

**Submission
No 84**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Haberfield Association

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The Haberfield Association
PO Box 121
Haberfield NSW, 2045

27th June 2021

Submission to the Standing Committee on Social Issues for the Inquiry into the NSW Heritage Act, 1977

Haberfield is a suburb in the Inner West Council area. It is protected by the Ashfield Local Environment Plan with its own specific clause, supported by the specific Haberfield Conservation Area chapter in the **Comprehensive Inner West Development Control Plan, 2016**. It has been recognised as a suburb of heritage significance to NSW and Australia. It is Australia's first realised planned Garden Suburb containing an impressive array of Federation houses and California bungalows within their garden settings and spatial relationships. Haberfield was classified a conservation area by the National Trust in 1979; its high significance confirmed by the Commission of Enquiry in 1980; gazetted a statutory conservation area in 1985; it was inscribed on the Register of the National Estate in 1990. Its history is well documented in the three volumes by Vincent Crow OAM, current President of the Haberfield Association, in university post graduate theses and peer reviewed research papers.

In June 2021, at the direction of the NSW Heritage Council, the Inner West Council undertook public consultation to progress Haberfield Garden Suburb 2045 onto the State Heritage Register.

From this long involvement with heritage assessment and management, the residents of the Haberfield thus have a strong interest in the outcomes of this Review.

INTRODUCTION

The Haberfield Association Inc. was established in 1980. It has a longstanding and respected record of contributions to protecting the heritage of the suburb. Its objects are to promote a strong sense of community within Haberfield as a unique Federation era 'garden suburb through the organisation of cultural and educational events and activities. The Association is committed to publishing aspects of the suburb which demonstrate all criteria of its heritage significance. It lobbies all levels of government to conserve and protect Haberfield's heritage architecture, spatial relationships, gardens and other features. It supports the heritage management of other parts of the Inner West area. It actively opposes proposed laws and developments which may damage the heritage and/or uniqueness of the suburb. Accordingly, the Association is making this submission to the Inquiry on behalf of its members and the residents of the Haberfield Garden Suburb.

The Association has examined the Discussion Paper: Review of NSW Heritage Legislation (The Paper) and will address a number of its Focus Questions and make general comments.

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

The intent of the NSW Heritage Act is to protect the State's heritage, and this remains as relevant today as it was in 1977.

The objects of this Act are as follows—

- (a) to promote an understanding of the State's heritage,*
- (b) to encourage the conservation of the State's heritage,*
- (c) to provide for the identification and registration of items of State heritage significance,*
- (d) to provide for the interim protection of items of State heritage significance,*
- (e) to encourage the adaptive reuse of items of State heritage significance,*
- (f) to constitute the Heritage Council of NSW and confer on it functions relating to the State's heritage,*
- (g) to assist owners with the conservation of items of State heritage significance.*

The Review includes 'legislation' and thereby we assume includes heritage management as administered under the Environmental Planning and Assessment Act (EP&A) where over 95% of heritage places are recorded, that is conservation of heritage as prescribed by the standard Local Environmental Plan template and schedule 5. The EP&A Act aims include:-

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The Association believes that the principles underpinning these Acts, and the protections they offer, remain relevant. The Association supports the above Objects.

We do consider, however, that the composition of the Heritage Council (Question 1) would be strengthened with the appointment of more community members nominated by organisations such as the Local Government Association, Aboriginal Land Councils, History Council of NSW and the like, with its members having proven and peer-reviewed heritage expertise.

We support the various powers of the Heritage Council and its making submissions and providing opinions relating to environmental heritage. We also consider that the Council should be able to comment on the appropriateness, desirability and effect of developments where its responsibilities may be affected by State Significant Development (SSD) or State Infrastructure (SSI) so that the communities affected by such declarations may be able to voice their concerns about their impact on the heritage of an area of a proposed SSD or SSI. SSD and SSI should not turn off the Heritage Act or heritage planning provisions.

