

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Anglican Church Property Trust Diocese of Sydney

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Standing Committee on Social Issues

Dear Committee Members,

Heritage Act 2013 – Discussion Paper Response

The Anglican Church Property Trust Diocese of Sydney (ACPT) is the trustee owner of NSW listed heritage items across twenty sites. The items are primarily churches, but also include cemeteries, pipe organs, residences and stables. Each item is held in trust for a parish, whose wardens have the responsibility for ensuring that they are maintained. In most cases the listed buildings are working properties, where congregations meet regularly, or clergy live. The management of each item, or group of items, is conducted by the parish in which it is located – there is not a system of consolidation or shared benefit/responsibility across the sites, as is the case with all parish property held in trust. Of the NSW register items, only one property, a rectory, has been converted to a commercial use and the income from that use contributes to the maintenance of other heritage items under the care of the same parish, along with a wide range of programs for marginalized and destitute community members.

From 2017 to 2020, \$4,852,023 was spent by those parishes on maintenance, repairs and significant renovations of state listed properties. During the same period this amount was supplemented by \$332,461 in grant funding, two thirds of which came through Heritage NSW matching grants. These figures suggest that over the four year period cited only 6% of the cost

relating to the care of these state significant properties was borne by the wider community through the grant system. In 2021 the parishes anticipate spending a further \$1.5m on NSW listed properties, however we also note that this is a fraction of the spending on heritage in Sydney as the ACPT holds approximately a further one hundred properties subject to local listings. While some of the properties have undergone substantial repair work in the recent past, many others are maintained at a minimum standard, with the premium cost of heritage specialist services and the reliance of parishes on donations and incidental income to cover the related costs a barrier to more work. Parishes rely on volunteer labour for the preparation of any project – the appointment of consultants, collection of quotes for work, meeting with contractors, seeking approvals from the landowner and making relevant applications to local council and Heritage NSW.

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

The objectives of the Heritage Act are still relevant, however they are not achieved through the current exercise of the powers given to the Heritage Council and given action by Heritage NSW, through the Act. The objectives are wide ranging and involve encouragement, promotion and assistance. The reality of engaging with Heritage NSW is one of resistance, compliance and the preservation of “heritage value” over all other considerations.

The objectives do not provide a rationale for their existence, as a consequence, heritage for heritage’s sake drives assessment and decision making. The general purpose of the Heritage Act 1977 was to conserve heritage items *without* unduly affecting owner rights or impeding economic activity. Our experience has been that the ownership of heritage items has been expensive, time consuming, has limited the options for building use and has thus impeded *community* activity, along with economic activity.

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

The church’s ongoing ownership and use of heritage items contributes to their heritage value. Ownership of heritage items is not actively sought, but a consequence of the presence of active,

worshipping communities in the same location over decades, in some cases centuries.

Unfortunately the interpretation of heritage value has at times resulted in demands that property be 'frozen' in time, without the flexibility to respond to changing church practices and community expectations about the provision of modern facilities. Some examples of this include:

An application was made to add a services building on a city site with two listed buildings and little free space. The application was rejected as construction would have impacted on one of the existing heritage buildings. There was no visit from a Heritage NSW assessor to discuss options or advise what would be permitted. The parish is still operating with the original substandard toilet facilities which limits its attraction for post wedding functions, despite the church itself being a popular wedding venue.

A country parish sought to extend a small modern building containing kitchen and bathroom facilities to accommodate an extra meeting room. The listed site previously consisted of a church and cemetery. The application to Heritage NSW took a year to be approved and required the submission of extensive additional documentation to prove to an officer, who never visited the site, that the proposed community facility was hidden from view. The same parish had also experienced a year's wait for approval on another project under \$100k in value.

Adaptive reuse implies a change of use. The challenge of heritage ownership for churches is not a desire to change the use of the property, but to change the property to better reflect current use. The requirement to preserve the paraphernalia of previous forms of worship in situ often impacts the optimal use of church buildings for current styles of worship. The requirement to retain fixed pews is a significant example where there can be no flexibility in layout to cater to modern worship or occasional alternate community uses such as special events, concerts, exhibitions etc.

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

The discussion paper asserts that the presence of heritage buildings enhances public spaces and has economic benefit. However the heritage buildings that comprise the ACPT holdings do not realise any direct economic benefit from increased local tourism or community engagement with the space. Our churches are active places of worship, and are used for church activities during the week and on weekends. A change of use would be necessary in order to turn a church building into an income generating asset, and the heritage restrictions on altering them would make it not viable to convert them to hospitality venues, commercial office or retail space, or private residences. Any such conversion would also require the parish to seek alternate meeting spaces, which in most locations is not achievable, particularly if seeking a break even transaction that includes the costs of alternate spaces and the costs of maintaining the heritage item. While our heritage properties benefit the community, and increase tax income generated for local, state and federal government through local business revenue, there is no direct, and little indirect, benefit back to the item's owners. In practice it is the post-tax donations by parishioners and other individuals that fund much of the maintenance of these heritage items and enable them to remain viable community venues.

The following suggestions do not directly address the focus question, but we note the lack of a question about the way in which government revenue might contribute to the activation and conservation of heritage.

Listing bonus

When a site is listed there is no cost to those members of the community promoting the listing. Often community interest in listing is to retain community benefit – open space, aesthetic value, to constrain development – with no concomitant obligation on behalf of those benefitting to contribute to the maintenance of the item or offset the disadvantages. If owners of heritage items were compensated financially for the consequences of listing, local communities who engage vigorously in promoting listings may be more motivated to engage with the financial and lost opportunity costs to the land owner.

