

**Submission
No 22**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Goulburn Mulwaree Council

Date Received: 25 June 2021

Public Exhibition for the Review of NSW Heritage Legislation

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Submission Details

Goulburn Mulwaree Council gives its permission for this submission to be published in full on the web site (including the name and contact details provided in the submission)

Discussion Paper

Goulburn Mulwaree Council is both a land use manager of a large number of heritage items and conservation areas (which include Goulburn which is Australia's first inland city), but is also the owner of a number of heritage properties. Heritage land use management is a key area of focus in Council's *Local Strategic Planning Statement* which includes a vision for 2040 as follows:

"Goulburn Mulwaree's cultural heritage is conserved, actively adapted for use (where appropriate) and celebrated."

Accordingly, Council is supportive of a review of the *NSW Heritage Act, 1977* and other subordinate policies and procedures which may invigorate the heritage management system, investment and interest in heritage, and thereby lead to greater adaptive reuse of heritage items and places.

General Comments

The following points are raised in addition to the matters raised for discussion in the focus questions:

- There could be a greater role for the NSW Department of Public Works in employing additional tradespeople with heritage experience and offering apprenticeships for heritage trades. As an alternative to grants (where people have to find a tradesperson), the option of engaging the Department of Public Works at a subsidised rate to undertake the works would be provided.
- Similar to Section 8.2A of the NSW Environmental Planning and Assessment Act a review /mediation process could be added to the Act to manage refusal of applications and disagreement concerning listings. In addition to an appeal to the Minister or Court (as per current Section 70 – 74 provisions).
- Interim Heritage Order (IHO) provisions (and delegations to councils for IHOs) in relation to the definition of "harm" needs to be more refined/reviewed. Basically councils cannot issue an IHO if there is an approval to cause any "harm" to the item in place. The definition of

harm is quite broad and may include subdivision even if no specific harm is caused to buildings etc. The definition of harm in relation to IHO's should be less expansive, otherwise an IHO cannot be issued on anything with a development consent of CDC (as per the delegations).

- There is capacity to expand on the role of conservation management plans (or other relevant heritage management documentation) in terms of directing compliance activity, grants and planning controls. If these documents are tailored to specifically align with planning and grant requirements to detail what features must be retained (and to what standard) and what features may be removed, this eliminates much of the doubt and uncertainty that comes with adaptive reuse and heritage management. A heritage listed building with an approved conservation management plan prepared in this manner would give the property owner the certainty they need to confidently proceed through the planning system and invest in any adaptive reuse proposal that is consistent with the plan whilst simultaneously also holding the property owner to account on what is considered acceptable maintenance if capacity to enforce such plans is given under the Act. The property owner may then use this same plan to support local or state heritage grant applications.

The preparation of these kinds of conservation management plans could be encouraged by prioritising grants to items that have this level of documentation and be enforced through either planning requirements or compliance action applicable under the *Heritage Act, Environmental Planning and Assessment Act 1979* or the relevant Local Environmental Plan for local items. Guidance material and financial support should also be made available for the preparation of such documentation, with the former to be given weight under the applicable Act. There may also be the capacity to allow these conservation management plans to have site specific exemptions to requiring a heritage permit for identified activities if given power under the relevant legislation.

Focus Question 1: What should be the composition, skills and qualities of the Heritage Council of NSW?

The current composition, skills and qualities of the Heritage Council of NSW is quite broad and is considered to be generally an appropriate reflection of the relevant interest groups/stakeholders. However, a specific position should be made available for Aboriginal representatives from each of the relevant areas when *specific items* are discussed and generally from the NSW Aboriginal Land Council.

Focus Question 2: How should Aboriginal Cultural Heritage be acknowledged and considered within the Heritage Act?

The Act should recognise all cultural heritage including specifically Aboriginal cultural heritage. It would be appropriate to have a specific Act in relation to Aboriginal cultural heritage as it would potentially have quite different matters of consideration in terms of consultation, listing, mapping, and management to the treatment of European/Migrant cultural heritage.

Some Acts have a clear relationship with each other and defer to each other on some matters such as definitions, approvals etc. The revised Heritage Act could incorporate relationship provisions with a separate Aboriginal Cultural heritage Act.

