

**Submission
No 109**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Friends of Ku-ring-gai Environment Inc.

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Standing Committee on Social Issues
NSW Government
NSW Parliament House
SYDNEY NSW 2000

1 July 2021

Dear Committee Members,

RE: Review of NSW Heritage Legislation – Discussion Paper

Thank you for giving us the opportunity to put forward some comments on the Discussion Paper.

We understand that on 7 April the NSW Government announced a major review of the *Heritage Act 1977* ('the Act'). This is the first since 2007. Major reforms of the Act have not been made since 1999.

Friends of Ku-ring-gai Environment Inc (FOKE) is a community group that advocates for protecting and conserving the built and natural environment of Ku-ring-gai. We believe the current Heritage Act 1977 is very robust and working well and needs only minor updating and tweaking.

We understand the stated intention of the review is to make heritage properties '*easier, more affordable and more desirable to own*' and is governed by three key themes:

- making heritage easier by making ownership and administration simple and cost effective;
- making heritage a viable opportunity for economic growth, employment and community enjoyment; and
- making heritage relevant by reviewing the objectives of the Act.

Moreover, the review will report on the effectiveness of the Act and the State's heritage regulatory system. We understand this will lay the foundations of a Government White Paper and a proposed new heritage law.

We support the role of the Heritage Act, 1977 to identify, protect, promote and conserve cultural heritage places in NSW. The Terms of Reference of this review include the phrase 'reflects best practice heritage conservation, activation and celebration'. This discussion paper does not encourage us to believe that best practice heritage would be followed, as there remains no reference to it.

Our main concern is that the discussion paper intends to water down the current Heritage Act conservation and protection measures. Under the rationale for the review, the prescriptive controls which have helped conserve and protect heritage items are cited as outdated, with no real comment with regard to best practice in this area from other countries. Much of the paper recommends a 'nuanced' approach to heritage controls. This will only lead to confusion, attempts by developers to amend heritage items to the point of being delisted, and many court battles with local and state planning controls regarding interpretation. Prescriptive controls have proven to be successful in other countries such as the UK.

The remainder of the rationale regarding the Act as a disincentive to ownership relies strongly on financial issues that can be dealt within some of the recommendations presented.

Also who is the ‘customer’ at the centre of the State Government’s priorities with regard to heritage? It should not only be the current, but also, future communities, not simply owners or developers.

In FOKE’s view, there remains no real reason to amend the Heritage Act and we urge the Committee to maintain the Act’s strong record.

We have read the Discussion Paper which breaks the discussion down into 19 focus questions and covers a wide range of issues including Aboriginal cultural heritage, environmental planning, enforcement, the listing process and the categories for listing of heritage items, and ways to incentivise the ownership, activation, and adaptive reuse of heritage items.

Below are our responses on the various questions and recommendations raised:

- Q1. The determination of heritage value should be determined by a panel of experts in built and natural heritage, history and architecture, and not include developers or politicians e.g. 1977 Heritage Council model. The Heritage Council is perceived as currently skewed to the developer lobby agenda.
- It is unacceptable that that a Minister be given the power to override an expert panel recommendation.
- Q2. As promised by government, independent Aboriginal heritage legislation should be enacted to deal with the various specific issues that apply to access, conservation and preservation of these sites.
- Q3. Yes. The Act remains relevant. Any improvement in regard to the Heritage Act should focus on the process to evaluate and conserve heritage and to enforce the Act.
- Q4. Yes. No change to the Act is required. There needs to be more trust placed in the processes and in understanding community expectations in protecting heritage. The Act should continue to protect heritage for current and future communities. Community consultation must be maintained as part of this process.
- Q5/6. Yes. Agree with the need to better support best practice conservation of heritage with incentives, funding and tax minimisation.
- Q7. Philanthropic investment in heritage will best be handled through tax deductions or deferment.
- Q8/9. We currently have 2 main levels of protection, State and Local Heritage Items, which include Heritage Conservation Areas. The proposed new 4 categories (iconic, etc) are subjective and vague and not supported.
- Q10. Definitely engage community to more pro-actively nominate heritage items. To date various community recommendations, such as Hillview in Ku-ring-gai have been mainly ignored.
- Q11. A streamlined delisting process is a preservation issue and not supported. However more frequent reviews of a listing item to ensure conservation and preservation is maintained would be recommended.

- The issue remains that unscrupulous developers or owners will use a streamlined delisting system to allow for changes that will negatively affect the property's heritage values or allow it to deteriorate and hence request delisting.
- Q12/13. No change required. As the document states, there already exists a process where many activities and works are exempt from this permit process. If a process is confusing, a clearer communication process would be preferable to wholesale change.
- Q14/15. Ensure that all heritage items have a significant perimeter where no development is allowed that would dominate it. Most heritage is an item within a setting that adds to its value and historic validity, hence the area surrounding it needs to be similarly protected.
- Q16. The issue of penalty infringement notices and enforcement of non-compliance are supported and should be adopted to preserve and conserve our heritage.
- Q17/18. The communication strategy of the importance of our state's heritage and history has been woeful. We totally support programs for engaging with the community through heritage promotion and tourism. To date this has been left to volunteer organisations and the National Trust.
- Q19. Public heritage buildings should be activated but in a manner that reflects their original use so context and heritage values remain. These should be exemplars of best practice preservation and re-use.

Heritage assessment and relevance to local, state or national significance should be maintained. Any proposed amendments should result in better heritage outcomes rather than a weakening of heritage protection. The Heritage Act is appropriate but the government should provide increased resources for its proper implementation.

Our concern is that cultural heritage is at immense risk from State Significant Developments, which can effectively turn off and override the provisions of the Heritage Act, 1977. If anything, the implementation of the Act must be strengthened, not weakened.

A major omission to the review is any consideration of climate change and monitoring and countering its impacts on the State's heritage items.

We believe S170 of the Heritage Act needs updating. The State Government needs to ensure that all State significant buildings and places in its care be listed and registered e.g. NSW Art Gallery, Transport House Macquarie Street, Central Railway Station, Central Local Courthouse and Holding Cells, Suspension Bridge Cammeray, Spit Bridge Mosman, Taronga Zoo Mosman etc.

We understand that The National Trust (NSW) have listed over 100 buildings and places that in their view warrant State Heritage listing which the Heritage Office has not recognised through listing on the State Heritage Register. (SHR) The National Trust have also indicated that there is a list of pre-1894 places which are not yet listed on the SHR. There could be thousands of places of State Significance that have not been recognised through listing on the SHR and there needs to be better resourcing and out-sourcing to deal with these listings.

We understand there are currently 1,740 items on the SHR with 38,260 local listings. There is a pressing need for support for local government for adequate identification, protection and conservation of the state's 40,000 + heritage listed places.

In closing we reiterate that we believe the Heritage Act 1977 to be working well and that only small amendments and/or tweaking of the Act are recommended.

We hope that our comments will be taken into account with respect to the Standing Committee's investigations and findings.

Yours faithfully

Kathy Cowley
PRESIDENT