

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Lake Macquarie City Council

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28 June 2021

Standing Committee on Social Issues

Dear Committee Members

Subject: Lake Macquarie City Council Staff Submission on the Review of NSW Heritage Legislation

Thank you for the opportunity to provide input to the review of the NSW Heritage Legislation. This is a Council staff submission that has been prepared with reference to the Review of NSW Heritage Legislation Discussion Paper (April 2021). Please find attached detailed comments in relation to the focus questions in the discussion paper.

Council staff support the aims of the review to deliver more effective, relevant, and best-practice ways of recognising, conserving, encouraging adaptive re-use and celebrating the important heritage of New South Wales.

Should you require further information, please contact me

Yours faithfully,

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Submission from Lake Macquarie City Council staff on Review of NSW Heritage Legislation

As a guiding principle for any proposed legislative changes, the Burra Charter and the Australian Natural Heritage Charter should be central to all considerations relating to the conservation of heritage.

It is considered a short coming of the discussion paper is that it does not address local heritage. In New South Wales, local environmental plans cover tens of thousands of heritage sites. The review should be expanded to cover local heritage as this represents the vast majority of places of heritage significance across New South Wales.

Focus Question 1: What should be the composition, skills and qualities of the Heritage Council of NSW?

While representation of different disciplines is important, the majority of members of the Heritage Council should be from disciplines or organisations relevant to heritage conservation.

The Heritage Council members need to be educated, have relevant experience and are knowledgeable about or skilled in the conservation of the cultural environment. Among other professions, this will require historians, conservation architects, archaeologists and planners.

Indigenous representation on the Heritage Council is particularly important where Aboriginal cultural heritage matters are being considered.

Various specialist heritage bodies should be represented on the Heritage Council such as the National Trust of Australia (NSW), the Australian Archaeological Association, the Australian Society of Historical Archaeologists, and Australia ICOMOS (International Council on Monuments and Sites).

The Australasian Institute for Maritime Archaeology should be a statutory consultee for the Council where it is considering matters relating to any items of maritime archaeology.

Assessment of heritage significance should be based on heritage values and separated from the decision-making processes about the ongoing management of those values.

Focus Question 2: How should Aboriginal Cultural Heritage be acknowledged and considered within the Heritage Act?

Active participation by Aboriginal people in the identification, conservation and management of Aboriginal heritage is essential to good conservation outcomes for Aboriginal Cultural Heritage.

Having standalone Aboriginal heritage legislation in NSW should be the first priority.

However, any acknowledgement and consideration of Aboriginal Cultural Heritage within the Heritage Act should:

- Include principles that are effective and workable;
- emphasise a rights-based approach to Indigenous cultural heritage protection (a requirement under the *United Nations Declaration on the Rights of Indigenous Peoples*) which gives clear powers to relevant Indigenous groups to make decisions;
- be based on an assessment of the overlap with the *Native Title Act 1993*, and
- be based on thorough consultation and discussion with Indigenous people.

The Committee are further encouraged to consider the *Dhawaura Ngilan: A Vision for Aboriginal and Torres Strait Islander Heritage in Australia* and the *Best Practice Standards for Indigenous Cultural Heritage Management and Legislation* developed in 2020 by Australian ICOMOS. (See *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* published by Department of Agriculture, Water and the Environment).

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

The role of the Heritage Act 1977 to identify, protect, promote and conserve cultural heritage places in NSW is still fundamentally important. The Heritage Act plays an important role in recognising the significant contribution that cultural heritage places make to our identity, creating a sense of place and representing the State's story, its people and its shared connections.

Staff consider that the objectives of the Heritage Act are still relevant, but could be expanded to more adequately cover social and racial justice, Indigenous heritage, intangible heritage and environmental sustainability.

It is important that any proposed amendments will result in demonstrably better heritage outcomes.

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

Active involvement by all sectors of the community in the process of identification, conservation and use of heritage places is integral to good conservation outcomes, community appreciation and compliance.

Based on our recent experience, the community continues to expect the conservation of heritage and wants strong protections. The community see heritage conservation as an integral part of environmental and land use planning. In particular, local communities have expressed a sense of connection to the past via heritage items and sense of place, and are concerned about the social implications when that connection is lost.

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

The Heritage Act does not currently prevent adaptive re-use of heritage places. When applied well, it enhances strong economic development and delivers good heritage outcomes. Owners of heritage places should receive useful advice, effective financial incentives and adequate conservation grants to ensure ownership and management of heritage places leads to desirable heritage outcomes and suitable outcomes for owners.

