

**Submission  
No 55**

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

**Organisation:** Willoughby City Council

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## SUBMISSION ON REVIEW OF THE HERITAGE ACT 1977

### FOREWORD

Willoughby City Council (WCC) appreciates the opportunity to comment on the Review of NSW Heritage Legislation Discussion Paper.

The Discussion Paper is the first stage of a review of the *Heritage Act 1977*.

WCC is proud of its' wide and varied Aboriginal, Cultural and Natural heritage. Council has 12 Conservation Areas, including the unique Griffin Estate containing many examples of buildings designed by Walter Burley Griffin and Marion Mahony Griffin. WCC has 11 items listed on the Willoughby Local Environmental Plan 2012 (WLEP 2012) as being of State Significance. We also have within our LGA, many items that are owned by State Agencies, such as Willoughby Public School and Willoughby Girls High School and the iconic suspension bridge at Northbridge.

*Hugh Phemister*

**Director Planning and Infrastructure**

June 2021

### GENERAL OBSERVATIONS

Willoughby Council has provided general comments in response to the Terms of Reference of the Inquiry into the *Heritage Act 1977* rather than responding to the individual focus questions.

#### (a) the need for legislative change to deliver a heritage system that is modern, effective and reflects best practice heritage conservation, activation and celebration

It is not entirely clear why changes are being proposed to the *Heritage Act 1977* (The Act). Whilst an opportunity to make some small reforms is supported, Council does not believe *The Act* needs an overhaul. It is important to ensure that the objectives of *The Act* are not weakened through this suite of reforms.

#### (b) the adequacy of the Act in meeting the needs of customers and the community and the protection of heritage

The main connection Council has in relation to implementing *The Act* is in consultation with the Heritage Office for Development Applications relating to state heritage items as Integrated Development. The process for obtaining comments from the Heritage Office is lengthy and adds to the timing of issuing a consent.

Similarly, the time taken to receive comments from the Heritage Office on Planning Proposals is also lengthy and unclear.

A general recommendation would be to increase staff resources at the Heritage Office. In addition, improved communications between councils and Heritage Office staff would be welcomed. A recommendation would be to incorporate a system similar to the Department of Planning Industry & Environment where a planning officer is responsible for a particular council area. Currently, there are no specific contacts at the Heritage Office to direct questions to or seek comments from. Having an initial "go to" person to form a liaison with would improve communications.



Data available on heritage inventory sheets for residents is an important way Council communicates the heritage significance of properties. We have noticed that the recent updates to the NSW Heritage website with the new spatial system for the State inventory database has led to some data on our inventory sheets being lost. It is also difficult to navigate this new system with drop down boxes rather than the ability to view the whole sheet. In the past, Council staff have printed inventory sheets for residents. This ability to print seems to no longer be available.

**(c) how the Act could more effectively intersect with related legislation, such as heritage elements of the Environmental Planning and Assessment Act 1979 and the National Parks and Wildlife Act 1974**

**National Parks and Wildlife Act 1974**

Aboriginal Cultural Heritage is important to Willoughby City Council. Focus Question 2 asks “How should Aboriginal Cultural Heritage be acknowledged and considered within the Heritage Act”?

Council’s Aboriginal Heritage Officer has provided the following response:

*“The Aboriginal Heritage Office supports the reform of Aboriginal cultural heritage that would provide separate legislation and a separate authority to what exists presently under the National Parks and Wildlife Act and the existing departmental structures. There are problems with the previously proposed model and it is noted that the NSW Government has not progressed the reform process in recent years. Notwithstanding the delays and problems with the reform process, the AHO does not consider Aboriginal heritage should be included within the NSW Heritage Act as its structure and approval system would further remove Aboriginal heritage from the management and decision making role of Aboriginal people”.*

It is further recommended that the Aboriginal Cultural Heritage Act should take priority over any review of the Heritage Act 1977 in regards to Aboriginal Cultural Heritage. This would then inform any proposed changes to The Act.

**Environmental Planning & Assessment Act 1979**

The Act could benefit from better connectivity with and in some cases “superiority” over the *EP&A Act*. For example, Willoughby had a dwelling house listed in WLEP 2012 as an item of local significance. A Notice of Listing under the Heritage Act subsequently changed the listing of this property from a local item to a state item. However, this did not automatically update the listing in WLEP 2012. The administrative change from a local to a state item had to be carried out via the Planning Proposal process. It is recommended that such a change would automatically update an LEP.