The Heritage Act should be strengthened to mandate Heritage Council decisions as binding, similar to the Victorian legislation. The use of the term 'state significant' is further

undermining heritage management by over-riding previous heritage conservation orders. This leads communities to conclude that heritage should be protected up until the time it is an obstacle to a major project having economic and transport needs or meeting wider community needs. Then it seems that it becomes expendable and can be destroyed.

The people of Haberfield had this experience with the **Westconnex** tunnel. Houses in the conservation area were demolished. Some had been restored at great expense to owners who wondered about the contradictions in the way laws and rules were applied, with the state apparently above some laws! While these may be explained by over-riding legislation, most citizens faced with a demolition of a treasured home, do not appreciate this power and its consequences.

We are opposed to the removal of prescriptive regulatory measures and compliance mechanisms. We challenge the notion expressed in the The Paper that these “are onerous, procedurally complex and adversarial to adaptive re-use”.

Any amendments to the Act which result in streamlining of procedures and removing complex bureaucratic requirements would be supported by the Association. Our intention, however, would be to make it easier to protect heritage from inappropriate “adaptive re-use”, to ensure the conserving or restoring of State items for community enjoyment.

An example in Haberfield is the **Yasmar Estate** which would benefit from attention by the state government, which owns it and has allowed it to fall into total disrepair and hence alienation from community use. The National Trust figures indicate that 54% of State Heritage listed places are owned by the NSW Government. We hope that the condition of this Estate does not reflect the regard of the NSW Government for its other heritage holdings.

Modest and sensitive adaptive re-use of the 1850s sandstone house after restoration would open up the entire Estate to the community. Yasmar House and garden is the only nineteenth century villa remaining on Parramatta Road, one of Australia’s earliest transport routes. Its neglect is shameful.

In conclusion, amendments to the Acts governing heritage which result in facilitating destructive development and over-development would be opposed by the Association. These would not be in the broader public interest in protecting heritage and conserving it for future generations. Nor should amendments result in excluding community consultation and involvement in decisions. Public consultation must remain in the aims of both the Heritage Act and the EP&A Act that manage heritage places.

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

The Heritage Council appears to do little to allay perceived ‘fears’ about heritage, having ceased to be the educator and communicator for heritage assessments and management. Its resources, such as high calibre staff expertise and budgets, have been annually depleted and the Heritage Branch has been consumed within super ministries and silos. To improve knowledge, understanding and appreciation of our heritage, regardless of the deemed level, requires adequate resources, community education and leadership. The invisibility of the Heritage function in government, lack of public accessibility to professional expertise, and the apparent disregard of heritage by senior ministers has led to the impression in the community, that this NSW Government would prefer an approach which resulted in divestment of heritage properties rather than their protection. The

expectations of contemporary NSW community are reflected in the Act, but not in the inaction or actions of the NSW Government. Any Act is as good as its implementation by government machinery and budget allocated to the function.

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

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

In relation to Question 5, there is a pervasive impression among some members of the community that the cost of owning a heritage property is prohibitive and alteration to its fabric very restricted. While the Association would not want the exact opposite impression to be created, there need to be incentives for sensitive restoration and renewal. Many owners of State Heritage Register (SHR)-listed properties are probably unaware of the possibility of heritage valuations which might reduce their land tax, council rates or stamp duty. These incentives need to be well communicated to potential owners and owners of SHR-listed places and the benefits need to be easier to obtain.

Former tax incentives were of great assistance when dealing with big ticket matters, such as retention or restoration of a slate roof. The State Government should work with its Federal counter-part to reinstate the tax incentives and make these easier to apply for and obtain.

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

All heritage conservation requires tailoring heritage conservation policies to conserve significance while managing relevant issues, constraints and opportunities.

The recent amendments to the Standard Exemptions to rely on self-compliance and reporting by owners run the same risks as those associated with private certification of developments. The problems with private certifiers are rife if there are no applied regulatory body checks and fines to stamp out wanton disregard and resultant irreversible damage to our heritage places.