One suggested improvement would be to introduce a “re-use first” principle, as Scotland has done. This would encourage owners to investigate adaptive reuse of heritage properties before demolition could be justified.

Staff support the provision of owner incentives such as access to transferrable heritage floor space schemes and flexibility in complying with other planning requirements.

Focus Question 6: How can we improve incentives within the taxation system to help mitigate the cost of private heritage ownership?

Staff support the provision of tax incentives, grants or other tax concessions for private conservation or philanthropic heritage investment. Any incentives need to be well publicised, and easy to navigate and access so their use is encouraged.

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

Staff support the development of a State-based scheme of stewardship payments to heritage owners seeking to activate a heritage item for a community or business opportunity.

Consideration should also be given to the “Invest Victoria” model of giving free-of-charge specialist advice on development approval processes for projects which involve the activation and conservation of heritage items through commercial investment.

Investigation should also be undertaken into encouraging philanthropic investment in heritage items by making these investments eligible to receive tax concessions and rebates, including exemptions from capital gains and GST.

Focus Question 8: How could tailored heritage protections enhance heritage conservation?

The process of identifying and listing cultural heritage places should be separate from the process of managing change at cultural heritage places. It should not introduce further categories of places.

Staff are not aware of any evidence that the tailored heritage protections or proposed heritage listing categories identified in the Discussion Paper will enhance the conservation of heritage items. There is concern that local heritage, which makes up the bulk of heritage items within the state, will suffer from a perception that they are not as significant as higher category items with more tailored and stronger legislative protections.

Focus Question 9: How should heritage items that are residential properties be accommodated under a proposed category scheme?

The key principle for the management of any heritage item is understanding its significance and managing the item in such a way as to conserve and enhance that significance. This principle needs to be reflected in any proposed category scheme or proposal to manage residential properties.

Focus Question 10: Would greater community engagement deliver a more robust State Heritage Register?

People-centered conservation is a way to place the community at the heart of heritage. Local heritage, in particular, can promote community empowerment, social and racial justice, and sustainability.

The review should consider:

- Greater funding to allow for engagement and consultation with Indigenous traditional owners and communities in relation to heritage values assessments.
- Innovative ways (e.g. interactive online maps) to facilitate greater community engagement in state heritage listings. The community often holds important and specific information about a particular place.

Focus Question 11: Would streamlining enhance the listing process?

Items should be listed on the basis of their assessed heritage significance. The Australian ICOMOS Charter for the Conservation of Places of Cultural Significance, known as the Burra Charter, establishes the best practice principles and processes for understanding and assessing a place's significance. Listing should be based on the Statement of Significance developed for each item under consideration in accord with the Burra Charter.

The decision to list items on the State Heritage Register should be based on the heritage significance and values of the item and separated as much as possible from the decision-making processes about managing the item after listing.

The following suggestions should be considered in the review:

- Heritage nominations should be assessed to a short, statutorily enforced and transparent timetable.
- Extensions should be possible but limited to reasonable periods with clear reasons articulated.
- Places under assessment should be provided with interim protection until a listing decision has been made on them.
- Emergency nomination decision timeframes (short) should be included in the Act.
- Statements of Reasons for all outcomes of listing should be available on a public website as a matter of course, in a timely manner.

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

Due to the risk of damage to the heritage significance of listed properties, the triggers for a heritage permit must continue to include:

- Building extensions, constructions, interior works, demolition or relocation of buildings and structures;
- Changes of colour schemes and signage;
- Subdivision and construction of new buildings and garden structures such as fences or decks, pathways and driveways, and change of materials;
- Works to registered trees and gardens which are not regular maintenance work;

An application for consent must be required to undertake any works or activities at archaeological sites listed on the Heritage Register.

In general, decision making on the regulatory thresholds for standard exemptions, fast-track applications and standard applications for permits should be made by suitably qualified and experienced professionals according to statutory timeframes.

Focus Question 13: Are the current determination criteria for heritage permits still appropriate?

The key principle for any determination is that the proposed works are compatible with and complement the heritage significance of the item. The current criteria are considered appropriate. Any proposed “stream-lining” or rationalisation of determination criteria which is not consistent with this principle is not considered best-practice.

Focus Question 14: How could we improve heritage consideration within land use planning systems?

