

**Submission  
No 33**

## **INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977**

**Organisation:** EJE Architecture - EJE Heritage

**Date Received:** 25 June 2021

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Standing Committee on Social Issues  
Parliament House  
6 Macquarie Street  
SYDNEY NSW 2000

**ATTENTION: The Chair, Standing Committee on Social Issues**

Dear Sir,

**RE: Submissions regarding the Review of the Heritage Act 1977**

Thank you for the opportunity to contribute to the revision of the Heritage Act. We write to share our experiences of complying with the Heritage Act through both personal experience since the 1980s and through observing other people's experiences with it also.

This correspondence has been contributed to by the EJE Heritage team of staff:

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We have responded to the discussion questions and include those observations and opinions below.

## SECTION 2. PURPOSE OF THE HERITAGE ACT

### Focus Question 1

*What should be the composition, skills and qualities of the Heritage Council?*

We believe the composition, skills and qualities of the Heritage Council should reflect the four values of significance recognised by the Heritage Act, with each value being represented in discussion and assessments by at least two but no more than three representatives: i.e.

- Historical significance – to be represented by historians and archaeologists
- Aesthetic significance – to be represented by architects, artists and designers
- Research/technical significance – to be represented by engineers and scientists
- Social significance – to be represented by sociologists, curators and archivists

In this way and by this number, each aspect of an item or potential item can be assessed accurately but not get bogged down.

### Focus Question 2

*How should Aboriginal Cultural Heritage be acknowledged and considered within the Heritage Act?*

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It should be given equal weight to European Heritage but preferably with a separate Council who is better able to understand and assess the issues. The two Councils would meet separately but come together for joint sittings over combined issues.

**Focus Question 3**

*Are the objectives of the Heritage Act still relevant?*

We believe that the objectives of the Heritage Act are still relevant and even admirable. We acknowledge through experience that it is the mechanisms through which the Act is applied that can be cumbersome, overly bureaucratic and at times political to the detriment of an item or the objectives of the Act.

**Focus Question 4**

*Does the Act adequately reflect the expectations of the contemporary NSW community?*

The Act itself is still relevant and its aims and objectives are still correct for what the community expects. It is the mechanisms under which the Act operates that fail the expectations in that items of cultural significance to the community sometimes fail to be protected in deference to loud protestations of individual landowners.

**SECTION 3. ACTIVATING OUR HERITAGE**

**Focus Question 5**

*How can the NSW Government Legislation better incentivise the ownership, activation and conservation of heritage through commercial and philanthropic investment?*

Assistance is the most important factor; be that financial assistance through grants or tax breaks; or practical assistance with resources such as specialist consultants or trades so that minimum standards of maintenance can be more easily adhered to.

**Focus Question 6**

*How can we improve incentives within the taxation system to help mitigate the cost of private heritage ownership?*

Assistance could be provided dollar-for-dollar for consultants with greater assistance rates for trades and building works.

**Focus Question 7**

*What sort of initiatives might encourage activation and conservation of heritage through commercial and philanthropic investment?*

Tax incentives as mentioned above, but also the encouragement of pursuing reuse options.

**SECTION 4. HERITAGE IDENTIFICATION AND LISTING**

Sections 4 and 5 are where in our experience we regularly see problems and difficulties arise. A large portion of it manifests like a disconnect between the State Heritage protections and the Local Heritage protections. This results in a breakdown in the process of updating the Heritage Schedules at both local and state levels and the loss of places which deserve protection.

The answer we see to this issue is a dual process we will describe as “Top-down & Bottom-up”.

In the Top-down part of the process; State Heritage defines the terms, themes and current heritage initiatives for Local Heritage to follow and act upon. E.g. the 2014 study into Modernism in NSW followed by the push to list worthy examples of modernist and brutalist buildings which has recently been acted upon by the City of Sydney. NSW Heritage should be able to compel the Local Government Areas to act upon the recommendations of such initiatives and update their LEP schedules with worthy examples befitting the theme.

