conservation Director,

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<sup>286</sup> Submission 256, City of Newcastle, p 2.

<sup>287</sup> Submission 295 a, NSW Aboriginal Land Council, p 2.

<sup>288</sup> Evidence, Honourable Don Harwin MLC, Leader of the Government in the Legislative Council, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, Vice President of the Executive Council, 2 August 2021, pp 2 and 4.

<sup>289</sup> Evidence, Honourable Don Harwin MLC, 2 August 2021, p 2.

<sup>290</sup> Correspondence from the Honourable Don Harwin MLC, Leader of the Government in the Legislative Council, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, Vice President of the Executive Council, to the Honourable Shayne Mallard MLC, Former Chair, Standing Committee on Social Issues, regarding the terms of reference for the inquiry, 12 May 2021.

National Trust of Australia (NSW) and Ms Anita Yousif, President, Australasian Society for Historical Archaeology.<sup>291</sup>

## Opportunities to improve the existing legislation

**3.22** Regardless of the different views put forward on whether there should be stand-alone legislation to protect Aboriginal cultural heritage or not, some specific suggestions were put forward on how to strengthen the existing framework for the protection of Aboriginal cultural heritage.

**3.23** The NSW Aboriginal Land Council, for instance, suggested that there could be improvements made to the mechanisms enabling listings on the State Heritage Register for Aboriginal cultural heritage, to better protect the diversity of Aboriginal cultural heritage across the state in line with the wishes of Aboriginal communities. In line with its emphasis on the legislation being based on self-determination (as will be discussed further below), the NSW Aboriginal Land Council also said that decisions about Aboriginal cultural heritage must be made by Aboriginal people to ensure continued custodianship and protection for future generations. It called for an Aboriginal body to be appointed to make decisions about Aboriginal cultural heritage.<sup>292</sup>

**3.24** The NSW Aboriginal Land Council also highlighted the need to broaden the definition and understanding of Aboriginal cultural heritage, to encompass 'holistic Aboriginal understanding of Country, and living Aboriginal cultures'.<sup>293</sup> A number of other stakeholders, including the National Trust of Australia (NSW) and GML Heritage, also supported the inclusion of a wider definition of 'heritage', so as to capture other items of Aboriginal cultural heritage, such as intangible items, storylines, connections, objects and landscapes.<sup>294</sup> Further discussion on this point was covered in Chapter 2.

**3.25** Other suggestions for improvements were:

- stronger emphasis on the Burra Charter, which emphasises the cultural significance of Aboriginal cultural heritage and its role in instilling connection to community and Country for Aboriginal people<sup>295</sup>
- modernising NSW Aboriginal cultural heritage planning controls and guidelines, for example, to provide formal guidance as to what level of Aboriginal cultural assessment is required for planning proposals<sup>296</sup>

<sup>291</sup> Submission 102, Planning Institute of Australia, p 3; Evidence, Mr David Burdon, Conservation Director, National Trust of Australia (NSW), 13 August 2021, p 15; Evidence, Ms Anita Yousif, President, Australasian Society for Historical Archaeology, 13 August 2021, p 27. See also: Submission 187, Dr Cameron Logan, p 3; Submission 290, Australian Institute for Architects, p 2; Submission 51, Blue Mountains City Council, p 5; Submission 81, Lake Macquarie City Council (Staff Submission), p 3; Submission 120, Wollongong City Council (Staff Submission), p 2.

<sup>292</sup> Submission 295, NSW Aboriginal Land Council, p 3.

<sup>293</sup> Submission 295, NSW Aboriginal Land Council, p 3.

<sup>294</sup> Submission 292, National Trust of Australia (NSW), p 23; Submission 90, GML Heritage, p 15.

<sup>295</sup> Submission 48, Better Planning Network Inc, p 2. See also: Submission 81, Lake Macquarie City Council (Staff Submission), p 1.

<sup>296</sup> Submission 22, Goulburn Mulwaree Council, p 4.

- ensuring some heritage listed buildings have reference to their Aboriginal past, for example, the St Thomas Church at Mulgoa, as well as greater investigation and recognition of Aboriginal archaeological sites, such as in Western Sydney Parklands<sup>297</sup>
- clarifying local government's role in the management of Aboriginal cultural heritage.<sup>298</sup>

**3.26** In addition, and as noted earlier in Chapter 2, several stakeholders called for better representation of Aboriginal people on the Heritage Council. Mr Howarth stated that there should be two Aboriginal members on the Heritage Council – instead of one – and that there should be one of each gender, to better reflect the nature of Aboriginal cultural heritage.<sup>299</sup> The Aboriginal Cultural Heritage Advisory Committee expressed the same view.<sup>300</sup> Similarly, the City of Sydney suggested that the Heritage Council should have increased Aboriginal representation, in addition to close engagement with Indigenous communities.<sup>301</sup>

**3.27** There was also a discussion about the improvements that could be made in relation to decision making and input from local Aboriginal communities once an item of cultural significance is placed on the register.

**3.28** The Brewarrina Aboriginal fish traps, known as Ngunnhu, are heritage protected both nationally and at a state level, being of spiritual significance to the traditional owners. While on the State Heritage Register, Mr Jeff Sowiak, General Manager, Brewarrina Shire Council, highlighted the issues around who controls the site.<sup>302</sup> This was an example of the need for greater involvement and control in matters of Aboriginal cultural heritage for Aboriginal people, further discussed below.

### **Importance of self determination**

**3.29** One of the main themes coming through the evidence provided on Aboriginal cultural heritage was the importance of having Aboriginal cultural heritage protections that enshrined the principle of self-determination.

**3.30** Cr Dennis of the NSW Aboriginal Land Council, told the committee that Aboriginal cultural heritage laws must be based on self-determination and need to be owned and controlled by Aboriginal people.<sup>303</sup> Ms Mishka Holt, Principal Solicitor, NTSCORP, while discussing the benefits of standalone legislation, also placed significant emphasis on the importance of Aboriginal ownership of heritage and culture, with opportunities for self-determination.<sup>304</sup>

**3.31** Other stakeholders expressed views of a similar nature. Ms Adam Lindsay, Executive Director, Sydney Living Museums and the State Archives and Records Authority of NSW, stated that the

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<sup>297</sup> Submission 27, Friends of Fernhill and Mulgoa Valley Inc, p 5.

<sup>298</sup> Submission 35, Local Government NSW, pp 9-10.

<sup>299</sup> Evidence, Mr Frank Howarth AM PSM, 13 August 2021, p 2.

<sup>300</sup> Submission 38, Aboriginal Cultural Heritage Advisory Committee, p 2.

<sup>301</sup> Submission 270, City of Sydney, p 3.

<sup>302</sup> Evidence, Mr Jeff Sowiak, General Manager, Brewarrina Shire Council, 24 August 2021, p 13.

<sup>303</sup> Evidence, Cr Anne Dennis, 17 August 2021, p 16.

<sup>304</sup> Evidence, Ms Mishka Holt, 17 August 2021, p 17.



focus should be on ensuring that First Nations leaders and communities are involved in the decision making and all points in the process.<sup>305</sup>

- 3.32** Curio Projects Pty Ltd also supported Aboriginal people to be involved in the design of any process and opportunities for streamlining heritage listings, protection and management of Aboriginal cultural heritage.<sup>306</sup> In GML Heritage's view, Aboriginal people are the rightful determiners of their history and heritage.<sup>307</sup>

### **Cultural infrastructure funding for an Aboriginal war memorial museum**

- 3.33** As part of its consideration of Aboriginal cultural heritage, the committee explored the possibility of cultural infrastructure funding for a memorial museum to commemorate Aboriginal frontier wars and massacre sites. In particular, the committee considered potential avenues of NSW Government funding for such a proposal.

- 3.34** This played out in the committee's questioning of NSW Government witnesses, with Ms Annette Pitman, Head of Create Infrastructure, reiterating the Government's policy commitment to cultural infrastructure that supports and empowers Aboriginal communities. Referring specifically to Create NSW's *Cultural Infrastructure Plan 2025+*, Ms Pitman advised that this guiding document includes recognition of the need for Aboriginal keeping places, while noting their current work with Aboriginal Affairs NSW and the Stolen Generations Council in establishing keeping places at four New South Wales sites of significance.<sup>308</sup>

- 3.35** Additionally, in response to the committee's supplementary questions, Ms Pitman referred the committee to the recently launched Creative Capital Funding Program, a \$60 million grants program responding to the need for cultural infrastructure to support the creative economy. A range of organisations are eligible to apply for grants under this program, including not-for-profit organisations and Local Aboriginal Land Councils – and Aboriginal cultural centres, keeping places and language centres are among the types of projects promoted as being eligible for capital or further investment.<sup>309</sup> It was noted that grants are available in two categories:

- Minor Works and Equipment Projects, grants of between \$5,000 to \$250,000
- Medium to Large Projects, grants of between \$250,000 to \$5,000,000.<sup>310</sup>

<sup>305</sup> Evidence, Mr Adam Lindsay, Executive Director, Sydney Living Museums and the State Archives and Records Authority of NSW, 24 August 2021, p 22.

<sup>306</sup> Submission 87, Curio Projects Pty Ltd, p 3.

<sup>307</sup> Submission 90, GML Heritage, p 5.

<sup>308</sup> Evidence, Ms Annette Pitman, Head, Create Infrastructure, Create NSW, 2 September 2021, p 10.

<sup>309</sup> Answers to supplementary questions, Ms Annette Pitman, Head, Create Infrastructure, Create NSW, 29 September 2021, pp 3-4.

<sup>310</sup> Answers to supplementary questions, Ms Pitman, pp 3-4; Create NSW/NSW Government, Creative Capital, <https://www.create.nsw.gov.au/create-infrastructure/creativecapital/>

## Committee comment

- 3.36** The committee re-iterates its support for the separate co-design process currently underway to advance the NSW Government's legislative reforms for Aboriginal cultural heritage. We believe that Aboriginal cultural heritage would best be protected under its own dedicated, stand-alone legislation, instead of being subsumed within a revised Heritage Act.
- 3.37** Having a statutory heritage body with a majority of non-Aboriginal members preside over questions of Aboriginal cultural heritage is highly problematic and fundamentally at odds with the principle of self-determination. Aboriginal people must be empowered to determine how their cultural heritage is best protected and have a strong voice in determining its fate where potential development impacts are concerned. Evidence before the committee raised sufficient doubts about whether this would be achieved by relocating the legislative provisions for Aboriginal cultural heritage into the Heritage Act. We note that not one First Nations inquiry participant supported such a proposal.
- 3.38** On a more rudimentary level, imprinted in the Heritage Act are the assumptions, worldviews, constructs and ways of thinking of a dominant culture which may not accord with Aboriginal peoples' relationship with their past, stories and ways of being in the world. This is a legacy of the conditions, circumstances and impetus from which the Heritage Act was born – principally to prevent the destruction of the edifices and monuments of an Anglo-Celtic culture transplanted to Australia through colonisation.
- 3.39** Any future co-existence and co-operation of two pieces of heritage legislation at the State level should not result in unnecessary duplication, additional red tape, confusion or expense in instances where they interact, cross-over or touch – for example, where an item has shared significance. Our support for separate Aboriginal cultural heritage legislation is conditional upon this.
- 3.40** With that in mind, the NSW Government's review of the *Heritage Act 1977* and the co-design process for new Aboriginal cultural heritage laws should ideally occur in lockstep at the same time. This will allow consideration of any interactions and touchpoints between the two pieces of legislation and optimise their ability to operate side by side cohesively and harmoniously.
- 3.41** Notwithstanding the above, it is appropriate that the Heritage Act should recognise (on a symbolic level) the prior existence of First Nations people and cultures in its preamble.
- 3.42** In the committee's view, there is nothing in the existing Act preventing places of significance to Aboriginal people, or shared significance, being listed on the State Heritage Register under the Heritage Act. As an alternative to legislative change, the committee would encourage Heritage NSW to explore other means to increase representation of Aboriginal cultural heritage on the Register, similar to those canvassed in Chapter 2 aimed at addressing gaps and imbalances. More targeted community outreach and assistance, and an easier, culturally responsive nomination process, could assist in this regard. We also believe there is merit in having greater Aboriginal representation on the Heritage Council, as several of our First Nations stakeholders called for, and as was recommended in Recommendation 7.

**Recommendation 16**

That, as a matter of priority, the NSW Government progress the reform of Aboriginal cultural heritage legislation in tandem with the review of the *Heritage Act 1977*.

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- 3.43** While the committee applauds the NSW Government for its support for the creative economy via the new \$60 million Creative Capital Funding Program, this program appears to be specifically targeted to Aboriginal cultural centres and keeping places for very specific types of infrastructure upgrades and investments. Moreover, the committee is not convinced the amount of funding available to eligible organisations under this program would be sufficient for a 'new build' memorial museum for Aboriginal frontier wars and massacres. The committee therefore recommends that the NSW Government allocate specific funding for an Aboriginal war memorial museum.
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**Recommendation 17**

That the NSW Government allocate specific funding for an Aboriginal War Memorial Museum and work with Aboriginal people across New South Wales, including traditional owners and the NSW Aboriginal Land Council, to progress this proposal.

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## Chapter 4 Incentives, community education and other stakeholder concerns

This chapter takes a detailed look at how incentives might be used to promote heritage ownership, recognising that in conserving the character of heritage listed properties, private owners are providing a considerable community benefit or public service, often without much financial benefit or support. The chapter will then consider stakeholder suggestions for enhancing public understanding of heritage, before discussing views on heritage tourism and how public heritage buildings could be revitalised to meet local community needs. At the end, the chapter will outline some other concerns with the Act and broader heritage system.

### Incentives

- 4.1 Noting that one third of state heritage register items are owned by non-government entities, the discussion paper discusses the use of incentives to promote reuse and activation of heritage assets and/or philanthropic heritage investment. It noted that at the state level there are a lack of systemic incentives and that the lack of financial and other supports, coupled with the perceived expense and complexity associated with heritage conservation, contributes to a public view that heritage ownership is burdensome.<sup>311</sup>
- 4.2 The discussion paper discussed the proposal for owner incentives to be expanded, including options such as assistance with the costs of adaptive reuse and heritage activation to encourage community or commercial ventures and the establishment of a revolving conservation fund to help communities acquire, restore and operation items for profit. It also discussed the use of tax incentives, grants and other concessions, along with philanthropic investment.<sup>312</sup>
- 4.3 As this section will outline, many stakeholders supported the use of both financial and non-financial incentives to promote heritage ownership, activation and conservation. Often, this support was connected to the public value provided by heritage assets, contrasted with the time and costs many associate with owning and maintaining a heritage asset. As noted by Professor Richard Mackay AM, a former member of the NSW Heritage Council and current expert cultural heritage advisor to the UNESCO World Heritage Committee:

The market failure exists because the benefits of the public good are enjoyed by the entire community, whereas the costs of providing that good are borne by the owners and managers of heritage places. Therefore, it is appropriate that the statutory regime for heritage in NSW should support and provide incentives for those involved in the care, control, and management of heritage place.<sup>313</sup>

- 4.4 Echoing this sentiment, Mr Howard Tanner AM, former Chair of the Heritage Council of NSW, also suggested incentives have a role to play in conserving heritage. Noting that 'people see heritage as a problem, a burden', he said that 'there has to be something that encourages people

<sup>311</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 10.

<sup>312</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, pp 10-11.

<sup>313</sup> Submission 56, Professor Richard Mackay AM, p 8.

to see heritage as not only doing the right thing but also being encouraged to do to the right thing in a very positive way'.<sup>314</sup>

- 4.5 While a wide range of suggestions were put forward in relation to incentives, this section will outline the key initiatives discussed throughout the inquiry.

#### **Tax incentives and other concessions**

- 4.6 The discussion paper noted that there are currently some financial incentives provided by the current legislation, including the ability for land tax on heritage listed properties to be reduced and for local councils to exercise discretion in reducing council rates. It acknowledged that these incentives are often inconsistently or rarely used by owners.<sup>315</sup>
- 4.7 In evidence to the inquiry, it was clear that tax related measures, such as a reduction or exemption in stamp duty or land tax, in addition to rate relief, were broadly supported by stakeholders as financial incentives that would promote improved ownership, activation and adaptive reuse of heritage.<sup>316</sup>
- 4.8 The Heritage Council of NSW noted that a reduction in state and local rates and taxes could encourage good stewardship. It stated that land tax and stamp duty could be reformed to encourage heritage protection, such as via a stamp duty rebate for the purchase of a listed or local state heritage property. It also suggested that the Commonwealth Government could provide tax incentives with income tax deductibility, which could apply to national listings.<sup>317</sup>
- 4.9 A number of local councils also supported tax and rate concessions as incentives to assist with the conservation of heritage assets.<sup>318</sup> Local Government NSW noted, however, that under current legislation, there is currently limited capacity for local councils to offer category based concessions on council rates for owners of locally listed heritage items, whereas concessions on council rates, land tax and other duties to owners of state listed heritage items are able to be provided.<sup>319</sup>
- 4.10 President of Local Government NSW, Cr Linda Scott, also outlined that at the local government conference in 2017 councils resolved to advocate for greater tax-based incentives to support local governments to promote ownership of the cultural assets they protect.<sup>320</sup> Cr Scott stated:

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<sup>314</sup> Evidence, Mr Howard Tanner AM, private individual, 2 September 2021, p 5.

<sup>315</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 10.

<sup>316</sup> See for example: Submission 37, Heritage Council of NSW, p 11; Submission 23, Sue Rosen Associates, p 2; Submission 24, Business Western Sydney, p 3; Submission 27, Friends of Fernhill and Mulgoa Valley Inc, p 12; Submission 10, Mr Howard Tanner AM, p 1; Submission 33, EJE Heritage, p 2; Submission 34, Committee for Sydney, p 4; Submission 36, Hornsby Shire Council, p 2; Submission 290, Australian Institute of Architects, p 6; Submission 88, City Plan Heritage, p 2.

<sup>317</sup> Submission 37, Heritage Council of NSW, p 14.

<sup>318</sup> See for example: Submission 22, Goulburn Mulwaree Council, p 5; Submission 45, Penrith City Council, p 6.

<sup>319</sup> Submission 35, Local Government NSW, p 13.

<sup>320</sup> Evidence, Cr Linda Scott, President, Local Government NSW, 24 August 2021, p 3.

