

**Submission
No 63**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Northern Beaches Council

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Inquiry into Heritage Act, 1977 Standing Committee on Social Issues

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Our

Ref 2021/457608

Dear Sir/Madam

Submission – Inquiry into Heritage Act, 1977

Please find attached Northern Beaches Council's submission to the Inquiry into the NSW Heritage Act.

Council supports the review of current heritage legislation in NSW. Heritage values are constantly under threat from development, particularly in the urban context of a global city like Sydney. The current legislation dates to 1977 and has remained relatively unchanged for over 20 years.

It is hoped that this review will result in meaningful changes to the Heritage Act, which will strengthen heritage provisions and result in a better outcome for the management of the State's heritage into the future. It should be remembered that once heritage items are lost, they are never recoverable and even adaptive re-use of items need to be done appropriately.

It is agreed that heritage listing often has a negative connotation in the community and it is considered that all levels of government should be actively educating the community on the importance of conserving and preserving our heritage for future generations. The State government should lead the way by appropriately managing its own heritage assets, including those owned by State agencies. The State government should also provide greater funding to help owners conserve, restore or adaptively and appropriately reuse their heritage properties. Heritage should be celebrated not considered a burden on land owners. The owners of these heritage properties should feel like they are a custodian of the State's heritage and feel valued for taking on that role.

More details are contained within our attached submission. Should you require more information please contact Janine Formica, Heritage Planner

Yours faithfully

Louise Kerr
Director Planning and Place

Submission – Review of Heritage Act, 1977

This submission is being made to the Standing Committee for Social Issues, by Northern Beaches Council.

Introduction

Council welcomes this review of the Heritage Act, 1977, which is a fundamental piece of legislation designed to identify, protect and manage items of heritage significance for the State of NSW. A comprehensive review is long overdue. When it was introduced in 1977, it was the first such Act in Australia, but over 40 years have passed and many changes have impacted upon the overall effectiveness of the Heritage Act, including changes to associated legislation.

Any changes proposed as part of this Review should result in a better, stronger and more effective Heritage Act, so that it can fulfil the fundamental purpose of the Act, which is to identify and protect items of heritage significance.

Purpose of the Act

Council supports the purpose of the Heritage Act and the current objectives included within the Act.

However, it is considered that an extra objective should be added which clearly states that the main object of the Act is to **identify and protect items of heritage significance**. While the current objectives talk about the Heritage Council, establishment of the State Register to protect items, and other regulatory mechanisms to protect heritage items, it falls short of stating that its aim is to identify and protect items of heritage significance.

This should be a fundamental objective of the Act and should be added to the objectives.

Heritage Council

In relation to the constitution of the Heritage Council of NSW, it is considered that the majority of members should have demonstrated and varied experience in heritage conservation practice (including Aboriginal Cultural heritage and landscape heritage). In addition, consideration should be given to including a local government representative on the Heritage Council (given that most heritage items and potential heritage items in NSW are managed by local government).

The Heritage Council should also be independent of government and have more authority to implement decisions in relation to proposed listings on the State heritage register. Rather than only being an advisory body making recommendations to the Minister for listings, as the expert heritage body, it should have the authority to implement listing recommendations.

Activating our heritage

The State Government should be leading the way in restoring, celebrating and activating its heritage assets. Two-thirds of State heritage listings are in public ownership and the government should be committed to implementing the objectives of the Heritage Act, in doing so being a positive heritage role model for private owners of heritage.

Section 170 Registers

Government agencies are required to list heritage assets on a section 170 Register, however there is no clear guidance provided in the Heritage Act in relation to their responsibilities as the asset manager of these heritage items.

The requirement for section 170 Registers should be retained in the Act and there is an opportunity to strengthen the requirements for agencies managing these heritage items.

Development incentives and support

In relation to privately-owned State heritage items, the Government should provide more financial incentives, by way of increased grant availability and tax incentives, to encourage the conservation and celebration of these items.

Any incentives to encourage the restoration and on-going protection of State significant heritage items by private owners is supported. However, there needs to be strong guidance and controls to ensure that heritage conservation and celebration is achieved.

Proposed heritage enterprise grants should be available to local government, as well as private owners. There are significant costs associated with restoration of Council owned/managed State heritage items (e.g. Currawong and Ivanhoe Park) and adequate funding would greatly assist.

There may be better ways for grants and financial benefits to be provided to private owners of State significant heritage. Avenues should be investigated, including best practice examples from overseas.

Adaptive re-use

Adaptive re-use of heritage buildings is supported, however there is no definition in the Heritage Act or the Environmental Planning & Assessment Act, 1979 of what constitutes "*adaptive re-use*". A definition is needed.

In relation to encouraging adaptive re-use and consideration of development incentives, it can be difficult to balance the competing interests of commercial viability versus good heritage outcomes. While it is good to encourage adaptive re-use and activation and the continued use of heritage assets, such changes need to be managed in a proportionate way to ensure that what is significant about the item is not degraded or lost in the process. Once significance is degraded or lost it can never be regained.

