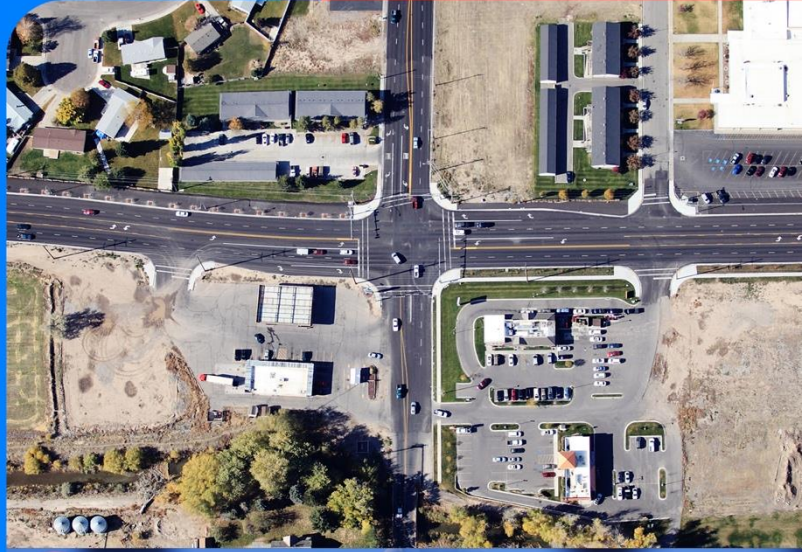


DRAFT SUBMISSION

# A Heritage Strategy for NSW

March 2024







Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

## OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs **55,000 people**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



Local government in NSW looks after more than **\$177 billion** of community assets



NSW councils manage an estimated **4 million tonnes of waste** each year



Local government in NSW spends more than **\$2.2 billion** each year on caring for the environment



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**



NSW has more than **350 council-run libraries** that attract tens of millions of visits each year



NSW has more than **400 public swimming and ocean pools**

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# Opening

Local Government NSW (LGNSW) welcomes the opportunity to provide its views to Heritage NSW on the survey for *A Heritage Strategy for NSW*. The ongoing retention, promotion and management of both built and Aboriginal cultural heritage is of significant interest and importance for local councils and the communities they represent.

LGNSW supports the NSW Government taking a strategy approach to setting a new direction and vision for protecting heritage in NSW as a first step to addressing the key challenges that heritage is facing now and into the future.

The primary purpose of this submission is to highlight current issues local government faces in recognising, preserving and enhancing all types of heritage, particularly when heritage significance competes with pressure for housing and development in their communities.

This submission is informed by the policy positions of LGNSW and consultation with LGNSW member councils. Please note this submission is provided as a draft, pending endorsement by the LGNSW Board at its next meeting. We will advise of any amendments to the submission in due course.

## Background

### **The importance of heritage management to local government**

Local councils are the responsible authority for the protection and ongoing compliance of locally significant heritage items listed under Local Environmental Plans (LEPs) and are thereby custodians of the majority of listed heritage items across the state.

Furthermore, local government is a significant property owner of environmental heritage items, with many state and local heritage listed properties activated by local government for community benefit as community centres, libraries, childcare centres, sporting halls, museums and galleries, visitor information centres and tourist attractions.

Local government plays a significant role in promoting, incentivising and regulating the retention of locally significant heritage items, and in doing so, often bears significant financial and resourcing costs to run grant assistance programs, provide local heritage advice, undertake strategic planning and conservation, promote local and state heritage to a broader audience, as well as ensure compliance with heritage controls at a local level. Councils are also an important contributor of expert advice and information to inform the State Heritage Register.

## Auditor General's Performance audit of state heritage assets

The NSW Auditor General's 2023 *Performance Audit of State heritage assets*<sup>1</sup> contains several recommendations that can inform and enhance a strategic approach by Heritage NSW to heritage management in NSW.

