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24th July 2026

The Hon. Penny Sharpe, MLC
Minister for Environment, Heritage Climate Change and Energy
office@sharpeminister.nsw.gov.au

**Re: Breach of Section 33 of the Heritage Act 1977 – Non-compliance regarding
MV Collaroy State Heritage Register nomination**

Dear Minister Sharpe,

I am writing to formally bring to your attention a serious administrative and procedural failure by Heritage NSW and the State Heritage Register Committee (SHRC) concerning the handling of the nomination of the historic Freshwater-class ferry, MV *Collaroy*, for inclusion on the State Heritage Register (SHR).

On 4 February 2026, the SHRC resolved that *"although MV Collaroy may be of State significance, the nomination will not be progressed for assessment noting advice from Heritage NSW that the NSW Government has received no sustainable divestment options"*.

This decision represents a clear failure to comply with the mandatory statutory processes set out under Section 33 of the *Heritage Act 1977*. Furthermore, Heritage NSW has sought to justify this action (in their reply to me) by suggesting that its own internal assessment process, as published on its agency website, somehow permits them to bypass these statutory obligations.

From the perspective of NSW administrative law, the agency's reliance on internal website procedures to circumvent parliamentary legislation is a clear case of *ultra vires*—acting beyond lawful authority. It is a foundational principle of administrative law that an executive agency cannot use rigid, unlegislated policy guidelines to fetter a statutory discretion or completely replace a mandatory procedure prescribed by Parliament.

By applying an unauthorized internal "triage" rule to dismiss a nomination that has acknowledged potential State significance, Heritage NSW has committed a jurisdictional error, taken into account irrelevant commercial considerations, and acted *ultra vires*.

An agency's internal policy cannot amend, override, or exempt it from its explicit statutory duties. Dismissing this nomination based on an internal mechanism constitutes an error of law and an abuse of procedural fairness.

Given that steps toward the disposal or scrapping of the MV *Collaroy* continue to advance, this unlawful shortcut leaves an irreplaceable piece of New South Wales

maritime history in immediate jeopardy without the rigorous, statutory heritage assessment to which it is legally entitled.

I have provided a briefing paper to assist you and your staff to understand the issues.

I urgently request that you, as the Minister for Heritage:

- **Direct** Heritage NSW and the Heritage Council of NSW to set aside the flawed 4 February 2026 resolution regarding MV *Collaroy*.
- **Enforce** a lawful, transparent reassessment of the vessel strictly in accordance with the mandatory procedures outlined in Section 33 of the *Heritage Act 1977*, independent of any conflicting internal agency policies.
- **Issue** an Interim Heritage Order (IHO) immediately to protect the vessel from irreversible destruction while this statutory review takes place.

I look forward to your prompt response outlining the steps your department will take to rectify this breach of the Act and ensure statutory compliance by Heritage NSW.

Yours sincerely,



Ben Parker

BRIEFING NOTE FOR THE MINISTER FOR HERITAGE

TO: The Hon. Penny Sharpe, MLC, Minister for Environment, Heritage, Climate Change and Energy

FROM: Ben Parker

DATE: 24 July 2026

SUBJECT: Statutory Breach and *Ultra Vires* Action by Heritage NSW Regarding the MV *Collaroy* State Heritage Register Nomination

1. PURPOSE

To alert the Minister to a critical procedural failure and jurisdictional error committed by Heritage NSW and the State Heritage Register Committee (SHRC). This note demonstrates how the agency substituted explicit parliamentary legislation under Section 33 of the *Heritage Act 1977* with unlegislated internal policies, unlawfully halting the State Heritage Register (SHR) nomination of the MV *Collaroy*.

2. BACKGROUND

- **The Item:** The MV *Collaroy* is a historic, highly significant Freshwater-class Sydney ferry.
 - **The Resolution:** On 4 February 2026, the SHRC formally resolved that *"although MV Collaroy may be of State significance, the nomination will not be progressed for assessment noting advice from Heritage NSW that the NSW Government has received no sustainable divestment options."*
 - **The Agency Justification:** Heritage NSW has asserted that its internal, website-published "triage" and assessment workflows grant it the administrative authority to halt nominations prior to completing the explicit process set out in the Act.
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3. LEGAL AND ADMINISTRATIVE ERRORS

A. *Ultra Vires* and Jurisdictional Error (Substitution of Law with Policy)

It is a foundational principle of New South Wales administrative law that an executive agency cannot use rigid, unlegislated policy guidelines to override or bypass a mandatory statutory process prescribed by Parliament.

- **The Statute:** Section 33 of the NSW Heritage Act 1977 dictates a strict, linear chain of events once a nomination is under consideration (Notification → Public Submissions → Formal Consideration → Recommendation to the Minister).

- **The Breach:** Heritage NSW applied an unauthorized internal "triage" mechanism to abort the process entirely. A website graphic or internal policy document cannot lawfully create an "off-ramp" from statutory obligations.

B. Unlawful Fettering of Discretion via Irrelevant Considerations

The SHRC explicitly blocked the assessment because *"the NSW Government has received no sustainable divestment options."*

- Under Section 33, a nomination must be evaluated strictly against evidence-based **heritage significance criteria**.
- Introducing such matters as commercial divestment gridlocks at the initial assessment stage constitutes a severe error of law. It allows external commercial pressures to legally contaminate what must be a merit-based heritage evaluation.

4. STATUTORY VS. POLICY ROADMAP (SECTION 33 BREACH)

- **Notice and Submission Failures:** Section 33(1)(a)-(c) dictates that the Heritage Council ***shall*** give public notice and ***shall*** invite public submissions for a minimum of 14 days. By applying an internal policy or procedural filter, the agency completely denied maritime experts and the public their statutory right to submit evidence regarding the vessel's significance.
- **Mandatory Consideration Defied:** Section 33(1)(d) requires the Council to consider those submissions and make a determination. The SHRC bypassed this entire collection of public evidence.

5. RECOMMENDED ACTIONS FOR THE MINISTER

To rectify this administrative overreach and ensure the integrity of the *Heritage Act 1977*, it is recommended that the Minister:

1. **Direct** Heritage NSW and the Heritage Council of NSW to set aside the legally flawed resolution of 4 February 2026 regarding the MV *Collaroy*.
2. **Order** a lawful reassessment of the vessel's nomination strictly in accordance with the statutory steps of Section 33, free from internal agency triage policy interference.
3. **Issue an Interim Heritage Order (IHO)** over the MV *Collaroy* immediately to freeze any disposal or scrapping actions while a legally compliant statutory assessment is conducted.

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