

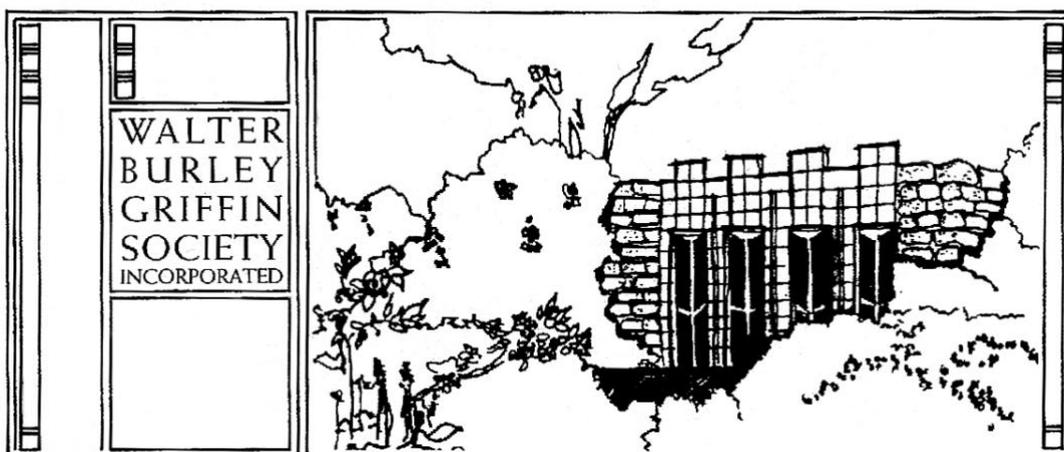
**Submission  
No 67**

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

**Organisation:** Walter Burley Griffin Society Inc.

**Date Received:** 26 June 2021

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25 June 2021

**The Standing Committee on Social Issues,  
Legislative Council NSW**

**Re: NSW Heritage Act 1977 Review**

<https://www.heritage.nsw.gov.au/what-we-do/the-nsw-heritage-act-review-has-commenced/>

The Walter Burley Griffin Society was established in 1988 to commemorate and promote a better understanding of the lives, ideals, vision and works of Walter Burley Griffin and Marion Mahony Griffin. The Society's aims and objectives are to protect the Griffins' legacy, promote the preservation and conservation of landscape designs, buildings and other works designed by or having an association with the Griffins. In NSW this includes the Griffin Conservation Area, an internationally renowned and unique urban development at Castlecrag, residential houses throughout Sydney, incinerator buildings at Glebe and Willoughby, the towns of Griffith and Leeton, Griffin subdivisions at Jervis Bay, and at North Arm Cove, Port Stephens.

Thus the Society is very interested in the Heritage Act Review, and ensuring good outcomes for the protection and celebration of Griffin heritage.

We wish to address several of the focus questions below:

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

1. The objectives are still very relevant but need to be strengthened. Existing objectives under Section 3 of the Act refer to promotion and encouragement of the conservation of the State's heritage. The Act should be more affirmative to provide actual protection (not just promotion and encouragement) for heritage items and conservation areas, to prevent their complete destruction and the erosion of their heritage values.
2. The powers of integrating environmental planning and heritage that were removed from the Heritage Act in the 1990s need to be reinstated. This is particularly so now as the environment has much greater importance regarding heritage impacts.
3. A wholistic approach that incorporates environmental planning is needed to ensure good outcomes. Currently the planning system is focused on process rather than outcomes which can be detrimental to heritage.

### Focus Question 11: Would streamlining enhance the listing process?

1. We support any improvement to the heritage protection process that would provide greater protection for heritage items. The Heritage Council should have consent powers, and not simply advice powers, over State Significant Development, over State Significant Infrastructure and other large-scale projects.
2. The regulatory thresholds for standard exemptions, fast-track applications and standard applications for permits under the Act should not be allowed to be politicised and determined by the Minister. The determinations should be done by the experts, i.e. The Heritage Council should be constituted with heritage experts, not politically appointed members or any other independent panel of independent heritage experts.
3. straightforward relaxation of existing regulations related to heritage conservation would not be desirable and would not enhance the listing process. Streamlining would be detrimental to heritage, as are exemptions (that in recent years have increased dramatically). Also very detrimental to heritage is the recently introduced self-assessment process. Exemptions (that have quadrupled in number in the last 15 years) and self-assessment are irresponsible processes ultimately and inevitably detrimental to heritage.
4. Since the first listings of 1300 heritage items, there are now just an average of 22 heritage items listed per year. This is a very poor reflection on the state government. Commitment to heritage needs to be given in the form of greater resources.
5. The listing process can and should be enhanced by better resourcing at both the state government and local government levels.

Much responsibility for heritage has been devolved from the state to local government. Thus the State Government needs to support local councils and provide resources to them.