'It is really important to have a structured system of taxation from the State that rewards that kind of preservation for the wider public benefit'.<sup>321</sup>

- 4.11** On the issue of rate relief, Professor Mackay suggested that there could be a concessional rate for a heritage item in a conservation area, which would be both a recognition and an incentive, and potentially tied to conservation works.<sup>322</sup>
- 4.12** Also expressing support for tax deductions and/or rebates was the Historic Houses Association Australia, given this could assist with repairs, maintenance and restoration of historic houses.<sup>323</sup> Ms Polly Seidler, history researcher, lawyer and daughter of prominent architect Harry Seidler, also supported financial incentives related to land tax, the waiving of stamp duty insurance and local council rates, which could help to subsidise heritage.<sup>324</sup>
- 4.13** Mr Howard Tanner AM explained why incentives are important. He noted that there is an assumption that those who own a heritage property have adequate means to maintain it, whereas this is often not the case. He suggested that tax schemes or rate relief are mechanisms that could be used to encourage people to protect heritage assets.<sup>325</sup>
- 4.14** While Woollahra Municipal Council supported these incentives, it noted that tax incentives or concessions must be conditional, and recognise that ownership is temporary, whereas the significance of the heritage items is perpetual and should endure beyond the current owner.<sup>326</sup>
- 4.15** Also, some taxation related incentives may only benefit certain heritage owners. For example, Ms Penny Barletta, Manager, Parish Property Services, Anglican Church Property Trust Diocese of Sydney and Anglican Church Growth Corp, Moore Theological College, told the committee that they do not pay land tax for the churches they own, which is why the most meaningful incentive would be more grants and funding generally.<sup>327</sup>

### **Heritage Floor Space Scheme**

- 4.16** A number of stakeholders expressed their support for expansion of the Heritage Floor Space Scheme, a scheme currently operated by the City of Sydney that allows owners of eligible heritage listed buildings to be awarded heritage floor space after preparing a conservation management plan and the completion of agreed conservation works. Once awarded this space, it can be sold to developers who need to buy and allocate the space to be able to realise their maximum floor space provisions in the Sydney Local Environmental Plan.<sup>328</sup>

<sup>321</sup> Evidence, Cr Linda Scott, 24 August 2021, p 5.

<sup>322</sup> Evidence, Professor Richard Mackay AM, 2 September 2021, p 6.

<sup>323</sup> Submission 1, Historic Houses Association Australia, p 4.

<sup>324</sup> Evidence, Ms Polly Seidler, 17 August 2021, p 34.

<sup>325</sup> Evidence, Mr Howard Tanner AM, 2 September 2021, p 6.

<sup>326</sup> Submission 40, Woollahra Municipal Council, p 3.

<sup>327</sup> Evidence, Ms Penny Barletta, Manager, Parish Property Services, Anglican Church Property Trust Diocese of Sydney and Anglican Church Growth Corp, Moore Theological College, 17 August 2021, p 31.

<sup>328</sup> Submission 270, City of Sydney, p 9.

- 4.17** At a hearing, Mr Ben Pechey, Executive Manager, Strategic Planning and Urban Design, City of Sydney, explained that the scheme only applies in the CBD, and the amount of heritage floor space awarded is a 'portion of the amount of a total development potential that could otherwise be realised' if the item was not heritage listed. Essentially, there is an obligation on a developer of a building to purchase the heritage floor space before a development can proceed, based on a price agreed between the two. Mr Pechey agreed that this floor space is considered a commodity desirable by developers.<sup>329</sup>
- 4.18** Given the success of this scheme, several inquiry participants, including Business Western Sydney, Committee for Sydney and the Australian Institute of Architects, supported its expansion to other business districts or areas in New South Wales.<sup>330</sup> The Heritage Council of NSW, URBIS and Docomomo Australia, also indicated support for this incentive.<sup>331</sup>
- 4.19** In terms of whether the scheme could operate successfully elsewhere, the City of Sydney said detailed research would be needed to determine how this could be developed and managed. In particular, it said that investigations would need to focus on issues such as whether the heritage floor space would be available to all building types, how it would be sold and allocated, and whether it should be limited to identified areas, such as business districts in major cities. In addition, City of Sydney noted that local environmental plans will require revision to accommodate this scheme, and resourcing on a local level would also need consideration given their experience with operating the scheme.<sup>332</sup> Mr Ben Pechey of the City of Sydney, stated that there 'would need to be a degree of adaption should it be used in other places in the state'.<sup>333</sup>
- 4.20** Some suggestions were put forward for locations in which the scheme could be expanded. For example, the Committee for Sydney suggested CBDs in NSW, such as Parramatta, Newcastle and Wollongong would benefit from a similar scheme.<sup>334</sup> The Honourable Don Harwin MLC, Leader of the Government in the Legislative Council, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, also indicated his view that a variation of the scheme may be useful in an area like Parramatta, given it has significant heritage.<sup>335</sup>
- 4.21** A few stakeholders discussed contexts in which this scheme may be less suitable. Woollahra Municipal Council stated that 'transferrable heritage floor space schemes are generally only suitable in the Sydney CBD. In lower density areas these schemes should be avoided as they tend to result in incompatible and unacceptable built form outcomes'.<sup>336</sup> Mr Peter Romey, Past

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<sup>329</sup> Evidence, Mr Ben Pechey, Executive Manager, Strategic Planning and Urban Design, City of Sydney, 24 August 2021, p 9.

<sup>330</sup> Submission 24, Business Western Sydney, p 3; Submission 34, Committee for Sydney, p 1; Submission 290, Australian Institute of Architects, p 6.

<sup>331</sup> Submission 37, Heritage Council of NSW, pp 11 and 14; Submission 30, Urbis, p 2; Submission 45, Penrith City Council, p 5; Submission 47, Docomomo Australia, p 5.

<sup>332</sup> Submission 270, City of Sydney, p 9.

<sup>333</sup> Evidence, Mr Ben Pechey, 24 August 2021, p 3.

<sup>334</sup> Submission 34, Committee for Sydney, p 4.

<sup>335</sup> Evidence, Honourable Don Harwin MLC, Leader of the Government in the Legislative Council, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, Vice President of the Executive Council, 2 August 2021, p 6.

<sup>336</sup> Submission 40, Woollahra Municipal Council, p 3.



Executive Committee Member, Australia ICOMOS, was similarly of the view that this scheme relies on 'a high degree of development pressure to generate the demand for heritage transferable floor space' and 'does not really work in a suburban or a rural situation'.<sup>337</sup>

### Heritage enterprise grants

- 4.22** In the context of owner incentives, the discussion paper also noted the UK Heritage Enterprise Grants scheme, a scheme which can help communities to repair and reuse derelict buildings. In the UK, this scheme helps to fund the repair costs involved in making heritage buildings commercially viable. This can generate economic growth and create jobs and opportunities in local communities.<sup>338</sup>
- 4.23** Several stakeholders supported the investigation or introduction of a similar Heritage Enterprise Grants scheme in New South Wales.<sup>339</sup> Several local councils also expressed interest in this type of initiative, including Goulburn Mulwaree Council, Northern Beaches Council and the City of Newcastle.<sup>340</sup> Mr Chris Betteridge, a heritage professional with 30 years' experience in private practice, noted that this type of scheme would need to be adequately funded and promoted.<sup>341</sup>

### Heritage lottery

- 4.24** Like the enterprise scheme, the UK also have a heritage lottery fund, which distributes funding to projects that connect people and communities to heritage. Funding can be directed to heritage activities, repair and conservation, training and professional fees.<sup>342</sup>
- 4.25** Inquiry participants expressed interest in this incentive, including the Property Council of Australia, Friends of Fernhill and Mulgoa Valley Inc, Goulburn Mulwaree Council, City of Sydney, City Plan Heritage and Penrith City Council.<sup>343</sup> In addition, the Historic Houses Association of Australia noted that it would like to see a heritage lottery, similar to the Opera House lottery, to raise funds for the maintenance of state heritage listed properties and to raise awareness more broadly.<sup>344</sup>

<sup>337</sup> Evidence, Mr Peter Romey, Past Executive Committee Member, Australia ICOMOS, 13 August 2021, p 16.

<sup>338</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 12.

<sup>339</sup> Submission 103, Mr Chris Betteridge, p 7.

<sup>340</sup> Submission 22, Goulburn Mulwaree Council, p 5; Submission 63, Northern Beaches Council, p 3; Submission 256, City of Newcastle, p 3.

<sup>341</sup> Submission 103, Mr Chris Betteridge, p 7.

<sup>342</sup> Heritage Fund, *What we fund*, <<https://www.heritagefund.org.uk/funding/what-we-fund>>.

<sup>343</sup> Submission 264, Property Council of Australia, p 4; Submission 27, Friends of Fernhill and Mulgoa Valley Inc, p 13; Submission 22, Goulburn Mulwaree Council, p 5; Submission 45, Penrith City Council, p 6; Submission 270, City of Sydney, p 10; Submission 88, City Plan Heritage, p 2; Submission 292, National Trust of Australia (NSW), p 19.

<sup>344</sup> Submission 1a, Historic Houses Association Australia, p 4.

### Improved support for heritage owners

**4.26** Some inquiry participants stressed the importance of owners having appropriate support and assistance to manage, develop and maintain heritage assets. It was argued that this itself could be an incentive to heritage ownership and conservation.

**4.27** Mr Peter Romey of Australia ICOMOS advised the committee that well-resourced and customer focused support at the state and local government level would be an incentive for the owners of heritage places as it would making owning a heritage place easier.<sup>345</sup> He explained:

I think the most effective incentive there is is an efficient system that helps people, that is customer focused, so that the owner of a heritage property that wants to make changes to the property is assisted to make good decisions about how to do that rather than at times to hit what can be a brick wall in terms of just that customer focused attitude to helping that person. That comes down to resourcing not only at the State level but at the local government level as well ... So having people feel—because heritage is a little bit more challenging than a new build—that there are resources there to help you, not just to hinder you, is a really important incentive.<sup>346</sup>

**4.28** Emphasising this point further, Mr Romey added:

If owners are not encouraged to avail themselves of readily available resources and support, they will do nothing or they will go and do something else that is not appropriate, and they actually reduce the economic and other viability of the property in the long term.<sup>347</sup>

**4.29** In a similar vein, Mr David Burdon, Conservation Director, National Trust of Australia (NSW), stated that non-financial incentives, such as having adequate guidelines and resources for owners and managers of heritage properties, would be helpful.<sup>348</sup> The Planning Institute of Australia echoed this sentiment, stating that heritage ownership would be improved by having a well-resourced government advice service that demonstrated and promoted best practice conservation.<sup>349</sup>

### Grants, funds and other incentives

**4.30** While the legislation makes broad provision for some types of assistance, including the ability to issue grants or for low or no-interest loans to be provided to heritage owners through the Heritage Incentive Fund, the overwhelming sentiment from stakeholders was that there should be more grants and loan schemes provided and promoted, to assist in activating and conserving heritage properties.<sup>350</sup>

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<sup>345</sup> Evidence, Mr Peter Romey, 13 August 2021, p 10.

<sup>346</sup> Evidence, Mr Peter Romey, 13 August 2021, p 16.

<sup>347</sup> Evidence, Mr Peter Romey, 13 August 2021, p 17.

<sup>348</sup> Evidence, Mr David Burdon, Conservation Director, National Trust of Australia (NSW), 13 August 2021, p 16.

<sup>349</sup> Submission 102, Planning Institute of Australia, p 6.

<sup>350</sup> See for example: Submission 37, Heritage Council of NSW, p 14; Submission 40, Woollahra Municipal Council, pp 2, 4 and 10; Submission 41, Central Coast Council, p 2; Submission 48, Better Planning Network Inc, p 3; Submission 10, Mr Howard Tanner AM, p 1.

- 4.31** Some stakeholders noted the limitations of existing grant schemes, highlighting the need for a more effective approach, with targeted grants, an increase in funding more broadly and grants that suit different purposes. For example, the Historic Houses Association of Australia noted that there is a NSW Heritage Grants program but that this only supports a small proportion of state heritage home owners.<sup>351</sup>
- 4.32** In response to the committee's supplementary questions, Ms Alexandria Barnier, Associate Director of Urbis' Heritage Team, expressed concerns about the way in which the NSW Heritage Grants Program (detailed in Chapter 1) is administered – particularly, the execution of the selection process by Heritage NSW. While she acknowledged that most, if not all, owners are eligible for one or more heritage grants within this program, Ms Barnier suggested that adherence to precedents set by previous funding decisions effectively means certain owners or applicants – in her case, a private company – are much less likely to be successful. Furthermore, she noted that Urbis' previous applications to the NSW Heritage Grants Program have required the preparation of large amounts of corporate information and heritage documentation – requirements she considered on balance to be overly onerous given the likelihood of success.<sup>352</sup>
- 4.33** Mr Adam Lindsay, Executive Director of Sydney Living Museums and the State Archives and Records Authority, also raised issues around eligibility for funding under this program. He observed that the NSW Heritage Grants Program is not available to State government agencies, including Sydney Living Museums – whereas the Commonwealth Government's Australian Heritage Grants program is available to all owners and managers of items listed on the equivalent register, including Commonwealth corporate entities and State or Territory government agencies.<sup>353</sup>
- 4.34** Local Government NSW also outlined limitations with the existing small heritage grants provided to councils. It noted that of the 2020-2021 round of Heritage NSW Small Heritage Grants, all councils that applied for funding received an equal grant of \$5,500, despite large disparities in size, budget and the number of heritage items.<sup>354</sup>
- 4.35** The City of Sydney supported the continued use of the NSW Heritage Grants Program but called for it to be increased, given it is a major instigator of economic and community development.<sup>355</sup> Penrith City Council also supported the expansion of grants programs for both state and locally listed heritage items for heritage conservation, activation and adaptive re-use projects, government funded but administered by Heritage NSW in conjunction with local councils. It noted that grants could be targeted at a range of works, including conservation, maintenance, education and tourism.<sup>356</sup> If grant programs are expanded, Canterbury Bankstown Council noted that there would need to be greater awareness and promotion.<sup>357</sup>

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<sup>351</sup> Submission 1, Historic Houses Association Australia, p 3.

<sup>352</sup> Answers to supplementary questions, Ms Alexandria Barnier, Associate Director, Heritage Team, Urbis, 16 September 2021, pp 1-2.

<sup>353</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, Sydney Living Museums and the State Archives and Records Authority, 22 September 2021, p 2.

<sup>354</sup> Submission 35, Local Government NSW, pp 14-15.

<sup>355</sup> Submission 270, City of Sydney, p 10.

<sup>356</sup> Submission 45, Penrith City Council, p 5.

<sup>357</sup> Submission 14, Canterbury Bankstown Council, p 2.

- 4.36** Ms Merrill Witt of the Better Planning Network added her voice to calls for the NSW Heritage Grants Program to be 'better funded', describing it as an 'excellent' program and a 'game-changer' for small towns.<sup>358</sup>
- 4.37** In terms of one of the suggestions outlined in the discussion paper – the proposal to establish a revolving conservation fund – Mr Frank Howarth AM PSM, Chair of the Heritage Council of NSW, highlighted the benefits this could bring in terms of promoting heritage conservation and how it could work in practice:
- A heritage conservation fund might be used in a couple of ways: either by direct application by particularly private heritage property owners to enable them to support work that is required to maintain their property; it might also be used to purchase heritage properties.
- As Mr Nile earlier mentioned, the farm that is managed by Sydney Living Museums is an example—the Endangered Houses Fund, I think. Such a fund could purchase heritage properties, enable their updating, making them suitable for adaptive re-use and then, either through long-term leases or sale, getting them back out into operation again. So we believe such a fund, with a fair degree of flexibility and deductible gift recipient status—if the Commonwealth agreed to that—would be a very good vehicle for heritage conservation.<sup>359</sup>
- 4.38** Mr Howarth referred to the Endangered Houses Fund as an example of this approach. In the discussion paper, it was explained that this revolving fund identifies significant NSW heritage properties at risk of demolition or unsympathetic development. The fund purchases the properties, carries out appropriate work and implements suitable protections on the property. The items are then sold and the capital is used for the next project. While this fund has achieved significant conservation outcomes, the discussion paper noted that it is limited in that it does not address the needs of owners with existing heritage properties.<sup>360</sup>
- 4.39** In terms of the proposal to potentially expand this fund, to protect heritage properties and incentivise heritage ownership, there was significant support from various stakeholders, including the National Trust of Australia (NSW), the Australian Institute of Architects, the Rail, Tram and Bus Union, Retired Members Association, and Mr Chris Betteridge.<sup>361</sup>
- 4.40** Beyond these incentives, other ideas discussed by stakeholders that might encourage the activation and conservation of heritage included:
- incentives targeting the preservation of trade skills and knowledge, for example, how to drive a steam engine<sup>362</sup>

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<sup>358</sup> Answers to supplementary questions, Ms Merrill Witt, Member, Leadership Group, Better Planning Network, 27 September 2021, pp 1 and 2.

<sup>359</sup> Evidence, Mr Frank Howarth AM PSM, Chair, Heritage Council of NSW, 13 August 2021, p 7.

<sup>360</sup> NSW Government/Heritage NSW, *Review of heritage legislation: Discussion paper*, April 2021, p 13.

<sup>361</sup> Submission 292, National Trust of Australia (NSW), p 19. See also: Submission 71, Sydney Living Museums and the State Archives and Records Authority of NSW, p 4; Submission 103, Mr Chris Betteridge, p 7; Submission 215, Mr James Nicholson, p 3; Submission 290, Australian Institute of Architects, p 7; Submission 305, Rail, Tram and Bus Union, Retired Members Association, p 5.

<sup>362</sup> Evidence, Mr Neil Hogg, Member, Engineers Australia, 13 August 2021, p 33.

- implementing a program that allows heritage to be part of a sustainability rating system<sup>363</sup>
- instituting a 'green star' rating for heritage conservation and adaptive reuse<sup>364</sup>
- incentives through the Environmental, Planning and Assessment Act reforms and development conditions that support activation and adaptive reuse for private heritage ownership.<sup>365</sup>

### Committee comment

- 4.41** It is the committee's view that, in light of the immense public benefit that heritage provides to the community, there needs to be far greater incentives to owners, both financial and non-financial. At present, the committee is not convinced that the value heritage owners add to our urban landscapes and environments is matched by a corresponding commitment to offset some of the cost and additional management requirements that would not otherwise apply to owners of properties without a heritage overlay. The owners and custodians of the State's most significant places deserve a much better deal.
- 4.42** While we note the range of owner incentives that are currently provided for in the existing legislation, such as heritage agreements and concessional land tax valuations, it was clear to the committee that awareness, use and execution of these incentives has generally been lacking and a lot more needs to be done to support private owners of State-listed items.
- 4.43** In the committee's view, at a minimum, there should be a renewed commitment to the NSW Heritage Grants Program as the NSW Government's flagship financial incentives program for private and local government owners of State-listed items. While some inquiry participants commended this program, other evidence revealed there is scope for improvement. Accordingly, the committee calls on the NSW Government to renew its commitment to this program, by increasing its funding, improving promotion and community awareness of the program, and making it easier and more attractive for owners to apply for grants. In particular, promotion and outreach for a revitalised Heritage Grants Program should target owners in regional and remote New South Wales, with a dedicated grants stream for these owners.

