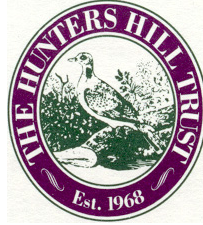


**Submission
No 268**

INQUIRY INTO WINDSOR BRIDGE REPLACEMENT PROJECT

Organisation: The Hunters Hill Trust

Date received: 28 January 2018



*PRESERVING AUSTRALIA'S OLDEST
ST GARDEN SUBURB
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P.O. BOX 85, HUNTERS HILL, N.S.W. 2110*

The Director,
Portfolio Committee No. 5,
Parliament House,
Macquarie Street,
Sydney NSW 2000.

Dear Director,

Re: Inquiry into the Windsor Bridge replacement project

Please accept this correspondence as a submission to the Windsor Bridge Inquiry. In making this submission the Hunters Hill Trust wishes to register its absolute opposition to the project.

We have no doubt that this project will entail the destruction of Australia's oldest town Square, named by Governor Macquarie for the convict Andrew Thompson and restored for its significance in time for Australia's Bicentennial.

It is arguably one of Australia's most significant colonial locations and has numerous items of State Significance that should be protected for future generations along with its archaeology, its stories and its community and tourism appeal.

Along with the significant heritage impacts, the project also involves destruction of heritage in the removal of Windsor Bridge, the first Hawkesbury River crossing built in 1874. We understand that independent experts and former Chief RMS bridge engineers have determined that the bridge can continue to provide a local traffic route for decades to come with appropriate maintenance.

Recent extremely significant colonial archaeological finds also appear to be at risk of destruction - including convict-built barrel vault drains and rare early Telford road paving – incredibly important examples of colonial infrastructure.

We are aware of and have sighted government documents containing advice as far back as 2008 about the need for a bypass to protect the State Significant Heritage and accommodate traffic and growth and, since this time, millions of dollars have been spent on what appears to be a deeply flawed project.

The Trust is in favour of retaining the 1874 Windsor Bridge for local traffic and for a bypass to be built in line with what has been put in place in numerous other, perhaps less historic heritage towns throughout NSW such as Berrima, Goulburn, Gundagai, Mittagong and Gunning.

In relation to the Inquiry Terms of Reference (TOR) the Trust's concerns sit largely within item b) the replacement bridge project: iii. economic, social and heritage impacts. Most significant

of these is the ability for a State Significant Project approval to be given which overrides State Significant Heritage.

Credentials to provide comment

The Hunters Hill Trust was formed in 1968, and has been one of the pioneers in heritage and conservation planning in NSW, instrumental at the local level in ensuring the recognition and implementation of heritage and conservation protection in Hunters Hill's planning instruments. Fifty years on, we are facing a heritage and conservation crisis across NSW, with much of the work of the last half-century being undermined. The Trust has therefore been active in raising concerns about heritage loss, planning and civic and community outcomes in NSW more broadly.

Significance of the heritage precinct

Windsor is one of Australia's most significant historic towns – one of the five towns established in the Hawkesbury region by Governor Lachlan Macquarie whose visionary civic planning is well recognised.

Thompson Square, within Windsor, is Australia's oldest town square and the centre of one of the earliest settled districts in Australia. It dates to 1795 and its collection of colonial buildings has remained largely intact since being built in the period between 1815 and 1880. It is the only remaining civic space as laid out by Governor Macquarie and is a vital precinct in the preservation of the early Colonial character of Windsor.

Macquarie named Australia's first public square in 1811 after fellow Scot, Andrew Thompson, a convict who had redeemed himself. This was in an era of naming places after a King, a Lord or a former Governor and in itself is remarkable. It is the only public space from this era to be named after a convict and is also the site of the hanging of Cunningham, following the convict rebellion of Vinegar Hill.

Timeline of recognition of the Square's significance

Over 100 years ago the architect Hardy Wilson measured up and recorded both the Doctor's House and the Macquarie Arms. In 1949, the Royal Australian Institute of Architects, in NSW, prepared the first list ever of historic buildings in NSW, including Thompson Square and the first Register of Historic Buildings, prepared by the fledgling National Trust (after it was formed in 1945) also included the buildings of Thompson Square. Subsequently in 1967 the State Planning Authority of NSW included Thompson Square in its publication, *Historic Buildings – Windsor and Richmond*.

