

**Submission
No 89**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: National Trust of Australia (NSW) Parramatta Regional Branch

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Submission to the Review of the NSW Heritage Legislation

I write this submission as President and on behalf of the Parramatta Regional Branch (the Branch). I have 11 years' experience as a member of the Branch's Executive Committee and as President and have acted as a heritage advocate throughout this period. I have previously put forward numerous submissions to reflect the Branch's response to threats to the heritage significance to buildings and places in Parramatta and within New South Wales (NSW). The Executive Committee has endorsed this submission.

The Branch supports a review of the Heritage Act 1977 however, its principal position is that any review should not dilute any provisions that seek to protect the heritage in NSW. In reading the documents associated with this review, the Branch cannot come to any other conclusion than this review will unfortunately achieve a significant reduction in the protection of the State's heritage.

While the Branch has a specialist interest in maintaining and advocating for the protection of heritage in the Parramatta regional area, the Branch also adopts the reasonable approach that heritage items should not be seen as an inconvenience but play a legitimate part of the development process. Heritage affords tangible links to our past and the ability for future generations to understand the "stories, memories and collective experiences in our state in physical form" as stated by the Minister. As well, heritage buildings provide an exceptional contrast and balance to modern concrete and glass structures and offer a more hospitable environment for workers and visitors to our State.

The Branch would like to make the following comments based on this first discussion paper:

A changing operating context (page 6)

The Branch questions the statement that recent natural disasters, such as bushfires, flooding and COVID 19 have affected heritage conservation and whether these events have "sharpened the focus on the role of heritage in job creation and economic recovery". The Branch would be disappointed if matters that reflect great and legitimate community concern are used to support change without any specific evidence available to support this statement.

Similarly, the Branch would question the statement that "Heritage is increasingly being recognised for more than its heritage relevance, with many social, economic, environmental, health and wellbeing aspects of heritage increasingly coming into focus".

Despite my discussions with colleagues, it is not clear what this means. Again, if it is used to support change there should be specific evidence to support this statement.

The Branch would gladly accept that a review of the Heritage Act should be undertaken if for no other reason than the time the Act has been in operation and the absence of indigenous heritage, but it is not necessary to support a review based on the irrelevant reasons given.

Aboriginal Cultural Heritage (page 7)

The Branch supports the inclusion of aboriginal heritage in the review. For consistency, the Branch would suggest that any new provisions or those currently controlled by the NSW National Parks and Wildlife Act 1974 be contained in a single Heritage Act. The promise to include indigenous heritage was made some twenty years ago and has still not been enacted. This must remain a priority and be addressed now.

The rationale for a review of the NSW Heritage Act (page 7)

The Branch does not agree with statement that “the Act is now widely considered to be out-of-step with trends in heritage conservation and land-use planning and development. It reflects an outdated reliance on prescriptive regulatory measures and compliance mechanisms to achieve its objectives, and is generally considered onerous, procedurally complex and adversarial to adaptive reuse”.

Again,

Who considers it out-of-step?

What are the prescriptive regulatory measures and compliance mechanisms that are so onerous?

It has been the experience of the Branch that, given the different forms and significance of heritage, that conservation is almost predominantly a qualitative process (rather than a quantitative process) that depends solely on the heritage qualities of the heritage item in question.

Again, the Branch does not agree that there is “a perception that heritage listing can be a burden rather than a celebration of our history”.

While this may be true in limited cases where developers purchase sites with heritage items and seek to develop these sites. Some developers have little interest in preserving the heritage qualities of the building (for example, the State-listed Roxy Theatre at Parramatta).

Most heritage listed properties do not fall into this category. In fact, heritage listed items have significant advantages not available to non-heritage listed properties located in

similarly zoned areas. The Standard Instrument (cl 5.10) allows heritage listed properties the ability to be used for any use irrespective of the zoning. There is also no ban of sensitive alterations and additions and even demolition if this can be supported on heritage grounds. Perhaps the problem is the lack of understanding of what can be done to heritage items rather than their alleged inherent burden.

Any changes to the Heritage Act should strengthen legislation to provide better heritage outcomes and not weaken heritage protections.

