

**Submission
No 94**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Camden Residents' Action Group Inc

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Submission to the Review of the Heritage Act (NSW) 1977

Thank you for the opportunity to comment on the *Review of NSW Heritage Legislation Discussion Paper* (April 2021) and make an input into any change in the management of NSW's significant heritage.

Camden Residents' Action Group Inc which was established in 1973, has a long history of representing the community on heritage and environmental matters. Camden is rich in cultural significance and is home to many State and locally listed items.

As stated in the Discussion Paper (p. 6), the Heritage Act 1977 was the result of community concern about the loss of our environmental heritage through overdevelopment. Lack of compliance with protective heritage controls is currently a very sensitive problem in Camden, and elsewhere. Whilst job creation and economic recovery are currently very important, we consider that the community sees conservation of our heritage as necessary, especially given the seemingly strong incentives for developers to ask for more than development planning rules stipulate. Many would say this is a leading cause of the overdevelopment that they see as occurring now.

Once the cultural significance of our heritage is lost it is gone forever. The community understands this and is concerned about repetition of the mistakes that resulted in the Heritage Act now under review.

Our comments follow.

From the introduction to the Discussion Paper, we note that the Review into how NSW can better recognise, conserve, and celebrate our heritage is to be guided by three key themes:

1. Making heritage easy; *Making heritage ownership and administration simple and cost-effective.*

2. Putting heritage to work; *Making heritage a viable opportunity for economic growth, employment and community enjoyment.*

3. Making heritage relevant; *Making heritage a cornerstone of NSW communities, quality local environments and beautiful public spaces.*

We submit that the community would applaud the first and third themes as they are likely to promote conservation of our heritage into the future.

The second theme is problematic, and this is reflected in our comments throughout this submission.

The theme of putting heritage to work is not necessarily an objective of heritage conservation for future generations. It is in fact not a stated objective of the current Heritage Act.

Cultural heritage can be appreciated for its own sake. It is intrinsically valuable as a window into the past, a means of learning about our journey, understanding our present and informing our future. Not everything of human value is about economic growth and employment, as imperative as they may be in the shorter term.

We have serious concerns with the argument (p 6) that an effective heritage system needs to harness cultural and economic values of heritage sites, manage competing values and adapt to the pressures and challenges of an ever-changing world.

This sounds like a recipe for developers to argue that current “challenges”, whether they be economic pressures of lack of development space such as in Sydney, or a need at a point in time for jobs in the construction industry, are more important than heritage conservation. A changing operating context is normal and to be expected. Heritage conservation on the other hand is long term. It is essential to a community’s identity, a unique sense of place and certainly to tourism potential.

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

We note that Heritage Council decisions are made by a majority of members in attendance at a meeting as long as a quorum of a majority of Council members is present. We are happy to be corrected, but it seems that the most qualified and knowledgeable on a specific agenda item are not necessarily present to speak to and inform a decision. Heritage Department staff of course provide significant input, but do not necessarily include any representation of community views. There is no requirement as far as we can find, that harnesses the knowledge and lived experience of the community or takes into account what the people see as a beautiful quality environment referred to in Theme 3.

We believe that the composition, skills and qualities of the Heritage Council of NSW should include opportunity for inclusion of the local Community affected by a particular decision. Perhaps this could be achieved by the Heritage Department notifying relevant information and issuing an invitation to participate with submissions and inclusion of a representative familiar with the agenda item in the Heritage Council meeting.

As noted in the Burra Charter (1.2) cultural significance is embodied in the *place itself, its fabric, setting, use, associations, meanings, records, related places and related objects*. Knowledge of the place itself is key. We submit that composition of the Heritage Council should be more flexible and open to inclusion of those with local knowledge and understanding.

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

Acknowledging and considering Aboriginal Cultural Heritage is not enough in itself.

We refer to our above comment about the need for local community inclusion. We absolutely agree with the opening statement (p.7) about ensuring Aboriginal People self-determine and take custodianship of Aboriginal cultural heritage. The disastrous destruction of the Juukan caves in Western Australia and NSW approvals that impact Aboriginal heritage sites under National Parks and Wildlife legislation are not only disrespectful breaches of trust but legislative failures.

Sufficient safeguards must be included in the Heritage Act to ensure self-determination. Community experience with the Act as it stands has not always been positive. The sense is, that regardless of an item's state heritage listing, it is not necessarily safe from inappropriate development, even in the case of significant and sustained community protest such as that witnessed in Windsor.

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

Yes, we believe they are still relevant. They put long term conservation ahead of short-term economics, an approach that we believe reflects a community consensus on the importance of heritage conservation into the future.

In relation to Objective (e) *to encourage the adaptive reuse of items of State heritage significance*, we note the definition of the concept of Adaptive reuse in the Glossary (p.5). We are concerned that within the context of Theme 2 it is not necessarily consistent with the principles of the Burra Charter¹ which is endorsed by and according to the NSW Heritage Council provides a best practice standard for managing cultural heritage places in Australia². According to Articles 7 and 21 of the Burra Charter, where the *use of a place is of cultural significance* it should be retained and any new use of a place should involve minimal change to significant fabric and use and respect associations and meanings; adaptation is only acceptable with minimal impact on cultural significance and after considering the alternatives.

The definition in the discussion Paper of adaptive reuse being the process of modifying a building or structure and its curtilage to suit an existing or proposed use, for a purpose other than for which it was built or designed, would seem to be the wrong way around. The use should be compatible with its original cultural significance as a first and main approach, rather than the item being adapted to suit another use that happens to be seemingly convenient or most profitable at the time.