In 1970, 'to protect the Square', the State Planning Authority acquired the Cottage at 5 Thompson Square and in 1972, the NSW Government engaged eminent heritage architect Clive Lucas to restore 5 Thompson Square. In 1981 the newly formed Heritage Council of NSW engaged Clive Lucas to do a measured study and restoration proposals for all the buildings in Thompson Square.

A Permanent Conservation Order (No. 126) was placed on the Thompson Square Precinct on 2 July 1982. The intent of this order was 'to control the demolition or alteration of buildings or works; damaging or despoiling a relic, place or land; excavating to expose or move a relic; development of land...'. The Square is also listed on the original Register of the National Estate.

The Heritage Council's 1987 publication, *Historic Buildings of Windsor and Richmond* again highlighted the importance of Thompson's Square.

Australia's Bicentennial saw the precinct recorded and conserved. The 'restored' Thompson Square was unveiled on 23 April 1988 by then Premier of NSW, Nick Greiner

Concerns raised with the Department of Planning and the Minister for Planning by the Hunters Hill Trust

The Trust has made several representations on the Windsor Bridge matter to the Minister for Planning and the Secretary for the Department of Planning - in a meeting on 20 July 2017 and in follow up correspondence on 24 July and 3 September 2017.

Protections for State Significant Heritage

Regarding the Windsor Bridge replacement project our deep concern is that State Significant Infrastructure Legislation overrides all State Significant Heritage protections **and cannot be merit appealed**, and without any ability to review a decision should additional evidence and reports subsequent to the decision indicate that the decision should not have been made.

Court Action

For this part of our submission we refer to the Community Action for Windsor Bridge Inc v NSW Roads and Maritime Services & anor [2015] NSWLEC 167 in the Land and Environment Court, hearing dates 22 & 23 October 2014 and decision date 27 October 2015.

"On 20 December 2013, the second Minister for Planning and Infrastructure ("the Minister") gave the NSW Roads and Maritime Services ("RMS") an approval ("the Approval") under (NSW) Environmental Planning and Assessment Act 1979 ("the EPA Act"), s 115ZB, for a State significant infrastructure ("SSI") project known as the Windsor Bridge replacement project ("the Project") for construction of a new 159m long five span bridge across the Hawkesbury River, construction of new northern and southern approach roads and the realignment and modification of access roads, and the removal of the existing bridge."

There were several conditions to the approval. For the purposes of the Trust's submission the most significant condition is B1, which "requires RMS to submit, for approval by the Director-General, a Strategic Conservation Management Plan ("CMP") for the project area on the southern side of the Hawkesbury River ... prepared by appropriate heritage consultants and provide for the heritage conservation of the Thompson Square Conservation Area (referred to hereafter, for convenience, simply as "Thompson Square"), and include, but not be limited to (a) identification of the heritage value of Thompson Square, (b) the development of heritage design principles for the Project to retain the heritage significance of Thompson Square, (c) specific mitigation measures for Thompson Square, and (d) changes to the detailed design of the Project to mitigate heritage impacts.

Condition B2 requires RMS to complete a detailed archival recording of all historic heritage sites within the CMP study area. Condition B3 requires RMS to complete an archaeological investigation program of Aboriginal and non-Aboriginal heritage in the project area on the southern side of the river, and condition B4 requires completion of a similar program in respect of Aboriginal heritage on the northern side."

The issue with the approval

There is a serious problem with process if an approval can be given ahead of 'the identification of the heritage value' – B1 (a) - especially in light of the below acknowledgement in the court case judgement:

Judgement - Para 117. – "Chapter 11 (Project justification and conclusion) assessed the Project against the various project objectives and criteria. The conclusion plainly acknowledged that the Project would have significant adverse heritage impacts on Thompson Square (emphasis added):

While Windsor bridge replacement project addresses the project objectives it would result in significant impacts on the heritage vistas of Thompson Square Conservation Area and its archaeological resources. These impacts have been minimised as much as possible through reducing the height of the bridge, selecting a bridge type that has a lower visual profile and including appropriate urban design features and landscaping, however, they cannot be ameliorated completely."

