

Review of NSW  
*Heritage Legislation*

DISCUSSION PAPER



Standing Committee on Social Issues

April 2021

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## MINISTER'S FOREWORD

Heritage is our legacy. It is the stories, memories, and collective experiences of our state in physical form. Heritage items of special significance play an important role in our community whether it be sparking joy, bringing people together or encouraging reflection. Our heritage deserves to be protected and cherished.

NSW currently has some of the oldest heritage legislation in Australia, which in twenty years, has barely changed. However, over time, a perception has developed that heritage listing can be a burden, with the most minor activities subject to costly regulatory obstacles.

Last year, I asked Heritage NSW to develop a discussion paper to assist the NSW Government in undertaking a review of effectiveness of the NSW Heritage Act 1977.

The NSW Government will move to refer this discussion paper, the starting point of the review, to the *Standing Committee on Social Issues* to establish a public inquiry to examine the NSW Heritage Act 1977, Heritage Regulation 2012, and other related matters.

This paper, developed in consultation with the Heritage Council of NSW, poses the question: 'what sort of regulatory model would facilitate the preservation, activation, and celebration of our State's heritage?' To assist the inquiry, the paper outlines key issues and policy concepts, which the Committee can use as a guide to inform analysis of the current legislative framework.

While many think of heritage items as historical artefacts, we must consider how they can integrate with and plan for the future to ensure opportunities for heritage preservation, adaptive re-use and community enjoyment are fully realised in NSW.

I look forward to the report of the Committee.

### **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

DATE: 7 April 2021

## 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?

## Glossary terms

**Activation** of a place or building is a process that aims to create a sense of place and social connection, improve streetscapes and encourage community, commercial and residential use. It may be realised in a variety of ways e.g. through art, performance or community activities.

**Adaptive reuse** is the process of modifying a building or structure and its curtilage to suit an existing or proposed use, for a purpose other than for which it was built or designed.

**Conservation** means all the processes of looking after a place so as to retain its cultural significance including its preservation, protection, maintenance, restoration and adaptation.

**Heritage Act 1977** - The statutory framework for the identification and conservation of heritage in NSW. The Heritage Act is available here: [www.legislation.nsw.gov.au/#/view/act/1977/136/full](http://www.legislation.nsw.gov.au/#/view/act/1977/136/full)

**Heritage Council of NSW** is an advisory body created by the Heritage Act 1977.

**Heritage NSW** is the NSW Government agency concerned with heritage in NSW. Its mission is “to help the community conserve our heritage”. This includes working with government and communities to help them identify their important places and items; providing guidance on how to look after heritage assets; and maintaining the NSW heritage database, an online list of all statutory-listed heritage items in NSW.

**Heritage owners and managers** for the purposes of this paper include those responsible for caring for heritage properties, including maintenance, activation, adaptive reuse and conservation.

**Heritage significance** under the Heritage Act means significance to the State in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of an item.

**Interim Heritage Order** protect items potentially of heritage significance that are under immediate threat.

**Item** means a place, building, work, relic, moveable object or precinct.

**Movable heritage** is heritage items or objects which are not fixed to a site or place (for example, furniture, locomotives and archives). It can include natural or manufactured objects or collections of heritage significance.

**Preservation** means maintaining the fabric of a place in its existing state and retarding deterioration.

**Restoration** means returning the fabric of a place to a known earlier state by removing accretions or by reassembling existing components, without introducing new material.

**State Agency** refers to all NSW Government instrumentalities, organisations and agencies required to prepare heritage and conservation registers in accordance with Section 170 of the Heritage Act.

# 1. INTRODUCTION

## History of the Heritage Act

NSW has a strong history of heritage conservation and protection. It has the second oldest state heritage legislation in Australia, with over 1700 items currently listed on the State Heritage Register (SHR), providing enduring protections to these significant items. We recognised also the importance of documents like *The Burra Charter* that sets a standard of practice for those who provide advice, make decisions about, or undertake works to places of cultural significance.

The *Heritage Act 1977* (the Act), was first introduced in response to widespread community concern that heritage was coming under increasing threat from overdevelopment. The Act was initially designed to halt the increasing loss of heritage. Since its introduction, the Act has been amended to reflect changing circumstances. Today, the Act protects natural, cultural or built heritage items considered to be of significance to NSW. It establishes a series of mechanisms that aim to provide proactive and reactive protections, including:

- The establishment of the Heritage Council of NSW to provide recommendations relating to the protection and conservation of heritage
- The ability to issue interim and emergency heritage orders
- Establishing the State Heritage Register to recognise and protect State significant heritage items
- Protecting historic shipwrecks and relics
- Requiring heritage owners to seek approval to alter SHR items
- Setting minimum standards of maintenance and repair for SHR items
- Establishing compliance and enforcement powers to enable action against harm to heritage items
- Requiring NSW Government agencies to recognise and care for their heritage items.

