

**Submission  
No 110**

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

**Organisation:** Huskisson Heritage Association Inc

**Date Received:** 1 July 2021

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# Huskisson Heritage Association Inc.

## **Submission to review of NSW Heritage Legislation, Standing Committee on Social issues, Legislative Council NSW, July 1, 2021.**

*State heritage contributes to the story of NSW, and we want to hear from all areas of the community about how heritage matters to them. It's an important step in this process that local communities get involved and have their say on how we can better celebrate the heritage that matters most to NSW.*

Press release, Minister Don Harwin, 13<sup>th</sup> May 2021.

### **Purpose of this submission:**

This is a community submission. The statement of the Minister above includes the concept of local communities getting 'involved' and 'having their say'.

The document 'Review of NSW Heritage Legislation Discussion Paper, Standing Committee on Social Issues', April 2021 focuses on listings of heritage at the state level. While state significance is the highest level of significance, in small villages and towns it is far more likely that many places will only be of local significance. This does not render them less valued by the local communities.

This submission focuses on the problematic position of communities that must operate in the context of local Councils that consistently oppose heritage listings. The reluctance of local authorities to list is sometimes based on ignorance, on a lack of interest, or on the mistaken assumption that a heritage listing will stymie development, including tourist development.

### **This submission uses the Shoalhaven City Council (SCC) as an example of an LGA with inadequate understanding of heritage issues.**

The SCC employs a destructive approach to what many in its community clearly understand to be of heritage value. Clearly the heritage of the area includes its natural heritage and there is a complex array of legislation and guidelines relating to its rivers, coastline, Jervis Bay national parks and so on. The focus of this submission is confined to the NSW Heritage Act.

- The SCC has no heritage officer or any heritage planning expertise. From time to time a very part time consultancy has existed, but this position that is extremely difficult to fill, as any heritage practitioners in the area who took on this Council position were thereby unable to take other commissioned work in the LGA.

- Tourism is important to this LGA, but this is often juxtaposed in opposition to heritage, which is viewed as merely new accommodation and services. Cultural tourism that is promoted through imaginative reuse and repurposing of heritage buildings is rarely a consideration. Despite oft quoted statements about the importance of Indigenous Culture to tourists the SCC tourism website has little to offer and the LALCs are constantly having their arguments for sites to be protected rebuffed and refused.
- Official Shoalhaven City Council documents developed around planning issues are peppered with statements that reflect a long-held position that only some of its towns and villages are heritage places while the rest are not. For example, the current *'Shoalhaven 2040 – Our Local Strategic Planning Statement'* refers to the 'charming heritage towns, vibrant tourist destinations, and relaxed villages along our coastline'.

Read in conjunction with many other SCC publications it is clear that the 'charming heritage towns' are Berry, Kangaroo Valley and Milton, while the 'vibrant tourist destinations' includes Huskisson.

This exclusive focus on a few places designated as having heritage values appears to have been adopted as the rationale for recognition of heritage in the Shoalhaven several decades ago. It operates to validate the destruction of heritage places in other settlements.

### **Specific case study of Huskisson**

In 2005 draft LEP was lodged with the Department of Planning but subsequently the elected Council had it returned for review of Schedule 5 – heritage listings. The Department initially refused to do this. Eventually it was returned under protest and a great number of items were struck off the list by the SCC in what is still known locally as the 'great purge'.

A disproportionate number of places in Huskisson were removed and consequently never listed.

Some have disappeared quietly, but in other instances, the failure to recognize heritage value has contributed to the degradation of the village in ways that emphasize the frustration of the community unable to access a reasonable level of heritage recognition.

- These include the Burnside Children's Home which was located close to the mangrove swamps at the estuary of the Moona Moona Creek. These buildings not only told an important part of the village's history but related to the growing national understanding of the 'stolen generations.' They could have been imaginatively repurposed for financial gain, as well as contributing to the tourist hunger for contextual history. This estuarine area is being redeveloped with apartments that are currently experiencing structural issues as well as contributing to the degradation of the estuary. In the process of building, there was destruction of Aboriginal relics.
- Currently, and for a number of years, there is uproar in the village over the proposed redevelopment of the Holy Trinity Anglican Church property – Cyril Blacket building, old church hall, old growth trees and graveyard containing both European and Aboriginal

burials, some predating the arrival of the Anglican church. There is currently serious opposition to proposed (but not approved) development that will desecrate the graveyard, cut down the trees and remove the church.