1. The interaction between State Significant Developments, and the Heritage Act, 1977 needs to be reviewed. Heritage matters are still an important consideration in State Significant Developments.
2. Heritage recognition and conservation should be fully integrated into the planning and environmental management systems, simple to operate and understand, open, transparent and accountable.

3. Pre-lodgement consultation - should be encouraged for all scales of development. This allows the community to better understand and have input into large-scale planning and land-use decisions, as well as localised developments that have the potential to impact on the local area.
4. Regional Strategic Plans need to provide more place specific policy guidance particularly where tension exists between heritage significance and conservation and growth areas.
5. Heritage outcomes should be emphasized as opposed to assessment timeframes.
6. Clarify that adaptative re-use needs to be adequately explored before demolition can be justified. Proposals that might significantly affect heritage values should demonstrate how feasible alternatives have been taken into consideration so damaging options are avoided or minimised.

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

Given that the NSW government owns more than 50% of the places listed on the State Heritage Register, government agencies have a significant strategic leadership role in effectively managing and enhancing the state's heritage places.

The development of a State Heritage Strategy which recognises the economic, social and environmental values of heritage would promote the consideration of heritage conservation at all planning levels.

Regional Strategic Plans need to provide more place specific policy guidance particularly where tension exists between heritage significance and conservation and growth areas.

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

There are a number of issues which need to be addressed including:

- a lack of monitoring and reporting on the condition of State-listed heritage places,
- no long-term management strategies for some State-owned heritage places,
- no management strategies in place for the conservation of heritage values of government managed natural landscapes, and

- enforcement of minimum maintenance standards for listed heritage items owned by state government agencies (note that more than 50% of state listed items are owned by State Government agencies).

In addition, it is suggested that practical steps could include:

1. The introduction of penalties into the EP&A Act similar to the systems used in the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and the model Work Health & Safety Act 2011. This would enhance the regulator's capacity to hold offenders accountable for community and environmental harm, including harm to heritage items.
2. The introduction of powers to issue penalty notices if there is a non-compliance with heritage requirements for listed items and the introduction of investigative powers to enable Heritage NSW to gather sufficient evidence to prove an offence under the Act. The introduction of these powers would need to be supported by adequate resources.
3. The introduction of regulations and penalty notices to deal with situations of wilful demolition by neglect at the local level. Local listed heritage items currently have no protection against this illicit form of destruction.

It is suggested that the recent reforms of the Victorian Planning and Environment Amendment Bill 2021 be considered. This bill will provide local and state government with increased powers to penalise property owners for unlawful demolition, and allowing properties to fall into disrepair and disincentivise the practice of allowing protected buildings to fall into disrepair, known as "demolition by neglect".

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

An education and learning strategy are essential to promote greater understanding and support for the identification, conservation and management of heritage places.

A promotional program that showcases best-practice cultural heritage protection and management along with the benefits that appreciation and protection of heritage can bring to communities. This should include the development of a public education campaign which ensures that the community understands the heritage system and promotes the value of this heritage to the public.

The review should consider:

- Increased funding for heritage education, outreach and promotion of best practice heritage outcomes and innovative approaches. Particular emphasis

should be placed on engagement with and inclusion of Indigenous communities in any such programmes.

- Resourcing for raising awareness, recognition, listing and management of cultural landscapes and also (place-based) intangible cultural heritage.

Focus Question 18: How could we improve heritage tourism or help activate heritage places for tourism?

Staff support the establishment of a State-based grant program to assist with the cost of adaptive reuse and heritage activation to encourage the development of tourism ventures around heritage items and landscapes.

This initiative could be further supported by an annual award program for effective adaptive reuse and activation of privately-owned heritage buildings.

Planning incentives and flexibility regarding complying with certain planning controls could also be introduced where tourism uses are proposed for heritage places.

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

Government agencies should be exemplary owners and managers of public heritage places and need to resource their respective maintenance and management.

The establishment of a State-based conservation fund could help communities to acquire, restore and operate items for profit, while delivering economic and social benefits. The Victorian Working Heritage scheme is a potential model for a financially self-sustaining heritage re-use scheme that has potential application to NSW State Government-owned heritage items.

The long-term lease arrangements for the North Head Quarantine Station, at Manly, is another example of achieving long-term heritage conservation outcomes for publicly owned heritage items while ensuring that they stay in public ownership. This model is commended to the Committee as part of their review, and in particular for application to other significant State heritage listed sites owned by state agencies, such as the Morisset Hospital site.