The Auditor General's report concluded, among other things:

*To build preparedness for future reforms, Heritage NSW will need to ... ensure it has sufficient information and capacity to implement a risk-based regulatory approach; clear and effective governance arrangements with the Heritage Council of NSW; and enhanced engagement with government entities to promote the conservation and adaptive re-use of listed assets in public ownership.*

Among the recommendations of the 2023 audit report, a "heritage engagement strategy with targeted actions for owners, heritage professionals, the local government sector and key stakeholders..." is required to be implemented by June 2024.

## LGNSW Position

The LGNSW [Policy Platform](#) consolidates the voices of councils across NSW, reflecting the collective positions of local government on issues of importance and guiding LGNSW in its advocacy on behalf of the local government sector.

For the 2021 Parliamentary inquiry into the review of the *Heritage Act 1977*<sup>2</sup>, LGNSW made a submission<sup>3</sup> informed by councils with 16 recommendations. Those recommendations remain current and relevant and may help inform the proposed Heritage Strategy for NSW. The recommendations as submitted to the Parliamentary Inquiry are included at **Attachment 1**.

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<sup>1</sup> [State heritage assets | Audit Office of New South Wales \(nsw.gov.au\)](#)

<sup>2</sup> [Review of the Heritage Act 1977 \(nsw.gov.au\)](#)

<sup>3</sup> [0035 Local Government NSW.pdf](#)

# A Heritage Strategy for NSW survey

The current *Have your say*<sup>4</sup> public consultation provides for completion of an online survey.

In responding where appropriate to the survey, LGNSW shares the following comments as being most relevant to the local government sector's interests:

## 1. Which of the following best describes you?

- *I am involved with a (heritage) advocacy organisation* – LGNSW is a peak body, member organisation advocating on behalf of its members on all matters pertaining to local government. LGNSW is the voice of local government in NSW, working with councils to support, promote and improve communities throughout our state.

## 2. Do you live and/or work in NSW?

- LGNSW currently represents all 128 local councils in NSW and other group regional members.

## 3. Why is heritage important to you? Select 3 you identify most strongly with:

- *It creates a sense of belonging to a place or Country*
- *It adds to the character of a place*
- *It connects me to the stories of my family and/or community*

## 4. What do you think are the three main areas of challenge for heritage? (Local area interest):

- *Urban development/ land-use pressure*
- *Support for heritage owners and managers*
- *Legislation and policy*

## 5. What do you think are the three key focus areas for governments to respond to challenges for heritage? Select 3 key focus areas:

- *Funding for heritage conservation/safeguarding*
- *Controls for protecting heritage from development*
- *Incorporating heritage considerations into planning processes*

## 6. Do you know about one great project or initiative that has had positive outcomes for heritage?

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<sup>4</sup> [A Heritage Strategy for NSW | Have Your Say](#)



Many examples of positive heritage outcomes are available from the local government perspective. LGNSW will leave councils to nominate their examples in their response to the survey.

## **7. Would you like to share a heritage experience that was meaningful for you?**

Meaningful heritage is subject to individual interpretation. LGNSW will leave councils to share their examples in response to the survey. (end of survey)

More detail on LGNSW's selected priorities in response to the following three questions (Survey questions 3, 4 and 5) is provided below.

### **Why is heritage important to you?**

Local government has the privilege of grassroots connection to the communities it serves. Therefore, LGNSW selects the following three options as the most important to local communities:

#### **It creates a sense of belonging to a place or Country**

Aboriginal Cultural Heritage – Has been missing from the *Heritage Act 1977* and attempts for a standalone Act that addresses the absence of Indigenous recognition in state legislation have failed to materialise. Creating a sense of place also creates a sense of belonging, of identity and connection to country. A Heritage Strategy for NSW would be the first step in enshrining recognition of the important contribution that Indigenous culture makes and would help clarify the role of local government on the ongoing management of Aboriginal cultural heritage.

#### **It adds to the character of a place**

Heritage as Tourism – The unique character of some heritage items is a drawcard for tourist destinations. Celebrating heritage as a contributing part of local economies, be it for tourism, cultural identity or social focus is an investment in heritage that can make positive outcomes in local communities. The activation of heritage places for tourism is supported on the proviso that the views of local communities are considered.