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### Recommendation 18

That the NSW Government renews its commitment to the NSW Heritage Grants Program, including by:

- increasing its funding, improving promotion and community awareness of the program, and making it easier and more attractive for owners to apply for grants
  - targeting promotion of the program to owners in regional and remote New South Wales, alongside the establishment of a dedicated grants stream for these owners.
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<sup>363</sup> Submission 87, Curio Projects Pty Ltd, p 5.

<sup>364</sup> Submission 28, Place Management NSW, Department of Planning, Industry and Environment, p 4.

<sup>365</sup> Submission 28, Place Management NSW, Department of Planning, Industry and Environment, p 4.

- 4.44** During the course of the inquiry, it became clear to the committee that non-financial incentives are an equally important consideration in incentivising ownership and making activation and adaptive re-use of heritage items a more viable and attractive option. There is a clear need for much better owner support in this regard. Owners should have access to gold standard guidelines and publications, free heritage advice, efficient processes and much higher standards of customer service. Importantly, the system should not feel adversarial, resistant or unnecessarily obstructive. It should be customer-focused and solutions-focused, and supported by a more nuanced, considered and balanced approach to thinking about and assessing change to State-listed items. On a broad level, a commitment to high standards customer service must be embedded within the culture of the regulator.

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**Recommendation 19**

That the NSW Government improve the support it provides to owners of State-listed heritage items, in order to incentivise ownership and make activation and adaptive re-use of heritage items easier and more viable, without compromising the protection of the item's heritage value.

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- 4.45** The committee was encouraged by other incentives and funding mechanisms explored in inquiry evidence. Chief amongst these is the heritage floor space mechanism currently in operation within the City of Sydney and applying to locally listed items in the Sydney CBD. We support further investigation of how a similar scheme might operate in areas beyond the Sydney CBD and in a larger area of the City of Sydney LGA, including for State-listed items. As a first step, this should identify potential locations which hold the most potential for leveraging the success of the City of Sydney's scheme to incentivise conservation and adaptive re-use through a market-based mechanism. Such locations should be assessed against the pre-requisites, parameters, conditions or factors that have contributed to the success of the City of Sydney scheme.
- 4.46** It will also be important to consider resourcing, governance and administrative arrangements for any expanded scheme. The existing scheme is administered by the City of Sydney and is established under the Sydney Local Environmental Plan (LEP) 2012. In investigating its broader application, a key question will be whether it remains at a local government level – which would require resourcing and LEP amendments at that level – or whether there is scope for a similar scheme to be administered at the State level by Heritage NSW where it applies to State listed items. Questions of feasibility should be subject to expert economic appraisal and insights.

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**Recommendation 20**

That the NSW Government, with the benefit of experience and learnings from the City of Sydney, investigate the feasibility of:

- extending the heritage floor space scheme to Local Government Areas beyond the current Sydney CBD boundary such as Parramatta, North Sydney, Newcastle, Wollongong and other parts of the City of Sydney Local Government Area
  - establishing a heritage floor space trading scheme or equivalent at the State level for items listed on the State Heritage Register.
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- 4.47 In addition to market-based mechanisms, the committee sees considerable potential in other tax-based incentives canvassed in evidence – such as deductible gift recipient status or tax deductions for maintenance or restoration of heritage listed properties – although they are not under State jurisdiction and would therefore be a matter for the Commonwealth Government.

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### **Recommendation 21**

That the Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts make representations to the Commonwealth Government regarding the potential introduction of tax-based incentives for owners of State-listed items.

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## **Community education, awareness and promotion of heritage**

- 4.48 Noting that an object of the Heritage Act is to promote an understanding of the State's heritage, the discussion paper posed three questions related to heritage promotion, engagement and tourism, including how understanding of state heritage could be enhanced, how heritage tourism could be improved and how public heritage buildings could be activated to meet the needs of communities.

### **Enhancing understanding of state heritage**

- 4.49 There were various suggestions put forward by stakeholders as to how an understanding of state heritage could be enhanced in the community. Many acknowledged that heritage promotion and engagement can strengthen community support for heritage and contribute to improved heritage management.
- 4.50 Generally, there was broad support for increased community education and programs on protecting heritage.<sup>366</sup> A number of stakeholders suggested different formats for heritage promotion and education, including lectures, forums, regular training events, the development of new publications and resources, and increased advocacy.<sup>367</sup> In particular, some suggested that there should be clearer information, guidelines and support for new owners of heritage buildings, as was discussed earlier at paragraphs 4.26 to 4.29.<sup>368</sup>
- 4.51 Several stakeholders, such as Engineers Australia and the Property Council of Australia, also supported increased community engagement through Heritage Week and other festivals.<sup>369</sup>

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<sup>366</sup> See for example: Submission 33, EJE Heritage, p 5; Submission 305, Rail, Tram and Bus Union, Retired Members Association, p 9; Submission 103, Mr Chris Betteridge, p 12; Submission 120, Wollongong City Council (Staff Submission), p 18.

<sup>367</sup> See for example: Submission 290, Australian Institute of Architects, p 10; Submission 103, Mr Chris Betteridge, p 12; Submission 27, Friends of Fernhill and Mulgoa Valley Inc, p 23.

<sup>368</sup> See for example: Submission 27, Friends of Fernhill and Mulgoa Valley Inc, p 23; Evidence, Mr David Burdon, 13 August 2021, p 13.

<sup>369</sup> See for example: Submission 15, Engineers Australia, p 10; Submission 264, Property Council of Australia, p 10; Submission 22, Goulburn Mulwaree Council, p 8; Submission 47, Docomomo Australia, p 7.

Other stakeholders discussed the role of heritage awards and grants, and how improvements in existing award programs may contribute to better heritage promotion.<sup>370</sup>

**4.52** A wide range of other suggestions were provided, such as:

- increased support for community heritage organisations who have community contact at the 'grass root' level<sup>371</sup>
- exploring opportunities for enhanced understanding through entertainment avenues, for example television shows that focus on history, values and various methods to adapt items<sup>372</sup>
- exploring opportunities for the inclusion of heritage sites and programs within the education curriculum<sup>373</sup>
- additional funding and/or grants for targeted heritage programs.<sup>374</sup>

**4.53** A recent initiative discussed in this inquiry was the Blue Plaques program, based on the program in the United Kingdom. This program enhances community understanding of heritage, allowing nominations to be made by the public for a plaque to be awarded to a place which is linked to an historic event or person of significance to the community. With the nomination process underway as at early August 2021, the committee also heard how a digital interface is being developed as part of the Blue Plaques program to promote heritage and provide opportunities for heritage tourism and education.<sup>375</sup> Mr Howarth, Chair of the Heritage Council NSW, acknowledged that this type of program can 'go some way to making heritage more directly relevant to community members'.<sup>376</sup>

**4.54** While the Better Planning Network Inc indicated its support for the NSW Government to develop innovative ways to support and celebrate local heritage, it noted that programs will not be effective unless they are properly resourced and supported.<sup>377</sup>

### **Improving or activating heritage places for tourism**

**4.55** In the NSW Government's discussion paper, it was noted that heritage tourism can drive economic growth and contribute to the long-term conservation and enhancement of heritage places, sites and landscapes. It can also assist in promoting heritage understanding in the community.

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<sup>370</sup> See for example: Submission 87, Curio Projects Pty Ltd, p 7; Submission 264, Property Council of Australia, p 10; Submission 305, Rail, Tram and Bus Union, Retired Members Association, p 9; Evidence, Ms Kate Wooll, Business Manager, Goulburn Mulwaree Council, 24 August 2021, p 19.

<sup>371</sup> Submission 15, Engineers Australia, p 10.

<sup>372</sup> Submission 5, Goulburn Mulwaree Council, p 8.

<sup>373</sup> Submission 120, Wollongong City Council (Staff Submission), p 19.

<sup>374</sup> Submission 87, Curio Projects Pty Ltd, p 7.

<sup>375</sup> Evidence, Honourable Don Harwin MLC, 2 August 2021, p 3.

<sup>376</sup> Evidence, Mr Frank Howarth AM PSM, 13 August 2021, p 6.

<sup>377</sup> Submission 48, Better Planning Network Inc, p 9.



- 4.56** A number of stakeholders acknowledged the importance of heritage tourism, and the benefits it can provide, including Engineers Australia, the Heritage Council of NSW and various local councils.<sup>378</sup> The Rail, Tram and Bus Union, Retired Members Association, even suggested that one of the objectives of heritage legislation should be to reference the importance of promoting heritage tourism.<sup>379</sup>
- 4.57** Local Government NSW contended that there is little dedicated support for programs and grants to support the activation of heritage assets and the promotion of heritage tourism. It also noted that there is neither a state-led strategy for the activation of heritage assets, nor specific actions for the promotion of local or state heritage within the recently released *NSW Visitor Economic Strategy*, currently being implemented by Destination NSW.<sup>380</sup>
- 4.58** In addition, Local Government NSW noted that Heritage NSW grants do not extend to assist with activation support or promotional campaign activities. It suggested that the NSW Government should develop a state-wide heritage activation strategy to co-ordinate government efforts to activate and promote heritage assets, with dedicated funding to support initiatives.<sup>381</sup>
- 4.59** Several other stakeholders emphasised the importance of developing a heritage tourism strategy, including Goulburn Mulwaree Council and the staff of Wollongong City Council.<sup>382</sup> Museums and Galleries of NSW also highlighted the role Destination NSW could play in providing support of cultural and heritage tourism throughout regional NSW, including working with stakeholders on marketing campaigns to grow regional and heritage tourism.<sup>383</sup> Woollahra Municipal Council similarly suggested there should be collaboration with Tourism NSW to promote heritage places as desirable tourism destinations.<sup>384</sup>
- 4.60** In a similar vein, Curio Projects Pty Ltd contended that there needs to be closer alignment between National Parks, Destination NSW, Heritage NSW and NSW Education, to develop key documents, principles and research related to the benefits of cultural heritage tourism to the state's economy, both domestically and internationally. It also suggested that opportunities should be embraced to use natural and cultural heritage as part of a broader approach to towns, precincts and local government areas.<sup>385</sup>
- 4.61** Curio Projects Pty Ltd also indicated its support for better incentives, to assist private owners to retain, protect and beautify heritage assets as part of a broader approach to generate cultural tourism.<sup>386</sup>

<sup>378</sup> Submission 15, Engineers Australia, p 10; Submission 37, Heritage Council of NSW, p 14; Submission 57, Moree Plains Shire Council, p 4; Submission 13, Broken Hill City Council, p 1; Submission 63, Northern Beaches Council, p 5.

<sup>379</sup> Submission 305, Rail, Tram and Bus Union, Retired Members Association, p 3.

<sup>380</sup> Submission 35, Local Government NSW, pp 15-16.

<sup>381</sup> Submission 35, Local Government NSW, pp 15-16.

<sup>382</sup> Submission 22, Goulburn Mulwaree Council, p 8; Submission 120, Wollongong City Council (Staff Submission), p 19.

<sup>383</sup> Submission 21, Museums and Galleries of NSW, p 4.

<sup>384</sup> Submission 40, Woollahra Municipal Council, p 10.

<sup>385</sup> Submission 87, Curio Projects Pty Ltd, p 7.

<sup>386</sup> Submission 87, Curio Projects Pty Ltd, p 7.

- 4.62** Stakeholders also provided the following suggestions to improve heritage tourism:
- development of a comprehensive accessible website to identify all heritage sites in NSW, and other places like museums and galleries, and festivals and other events<sup>387</sup>
  - establishment of a state-based grant program to assist with cost of adaptive reuse and heritage activation to encourage the development of tourism ventures<sup>388</sup>
  - expansion of the Heritage NSW grants program to provide more targeted grants for education and tourism, for example, the creation of apps for heritage tours<sup>389</sup>
  - increased incentives, concessions and/or grants to support or encourage heritage tourism.<sup>390</sup>
- 4.63** Importantly, a number of successful approaches to heritage tourism were highlighted throughout the inquiry, including the redevelopment of the Eveleigh site,<sup>391</sup> Carriageworks<sup>392</sup> and the Q-Station at North Head.<sup>393</sup> Broken Hill City Council also highlighted heritage tourism as a key economic driver in Broken Hill, where economic incentives and support has been imperative to conservation and adaptive reuse of heritage buildings.<sup>394</sup>

#### **Activating heritage buildings to meet the needs of communities**

- 4.64** The NSW Government's discussion paper suggested that public heritage buildings could be revitalised to meet the contemporary needs of local communities, with this helping to ensure heritage continues to be valued, used and cared for by the communities they were built to serve. A number of stakeholders indicated their general support for this proposal, noting though the importance of ensuring the significance of the heritage building is not diminished.
- 4.65** The Property Council of Australia indicated its support for adaptive reuse of heritage places in public ownership, provided the new use and associated changes are not to the detriment of the heritage significance and value associated with the place. It noted examples such as Paddington Reservoir Gardens and Joynton Avenue Creative Centre, the Carriageworks Arts Centre, The Fenwick and The Mint.<sup>395</sup>
- 4.66** Ms Annette Pitman, Head, Create Infrastructure, Create NSW, acknowledged that heritage buildings can be given a 'new lease on life with new and compatible uses'. She noted that the maintenance and re-use of those buildings has social benefits for the community. Ms Pitman highlighted certain examples of adaptive reuse, such as the Southern Highlands Gallery at Retford Park, the transformation of the Albury waterworks pump house into a maker space and artist's workshop and the Walsh Bay Arts Precinct. On the latter project, Ms Pitman highlighted

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<sup>387</sup> Submission 15, Engineers Australia, p 10.

<sup>388</sup> Submission 81, Lake Macquarie City Council (Staff Submission), p 81.

<sup>389</sup> Submission 45, Penrith City Council, p 9.

<sup>390</sup> Submission 48, Better Planning Network Inc, p 10.

<sup>391</sup> Submission 305, Rail, Tram and Bus Union, Retired Members Association, p 10.

<sup>392</sup> Submission 305, Rail, Tram and Bus Union, Retired Members Association, p 10.

<sup>393</sup> Submission 63, Northern Beaches Council, p 5.

<sup>394</sup> Submission 13, Broken Hill City Council, p 1.

<sup>395</sup> Submission 264, Property Council of Australia, p 10.

how the project has allowed the creation and enhancement of facilities to support arts and cultural performances.<sup>396</sup>

- 4.67** In terms of considering how public heritage buildings could be adapted for reuse, the Australian Institute of Architects recommended that underutilised heritage buildings in need of activation be identified, and then local community and council's need determined to identify a match. It suggested that state owned heritage buildings that are empty should be publicly listed, so that the properties could be potentially leased for other community uses, such as refuges, medical health and child care facilities. It noted that favourable leased conditions should be provided, with support also given to the lessee in understanding and maintaining the heritage asset.<sup>397</sup>
- 4.68** Several stakeholders discussed the importance of ensuring reuse initiatives are appropriate and effective. EJE Heritage, experienced in working on the adaptive re-use of the Newcastle Administration Building, stated that reuse initiatives need to be authentic to the area and to the specifics of the item to which they are applied, and that there needs to be a pragmatic approach, with consideration of financial viability.<sup>398</sup>
- 4.69** Northern Beaches Council stated that adaptive re-use and activation of heritage buildings needs to be managed in a proportionate way to ensure that what is significant about the item is not degraded or lost.<sup>399</sup>
- 4.70** Some stakeholders suggested improvements in legislation and funding to facilitate adaptive reuse approaches, including:
- the establishment of a heritage conservation fund to help support adaptive reuse projects<sup>400</sup>
  - improved integration of planning and heritage laws<sup>401</sup>
  - the establishment of heritage enterprise grants, like the schemes in Victoria and South Australia<sup>402</sup>
  - greater flexibility with the application and enforcement of Australian Standards and other codes which 'often stymie adaptive reuse'<sup>403</sup>
  - greater awareness for communities of the status of public heritage buildings and process for activation.<sup>404</sup>

<sup>396</sup> Evidence, Ms Annette Pitman, Head, Create Infrastructure, Create NSW, 2 September 2021, p 12.

<sup>397</sup> Submission 290, Australian Institute of Architects, p 10.

<sup>398</sup> Submission 34, EJE Heritage, p 5.

<sup>399</sup> Submission 63, Northern Beaches Council, p 3.

<sup>400</sup> Evidence, Mr Frank Howarth AM PSM, 13 August 2021, p 7.

<sup>401</sup> Evidence, Mr Ben Pechey, 24 August 2021, p 3. See also: Evidence, Ms Kate Wooll, 24 August 2021, p 11.

<sup>402</sup> Evidence, Ms Kate Wooll, 24 August 2021, p 19.

<sup>403</sup> Submission 267, Edwards Heritage Consultants Pty Ltd, p 6.

<sup>404</sup> Submission 84, Haberfield Association, p 7.