## A changing operating context

Over the past decade a number of changes have fundamentally altered the operating context of the Act. The 2019 bushfires have highlighted how natural disasters and the impacts of climate change may affect heritage conservation, while COVID-19 has sharpened the focus on the role of heritage in job creation and economic recovery. 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.

An effective heritage system will facilitate the community in harnessing the cultural and economic values of heritage sites. It will also provide a framework for managing competing values and adapting to the pressures and challenges of an ever-changing world.

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.

We also have a more complex understanding of heritage. Heritage is increasingly being recognised for more than just its historical relevance, with the many social, economic, environmental, health and wellbeing aspects of heritage increasingly coming into focus.

## Aboriginal Cultural Heritage

Aboriginal Cultural Heritage is managed under the *National Parks and Wildlife Act 1974*. It forms a critical part of our State's story and any heritage legislation must acknowledge this connection.

The NSW Government wants to ensure that Aboriginal Cultural Heritage is managed and cared for by Aboriginal People. Currently, the NSW Government is consulting with peak Aboriginal bodies on Aboriginal cultural heritage legislation to ensure self-determination and custodianship is at the centre of any legislation that deals with Aboriginal cultural heritage.

## The rationale for a review of the NSW Heritage Act 1977

The Heritage Act was last reviewed in 2007, but the last major reforms took place in 1999. The Act is now in its fifth decade of existence and has been amended many times as its operating context changed. Despite these updates, the Act is now widely considered to be out-of-step with trends in heritage conservation and land use planning and development. It reflects 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.

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 and adaptive reuse, which are the cornerstones of the heritage conservation system in NSW. Given the scale and rate of social, economic and policy change since the Act's inception and since its last review, it is timely to consider whether the legislation remains the most effective, relevant and best-practice way of recognising and conserving the important heritage of NSW.

## Guiding themes to underpin the review

The NSW Government proposes three key policy themes to guide this legislative review process. These themes relate to the key NSW Government priorities of: putting the customer at the centre of everything we do; a strong economy; and well-connected communities with quality local environments.



### 1. Making heritage easy

Making heritage ownership and administration simple and cost-effective

### 2. Putting heritage to work

Making heritage a viable opportunity for economic growth, employment and community enjoyment

### 3. Making heritage relevant

Making heritage a cornerstone of NSW communities, quality local environments and beautiful public spaces



### The discussion paper process

This paper is the first stage of a review of the *Heritage Act 1977*. It identifies some of the pressures impacting our heritage, along with some known areas of concern with the current legislation and regulatory processes.

This paper is intended to provoke community discussion around the purpose of heritage protection, the current operation of the heritage conservation system and the opportunities it can provide for cultural, economic and community growth. While some specific reform ideas are posed, these are not yet established policies but rather a starting point for community input and discussion.

Focus questions are posed throughout the paper to help frame the discussion.



## 2. PURPOSE OF THE HERITAGE ACT 1977

The general purpose of the *Heritage Act 1977* when it was introduced, was to put into law mechanisms to conserve important NSW heritage items without unduly affecting owner rights or impeding economic activity.

The Act contains seven high-level Objects as a general guide to the Act's purpose. These are:

- (a) to promote an understanding of the State's heritage,
- (b) to encourage the conservation of the State's heritage,
- (c) to provide for the identification and registration of items of State heritage significance,
- (d) to provide for the interim protection of items of State heritage significance,
- (e) to encourage the adaptive reuse of items of State heritage significance,
- (f) to constitute the Heritage Council of New South Wales and confer on it functions relating to the State's heritage,
- (g) to assist owners with the conservation of items of State heritage significance

The Act has been amended over time to attempt to achieve an acceptable balance between heritage conservation, owner rights and the changing needs of communities across the state for housing, job opportunities, infrastructure and community and open spaces.

### Heritage Council of NSW

The membership of the Heritage Council of NSW is guided by the criteria under the Act of qualifications, knowledge and skills relating to 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 and one of the members is to possess qualifications, knowledge and skills relating to Aboriginal heritage.

- ◆ **Focus Question 1:** What should be the composition, skills and qualities of the Heritage Council of NSW?
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### 3. ACTIVATING OUR HERITAGE

Private conservation efforts are critical to maintaining and conserving the heritage of NSW. Over one-third of SHR items are owned by non-government entities such as corporations, religious organisations, not for profit groups and private individuals. Without the ongoing care and investment of these private heritage owners, the heritage legacy of NSW would be considerably poorer and its value to the community as a social, cultural and economic asset would be limited.