Heritage identification and heritage listing

While the Heritage Act provides the means for items to be nominated, to work effectively it requires resources and appropriate experience within the NSW Heritage Office. The current listing processes is not onerous, but because of the lack of resources in the Heritage Office and competing demands on their time, a nomination lodged can take many years to be considered.

Any improvement to the nomination system would be welcome, however this will not address funding and staff resourcing issues which are essential to support any process improvements.

As mentioned, after professional assessment of a nomination, consideration by members of the Heritage Council and a recommendation made to proceed with State heritage listing, the listing should proceed automatically without needing the approval of the Minister. Professional recommendations for heritage listings, from an independent Heritage Council, should be implemented by the government.

State Heritage Register

Council supports changes to the nomination process to enable a more community-driven process. Communities have far greater visibility of the heritage significance of items and places in their community and it would result in a broader and more widespread range of potential State heritage items for consideration and listing. However, for such a change, resources in NSW Heritage would need to be increased.

Similarly, the suggestion to introduce a streamlined process to periodically update and review heritage listings is supported. Again, resources are needed to facilitate this.

Any streamlining of the de-listing process should include rigorous checking mechanisms to ensure that items are only removed from the heritage list if heritage significance has changed. De-listing through neglect should not be allowed.

Heritage permit process

Council agrees that heritage listings should not freeze items in time and that change is appropriate if it does not adversely impact upon the identified heritage significance.

A review of the permit system for works to State items is supported. It needs to be simplified and more transparent. It is often difficult to determine whether something is exempt or whether a permit or application is needed and as a result, decisions are often subjective rather than objective. More clarity is needed.

When an integrated application is required for relatively minor works, the process is overly lengthy, with the need to submit a DA, section 60 application as well as a Construction Certificate. This can be a disincentive for owners to carry out minor works which require consent. In some instances, larger scale maintenance works (e.g. replacing a roof "like for like") are something that could be managed via a heritage maintenance permit, rather than making the owner having to lodge an integrated development application, with the time and cost associated with that process.

Any streamlining of permits/exemptions to enable owners to maintain their properties will be a win for heritage. Owners should be encouraged to maintain their properties, with minimal regulatory controls and grant support.

Resources and support for Local Government

Local government is the public custodian of many State heritage sites and there needs to be a greater understanding of the role that local government plays in the heritage system and the restoration and conservation of natural and built heritage.

Heritage NSW has always had a staff resourcing issue, which has affected the efficiency of the nomination process as well as the provision of support resources to local government (who are managing 40,000 local heritage items).

The support role provided by Heritage NSW has been reduced over the last 10 -15 years. Many of the resource documents have not been updated by Heritage NSW and new advisory documents and guides have not been produced. Many local government bodies are keen to promote heritage and engage with their communities but need more assistance and resourcing from the State government.

Interim Heritage Orders under delegation

Currently local councils can make an Interim Heritage Order, under delegation, to protect an item of potential heritage significance which is under threat. However, Council only has 6 months within which to complete the required steps to proceed with a heritage listing within its Local Environmental Plan.

It is considered that the current 6-month time period could be extended to 12 months.

Protection of potential heritage items

Emergency protection of potential heritage items is an on-going issue for Council. These potential items are often not discovered until a development application has been submitted at which stage demolition can occur at any time under the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The only option available to Council to prevent demolition is the placing of an Interim Heritage Order on the property, which can take some time.

Consideration should be given to an Emergency Order provision which could be used by Council to temporarily prevent demolition until such time as a heritage assessment of the property has been prepared and a development application fully considered.

Incentives (financial or otherwise) for these owners to consider retention of historical fabric, rather than wholesale demolition and rebuild, would be valuable. Otherwise there is no incentive for the owner of an historically significant property, which is not heritage listed, to retain a building.

Powers to require maintenance of local heritage items

Current maintenance provisions in the Heritage Act only apply to State heritage items.

Consideration should be given to the extension of these powers to require minimum standards of repair, so that they can also be applied to local heritage items managed by local government. As most of the State's heritage items are local items (approximately 40,000), the lack of such powers means that there are many heritage items throughout the State being demolished by neglect. Council should have the ability to order repairs/maintenance for local heritage items under threat of demolition by neglect.

Interaction with other legislation

The Heritage Act was introduced to protect the heritage of NSW, however the introduction of various pieces of planning legislation over the years has eroded the ability for this Act to be effective and relevant. For example, State Environmental Planning Policy (State and Regional Development) 2011 is largely silent on heritage issues. In effect, the provisions of the Heritage Act are turned off for State Significance Developments (SSD's).

This is one example of how the Heritage Act has gradually been distanced from planning legislation, whereas heritage should be an integral part of all planning considerations.

Heritage promotion and engagement

Council would support any improvements to the Heritage Act aimed at promoting an understanding of the State's heritage and increasing the engagement of the community in identifying and celebrating heritage. Heritage tourism is an excellent way to encourage heritage promotion and engagement, however is hampered by lack of funding and incentives.

Review Process and Further Consultation

It is understood that this call for submissions is the first step in the overall review of the Heritage Act.

It is considered that there should be full accountability for this review moving forward, including the preparation of a white paper, draft bill and further opportunities provided for public comment.