

**Submission
No 103**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Mr Chris Betteridge

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2 July 2021

The Hon. Shane Mallard MLC
Chair
Standing Committee on Social Issues
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Mallard

Submission to the Standing Committee on Social Issues in regard to the Review of the Heritage Act, 1977

My credentials

I am writing to the committee as a heritage professional and concerned resident of New South Wales, and not as a representative of any group or organisation. I am not and never have been a member of a political party.

In 1978 I was appointed to the position of Specialist – Environmental / Landscape in the Heritage and Conservation Branch of the NSW Planning and Environment Commission (PEC). The Branch was established to advise the then newly established Heritage Council of NSW on the application of the Heritage Act 1977 to the conservation of the environmental heritage of NSW and to provide heritage and conservation advice generally to the PEC. I fulfilled that role for ten years, working on a very wide range of heritage projects and in that time I had articles and reports published on the use of the Heritage Act to protect cultural landscapes including historic parks, gardens, cemeteries, the settings of historic buildings and sites, and heritage conservation areas.

From 1988 to 1995 I had senior management roles in the Tourism Commission of NSW, Royal Botanic Gardens Sydney and The Earth Exchange (former Geological and Mining Museum). For the past 30 years I have been in private practice as a heritage practitioner specialising in the conservation and interpretation of heritage places, particularly cultural landscapes. My work has included the preparation of conservation management documents for significant heritage sites in NSW, ACT and New Zealand.

From my own experience and from my conversations with other heritage practitioners and members of the public, I have to preface my submission by saying that there is a great deal of mistrust in the current NSW Government's commitment to heritage conservation and suspicion of the motives behind the Heritage Act Review. The poor planning and lack of transparency in many recent Government projects affecting places of State significance is beyond belief and a cause for great concern. There is inadequate resourcing of Heritage NSW for it to perform its role effectively and

efficiently and inadequate representation on the Heritage Council of NSW to cover the range of built, landscape, social and multicultural heritage relevant to the contemporary NSW community.

My Submission

My submission addresses the Focus Questions posed in the Discussion Paper and additional issues which I consider are relevant to the Review.

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

The Heritage Council of NSW should be an independent statutory expert body that makes decisions on listing of items on the State Heritage Register (SHR) and has an obligation to provide the relevant Minister with objective advice on heritage matters generally. Section 21 of the Act: 'Functions of the Heritage Council' needs to be amended to enable this.

As in the original Heritage Council of NSW back in 1978, the composition of the Heritage Council should include people with extensive knowledge of and demonstrated experience in relevant aspects of heritage, including but not limited to one or more of the following:

- Architecture / adaptive reuse / infill development.
- Landscape architecture / cultural landscape conservation and management.
- Strategic and development planning.
- Aboriginal culture and archaeology.
- Non-Aboriginal culture and archaeology.
- History / historical research.
- Nature conservation.
- Engineering and industrial heritage.
- Multicultural and social heritage.
- Movable heritage.
- Cultural tourism.
- Interpretation / education.
- Materials conservation.
- Local government.
- Rural interests.
- Community interests.
- The economics of conservation.
- Property ownership and rights / real estate / risk management / insurance.
- Environmental law / heritage law / compliance issues.

The original Heritage Council included Commissioner, Planning & Environment Commission (PEC); Director, National Parks & Wildlife Service (NPWS), Government Architect, a representative of the Labor Council of NSW and representatives of two community organisations, the National Trust of Australia (NSW) (NT) and the Royal Australian Historical Society (RAHS) as well as an elected local government councillor. This provided for good integration of heritage with planning, nature conservation, protection of NSW Government-owned properties, employment, local government and community views.

The original Heritage & Conservation Branch, established within the PEC (subsequently Department of Environment & Planning, Department of Planning, Department of Urban Affairs & Planning) had a strong bias towards the built

environment and this imbalance has not been redressed in 40+ years even though there has been considerable progress in the definition of cultural landscapes and increased acceptance of the need to adopt a cultural landscape approach to the management of heritage places. This holistic approach to heritage conservation must be reflected in the composition of both the Heritage Council of NSW and in Heritage NSW which services the HC. It is understood that of the 130+ staff in Heritage NSW only two have qualifications and experience directly relevant to landscape heritage. The Heritage NSW website, accessible at <https://www.heritage.nsw.gov.au/what-we-do/about-heritage-nsw/>, states “Our staff have a range of specialist heritage backgrounds, including architecture, conservation, history, planning and Aboriginal cultural heritage.” Landscape doesn’t get a mention.

The current Heritage Council has too few members with direct heritage conservation experience. The only community representation on the current HC is the National Trust of Australia (NSW), currently represented by Colleen Morris, who has extensive experience in historical research, cultural landscape assessment and management.