While some heritage incentive programs exist, such as the State heritage grants scheme and the City of Sydney's transferrable heritage floor space scheme, these currently have limited impact due to the small pool of funding available, locational constraints, perception of heritage conservation costs and regulatory constraints.

At the state level, there are no systemic incentives to encourage commercial reuse and activation of heritage assets or philanthropic heritage investment. This lack of financial and other supports, coupled with the perceived expense and complexity of heritage conservation, contributes to a public view that heritage ownership and development is difficult, time consuming and cost prohibitive.

#### The current legislation provides some heritage owner incentives

In its current form the Act makes broad provision for financial and other assistance to heritage owners. The Act allows the state to acquire and dispose of (buy, sell, lease, exchange) heritage properties, to take a share interest in a property, to issue grants, low or no-interest loans to heritage owners and, through the Heritage Incentive Fund, to pay for stamp duty and council rates. The state may provide "technical and other assistance" to a heritage owner under agreement.

Owner incentives are also supported by statutory provisions in the *Valuation Of Land Act 1916* (s.14G) the *Land Tax Management Act 1956* which can reduce land tax on heritage listed properties based upon a lowered land valuation. The size of benefit would vary according to the property and the uses that would otherwise be permitted in that location. The Standard Instrument LEP (2006) also provides for reductions in local council rates, at the discretion of local councils. It is not clear these arrangements provide an effective incentive for heritage ownership and conservation.

Although the Act allows for some financial and other private owner supports, it is difficult for owners to navigate and access these incentives and most of these are inconsistently or rarely used.

#### Owner incentives could be expanded

Around one-third of items on the State Heritage Register are privately owned. While heritage owners have a natural proprietary incentive to maintain their heritage item, they often face more expense when it comes to simple things like insuring their properties. There is scope to expand and increase supports for this group of heritage owners and to better incentivise private investment in adaptive reuse and conservation efforts. Options could include a range of better designed legislated supports or program responses that could:

- Assist with the cost of adaptive reuse and heritage activation to encourage commercial or community ventures that will stimulate economic growth and have indirect economic and social benefits
- Provide owner incentives such as access to transferrable heritage floor space schemes
- Provide stewardship payments to heritage owners seeking to activate a heritage item for a community or business opportunity
- Establish a revolving conservation fund that could help communities acquire, restore and operate items for profit

- Offer tax incentives, grants or other concessions for private conservation or philanthropic heritage investment.

The three boxes below provide examples of successful programs that facilitate heritage investment and activation. The UK Heritage Enterprise Grants scheme (Box A) helps communities to repair and reuse derelict historic buildings. The NSW Endangered Houses Fund (Box B) is a revolving fund that purchases, conserves, protects and then sells, heritage properties considered to be at risk of demolition or neglect. The Victorian Working Heritage scheme (Box C) is a financially self-sustaining heritage re-use scheme that has potential application to government-owned heritage.

- ◆ **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?

### Philanthropic investment could be encouraged

The heritage sector does not have the same history of philanthropic or commercial investment as is enjoyed by the broader arts sector. The Commonwealth Government's Cultural Gifts Program encourages philanthropists to make financial contributions and donations of items of cultural significance to art galleries, museums, libraries and archives. These institutions must be endorsed as a Deductible Gift Recipient (DRG) and are then eligible to receive tax concessions and rebates, including exemptions from capital gains and GST.

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

## Box 1: Case study A - Heritage Enterprise Grants, UK

Many historic buildings in the United Kingdom lie vacant and derelict because of the high costs involved in conserving them. The heritage enterprise grant program helps communities repair derelict historic places, giving them productive new uses.

The program helps to fund the repair costs involved in making these buildings commercially viable. The work generates economic growth and creates jobs and opportunities in local communities.

The case for grant funding depends on there being a “conservation deficit” or “value gap” which is where:

The existing value of a heritage asset		The value of the asset after development has been completed
+	<b>IS GREATER THAN</b>	
The cost of bringing it back into use		

The heritage enterprise grant funds the ‘conservation deficit’ – that is, it bridges the funding gap involved in restoring heritage buildings.

Not-for-profit groups or social enterprises must lead the projects, although they can work in partnership with commercial entities. Restored buildings must be used for an economic activity

that can provide a return. Residential developments are excluded. Priority is given to projects in disadvantaged areas, and buildings must be heritage listed or heritage items at risk.

