

**Submission  
No 91**

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

**Organisation:** Millers Point Community Resident Action Group

**Date Received:** 4 July 2021

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# **Millers Point Community** Resident Action Group

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## **SUBMISSION TO THE PARLIAMENTARY INQUIRY INTO THE REVIEW OF THE HERITAGE ACT 1977**

To: The Director  
Standing Committee on Social Issues  
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# Millers Point Community Resident Action Group

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## Introduction

The Millers Point Community Residents Action Group (MPCRAG) which includes Dawes Point, The Rocks and Walsh Bay, is the community voice of the area now called Harbour Village North in the City Of Sydney's Village Planning policies.

We were founded by Nita McCrae before the commencement of the Heritage Act in 1977. Nita was a significant actor in the political turmoil around community efforts to retain the Rocks in the 1970s, and she is now commemorated by the Nita McCrae Reserve in front of the Millers Point Community Centre in Argyle Street. Her work was continued with dedication by Mrs Shirley Ball and succeeding committees.

Amongst other achievements we obtained the State Heritage listing for the Millers Point area in 2003 – a ground-breaking achievement. Our built heritage has now changed dramatically from it being unmaintained under State ownership to being fully maintained by the current private owners at an estimated cost of greater than \$900m dollars. This level of spending is an indication of their commitment to the heritage of their own properties and to the area as a whole. Clearly, MPCRAG has a stake in any review of the Heritage Act 1977.

For the benefit of the Standing Committee, we will follow the structure of the Discussion Paper prepared by Heritage NSW. However, we begin our submission with four general comments.

1. The Discussion Paper seems to have been prepared from a very self-referential base. There is little recognition of the primary role of local government in all aspects of "heritage" (and how the two work together under the NSW Heritage Act). Councils in New South Wales (NSW) have moved on from the ill-informed 1950s to 1980s to a level of understanding and sophistication often superior to that of State Governments. Even bodies such as the National Trust now often find more rapport at Local Council level than at the State Level. This is also reflected at the local community level where residents observe the State's use of anti-heritage planning techniques such as unsolicited proposals, spot re-zonings and manipulated consultations to sidestep real heritage issues. To achieve a successful review Local Government must be more heavily involved and have its important roles recognised at State level and in state legislation.
2. Generally, the spirit and intent of the 1977 Act is as relevant today as when it was created. While it is implied in the Discussion Paper and explicitly stated in the Minister's introduction – "a perception has developed that heritage listing can be a burden, with the most minor activities subject to costly regulatory obstacles", we would argue that most problems are the result of the current administration of the Act. Nevertheless, the Act can be improved, and we would be pleased to assist.

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3. All relevant studies point to the conclusion that heritage, recognised, administered and managed properly, provides an economic benefit to owners, the community and the State. Unfortunately some developers see heritage as a challenge to get around rather than a benefit to their development. They promote the perception that the system can be skewed by hiring expensive consultants to forward their interests. This review will need to strengthen the Act against this perception.
4. To assist MPCRAG in the preparation of this submission an on-line survey was taken of 18 Millers Point residential property owners and three heritage consultants who work in the area. The results of the survey have informed this submission.

## **MPCRAG Responses to the 19 Focus Questions**

### **FQ 1 Composition of the Heritage Council**

Further to our earlier comment, we believe there should be a dedicated voice for Local Government on the Heritage Council. This could be in line with arrangements for similar bodies such as the NSW Environmental Trust with the LGNSW. Such a voice could be appointed from representatives nominated by LGNSW.

Further, we strongly believe the Act should not allow the Minister to override the decisions of the Heritage Council. All other States do not allow this. This anomaly diminishes the integrity and credibility of the Council and is an unnecessary burden on the Minister who may have little experience with the complexity of heritage procedures.

### **FQ 2, 3 and 4 Aboriginal Cultural Heritage**

NSW is the only State in Australia without stand-alone Aboriginal Cultural Heritage legislation. Achieving that would be a better solution than attempting to integrate it within the same statutory framework as colonial focused built heritage management.

### **FQ 5, 6 and 7 Heritage Legislation Incentives**

We agree that there needs to be a number of complementary paths to achieve heritage sustainability. In one case, the City of Sydney invented a system of transferable heritage floor space which works for the city but would be difficult to transpose to the suburbs. Some Councils allow additional developable floor-space bonuses for retention and upgrade of heritage items. Other Councils e.g., Melbourne City Council set up semi-independent funds from Council resources and others contribute directly on a dollar-for-dollar basis with the State. State assistance in NSW is available through the Heritage Incentive Fund on a recommendation of the Minister.

Local Councils are able to assist through the Local Government Act with rate concessions for listed heritage property owners, although there is a need for some legislated changes to the Local Government Act to assist this process.

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Overall, there are a number of paths open for assistance which do not require amendments to the Heritage Act but do require appropriate funding and administrative support from Heritage NSW. Again the point is made that the administration of the Act is a significant issue.