**Committee comment**

- 4.71** The committee acknowledges the pivotal role heritage plays in the New South Wales visitor economy, and especially the regional visitor economy. We heard in evidence how towns that have retained their character and charm are often at the top of the list for visitors to regional New South Wales. In the committee's view, the benefits of culture and heritage for regional tourism has been realised in an ad-hoc, almost incidental, way. What is lacking is a coordinated and concerted statewide approach to heritage tourism – involving collaboration with key stakeholders such as National Parks, Destination NSW, Heritage NSW and local councils. In recognition of the contribution that the heritage of local towns makes to state tourism, consideration should be given, where appropriate, to the listing of local heritage items on the State Heritage Register to afford them the protections that come with State listing and in coordination with Heritage NSW.
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**Recommendation 22**

That the NSW Government

- ensure agency collaboration on cultural tourism, to stimulate economic growth, promote heritage understanding and awareness in the community, and contribute to the long-term conservation and enhancement of heritage places, sites and landscapes
  - develop a state led strategy for the activation of heritage assets with specific actions for the promotion of local and state heritage, including consideration of listing relevant local items on the State Heritage Register.
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- 4.72** Like many inquiry participants, the committee also supports adaptive reuse of public heritage buildings to meet the contemporary needs of local communities. It is easy to see by the examples around us – such as Carriageworks and the Walsh Bay Arts Precinct – how these projects contribute to not only heritage conservation but an uplift in the economic and community value facilitated by the new uses of these sites. While the success of these initiatives rely on thorough research and assessment regarding the significance of the site and the proposed new uses, along with a sound business case and clear financial viability, it is clear that we must find ways to manage heritage items innovatively, without diminishing their value. The committee is firmly of the view that allowing heritage places to be activated and to come alive as living parts of our State is important, not least for keeping our connection to the past and celebrating heritage. However, as multiple submissions made clear, decisions about the adaptive reuse of heritage places can have significant impacts on the heritage and must always be consistent with the Burra Charter.
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**Recommendation 23**

That the NSW Government further investigate the United Kingdom's Heritage Enterprise Grants Scheme and consider the feasibility of creating a fund to assist with the adaptive reuse of public and private heritage properties – consistent with the Burra Charter – and which meets the contemporary needs of local and, in particular, disadvantaged communities.

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- 4.73** In the committee's view, a number of recommendations contained within this report will assist in strengthening community support and awareness of heritage. That being said, it is clear there would still be benefit in lifting community understanding of state heritage, especially given this is a core object of the existing heritage legislation. We can see the value provided by the NSW Blue Plaques program in connecting communities with their heritage and contributing to cultural tourism. We encourage the government to further develop digital components to link with the Blue Plaques to strengthen community engagement with heritage.

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#### **Recommendation 24**

That the NSW Government further develop the NSW Blue Plaques Program to engage communities with heritage and provide for cultural tourism opportunities, including the development of a mobile phone app in order to maximise and facilitate use, as the scheme in the United Kingdom provides.

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### **Other stakeholder concerns**

- 4.74** For some inquiry participants, the inquiry provided a forum for raising other issues and concerns not specifically addressed in the NSW Government's discussion paper. This section details some of the more salient issues that were raised in evidence throughout the inquiry.

#### **State government support for local councils**

- 4.75** Evidence from Broken Hill City Council shone a light on the importance of State government support for local councils as an enabler of quality heritage and community engagement outcomes, especially in rural and remote cities.<sup>405</sup>
- 4.76** Highlighting the achievements of its Heritage Advisor and Restoration Fund, the Council attributed the success of these programs to the ongoing financial support from the NSW Government, stating that '[w]ithout this financial commitment the achievements made would likely not have been possible'.<sup>406</sup>
- 4.77** Ms Elizabeth Vines OAM, Heritage Advisor to Broken Hill City Council, provided a specifically rural/remote perspective on issues surrounding heritage funding to local government. She impressed upon the committee that, unlike city properties, owner investment in heritage items in remote cities is not typically returned via an increase in the property's value, and hence why State government support is so critical.<sup>407</sup>
- 4.78** Before the committee, Ms Vines spoke of the goodwill that is generated by even modest amounts of State government funding in a place such as Broken Hill where the typical heritage owner profile is very different to those in urban/metropolitan Sydney. She observed that grant

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<sup>405</sup> Submission 13, Broken Hill City Council, p 1.

<sup>406</sup> Submission 13, Broken Hill City Council, p 1.

<sup>407</sup> Evidence, Ms Elizabeth Vines OAM, Broken Hill Heritage Advisor, Broken Hill Council, 24 August 2021, p 11.

recipients are often owners of homes sometimes worth only 'tens of thousands of dollars' and have no income beyond a pension. Ms Vines told the committee that, in such instances, even a grant of \$1,000 to enable the purchase of paint goes a long way to 'build[ing] up a sense of community, ownership and trust'.<sup>408</sup>

- 4.79** Furthermore, Ms Vines spoke of the multiplier effect of State government funding for heritage and conservation projects in local communities, a phenomenon she described as returning an 11-fold increase in value (via broader, flow-on community benefits) for every one dollar of State government funding.<sup>409</sup> Ms Vines drew the committee's attention to the following example to demonstrate how an initially small seed of funding can grow incrementally to have significant local benefit/value:

... let's say that you give a property owner \$500 ... to buy your materials ... the \$500 then invariably gets added to either in labour, which you are able to factor in at a labour rate because people are actually doing the work even if they are not being paid. So we in Broken Hill in the beginning of our scheme allowed dollar-for-dollar funding to be matched by contributions of labour. What we found in the first few years is that you have \$500 and that might generate, let's say, \$2,000 worth of improvement to a house because by the time they painted it and tarted it up and did it, they had added that amount of money. But then what we found was that once we gave a bit more money and there was more confidence in the community, the \$1,500 generated \$10,000 worth of work because they think, "Wow, we've got \$1,500," and then they might borrow a bit from the bank and then they might get a family to chip in and suddenly you have \$10,000 worth of work.<sup>410</sup>

- 4.80** On the back of these successes, and in recognition of the integral role culture and heritage plays in fostering engaged local communities, the Council called on the NSW Government to continue its support and consider increasing financial assistance to the Council for 'all aspects of heritage management' including skills training, enhanced support for heritage advisory services and practical conservation projects.<sup>411</sup>
- 4.81** Ms Kate Wooll, Business Manager, Strategic Planning, Goulburn Mulwaree Council, acknowledged the support Council receives for local heritage items – approximately \$6,000 per year for their Heritage Advisory Service and the same amount for their Small Grants Scheme for local heritage items – but confirmed they receive nil funding for State-listed items.<sup>412</sup>
- 4.82** In attempting to shift the focus of the review from the Act itself to its resourcing and administration, the National Trust of Australia (NSW) impressed upon the committee that better resourcing needs to extend to local government, not just Heritage NSW.<sup>413</sup>
- 4.83** Beyond the issue of financial assistance, another common concern raised by stakeholders across the local government sector was that local councils currently lack powers to enforce minimum

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<sup>408</sup> Evidence, Ms Elizabeth Vines OAM, 24 August 2021, p 17.

<sup>409</sup> Evidence, Ms Elizabeth Vines OAM, 24 August 2021, p 11.

<sup>410</sup> Evidence, Ms Elizabeth Vines OAM, 24 August 2021, p 18.

<sup>411</sup> Submission 13, Broken Hill City Council, p 2. See also: Answers to supplementary questions, Ms Elizabeth Vines OAM, Heritage Adviser, Broken Hill City Council, 27 September 2021, p 1.

<sup>412</sup> Evidence, Ms Kate Wooll, 24 August 2021, p 16.

<sup>413</sup> Evidence, Mr David Burdon, 13 August 2021, p 11.

standards of maintenance and repair for locally listed items so as to prevent so-called 'demolition by neglect'. Several inquiry participants advocated for the introduction of such powers for local councils – effectively, the local government equivalent to those established by section 118 of the Heritage Act for State-listed items, as detailed in Chapter 1 of this report.<sup>414</sup>

### **Importance of digitisation and video storytelling for the preservation and promotion of collections**

**4.84** Evidence from Local Government NSW highlighted the importance of digitisation for collecting and cultural institutions in both preserving their archives and collections and driving tourism, online promotion and visitation. Cr Linda Scott, the Association's President, considered digitisation as a means of long-term preservation 'really important', and noted that local councils are undertaking much of this work on their own, without 'consistent standards, proper protections and funding'. Cr Scott therefore called for a consistent preservation standard and funding mechanisms to enable local councils to meet that standard in a consistent way.<sup>415</sup>

**4.85** Cr Scott emphasised this position in response to the committee's supplementary questions, arguing that funding is a critical issue if the thousands of items in the care and custody of local councils are to be digitised and preserved. She stated that, while the Digitisation Round of the Regional Cultural Fund was a welcome support, local councils nevertheless need:

... guidance on digitisation, and access to a more consistent technology solution that would enable sharing of collections, but that the critical aspect to digitisation is funding. Both the total amount of funding and funding eligibility need to be broadened so councils can more easily apply for funding needs other than for cultural infrastructure. Councils have told LGNSW that funding is lacking for ongoing operations including curatorial development, and training and equipment for digitisation. Some councils may have thousands of items to digitise and this is knowledge, time and technology intensive.<sup>416</sup>

**4.86** Cr Scott also went onto explain the added value of transforming digitised objects into video stories using professional story tellers. Emphasising the importance of a strong arts and culture scene for the visitor economy, Cr Scott highlighted the potential role these initiatives could play in increasing visitation and online promotion of collections held in libraries, museum and galleries:

Video documentaries and digitisation more broadly would likely increase visitation and online promotion, among other benefits ... On the basis that heritage items encapsulate stories, the more accessible these stories are (including through increased digitisation and video stories) the more people will connect with the story of the item and want to visit its location.<sup>417</sup>

<sup>414</sup> See for example: Submission 35, Local Government NSW, p 17; Submission 26, Byron Shire Council, p 1; Submission 51, Blue Mountains City Council, p 5; Submission 78, National Trust of Australia (NSW) – Blue Mountains Branch, p 1; Submission 171, Cr Kerry Brown, p 2; Evidence, Mr Ben Pechey, 24 August 2021, p 3; Evidence, Cr Linda Scott, 24 August 2021, p 2.

<sup>415</sup> Evidence, Cr Linda Scott, President, Local Government NSW, 24 August 2021, p 6.

<sup>416</sup> Answers to supplementary questions, Cr Linda Scott, President, Local Government NSW, 22 September 2021, p 2.

<sup>417</sup> Answers to supplementary questions, Cr Scott, p 1.

- 4.87 Furthermore, noting the recent release of the Commonwealth Government's *Digital Culture Strategy 2021–2024*, Cr Scott recommended that the NSW Government roll out its own digitisation strategies in line with their Federal counterparts.<sup>418</sup>

### Concerns about the currency of publications and guidelines

- 4.88 The committee heard concerning evidence about the current state of Heritage Council guidelines and publications – in particular, that many guidelines have not been updated for several years and contain information that is no longer current or accurate.
- 4.89 Mr David Burdon of the National Trust of Australia (NSW) brought this to the committee's attention, observing that a number of guidelines are quite old and may contain advice that no longer applies. He cited, as an example, the recently gazetted standard exemptions (December 2020) that 'might not necessarily be applicable to the guidelines'.<sup>419</sup> In its submission, the Trust itemised a number of specific guidelines that are now anywhere between 16 and 25 years old and which 'confusingly refer to legislative requirements that are no longer in force and approvals processes that are no longer in place'.<sup>420</sup> Mr Burdon commented:

The National Trust itself does get quite a few telephone calls from people trying to work out which piece of legislation or guideline is in fact current. So that is where the problem is there. It can be easily remedied, of course, by just updating the necessary guidelines to reflect any current changes.<sup>421</sup>

- 4.90 Adding to this evidence, Dr Sue Rosen of Sue Rosen Associates, a heritage professional with 33 years' experience, raised a similar concern, seeing it as a direct consequence of inadequate resourcing of Heritage NSW.<sup>422</sup>
- 4.91 For Mr Hector Abrahams, former Chair of the Australian Institute of Architects Heritage Committee, the lack of recent expert publications by the Heritage Council was evidence of a period of decline in the Act's administration. He observed:

I think we have just come through a decline. I would evidence that by saying the Heritage Council, although one of its key obligations is to educate, has not made a publication for 11 years and they have only recently started their social media. In the 11 years before that they made over 100 publications, one of which is absolutely critical to every architect submitting a development application—that is, the standard template for the heritage impact assessment, "How to Assess Impact". That document is more than 20 years old and is just completely out of date. That is a problem of diligence.<sup>423</sup>

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<sup>418</sup> Answers to supplementary questions, Cr Scott, p 2.

<sup>419</sup> Evidence, Mr David Burdon, 13 August 2021, p 13.

<sup>420</sup> Submission 292, National Trust of Australia (NSW), p 26.

<sup>421</sup> Evidence, Mr David Burdon, 13 August 2021, p 13.

<sup>422</sup> Submission 23, Sue Rosen Associates, p 2.

<sup>423</sup> Evidence, Mr Hector Abrahams, former Chair, Heritage Committee, Australian Institute of Architects, 17 August 2021, p 36.



### Protection of archaeology under the Act: Critical perspectives

- 4.92** Professional bodies and associations for archaeologists proposed a number of suggested improvements to the way archaeology is currently defined and protected under the Heritage Act.
- 4.93** Notably, the Act's narrow definition of relics emerged as a key concern. For example, the Australian Association of Consulting Archaeologists observed that the Act's treatment of archaeology as 'relics' is restrictive and does not reflect 'the broad range of archaeological places and objects'. The Association further advised that some minor but significant amendments would be appropriate to enable other archaeological places and values to be better covered.<sup>424</sup> This was repeated in evidence from the Australian Archaeological Association.<sup>425</sup>
- 4.94** Related to this issue was the lack of clarity between the application of 'works' and 'relics' in assessing significance. Dr Iain Stuart, Member, Australian Archaeological Association, expanded on this in his testimony before the committee. He referred to a distinction drawn from legal opinion between 'works' and 'relics', where a 'work' encompasses things like a well, and 'relics' would encompass, for example, an old bottle that has fallen down the well. Highlighting a quirk of the current framework, Dr Stuart informed the committee that 'you can protect the bottle in the well but you cannot protect the well if it is empty'.<sup>426</sup>
- 4.95** Accordingly, Dr Stuart agreed that there needs to be greater clarity around the definition of 'relics', especially in order to provide an appropriate and time-sensitive mechanism to deal with unexpected archaeological discoveries that might more closely approximate 'works' (such as the Barangaroo boat) without going through a lengthy significance assessment and consideration for listing on a statutory list, which could take years rather than weeks.<sup>427</sup>
- 4.96** Additionally, in Dr Stuart's opinion, the definition of 'relics' should also clarify whether human remains are included as this was considered to be unclear in the existing definition.<sup>428</sup> Taken together, these were considered 'marginal definitional issues that could be altered to make [the Act] more effective'.<sup>429</sup>
- 4.97** The Australian Association of Consulting Archaeologists identified opportunities to address what it considered to be overlapping and duplication in the 'statutory regulation' of locally significant archaeological heritage. Noting the distinction between 'relics' of State and local significance, the Association considered it redundant for Heritage NSW to also regulate archaeological heritage that already has regulatory coverage under the *Environmental Planning and Assessment Act 1979*. Specifically, this evidence referred to:

... considerable opportunities to reduce overlapping and inconsistency between the provisions in planning instruments and development control plans, established under the *Environmental Planning and Assessment Act 1979* (EP&A Act), and the Heritage Act,

<sup>424</sup> Submission 104, Australian Association of Consulting Archaeologists, p 3.

<sup>425</sup> Evidence, Dr Iain Stuart, Member, Australian Archaeological Association, 13 August 2021, p 32; Submission 76, Australian Archaeological Association, pp 2-3.

<sup>426</sup> Evidence, Dr Iain Stuart, 13 August 2021, p 32.

<sup>427</sup> Evidence, Dr Iain Stuart, 13 August 2021, p 32.

<sup>428</sup> Evidence, Dr Iain Stuart, 13 August 2021, p 32.

<sup>429</sup> Evidence, Dr Iain Stuart, 13 August 2021, p 29.

particularly with respect to archaeology. In light of the logical division between archaeological relics of 'State' and 'local' significance, it follows that it is also logical to facilitate the regulation and management of locally significant archaeological resources (as well as other local heritage) at the local level, by local government, within the provisions of the EP&A Act. There does not need to be duplication of statutory regulation of archaeological heritage by the NSW Heritage Council (or delegate). This system would be supported by the continued blanket protection of relics under the Heritage Act.<sup>430</sup>

- 4.98** The Association also drew attention to a need for better arrangements for long-term curation, storage and management of archaeological records and excavated collections in New South Wales. It noted that neither the Heritage Act nor the National Parks and Wildlife Act contain adequate provisions to support appropriate investigation, reporting and long-term conservation and management of artefacts.<sup>431</sup>

### **Section 170: Heritage management by State government agencies**

- 4.99** Under section 170 of the Heritage Act, 'government instrumentalities' are required to establish and keep a heritage and conservation register as a statutory inventory of all the heritage assets under their care, control or management. Each government instrumentality must ensure that all items entered on its heritage and conservation register – also known as a 'Section 170 Register' – are updated within 12 months. All registers, once established, must be regularly reviewed and be publicly available on the State Heritage Inventory (online database) and in accordance with the Heritage Council of NSW's gazetted *State Agency Heritage Guide (2005)*. A government instrumentality must formally notify the Heritage Council of NSW if it intends to remove an item from its Section 170 Register, transfer ownership of any item on its Section 170 Register or vacate or demolish any place or building on its Section 170 Register. The instrumentality must provide at least 14 days' written notice.<sup>432</sup>
- 4.100** While this aspect of State-owned heritage was not specifically addressed in the NSW Government's discussion paper, many inquiry participants considered it broadly relevant to the review given a majority of items on the State Heritage Register are in public ownership.<sup>433</sup> Moreover, there was a clear sense that the NSW Government, through its various agencies and departments, should lead by example in conserving, managing and finding sensitive uses for the State heritage items in their care and control, thereby setting a benchmark for private owners of heritage to follow. The overwhelming sentiment was that the Section 170 provisions are not being properly enforced by the regulator, best-practice approaches to conservation are not being followed, and many 'government instrumentalities' are not currently meeting their obligations under the Act as significant owners and custodians of the State's heritage. For many inquiry participants – including those discussed below – this has resulted in a concerning decline deterioration in conservation outcomes for Government-owned heritage assets.
- 4.101** Mr Chris Betteridge, agreed that the NSW Government should be exemplary heritage managers thereby setting 'a good example to the public by best practice recording and management of the

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<sup>430</sup> Submission 104, Australian Association of Consulting Archaeologists, pp 3-4 and 7.

<sup>431</sup> Submission 104, Australian Association of Consulting Archaeologists, p 5.

<sup>432</sup> *Heritage Act 1977*, s 170 and s 170A.