### Grant example - Revitalising Bridgford Hall

A £1.5 million Heritage Enterprise Grant was given to the local council for the redevelopment of Bridgford Hall, in West Bridgford near Nottingham. The heritage listed hall was under-utilised and located in a prominent position in the town.

The building underwent a £2.3 million redevelopment, converting it into a luxury apartment-hotel and civil wedding ceremony venue.

The Heritage Enterprise grant opened a new chapter in the life of the building and supported the revitalisation of this part of the town.



Image: courtesy of Heritage Fund UK

### Box 2: Case study B - Endangered Houses Fund, NSW

Sydney Living Museums has operated the Endangered Houses Fund since 2005. This revolving fund identifies significant NSW heritage properties at risk of demolition or unsympathetic development. The fund purchases the properties, carries out appropriate conservation work and places suitable protections, such as Heritage Agreements, on the property. The items are then sold, with sale funds becoming the working capital for the next project. The fund seeks to break even on the sale of each property to ensure the program's capital base is sustained.

The fund conserves and protects heritage properties without the long-term recurrent costs to government of continued heritage ownership and operation. The focus is typically on properties that are not suitable for conservation by normal commercial mechanisms. The fund has had fantastic conservation outcomes but is limited in that it does not address the needs of owners with existing heritage properties.



Image: courtesy of Sydney Living Museums

### Box 3: Case study C – Working Heritage, Victoria

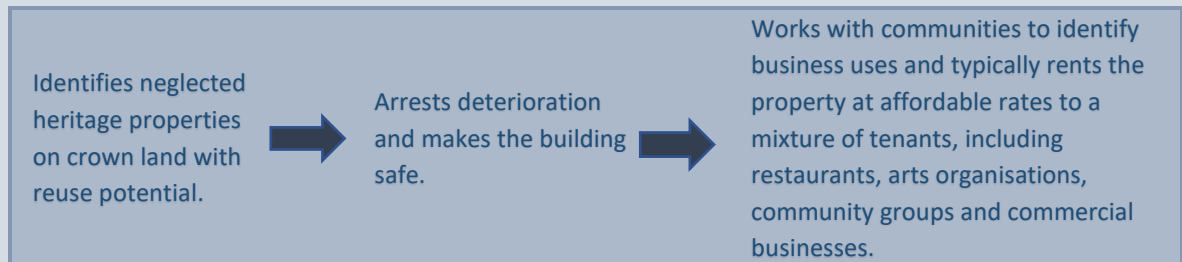
The Working Heritage program in Victoria conserves heritage places and adapts them to contemporary needs. The self-funded non-profit scheme utilises an initial one-off government investment (ongoing revenue from a commercial car park) to transform suitable heritage properties into affordable, rent-paying community assets. It oversees the adaptive reuse of sites using sustainable conservation and heritage management practices.

Working Heritage was established in 1998. From a single heritage building, the scheme has restored and now manages 16 heritage buildings with a net worth of \$120M (2018/19).



Image: courtesy of Working Heritage Victoria

The scheme:



## 4. HERITAGE IDENTIFICATION AND LISTING

Our heritage places reveal the stories of our State and nation's past. Heritage listing flags that a place or object has heritage significance. Within Australia there are four main statutory frameworks for managing heritage. Figure 1 below shows the four levels of heritage listing and the authority responsible for identifying and managing these heritage items. Items are listed according to their assessed level of significance and protected accordingly. Collectively, heritage places from all four lists demonstrate the unique history and achievements of the people of NSW. The Heritage Act is primarily concerned with items of State Heritage Significance, that is, items that are significant to the whole of NSW.