The recent replacement on the Heritage Council of an extremely well-qualified and experienced specialist heritage planner and long-time Australia ICOMOS member with a former Liberal NSW Heritage Minister is a cause for concern.

Representation on the Heritage Council of a representative of the Historic Houses Association of Australia (HAA) would be useful as HAA’s membership is largely drawn from private owners of heritage houses / homestead complexes who are well aware of the day-to day realities and costs of owning such places.

Representation on the Heritage Council of a representative of the Australian Institute of Landscape Architects (NSW Chapter) would ensure that landscape conservation is given adequate weight in the Heritage Council’s deliberations.

The number of members must be manageable and the current number of 9 plus an observer is probably enough to ensure the necessary balance of skills and experience can be achieved. Many heritage experts have experience in a number of relevant areas e.g. planning and interpretation, research and cultural landscapes and it is important that members who have demonstrated skills and ability to think outside the square are chosen as members. There must be transparency in the selection and appointment process. In the past, community-based heritage organisations such as NT and RAHS were invited to nominate representatives to sit on the Heritage Council.

Those who have delegated authority to implement the provisions of the Heritage Act must also have appropriate skills, expertise, experience and knowledge in heritage conservation.

In recent years, NSW Public Service cutbacks and reorganisations have resulted in the departure of many highly experienced heritage specialists from a wide range of Government agencies with heritage assets and this has been detrimental to conservation of those assets and to the consideration of heritage as an important issue to be considered in projects affecting State significant heritage properties.

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

One option would be to integrate Aboriginal and non-Aboriginal cultural heritage into one Heritage Act but this may be unacceptable to many Aboriginal people whose

culture for far too long has been lumped in with natural history through the National Parks and Wildlife Act and the Australian Museum.

The current Act provides for one of the Ministerial appointees to the Heritage Council to be someone with understanding of Aboriginal cultural heritage.

Nature, Aboriginal culture and non-Aboriginal culture are all part of an interdependent continuum and their identification, assessment, conservation management and interpretation must be well-integrated in legislation and its administration.

Non-Aboriginal heritage conservation and planning in NSW were meant to be integrated back in the 1970s but the Heritage Bill was enacted two years before the Environmental Planning and Assessment Act 1979 came into force. Aboriginal culture in NSW is currently subject one way or another to 16 NSW pieces of legislation and at least 2 Commonwealth acts.

Whatever decision is taken on Aboriginal cultural heritage legislation, there must be good integration with planning and with natural and non-Aboriginal cultural heritage legislation and management.

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

Objectives of the Heritage Act 1977, as amended are:

- (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 New South Wales and confer on it functions relating to the State's heritage,
- (g) to assist owners with the conservation of items of State heritage significance.

These objectives are still relevant and provide well for promotion, education, advocacy, identification, assessment, statutory protection and owner incentivisation / assistance.

New objectives should address a balance between conservation and sustainability and managing change while maintaining heritage values.

The three 'Guiding Themes' on page 7 of the Discussion Paper, 'Making heritage easy', 'Putting heritage to work' and 'Making heritage relevant' are not acceptable as objectives for the Heritage Act and would be difficult to translate easily into 'legislation speak'. They are nebulous motherhood statements rather than the clear objectives in the present Act.

The definition of heritage in the Act or its supporting documentation should include intangible values and should dispel the still widely believed myth that something has to be built and be old to be heritage.

The Heritage Act should promote the conservation of 'today's heritage' including significant works by living architects, landscape architects and urban designers. Recent demolitions of or alterations to significant major works by living practitioners have highlighted the need to protect significant examples of, for example, modernist and brutalist architecture.

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

It must be accepted that the NSW community has changed considerably since 1977, with the demographics of many significant places including Sydney CBD and Parramatta very different from 40+ years ago. Migration from non-English speaking countries, moves for economic and employment-related reasons and, more recently, relocation of people from larger cities as part of 'sea changes' and 'tree changes' have resulted in considerable changes to the ethnicity and socio-economic background of local communities in many places. These communities need to be made aware of their local heritage as something to be valued and appreciated.

Ever-increasing property prices only add to the widespread fear in the community that heritage listing places unreasonable restrictions and costs on the owners of listed properties.

Better education of communities on the significance of the heritage in their areas would improve knowledge, understanding and appreciation of their local heritage. This requires adequate resourcing of the body that services the Heritage Council. In the late 1970s / early 1980s the Heritage & Conservation Branch ran regular public seminars in areas under development threat e.g. Federation suburbs of Sydney.

In recent years there has been a substantial increase in the number of SSD applications including some highly significant SHR items. Switching off the Heritage Act for such developments can lead to unacceptable heritage outcomes, resulting from heritage impacts not being properly and thoroughly considered until the SSD is at such an advanced stage that it is not possible to revise the overall approach to achieve a better heritage outcome.