<sup>433</sup> Submission 120, Wollongong City Council (Staff Submission), p 8.

heritage assets under their care, control and management'. According to Mr Betteridge, Section 170 Registers are a way for the NSW Government to demonstrate its adherence to the same best-practice conservation approaches that would be expected (at least in principle) for privately owned heritage items.<sup>434</sup>

**4.102** Commentary on the NSW Government's performance as a heritage owner, and what should be its exemplary approach to managing its own heritage assets, was repeated in evidence from Mrs Rosalind Strong AM, former Director of the then Heritage Office, and Ms Sheridan Burke, private heritage consultant and former staffer of the then Heritage Branch.<sup>435</sup>

**4.103** A submission from staff of Wollongong City Council added further insights to this evidence, describing a trend or pattern – appreciable over recent years – of Government-owned properties on the State Heritage Register being threatened by demolition or other impacts. Noting that discussion paper is silent on the Section 170 provisions, the Council submitted:

... these provisions should be a core consideration of any review of the Act. Consideration should be given to further strengthening the requirements to strategically manage and conserve State owned Heritage Assets as part of any review ... The NSW Government should aim to set an example in relation to heritage management and should embrace its important place in the management of many of the States most significant Heritage Sites.<sup>436</sup>

**4.104** Dr Anne Warr of Anne Warr Heritage Consulting highlighted the perceived disparities and inequalities between the stringent requirements and restrictions placed on private owners, on one hand, and the very different circumstances that apply when the NSW Government is the proponent, on the other. For Dr Warr, this perceived lack of parity sends the wrong message to private owners and undermines the credibility and authority of the NSW Government as an effective regulator. She explained:

The government cannot expect private property owners to respect the heritage listings and accompanying restrictions if the NSW Government doesn't respect the heritage listings and accompanying restrictions for its own state-owned heritage properties.<sup>437</sup>

**4.105** The Property Council of Australia also voiced concerns about State government compliance with the Section 170 requirements, specifically around maintenance and repair for listed items. From its perspective, there have been instances where listed items have not been managed to appropriate standards of maintenance and repair owing to lack of resources, and their heritage values have been degraded. The Property Council thus called for increased resources for State government agencies, including Heritage NSW, to support programmed inspections and audits which, in its view, would drive a number of benefits:

A supported program of audits and inspections will not only advocate and assist with identifying maintenance issues, it could also network Agencies with similar issues/assets to consolidate packages of work, resources (human and capital), as well as form a

<sup>434</sup> Submission 103, Mr Chris Betteridge, p 16.

<sup>435</sup> Submission 223, Mrs Rosalind Strong AM, p 3; Submission 229, Ms Sheridan Burke, p 3. See also: Evidence, Ms Kate Denny, Partner and Heritage Planner, Lucas, Stapleton, Johnson and Partners, 17 August 2021, p 11.

<sup>436</sup> Submission 120, Wollongong City Council (Staff Submission), p 8.

<sup>437</sup> Submission 180, Dr Anne Warr, p 4.

community of practice to ensure that this issue is sponsored and continually monitored into the future. The heritage value of these assets cannot be allowed to degrade any further through neglect due to poor resourcing. This provides another opportunity for NSW to show leadership by demonstrating heritage conservation best practice.<sup>438</sup>

**4.106** Australia ICOMOS maintained there has been a 'significant diminution' in recent years in conservation standards for publicly owned heritage items listed on Section 170 registers. In its view, many agencies are not adopting the 'best practice conservation approaches that the public would expect of a government that (in principle at least) requires for privately owned items'.<sup>439</sup> Australia ICOMOS went on to detail a number of specific concerns:

- some agencies have not submitted Section 170 registers to the Heritage Council
- there are inconsistencies across government and between agencies in heritage identification and listing, with some very large asset owners having a disproportionately low number of State-listed assets.<sup>440</sup>

**4.107** As a way forward, Australia ICOMOS recommended that the Heritage Council of NSW's gazetted *State Agency Heritage Guide (2005)* be reviewed to ensure that State government agencies are appropriately managing heritage items under their ownership or control.<sup>441</sup>

**4.108** Finally, the National Trust of Australia (NSW) considered this a critical issue in relation to the enforcement of the Heritage Act. The stance the Trust took on this matter recognised that the NSW Government 'is the custodian of these public assets and the public expects that the government will not only fulfill its statutory obligations relating to them, but will properly care, maintain and conserve them'.<sup>442</sup>

**4.109** The National Trust of Australia (NSW) argued for greater government accountability in ensuring heritage items are managed with due diligence and recommended in 'the strongest possible terms' that:

- the requirement for government departments to maintain Section 170 Registers be maintained;
- Section 170 Registers be prepared for those government agencies that have not yet fulfilled this obligation that came into force in 2005; and
- Section 170 Registers be regularly reviewed and made publicly available on the State Heritage Inventory (online database).<sup>443</sup>

### **Committee comment**

**4.110** Evidence before the committee attests to the manifold community benefits of small amounts of State government heritage funding to local councils. It was refreshing to hear regional

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<sup>438</sup> Submission 264, Property Council of Australia, p 9.

<sup>439</sup> Submission 291, Australia ICOMOS, p 6.

<sup>440</sup> Submission 291, Australia ICOMOS, p 6.

<sup>441</sup> Submission 291, Australia ICOMOS, p 6.

<sup>442</sup> Submission 292, National Trust of Australia (NSW), p 21.

<sup>443</sup> Submission 292, National Trust of Australia (NSW), p 21.

perspectives on heritage ownership, an important reminder that not all heritage owners are asset-rich and have the same means. We call on the NSW Government to continue its heritage funding to local councils and to consider increasing its commitments to Councils in regional and remote New South Wales.

- 4.111** The committee notes with concern evidence highlighting the current state of Heritage Council guidelines and publications. It is disappointing that key documents are so out of date. To incentivise heritage ownership and make activation and adaptive reuse of heritage a more viable and attractive option, it is imperative for there to be higher standards of customer service and support, including the provision of accurate, clear and up to date guidelines and resources. Recommendation 19 is relevant in this regard.
- 4.112** The committee also notes with concern the administration of and compliance with the management requirements of State-owned heritage as established by Section 170 of the Heritage Act. Whether due to resourcing issues or not, it is critical for the NSW Government to demonstrate best-practice heritage conservation and stewardship of its own heritage assets, thereby setting an example for private heritage owners. Due to the level of concern we received on this matter, it would be remiss of us not to recommend that the government address this issue, hence our recommendation below.

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**Recommendation 25**

That the NSW Government take immediate steps to improve compliance with section 170 of the *Heritage Act 1977*, including ensuring that State government agencies update their section 170 register within 12 months, wherever reasonably practical.

**Recommendation 26**

That the NSW Government allocate specific funding for digitisation and video recording preservation of archives, records and artefacts in Libraries, Galleries and Museums.

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## Appendix 1 Criteria for listing on the State Heritage Register

The State Heritage Register is established under Part 3A of the Heritage Act (as amended in 1998) for listing of items of environmental heritage<sup>1</sup> which are of state heritage significance.

To be assessed for listing on the State Heritage Register an item will, in the opinion of the Heritage Council of NSW, meet more than one of the following criteria or if an item satisfies only one of the criteria, the item is of such particular significance that it should be listed.

- a) an item is important in the course, or pattern, of NSW's cultural or natural history;
- b) an item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history;
- c) an item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW;
- d) an item has strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons;
- e) an item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history;
- f) an item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history;
- g) an item is important in demonstrating the principal characteristics of a class of NSW's
  - cultural or natural places; or
  - cultural or natural environments.

An item is not to be excluded from the Register on the ground that items with similar characteristics have already been listed on the Register.

**Source:** <https://www.heritage.nsw.gov.au/assets/Uploads/a-z-publications/a-c/CRITERIA-FOR-LISTING-ON-THE-STATE-HERITAGE-REGISTER.pdf>

## Appendix 2 Review of the *Heritage Act 1977*: Focus questions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Appendix 3 Submissions

<b>No.</b>	<b>Author</b>
1	Historic Houses Association Australia
1a	Historic Houses Association Australia
2	Dr Ian Willis
3	Hunter Valley Wine and Tourism Association
4	Name suppressed
5	Mr Robert Wickert
6	Camden Historical Society Inc
6a	Camden Historical Society Inc
7	The Mudgee Rylstone Gulgong Branch of The National Trust
8	Name suppressed
9	Lane Cove Council
10	Mr Howard Tanner
11	Mr Andrew Starr
12	Mr David Ashton
13	Broken Hill City Council
14	Canterbury Bankstown Council
15	Engineers Australia
16	Name suppressed
17	Name suppressed
18	Ms Carolyn Allen
19	Ms Juliet Ramsay
20	Veterans Car Club of Australia (NSW) Inc
21	Museums and Galleries of NSW
22	Goulburn Mulwaree Council
23	Sue Rosen Associates
24	Business Western Sydney
25	Tanner Kibble Denton Architects Pty Ltd
26	Byron Shire Council
27	Friends of Fernhill and Mulgoa Valley Inc
28	Place Management NSW, DPIE
29	Australian Rail Track Corporation (ARTC)



<b>No.</b>	<b>Author</b>
30	Urbis
31	Name suppressed
32	Parramatta Female Factory Friends Inc.
33	EJE Architecture - EJE Heritage
34	Committee for Sydney
35	Local Government NSW
36	Hornsby Shire Council
37	Heritage Council of NSW
37a	Heritage Council of NSW
38	Aboriginal Cultural Heritage Advisory Committee (ACHAC)
39	Mr Gregory Brunner
40	Woollahra Municipal Council
41	Central Coast Council
42	Mr Peter Ingall
43	Cessnock City Council
44	Double Bay Residents' Association Inc
45	Penrith City Council
46	Name suppressed
47	Docomomo Australia
48	Better Planning Network Inc
49	Anglican Church Property Trust Diocese of Sydney
50	National Trust of Australia (NSW) - Southern Highlands Branch
51	Blue Mountains City Council
52	Mr Kenneth Pritchett
53	Name suppressed
54	Name suppressed
55	Willoughby City Council
56	Professor Richard Mackay
57	Moree Plains Shire Council
58	Wollondilly Shire Council
59	Australian Garden History Society Sydney & Northern NSW Branch
60	Mr Eduard Glastra-Marcello
61	Name suppressed
62	Name suppressed
63	Northern Beaches Council

<b>No.</b>	<b>Author</b>
64	Anglican Church Growth Corporation
65	Save the Powerhouse
66	The Glebe Society Incorporated
67	Walter Burley Griffin Society Inc.
68	Operating Heritage Australia
69	Friends of Quarantine Station
70	Create NSW
71	Sydney Living Museums and the State Archives and Records Authority of NSW
72	University Infrastructure, University of Sydney
73	Liverpool City Council
74	APA Group
75	Lucas Stapleton Johnson and Partners
76	Australian Archaeological Association
77	Urban Development Institute of Australia NSW (UDIA)
78	Blue Mountains Branch, National Trust (NSW)
79	Australasian Society for Historical Archaeology
80	History Council of NSW
81	Lake Macquarie City Council
82	Utopia Architects
83	The Astor Pty Ltd
84	Haberfield Association
85	National Trust NSW, Far South Coast Branch
86	Ms Polly Seidler
87	Curio Projects Pty Ltd
88	City Plan Heritage
89	National Trust of Australia (NSW) Parramatta Regional Branch
90	GML Heritage
91	Millers Point Community Resident Action Group
92	Australian Museums and Galleries Association, NSW Branch
93	Transport Heritage NSW
94	Camden Residents' Action Group Inc
95	Royal Australian Historical Society
96	Extent Heritage Pty Ltd
97	Ms Kate Clark
98	Urban Taskforce

<b>No.</b>	<b>Author</b>
99	Dr Iain Stuart
100	National Parks Association of NSW
101	Greater Sydney Parklands
102	Planning Institute of Australia
103	Mr Chris Betteridge
104	Australian Association of Consulting Archaeologists Inc
105	Australasian Institute of Maritime Archaeology
106	Australian Institute of Landscape Architects [AILA]
107	Mr Jamie Parker MP
108	Mrs Mary Dal Santo
109	Friends of Ku-ring-gai Environment Inc.
110	Huskisson Heritage Association Inc
111	Hunters Hill Council
112	Bermagui Community Forum Management Committee
113	Coffs Harbour City Council
114	Berry & District Historical Society Inc
115	Blue Mountains Association of Cultural Heritage Organisations Inc
116	Australian Garden History Society
117	Ms Susan Stratton
118	Balmain Association
119	Miss Porter's House Museum, National Trust NSW
120	Wollongong City Council
121	Council of Heritage Motor Clubs NSW Inc.
122	Port Macquarie Historical Society Inc.
123	Mrs Donna Palmer
124	Ms Ursula Bonzol
125	National Trust Vienna Cottage Committee
126	REDWatch Inc
127	Willoughby Environmental Protection Association (WEPA)
128	The Hunters Hill Trust
129	City of Canada Bay
130	Maitland City Council
131	Name suppressed
132	Bathurst Showground Land Manager
133	Confidential

<b>No.</b>	<b>Author</b>
134	Mr Lee Squires
135	Dr James Lesh
136	Dr Clive Lucas
137	Name suppressed
138	Name suppressed
139	Name suppressed
140	Confidential
141	Name suppressed
142	Name suppressed
143	Mr Paul Rappoport
144	Name suppressed
145	Mrs Sharon Thistlethwaite
146	Name suppressed
147	Ms Donna Leslie
148	Ms June Lunsmann
149	Ms Helen Carter
150	Tenterfield Shire Council
151	Mrs Elaine White
152	Mrs Janet Hay
153	Mr Phil Jenkyn OAM
154	Professor Sybil Jack
155	Singleton Shire Healthy Environment Group
156	Cremorne Conservation Group
157	Mrs Heather Berry
158	Dr Bridget Brooklyn
159	Mrs Jane Gardiner
160	Mrs Christine Newton
161	Professional Historians Association (NSW & ACT)
162	Mr Tim Phillip
163	Mr Robert Clark
164	Ms Louise Marcroft
165	Ms Judy Butlin
166	Ms Cathy Peters
167	Mr Max Underhill
168	Mr David Dufall

<b>No.</b>	<b>Author</b>
169	Mr Vasilij Schlusser
170	Mrs Barbara Brady
171	Cr Kerry Brown
172	Mrs Oriel Jonas
173	Ms Mary Sutton
174	Mrs Barbara Rooke
175	Ms Anne Field
176	Mr Wayne Lewis
177	Brewarrina Shire Council
178	Ms Linda Avramides
179	Ms Robyn Longhurst
180	Dr Anne Warr
181	Dr Kate Sullivan
182	Ms Catherine Barlow
183	North Sydney Council
184	Mr Ross Mackenzie
185	Mrs Alice Oppen
186	Janet Harwood
187	Dr Cameron Logan
188	Mr Francis Breen
189	Lauren Schutz
190	AMAC Group
191	Dr Cameron Hartnell
192	Mrs Colleen Fliegner
193	Mr Geoff Stennett
194	Brett Simpson
195	Dr Geoffrey & Ann Long
196	Michelle Jones
197	Ms Hayley Edmonds
198	Mrs Christine Alexander
199	Dr Alister Sharp
200	Caitlin Allen
201	Dr Mary Casey
202	Hawkesbury City Council
203	Ms Sue Murray

<b>No.</b>	<b>Author</b>
204	Ms Kate Higgins
205	Mrs Julie Daly
206	Mrs Evelyn O'Donoghue
207	Ms Jennie Minifie
208	Mr Finbar O'Donoghue
209	Ms Margaret Hinchey
210	Ms Helen Temple
211	Design 5 – Architects
212	Mrs Elizabeth Barton
213	Mrs Brigid Dowsett
214	Mr Charles Barton
215	Mr James Nicholson
216	Mr Malcolm Garder
217	Mr Warren Fisher
218	Mrs Rosemary Hadaway
219	Name suppressed
220	Mrs Philippa Pritchett
221	Dr Alison Wain
222	Mr Alastair Kinloch
223	Mrs Rosalind Strong AM
224	Mr Tom Sherlock
225	The Paddington Society
226	Ms Jacqui Kirkby
227	Ms Emma Brooks Maher
228	Virtus Heritage
229	Ms Sheridan Burke
230	Ms Jane Alexander
231	Name suppressed
232	Dr Peter Watts
233	Name suppressed
234	Name suppressed
235	Name suppressed
236	Name suppressed
237	Name suppressed
238	Name suppressed

<b>No.</b>	<b>Author</b>
239	Name suppressed
240	Name suppressed
241	Name suppressed
242	Name suppressed
243	Confidential
244	Name suppressed
245	Name suppressed
246	Name suppressed
247	Name suppressed
248	Name suppressed
249	Name suppressed
250	Name suppressed
251	Name suppressed
252	Name suppressed
253	Name suppressed
254	Name suppressed
255	Name suppressed
256	City of Newcastle
257	Ku-ring-gai Council
258	Queanbeyan-Palerang Regional Council
259	Narrabri Shire Council
260	Dr Philip Drew
261	Highgate Owners Corporation SP49822
262	Walgett Shire Council
263	Ms Gwenda Sheridan
264	Property Council of Australia
265	Name suppressed
266	Mr Robert Allan Moore
267	Edwards Heritage Consultants Pty Ltd
268	Mr Robert Gasparini
269	Ms Bev Atkinson
270	City of Sydney
271	Pymont Action Inc.
272	Randwick City Council
273	Herbert Smith Freehills

<b>No.</b>	<b>Author</b>
274	Dr Bronwyn Hanna
275	Clarence Valley Council
276	Far South Coast Environment & Heritage Conservation Inc.
277	The Royal Botanic Garden Sydney
278	Tamworth Regional Council
279	Ultimo Village Voice
280	Name suppressed
281	Name suppressed
282	Name suppressed
283	Name suppressed
284	Name suppressed
285	Name suppressed
286	Name suppressed
287	Name suppressed
288	Colonel (Retd) David Dufall and Mrs Kathleen Dufall
289	Orwell & Peter Phillips
290	Australian Institute of Architects
291	Australia ICOMOS
292	The National Trust of Australia (NSW)
293	NSW Department of Education
294	James Colman and Laurie Bennett
295	NSW Aboriginal Land Council
295a	NSW Aboriginal Land Council
296	Confidential
297	Name suppressed
298	Confidential
299	Confidential
300	Confidential
301	Confidential
302	Confidential
303	Confidential
304	Shoalhaven City Council
305	Rail, Tram and Bus Union, Retired Members Association
306	Construction, Forestry, Maritime, Mining & Energy Union