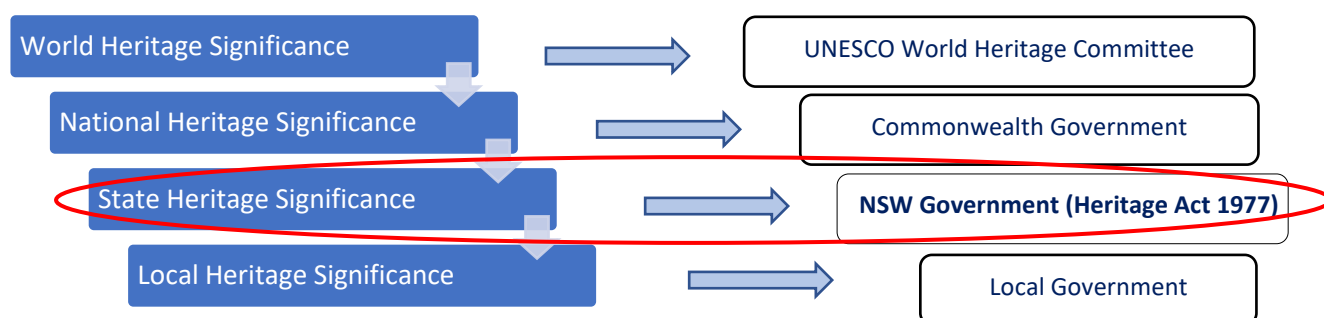


Figure 1: Statutory heritage frameworks operating in NSW

### How State heritage listing works

The State Heritage Register (SHR) is a list of places and items of particular importance to the people of NSW. State heritage listing enables our important heritage items and places to be identified, protected and managed, safeguarding this limited resource for present and future generations. The SHR lists a diverse range of items, in both private and public ownership.

A nominated item must meet at least one of the seven heritage significance criteria set by the Heritage Council of NSW. After reviewing a nomination, if the Heritage Council resolves the item is of State significance, it makes a recommendation to the Minister responsible for administering the Heritage Act. The Minister makes the final decision on whether the item should be listed on the SHR.

### State Heritage Register categories could provide tailored protections

Currently, every heritage item listed on the SHR is treated in the same way, with one standard set of regulatory controls applied. This one-size-fits-all approach is unable to respond to the often very distinct differences in item type or circumstance. This means that clearly different heritage items, such as the Sydney Harbour Bridge, a residential house or a working farm, are required to abide by the same controls, regardless of their very different circumstances. There are benefits to exploring nuanced approaches to heritage conservation, for example, the New York heritage framework, which protects private residential building exteriors while allowing the updating and remodelling of their interiors.

**REFORM PROPOSAL:** It is proposed that NSW adopts a more nuanced set of four heritage listing categories, as set out in Figure 2 below. This change would allow for more tailored heritage protections to be applied to items to suit their individual circumstances. By removing some of the perceived constraints associated with heritage listing, this change could encourage more



people to seek heritage listing and better enable the long-term conservation of heritage. This could also encourage heritage owners of existing listings to conserve, activate and celebrate their heritage properties. Low regulation options could be negotiated where appropriate for straightforward or low risk items, while more complex items, such as those with multiple owners, could receive more tailored and streamlined protections.

Before deciding to add an item to the State Heritage Register, the Minister should consider not only if reasonable and economic use would be affected by the listing but also what opportunities there are for adaptive reuse and activation.

It is proposed the categories would include:

- Exceptional state significant heritage to be identified and rigorously managed to ensure our most iconic items are conserved to the highest standards (Category 1)
- State significant heritage landscapes and areas with large curtilages, which could include farms, gardens, Aboriginal cultural landscapes and urban precincts (Category 2)
- Most items of state heritage significance to be covered by consistent and easy to understand protections that support conservation, activation and celebration (Category 3)
- Items of local significance that are identified by local governments would be recorded consistent with the arrangements in place for the State Heritage Inventory (Category 4)

Figure 2: proposed NSW heritage listing categories

Category	Features	Examples
<b>Category 1</b>  <b>Heritage of exceptional and iconic value</b>	<ul style="list-style-type: none"> <li>• Items in this category would be of exceptional interest to NSW, nationally and worldwide.</li> <li>• Items would likely be (or have the potential to be) designated a world heritage or national heritage site.</li> <li>• These items would likely have high tourism potential and be iconic of NSW &amp; Australia.</li> <li>• Items would have heightened regulatory controls.</li> </ul>	<ul style="list-style-type: none"> <li>• Sydney Opera House</li> <li>• Harbour Bridge</li> <li>• Parramatta Female Factory</li> <li>• Hyde Park Barracks</li> <li>• Blue Mountains National Park</li> <li>• Willandra Lakes Region</li> <li>• Gondwana Rainforests of Australia</li> <li>• Brewarrina Aboriginal Fish Traps</li> </ul>
<b>Category 2</b>  <b>State significant heritage landscapes</b>	<ul style="list-style-type: none"> <li>• State significant landscapes and areas with large curtilages, which could include farms, gardens, Aboriginal cultural landscapes and urban precincts.</li> <li>• Category 2 listings will receive tailored regulation to suit individual circumstances and ensure that landscape activities, such as agriculture, are not impacted by heritage listing.</li> <li>• This category will deliver a fairer approach, so that items with complex management needs, such as working farms, will be treated differently to standard heritage items, such as train stations.</li> </ul>	<ul style="list-style-type: none"> <li>• Bondi Beach Cultural Landscape</li> <li>• Myall Creek Massacre and Memorial Site</li> <li>• Braidwood</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Majority of SHR items</li> </ul>	<ul style="list-style-type: none"> <li>• Standard residential properties</li> </ul>