#### **It connects me to the stories of my family and/or community**

Local Heritage Listings – Local councils all have local heritage listings that recognise places and items of value to their community. Trees, landscapes, monuments, precincts and vistas can be recognised in various categories. As noted in the 2021 Parliamentary Inquiry Final Report, "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<sup>5</sup> This would amplify the value of local heritage in a way that mirrors and complements the status of items on the State Heritage Register.

**Recommendation 1:** A Heritage Strategy for NSW should ensure recognition of Aboriginal Cultural Heritage.

**Recommendation 2:** A Heritage Strategy for NSW should ensure recognition of Heritage as Tourism with consideration of the views of local communities.

**Recommendation 3:** A Heritage Strategy for NSW should seek to amplify the value of local heritage by considering, where appropriate, the listing of local heritage items on the State Heritage Register to afford them the protections that come with State listing.

### **What do you think are the three main areas of challenge for heritage?**

A Heritage Act that is nearing 50 years old (and perhaps deemed heritage itself) may contribute to vulnerability for heritage protection. LGNSW considers the following areas most challenging.

#### **Urban development and land-use pressure**

Housing crisis - The housing crisis has introduced new and greater pressures on local areas - particularly those well-located to town centres and transport hubs - to redevelop and increase densities. The NSW Government's Transport Oriented Development (TOD) Program and proposed changes to create low- and mid-rise housing are new and widespread reforms to encourage housing development under the National Housing Accord.

For some communities there is tension and concern that under these initiatives heritage is at risk of being sacrificed by the intensification of development for more housing, particularly where 'no refusal' legislation will be introduced to override council powers.

A Heritage Strategy for NSW could assist in managing the potential confusion and conflict between advocates of urban intensification and defenders of urban heritage, by including some guiding principles to help get the balance right between heritage preservation and urban intensification.

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<sup>5</sup> [Report No. 59 - Standing Committee on Social Issues - Review of the Heritage Act 1977.pdf \(nsw.gov.au\)](#), p 92



## Support for heritage owners and managers

Heritage Council representation – As noted above, local councils have responsibility for locally significant heritage items listed under their LEPs and are custodians of the majority of listed heritage items across the state. Councils are also significant property owners of environmental heritage items. Having a representative of local government sitting on the NSW Heritage Council would ensure that a dedicated voice for one of the prime heritage owners and managers is always considered. Indeed, the (then) NSW Government supported recommendation 7[c] of the Parliamentary Inquiry into the Heritage Act 1977 that “the Heritage Council of NSW is to include a representative from local government who possesses skills and experience in heritage.”<sup>6</sup> A Heritage Strategy for NSW could consider how legislative and governance frameworks could be amended to provide a dedicated voice for local government on the Heritage Council of NSW.

## Legislation and policy

Work with *Environmental Planning & Assessment Act 1979* (EP&A Act) – Better interaction between planning (EP&A Act) and heritage legislation (*Heritage Act 1977*) would resolve current bottlenecks in assessment and improve processes and processing times. Issues around concurrence, exempt and complying development, standard minor works exemptions, enforcement powers and processes for formal listings could be improved with active involvement of local government. Improvements could also be made within the *Heritage Act 1977* alone to achieve some of these aims. A Heritage Strategy for NSW should devote resources to look at the interaction between planning and heritage legislation and ways to improve assessment processes.

**Recommendation 4:** A Heritage Strategy for NSW could provide greater guidance on the importance of heritage considerations in urban intensification and should contain principles to help manage potential conflicts between urban intensification and preservation of local heritage.

**Recommendation 5:** A Heritage Strategy for NSW should consider how changes to the legislative and governance framework could provide a dedicated voice from local government on the Heritage Council of NSW, as recommended by the 2021 Parliamentary Inquiry into the Heritage Act 1977.

**Recommendation 6:** A Heritage Strategy for NSW should devote resources to consider how processes and processing times could be improved with amendments to planning and heritage legislation by actively involving local government.