### Focus Question 14: How could we improve heritage consideration with land use planning?

1. Heritage consideration in relation to land use planning can be dramatically improved by eliminating spot rezoning for State Significant Planning Proposals that conflict with the Heritage Act, and often disregard good strategic planning.
2. The NSW Government needs to lead by good planning that respects the past and the present, but also the future. Significant values including those of heritage and landscape need to be identified and respected so that they can be celebrated by future generations.
3. The Heritage Act should **not** be able to be "switched off" as at present for State Significant Planning Proposals or for any other reason.
4. Good state government leadership in relation to both heritage and planning, not being beholden to developers, is necessary to ensure our heritage can be celebrated in the future, and NSW and its capital Sydney can become an international destination rich in heritage.
5. Strengthening the Local Government DCPs as they apply to the heritage conservation areas is critical to protection of the intrinsic heritage character of these areas. The LEPs are legally binding documents but DCPs are not. Even though LEPs are prepared by councils, they have the benefit of review by parliamentary counsel and are interpreted relatively strictly. DCPs, on the other hand, have had their status reviewed and re-classified recently by the NSW Government in the EPA Act. Section 3.42.

The Act provides that the purpose of DCPs is to provide **guidance** on:

- a) **giving effect to the aims** of any environmental planning instrument that applies to the development,
- b) **facilitating development** that is permissible under any such instrument, and
- c) **achieving the objectives of land zones** under any such instrument.

What this means is that a DCP does not have significant weight at all and it can be loosely interpreted by developers, applicants and councils. Compliance with the provisions of the

DCPs for **the heritage conservation areas should not be interpreted with flexibility** and in an *ad hoc* way by the assessment planners. The DCPs for conservation areas should form a strong protection for these areas and not to be misinterpreted as it suits individual applicants and very often assessment planners at local councils. Councils often approve obvious non-compliances with the DCPs in order to avoid costly litigation. This is very detrimental to the heritage of the particular area, and needs to be rectified.

6. **The Heritage Act should make references and certain provisions to significantly strengthen the DCP status as it applies to the heritage conservation areas and make them non-negotiable.**
7. DCP objectives and recommended actions should be transitioned into modified LEPs, to give them statutory weight and require serious adherence, not mere 'consideration' and dismissal by proponents, Councils or other decision makers.

**Focus Question 15: Are there opportunities to enhance consideration of heritage at the strategic level?**

1. Consideration of heritage at the strategic level can be enhanced by meaningful and genuine consultations with local communities and listening to their views and concerns. Currently this does not happen.
2. Strategic surveys should be funded and prioritised, to fill identified gaps in State Heritage Register listings, strengthen under-represented regions and types of heritage listings. These should then be used to support Local Councils in identifying, listing and providing appropriate statutory heritage protection.

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

1. The proposed nuanced and lighter-touch enforcement approaches, as an alternative to expensive and uncertain court actions, would only encourage non-compliances and breaches of the Act.
2. Often the heritage reports prepared for the developers or private owners by the consultants dismiss or diminish the impacts of the proposal on the heritage item or the heritage area.
3. The penalties for non-compliance should be strengthened not relaxed and self-certification should not be allowed when dealing with State significant heritage items.
4. The level of penalties for non-compliance should be set at the highest possible level to be a significant deterrent for breaching the rules of the law.
5. There should also be some penalty set for rogue and negligent consultants to prevent this occurring on a regular basis.
6. The irresponsible actions of the few are impacting on the reputation of the entire profession and it should be closely monitored and strongly discouraged.

**Focus Question 17: How could understanding of state heritage be enhanced?**

1. Understanding of state heritage could and should be enhanced by respecting it and promoting it. Heritage should be promoted, just as tourism and sport are promoted.
2. The State Heritage Office should be fully independent from political influence. Currently in NSW it is politicised with political appointments to boards and the Minister having the power to refuse heritage listings for the State Heritage Register.
3. Heritage Victoria is not politicised. The Heritage Council of Victoria decides what to include in the Victorian Heritage Register. The Victorian Minister cannot refuse a listing and with a permit or consent application may only refer a review to an independent tribunal for determination. This is how it should be in NSW also. In this way, respect from

the whole community (including community groups and developers) for heritage and the processes protecting it, would be greatly increased.

**Focus Question 18: How could we improve heritage tourism of/ help activate heritage places for tourism?**

1. There are many opportunities to improve heritage tourism in NSW. There should be a strong cooperation with the Federal Government to activate places such as Cockatoo Island, Middle Head, North Parramatta and other areas to bring heritage to the forefront of the tourism activity in Sydney.
2. Sydney needs an aboriginal heritage museum presenting past and present, celebrating how the various indigenous groups lived in the Sydney and the NSW area, and demonstrating where indigenous art can be found.
3. Places such as the recently closed Grafton Goal could become a colonial / first settlers' museum with interactive displays and the opportunity to search one's family history. There could be accommodation for backpackers and a venue for conferences.
4. Sydney also needs an immigration museum. Many underutilised state heritage items could be successfully adapted to encourage such tourism and save the buildings for future generations.

**Focus Question 19: How could public heritage buildings be activated to meet the needs of communities?**

1. Public heritage buildings should be kept in public ownership and leased on relatively short term leases. They could be adaptively reused in an appropriate way to maintain their integrity and kept open to the public.
2. The Griffin designed Willoughby Incinerator is an excellent example of a public building owned by a Local Council that has been repurposed and activated with a regional gallery space and cafe which are both drawcards for the broad community.
3. As approximately 60% of places on the State Heritage Register are government owned, it is essential that this heritage is respected in the best possible way. Short term leases, rather than asset stripping, can ensure good heritage outcomes and good economic outcomes for the state and for tax-payers now and in the future.

Yours sincerely,

Kerry McKillop  
Secretary  
Walter Burley Griffin Society Inc  
[www.griffinsociety.org](http://www.griffinsociety.org)