A case in point is the proposal to “adapt” state-listed Gledswood, one of Camden municipality’s most iconic and precious properties for use as a child care centre. This would require alteration to historic fabric and gardens despite its Conservation Management Plan, Heritage Agreement which allowed curtilage sell-off to fund restoration and its Tourist (SP3) zoning.

Proposals that seek uses that are irrelevant to the original, especially if they require major modification to the heritage item, should only be considered after all appropriate uses have been explored with heritage and economic analysis that is reviewed truly independently.

Proposals that are not consistent with the concept of adaptive re-use as defined in the Burra Charter should not be accepted and certainly not encouraged further through any amendment to the Heritage Act.

¹ ICOMOS 2013 *The Burra Charter. The Australian ICOMOS Charter for places of cultural Significance*. Available at <https://australia.icomos.org/wp-content/uploads/The-Burra-Charter-2013-Adopted-31.10.2013.pdf>

² Heritage Council of NSW *What We do* Available at <https://www.heritage.nsw.gov.au/what-we-do/heritage-council-of-nsw/> Accessed 27 June 2021.

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

No. What is happening in Camden is also happening elsewhere. Developers, despite the planning instruments and heritage listed status push the envelope.

A particular issue in Camden is that heritage and flood constrained sites are relatively cheap and developers see opportunity in lodging grossly non-compliant proposals. It seems they are prepared to take them as far as necessary to achieve greater gain at the expense of Camden's unique heritage and set a precedent to make future applications easier.

Another specific case in point is the potential redevelopment of Camden's St John's Anglican Church Precinct. Despite its State heritage listing it is subject to an option contract to purchase around two-thirds of its area for aged care/seniors housing. The potential developer has committed a non-refundable deposit and clearly believes that its listing and Conservation Management Plan (as well as its zoning and title caveats setting out the trust terms of the original Macarthur gifts), are not impediments to its plans.

Developers, and even government departments such as the RMS, do not necessarily heed the Heritage Act, which is a problem that should be addressed in this review.

It is not the expectation of the contemporary community that grossly non-compliant development proposals should be accepted or ever see the light of day, let alone be approved.

The balance is wrong. At this point in time, the community feels that it does not self-determine or have custodianship over its heritage. The Act needs to empower the community by reflecting its expectation that it should have a determining voice.

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

We also refer to our comments under Focus Question 1. To embrace the approach of Theme 3 of *making heritage a cornerstone of NSW communities, quality local environments and beautiful public spaces*, the invested community needs to be heard and involved in the listing processes of the Heritage Council.

Whilst an objective of the Act is to promote an understanding of the State's heritage, it is often the community that has already done the research and understands the cultural heritage significance of items in its locality. That is certainly the case in Camden, which has been and is subject to much active research.

We see the decision-making about what is listed on the State Heritage Register as a two-way exercise.

We are familiar with the State listing process having conducted a heritage study³ of the original private Macarthur town of Camden (designed 1836 and founded in 1840) and nominated its locally listed Heritage Conservation Area for State listing in 2016. Camden Council is also investigating its potential listing. The community has also recently been involved in the State listing of St John's Anglican Church Precinct.

We have found that the listing process is difficult to navigate and time-consuming.

The resourcing of NSW Heritage can be a potential barrier in the nomination process as it restricts its ability to closely examine, ratify and accept nominations from citizens and community groups even when they are supported by fully researched and referenced analyses of cultural significance that are further substantiated by renowned historians.

Also, once an item is recommended by the NSW Heritage Council to the Minister for State listing, as in the case of St John's Anglican Church Precinct, there can still be uncertainty as to whether and when it will be signed off for its gazettal.

³ Camden Residents' Action Group Inc 2016 *Camden Township Heritage Study* Available at <https://www.crag.org.au/camden-township-heritage-study/>

Focus Question 11: Would streamlining enhance the listing process?

We do agree with the statements that there is uncertainty and delays in relation to heritage listing (p 7) and that current heritage listing procedure is lengthy and complex (p. 17).

We would of course welcome the proposed reform (p. 17) of Heritage NSW providing assistance in preparing community nominations.

However, we would not want to see making a nomination as a purely competitive exercise, and subject to invitation. Anyone should be able to make nomination at any time and to be told what is needed to take it further, not await a round and subsequently have it dismissed as “non-promising”. An “early-round” system would lengthen the community process, not streamline it. It would not assist in nominations that are lodged more urgently in response to perceived threat.

However, the round system would be a useful reminder and could work in conjunction with the ability to nominate at any time.

In relation to there being *no current process to engage the broader community in identifying items of value* (p 17) we do not see the “round” system as the most efficient answer. There are more inclusive and immediate means of understanding broader community interest and support for listings. What is already locally listed would provide a first indication. Requiring a nomination would not necessarily identify items of most value to the community. As argued above, often the local community knows most about what is most culturally significant in their locality, and would be happy to share the information. Correspondence with community groups, such as historical societies, which are custodians of much local research and knowledge about what they would consider nominating for state listing would soon reveal a picture.

As we indicated at the outset, we believe conservation of our heritage is a fundamental expectation of the contemporary community, and necessary regardless of changing times.

We trust that any amendment to the Heritage Act will reinforce its protective function within the planning system and empower the community with a much stronger voice.

Yours sincerely,

Camden Residents Action Group Inc