In the Bottom-up part of the process; Local Heritage Officers undertake the research and update of heritage schedules and heritage inventory using the available local resources so that the groundwork is already written and properly referenced for the State Heritage Office if they need to refer to it. The Local Officers, which should consist of at least one full time employee for each LGA, would need to follow the lead on the State theme so that relevant examples in their LGA if they exist are protected also. The Bottom-up process should also be established as the means for Heritage Identification and listing through nominations. The logical process of heritage listing would benefit from following the steps below:

1. A place is considered Contributory (if it is in a Heritage Conservation Area)
2. A place is listed as being of Local Significance
3. A listed place is elevated to State Significance

If this is implemented, the State Heritage Office will be able to oversee the future direction of heritage in NSW and administer the items upon the State Heritage Register while the local heritage contributes to support the State Office through the identification, documentation of heritage in their area which in turn can escalate to State nomination for exceptional examples.

The current situation which allows anyone to nominate an item for the State Heritage Register fails because a number of nominated places do not even have Local significance when they are nominated, the research needs to be commenced from scratch, and if the item is determined to not be of State significance, but is of Local significance, there is no recourse which compels the Local Council to list it in their LEP Schedule.

We have seen this very situation recently in a number of places with varying results: Sirius, Lindfield Learning, The Binishell Collection, MLC North Sydney, Robb College. An example which currently affects EJE Heritage is the City of Newcastle former City Administration Centre which is being considered by the Heritage Council for State listing when it is not a Local Heritage item in the Newcastle LEP 2012 and is not even considered to be a contributory item in the City Centre Heritage Conservation Area under their current documentation. Of the buildings mentioned above, some have gained State protection while others, despite demonstrating clear and obvious significance and eliciting substantial campaigns for their conservation, have been rejected by the State department and remain unlikely to receive local protection either.

Heritage is sure to be lost if this separation of State and Local heritage remains as such an apparent rift.

### Focus Question 8

*How could tailored heritage protections enhance heritage conservation?*

If the significance of an item was sufficiently documented in the State Heritage Inventory to the point that examples of what acceptable on non-acceptable development might look like for an individual site, would allow a better understanding for investors in a site prior to financial decisions could be made.

As well as general exemptions, site specific exemptions which are informed by the significance of the item will also demystify what conservation options might be available.

Development guidelines could be included in the 'Management Recommendations' section of each listing. Site specific exemptions listed similarly. Conservation Policies of endorsed CMPs might also be included in the Management Recommendations.

### Focus Question 9

*How should heritage items that are residential properties be accommodated under a proposed category scheme?*

This again needs to be spelled out in the Analysis of Significance and Statement of Significance. A blanket rule would not be appropriate. If a residential house is significant for being especially intact; then proposing major renovations internal or external is going to be impactful. If a house is designed by an important designer who has designed bespoke joinery including kitchens and bathrooms to match the style of the house, then replacing kitchens and bathrooms to suit the owners' differing tastes would also be impactful. Listings which

sufficiently analyse and describe significance and what is or is not acceptable in the conservation of the item could be vital even for residential properties.

## SECTION 5. STREAMLINING THE HERITAGE PROCESS

### Focus Question 10

*Would greater community engagement deliver a more robust State Heritage Register?*

Yes, criteria a and d would especially be better analysed through community engagement. The State Heritage Inventory which lists all the items of local significance would greatly benefit from the locally based Heritage Officers keeping the Inventory up to date making it the robust resource it needs to be to be able to make conservation decisions.

### Focus Question 11

*Would streamlining enhance the listing process?*

The Top-down & Bottom-up process described above would greatly enhance the listing process as information gained from local sources would be much more readily available to inform the State and the State would ensure that the Local Authorities are keeping pace with the decisions made at higher levels.

The discussion paper mentions the difficulty of amending existing listings on the State Heritage Register. The lodgement of Section 60 Applications are an easy way to identify when listings need to be updated. Simple items such as boundary changes and the subtle changes they may make to curtilages need not be so difficult to keep track of in the register.

It would be essential that LEP Heritage Schedules be updated more regularly than they are currently. The current situation results in many items being included in the Heritage Schedule without thorough research, many places of significance being lost before protection can be assigned to them, and a number of items which are demolished for one reason or another remaining on the schedule long after they are gone thus unnecessarily increasing difficulties for any action by subsequent owners.