It has been argued that the purchase of a heritage item should be done with full knowledge of relevant planning requirements, but the path of adaptive re-use can often be assisted by non-government bodies such as the Historic Houses Association of Australia (HHA) who would welcome opportunities to facilitate partnerships between Heritage NSW and heritage home owners. It should be noted that the British equivalent of HHA is currently the recipient of significant private and government funding.

## **FQ 8 and 9 Tailored Heritage Protection**

The Discussion Paper's comments here are generally supported by MPCRAG subject to the detailing of the four proposed categories being appropriate and capable of implementation and policing. If managed well, this could support simpler administration of heritage items. There could also be significant tailoring of the procedures now required for maintenance and development approvals. In particular, the need for an endorsed Conservation Management Plan compared to a requirement for a simple Heritage Impact Statement could be clarified.

## **FQ 10, 11, 12 and 13 Heritage Nominations and Approvals**

MPCRAG supports:

- Community driven "early round nominations";
- A streamlined updating process, subject to no reduction in heritage protection;
- The Heritage Council being responsible for determining regulatory thresholds. The Minister should be involved in this process only at a policy level – not for individual sites; and
- The current determination criteria for heritage permits.

## **FQ 14, 15 and 16 Integration with Land Use Plan**

MPCRAG considers the more integration with land use planning, including strategic planning the better. This should occur at the coalface i.e., the Local Council level. More delegation to Councils should occur including the right to prosecute offenders against the Act. All this implies additional resources at the Council level where cost shifting from the State is already a problem. The annual rate-fixing procedures for Councils should allow for separate recognition of the need for additional heritage related resources.

All Councils should be delegated the power to issue Interim Heritage Orders. Currently only some Councils have this delegated power.

## **FQ 17, 18 and 19 Engagement and Promotion**

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As mentioned throughout this submission there is critical need for more resources across the heritage area. The State urgently needs to resource Heritage NSW and the Heritage Council. Local Councils, as a result of cost shifting and rate capping, are economically restricted. Private interests continue to be massive contributors, in addition to their normal tax liabilities.

MPCRAG is aware of many resident/owners in our area keen to work with Heritage NSW and the City of Sydney to promote joint activities such as heritage tourism through local walking tours. Also new technologies provide ways to attract visitors to Millers Point and to our local businesses. Millers Point is the gateway to Barangaroo. There are other examples of heritage promotion and engagement described in the discussion paper which are capable of being implemented by a reinvigorated Heritage Council.

It should be noted that this is the location of early inter-action between the European settlers and the First Nation inhabitants. The recognition of this inter-action needs to be handled very sensitively and show cased.

## Summary

1. The spirit and intent of the 1977 Act is as relevant today as when it was created. It is the implementation of the Act that needs attention.
2. Local Government, as the cutting edge of heritage conservation and promotion, must be jointly involved in any proposed amendments to the Heritage Act 1977.
3. The Act needs to be strengthened and clarified in concert with planning legislation to recognise local character overlays, heritage conservation areas, local strategic plans and the relevance of heritage impact statements and heritage management plans.
4. Other legislation which sidelines the Heritage Act such as State Significant Development and Unsolicited Planning Proposals should be reviewed prior to any review of the Heritage Act.
5. The Heritage Council should comprise a representative of Local Government and relevant bodies such as the Planning Institute and the HHA.
6. As in all other States the Minister should not be personally involved with decisions of the Heritage Council.
7. Aboriginal Cultural Heritage should be protected through its own separate legislative act.

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8. The Act should require Heritage NSW to investigate and promote related planning and financial arrangements which can further the stated aims of the Act.
9. The Local Government Act should be amended to allow concessional rating of heritage properties listed by the State or individually listed in environmental plans.
10. Local Government should be given enforcement powers for Local and State listed items including the right to recover associated costs.
11. The Act should require the State Government to prepare a Heritage and Tourism Strategy incorporating a mandated role for Local Government.
12. A tailored form of heritage protection as set out in the Discussion Paper is supported including the wider use of a refined approach to Heritage Impact Statements.
13. A form of “early round nomination” is supported.
14. A streamlined updating process is supported.
15. We support the Heritage Council being entirely responsible for determining regulatory thresholds.
16. We support the current determination for heritage permits.
17. All Councils should be delegated power to issue Interim Heritage Orders.
18. All Development Applications (DAs) for heritage items should be assessed at the relevant Council level and not by Heritage NSW who should be available for advice only. This should be invoked only where Local Councils have demonstrated the capacity to manage heritage issues. This should also include items on the Section 170 Register (State Owned Items).
19. It is not fair to blame the Heritage Act for making heritage processes complicated and burdensome when it is the State Government’s under-resourcing of Heritage NSW that has led to poor administration of the Act and consequent delays, the cost of which has been borne by private property owners.