

**Submission
No 44**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Double Bay Residents' Association Inc

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Double Bay Residents' Association

Protecting Sydney's Stylish Bayside Village

Re. Submission to the Standing Committee on Social Issues Review of the Heritage Act 1977

The Double Bay Residents' Association (the Association) advocates on behalf of its 300 members. It is the most active residents' association in the Woollahra Council area and regularly takes an interest in heritage-related issues.

Given the pace of development in recent years, the Association is concerned that Double Bay is at risk of losing too much of its heritage. Double Bay's low-rise character-rich buildings very much contribute to the area's highly sought after and unique village-like ambience. What's left of its heritage urgently needs protection.

With respect to the focus questions in the Discussion Paper of the Review of the Heritage Act, we have framed most of our comments/recommendations under "Focus Question 3: Are the objectives of the Heritage Act still relevant?" Most of the focus questions asked in the Discussion Paper invite comment on how the Heritage Act is meeting its still very important and relevant objectives.

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

- The Heritage Act was first introduced in 1977 in response to widespread community concern that heritage was coming under increasing threat from overdevelopment.
- **Unfortunately, despite all the new protections afforded by the Act, today too much of the state's heritage is still under threat.** This is especially the case for inner-city local government areas like Woollahra where the state government is imposing unrealistically high new dwelling targets on already highly densely populated areas.
- **Too much of the new development in Double Bay, for example, is ruining the ambience of its heritage and character-rich streets.** By way of example, a developer is appealing approval conditions to reduce the scale and bulk of an apartment building imposed by the Local Planning Panel partly to protect the health and ambience of the neighbouring state heritage listed Overthorpe gardens on New South Head Road. Developers should not be allowed to challenge conditions designed to protect heritage listings.

Whilst the objectives of the Act are still relevant, some objects need to be strengthened. Many of the processes in place to meet the following objectives should also be better designed and resourced. For example:

(b) to encourage the conservation of the State's heritage

- **Even relatively well-off local councils like Woollahra don't have the resources to properly identify and assess items for heritage protection.** The state government needs to provide councils with additional funding so they can employ more council officers with expert heritage knowledge and experience. Too much reliance on heritage consultants is risky because they bring varying levels of expertise and often work alternatively for two masters: developers and the council; a situation that carries a potential conflict of interest risk.
- **Heritage audits should be a prerequisite for the development of new strategic planning proposals, especially if councils are planning to upzone areas for more density.** The Double Bay Residents' Association recently fought plans for the premature release of a new draft planning strategy for the Double Bay centre in part because the plans failed to adequately protect the heritage, village-like ambience of the area and did not identify enough buildings that should be eligible for heritage/character listings.

(c) to provide for the identification and registration of items of State heritage significance

- **In some areas of the Woollahra municipality, "heritage conservation areas" have worked well to protect the heritage and character of the local area.** This umbrella approach is effective because:
 - it manages owners' expectations about what they can or cannot do with their property,
 - is less taxing on council resources because time does not have to be spent individually assessing every building in the area, and
 - ensures that the look and feel of an area are preserved in perpetuity.
- **The criteria for listing heritage conservation areas should be relaxed to allow for more areas of local character to be eligible for protection against inappropriate development.**
- **The process of listing heritage items at state and local levels is too bureaucratic, prescriptive and takes too long.** In recent years, Woollahra Council's resources have been stretched by a plethora of development applications in R3 medium density areas, where developers are keen to knock down original single dwelling houses and replace them with apartment buildings. Often this creates a situation where development applications (DAs) are received on properties that are potential candidates for heritage or local

character listings before Council has had time to properly assess their eligibility.

- **Woollahra Council and other local government areas need urgent resources to add new items to the heritage and local character lists as soon as possible and before new strategic plans are developed.** Once developers receive word of plans to upzone areas for more density they will likely strongly resist efforts to have their properties added to the heritage list.
- **Woollahra Council's development controls identify "character" buildings in Double Bay and other areas, but these buildings are not afforded protection against demolition.** Recently, for example, a developer lodged a DA to knock down and replace a well preserved circa 1905 Victorian terrace on Bay Street, Double Bay. Whilst the local planning panel refused the DA for a replacement 5 storey apartment building, the fate of the building is still at risk even though it's listed in the DCP as a character building. The regulations need to be strengthened so that character buildings can be protected from demolition. In time, they are likely to become worthy of the more formal heritage listing.
- **Community-based heritage societies and committees need to be funded by the government, and actively consulted by councils.** This type of initiative will also help to speed up listings and ensure that important buildings and sites are not overlooked.

(d) to provide for the interim protection of items of State heritage significance

- **Interim protection orders are important but the process is often fraught because developers will typically fight the listings if they have lodged or intend to lodge a DA.** Also, sometimes the Department of Planning, Industry & Environment (DPIE) or the Court will effectively weaken or nullify an interim protection order by including a "savings provision" in condition consents for heritage listings. This was the case for the [Uniting Church and Wesley Hall](#) in Rose Bay; both of which are now being wholly or partially demolished even though the DPIE accepted Council's Planning Proposal to heritage list the adjoining buildings. These types of loopholes in the law need to be removed.