As a separate matter for consideration, it has also been noticed by Council that current NSW Aboriginal Cultural heritage planning controls and guidelines are in need of modernisation. For example, there is no formal guidance as to what level of Aboriginal Cultural assessment is required for planning proposals (despite expectations by former OEH that this should occur – particularly for planning proposals). There is also no formal requirement for consulting with the Aboriginal community when undertaking an Aboriginal Cultural Due Diligence Assessment in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*, which substantially limits the suitability of such assessments in the consideration of most planning decisions.

Improved State agency guidelines on the provision of Aboriginal Due Diligence Assessments versus Aboriginal Cultural Heritage Assessment in relation to planning proposals would also be useful. These guidelines should be developed in consultation with councils.

Given the above, it would be appropriate to undertake a separate comprehensive review of Aboriginal Cultural heritage planning regulation and policy.

Focus Question 3: Are the objectives of the Heritage Act still relevant?

The objects could be broadened i.e. (g) *to assist owners with the conservation and management of items of State heritage significance.*

Also a new object in relation to the Acts interpretation with other legislation i.e. this is not a “stand alone” matter but all of government approach to heritage management.

Focus Question 4: Does the Act adequately reflect the expectations of the contemporary NSW community?

People from all cultures and backgrounds enjoy and value the wealth and range of heritage in NSW. Heritage is not limited to any one cultural group and provides a uniqueness and sense of place that we all value.

The Act does meet the expectations of the community in relation to identifying and protecting European/Migrant heritage (but not obviously in relation to Aboriginal cultural heritage). However, there is a gap in the community’s understanding in relation to the:

- importance of significance versus “aesthetics” – often the community is more interested in the aesthetic, which in some cases may be a reasonable outcome;
- relative levels of authority between State and local listing in LEPs;
- authority for the State to ensure/require reuse of a building (beyond the minimum standards of maintenance and repair); and
- the actual level of regulation (due to limited number of compliance staff) to enforce minimum standards of maintenance and repair under the Heritage Act.

The Goulburn Mulwaree LGA has a number of large and prominent heritage sites on the SHR and/or locally listed which are currently vacant and subject to potential or ongoing vandalism or decline to being unoccupied. Demolition by neglect is prevalent and is a significant cause of community concern. In addition

to this, owners who are not willing to undertake redevelopment/maintenance in a timely manner are also sometimes unwilling to sell the properties to other parties who may be willing to undertake the work. This is an issue in itself as the community may be keen to undertake action to save buildings/places but can be held to ransom when trying to purchase neglected sites.

The ownership of State and local heritage items is difficult as:

- the standard for conservation works when development applications are lodged is very high;
- factors such as accessibility and fire safety become considerably more difficult to deal with;
- finding suitably qualified tradespeople to undertake repairs (and materials for some repairs) can be difficult;
- tenants may be limited in respect to advertising and other minor changes etc.; and
- the relative building costs are higher than a new build and insurance is more expensive.

There are properties for which adaption and reuse is almost unfeasible due to requirements to achieve the absolute highest standards for conservation. There needs to be greater understanding in assessment of applications/or considerations in relation to feasibility and likely outcomes.

There needs to be greater acceptance that sometimes the ideal result cannot be achieved and that for development to occur that compromises are negotiated. This is particularly the case for very large heritage properties (where expense is vast) or very small properties where options to address fire or access regulations are limited.

State listed heritage items should be restored with a conservation management plan in place before being sold to another party. There are a number of large scale properties where they are simply left due to the complexities of development and scale of the cost of redevelopment. The State could work closely with local communities to ensure the best outcomes similar to the approach taken in Case Study C in relation to Working Heritage, Victoria.

Focus Question 5: How can the NSW Government legislation better incentivise the ownership, activation and adaptive reuse of heritage?

Generally *the Environmental Planning and Assessment Act, 1979* already provides a pathway through Clause 5.10(10) of the Standard local environmental plan (LEP) Template for the consideration of otherwise prohibited land uses in relation to heritage listed properties. Older LEPs sometimes used to include a reduction in car parking as an incentive (which would be also useful) in addition to transferable floor space schemes (which apart from the City of Sydney have largely been phased out). The reason being that many heritage buildings no longer sit on a large parcel of land and if redeveloped cannot comply with Council development control plan (DCP) requirements for car parking provision. For commercial buildings in CBD areas, this also adds another significant disincentive for redevelopment.