Recent high profile State significant development projects such as Parramatta North Urban Renewal (PNUR), WestConnex, Western Sydney Stadium, Sydney Football Stadium, City and East Light Rail and Powerhouse Parramatta have demonstrated that a well-informed and vocal section of the contemporary NSW community feels very strongly about their local heritage and that the Heritage Act is often perceived as a 'paper tiger' which can be turned off for State Significant Developments (SSDs) and State Significant Infrastructure (SSIs).

It is unfortunate that the NSW Government chose to use the term 'significant' for such developments and infrastructure projects because it leads to confusion with heritage significance. 'Significant' and 'significance' are terms enshrined in heritage legislation and conservation philosophy. It would be preferable to rename State Significant Developments and State Significant Infrastructure as 'Major State Development' and 'Major State Infrastructure'. These should not turn off the Heritage Act and override rigorous heritage input at an early stage of the planning process for these developments. This is one of the main causes of mistrust and suspicion in the heritage conservation industry and in the wider community that the Government has made up its mind on a project irrespective of what heritage impacts there might be.

The use of SSDs and the SSD approval process is particularly inappropriate where a publicly owned and highly significant heritage item is affected (e.g. Central Railway Station, the Education Department Building, the Lands Department Building or the Chief Secretary's Building). The process is particularly concerning where existing height and FSR controls are revised to allow for a particular development driven by non-heritage imperatives. The NSW Government has a responsibility on behalf of

the public to carefully manage the process so that the heritage values of these cherished places are respected, conserved and interpreted.

The key proposition on page 7 of the Discussion Paper is:

“Heritage owners, developers and administrators face uncertainty, expense, duplication and delays in relation to heritage listing and approvals. This has led to a perception that heritage listing can be a burden rather than a celebration of our history.”

This statement is not supported by clear evidence. It is more likely that any *uncertainty, expense, duplication and delays* are the result of administrative, resourcing and education shortcomings rather than structural problems with the Act itself or the broader heritage system.

It is essential that Heritage NSW be adequately resourced and publish clear and accurate information on the implications, including the benefits, of heritage listing. Only through good education, with examples of successful heritage outcomes, can the public fear of heritage listing be allayed. The education process needs to be extended to undergraduates in university and other higher education courses in fields relevant to heritage including, but not limited to, architecture, landscape architecture, engineering, planning and law.

I am not sure of the current arrangements at Heritage NSW which are obviously restricted during the Covid-19 pandemic, but in the 1970s and 1980s, officers of the Heritage and Conservation Branch regularly gave lectures on heritage conservation and the application of the Heritage Act to university classes, conferences and public forums. Undergraduate students in relevant fields also spent periods of attachment in the Branch and some went on to careers in heritage conservation. By these means, the reasons for and the importance of heritage conservation were more widely disseminated in the professional and wider community. Again, this requires adequate resourcing of Heritage NSW.

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

The recent National Trust Forum on the Heritage Act Review was very well attended by NSW Public Service, private heritage practitioners and others interested in the Heritage Act Review. It revealed that heritage incentives and heritage agreements available under the present legislation are rarely used. Some owners of 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 the wider community and especially the owners of SHR-listed places and the benefits need to be easier to obtain. It is essential that Heritage NSW have adequate resourcing to do these things.

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

This needs better cooperation between the NSW and the Australian governments and agreement by the Australian government to allow for income tax deductions for heritage conservation works. The Taxation Incentives for the Arts Scheme for donation of artworks and artefacts to certain cultural institutions was fraught with red-tape that turned many potential donors off. If any streamlining of the Heritage Act is

to be implemented, it should be to make taxation incentives easier to apply for and obtain.

Incentives might include reduction in land tax for owners of multiple heritage properties or waiving of stamp duty on the purchase of heritage properties.

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

Transfer of development rights.

An example where transfer of development rights could have resulted in better heritage outcomes is the redevelopment of the land on the northern side of Station Street, Menangle Village. This area, known as the Rotolactor Paddock, includes not only the remains of the Rotolactor dairy but also the Main Creamery. This land is part of the historic Macarthur - Onslow Camden Park Estate. Although gazetted as a Landscape Conservation Area in Wollondilly LEP the land is not on the SHR even though it is of equal State significance to the lands immediately to the west, within the SHR-listed Elizabeth Macarthur Agricultural Institute. The owner of the Rotolactor Paddock was able to take advantage of an historic but still current linear subdivision development consent along the northern side of Station Street to create a housing development proposal that will change forever the significant views to Menangle Village from the north. Transfer of development rights from the linear subdivision site along Station Street to a site east of the main Southern Railway Line could have protected the setting of Menangle while still allowing the developer a major development in a less visually sensitive site.