Commenting on a DA allowing removal of the Blakett Church and demolition of the old church hall, the Deputy Chair of the NSW Heritage Council, Sheridan Burke has observed:

*This Council has a consistently problematic history of dealing with heritage issues. The SCC sees Huskisson as a tourism focused village and has repeatedly resisted community and indeed Department of Planning requests to identify and manage local history and heritage via its LEP. This approval [DA 18/2102] will damage one of the few cultural heritage places that remain in the area and is very regrettable indeed...*

[Sheridan Burke to Pauline McKenzie, 3<sup>rd</sup> August 2019: In Sarah Johnson, Director, Premier & Cabinet, to Matt Floro, Environmental Defenders Office 11<sup>th</sup> October 2019, Application for access to Government information, Ref A 3176458 Record 2]

These two examples could be supplemented with others from Huskisson and from other villages and places across the Shoalhaven.

We put it to you that avenues for genuine listening to local communities are at present largely absent in the way the Heritage Act is interpreted.

### **Some comments on the present Heritage Act.**

We note that Section 24(1) of the Heritage Act states that the Minister may make an interim heritage order for a place, building, work, relic, moveable object or precinct that the Minister considers may, on further enquiry or investigation, be found to be of **State or local heritage significance**. [Emphasis added] The following section 24(2) says that the Heritage Council may provide advice to the Minister on the making of interim heritage orders. This permits the Heritage Council to recommend interim heritage orders for local items, places etc...

We also note that, as far as we are aware, this section 24(1) is not used to list local places.

In our case study of the Huskisson church property, an application for an IHO was rejected in July 2019. The Executive Director, Heritage Division DPC recorded in a letter that an IHO was not recommended 'as the site is unlikely to be of state heritage significance.'

Further reasoning given in Heritage Division advice seen by us includes the understanding that local heritage is a matter for the local council and that it is well known that the Shoalhaven City Council does not want to list this property and that therefore the Heritage Council would not recommend listing. [Pauline McKenzie, Executive Director, Heritage Division to Environmental Defenders Office, 3 February 2020, ref Doc 19/1114868] If this is the case, it is difficult to understand why the Act permits local listings to be recommended by the Heritage Council as this would seem to be intended for situations where local authorities do not list.

## **Comments on the Discussion Paper, Review of NSW Heritage Legislation, Standing Committee on Social Issues, April 2021**

We note that on p. 15 of the Discussion Paper, Figure 2: 'Proposed NSW heritage listing categories', specifically states that there be 'no change from current practice' in listing items of local heritage. Items would be identified by local governments and recorded on the State Heritage Inventory, clearly identified as of local heritage significance only.

This practice assumes more understanding and respect for heritage than we currently experience at the local level.

We note that the Discussion Paper claims that the general purpose of the Heritage Act 1977 as to put into law mechanisms to conserve ... without unduly affecting owner rights or impeding economic activity. (p.9)

While it may be prudent to strive for a double or triple 'bottom line', it is asking too much of 'heritage' to always achieve this, especially in the case of public spaces. The guiding themes that underpin the review proposes three key policy themes – making heritage easy, putting heritage to work and making heritage relevant.

In the case study of the Huskisson church site, this contributes to 'quality local environments and beautiful public spaces' (key priority: making heritage relevant) but it may be fanciful to also argue maintaining owner rights or maximum financial activity. While the thrust of any new or amended heritage legislation may facilitate 'putting the customer at the centre of everything' Huskisson Heritage Association submits that heritage must be measured in heritage terms in the first instance.

### **Opportunities for state involvement at the local level.**

**The recommendation of 'no change from current practice' in listing items of local heritage is profoundly disturbing, if the aim is to achieve heritage protection across the state.**

This goes to the issue of assumed State interference in local government, but without providing some mechanisms for sensible review, local communities are left high and dry and local heritage is destroyed.