Increasingly the Association is aware of non-compliance and such incremental erosion of the spatial context and settings which erode the overall State significance of Haberfield,

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

There are a number of problems with the categories proposed in the The Paper and the effect of this proposed categorisation

1. Assessment versus management.
2. Creation of a hierarchy of categories which is detrimental to the local level category.
3. More power given to potential developers and owners of sites who are not necessarily concerned with conservation.

The Association does not support expanding or having more 'categories'.

The Haberfield Conservation Area is a place on the Register of the National State (RNE). It was inferred in the COAG (heritage) Agreement that RNE places would be transferred to state lists. This has never been implemented. The Association has been urging the NSW State Government over many years to enact the transfer and put Haberfield 2045 onto the NSW State Heritage Register.

Further down grading places on a LEP schedule is also of grave concern. We have experienced proponents arguing that the Haberfield controls do not apply because 'it is *only local*'.

Thus categories are potentially very detrimental to heritage conservation. Proponents of certain developments argue in Court or to a Planning Panel that a place is 'only local' and so does not count or be worthy of attention.

To our community *ALL* our heritage places are significant and should be protected accordingly. Over 95% of heritage places in NSW are at the local level, governed by the EP&A Act. These LEP schedules have been through rigorous consultation and agreed by local communities as being 'their' special places.

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

This question refers to places on the State Heritage Register, such as for permits to excavate archaeology.

Most State items, such as the Yasmar Estate, which are owned by the State Government, have both general and site specific 'exemptions'. However during the Association's last discussion with the NSW Heritage Branch, to erect a 'temporary fence' under the standard exemptions, it appeared the Heritage Branch expertise and knowledge was extremely 'limited'. The Association concludes from this that the resourcing of the Heritage Branch, in terms of budgets and the skill and expertise of practitioners does not match the challenges required by the work.

Rather than the focus being on the current determination criteria for heritage permits, it is the process and its resourcing which is at issue for the Association. The Heritage Branch is simply not adequately resourced.

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

Different powers lie in the different acts and are played off against each other. The two Acts need to be reviewed concurrently.

Planning must include, not turn off, community consultation.

The Association has always agreed that day-to-day management of the SHR listing of the Haberfield Conservation Area should be delegated to local government, in this case to the Inner West Council, and that development applications should be dealt with by the Council.

Since c2000 several extra layers have been introduced and mandated by the NSW State Government and planning has become increasingly centralised. This is extremely worrying for heritage conservation areas such as Haberfield.

State Planning Policies 'turn OFF' heritage assessments and override the specific Haberfield LEP and DCP clauses. State Policies are incrementally eroding the setting and context of this nationally important 'garden suburb'. Similarly it is extremely concerning that applications which are arbitrarily deemed to be 'state significant' and State infrastructure, even or the local schools, that also turn OFF best practice heritage management.

The issue here is not with the Heritage Act, but the lack of respect for heritage management with the much more powerful Planning Department dictating the terms, and increasingly, distain by developers, who use planning rules to by-pass the community.

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

The most effective way to ensure compliance and enforcement in residential areas such as Haberfield is to strengthen Council powers and to give Development Control Plans (DCPs) statutory force. Councils do not have adequate powers to force property owners to remove items not in an approved Development Application (DA). Councils presently have limited options: Ask property owners to remove unauthorised items or alter construction; request the owner to submit another DA and hence give a retrospective approval; or take the owner to court to have a fine imposed which may not rectify the problem with the construction. This latter option is expensive and time-consuming.

Provisions in an LEP and DCP should be consistently applied. Inconsistencies invariably leave decisions open to challenge with comparisons being made by owners.

The Association examines Development Applications and advises Council officers on their compliance or otherwise. A recent example of an approval granted for a curved sprung roof carport by a so-called heritage consultant to Council was in direct contravention of the DCP which states explicitly that only gabled or hipped roofs should be used on carports. Owners who have complied resent such contraventions and they undermine the DCP setting precedents.