The greater problem is the interaction with Commonwealth legislation/policy such as the Building Code of Australia and Premises Code. Fire and access issues are two of the biggest hurdles when adaptively reusing a heritage building.

Focus Question 6: How can we improve incentives within the taxation system to help mitigate the cost of private heritage ownership?

Broaden tax concessions to include removing/reducing stamp duty on SHR listed properties.

Goulburn Mulwaree Council has included an exemption in its *Local Infrastructure Contributions Plan 2021* for the adaptive reuse of heritage items to act as an incentive.

Insurance is a major hurdle for many owners of heritage even for non LEP items located in a heritage conservation area (HCA). There could be a government led scheme for the insurance of heritage properties.

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

Further tax incentives around the ownership/purchase/GST of heritage items (with a view to adaptive reuse) by superannuation funds would be fantastic. Some of the properties are very large and require substantial amounts of capital investment (which can be hard to obtain finance for). No/low interest loans to superfunds for adaptive reuse with a targeted campaign aimed at super funds could be a good way to inject capital into sites which are otherwise seen to be too difficult (for lending authorities as well as smaller companies/individuals).

Broadening the Commonwealth Government's Cultural Gifts Program to include the purchase and maintenance of heritage items would be supported.

The introduction of a Heritage Enterprise Grants scheme would also be supported.

Heritage lottery for the funding of heritage maintenance projects/increased grants for SHR items.

Focus Question 8: How could tailored heritage protections enhance heritage conservation?

There is a diverse range of properties and areas/landscapes which are listed in the SHR. There are exemptions which can be included in listings for specific properties and based on conservation management plan (CMP) where they exist.

It is not clear that the range of categories in the Discussion Paper adequately identifies all situations. It would actually be a huge undertaking to work through the existing SHR list to ensure items are placed in the appropriate category and to then tailor the appropriate controls.

There are recently reviewed standard exemptions for SHR listed properties also.

Category 3 seems a bit simplistic and effectively mirrors the existing framework which includes the standard exemptions? Greater use of CMPs for the identification of agreed areas of change could be pursued. Where agreement is achieved this could negate the need for further approvals under the Heritage Act if consistency with a CMP is demonstrated. Council Heritage Advisors could oversee compliance with the CMP.

The main issue for most SHR properties is often the cost of preparing a suitable CMP which is sufficiently detailed to base specific exemptions on. The existing process would work better if greater funding was provided to the preparation of CMPs. Also, owners often do not fully understand the benefits of a CMP compared to the cost – so some education around this may also be required.

The other issue is the extensive nature of CMPs versus a “conservation policy”. Conservation policies can be a lot cheaper to produce and could also form the basis of exemptions. Greater attention could be placed on this issue rather than introducing categories?

Refer to the above comments (Focus Question 8).

Focus Question 9: How should heritage items that are residential properties be accommodated under a proposed category scheme?

A key distinction that should be made in any high level categorisation system should be the relevance of the heritage listing to internal features/layout, where it is not readily visible from the streetscape. This is especially useful in circumstances where significant remodelling of the internal layout of the structure is required to meet current building standards or better accommodate adaptive reuse, as it will allow any item owner or prospective developer to proceed with confidence without necessarily needing to undertake an exhaustive heritage impact statement if major exterior modifications are not required. Where information justifying such a categorisation is lacking, there should be the capacity to specify that this is subject to further assessment.

It is hard to get the greater community to engage with the listing process (or planning generally). Typically the community becomes more engaged when a development application proposing demolition is advertised.

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

In the past there have been drives for nominations of items for SHR listing using the current Act provisions (ICONS Project). Effectively due to the high bar for SHR listing, Heritage NSW is not sufficiently resourced to actually undertake a large number of listings at the same time.

This process could be better integrated with the NSW *Environmental Planning and Assessment Act*, and local environmental plan (LEP) listings. For instance, a Council could nominate an item as being State in the LEP and if sufficient justification is provided to meet the criteria (and concurrence is issued by the Heritage Council) that new items could be added in this manner?