In reviewing the Court Case Judgement conclusions – paragraphs 145 and 147 below it is clear that the Minister was required to consider the heritage impacts and in light of these imposed

conditions. Given the record of advice about the 'irrevocable damage' that the project would cause to heritage from eminent heritage organisations (see below) dating to this time it is clear that the Minister considered that "the utilitarian and economic advantages of the preferred course outweighed the cost to cultural heritage."

The **National Trust of Australia and the Federation of Australian Historical Societies**, representing a combined membership of some 190,000 Australians, voted Thompson Square as Australia's "*Heritage at Risk*" for 2013.

Professor Lawrence Nield, then **Chair of the NSW Heritage Council** (17th December, 2012) wrote:

"The serious and irrevocable heritage impacts of a new Windsor Bridge through Thompson Square mean that the Heritage Council recommends to the Minister for Planning that project SSI - 4951 WINDSOR BRIDGE REPLACEMENT PROJECT should be refused on heritage grounds" and

"(The Heritage Council) is unequivocally opposed to the project for the 'irrevocable damage' it will do to Windsor and Thompson Square."

Dr Anne-Marie Whitaker, then **Chair of the Royal Australian Historical Society** (16th November, 2012):

"SSI-4951(The project) entails the destruction of one of the most significant townscapes in Australia, Thompson Square in Windsor." And

"The Royal Australian Historical Society therefore lodges its objection in the strongest possible terms to the proposal known as Option 1 which is the subject of the current EIS process."

The Roads and Maritime Services' (RMS/RTA) own Heritage Consultants advise them that:

"the most appropriate treatment of Thompson Square and Windsor Bridge is to avoid any further negative impact and to take the opportunity identified by the Heritage Council to remove through traffic."

Ian Jack on behalf of **Royal Australian Historical Society**, 21 July 2013:

"the location of the proposed new bridge and its approaches is a colossal mistake, appallingly destructive in the short-term; of no benefit to traffic flow either in the short-term or in the long-term; and sharply diminishing the high economic and social value of this area to the community."

Judgement - Para 145. "The Minister was bound to consider the Project's impact on cultural heritage. However, while that requires genuine consideration and not mere advertence or colourable consideration, it does not open to review the sufficiency of the evidence before the Minister or the rigour of his analysis, and it did not require the Minister, before giving his approval, to identify the heritage values and develop heritage design principles and mitigation measures, as a heritage consultant might. Even though the Minister may have accepted that the heritage assessment was deficient, he did not fail to appreciate, and to take into account, that approving the Project would involve serious adverse heritage impacts, particularly for Thompson Square. That he imposed conditions addressing the Project's impact on cultural heritage, and the identified shortcomings in the heritage assessment, with the express objectives of minimising impacts on heritage sites and enhancing and conserving Thompson Square, refutes the contention that he did not consider the adverse impact of the project on cultural heritage."

Judgement - Para 147. "The Minister's decision to approve the Project, generally in the form proposed, but to adopt the suggestion that a conservation management plan be required in order to provide for further mitigation measures in the detailed design phase, reflected a judgment that the utilitarian and economic advantages of the preferred course outweighed the cost to cultural heritage, but what could be done to mitigate the heritage impacts should be done. The imposition of condition B1, far from being devoid of plausible explanation, is explained by the intention of addressing some of the identified deficiencies in the heritage assessment, and putting in place measures to minimise the adverse heritage impacts that the Project would inevitably occasion and rescue what could be saved, including by refinement of

the Project in the detailed design phase. Such a decision was plainly within the bounds of possible acceptable outcomes. It was one of the rational decisions open to the Minister. That many, even most, might have resolved the conundrum differently would not make the decision unreasonable in the legal sense."

The Trust's request to the Minister for Planning in 2017

Given it was a former Minister for Planning that gave approval for the project the Trust asked the current Minister for:

'a NSW Government response on the ability to overturn the approval for the Windsor Bridge replacement project'.