Better articulation of current heritage provisions in LEPs.

Some adaptive reuse proposals for SHR-listed properties are stymied by unrealistic and inflexible requirements in local planning instruments for provision of amenities such as the number of parking spaces for certain types of development. There needs to be better articulation and promotion of the current heritage incentive provisions in LEPs to encourage better heritage outcomes.

Taxation incentives for sponsorship of heritage projects.

As with taxation incentives for owners, these could be made available to corporate and other entities to sponsor heritage projects in return for tax benefits and being seen as good corporate citizens.

Schemes such as the UK Heritage Enterprise Grants, the NSW Endangered Houses Fund and the Victorian Working Heritage scheme all can encourage activation and conservation but need to be adequately funded and promoted.

Since 1993 the Historic Houses Trust of NSW / Sydney Living Museums have acquired six properties under the Endangered Houses Fund to protect them, supervise their conservation and then sell them. Of the six, four have been conserved and sold, taking from two to six years from acquisition to disposal. One property, a mostly intact Nissen hut adapted for post-World War II migrant accommodation housing at Belmont North was purchased in 2008 to demonstrate the conservation options for modern industrial buildings. The other property still owned by Sydney's Living Museums, Beulah at Gilead, near Appin, was acquired in 2010 and is still undergoing conservation works. A big advantage of the Endangered Houses Fund is that the properties acquired under it are conserved after thorough research and under the supervision of a State agency with considerable heritage conservation experience and expertise. The numbers of properties processed under

the Fund in nearly 20 years is small but the scheme does offer the advantages of best practice conservation and subsequent sale to the private sector, with the properties subject to appropriate statutory protection.

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 rely on self-compliance and reporting by owners and run the same risks as those associated with private certification of developments. While some owners of heritage assets will obviously do the right thing in their application of these relaxed exemptions, there is a danger that others will not comply and will not report adequately. Again, the oversight of the use of these exemptions by owners will require improved resourcing of Heritage NSW.

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

Australia and NSW already have a multi-level listing process (World, National, State and Local) and there is no demonstrated rationale or need for the additional complexity of a multi-category system within the SHR.

The Burra Charter of Australia ICOMOS requires that the process of determining heritage significance before deciding on appropriate change or management should apply irrespective of the level of significance, although the complexity of the process will vary accordingly.

The Discussion Paper is silent on how the approval process for works applications will differ across the proposed multi-category SHR, although it is assumed that there will be less rigour for items listed on the lower categories. This could lead to unacceptable heritage outcomes, especially for less significant items subject to high impact works. There are already fast track processes in place for minor works (e.g. Section 57 Exemptions), and these could be developed further to avoid unnecessary process and delay.

Category schemes are potentially dangerous, running the risk of perpetuating the 'jewel' complex in which those places in proposed Category A, deemed to be 'the most significant' would be kept well protected but places in other categories might be regarded as more dispensable. Properly assessed and protected heritage places should be managed to conserve and enhance their heritage values, regardless of the level of their significance. A locally listed item such as 'Willow Grove' at Parramatta might be considered just as significant to the local community as the World Heritage listed Old Government House and The Domain in Parramatta Park up the road.

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

What does a robust SHR mean? The Macquarie Dictionary defines robust in a number of ways 'strong and healthy, hardy, or vigorous' but also 'strongly or stoutly built', 'suited to or requiring bodily strength or endurance', 'rough, rude or boisterous' and even, for computers, 'fault tolerant'. Which 'robust' SHR is meant? If we assume it's the first-mentioned definition, then the current SHR could be considered robust although it has a strong bias towards government-owned properties and built heritage. Greater community engagement in and support for the SHR and all it

implies can only be achieved by better education and bringing the community along with decisions to add places, particularly privately owned places, to the Register.

The Register of the National Estate (RNE) in the 1970s included many places which were transferred from the existing state National Trust non-statutory registers and other lists to meet political imperatives and produce a national list relatively quickly. Many places had been originally assessed against a range of different criteria or no criteria at all. The National Heritage List which has replaced the RNE has been prepared with much more rigorous assessment of significance against the national criteria.

The SHR includes places previously subject to Permanent Conservation Orders (PCOs) and which were just added to the SHR when it was established, many since requiring re-assessment. Recent additions to the SHR, however, have undergone much more rigorous assessment against the State criteria. The slow rate of additions to the SHR in recent years is a concern and needs further investigation. There also needs to be adequate resourcing for regular, rigorous and open review and updates of SHR listings as new information comes to light or if an item is assessed not to meet at least one criterion for listing. If an item is removed from the SHR but is assessed to be of local significance, removal from the SHR should be predicated on its being listed on the relevant LEP heritage schedule.