## Appendix 4 Witnesses at hearings

Date	Witnesses	Position and Organisation
<b>Monday 2 August 2021</b> <b>Via videoconference</b>	The Hon. Don Harwin MLC	Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs and the Arts
	Ms Katherine Foy	Deputy Secretary, Community Engagement, Department of Premier and Cabinet
	Mr Matthew Clark	Director, Heritage Strategy and Policy, Heritage NSW, Community Engagement, Department of Premier and Cabinet
<b>Friday 13 August 2021</b> <b>Via videoconference</b>	Mr Frank Howarth AM PSM	Chair, Heritage Council of NSW
	Mr Dillon Kombumerri	Chair, Approvals Committee, Heritage Council of NSW
	Mr Peter Romey	Past Executive Committee Member, Australia ICOMOS
	Mr David Burdon	Conservation Director, National Trust of Australia (NSW)
	Mr Tom Forrest	Chief Executive, Urban Taskforce Australia
	Mr Andrew Margan	Hunter Valley Wine and Tourism Association
	Dr Iain Stuart	Member, Australian Archaeological Association
	Ms Anita Yousif	President, Australasian Society for Historical Archaeology
Mr Neil Hogg	Member, Engineers Australia	
<b>Tuesday 17 August 2021</b> <b>Via videoconference</b>	Ms Merrill Witt	Member, Leadership Group, Better Planning Network
	Ms Alexandria Barnier	Associate Director, Heritage Team, Urbis

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	Ms Kate Denny	Partner and Heritage Planner, Lucas, Stapleton, Johnson and Partners
	Ms Natalie Vinton	Chief Executive Officer, Curio Projects
	Dr MacLaren North	Managing Director, Extent Heritage
	Cr Anne Dennis	Chair, NSW Aboriginal Land Council
	Ms Glenda Chalker	Chair, Aboriginal Cultural Heritage Advisory Committee
	Ms Mishka Holt	Principal Solicitor, Native Title Services Corporation
	Ms Penelope Barletta	Manager, Parish Property Services, Anglican Church Property Trust Diocese of Sydney, and Anglican Church Growth Corp, Moore Theological College
	Mr Tim Duddy	General Manager, Historic Houses Association of Australia
	Mr George Salouros	Director, Asset Management, Planning and Projects, Royal Botanic Gardens and Domain Trust
	Mr Stephen Batey	Architect, EJE Architecture
	Mr Hector Abrahams	Former Chair, Heritage Committee, Australian Institute of Architects, NSW Chapter
	Ms Polly Seidler	Private Individual
<b>Tuesday 24 August 2021</b>	Cr Linda Scott	President, Local Government NSW
<b>Via videoconference</b>	Mr Ben Pechey	Executive Manager, Strategic Planning and Urban Design, City of Sydney
	Ms Lisa Newell	Principal Strategic Planner, Hornsby Shire Council
	Mr Terry Tredrea	Strategic Planner, Lane Cove Council
	Ms Elizabeth Vines OAM	Broken Hill Heritage Advisor, Broken Hill Council

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Ms Kate Wooli	Business Manager of Strategic Planning, Goulburn Mulwaree Council
Mr Jeff Sowiak	General Manager, Brewarrina Shire Council
Mr John McInerney AM	Executive Committee Member and Former President, Millers Point Community Resident Action Group
Dr Michael Barkley	President, Friends of Fernhill and Mulgoa Valley
Mr Adam Lindsay	Executive Director, Sydney Living Museums and the State Archives and Records Authority of NSW

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<b>Thursday 2 September 2021</b>  <b>Via videoconference</b>	Prof Richard Mackay AM	Private Individual
	Mr Howard Tanner AM	Private Individual
	Dr Stephen Gapps	President, History Council of NSW
	Ms Annette Pitman	Head, Create Infrastructure, Create NSW
	Mr Sean Macken	Strategic Advisor, Committee for Sydney
	Ms Sharon Veale	Chief Executive, GML Heritage
	Mr Roger Jowett	The Rail, Tram and Bus Union, Retired Members Association

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## Appendix 5 Minutes

### Minutes no. 25

Wednesday 12 May 2021

Standing Committee on Social Issues

Members' Lounge, Sydney, at 1.42 pm

#### 1. Members present

Mr Mallard, *Chair*

Mr Mookhey, *Deputy Chair*

Mr Franklin

Ms Jackson

Mr Martin

Revd Mr Nile

Mr Shoebidge (*substituting for Ms Boyd for the duration of the inquiry*)

Mrs Ward

#### 2. Draft minutes

Resolved, on the motion of Mr Franklin: That draft minutes no. 24 be confirmed.

#### 3. Correspondence

The committee noted the following correspondence:

##### *Received*

- 20 April 2021 – Email from the office of Ms Boyd to the Secretariat advising that Mr Shoebidge will be substituting for her for the duration of the inquiry

#### 4. Inquiry into the Review of the *Heritage Act 1977*

##### 4.1 Consideration of Ministerial terms of reference

The Chair tabled the following terms of reference received from the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, on 7 April 2021:

1. That the Standing Committee on Social Issues inquire into and report on the *Heritage Act 1977* (NSW) (the Act), with particular reference to:
  - (1) the need for legislative change to deliver a heritage system that is modern, effective and reflects best practice heritage conservation, activation and celebration
  - (2) the adequacy of the Act in meeting the needs of customers and the community
  - (3) how the Act could more effectively intersect with related legislation, such as heritage elements of the *Environmental Planning and Assessment Act 1979* and the *National Parks and Wildlife Act 1974*
  - (4) the issues raised and focus questions posed in the Government's Discussion Paper, in particular:
    - (i) a category approach to heritage listing to allow for more nuanced and targeted recognition and protection of the diversity of State significant heritage items

- (ii) consideration of new supports to incentivise heritage ownership, conservation, adaptive reuse, activation and investment
  - (iii) improvements to heritage compliance and enforcement provisions
  - (iv) streamlining heritage processes
- (5) any other related matter.

Resolved, on the motion of Mr Shoebridge:

- That the Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, be requested to amend the terms of reference by adding the following words at the end of clause (b) of paragraph 1: 'and the protection of heritage'
- That the Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, be requested to amend the terms of reference by inserting the following new clause after clause (c) of paragraph 1: '(d) the case for stand-alone First Nations heritage laws in New South Wales.'
- That the Chair write to the Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, seeking same.
- That, subject to the Minister's response, the motion to adopt the terms of reference as amended be circulated and agreed to via email.

## 5. Inquiry into Gay and Transgender hate crimes between 1970 and 2010 - 57th Parliament

### 5.1 Joint submission from ACON, Dowson Turco Lawyers and community partners

- 5.2 The committee noted that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no 40 – Joint submission from ACON, Dowson Turco Lawyers and community partners.

## 6. Next meeting

The committee adjourned at 1.54 pm, *sine die*.

Anthony Hanna  
Clerk to the Committee

## Minutes no. 26

Thursday 13 May 2021

Standing Committee on Social Issues

Members' Lounge, Sydney, at 9.47 am

### 1. Members present

Mr Mallard, *Chair*

Mr Mookhey, *Deputy Chair*

Ms Jackson

Mr Shoebridge (*substituting for Ms Boyd for the duration of the inquiry*)

Mrs Ward

**2. Apologies**

Mr Franklin  
Revd Mr Nile  
Mr Martin

**3. Correspondence**

The committee noted the following correspondence:

***Sent***

- 12 May 2021 – Letter from the Chair to the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, requesting amendments to the terms of reference for the review of the *Heritage Act 1977*

***Received***

- 12 May 2021– Letter from the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, to the Chair providing revised terms of reference for the review of the *Heritage Act 1977*.

**4. Consideration of revised Ministerial terms of reference**

The Chair tabled revised terms of reference received from the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, on 12 May 2021:

**Review of the *Heritage Act 1977***

1. That the Standing Committee on Social Issues inquire into and report on the *Heritage Act 1977* (NSW) (the Act), with particular reference to:
  - a) the need for legislative change to deliver a heritage system that is modern, effective and reflects best practice heritage conservation, activation and celebration
  - b) the adequacy of the Act in meeting the needs of customers and the community and the protection of heritage
  - c) how the Act could more effectively intersect with related legislation, such as heritage elements of the *Environmental Planning and Assessment Act 1979* and the *National Parks and Wildlife Act 1974*
  - d) the issues raised and focus questions posed in the Government's Discussion Paper, in particular:
    - i. a category approach to heritage listing to allow for more nuanced and targeted recognition and protection of the diversity of State significant heritage items
    - ii. consideration of new supports to incentivise heritage ownership, conservation, adaptive reuse, activation and investment
    - iii. improvements to heritage compliance and enforcement provisions
    - iv. streamlining heritage processes
  - e) any other related matter.

Resolved, on the motion of Mr Shoebridge:

- That the committee adopt the terms of reference as amended

- That the committee authorise the publication of the following documents on the inquiry webpage:
  - Letter from the Chair to the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, requesting amendments to the terms of reference for the review of the *Heritage Act 1977*, dated 12 May 2021
  - Letter from the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, to the Chair providing revised terms of reference for the review of the *Heritage Act 1977*, dated 12 May 2021
  - Letter from the Honourable Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council to the Chair, dated 7 April 2021
  - Review of NSW Heritage Legislation - Discussion Paper, April 2021.

## 5. Conduct of the inquiry into the *Heritage Act 1977*

### 5.1 Proposed timeline

Resolved, on the motion of Mr Mookhey: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close: Sunday 27 June 2021
- Hearing dates: to be determined by the Chair after consultation with members as to their availability (potentially August/September 2021)
- Reporting date: October 2021

### 5.2 Stakeholder list

Resolved, on the motion of Mrs Ward: That members have until 12 noon, Monday 17 May 2021 to amend the Chair's proposed stakeholder list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

### 5.3 Advertising

The committee noted the standard advertising arrangements for all inquiries.

## 6. Next meeting

The committee adjourned at 9.52 am, *sine die*.

Anthony Hanna  
Clerk to the Committee

## Minutes no. 27

Monday 2 August 2021

Standing Committee on Social Issues

Via WebEx at 9.15 am

### 1. Members present (*via WebEx*)

Mr Poulos, *Chair*

Mr Buttigieg, *Deputy Chair*

Mr Khan (*substituting for Mr Franklin*)

Mr Mallard  
Mr Martin  
Revd Mr Nile  
Mr Primrose  
Mr Secord (*participating member*)  
Mr Shoebridge (*substituting for Ms Boyd for the duration of the inquiry*)

## 2. Draft minutes

Resolved, on the motion of Mr Martin: That draft minutes nos. 25 and 26 be confirmed.

## 3. Correspondence

The committee noted the following correspondence:

### *Sent*

- 12 May 2021 – Letter from the Chair to the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, inviting the Minister to give evidence on 22 July 2021 for the review of the *Heritage Act 1977*.

### *Received*

- 17 May 2021 – Letter from Ms Helen Lardner, President of Australia ICOMOS, to the chair encouraging the committee to consider further specific issues/broader concerns within the terms of reference for the review of the *Heritage Act 1977*.
- 7 July 2021 – Email from Mr Tom Anderson, Director, Parliament, Office of the Hon Don Harwin MLC, to the secretariat nominating Government witnesses to give evidence alongside Minister Harwin on 22 July 2021 for the review of the *Heritage Act 1977*.
- 16 July 2021 – Letter from the Hon Shayne Mallard MLC, Government Whip in the Legislative Council, to the secretariat advising that the Hon Trevor Khan MLC will substitute for the Hon Ben Franklin MLC for the hearing on Monday 2 August 2021 for the review of the *Heritage Act 1977*.
- 27 July 2021 – Email from Ms Lauren Conceicao, NSW Acting Executive Director, Property Council of Australia, to the secretariat declining the committee's invitation to give evidence on Monday 2 August 2021 for the review of the *Heritage Act 1977*.
- 27 July 2021 – Email from Ms Ronda Gaffey, Secretary, Parramatta Female Factory Friends, to the secretariat declining the committee's invitation to give evidence on Friday 6 August 2021 for the review of the *Heritage Act 1977*.

## 4. Committee membership

The committee noted that the Hon Mark Buttigieg MLC was nominated as Deputy Chair of the committee in accordance with the resolutions appointing standing committees on 21 June 2021.

## 5. Inquiry into the review of the *Heritage Act 1977*

### 5.1 Public and name suppressed submissions

The committee noted that the following public submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1, 1a, 2, 3, 5, 6, 6a, 7, 9-15, 18, 19-30, 32-45, 47-52, 55-60, 63-130, 132, 134-136, 143, 145, 147-154, 155, 156, 157-220, 221, 223, 224-230, 232, 256, 257, 258-264, 266, 267-277, 279, 288, 289, 290, 291, 292, 293, 294 and 295.



The committee noted that the following name suppressed submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 4, 8, 16, 17, 31, 46, 53, 54, 61, 62, 131, 137, 138, 139, 141, 142, 144, 146, 219, 231, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 265, 280, 281, 282, 283, 284, 285, 286 and 287.

## **5.2 Partially confidential submissions**

Resolved, on the motion of Mr Shoebridge:

- That the committee keep the following information confidential, as per the request of the author: identifying information in submissions nos. 219 and 281.
- That the committee keep the following information confidential as per the recommendation of the secretariat: information that could be used to identify the author's home address in submission no. 222.

## **5.3 Confidential submissions**

Resolved, on the motion of Mr Shoebridge: That the committee keep submission nos. 133, 140, 243, 278, 296, 298, 299, 300, 301, 302 and 303 confidential, as per the request of the author.

## **5.4 Change to requested publication status – Submission 297**

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 297 in accordance with its updated publication status.

## **5.5 Publication of attachment – Submission 229**

Resolved, on the motion of member Mr Shoebridge: That the committee authorise the publication of the attachment to submission no. 229.

## **5.6 Allocation of questioning**

Resolved, on the motion of Mr Shoebridge: That the sequence of questions to be asked during the hearing on 2 August 2021 alternate between opposition, crossbench and government members, in that order, with each round being of 10 minutes duration.

## **5.7 Recording of hearing**

Resolved, on the motion of Mr Martin: That because the fully virtual hearing on 2 August 2021 will not be broadcast, the committee agrees to record the hearing, and that this recording be placed on the inquiry webpage as soon as practicable after the hearing subject to any comments or concerns from the secretariat or the committee after the hearing.

## **5.8 Advisors to attend hearing**

The committee noted it agreed via email to a request for Ministerial and Departmental advisors to be admitted to the virtual hearing on 2 August 2021.

## **5.9 Public hearing**

The committee proceeded to take evidence in public.

The Hon Don Harwin MLC, Minister for the Public Service and Employee Relations, Aboriginal Affairs and the Arts, and departmental witnesses were admitted via video link along with ministerial and departmental advisors.

The Chair made an opening statement regarding questions on notice, virtual hearing etiquette and other matters.

The Chair noted that members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

The following witnesses were sworn:

- Ms Kate Foy, Deputy Secretary, Community Engagement, Department of Premier and Cabinet; and
- Mr Matthew Clark, Director, Heritage Strategy and Policy, Heritage NSW, Community Engagement, Department of Premier and Cabinet.

The witnesses were examined by the committee.

The Minister withdrew at 10.31 am.

Departmental witnesses were further examined by the committee.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 11.07 am.

**6. Virtual hearing**

The committee discussed and provided feedback on the first ever fully virtual hearing at the NSW Parliament.

**7. Next meeting**

The committee adjourned at 11.26 am, *sine die*.

Anthony Hanna  
**Clerk to the Committee**

**Minutes no. 28**

Friday 13 August 2021

Standing Committee on Social Issues

Via WebEx at 9.42 am

**1. Members present** (*via WebEx*)

Mr Poulos, *Chair*

Mr Buttigieg, *Deputy Chair*

Mr Franklin

Mr Mallard

Mr Martin

Revd Mr Nile

Mr Primrose

Mr Secord (*participating*) (*until 10.45 am*)

Mr Shoebridge (*from 9.46 am*)

**2. Draft minutes**

Resolved, on the motion of Mr Martin: That draft minutes no. 27 be confirmed.

**3. Correspondence**

The committee noted the following correspondence:

***Received***

- 10 August 2021 – Email from Ms Lauren Conceicao, NSW Deputy Executive Director, Property Council of Australia, to the secretariat declining the committee's invitation to give evidence on Friday 13 August 2021 for the review of the *Heritage Act 1977*
- 11 August 2021 – Email from Dr Rebecca Parkes of the Australian Association of Consulting Archaeologists, to the secretariat declining the committee's invitation to give evidence on Friday 13 August 2021 for the review of the *Heritage Act 1977*.
- 12 August 2021 – Email from Ms Lauren Rountree on behalf of Mr David Borger, Business Western Sydney, to the secretariat declining the committee's invitation to give evidence on Friday 13 August 2021 for the review of the *Heritage Act 1977*.

#### 4. Inquiry into the review of the *Heritage Act 1977*

##### 4.1 Public submissions

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of submission nos. 37a, 295a and 304.

##### 4.2 Change to requested publication status – Submission 278

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of submission no. 278 in accordance with its updated publication status.

##### 4.3 Allocation of questioning

The committee agreed that questions would be allocated evenly between the Opposition/Crossbench/Government for the duration of the inquiry.

##### 4.4 Fully virtual hearing

The Chair noted some practicalities to ensure the smooth running of the virtual hearing.

##### 4.5 Live streaming and recording of hearing

Resolved, on the motion of Mr Shoebridge: That all remaining hearings for the review of the *Heritage Act 1977*, including the hearing on 13 August 2021, will be live streamed via the Parliament's YouTube channel and recorded, with all recordings being made publicly available online.

##### 4.6 Public hearing

The committee proceeded to take evidence in public.

Witnesses were admitted via video link.

The Chair made an opening statement regarding questions on notice, virtual hearing etiquette and other matters.

The following witnesses were sworn and examined:

- Mr Dillon Kombumerri, Chair, Approvals Committee, Heritage Council of NSW
- Mr Frank Howarth AM PSM, Chair, Heritage Council of NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Peter Romey, Australia ICOMOS Representative
- Mr David Burdon, National Trust of Australia (NSW)

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Tom Forrest, Urban Taskforce Australia
- Mr Andrew Margan, Hunter Valley Wine and Tourism Association

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Ian Stuart, Australian Archaeological Association
- Ms Anita Yousif, Australasian Society for Historical Archaeology
- Mr Neil Hogg, Engineers Australia

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.55 pm.

## 5. Other business

Committee members provided feedback on the virtual hearing.

## 6. Next meeting

The committee adjourned at 3.58 pm, *sine die*.