We received a response from the Secretary for Planning dated 15 August 2017 advising us in relation to the Windsor Bridge project that:

'the New South Wales Government cannot overturn a development approval. This can only be done by the Land and Environment Court. I am advised the Windsor Bridge project's approval was previously appealed to the Land and Environment Court, which upheld the approval'.

In receipt of the above advice the Trust wrote again to the Minister for Planning on 3 September 2017:

'We turn now to the matter of Windsor Bridge and Thompson Square and the implications for development in Hunters Hill, Gladesville and Sydney more broadly. We were surprised to learn from Ms McNally of the Government's inability to 'overturn' an approval for one of its own projects. In regard to Ms McNally's remarks that the Windsor Bridge project approval was appealed and upheld by the Land and Environment Court, we note that in this case, the only matters allowed to be tested were administrative issues associated with the Project Approval. The Court's determination did not constitute an endorsement of the project, or Minister Hazzard's approval of it. The Land and Environment Court only examined and upheld the administrative processes associated with the Minister making his determination.

This court case is of great concern to the Trust, highlighting as it does that the declaration of 'State Significant Infrastructure' overrides all 'State Significant Heritage' protections and precludes any form of 'merit appeal'. The Government's planning legislation effectively 'switched off' the heritage protections placed on Thompson Square so that the project could proceed. Those protections were there to ensure this unique Georgian precinct, which contains numerous items of State Significance, was protected and continued to contribute to the economic wellbeing of the local area and to our identity as a nation.

Specifically, therefore, we seek your advice regarding the circumstances under which the NSW Government would reallocate the funding available for the proposed Windsor Bridge Replacement Project, directing it instead to a genuine traffic solution for Windsor, one that achieves its objectives without destroying the peerless heritage values of Thompson Square. Will the NSW State Government develop plans for a second river crossing at Windsor that respects the basic tenets of good urban planning and removes regional traffic from the heart of the oldest country town in the nation as has occurred in Berry and innumerable other locations in NSW?'

The Minister's response to the Trust in relation to the above dated 1 November 2017 was:

'Regarding the Windsor Bridge project, the Land and Environment Court considered the appeal on procedural grounds. The Court held that the decision of the former Minister for Planning to approve the project was lawfully made. While the Court did not consider the merits of the project, its decision included a ruling that the former Minister had considered the heritage impacts of the project.

Roads and Maritime Services are responsible for the Windsor Bridge Replacement Project. Your concerns about this project would be best addressed by the Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight. The Hon Dominic Perrottet MP, Treasurer, may also be able to advise you about funding reallocations.'

The Trust's position

Given the court was unable to consider the merits of the project and the Minister, in approving the project, has dismissed heritage impacts and significant community concerns, the Trust believes that the project should be immediately halted until the Parliamentary Inquiry is concluded.

The Trust is opposed to the Project on the grounds that the heritage impacts have not been properly considered – especially in light of the additional archeological discoveries that have recently been made.

In addition to the heritage impacts the Trust understands that the Project does not deliver appropriate outcomes on a number of other grounds and these include:

- Escalation in costs compared to original estimates
- Socio-economic impacts on local businesses during construction and subsequently with opportunity to support a thriving tourist precinct in future severely compromised
- Little or no flood immunity with no change in flood immunity to the surrounding roads
- Little traffic improvement with growth outstripping the three-lane solution and no change to intersections
- Noise impacts on the parkland are projected to be three times louder than is stipulated in the Government's own Road Noise Policy
- Impacts on pedestrian safety
- Loss of amenity for the community

In conclusion, the Trust is of the opinion that the Project fails to deliver a quality strategic infrastructure, community or planning outcome and it will destroy extremely significant colonial heritage that should be preserved for future generations.

Given the project's obvious shortcomings, the responsible long-term actions should be to:

- (1) repair the 1874 bridge for ongoing local traffic useage;
- (2) cancel the current RMS proposed new bridge through Thompson Square;
- (3) divert the millions currently being spent towards the cost of a bridge outside the historic town; and
- (4) consider the future for the five Macquarie towns in the Hawkesbury holistically to enable a visionary future outcome that preserves and enhances this legacy in an appropriate way.

Yours sincerely,

Alister Sharp
President
Hunters Hill Trust

28 January 2018