Community engagement in heritage studies that identify potential new items or review existing heritage listings promotes a greater sense of ownership of heritage by the community, including its ongoing support for conservation and keeping watch for threats. This community engagement has been fostered through the community-based heritage study program which needs to be continued and adequately funded.

Focus Question 11: Would streamlining enhance the listing process?

What does streamlining mean? The *Macquarie Dictionary* (4th edition, 2005) defines the term as 'simplifying, especially to improve efficiency'. The example given in the dictionary is "a 'tangle of different standards and research methodologies' should be streamlined into a new set of regulations that could be readily adopted by Australia's building code." (AAP News, 2000)

Sceptics might equate 'streamlining' to 'dumbing down'. Better resourcing of assessment groups within Heritage NSW would speed up the listing process but rigorously researched significance assessment against the established criteria must always underpin the listing process.

Concern is raised by a recent case of the SHR Committee of Heritage NSW advising Woollahra Council which supported and commissioned assessment and nomination of Cooper Park, an historic public park for SHR listing that "Cooper Park is likely to meet the threshold for State heritage significance, however it is not a current priority for SHR listing and should not be progressed. The SHR Committee notes that the heritage significance of Cooper Park will be adequately protected and recognised through its impending inclusion as a heritage item on the Woollahra Local Environmental Plan". This resolution to not recommend the park to the Minister for SHR listing was apparently due the Committee's perception that the park was deemed not to be at risk. As a result, the local council and the community, which elected it, have been denied an SHR listing which they both strongly support for this cherished place. Listing should be based on significance, not risk. Risks and threats might necessitate accelerated identification and assessment of places and ultimately lead to listing but should not be the major criterion for listing. Better resourcing of

Heritage NSW with both increased staff and a wider range of heritage expertise would help address the recent slow rate of additions to the SHR and the bias towards government-owned, and built heritage items on the SHR.

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

My experience is limited to Section 60 applications. The downloadable forms for these still seem to have formatting glitches in them when it comes to filling them in and signing them.

Also, the requirement for a separate Section 60 application to be lodged at the completion of an Integrated Development Application (IDA) approval process is an unnecessary complication and should be removed from the Heritage Act.

I'm sure others, particularly archaeologists, are better able to address this question in regard to permits.

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

See my response to Focus Question 12

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

Heritage must be closely integrated with planning. I was in the minority among my peers who thought that heritage should have stayed in the Department of Environment and Planning rather than becoming autonomous under the former Heritage Office. While the move of the Heritage Office to the former Kings School building at Parramatta in 2003 fulfilled a long-held wish by many of the staff to be located in a heritage building rather than in a high-rise modern office tower, the physical separation from the planning department reduced the opportunities for closer collaboration between heritage and planning. 100 of the Heritage NSW 130+ staff are now again in a high-rise office building in Parramatta, with the remaining 30 or so located in 19 regional centres.

While the close cooperation between Heritage NSW and other agencies in the Department of Premier and Cabinet including Aboriginal Affairs NSW, Create NSW, Sydney Living Museums and State Archives and Records Authority (SARA) is laudable, the disconnect with planning and environment is a cause for concern.

Too many planning decisions in recent years, particularly determination of infrastructure projects and urban release areas in the northwest, west and southwest of Sydney do not appear to have given adequate consideration to heritage conservation or conservation of prime agricultural land.

It is now more than two decades since Colleen Morris and Geoffrey Britton prepared their seminal work 'Colonial landscapes of the Cumberland Plain and Camden' and yet the surviving cultural landscapes they identified and recommended for conservation are still being destroyed by poor government planning and greedy developers only interested in maximising lot yield and financial return.

Significant historic cultural landscapes with prime agricultural production values at places such as Bringelly, Marsden Park, Rouse Hill/Box Hill, Appin and Wilton are being subdivided up for 'little boxes on the hillside, little boxes made of ticky-tacky, little boxes on the hillside, little boxes all the same' (credit to Malvina Reynolds and Pete Seeger). If the people in those little boxes 'all went to the university' as the

words of the song suggest, they certainly failed urban planning! When do we get out of this dangerous mindset of allowing oversized air-conditioned project homes set on ridiculously small lots, with no space left for deep soil planting and streets dominated by roller doors?

Speaking to reporters on 2 April 2019, after the NSW State election, Premier Gladys Berejiklian said, “We’ve moved heritage into the arts, because heritage and the arts have a very strong focus”. “We’re also making sure that the environment takes increased prominence in the new government [with a] prominent place within planning.” Heritage has a very nexus with both environment and planning and used to be located with them.

