

**Submission
No 18**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Ms Carolyn Allen

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The Hon Shayne Mallard MLC

Chair: Inquiry into the Heritage Act 1977

Parliament House

Sydney NSW 2000

Dear Mr Mallard,

I am responding to this Inquiry as a community member passionate about Heritage, but not a professional. I agree with the statement made in the Minister's forward that our heritage deserves to be protected and cherished. My experience as outlined below equips me to contribute to this Inquiry.

In the late 1980's I worked through a community group, Friends of the Baths to raise funds to gain Heritage listing for the Dawn Fraser Baths (DFB). We gained listing on the State Heritage Register, also the National Heritage Register at that time. I served on Leichhardt Council (2004-8) contributing to heritage conservation and planning throughout the Municipality. I have worked to ensure the continued maintenance of the DFB & the maintenance the Archives of the Swimming & Water Polo Club at the Baths & to the more recent rebuild of the Southern pavilion which will ensure this wonderful heritage place can continue to be a special place for sport, recreation & community.

I have been on the committee of the Balmain Association for the past 13 years & we manage & maintain a State Heritage Listed item The Watch House (BWH) on behalf of the National Trust (NSW).

I worked at the Australian National Maritime Museum 2000-2011 in Education & visitor programs where we promoted and preserved Maritime cultural heritage including Shipwrecks & relics.

My experience illustrates that all heritage is local and part of our national heritage. It has shown me that it is local & community activism that is at the very core of protecting and cherishing this heritage. It also has shown me that the government has reduced its commitment to supporting those who work to retain & celebrate our heritage.

Re Terms of Reference

(a) the need for legislative change

The objectives of the Heritage Act are certainly relevant in 2021 but the Act itself is not easily understood and is therefore not meeting the needs of community.

(b) the adequacy of the Act and items in (d) relating to the Discussion Paper.

The Act has been adjusted over time with many parts deleted so it is no longer coherent. The Act is not clear about there being any support or responsibility for local items on the State Heritage Register which are not State Heritage listed, but must meet the criteria established by the Heritage Council. If the aim of the review is to 'activate' (I use as defined in the glossary) heritage the Act needs to be amended to give more resources for local heritage & for conservation areas.

The resources Government allocates to its operation & implementation have declined considerably over the years from my experience.

Composition of the Heritage Council.

The changes to the numbers and composition of the Heritage Council over time illustrate a reduced conviction to the effective implementation of the Act. To be effective the Heritage Council members should predominantly be representatives of relevant organisations.

The list of qualifications, knowledge and skills is too broad as members may have skills in all the areas of development & property, planning, planning or environmental law, property economics yet have NO knowledge or skills of anything related to archaeology, conservation, environmental or cultural heritage. If any members are not representative of a related heritage organisation or group they should have expertise in a number of areas but at least one which is related to actual heritage.

[(d) ii] The need for resources.

There is no longer a well-resourced Heritage Office with skills, knowledge and enthusiasm to assist in any aspect of heritage listing or the development & maintenance of skills needed in the community to restore or conserve places of heritage significance. In my experience with the DFB & BWH this support was more readily available 20 years ago.

With additional resources there would be greater community engagement, 'activation and celebration' of our heritage which is a stated aim of the Review.

The legislation contains strategies which could be used to support individuals, communities & local governments such as tax incentives but these apply only to State Heritage items. Grants are only made for State Heritage Items & in light of current building costs, the less than \$6m in the last reported year is paltry. Without specific support and incentives local heritage will continue to be lost.

A well-resourced Heritage Council / Office would process permits speedily & monitor compliance & enforcement. Currently for locally listed residential properties the monitoring of compliance & approvals for restoration and 'activation' are undertaken by a very small number of experts and local Planning Officers many who lack Heritage knowledge & expertise. This means that local heritage can only really be conserved in areas of high socio economic status & where property is highly priced. This is inequitable as valuable heritage is lost in poorer communities.

The Act makes the Heritage Council responsible for State Heritage listed items. I believe that more than 60% of these items are actually government (or not privately owned). The State Government is not even looking after its own properties. Perhaps this why additional listings are not actually being processed or are taking so long? In my local area, a number of State listed items are within Callan Park & very little is being done to conserve/ restore these items.

The State Treasury through the Heritage Council should support the conservation of our Heritage by financially supporting local councils to offer reduced rates & fees for Development Applications & other fees where private owners of Heritage properties often have to pay for additional reports compared to owners of non- heritage property. Council rates are pegged and Heritage, whilst all being local is more than that in that it belongs to every citizen so must be supported by the State.

(c) how the Act could more effectively intersect with related legislation.

The Act does not state how it interacts with other Acts in any way. We have a number of different Acts but no clear process for determining precedence.