Another example in Willoughby highlighted a case where the Heritage Act is subservient to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (The SEPP). Willoughby had an example where a Complying Development Certificate (CDC) had been issued to demolish a residential dwelling. The dwelling was considered to have potential as a local heritage item and this led to the issue of an Interim Heritage Order (IHO). A Planning Proposal was prepared to amend WLEP 2012 and make the property a heritage item. Once the draft LEP was placed on exhibition the IHO automatically expired presumably because the heritage status would be a consideration for any



future application. This does not address existing approvals issued, including Complying Development Certificates (in the example being for the demolition of the building) which could lawfully proceed despite the heritage significance having been recognised. Provisions should be included to ensure approvals issued under the *Environmental Planning and Assessment Act, 1979* cannot proceed if the investigation determines that the building or site is identified as having heritage significance.

### **State Significant Development**

It is a concern that for a State Significant Development, Division 8 of the Heritage Act does not apply, ie (controlling and restricting harm to buildings, works, relics and places not subject to interim heritage orders or State Heritage Register listing). Once again, *The Heritage Act* should take priority.

#### **(d)(i) a category approach to heritage listing to allow for more nuanced and targeted recognition and protection of the diversity of State significant heritage items**

All items in Schedule 5 of the WLEP 2012 are significant and we do not want them to seem less significant from a perceived ranking system. Categorisation of listings as suggested in this review would complicate rather than simplify heritage for public understanding.

Council is not in favour of a new category system that would affect the concurrent and integrated development assessment process. It is important that councils would still have the ability to comment on state heritage items in their local government areas. It is also of concern that a categorisation system would “dilute” the existing heritage protections and controls by making some items of a lesser “value” than others.

#### **(d)(ii) consideration of new supports to incentivise heritage ownership, conservation, adaptive reuse, activation and investment**

Willoughby waives Development Application fees as an incentive for owners of heritage items to maintain their properties.

Clause 5.10 (10) of WLEP 2012 for Conservation Incentives is another means of providing incentives for owners to maintain and conserve their properties. A similar incentive scheme could be included in *The Heritage Act*.

Council has experienced good examples of adaptive reuses for state items within the LGA, for example, the Walter Burly Griffin Incinerator site in Willoughby is now successfully used as a café and art gallery space. However, as this item is located within a public park, the curtilage of the item has in the past been prohibitive in adjoining uses which affect the functionality of the park. Perhaps a more streamlined process of adjusting the curtilage of a heritage item when located in public areas could assist in a case similar to this. See below for more comments on streamlining.

It is also important to note that not all heritage items are suitable for generating funding for their conservation and should not be expected to fund their use. There are many examples where heritage items have a purpose which benefits a place and its community, such as retirement homes, providing affordable homes and places of education.



**(d)(iii) improvements to heritage compliance and enforcement provisions  
streamlining heritage processes  
(iv) streamlining heritage processes**

The standard exemption process changed recently without any consultation with councils. Clause 5.10(3) of WLEP 2012 requires owners of local heritage items to notify Council for advice prior to carrying out any minor works. The same should apply with State significant items.

However, for State items, property owners have responsibility for conducting exemptions on their own properties without consultation. A process similar to that of Clause 5.10(3) is encouraged.

Currently, the burden of compliance and enforcement falls on local Councils. We would like to see greater enforcement of non-compliance adopted by the Heritage Office. In addition, the Heritage Act could be amended to provide councils with the ability to issue orders to protect an item (state or local) and stop unauthorised works. This would provide clarity rather than having to decipher if an Order should be issued under the Local Government Act or the EP&A Act.

With regards to streamlining, Council is concerned with the suggestion to make it easier for items to be delisted. If a property has been irretrievably damaged, options should be thoroughly explored for retaining and interpreting the place before delisting. There may be strong social connections or some other significance relating to the place which should not be abandoned by delisting it.

Further, with regards to Section 60 Applications for works to a State Heritage Item, Council believes the State Government, through the Heritage Office and a suitably qualified Heritage Council, should retain the ability to assess the works, rather than implementing a private certification process. Our experience at local government level has been that the private certification process is fraught with difficulties and leads to the incremental loss of the finer grain details that can sometimes contribute to the significance of a place.

**Conclusion**

Council appreciates the opportunity to comment on the review of the Heritage Act and would like to be updated with the next steps involved in the process.