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<sup>6</sup> [Government’s response to the Standing Committee on Social Issues Report 59 – Review of the Heritage Act 1977](#)

## **What do you think are the three key focus areas for governments to respond to challenges for heritage?**

The challenges for heritage are many and varied but always seem to stem from inadequate funding and prioritisation. LGNSW has selected the following key focus areas to best address these shortfalls:

### **Funding for heritage conservation/safeguarding**

Maintaining heritage assets – Maintenance and repair of locally listed heritage items is a common problem that is difficult for local councils to enforce. For some time LGNSW has advocated for the NSW Government to explore minimum standards of maintenance and repair, which could be supported by sufficient enforcement powers and heritage fund grants for heritage asset landowners to achieve conservation standards.

### **Controls for protecting heritage from development.**

Heritage exemptions from development – The NSW Government's current proposed and recent housing and planning reform initiatives are placing undue pressure on heritage listed assets and conservation areas that are in close proximity to nominated town centres and transport hubs. A key example is the proposed introduction of blanket 'non-refusal' clauses which risk detrimental consequences for heritage protection under the Heritage Act and undermine community trust that heritage will be protected.

### **Incorporating heritage considerations into planning processes**

Development Assessment – The ever-expanding declaration of more development as State Significant Development (SSD) and State Significant Infrastructure (SSI) has the effect of 'turning off' the Heritage Act for consideration. It also locks out local councils from the assessment process (SSI and SSD applications are determined by the Minister for Planning).

A recurring theme in submissions to the 2021 Parliamentary Inquiry was that the *"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>7</sup>. The concern for local government is that this can contribute to increased community distrust in government and the planning system and in the processes that are supposed to protect places valued by the community.

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<sup>7</sup> [Report No. 59 - Standing Committee on Social Issues - Review of the Heritage Act 1977.pdf \(nsw.gov.au\)](#), p 18

The inclusion of heritage considerations at least at preliminary or gateway stages of assessment for these types of development, with inclusion of council heritage input, will assist in the incorporation of heritage considerations prior to determination.

**Recommendation 7:** A Heritage Strategy for NSW could consider how better heritage outcomes could be achieved by supporting maintenance and repair of locally listed heritage items through sufficient enforcement powers for councils and funding grants for landholders.

**Recommendation 8:** A Heritage Strategy for NSW could champion community expectations that heritage considerations should not be inappropriately compromised by reforms such as the proposed 'non-refusal' standards.

**Recommendation 9:** A heritage Strategy for NSW should address the widespread concern that heritage protections are 'turned off' for SSD and SSI applications, by considering how preliminary heritage and council input can be incorporated prior to determination.

## Conclusion

LGNSW welcomes the NSW Government's continuing commitment to ensure that recognising, preserving and enhancing heritage remains relevant in our communities. Local government seeks to work constructively with the NSW Government to develop a strategy that demonstrates how appreciation of heritage is evolving. This submission makes new recommendations and reiterates previous recommendations to ensure that recent reviews and inquiries into the *Heritage Act 1977* form the basis of the proposed strategy.

## Summary of Recommendations

**Recommendation 1:** A Heritage Strategy for NSW should ensure recognition of Aboriginal Cultural Heritage.

**Recommendation 2:** A Heritage Strategy for NSW should ensure recognition of Heritage as Tourism with consideration of the views of local communities.

**Recommendation 3:** A Heritage Strategy for NSW should seek to amplify the value of local heritage by considering, where appropriate, the listing of local heritage items on

the State Heritage Register to afford them the protections that come with State listing.

**Recommendation 4:** A Heritage Strategy for NSW could provide greater guidance on the importance of heritage considerations in urban intensification and should contain principles to help manage potential conflicts between urban intensification and preservation of local heritage.

**Recommendation 5:** A Heritage Strategy for NSW should consider how changes to the legislative and governance framework could provide a dedicated voice from local government on the Heritage Council of NSW, as recommended by the 2021 Parliamentary Inquiry into the Heritage Act 1977.

**Recommendation 6:** A Heritage Strategy for NSW should devote resources to consider how processes and processing times could be improved with amendments to planning and heritage legislation by actively involving local government.

**Recommendation 7:** A Heritage Strategy for NSW could consider how better heritage outcomes could be achieved by supporting maintenance and repair of locally listed heritage items through sufficient enforcement powers for councils and funding grants for landholders.

**Recommendation 8:** A Heritage Strategy for NSW could champion community expectations that heritage considerations should not be inappropriately compromised by reforms such as the proposed 'non-refusal' standards.