Individuals and groups with more political power or access to finance are able to gain approval for a development seemingly without 'due process'. From observation the Heritage Act can be 'over-ruled' & I am told this happens more frequently in NSW than in Victoria.

Related Acts; The National Parkes & Wildlife Act (1974), the Environmental Planning & Assessment Act (1979) but also the Aboriginal Land Rights Act 1983, the Native Title Act (NSW) 1994 and Threatened Species Conservation Act 1995 are all concerned with our heritage in different ways, from the physical relics & items to places & landscapes. They all use differing terms which is confusing.

These Acts are administered by the portfolio of the Department of Planning Industry & Environment and the Minister of the day appears to have the power to decide which Act takes precedence.

We have seen that by declaring an issue one of 'State Significance' the Acts can be overruled without proper consultation and transparency.

If a development or project is of State Significance there should be a robust process with community consultation where a Heritage item or place is to be compromised. This should most certainly never happen in the case of an unsolicited proposal being made to the Government of the day. This all leads to lack of public trust and undermines our democracy.

Changes to the NP&W Act to improve the processes for Aboriginal Cultural Heritage in NSW have been promised for some time. However, the Draft Aboriginal Cultural Heritage Bill (2018) has yet to be legislated. The Heritage Council does manage the Aboriginal Heritage Information Management System & has an expert committee to advise the Council but how does this interact with the implementation of the NP & W Act?

There is great diversity among Aboriginal groups but the current situation in NSW where a developer can choose a local group to undertake the required consultation must be changed and consultation required through groups representative of all Aboriginal groups concerned.

(d) the issues raised & focus questions posed in the discussion paper

I take issue with the comment in the discussion paper regarding "an increased focus on community-driven strategic planning is not reflected in the heritage system". Local government has no legislative powers, so any adoption of local plans is entirely at the discretion of the Planning Department of the day & Heritage listings of the Heritage Council. In the past 10 years the planning authority of the day has put greater regulation & restrictions on local councils. Whilst some councils may find the prescribed formulaic plans helpful, progressive councils have been knocked back on some elements of their plans, only to have them enforced at a later date.

Many local governments, reflective of their communities have excellent Heritage & objectives and support local historical groups. Many have quite extensive Heritage Conservation Areas which also need support from the State to meet the objectives of the Act.

The Act and legislation is very unclear about the status of local conservation areas in LEps which are approved by the Government. Experience in the Balmain indicates that if an unsympathetic development applications is made, the Land & Environment Court frequently overrule the local decision.

(i) The suggested category approach is not acceptable.

This proposal merely divides State Heritage Listed items into a three-tier hierarchy and attempts to include some items which are not specifically catered for in the current Heritage Act but would be included in the NP& W Act & the Draft Aboriginal Cultural Heritage Bill. Is this a sign that this legislation is not to be pursued but they want to appear to recognise Aboriginal cultural heritage?

Category 2 is very poorly defined. It seems to be 'not quite as important' as Category 1.

Category 3 includes the majority of SHR items & seeks to reduce regulation and increase exemptions. Of the more than 30,000 items on the State Heritage Inventory fewer than 2,000 are in the first 3 categories with the remainder being local heritage left with 'no change from current practice'.

Category 4. With NO changes proposed in relation to the majority of heritage items it is not possible to have a system that 'is modern, effective and reflects best practice heritage conservation, activation & celebration'. This proposal only proposes a reduction in support for items on the SHR.

With other proposed changes to make things 'simpler' or easier we will only see a loss of heritage.

(ii) Consideration of new supports etc.

As indicated, the Review paper does not propose any new supports. An increase in public funds allocated is the only way to show a commitment to Heritage. The Heritage Council membership must include representatives and have sufficient funds to establish expert committees to manage all aspects.

Communities clearly support conservation & restoration as is evident from the majority of heritage listings being in LEPs.

This shows that the people of NSW care about our heritage.

The State should extend land tax incentives to items of local heritage and should subsidize owners for the additional fees that need to be paid to obtain permits for rebuilding & development when a private residence is on the local register. Local Councils should also be given financial support to repair and develop heritage items not on the SHR so that they can be used ('activated') in compatible ways. The State government has starved councils of funds over many years by rate pegging and also by transferring costs (eg funding for fire & emergency services) so there is an obligation to ensure that the Heritage Act and Legislation does support local heritage through additional funding.

In summary, I believe generally that the legislation is no longer serving the objectives of the Act but that the discussion paper in promoting ideas to streamline processes is reducing support for State Heritage Register items and that support must be given to communities for local heritage items if we are to achieve the objectives of the Act and the stated aims of the discussion paper & review.

Yours sincerely

Carolyn Allen