Placing Heritage NSW in the Department of Premier & Cabinet was touted as elevating heritage in the government hierarchy but as a cynic I see it as making sure heritage doesn’t impede infrastructure development and job creation. The lack of transparency demonstrated by the current NSW government in a wide range of matters does not inspire confidence that the Heritage Act Review will result in stronger protection of heritage. When the current Minister for the Arts and Heritage can sanction and promote the widely criticised Powerhouse Parramatta project and the demolition, storage and ‘rebuilding’ elsewhere of a prominent local heritage item against all conservation philosophy, community wishes and ‘green bans’ only adds to cynicism of the government’s decision to review the Heritage Act.

In my opinion heritage conservation was better located within the environment and planning portfolio and administration, as it was originally. There was close cooperation between heritage specialists and strategic planners, with planners from regional teams seconded to the Heritage and Conservation Branch on a regular basis to ensure better integration of heritage and planning.

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

Heritage must be given equal weight to other strategic planning issues such as land use, employment, education, transport, health. How that is achieved remains to be seen but from some recent urban release areas in outer Sydney it is clear that heritage didn’t get adequate consideration.

Putting heritage administration back in with environment and planning would be better than having it hidden away and nobbled in Premier and Cabinet. It’s not going to work effectively unless the NSW government takes heritage conservation seriously and does not waste precious funds on developing former premier’s ‘thought bubbles’ like the Powerhouse Parramatta project. The government needs to restore public trust in its heritage conservation policies and programs instead of wasting \$1.4 billion dollars on the hair-brained Powerhouse redevelopment.

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

There will always be those who seek to circumvent heritage controls by neglecting maintenance, allowing vandalism, carrying out unapproved additions and alterations but compliance can be improved by better education and improved incentives. Enforcement of controls on SHR-listed places requires greater resourcing of Heritage

NSW. At the present time, it seems enforcement of SHR controls is 'hit and miss' and often relies on unpredictable local intelligence such as neighbours 'dobbing in' those who are not complying.

In recent years, the professional heritage community has encountered considerable difficulties in dealing with Heritage NSW, having difficulties in contacting key staff and experiencing delays in provision of comments and decision-making. At times there have unreasonable demands to modify the scope of works applications that are benign in terms of impact on heritage significance. To address these difficulties, the resourcing and professional expertise of Heritage NSW needs to be enhanced.

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

All heritage is local to those communities in which it is located, whether it has been assessed as of local or state significance. Understanding of heritage at both levels requires well integrated community education and interpretation through a range of media including websites, publications, interpretive signs, heritage trails, lectures, seminars, heritage festivals, special events. These all exist at the present time but are very uneven across the state.

Programs for promoting and funding heritage often have limited lifespans, kicked off with a bang but not maintained in the longer term. The funds already wasted on the Powerhouse Parramatta project in the commissioning of endless reports and allocated for conversion of the Powerhouse Ultimo into a strange mix of steam engineering and transport items with fashion and design would have been better spent on funding a range of smaller heritage conservation projects across the state.

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

Covid-19 and the inability of Australians to travel overseas has led to a big surge in domestic tourism but the speed of this has not allowed adequate consideration of the best ways to manage this increased access to places of heritage significance. There is a risk that many well-known heritage places will be loved to death before adequate management and interpretive programs have been worked out and put in place. Some places that could benefit from heritage tourism may miss out because they have not been adequately identified and assessed and have not had sound conservation management and interpretation planning carried out.

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

For heritage assets such as historic buildings to meet community needs often requires changes to accommodate new uses. So-called 'adaptive reuse' must not be equated with 'heritage conservation'. They are not synonymous. Decisions on managing change in heritage assets must be informed by thorough research and assessment of significance in accordance with established criteria and methodologies and determination of sympathetic new uses which conserve and interpret significance but facilitate new uses.

The adaptive reuse of the so-called 'sandstones' in Bridge Street, Sydney (i.e. the former Education and Lands buildings) as international hotels and the proposed disposal of the former Land Titles Office pose threats to the significant interiors and movable heritage they contain. Conversion of such landmark State significant buildings must include retention of significant interiors and movable heritage in situ, combined with ongoing public access to and interpretation of those spaces.

The current NSW government's rush to sell off public heritage buildings has not benefited from adequate community consultation and appears to have been predicated on making a buck without considering whether the buildings could be adaptively reused by government for community purposes.

Conversion of significant historic public buildings into museums is often cited as a good new use but is often unsuccessful due to factors which may include poor internal circulation patterns and the need for high levels of intervention in original fabric to achieve compliance and meet internationally recognised environmental standards for the storage and display of objects and artefacts. Two major unsuccessful examples were the conversion of the former Sydney Mint into the Museum of Applied Arts and Sciences decorative arts museum. Poor internal circulation and lack of space meant that it never worked well as a museum and was subsequently converted to offices, research facilities and a restaurant for the Historic Houses Trust of NSW (now Sydney's Living Museums).