We support the suggestions contained in Section 6 of the Discussion Paper that states:

there are no dedicated programs to promote community heritage understanding, engagement or promotion. The NSW Government could seek innovative ways to support and celebrate local heritage through best practice guidance on local heritage management.

Often local communities are way ahead of their local councils in understanding and valuing heritage places. State funding for heritage education is a good first step.

We further submit that there is an urgent need for some mechanism for allowing local interests to be heard at the state level. Clearly this would need to be structured in a way that did not simply allow local government to be overridden without good reason. Vexatious and

unnecessary submissions should be curtailed and culled from any State level involvement. At present submissions may be made to the Heritage Council, but unless they are deemed to be of State significance. no actions are taken. This results in loss of heritage and cultural complexity in places that rarely get over the threshold of State significance. This results disproportionately in heritage loss to small communities.

Thank you for considering this submission.

Dr Shirley Fitzgerald

Historian & President  
Huskisson Heritage Association.

## Response to Focus Questions

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

The number of legislative avenues for Aboriginal heritage, including AHIMS focus on Aboriginal places, the NP& W and the federal legislation is all too confusing. While acknowledging that Aboriginal history extends for many centuries, and that pre -contact heritage is important not only to NSW and Australia, but to the world, the act does not facilitate acknowledgment of the shared heritage of the post -invasion European and Aboriginal experience.

The Huskisson Holy Trinity Church site is a good example of shred cultural history, where the various routes through complex legislation is extremely challenging. Currently the Jerrinja LALC has a claim in to the Federal Government under the Aboriginal and Torres Strait Heritage Protection Act for protection of the church grounds that includes a statement that the entire site has particular significance because (rather than in spite) of this being a Christian burial site of one of their leaders, arguing the significance is due to colonial protectionist policies. In so far as current legislation attempts to separate traditional from post European contact history, it is inadequate to deal with ongoing and present heritage.

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

Properties such as church lands were often granted to the church or purchased by the church with the clear intention of providing public good. When these places are found to be surplus to the requirements the default position is to sell them to the private sector, and given that these places are often centrally located, this often facilitates intensive private residential and/or commercial development. While this land is legally sold, with or without a heritage order in place, community perception is that a once public place is now privatized. Opportunities for philanthropic investment should be facilitated.

The example of Nimbin NSW is probably the most embedded in community behaviour. Here several properties have either been purchased by the not-for-profit Nimbin Community Development Association or part purchased, as in the case of the Community Centre (81 Cullen Street) where a 50/50% joint funding arrangement with Lismore Council was entered into.

This practice has not been without its difficulties and it is not likely to be of general interest, but at the present time, heritage properties such as surplus churches are sold without any opportunity for community involvement.

Case study: The community of Huskisson, which considers the property to be of great heritage value, has made suggestions of various sympathetic ways forward in re-use and activation, but the local council has not shown any interest or facilitated any discussion. The Anglican Church did not place the property on the open market. Other developers and groups with more innovative or interesting proposals for future use were not permitted any involvement in the process. In the case of heritage listed buildings, open market conditions should be mandated.

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

Yes.

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

Require, fund and resource the NSW Heritage Council to adjudicate on local heritage listing in land use planning where a local Council is reluctant to take a role in conservation and the community requests such a review. Many Councils have lax approaches to heritage conservation in land use planning for a range of reasons: they do not have appropriate technical resources, Councillors may be ill informed and property developers are effective lobbyists.

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

Opportunities exist to enhance strategic planning for heritage values through communication campaigns of successful models of cities and towns from Venice to Broken Hill to Berry complimented by examples of the many repurposed buildings, churches, forts, barns etc. Decision makers need to be made aware of the public's inherent interest in the mystique of history reflected in heritage structures.

This is also apparent in domestic and international interest in Australian aboriginal culture of which there is a deficit of public interpretation material of quality.

Public communications campaigns are required.

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

LGAs could be required to develop tourist policies for places they designate as 'tourist places' that include examination of the potential of heritage items and places to enhance tourism.

Currently, in the case of the Shoalhaven City Council, the tourist label is too often assumed to give the green light to trash heritage.