<b>State significant heritage</b>	<ul style="list-style-type: none"> <li>• This category would carry consistent and easy to understand regulatory mechanisms like site specific exemptions or asset class exemptions</li> <li>• Potential for tailored regulatory settings for items or groups of in this category with unique or challenging management needs such as residential properties.</li> </ul>	
<b>Category 4</b>  <b>Local heritage</b>	<ul style="list-style-type: none"> <li>• Items of local significance that are identified by local governments would be recorded consistent with the arrangements in place for the State Heritage Inventory.</li> <li>• This category would clearly identify that these items are of local heritage significance only</li> <li>• No change from current practice.</li> </ul>	<ul style="list-style-type: none"> <li>• Locally significant heritage items</li> </ul>

- ◆ **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?

## 5. STREAMLINING HERITAGE PROCESSES

The Act sets out procedures and processes for a number of the key functions including the listing process, the process for applying for a permit to make alterations to an item listed on the SHR and the process for compliance and enforcement. These processes are time consuming and may not be consistent with modern customer service expectations.

### Improving the listing process

The current heritage listing procedure has been described as lengthy and complex, with some items taking more than a year to be listed on the SHR. While anyone can nominate items for heritage listing, nominations are often received in response to perceived threat. There is no current process to engage the broader community in identifying items of value for potential listing, or for ensuring that future listings reflect the broad and diverse interests of the NSW community. An easier, more efficient listing system that would enable the Heritage Council to understand community interest and support for future listings, could be considered to ensure the SHR reflects the diverse heritage of the broader community.

**REFORM PROPOSAL:** Introduce a community-driven nomination process. Community-based ‘early-round nominations’ would be submitted for Heritage Council consideration. The Heritage Council could then invite more detailed nominations from promising applications. Heritage NSW could provide assistance in preparing nominations.

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

### Amending existing listings on the State Heritage Register

The current process delivers a static, point-in-time SHR listing that, as time passes, may no longer fully reflect the actual significance of each site. This is partly because updating existing heritage listings or delisting SHR items is onerous, requiring the full listing process to be revisited. These kinds of changes may be necessary to facilitate physical changes to a heritage listing, such as boundary adjustments. Amendments are also important because it is only those aspects of a site that have *recorded* significance that are protected. Significant site aspects that may become apparent over time, such as a site’s Aboriginal history and heritage, would be left vulnerable to inappropriate change until the listing is updated.

Similarly, delisting a SHR item, which, for example, may be necessary where that item has been destroyed by bushfire or flood, requires a repeat of the lengthy listing process, throughout which owners are still required to abide by heritage regulatory processes.

**REFORM PROPOSAL:** Introduce a streamlined process to update heritage listings to allow SHR listings to be periodically reviewed and amended to address site changes and ensure a site’s full significance is protected. An abridged process would deliver a more accurate representation of SHR items and values over time and ensure that protections are appropriately targeted.

Similarly, an abridged delisting process, in certain circumstances, would ensure the SHR remains an up to date representation of State significant heritage items.

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

## The heritage permit process

Heritage listing should not stop all change or freeze a place in time. Rather, if heritage items are to have a viable future, they should be used, cared for and activated as lively spaces, accepting that changes may need to be made to keep pace with modern amenity. Nor should heritage places be inflexibly bound or 'mothballed' by onerous processes.

The listing of a building or place on the SHR therefore should not mean that the item cannot be changed. Rather it should simply ensure that any work carried out is compatible with and complements the heritage significance of the item and supports its long-term viability. To support ongoing sustainable conservation outcomes, we should consider the sustainability of the entirety of the heritage building or place rather than focussing on its individual elements when managing change.

When an item is listed on the SHR, or an Interim Heritage Order has been applied, a person must not demolish, damage, move or change that item without approval. Where an owner wants to make changes, they must apply to the Heritage Council for a permit under the Heritage Act. The Heritage Council or delegate then decide whether the proposed works will have an acceptable impact on the heritage significance of the item.

Many activities and works are exempt from this permit process. This includes works such as general maintenance, repainting, installation of telecommunication infrastructure and alterations to parts of the site considered to be non-significant. Other activities that would have no, little or minor impact on heritage significance, with a total cost less than \$150,000, can usually access a fast track permit process, with applications determined within 21 days. More major works, including any works exceeding \$150,000, must obtain a standard permit under Section 60 of the Act.