While the former Geological and Mining Museum in The Rocks operated successfully for many years in a building originally built as a power station, when converted in the 1990s to The Earth Exchange the limitations imposed by the original design meant that it could not take the large travelling exhibitions so important to the success of modern major museums.

While the adaptive reuse of one of the six State significant Flowers Wards buildings at Prince Henry at Little Bay (the former Prince Henry / Coast Hospital) as a nursing and medical museum was a good new use for this building, the high cost of conservation / establishment (approximately \$1 million in 2000), reliance on elderly volunteers to run it, lack of promotion, limited opening times and very low visitation rates make such conversions economically unviable. Governments of all political persuasions are not renowned for adequate recurrent funding of cultural institutions. They must accept that not all heritage places, especially ones with major collections, can ever be financially self-sustaining. Putting pressure on the managers of government-owned heritage assets to be self-funding often leads to inappropriate new uses being introduced to increase visitation and income.

The Parramatta North and wider Sydney communities have articulated to the state and local government their views on the conservation and potential adaptive reuse of the buildings in the Parramatta North Historic Sites (PNHS) and the conservation of their landscape setting. Even so, the NSW Government has persisted, against overwhelming international and domestic expert advice and community opinion, with the Powerhouse Parramatta project, rather than spending that money on adaptive reuse of the former Cumberland Hospital (East Campus), Parramatta Gaol and other significant heritage assets in Parramatta for new community uses which may include but are not limited to museum uses.

Adaptive reuse of the buildings at PNHS could provide Parramatta and western Sydney with community facilities that interpret the rich Aboriginal, colonial and recent non-Aboriginal history of the place.

For public heritage buildings to meet the needs of communities firstly necessitates determination of those needs and therefore well-planned community consultation is essential. Once the needs have been identified, adaptive reuse that strikes the best balance between meeting community needs and conserving heritage significance should be determined.

Other matters for consideration by the Standing Committee

Definition of terms not currently in the Heritage Act and consistency with the Burra Charter and other heritage acts

When the Heritage Act was introduced, it had the potential to provide statutory protection for a wide range of environmental heritage items and places. At a time when the National Parks and Wildlife Act did not include interim protection provisions and the Threatened Species Conservation Act (later replaced by the Biodiversity Conservation Act) had not been introduced, the Heritage Act was used to provide at least interim protection for rare and endangered plant and animal habitats, as diverse as an osprey nesting site, a flying fox colony and a rare terrestrial orchid habitat.

While there have been great improvements in legislation to protect the State's natural heritage, conservation of the State's cultural landscape heritage requires careful integration between planning controls and heritage controls.

It would be an improvement if the Heritage Act included definition of terms such as 'landscape', 'setting' and 'curtilage' and better integration with the conservation language in the Burra Charter of Australia ICOMOS and other state and federal heritage legislation.

Provision for the ongoing storage and protection of non-Aboriginal relics resulting from archaeological investigations.

Many development and infrastructure projects require prior archaeological investigations resulting in the discovery of many artefacts and objects. The Act makes no provision for the long-term conservation of this material and clear guidance on their future study. Many of these objects and artefacts languish in the offices, garages and storage units of the archaeologists who excavated them.

A solution used in the redevelopment of the archaeological site of the former Government House at Port Macquarie for apartments was a secure space set aside off the foyer of the development. The foyer has a display of part of the footings of the original building and interpretive panels on the history of the site. The archaeology room has shelves for all the significant items excavated from the site and space for bona fide researchers to study the material. This outcome was described by the then Executive Director of the NSW Heritage Office as a 'win-win' for heritage conservation and development – a benchmark for other developers of heritage sites to follow.

I see no reason why developers of major building projects on sites of State heritage significance should not be required to make similar provisions for the ongoing storage and study of archaeological material recovered from their sites. Whether or not such provision is made, the Act should provide for the statutory protection and ongoing management of significant material excavated from archaeological digs.

Naming, composition and location of the administrative body to service the Heritage Council of NSW.

'Heritage NSW' is clear and less cumbersome than some previous titles for the body servicing the Heritage Council and is consistent with other NSW Government bodies such as Property NSW, Venues NSW and Infrastructure NSW. I have already expressed my opinion that I feel Heritage NSW is better located with Planning and Environment as it was previously and as the Victorian equivalent is. Heritage Victoria

is located within the Victorian Department of Environment, Land, Water and Planning, not in that state's Premier's Department.