**Recommendation 9:** A heritage Strategy for NSW should address the widespread concern that heritage protections are 'turned off' for SSD and SSI applications, by considering how preliminary heritage and council input can be incorporated prior to determination.



## Appendix 1

### Summary of LGNSW recommendations to Parliamentary inquiry into the review of the Heritage Act 1977

*LGNSW made the following summary recommendations in its submission, June 2021:*

**Recommendation 1:** The NSW Government must actively involve local government in the design of any amendments to the Heritage Act 1977 and any other associated legislation that may result from this review.

**Recommendation 2:** NSW Government agencies must work collaboratively together, and with local government, to ensure any future heritage legislative framework appropriately considers the interaction between the operation of heritage legislation and environmental planning legislation, the proposed Design and Place SEPP, local character overlays, local strategic plans and the provisions of Local Environmental Plans.

**Recommendation 3:** The NSW Government should consider legislative changes to the Heritage Act 1977 that would provide for a mandated and dedicated voice for local government on the Heritage Council of New South Wales, nominated by LGNSW.

**Recommendation 4:** Local government's ongoing role in the management of Aboriginal cultural heritage must be clarified in any proposed reforms to state heritage legislation.

**Recommendation 5:** Heritage NSW should review its internal processes to make it both quicker and easier for proponents to garner approval for works requiring concurrence under the Heritage Act 1977. This review should explore set exempt or complying development standards for accessibility works and a review of the currency and ease of use of the Guidelines for the Adaptation of Historic Buildings and Sites.

**Recommendation 6:** 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. Heritage NSW should support the development of standardised event and use management plans for heritage assets to support their activation.

**Recommendation 7:** While the activation of heritage places for tourism is supported in principle, close and detailed consideration must be made to the suitability of the adaptive reuse and/or activation that considers the views of local communities.

**Recommendation 8:** The NSW Government should explore legislative changes to the Local Government Act 1993 that would enable local councils to offer a rebate/concession on council rates for land with local or state heritage-listed properties, on an opt-in basis.

**Recommendation 9:** The NSW Government must make more funding available through the Heritage NSW Local Heritage Grants Fund program to assist local councils to

promote the ongoing maintenance of local heritage items and minimise shortfalls in requests for grant assistance.

**Recommendation 10:** The NSW Government should develop a state-wide Heritage Activation Strategy to coordinate government efforts to activate and promote heritage assets (both built and cultural heritage) across New South Wales. This should commit a dedicated funding pool to local government to support the activation and promotion of built and cultural heritage across New South Wales.

**Recommendation 11:** The NSW Government should explore legislative options to mandate minimum standards for the maintenance and repair for locally listed heritage items. These legislative options should provide councils with sufficient enforcement powers to enforce minimum standards of maintenance and repair.

**Recommendation 12:** Any reforms to the enforcement powers within the Heritage Act 1977 should be mirrored, where appropriate, within the Environmental Planning and Assessment Act 1979 and associated legislation and regulations. This would provide intermediate enforcement powers to local government to enforce compliance with local planning laws for locally listed heritage items. Additional funding, or the capacity for councils to recover the costs of heritage compliance monitoring should be considered.

**Recommendation 13:** Local government must be consulted on any proposed categorisation scheme for state heritage items. Any proposal to provide a category-based heritage listing 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.

**Recommendation 14:** The existing pathways for local government to make formal recommendations for state heritage listing under section 166 of the Heritage Act 1977 should be maintained. Heritage NSW should explore options to expand the capacity for local communities to recommend items for heritage listing through accessible means, such as online nomination and consult with local government on the design of this program.

**Recommendation 15:** The Minister and the Chairperson of the Heritage Council of NSW should exercise caution in issuing stop work orders where development approval has already been issued by a local council or a local or regional planning panel, and the works are being undertaken in accordance with the development consent. A published set of criteria should be developed to guide when the Minister or Chairperson may use these powers, including requirements to consult with the proponent and/or landowner.

**Recommendation 16:** All councils should have equal capacity to make interim heritage orders for items of local heritage significance.