Some heritage owners can find the permit processes to be confusing, costly and time-consuming. Owners can also face uncertainty about what types of change are permissible, as well as additional costs involved in ensuring that any approved works meet the heritage standards required. Managing change to a heritage item should not feel adversarial, we should explore constructing a permit system that embraces an approach to heritage conservation in which change is permissible if it is sensitive to the heritage significance of the place (a 'yes if' approach).

**REFORM PROPOSAL:** The Minister responsible for heritage could be responsible for determining, in consultation with the Heritage Council, the regulatory thresholds for standard exemptions, fast-track applications and standard applications for permits under the Act. This would ensure the application and exemption process is flexible and responds to community need making it easier for heritage owners to maintain and conserve their properties.

- ◆ **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?

## Heritage within the planning system

There are multiple interactions between the Planning system and the Heritage Act. The two key interaction points are development applications and strategic planning. The Heritage Act was designed to work in conjunction with other land use and planning regimes, such as the *Environmental Planning and Assessment Act 1979* (EP&A Act). However, as these Acts have been

amended over time, linkages have become less efficient. For example, ongoing refinements to the EP&A Act, designed to deliver simpler, faster and better-quality planning outcomes, such as an increased focus on community-driven strategic planning, are not reflected in the heritage system. Improving how these two Acts, and other land use and planning regulatory systems, work together, could deliver a range of customer service and community planning benefits.

- ◆ **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?

### Compliance and enforcement

The Act currently establishes very strong enforcement provisions, such as the ability to prosecute non-compliance. It also contains a number of weaker provisions, such as the ability to write warning letters to owners who have been the subject of a complaint. The Act lacks any intermediate options, such as the ability to issue infringement notices where non-compliance has been established. This kind of option can be an effective approach to dealing with less-serious breaches of the Act. Such provisions are commonly found in more modern legislation, such as the *Protection of the Environment Operations Act 1997*.

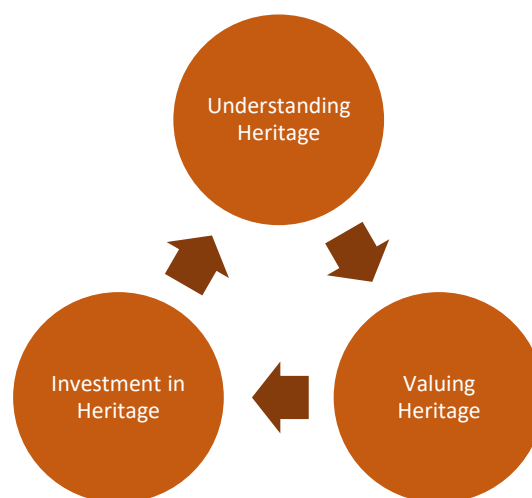
**REFORM PROPOSAL:** It is proposed to introduce a series of intermediate enforcement powers to allow heritage regulators to take a graduated and proportionate response to non-compliance. This would include investigative powers allowing Heritage NSW the ability to gather sufficient evidence to prove an offence, along with the ability to issue penalty or infringement notices. This change would allow Government to take more nuanced and lighter-touch enforcement approaches, as an alternative to expensive and uncertain court action.

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

## 6. HERITAGE PROMOTION AND ENGAGEMENT

The first Object of the Heritage Act is to *promote an understanding of the State's heritage*. The Act is largely silent on how this is to be achieved. Currently, Heritage NSW supports this aim through the Heritage Grants program, which provides community outreach and funding for heritage education, conservation and engagement and through sponsorship of the National Trust Heritage Awards which recognise outstanding achievements in the heritage field. However, the primary focus of Heritage NSW is on resource-intensive heritage listing and approval processes. There are no dedicated programs to promote community heritage understanding, engagement or promotion. The NSW Government could seek innovative ways to support and celebrate local heritage, for example, through best practice guidance on local heritage management.

Heritage is intrinsically values-based. In order to remain meaningful to and supported by the broad NSW community, the community needs to understand and appreciate its importance. Similarly, the heritage system should respond to and reflect the interests and values of the community. Heritage promotion and engagement, done well, can both strengthen community support for heritage, and ensure that the State's heritage remains relevant to and cared for by future generations.



We are also still learning about the contribution that heritage makes to our daily lives. While heritage has a very clear cultural and educative value, it has also been shown to contribute to a sense of identity and well-being, to benefit local economies and to promote social cohesion. Helping the community and decision-makers to understand these many benefits could deliver increased support for heritage conservation.

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

### Heritage Tourism

Heritage tourism presents a compelling opportunity for heritage understanding and engagement. Done well, it has the added benefits of driving economic growth through job creation, and of ensuring the long-term conservation and enhancement of heritage places, sites and landscapes.