(e) to encourage the adaptive reuse of items of State heritage significance,

- **As mentioned in the Discussion Paper for the Review, the New York heritage framework, which protects private**

residential building exteriors while allowing the updating and remodelling of their interiors, is a model that could be used to protect the facades or exteriors of more heritage and character buildings; thus preserving the look of the streetscape and the overall heritage character of the area.

Recently, Woollahra Council rejected a nomination for a heritage listing of a Federation house on Newcastle Street in Rose Bay because the Heritage Officer claimed it didn't meet the threshold for a heritage listing. This assessment was made despite the fact that the facade of the building facing the streetscape is completely original, suggesting that criteria for listing heritage items is too onerous? This house will now likely be demolished to make way for a Seniors SEPP four-storey apartment building, thus further robbing the street of the little that's left of its local/heritage character.

- The Government, however, must not lose sight of the heritage conservation principles articulated in the Burra Charter with respect to adaptation (Article 21):
 - 21.1 Adaptation is acceptable only where the adaptation has minimal impact on the cultural significance of the place.
 - 21.2 Adaptation should involve minimal change to significant fabric, achieved only after considering alternatives.
- Too often the ambience of heritage-listed buildings is suffocated by insensitive surrounding new developments.

(f) to constitute the Heritage Council of New South Wales and confer on it functions relating to the State's heritage

- Community and local government representation on the Heritage Council of NSW should be mandatory.
- The Minister for Heritage should also be bound by the recommendations of the Heritage Council, especially if they are well supported by the community.

(g) to assist owners with the conservation of items of State heritage significance

- As highlighted in the Discussion Paper, in its current form the Act makes broad provisions for financial and other assistance to heritage owners. But these provisions are either not well known or difficult for both councils and owners to navigate.

- Benefits such as grants, interest-free loans through the Heritage Incentive Fund, and relief from stamp duty, land tax and council rates for heritage-listed items need to be more widely publicised and better utilised by the state government, local councils and individuals.
- Owners should be encouraged to nominate their properties for heritage listing and not be afraid of the additional cost burdens of restoring heritage buildings, especially if the current system is improved to provide good advice and generous financial incentives. In all likelihood, a heritage listing will increase property prices in the area by improving its aesthetics and liveability, eg. maintaining a predominately lowrise area that maintains a healthy amount of tree cover and open space. A Productivity Commission study, for example, found that [in parts of Sydney's north shore, a heritage listing can add 12% to a home's market value.](#)

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

- **Community voices need to be empowered at the local level. Community groups too often operate as lone voices and are not well resourced.** The Woollahra Heritage Society, for example, recently folded.
- **Heritage advisory committees composed of local community representatives should be a mandatory requirement of all councils.** Their advice should be respected and incorporated into the decision making process, especially during the strategic planning process when heritage considerations should be placed front and centre in order to ensure good outcomes.

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

- The Association is concerned that the Discussion Paper's proposal to introduce "a series of intermediate enforcement powers to allow heritage regulators to take a graduated and proportionate response to non-compliance" could potentially weaken heritage protections.
- Whilst the Association would welcome moves "to give Heritage NSW the ability to gather sufficient evidence to prove an offence, along with the ability to issue penalty or infringement notices," enforcement penalties should be strengthened so they act as an appropriate deterrent with or without the threat of "expensive and uncertain court action."
- Unfortunately, the Association is aware of examples of developers deliberately removing or neglecting to maintain the heritage features of their properties in order to avoid a potential interim heritage protection order. In one

case, a developer was investigated for arson because the historic house inexplicably burned down.

- Typically, monetary penalties are irrelevant to a developer because the cost of a potential fine for heritage destruction is built into the price of the redevelopment.
- The Association recommends that in cases of suspected deliberate neglect or destruction, compliance procedures are strengthened. A developer should be compelled to restore the heritage aspects of the building before a DA proposing a substantial redevelopment and/or demolition is assessed by the local council. These types of harsh measures are in line with community expectations that proper assessments of buildings with heritage value are made before DAs are considered.
- Developers who deliberately destroy heritage-listed buildings or buildings that are candidates for interim heritage protection orders should not be allowed to redevelop the site. The site should be seized by the council for community use, preferably open space. Only harsh deterrents will protect what's left of Sydney's heritage.
- The use of powers to suspend/revoke approvals where a breach has been discovered should also be strengthened. Councils and/or Heritage NSW should have the ability to delay or stop a development from progressing if heritage orders/conditions are breached. The building/site should have to be repaired/restored before construction work can recommence.

Thank you again for the opportunity to comment on this important and timely review of the Heritage Act. We would welcome an opportunity to speak with members of the Review Committee about our concerns. In the meantime, if you have any questions or need additional information, please don't hesitate to get in touch.

Anthony Tregoning
President
Double Bay Residents' Association