SHR listing process

Serious consideration should be given to abandoning the existing NSW process in which the Minister for Heritage makes decisions on SHR listing after considering the Heritage Council's recommendation and adopting the Victorian model in which the Victorian Heritage Council considers recommendations from Heritage Victoria and lists items of State significance on that state's Heritage Register. In this way listings are made based on the expert advice of heritage specialists in Heritage Victoria and made by the heritage experts on the Victorian Heritage Council, eliminating ministerial involvement in the process and increasing public confidence in the process.

If the existing SHR listing process is retained, the proposition made in the Discussion Paper (page 15) that the Minister, before deciding to add an item to the SHR, should consider what opportunities there are for adaptive reuse and activation of the item is impractical and open to manipulation.

An item should be listed on the SHR based on its meeting one or more of the seven significance assessment criteria at a State level. Finding and implementing a sympathetic adaptive reuse and 'activating' the item often takes time and sometimes depends on having the right mix of ownership and opportunity to achieve success. In the meantime, the statutory protection provided by the SHR listing is necessary.

Reducing possible political interference in the listing process is a desirable objective. An item of State significance warrants inclusion on the State Heritage Register based on its heritage values, not on whether its listing is politically expedient. When I worked in the Heritage & Conservation Branch as part of the original team servicing the Heritage Council we were required to include at the bottom of all our reports recommending action under the Heritage Act which electorate the item was in and who the local member was. While the inclusion of this information was understandable in terms of promoting such action in local electorates, there was also the concern that it might colour the Minister's decision making. Recent well publicised events such as the 'sports rorts' program suggest that political bias in ministerial decision-making, whether it's for funding sporting facilities or listing heritage items is still a cause for concern.

Development in the vicinity of SHR listed items

Model Local Environmental Plans include provisions for 'development in the vicinity of heritage items' requiring consideration by the consent authority of the impact of such development on the heritage items but this provision is not in the Heritage Act and should be.

A recent example of a dangerous planning proposal in the vicinity of an SHR-listed item is the proposal by Meriton to have the land at Little Bay Cove immediately to the north of the SHR-listed former Prince Henry Hospital / Coast Hospital site rezoned for much higher development than currently permissible under the approved masterplan for the site which is partly implemented, 224 apartments already built, and allows for low and medium development of 2-5 storeys. Meriton acquired the site and wanted to build a hotel, shops and almost 2,000 new apartments in buildings up to 22 storeys high on the site.

The conversion of the former Prince Henry Hospital site by Landcom in the years leading up to 2000 is regarded as a very successful example of a NSW Government led redevelopment involving well-planned adaptive reuse of former hospital buildings to residential and community uses and sympathetic infill residential and commercial development in a landmark coastal site. It would be unfortunate indeed if a private developer were to be allowed to carry out very unsympathetic overdevelopment on the coastal site immediately north of Prince Henry at Little Bay.

Fortunately, Randwick City Council formally refused the Planning Proposal in a unanimous decision at its meeting on Tuesday 23 June 2020, accepting the assessment by its staff that the proposal lacked strategic merit and was inconsistent with existing planning strategies for the area, including the State Government's Eastern City District Plan and Council's Local Strategic Planning Statement and Housing Strategy.

The concerns raised by the Heritage Council of NSW and Heritage NSW on the Planning Proposal with regard to the impact on the proposed SHR item 'Little Bay Geological site', the Aboriginal heritage values of the site, the adjoining SHR items and the inadequate information provided by Meriton to respond to these key concerns were among many reasons for refusing the Planning Proposal.

An amended Planning Proposal, still involving nearly 2000 apartments in buildings up to 17 storeys high was rejected by the Sydney Eastern City Planning Panel on 18 June 2021. It is not known whether Meriton will appeal the decision.

This Planning Proposal should never have been allowed to proceed as far as it did and the local community is not convinced that they have seen the last of the developer's plans for this sensitive coastal site.

Section 170 Register of heritage assets owned/managed by State agencies

It is essential that governments, whether local, State or Federal set a good example to the public by best practice recording and management of the heritage assets under their care, control and management.

The registers of heritage assets required under Section 170 of the Heritage Act provide the statutory mechanism whereby NSW Government departments and agencies can demonstrate that they are applying the best practice conservation approaches in the management of their Government-owned assets as would be expected, at least in principle, for privately owned heritage items.

Many Section 170 registers are incomplete and out of date and departments and agencies need to be required to address this shortcoming, with additional funding to do so if necessary.

I trust that this submission will be read in full by the Standing Committee and given due consideration as it is based on my long professional experience as a heritage practitioner working within the provisions of the Heritage Act since it came into force in 1978.

Yours faithfully

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M.ICOMOS

I acknowledge that the Cadigal and Bidjigal peoples traditionally occupied the Sydney coastal lands where I now live and work. I pay my respects to their Elders past, present and emerging.