Tourism is a priority economic activity for NSW. Heritage places can contribute to tourism in many ways, providing important character to an area, providing drawcard attractions, and aesthetically pleasing sites for cafes, bars, hotels and shops. Heritage places and experiences have been shown to encourage visitors to stay longer, spend more and connect more deeply with destinations.

The Heritage Act currently provides no incentives, concessions or grants to support or encourage heritage tourism. Box 4 below provides a brief outline of the recently released South Australian Heritage Tourism Strategy, which has been developed to enhance the SA heritage tourism sector.

#### Box 4: South Australia – Heritage Tourism Strategy

The South Australian government's draft Heritage Tourism Strategy 2020-2030 provides a model best practice approach to enhancing heritage tourism. The strategy aims to promote:

- Growth in the visitor economy as a result of outstanding heritage experiences
- Investment and activity that conserves, retains and takes pride in the state's heritage.

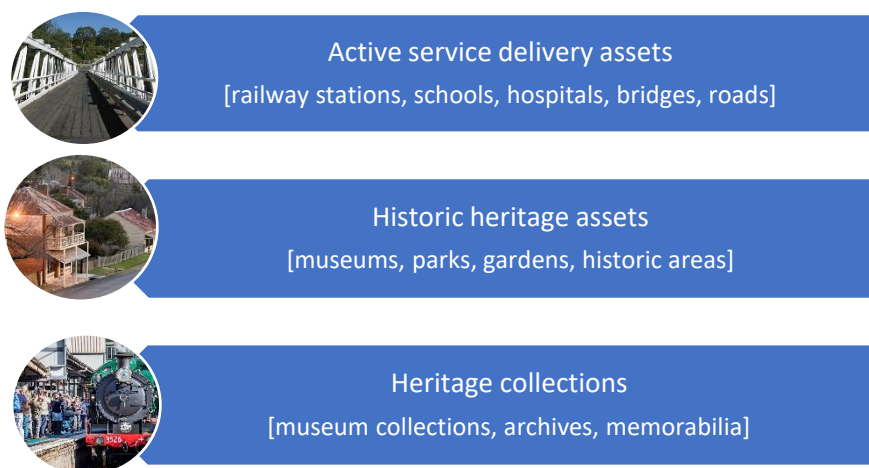
The action plan outlines a range of regulatory and non-regulatory initiatives to enhance SA's heritage tourism industry. Regulatory initiatives include removing red-tape, streamlining processes and developing incentives and guidelines to support adaptive reuse of heritage for commercial activity.

Non-regulatory initiatives include marketing, experience and supply development, improved sector collaboration, and promoting the value of tourism.

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

## 7. PUBLICLY OWNED HERITAGE

The NSW Government, and therefore the citizens of NSW, own over 10,000 items of local, state, and potential heritage interest and value. These include some of our most iconic and exceptional heritage, such as the Sydney Harbour Bridge and the Hyde Park Barracks. These assets tell the story of how modern NSW has developed through the provision of government services for the people. Figure 2 gives examples of some of the many heritage assets held by public sector agencies.



**Figure 2:** examples of heritage assets held by the NSW Government

### Activating public heritage

State-owned heritage assets such as the World Heritage listed Sydney Opera House, contribute to the attraction of Sydney as a tourist destination and global city. Heritage assets can provide both direct and indirect economic benefits to NSW and local communities. Heritage assets can also provide a variety of social benefits through community connection, amenity and social cohesion.

While most public heritage buildings remain in active use, many may now be considered surplus to need due to changing service delivery needs, expensive maintenance costs or other reasons. These surplus assets require ongoing conservation and maintenance, even when idle. At the same time, local communities across NSW are contending with population growth and development, putting pressure on existing community and commercial spaces and facilities.

As the keepers of such a large portion of NSW heritage, State agencies must find ways to manage these heritage items in innovative ways that balance heritage conservation and service provision with their potential economic and social benefits. Revitalising these public buildings to meet the contemporary needs of local communities could ensure they continue to be valued, used and cared for by the communities they were built to serve. Box 5 below is an example of a public heritage activation project that has provided improved public amenity.

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



### Box 5: Pyrmont Bridge

Pyrmont Bridge in the Sydney Darling Harbour Precinct is the oldest working electric swing bridge in the world. As well as adding character and distinctiveness to this popular precinct, the historic bridge provides environmental and health benefits by being an important walking and cycling link to the city.

This heritage activation project is an example of how government can repurpose a significant heritage asset no longer used for its original purpose.