Sale of air space

As mentioned in the discussion paper, the City of Sydney's transferrable heritage floor space scheme offers some compensation for the loss of income for maintenance/redevelopment opportunity of a heritage item. Expanding such schemes to other council areas would assist owners to recoup some value from their land. This would be particularly relevant where the land burdened with a listing is open space, for example cemeteries. The Cemeteries and Crematoria Act 2013 statutory review recommends that NSW register listed cemeteries be subject to regulations regarding perpetual maintenance funds. These sites will be retained as green space and have little to no ongoing commercial potential, so a scheme that recognizes the community benefit would be extremely valuable.

Tax deductibility funds

Urgently engage with federal government to seek to enable the category of heritage conservation and restoration as a criteria for deductible gift recipient funds so they can be established by not for profit organisations.

Benefits to not-for-profits

We note that a number of owner incentives are based on tax and rates exemptions. As a not for profit organization already recognized for its community benefit, regardless of heritage considerations, these exemptions are of no benefit to the church. We also note that many of the suggestions made in the discussion paper prioritise economic outcomes from for profit ventures, despite the benefits relating to community well-being and the cost savings to the community from these benefits. While the link between these savings and the contribution made by heritage constrained properties is indirect, it would be appropriate for a financial contribution to be made towards the upkeep of such buildings by the wider community.

Planning and design concessions to enable functional and commercial development on site

There are examples both in Australia (ie St Jude's Anglican Church, Carlton, Vic) and overseas of heritage buildings that have had additions and alterations that retain substantial portions of the heritage fabric while making the building more functional and enabling income generating and enhanced social activities to take place. Successful additions of this type enhance visitor experience and contribute to the activation of sites for tourism and repeat visits. We note that many heritage buildings that achieve additions which enhance their functionality (the Police and Justice Museum, Customs House and Australian Museum, all in Sydney city) are able to minimize the impact of these additions as they are invisible against urban backdrops. Our heritage items usually include significant curtilage restrictions which would need to be breached in order to make the necessary adaptations. Achieving this would require a movement away from the current attitude towards religious heritage which consigns it to the past – an English pastorate vision - and assumes that fixing it there is an appropriate way to encourage conservation and ongoing use.

Recommendation

1. Heritage NSW re-establish the places of public worship consultation group (formerly the Religious Property Advisory Panel) to include representatives from religions owning NSW listed items, property professionals and heritage experts and include legislation which requires commentary from this group to have weight in decisions made regarding applications to develop listed places of public worship.

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

The discussion paper talks about *perception* of heritage listing as burdensome, involving costly conservation costs and constrained by regulation. Our experience is that this is *not* a perception, but a reality, and while Heritage NSW, who authored the discussion paper, may wish to imply that heritage ownership is without significant challenges, we note that Heritage NSW does not actually manage any heritage items, nor need to navigate Heritage NSW's systems. That the Anglican Church in Sydney is able to manage and maintain over thirty NSW heritage listed items is entirely due to the time and donation contributions of volunteers who take on this work. Examples of overreach, inconsistency and poor responsiveness from Heritage NSW officers are:

One of the state's pre-eminent heritage architects was retained to oversee the replacement of a church roof with the same materials as the original. Based on his extensive experience with similar projects his office submitted an exemption notification for the project. The notification was submitted in June 2015. Over a year later, when the work was underway, Heritage NSW issued an informal request for work to stop, and a direction that an application for approval to be submitted, contrary to the architect's previous experience. This delay caused additional costs to the half million dollar project.

A Conservation Management Plan (CMP) was required as part of an approval for a development on a lot neighbouring a listed property. The requirement was only possible because of the shared ownership across both lots. While initially an update of an existing plan was requested by Heritage NSW, it was subsequently decided that an entirely new document should be created. This document has been rejected for review by Heritage NSW officers through four iterations. In the most recent edit provided by Heritage NSW, officers have proposed alterations to aspects of heritage value as assessed by the heritage architect who prepared the document. One of the proposals from Heritage NSW would significantly impact the potential for further development on the neighbouring site. The proposal seeks to protect sightlines to the heritage item which were only opened up through the demolition of the previous building on that site as part of the new development. The original author of the document has completed his engagement with the parish – some six years after the project originally started, and it seems unlikely that a final version of the CMP will be agreed between Heritage NSW and the land owner. The checklist following the fourth review now stands at fifty-four pages.

Major restoration and development works were being undertaking in one of our flagship properties, under an approval obtained in 2012. A Section 4.55 was submitted to amend the original approval, and in the process a Heritage NSW assessor sought to reverse an aspect of the earlier approval without seeing the site. It took further meetings with the new assessor to enable the project to continue as originally planned.

Recommendations

2. A single point of contact be established within HeritageNSW for each application and the applicant be advised of the contact details within ten working days of the date of application.
3. HeritageNSW be required to seek information from local government planning and building officers regarding the application and to provide reasons if they do not accept their response.
4. The length of time that HeritageNSW is allowed for consideration of the application be made the same to that of the Environment and Planning Act where, if the approval authority exceeds forty two days (6 weeks) without approval, the application is deemed to be rejected and can be referred to an external body for consideration.
5. Where an application can be clearly established to be of significant benefit to the community, this should be given greater consideration for approval than minor non-compliance with heritage aspects.

For further information please contact Penny Barletta, Manager, ACPT

Yours sincerely,

RICHARD NEAL

Chair, Anglican Church Property Trust Diocese of Sydney