Madeleine Dowd

**Clerk to the Committee**

## Minutes no. 29

Tuesday 17 August 2021

Standing Committee on Social Issues

Via WebEx at 9.47 am

### 1. Members present (*via WebEx*)

Mr Poulos, *Chair*

Mr Buttigieg, *Deputy Chair (until 12.00 pm; and from 2.00 pm)*

Mr Franklin

Mr Mallard (*until 12.00 pm; and from 2.00 pm*)

Mr Martin

Revd Mr Nile (*until 12.00 pm; and from 2.00 pm*)

Mr Primrose

Mr Secord (*participating (from 11.45 am until 12.30 pm)*)

Mr Shoebridge

### 2. Correspondence

The committee noted the following correspondence:

#### ***Received***

- 13 August 2021 – Email from Dr Mary-Jean Sutton, Director, Virtus Heritage, to the secretariat declining the committee's invitation to give evidence on Tuesday 17 August 2021 for the review of the *Heritage Act 1977*.

### 3. Inquiry into the review of the *Heritage Act 1977*

#### 3.1 Allocation of questioning

The committee noted that it previously resolved the sequence of questions to be asked at all remaining hearings for the review of the *Heritage Act 1977* is to alternate between Opposition, crossbench and Government members, in that order, with equal time allocated to each.

#### 3.2 Fully virtual hearing

The Chair noted some practicalities to ensure the smooth running of the virtual hearing.

#### 3.3 Live streaming and recording of hearing

The committee noted that it previously resolved that all remaining hearings for the review of the *Heritage Act 1977* will be live streamed via the Parliament's YouTube channel and recorded, with all recordings being made publicly available online.

#### 3.4 Public hearing

The committee proceeded to take evidence in public.

Witnesses were admitted via video link.

The Chair made an opening statement regarding questions on notice, virtual hearing etiquette and other matters.

The following witnesses were sworn and examined:

- Ms Merrill Witt, Member, Leadership Group, Better Planning Network
- Ms Alexandria Barnier, Associate Director, URBIS

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Kate Denny, Partner, Lucas, Stapleton, Johnson and Partners
- Ms Natalie Vinton, Chief Executive Officer, CURIO Projects
- Dr MacLaren North, Managing Director, Extent Heritage

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Cr Anne Dennis, Chair, NSW Aboriginal Land Council
- Ms Glenda Chalker, Chair, Aboriginal Cultural Heritage Advisory Committee
- Ms Mishka Holt, Principal Solicitor, Native Title Services Corporation

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Penny Barletta, Manager, Parish Property Services, Anglican Church Growth Corp/Anglican Church Property Trust Sydney Diocese
- Mr Tim Duddy, General Manager, Historic Houses Association
- Mr George Salouros, Director, Asset Management, Planning and Projects, Royal Botanic Garden Sydney

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Stephen Batey, Architect, EJE Architecture
- Mr Hector Abrahams, Former Chair, Heritage Committee, Australian Institute of Architects
- Ms Polly Seidler, private individual

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.56 pm.

#### 4. Next meeting

The committee adjourned at 3.56 pm until 9.45 am, Tuesday 24 August 2021 (fourth hearing for the review of the *Heritage Act 1977*).

Anthony Hanna

**Clerk to the Committee**

#### Minutes no. 30

Tuesday 24 August 2021

Standing Committee on Social Issues

Via WebEx at 9.16 am

#### 1. Members present (*via WebEx*)

Mr Poulos, *Chair*

Mr Buttigieg, *Deputy Chair (until 11.45 am)*

Mr Franklin

Mr Mallard (*until 11.45 am*)

Mr Martin

Revd Mr Nile (*until 11.45 am*)

Mr Primrose

Mr Secord (*participating until 11.45 am*)

Mr Shoebridge (*until 11.45 am*)

#### 2. Draft minutes

Resolved, on the motion of Mr Franklin: That draft minutes nos. 28 and 29 be confirmed.

#### 3. Correspondence

The committee noted the following correspondence:

##### ***Received***

- 16 August 2021 – Email from Mr David Carswell, Service Manager, Land Use Planning, Queanbeyan-Palerang Regional Council, to the secretariat declining the committee's invitation to give evidence on Tuesday 24 August 2021 for the review of the *Heritage Act 1977*
- 17 August 2021 – Letter from Prof Richard Mackay AM, private individual, to the committee Chair providing clarification to answers given by Ms Kate Foy and Mr Matthew Clark of the Department of Premier and Cabinet at the hearing on Monday 2 August 2021 for the review of the *Heritage Act 1977*

- 17 August 2021 – Email from Ms Ronda Gaffey, General Secretary, Parramatta Female Factory Friends, to the secretariat declining the committee's invitation to give evidence on Tuesday 24 August 2021 for the review of the *Heritage Act 1977*.

#### 4. Inquiry into the review of the *Heritage Act 1977*

##### 4.1 Witnesses for reserve session on 2 September

Resolved, on the motion of Revd Mr Nile: That the reserve session on Thursday 2 September 2021 be used to hear from a representative of GML Heritage as well as organisations that had previously declined the committee's invitation to give evidence due to unavailability, as identified by the secretariat.

##### 4.2 Allocation of questioning

The committee noted that it previously resolved the sequence of questions to be asked at all remaining hearings for the review of the *Heritage Act 1977* is to alternate between Opposition, crossbench and Government members, with equal time allocated to each.

##### 4.3 Fully virtual hearing

The Chair noted some practicalities to ensure the smooth running of the virtual hearing.

##### 4.4 Live streaming and recording of hearing

The committee noted that it previously resolved that all remaining hearings for the review of the *Heritage Act 1977* will be live streamed via the Parliament's YouTube channel and recorded, with all recordings being made publicly available online.

##### 4.5 Public hearing

The committee proceeded to take evidence in public.

Witnesses were admitted via video link.

The Chair made an opening statement regarding questions on notice, virtual hearing etiquette and other matters.

The following witnesses were sworn and examined:

- Cr Linda Scott, President, Local Government NSW
- Mr Ben Pechey, Executive Manager, City of Sydney
- Mr Terry Tredrea, Strategic Planner, Lane Cove Council
- Ms Lisa Newell, Principal Strategic Planner, Hornsby Shire Council

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Elizabeth Vines, Broken Hill Heritage Advisor, Broken Hill Council
- Ms Kate Woolf, Business Manager, Goulburn Mulwaree Council
- Mr Jeff Sowiak, General Manager, Brewarrina Shire Council

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr John McInerney, Executive Committee Member and Former President, Millers Point Community Resident Action Group

- Dr Michael Barkley, President, Friends of Fernhill and Mulgoa Valley
- Mr Adam Lindsay, Executive Director, Sydney Living Museums and the State Archives and Records Authority of NSW

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 12.47 pm.

**5. Next meeting**

The committee adjourned at 12.47 pm, *sine die*.

Anthony Hanna

**Clerk to the Committee**

**Minutes no. 31**

Thursday 2 September 2021

Standing Committee on Social Issues

Via WebEx at 9.49 am

**1. Members present** (*via WebEx*)

Mr Poulos, *Chair*

Mr Buttigieg, *Deputy Chair (from 9.59 am)*

Mr Franklin

Mr Mallard

Mr Martin

Revd Mr Nile

Mr Primrose

Mr Secord (*participating from 10.45 am – 11.30 am*)

Mr Shoebridge

**2. Draft minutes**

Resolved, on the motion of Mr Mallard: That draft minutes no. 30 be confirmed.

**3. Correspondence**

The committee noted the following correspondence:

***Received***

- 20 August 2021 – Letter from Ms Sharon Veale, Chief Executive Officer, GML Heritage, to the committee Chair outlining concerns about the witness selection process for the review of the *Heritage Act 1977*
- 20 August 2021 – Email from Mr Howard Tanner, private individual, to the secretariat enclosing his correspondence to the Honourable Justice Brian Preston SC of the NSW Land and Environment Court concerning the qualifications, skills and experience of members of the Heritage Council of NSW
- 27 August 2021 – Email from Ms Lauren Rountree, Executive Assistant to the Executive Director, Business Western Sydney, to the secretariat advising that Mr David Borger has declined the committee's invitation to give evidence on Thursday 2 September 2021 for the review of the *Heritage Act 1977*.



#### 4. Inquiry into the review of the *Heritage Act 1977*

##### 4.1 Amendments to the committee's fourth hearing on 24 August 2021

The committee noted that it previously agreed via email to amend/adjust timetabling for the committee's fourth hearing on 24 August 2021 for the review of the *Heritage Act 1977* and hold a fifth hearing on 2 September 2021.

##### 4.2 Additional witness for the committee's fifth hearing on 2 September 2021

The committee noted that it previously agreed via email for a representative of the Rail, Tram and Bus Union, Retired Members Association, to be invited to give evidence on 2 September 2021 for the review of the *Heritage Act 1977*.

##### 4.3 Invitation to make a late submission

The committee noted that it previously agreed via email for both the Rail, Tram and Bus Union, Retired Members Association, and the CFFMEU to be invited to make a late submission to the review of the *Heritage Act 1977*.

##### 4.4 Consideration of revised reporting/inquiry timeline

Resolved, on the motion of Mr Martin: That the committee agree to moving the report deliberative from 1 October 2021 to 18 October 2021 (potentially the afternoon), pending member availability, with the meeting to be held virtually via WebEx if restrictions are still in place.

##### 4.5 Timeframe for answers to questions on notice and supplementary questions arising from the hearing today

Resolved, on the motion of Mr Mallard: That witnesses appearing at the hearing on 2 September 2021 be given 14 days to provide responses to questions on notice or supplementary questions.

##### 4.6 Allocation of questioning

The committee noted that it previously resolved that the sequence of questions to be asked at all remaining hearings for the review of the *Heritage Act 1977* is to alternate between Opposition, crossbench and Government members, with equal time allocated to each.

##### 4.7 Fully virtual hearing

The Chair noted the attached guidelines to assist the smooth running of the hearing.

##### 4.8 Live streaming and recording of hearing

The committee noted that it previously agreed that all hearings for the review of the *Heritage Act 1977* would be live streamed via the Parliament's YouTube channel and recorded.

##### 4.9 Public hearing

The committee proceeded to take evidence in public.

Witnesses were admitted via video link.

The Chair made an opening statement regarding questions on notice, virtual hearing etiquette and other matters.

The following witnesses were sworn and examined:

- Professor Richard Mackay, Private individual
- Mr Howard Tanner, Private individual.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Stephen Gapps, President, History Council of NSW
- Ms Anette Pitman, Head of Create Infrastructure, Create NSW
- Mr Sean Macken, Consultant, Committee for Sydney.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Sharon Veale, Chief Executive, GML Heritage
- Mr Roger Jowett, the Rail, Tram and Bus Union, Retired Members Association.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 12.44 pm.

#### **4.10 Discussion of key themes and recommendations for the Chair's draft report**

Members discussed the key themes and recommendations for the Chair's draft report.

#### **5. Next meeting**

The committee adjourned at 12.52 pm, *sine die*.

Madeleine Dowd  
**Clerk to the Committee**

#### **Draft minutes no. 32**

Monday 18 October 2021  
Standing Committee on Social Issues  
Via WebEx at 2.03 pm

#### **1. Members present (via WebEx)**

Mr Poulos, *Chair*  
Mr Buttigieg, *Deputy Chair*  
Mr Franklin  
Mr Mallard  
Mr Martin  
Revd Mr Nile  
Mr Primrose  
Mr Shoebridge

#### **2. Draft minutes**

Resolved, on the motion of Mr Franklin: That draft minutes no. 31 be confirmed.

#### **3. Correspondence**

The committee noted the following correspondence:

***Received***

- 17 September 2021 - Letter from Ms Polly Seidler, private individual, to the committee clarifying several answers she gave in evidence before the committee at the hearing for the review of the *Heritage Act 1977* on 17 August 2021.

#### 4. Inquiry into the review of the *Heritage Act 1977*

##### 4.1 Submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 305 and 306.

##### 4.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Minister Harwin and Ms Kate Foy, received on 30 August (first set) and 23 September (second set)
- Dr MacLaren North of Extent Heritage, received on 7 September
- Mr Terry Tredrea of Lane Cove Council, received on 7 September
- Mr John McInerney of the Millers Point Community Resident Action Group, received on 7 September
- Mr Peter Romey of Australia ICOMOS, received on 9 September
- Ms Lisa Newell of Hornsby Shire Council, received on 10 September
- Mr Andrew Margan of the Hunter Valley Wine and Tourism Association, received on 10 September
- Cr Ann Dennis, Chair of the NSW Aboriginal Land Council, received on 14 September
- Ms Glenda Chalker, Chair of the Aboriginal Cultural Heritage Advisory Committee (ACHAC), received on 13 September
- Mr Frank Howarth AM PSM, Chair of the NSW Heritage Council, received on 17 September (first set) and 23 September (second set)
- Ms Kate Denny of Lucas, Stapleton, Johnson and Partners, received on 17 September
- Ms Mishka Holt of NTSCORP, received on 16 September
- Mr George Salouros of Royal Botanic Gardens Sydney, received on 16 September
- Ms Alexandria Barnier of Urbis, received on 16 September
- Ms Penelope Barletta of the Anglican Church Property Trust Sydney Diocese, received on 16 September
- Mr Stephen Batey of EJE Architecture, received on 16 September
- Mr Adam Lindsay of Sydney Living Museums, received on 22 September
- Cr Linda Scott of Local Government NSW, received on 22 September
- Dr Michael Barkley of the Friends of Fernhill and Mulgoa Valley Inc, received on 21 September
- Ms Elizabeth Vines, advisor to Broken Hill Council, received on 27 September
- Mr Howard Tanner, received on 16 September
- Prof Richard Mackay, received on 14 September
- Dr Stephen Gapps, President of the NSW History Council, received on 20 September
- Mr Tim Duddy of the Historic Houses Association, received on 23 September
- Ms Merrill Witt of the Better Planning Network, received on 27 September

- Mr Roger Jowett of the Rail, Tram and Bus Union RMA, received on 26 September
- Mr Ben Pechey of the City of Sydney, received on 27 September
- Ms Annette Pitman of Create Infrastructure NSW, received on 29 September
- Mr Jeff Sowiak of Brewarrina Shire Council, received on 3 October
- Mr Sean Macken of the Committee for Sydney, received on 1 October

The committee noted that the following additional information was also published by the committee clerk under the authorisation of the resolution appointing the committee:

- The Dhawura Ngilan vision statement and the ACHAC Principles based on the Dhawura Ngilan best practice standards, provided by Ms Glenda Chalker, Chair of ACHAC;
- The Australia ICOMOS submission to the Environmental Impact Statement for the Central Station Western Gateway Development, provided by Mr Peter Romey of Australia ICOMOS;
- The Rail, Tram and Bus Union Retired Members Association submission in response to Transport for NSW's North Eveleigh Strategic Vision, provided by Mr Roger Jowett of the Association.

#### **4.3 Clarification of evidence – Ms Polly Seidler**

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of Ms Seidler's clarification of evidence and the insertion of footnotes to the relevant paragraphs of within the hearing transcript for 17 August 2021.

#### **4.4 Recording of report deliberative**

Resolved, on the motion of Mr Mallard: That the committee's deliberation on the Chair's draft report entitled, *Review of the Heritage Act 1977*, be recorded to assist the secretariat and then deleted thereafter.

#### **4.5 Consideration of Chair's draft report**

The Chair submitted his draft report, entitled *Review of the Heritage Act 1977* which, having been previously circulated, was taken as being read.

### **Chapter 1**

Resolved, on the motion of Mr Shoebridge: That paragraph 1.11 be amended by omitting 'and political attention' and inserting instead 'press and political attention, with much of the commentary from the media and politicians at the time being extremely critical of the actions of the union and its supporters. Nevertheless ...'

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 1.26:

'In XX the Environmental Planning and Assessment Act was amended to provide a new part 3A. This had the effect that protections under the Heritage Act for listed items were turned off when a project was declared to be State Significant Development. It had the same effect for the Aboriginal heritage protections under the National Parks and Wildlife Act. Under these provisions the planning authority would still consider the significance of a heritage item but was permitted to consent to its destruction or alteration regardless of the protections that were otherwise found under the Heritage Act. When Part 3A was repealed in 2011 the same basic provisions were transferred over to what was then a new Part 4 of the Act. Despite amendments and renumbering since, these provisions remain in the Environmental Planning and Assessment Act.'

Resolved, on the motion of Mr Shoebridge: That the Chair and committee secretariat review paragraphs 1.22 and 1.23 for accuracy and, where necessary, re-draft these paragraphs to reference the Section 22 provisions of the original iteration of the *Heritage Act 1977*.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.29 be amended by inserting at the end the following words:

'These matters are strictly not the subject of this review but are nevertheless relevant in considering the scope of the Heritage Act and the broader protection of heritage in NSW'.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 1.51, subject to the committee secretariat checking for accuracy:

'The 2021-23 grant round saw \$5.9 million awarded to 231 projects across three broad categories of Aboriginal Cultural heritage, Caring for State Heritage and Community Heritage. At an average of just under \$25,000 for each grant this is an important, but modest, contribution to the conservation and maintenance of State heritage.'

Resolved, on the motion of Mr Shoebridge: That the following new recommendation be inserted after paragraph 1.72:

#### **'Recommendation X**

That any legislative reform of the *Heritage Act 1977* have as its guiding principles the need to protect, conserve and celebrate the State's heritage, and that the guiding policy themes in the government's discussion paper of making heritage easy, putting heritage to work and making heritage relevant, must be secondary to these principles.'

## **Chapter 2**

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 2.2:

'The concerns with the administration of the Act also expressly raised the need for more resources to be available to Heritage NSW and the Heritage Council to undertake their roles in identify and protecting State heritage. This lack of resources was said by numerous stakeholders to cause undue delay and frustration in the listing, assessment and management of State heritage.'

Resolved, on the motion of Mr Buttigieg: That the following new paragraph be inserted after paragraph 2.5:

'Many witnesses including the National Trust expressed concern regarding the use of State Significant Developments in the EPA Act to effectively turn off the provisions of the Heritage Act. The strong theme of the evidence and submissions was that this interaction between the EPA and the Heritage Acts was unbalanced and inappropriately compromises Heritage where State Significant Developments are able to override all heritage concerns.'

Resolved, on the motion of Mr Shoebridge: That paragraph 2.15 be amended by omitting 'a not-for-profit organisation' after 'Urban Taskforce Australia.'