Council could assist in reviewing the current SHR listings for its area with Heritage NSW to identify items which may not be of State significance (noting some of these came from the s170 register).

Focus Question 11: Would streamlining enhance the listing process?

As per the comments above (Focus Question 10), streamlining the listing process with the *Environmental Planning and Assessment Act, 1979* would be a potential way of having proactive review. Council constantly has to review/update its LEP list with new items and housekeeping amendments.

Councils are often well placed to understand the relative significance of certain items in their areas. This is reflected in the provisions of the current *Heritage Act* (Section 166). However, councils can only refer matters rather than process applications under the planning provisions.

Council also provides updates on changes to property descriptions etc. to Heritage NSW for SHR maintenance. Occasionally de-listing would be warranted but this should be limited to obvious situations where listing is clearly no longer appropriate and should not be a means of removing items for political or economic expedience. Delegation to the Heritage Council could be provided for an abridged version of delisting of items given certain criteria?

Focus Question 12:
How could we improve the current approval permit system?

The focus should potentially be on having agreements in place concerning individual/site conservation policies which could provide a clear understanding of the extent to which change on any given site can occur. A “yes if” approach cannot really happen unless there is some understanding of both significance and situational context/feasibility.

As previous stated in this submission the standard for CMPs is set relatively high and is very expensive and is an area which should be reviewed.

Focus Question 13: Are the current determination criteria for heritage permits still appropriate?

Section 62 of the Heritage Act is fairly broad in its considerations in determining applications (particularly S.62 (1)(d)). This could include feasibility/economic considerations.

Focus Question 14:
How could we improve heritage consideration within land use planning systems?

Refer to previous comments (Focus Questions 10 &11).

Heritage is already a fundamental consideration in the land use planning process as reflected in the *Environmental Planning and Assessment Act* (and subservient policies/ environmental planning instruments such as: Ministerial Directions, State Environmental Planning Policies, Regional Plans, Local Strategic Planning Statements, Local Environmental Plans, and Development Control Plans). It is not clear how much more it could be added to land use planning?

Most councils engage either a heritage planner or consultant heritage expert to inform local heritage management. In addition to this most councils would be involved in the State’s Local Heritage Grant program and potentially also fund Main Street Grants.

Councils regularly engage with local historical groups and Local Aboriginal Land Councils as a [art of strategic planning processes.

Additional State funding of local heritage studies/reviews would always be welcome.

Focus Question 15: Are there opportunities to enhance consideration of heritage at the strategic level?

Refer to the above comments (Focus Question 14).

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

Greater resourcing is required for the provision of compliance/enforcement staff. There are too many items all over NSW with too few regulatory staff to inspect. Compliance has to be priority based given current resourcing which effectively means responding to compliance matters raised by the public, councils etc. Ideally there should be sufficient staff for a rolling program of site inspections and checks before damage gets to the point where it becomes unfeasible to repair. Council also does not have the capacity to act in a compliance role for these matters.

The reform proposal identified in the Discussion Paper to introduce a series of intermediate enforcement powers to allow heritage regulators to take a graduated and proportionate response to noncompliance would be of assistance, however, increased resources are still required to facilitate this

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

It is hard to compete for attention in our society, often with heritage the need to engage in the system is driven by legislative requirements. Therefore, heritage interaction for many people is reactive rather than proactive (unless you are a member of a local history group, National Trust, etc.).

Entertainment may be an area that could be expanded upon, such as the production of television content that looks at this area similar to “Grand Designs” or “Restoration Australia” but has more of a focus on history, values and various works/methods to adapt items. Grand designs is often too focused on dwelling adaptations (and tries to use any “controversy” to spice up interest). A series on regionally significant items and improvements would be good and could be used by schools, libraries etc.?

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

A Heritage Tourism Strategy would be a good first step as per the SA Heritage Tourism Strategy example.

As per the above comment (Focus Question 17) using the entertainment section, running a heritage campaign in Sydney Weekender for NSW in conjunction with the National Trust’s Heritage Week Festival etc.? Possibly assist funding for local heritage festivals?