### Focus Question 12

*How could we improve the current approval permit system?*

A speeding up of the process would certainly be helpful. A speeding up would be possible if as we have suggested above, accurate information about the item is already contained in the listing along with management recommendations, guidelines for acceptable forms of development, and site-specific exemptions. The local Heritage Officers would be carrying out the bulk of this information gathering.

In some Councils, the local Heritage Officer is only available on a very limited time basis which slows and stalls process. Some assistance from the State may be needed or advantageous to enable the provision full time Heritage Officers. This would enable the information to be gathered as mentioned above and be expedient when applications are submitted.

Another speed-up could be achieved if the process of integrated development through the local Council would also procure the Section 60 consent in the same process.

### Focus Question 13

*Are the current determination criteria for heritage permits still appropriate?*

It is not necessarily a bad thing that there is extra rigmarole around seeking consent to alter an item on the State Heritage Register as it means an extra level of consideration and determination by the property owner is warranted before making an application. Confusion and uncertainty about options and outcomes however are not desirable and thus having accurate listings and relevant management recommendations will be invaluable in both the consideration and determination of an application by the Heritage Council or its delegate.

#### Focus Question 14

*How could we improve heritage consideration within land use planning systems?*

The discussion paper mentions disconnections between the EP&A Act and the Heritage Act which have occurred through progressive revisions. These two Acts need to be realigned to rectify this situation. The two Acts should be revised at similar intervals so the two are considered together.

In a similar way, there should be better mechanisms in place between the Heritage Act and the National Construction Code and the Disability Discrimination Act so that synergies and consistencies are in place to deal with common situations.

#### Focus Question 15

*Are there opportunities to enhance consideration of heritage at the strategic level?*

Yes. Councils are under increasing pressure to increase density and commercial opportunity. Rezoning and redefinition of permissible uses in zonings occur. This should be considered in tandem with the creation of conservation areas i.e. quintessential parts of the LGAs in question which define the history or community of that area. This was achieved reasonably well during the recent Council amalgamations and boundary adjustments that saw a large portion of Epping shift from Hornsby Shire to the City of Parramatta. The CBD of Epping was radically densified and height limits raised, but a number of new conservation areas were created to ensure some of the best examples of the residential character of Epping were conserved.

Again as mentioned above in the top-down process, the Heritage Department at State level should specify policy and direction for local Council Strategic Planners and Heritage Officers to act upon when considering their futures.

#### Focus Question 16

*How could heritage compliance and enforcement be improved?*

Fines and / or executive orders to comply may indeed be a good incentive to enforce compliance, however a non-conformance may well come down to an economic deficiency. There needs to be a proper understanding of a property owner's situation and financial assistance offered where necessary to enable compliance.

### SECTION 6. HERITAGE PROMOTION AND ENGAGEMENT

#### Focus Question 17

*How could understanding of state heritage be enhanced?*

Knowledge of the significance of items needs to be available and it needs to be understandable by lay people. Community engagement as discussed above may assist in raising awareness of the significance of items as well as gather information about them.

#### Focus Question 18

*How could we improve heritage tourism or help activate heritage places for tourism?*

Adaptive reuse needs to be encouraged and made achievable commensurate with the significance and management of the item. Interpretation of that significance needs to be included in development.

#### Focus Question 19

*How could public heritage buildings be activated to meet the needs of communities?*

Fostering a use for public heritage buildings is absolutely critical to their activation to meet the needs of the community. Reuse initiatives need to be authentic to the area and to the specifics of the item to which they are applied. Reuse options should also be pragmatic, so that there is a variety in what might be available and not every item is turned into a museum or gallery or coffee shop. Financial viability of reuse options also needs to be a consideration so that the

use can be sustained and not result in the building becoming redundant again and another redevelopment considered.

Practically speaking, if a public heritage building on the State Heritage Register remains without a use for an extended period e.g. five years; its listing in the SHR should be reviewed and reconsidered perhaps resulting in removal from the Register (though remain on an LEP Schedule.)

**Conclusion**

We thank you again for this opportunity to contribute to the revision of the Heritage Act. We believe that this process will benefit the heritage of NSW, its owners and the professionals and tradespeople who are striving to conserve it.

Yours faithfully  
**EJE HERITAGE**

Barney Collins  
Director