Private certifiers approve construction that is not compliant with the approved plans. In one instance, the approved plans showed the original appearance of the house. The new building bore little resemblance. Many other discrepancies were subsequently found by Council officers. The accreditation of private certifiers needs to be strictly administered and their certification regularly reviewed based on their performance.

A further issue for a suburb like Haberfield, is the fact that State Environmental Planning policies override local government planning instruments and their regulations such as the LEP and DCP. For example, SEPP (Affordable Rental Housing) 2009 permits dual occupancy on properties. Haberfield was specifically designed as a residential area of one house per block of land. This is one factor which gives it a particular character and

heritage significance. Attached dual occupancy is permitted under the DCP, but this SEPP allows detached dual occupancy which undermines Haberfield's heritage character. There should be quite specific exclusions applying to certain suburbs which are heritage conservation areas.

Protection and strict adherence to a DCP does not mean there cannot be any variations, but they cannot be so radical that the character of an area is basically ruined by renovations and additions.

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

Garden suburbs are noticeably absent from any government tourism advertising. Letchworth in England and Hellerau in Germany are internationally recognised as Garden Suburbs because they are advertised as such by governments in their respective countries. Advertising for Tourism NSW and various local areas concentrates on beachside suburbs, for example, Bondi and suburbs like Paddington and Balmain. There should be greater diversity in the selection of heritage sites for such advertising and promotion and more community consultation representing the richness and history of suburbs. While this may depend on Council priorities and cultural events offered as well as tourist amenities, there are opportunities in a suburb like Haberfield to build on its historical and heritage significance. The *Yasmar Estate* offers the government a particular tourist destination. But investment is required to restore it. Government leadership would be a precondition.

A register of heritage associations should be compiled at the national and state level with information on heritage conservation areas.

The promotion of particular suburbs and areas of heritage significance to tour operators should be a priority in any major campaign for local tourism.

Haberfield is currently seeking State Heritage Listing. Such listing is likely to enhance its profile nationally and internationally. Everyone in the suburb would be a beneficiary of improved amenities and visitors.

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

There are numerous ways in which public heritage buildings could be activated. Lack of awareness of the ownership status of buildings is an issue. Communities need to be informed of their status and the potential and process for activation. Councils need to play an active role. The Association accepts that heritage is a shared responsibility, but government has a leadership role to play and legislation has a protection and propagation role. Sites languish without resources and community involvement.

The Haberfield Association plays its part at the *Yasmar Estate* by organising through the Friends of Yasmar Committee to maintain the garden and its rare botanical contents. This is potentially a wonderful education resource for the community. We have set out in a Mission Statement our aims for this important piece of colonial history. We want a dedicated Crown Lands Reserve Trust to be established, known as Yasmar Reserve Trust with the Inner West Council as Reserve Trustee. The Estate should remain in public

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Other Comments

The Paper has an overly excessive focus on ‘adaptive reuse’. This has always been available for heritage places. Churches and masonic lodges have changed to homes, Buddhist temples and commercial retail spaces; former gaols become housing estates and museums. Homes have new kitchens and bathrooms.

The Paper places considerable emphasis on ‘residential’ category of heritage places, the bulk of which are recognised on a local environmental plan under the planning legislation, not the Heritage Act.

Conclusion

Further the vast majority of SHR places are in State ownership. The State Government should be ‘leading by example’ in heritage management. In Haberfield, we witness severe government neglect of the ***Yasmar Estate***. This raises questions and doubts in the local community about government leadership of, and commitment to, heritage conservation.

It is not the Heritage Act but its implementation and management that is the main issue. The Association confirms its support for the role of the Heritage Act, 1977 to identify, protect, promote and conserve cultural heritage places, building and estates in NSW.

We consider that the NSW Government should be a leader and an exemplary owner and manager of cultural heritage assets.

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