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 2.21:

'In its further submissions the Heritage Council enumerated a series of matters where it saw the current Act as deficient, they included:

- the failure to protect Aboriginal Heritage

- the inability of the Heritage Council to employ its own staff and be seen as fully independent of Heritage NSW
- the need for greater diversity on the Heritage Council including at least two Aboriginal members and a mix of heritage specialists and community members who share a passion for heritage
- the need for more financial incentives for the owners of heritage items
- the need for improved compliance and enforcement powers
- the need for simpler and faster listing mechanisms, and
- the potential benefits of a more refined category system including for the protection of environmental heritage.'

Resolved, on the motion of Mr Shoebridge: 'That paragraph 2.28 be amended by inserting 'may' after 'outcomes.'

Resolved, on the motion of Mr Shoebridge: 'That paragraph 2.51 be amended by omitting 'is moot and' before 'requires more detailed investigation.'

Resolved, on the motion of Mr Buttigieg: 'That Recommendation 1 be amended by omitting 'better' and inserting instead 'explicitly'.'

Mr Buttigieg moved: 'That the following Recommendation 2 be omitted: "That the NSW Government undertake a review and/or comparative analysis of approaches to the identification, management and protection of intangible cultural heritage in other jurisdictions in Australia and internationally" and this recommendation be inserted instead:

**'Recommendation x**

That the NSW Government develop protocols, guidelines, statements of policy and regulations for the identification, management and protection of intangible cultural history as a matter of priority and in parallel conduct an examination of approaches in other Australian jurisdictions and internationally.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr Primrose, Mr Shoebridge.

Noes: Mr Franklin, Mr Mallard, Mr Martin, Revd Nile, Mr Poulos.

Question resolved in the negative.

Resolved, on the motion of Mr Buttigieg: 'That the following new recommendation be inserted after Recommendation 3:

**'Recommendation X**

That the *Heritage Act 1977* provide increased opportunity for community participation and co-design in the identification, protection and management of heritage and that this participation and co-design include Indigenous members of the community.'

Mr Shoebridge moved: 'That the following new paragraph and recommendation be inserted after paragraph 2.188:

'Multiple submissions were opposed to the provisions in the Environmental Planning and Assessment Act that removed State heritage protections for items that are the subject of, or impacted by, state significant development applications. These provisions expressly place the Heritage Act as subservient to the planning laws in NSW and are not consistent with heritage

laws that prize and protect the state's precious state heritage. These provisions should therefore be removed from the EP&A Act as a matter of urgency. The same issue arises with the already inadequate protections for Aboriginal Heritage under the National Parks and Wildlife Act.

**Recommendation X**

That the Environmental Planning and Assessment Act be amended to ensure that items protected under the Heritage Act and Aboriginal Heritage items protected under the National Parks and Wildlife Act do not lose those protections during the consideration of state significant development.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr Primrose, Mr Shoebridge.

Noes: Mr Franklin, Mr Mallard, Mr Martin, Revd Nile, Mr Poulos.

Question resolved in the negative.

Resolved, on the motion of Mr Buttigieg: That the following new recommendation be inserted after Recommendation 3:

**'Recommendation X**

That State Significant Developments are only able to override Heritage concerns after the Minister has consulted with the Heritage Council of NSW and is satisfied that there is a clear net benefit to the community for proceeding with a State Significant Development which results in a diminution of an items heritage value.'

Mr Shoebridge moved: That the following new paragraph and recommendation be inserted after paragraph 2.76:

'For heritage to be given the value and importance it deserves then the principal body responsible for the protection of non-Aboriginal heritage in NSW should be seen as independent of the government of the day. We note the submission of the Heritage Council calling for the ability to directly employ its own staff to remove the perception that it is not independent of Heritage NSW. We note as well that this position was strongly endorsed by the National Trust that stated in its submission as follows:

[XX]

Therefore we recommend that the Heritage Act be amended to allow the Heritage Council to directly employ staff and directly engage professional assistance to allow it to perform its statutory functions independently, promptly and effectively.

**Recommendation X**

That the Heritage Act be amended to allow the Heritage Council to directly employ staff and directly engage professional assistance to allow it to perform its statutory functions independently, promptly and effectively.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr Primrose, Mr Shoebridge.

Noes: Mr Franklin, Mr Mallard, Mr Martin, Revd Nile, Mr Poulos.

Question resolved in the negative.

Mr Shoebridge moved: That:

- a) paragraph 2.77 be amended by inserting at the end the following: 'Given the fact that Local Councils across NSW deal with the majority of heritage listed items in the NSW (being those items listed under the provisions of the Environmental Planning and Assessment Act) and the depth of experience at a council level in protecting and managing heritage, there is a strong case to include on the Heritage Council a nominee of Local Government NSW who possess skills and experience in heritage.'
- b) Recommendation 4 be amended by inserting the following additional dot point at the end: 'a person appointed from a panel of three persons nominated by Local Government NSW who possesses skills and experience in heritage.'

Mr Franklin moved that the motion of Mr Shoebridge be amended by:

- a) omitting from (a) 'a nominee of Local Government NSW' and inserting instead 'a representative from local government'
- b) omitting from (b) 'a person appointed from a panel of three persons nominated by Local Government NSW' and inserting instead 'a representative from local government'

Amendment of Mr Franklin put and passed.

Original question of Mr Shoebridge, as amended, put and passed.

Resolved, on the motion of Mr Buttigieg: That Recommendation 4 be amended by omitting 'or core' after 'a majority'.

Mr Shoebridge moved: That:

- a) the paragraph 2.126 be omitted: 'The committee sees significant potential in the intent and rationale underpinning the proposed category system for listings on the State Heritage Register, but remains unconvinced of their specific form and expression in the NSW Government's discussion paper. It is clear from the evidence that this proposal needs further thinking, development and refinement. We support further exploration of the use of categories – potentially re-imagined as management tiers or classifications – to promote greater consistency in the approvals process and as a way of giving heritage owners a much better understanding of the changes or alterations that might be possible to their properties. Such tiers or classifications could codify, for example, the type of significance and required management approaches. Knowing exactly which tier a property falls into could reduce uncertainties for both heritage owners and regulators. Such a system should not, however, result in any diminution or dilution of significance and protection for State-listed items. Consideration must also be given to whether such a system would be 'grandfathered' or applied retrospectively to the approximately 1,750 items already listed on the State Heritage Register.' and the following new paragraph inserted instead:

"There was significant dissent amongst inquiry participants as to the benefit and detriment of dividing state heritage items by categories. Given the nature of the evidence before the committee it is not appropriate to recommend that this be a feature of any amended Heritage Act. While there is broad consensus that the Act should be amended to provide express protections for matters such as intangible heritage and cultural and natural landscapes, there was not sufficient support for the proposed four categories identified in the discussion paper. Therefore if there is to be further development of category style listing that should only be



done in a way that expands protections and addresses the quite valid criticisms of such an approach set out above.'

- b) the following recommendation be omitted: 'That the NSW Government further investigate the use of categories as a way of promoting greater consistency in the heritage approvals process, to give heritage owners a much better understanding of the changes or alterations that might be possible to their State-listed properties.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr Primrose, Mr Shoebridge.

Noes: Mr Franklin, Mr Mallard, Mr Martin, Revd Nile, Mr Poulos.

Question resolved in the negative.

Resolved, on the motion of the Mr Buttigieg: That Recommendation 5 be amended by inserting at the end the following words:

'Locally listed items of heritage should be mandatorily listed and consolidated on to the State Heritage Inventory so that applications can be more readily made for State Significance if necessary.'

Mr Shoebridge moved: That:

- a) paragraph 2.131 be amended by omitting 'as well as removing items that may no longer meet the threshold of State significance – for example, where their significance has been diminished as a result of fire or natural calamity' after 'State Heritage Register'
- b) the following Recommendation 8 be omitted: 'That the NSW Government amend the *Heritage Act 1977* to provide for an abridged delisting process for removing items from the State Heritage Register'.

Question put and negated.

Resolved, on the motion of Mr Buttigieg: That Recommendation 8 be amended by inserting at the end the following words:

'to cater for situations where an item's significance has been significantly diminished, for example, as a result of fire or some natural calamity.'

Resolved, on the motion of Mr Buttigieg: That Recommendation 10 be amended by omitting from the second dot point 'consider carrying' and inserting instead 'carry'.

Resolved, on the motion of Mr Shoebridge: That:

- a) The following new paragraphs be inserted after paragraph 2.168:

'Chapter 4 of this report deals in more detail with the need for additional support for the owners of heritage properties. However it is relevant to note at this stage that it was a repeated theme in the submissions that the time taken by Heritage NSW to deal with heritage permits is uncertain and often extremely lengthy. The absence of any statutory or administrative timeframes within which decisions are made on heritage permits means there is no accepted guide for the time frame for making decisions under the Act.

While we accept that the diversity of applications and State heritage matters means that express statutory time periods would not be appropriate, Heritage NSW should work with stakeholders to establish expected time periods within which applications will be determined.

However simply stating anticipated timeframes will not do the work needed to process applications thoroughly and efficiently. This, and all other recommendations about improving the approvals process, will require significant additional resourcing to be effective.'

b) Recommendation 10 be amended by inserting at the end the following:

- 'Increase the resources available to Heritage NSW and to the Heritage Council to improve the timeliness of the process, and
- Work with stakeholders to publish expected time frames within which heritage permits will be determined.'

Mr Shoebridge moved: That the following new paragraph and recommendation be inserted after paragraph 2.187:

'While it was not expressly part of this committee's remit to consider changes to how locally listed heritage items are protected and conserved, there was strong support amongst a number of stakeholders, not least Local Government NSW, for similar intermediate enforcement powers to be available to local councils to protect local listed heritage items. On the material before the committee there appears real merit in progressing this, potentially in concert with any changes to the Heritage Act.

#### **Recommendation X**

That the NSW Government consider amending the Environmental Planning and Assessment Act to provide intermediate enforcement provisions for local councils to protect local listed heritage items.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr Primrose, Mr Shoebridge.

Noes: Mr Franklin, Mr Mallard, Mr Martin, Revd Nile, Mr Poulos.

Question resolved in the negative.

Mr Shoebridge moved: That:

- a) Paragraph 2.188 be amended by omitting 'One obvious example is the requirement for proponents to seek approval under the *Heritage Act 1977* for works already referred to Heritage NSW for assessment as part of an Integrated Development Application under the *Environmental Planning and Assessment Act 1979*. The committee is unconvinced of the value or need for proponents to essentially apply for approval for the same works twice. If exactly the same works have been assessed and conditioned by Heritage NSW as part of the Integrated Development Application, it is unclear to the committee why a further approval under the Heritage Act is necessary. It is easy to understand how this would appear duplicative, confusing and unnecessarily time consuming from a heritage owner's perspective. We therefore recommend that the NSW Government remove the requirement for a Section 60 approval for works to State-listed items where an Integrated Development Application has already been made'.
- b) The following Recommendation 12 be omitted: 'That the NSW Government remove the requirement for a Section 60 approval for works to State-listed items where an Integrated Development Application has already been made'.

Question put and negatived.

Resolved, on the motion of Mr Buttigieg: That Recommendation 12 be amended by inserting at the end the following words:

'in situations where the requirements of Section 60 have already been satisfied'

### Chapter 3

Resolved, on the motion of Revd Nile: That:

- a) the secretariat be authorised to draft new paragraphs on funding for a memorial museum to honour Aboriginal frontier wars and massacre sites, for insertion after paragraph 3.32
- b) the new paragraphs be circulated to the committee for agreement prior to tabling.

Mr Buttigieg moved: That Recommendation 13 be amended by inserting at the end the following words:

'No changes to the Heritage Act should occur until such time as Aboriginal cultural legislation has been prepared in order to avoid any gaps in each piece of legislation catering for Aboriginal cultural heritage.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr Primrose, Mr Shoebridge.

Noes: Mr Franklin, Mr Mallard, Mr Martin, Revd Nile, Mr Poulos.

Question resolved in the negative.

Resolved, on the motion of Revd Nile: That the following new recommendation be inserted after Recommendation 13:

#### **'Recommendation X**

That the NSW Government work with Aboriginal people across New South Wales including traditional owners and the NSW Aboriginal Land Council to allocate specific funding for an Aboriginal War Memorial Museum.

### Chapter 4

Resolved, on the motion of Mr Shoebridge: That paragraph 4.43 be amended by inserting 'and local government' after 'private'.

Resolved, on the motion of Mr Buttigieg: That Recommendation 15 be amended by inserting at the end 'without compromising the protection of the item's heritage value'.

Resolved, on the motion of Mr Buttigieg: That:

- a) Recommendation 18 be amended by inserting at the end the following words:  
'In recognition of the contribution that the heritage of local towns make to state tourism, consideration should be given to the integration of appropriate heritage items on to the state register so that the same level of protection of local items is afforded in coordination with Heritage NSW. That the NSW Government develop a state led strategy for the activation of heritage assets with specific actions for the promotion of local and state heritage.'
- b) The secretariat be authorised to revise the wording of (a) for clarity, with the final wording to be circulated to the committee for agreement prior to tabling.

Resolved, on the motion of Mr Shoebridge: That:

- a) Paragraph 4.72 be amended by inserting at the end the following words:

'The committee is firmly of the view that allowing heritage places to be activated and to come alive as living parts of our state is important, not least for keeping our connection to the past and celebrating heritage. However as multiple submissions made clear, decisions about the adaptive reuse of heritage places can have significant impacts on the heritage and must always be consistent with the Burra Charter.'

- b) Recommendation 19 be amended by inserting at the end 'consistent with the Burra Charter'.

Resolved, on the motion of Mr Buttigieg: That Recommendation 19 be amended by inserting at the end the following words: 'which meets the contemporary needs of local and in particular disadvantaged communities'

Resolved, on the motion of Mr Buttigieg: That Recommendation 20 be amended by inserting at the end the following words, subject to the committee secretariat checking for accuracy:

'In order to maximize and facilitate use, the scheme should also include a mobile phone App as does the scheme in the United Kingdom.'

Resolved, on the motion of Revd Nile: That:

- a) the secretariat be authorised to draft new paragraphs on digitisation of archival collections, for insertion after paragraph 4.83
- b) the new paragraphs be circulated to the committee for agreement prior to tabling.

Resolved, on the motion of Revd Nile: That paragraph 4.95 be amended by omitting 'maintained with due diligence' and inserting instead the following words, subject to the committee secretariat checking for accuracy:

'updated within 12 months. All registers, once established, must be regularly reviewed and be publicly available on the State Heritage Inventory (online database) and'.

Resolved, on the motion of Mr Buttigieg: That Recommendation 21 be amended by inserting at the end the following words:

'including ensuring that State government agencies update their Section 170 register within 12 months wherever reasonably practical'.

Resolved, on the motion of Revd Nile: That the following new recommendation be inserted after Recommendation 21:

**'Recommendation X**

That the NSW Government allocate specific funding for digitisation and video recording preservation of archives, records and artefacts in Libraries, Galleries and Museums.'

Resolved, on the motion of Mr Franklin:

- The draft report, as amended, be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat by 10.00 am 21 October 2021;
- The secretariat table the report on Friday 22 October 2021.

**5. Next meeting**

The committee adjourned at 4.28pm, *sine die*.

Anthony Hanna  
**Clerk to the Committee**

## Appendix 6 Dissenting statements

### Mr David Shoebridge MLC, The Greens

The great bulk of this report is by consensus, it acknowledges the importance of heritage and confirms that any legislative reform of the Heritage Act must have as its guiding principles the need to protect, conserve and celebrate the State's heritage. This is a critical conclusion and is supported by the overwhelming majority of stakeholders.

The report also acknowledges that the biggest gap in NSW heritage laws is the failure to have stand-alone Aboriginal heritage laws that empower Aboriginal people to make the critical decisions on Aboriginal heritage. This is the project that should be prioritized by Heritage NSW and the NSW Government and it must be a process of urgent co-design with First Nations people, especially traditional owners.

Despite this broad consensus the report failed to reflect certain powerful evidence and other important reforms necessary to strengthen heritage protection in NSW.

There was significant dissent amongst inquiry participants as to the benefit and detriment of dividing state heritage items by categories. Given the nature of the evidence before the committee the Greens believe it was not appropriate to recommend that this be a feature of any amended Heritage Act. While there is broad consensus that the Act should be amended to provide express protections for matters such as intangible heritage and cultural and natural landscapes, there was not sufficient support for the proposed four categories identified in the discussion paper. Therefore if there is to be further development of category style listing that should only be done in a way that expands protections and addresses the quite valid criticisms of such from critical stakeholders.

While it was not expressly part of this committee's remit to consider changes to how locally listed heritage items are protected and conserved, there was strong support amongst a number of stakeholders, not least Local Government NSW, for intermediate enforcement powers to be available to local councils to protect locally listed heritage items. On the material before the committee, there appears real merit in progressing this, potentially in concert with any changes to the Heritage Act. The Greens firmly believe that the NSW Government should amend the Environmental Planning and Assessment Act to provide intermediate enforcement provisions for local councils to protect local listed heritage items. Failing to recommend this was a missed opportunity in the majority report.

Multiple submissions were opposed to the provisions in the Environmental Planning and Assessment Act that remove State heritage protections for items that are the subject of, or impacted by, state significant development applications. These provisions expressly place the Heritage Act as subservient to the planning laws in NSW and are not consistent with heritage laws that prize and protect the state's precious state heritage. These provisions should therefore be removed from the EP&A Act as a matter of urgency. The same issue arises with the already inadequate protections for Aboriginal Heritage under the National Parks and Wildlife Act. Again it was a missed opportunity in the majority report to seek to address this. The Greens believe that the Environmental Planning and Assessment Act should be urgently

amended to ensure that items protected under the Heritage Act and Aboriginal Heritage items protected under the National Parks and Wildlife Act do not lose those protections during the consideration of state significant development.

Finally, for heritage to be given the value and importance it deserves then the principal body responsible for the protection of non-Aboriginal heritage in NSW should be seen as independent of the government of the day. We note the submission of the Heritage Council calling for the ability to directly employ its own staff to remove the perception that it is not independent of Heritage NSW. We note as well that this position was strongly endorsed by important stakeholders, not least the Heritage Council itself. Reflecting this position the Greens believe that the Heritage Act should be amended to allow the Heritage Council to directly employ staff and directly engage professional assistance to allow it to perform its statutory functions independently, promptly and effectively.

While these elements of dissent are important, I wish to state my appreciation for the collaborative work of the chair and other members of the committee and for the diligence and professionalism of the secretariat in compiling a well-researched and important report that will contribute to the strengthening of heritage laws in this state.