Objects of the Heritage Act (page 9)

The Branch supports the retention of the objectives and principles of the Heritage Act. The Heritage Act remains relevant today although the Act may benefit from some small updates to strengthen, not weaken heritage protections.

Heritage Council of NSW membership (page 9)

The Branch believes that membership of the Heritage Council of NSW should be based on the qualifications, knowledge and skills criteria set out in the Act. The Heritage Council must be an independent voice for heritage and membership should consist of renowned heritage experts and representation from significant heritage organisations. It is only with members with the qualities identified in the Act that there can be any certainty that heritage will be protected.

Transferable heritage floor space (page 10)

The Branch remains unsure about transferable floor space for heritage buildings. The transfer of floor space that would be available for a site based on Local Environmental Plan (LEP) development standards would potentially stop the gross exploitation of heritage buildings. Tentative support for transferable floor space for heritage buildings would only be acceptable if some of the financial benefit gained was used in the restoration of the heritage item in question. Without this, it would be likely that the heritage item would be less attractive for future use and decay.

An alternative (and which the Branch has passed on to the City of Parramatta Council) is to remove the broad-brush approach to heights and floor space ratios in LEP maps and specifically exclude heritage items from these LEP maps and replace them with site specific planning controls.

Heritage owner incentives (page 10)

The Branch would support schemes that provide incentives for the conservation of heritage items.

Listing of heritage items (page 14)

The Branch raises strong objections to the proposed four-category approach suggested in the discussion paper for the following reasons:

- This approach dilutes the heritage significance of heritage items by involving non-heritage criteria such as economics and the opportunity for activation and reuse. The consequence of this approach is that a heritage item may be suitable for listing on its heritage qualities under the current assessment guidelines but because it cannot be economically reused, the heritage listing may not be granted.
- This approach would appear to place most State listed heritage items in Category 3 because of the use of the words “exceptional” for Category 1 and “significant” for Category 2 and as such, subject to the arbitrary requirements involving non-heritage matters such as economics and the opportunity for activation and reuse.
- This approach and the classification of Category 3 as “standard residential properties” clearly overlooks highly significant heritage items that provide insights into Australia’s social and cultural history and should not be treated as inferior items.
- The absence of detailed criteria for assessment of whether heritage items fall within Category 1,2 or 3.
- The question of whether Category 4 Local Heritage has the same process involving non-heritage criteria such as economics and the opportunity for activation and reuse given that the listing of local items still is the subject of the Minister’s consent.

The listing process (page 17)

The Branch maintains that the listing process needs to be rigorous and thorough to ensure that full heritage significance is available before a listing is made. To do otherwise would be a waste of time. The Branch would support a more community-driven nomination process for State listing.

Amending existing listings (page 17)

The Branch accepts that existing listings need review on a regular basis in much the same way that all councils are required to review their LEP's including the local heritage listed items identified in Schedule 5. The Branch is unsure why this cannot be done by the State government in a similar way.

The Branch is not convinced that an abridged "delisting" process should be included without an independent and thorough assessment of the heritage item and the loss of its significance was undertaken. Given the Branch's experience with the unreasonable loss of heritage items in Parramatta despite community concerns and advocacy, we would oppose an abridged "delisting" process. An abridged "delisting" process would see heritage buildings targeted for no other reason than convenience for developers, and we believe it would allow it to be abused more by them.

Compliance and enforcement (page 19)

The Branch does not accept that a "more nuanced and lighter touch enforcement approach" is warranted, in fact the opposite is required. The experience of the Branch is that heritage items are regularly subjected to 'demolition by neglect' and that councils should have easier and less costly opportunities to bring people and companies who neglect heritage properties before the Courts for their negligence.

Publicly owned heritage (page 22)

The Branch was perturbed to read that many public owned buildings are seen as "surplus to need". This comment goes to the heart of the argument of the Branch that heritage conservation isn't just about economics but the retention of NSW rich heritage for future generations. With the NSW Government owning over 50% of State Heritage Listed items surely, they have an obligation to the community to protect our heritage for future generations even though a building may be perceived by them to be "surplus to need".

Cheryl Bates
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