

**Submission  
No 118**

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

**Organisation:** Balmain Association

**Date Received:** 4 July 2021

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7 July 2021



## NSW Heritage Act Review 2021

The **Balmain Association** represents Balmain, Birchgrove and Rozelle communities. It was formed in November 1965 by a handful of residents who wished to preserve the best of the suburbs' history, architecture and natural beauty and aims to:

- Improve the living, working and recreational amenities of our area;
- Maintain all features having natural, architectural and or historical value of the area and keep a permanent collection of historical interest;
- Seek the cooperation of everyone concerned in the realisation of the above.

Members of the Association have read the discussion paper *Review of NSW Heritage Legislation (April 2021)* and wish to make the following comments.

### Terms of Reference

#### *(a) the need for legislative change*

The objectives of the Heritage Act are certainly relevant in 2021 but the Act itself is not easily understood and is therefore not meeting the needs of community.

#### *(b) the adequacy of the Act and items in (d) relating to the Discussion Paper.*

The Act has been adjusted over time with many parts deleted so it is no longer coherent. The Act is not clear about there being any support or responsibility for local items on the State Heritage Register which are not State Heritage listed but must meet the criteria established by the Heritage Council. If the aim of the review is to 'activate' heritage the Act needs to be amended to give more resources for local heritage & for conservation areas.

The resources Government allocates to its operation and implementation have declined considerably over the years from my experience.

### FQ 1 Composition of the Heritage Council.

The changes to the numbers and composition of the Heritage Council over time illustrate a reduced conviction to the effective implementation of the Act. To be effective the Heritage Council members should predominantly be representatives of relevant organisations.

The list of qualifications, knowledge and skills is too broad as members may have skills in all the areas of development and property, planning, planning or environmental law, property economics yet have no knowledge or skills of anything related to archaeology, conservation, environmental or cultural heritage. If any members are not representative of a related heritage organisation or group, they should have expertise in several areas but at least one which is related to actual heritage.

## FQ 2 Aboriginal Cultural Heritage

Changes to the National Parks & Wildlife Act to improve the processes for Aboriginal Cultural Heritage in NSW have been promised for some time. However, the Draft Aboriginal Cultural Heritage Bill (2018) has yet to be legislated. The Heritage Council does manage the Aboriginal Heritage Information Management System and has an expert committee to advise the Council but how does this interact with the implementation of the NP&W Act?

There is great diversity among Aboriginal groups but the current situation in NSW where a developer can choose a local group to undertake the required consultation must be changed and consultation required through groups representative of all Aboriginal groups concerned.

## FQ3 Objectives of the Heritage Act

We take issue with the comment in the discussion paper regarding “an increased focus on community –driven strategic planning is not reflected in the heritage system”. Local government has no legislative powers, so any adoption of local plans is entirely at the discretion of the Planning Department of the day and Heritage listings of the Heritage Council. In the past 10 years the planning authority of the day has put greater regulation and restrictions on local councils. Whilst some councils may find the prescribed formulaic plans helpful, progressive councils have been knocked back on some elements of their plans, only to have them enforced later.

Many local governments, reflective of their communities have excellent Heritage and objectives and support local historical groups. Many have quite extensive Heritage Conservation Areas which also need support from the State to meet the objectives of the Act.

The Act and related legislation are very unclear about the status of local conservation areas in Local Environment Plans which are approved by the Government. Experience in Balmain indicates that if an unsympathetic development application is made, the Land and Environment Court frequently overrule the local decision.

## FQ 8 Tailored Heritage Protection

## FQ 9 Residential Properties

This proposal merely divides State Heritage Listed items into a three-tier hierarchy and attempts to include some items which are not specifically catered for in the current Heritage Act but would be included in the NP& W Act & the draft Aboriginal Cultural Heritage Bill. Is this a sign that this legislation is not to be pursued but the government wants to appear to recognise Aboriginal cultural heritage?

Category 2 is very poorly defined. It seems to be ‘not quite as important’ as Category 1.

Category 3 includes most of the State Heritage Register items and seeks to reduce regulation and increase exemptions. Of the more than 30,000 items on the State Heritage Inventory fewer than 2,000 are in the first 3 categories with the remainder being local heritage left with 'no change from current practice'.

Category 4. With NO changes proposed in relation to the majority of heritage items it is not possible to have a system that 'is modern, effective and reflects best practice heritage conservation, activation & celebration'. This proposal only proposes a reduction in support for items on the SHR.

With other proposed changes to make things 'simpler' or easier we will only see a loss of heritage.

## FQ 10 Greater Community Engagement

The review paper does not propose any new supports. An increase in public funds allocated is the only way to show a commitment to Heritage. The Heritage Council membership must include representatives and have sufficient funds to establish expert committees to manage all aspects.

Communities clearly support conservation and restoration as is evident from the majority of heritage listings being in LEPs.

This shows that the people of NSW care about our heritage.

The State should extend land tax incentives to items of local heritage and should subsidize owners for the additional fees that need to be paid to obtain permits for rebuilding & development when a private residence is on the local register. Local Councils should also be given financial support to repair and develop heritage items not on the SHR so that they can be used ('activated') in compatible ways. The State government has starved councils of funds over many years by rate pegging and also by transferring costs (eg funding for fire & emergency services) so there is an obligation to ensure that the Heritage Act and Legislation does support local heritage through additional funding.

## Summary

In summary, the Balmain Association believes that the legislation no longer serves the objectives of the Act but that the discussion paper in promoting ideas to streamline processes is reducing support for State Heritage Register items and that support must be given to communities for local heritage items if we are to achieve the objectives of the Act and the stated aims of the discussion paper & review.

Regards

Duncan MacAuslan

President

*(d) ii The need for resources.*

There is no longer a well-resourced Heritage Office with skills, knowledge, and enthusiasm to assist in any aspect of heritage listing or the development and maintenance of skills needed in the community to restore or conserve places of heritage significance.

With additional resources there would be greater community engagement, 'activation and celebration' of our heritage which is a stated aim of the Review.

The legislation contains strategies which could be used to support individuals, communities and local governments such as tax incentives, but these apply only to State Heritage items. Grants are only made for State Heritage Items and considering current building costs, the less than \$6m in the last reported year is insufficient. Without specific support and incentives local heritage will continue to be lost.

A well-resourced Heritage Council and Office would process permits speedily and monitor compliance and enforcement. Currently for locally listed residential properties the monitoring of compliance and approvals for restoration and 'activation' are undertaken by a small number of experts and local planning officers, many of whom lack heritage knowledge and expertise. This means that local heritage can only really be conserved in areas of high socio-economic status and where property is highly priced. This is inequitable as valuable heritage is lost in poorer communities.

The Act makes the Heritage Council responsible for State Heritage listed items. The State Government is not even looking after its own properties. Perhaps this why additional listings are not actually being processed or are taking so long? In IWC's area, several State listed items are within Callan Park and very little is being done to conserve or restore them.

The State Treasury, through the Heritage Council, should support the conservation of our Heritage by financially supporting local councils to offer reduced rates and fees for Development Applications and other fees where private owners of Heritage properties often must pay for additional reports

compared to owners of non- heritage property. Council rates are pegged and whilst Heritage all being local but belongs to every citizen so must be supported by the State.

*(c) how the Act could more effectively intersect with related legislation.*

The Act does not state how it interacts with other Acts in any way. We have several different Acts but no clear process for determining precedence.

Individuals and groups with more political power or access to finance are able to gain approval for a development seemingly without 'due process'.

Related Acts;

- The National Parkes & Wildlife Act (1974),
- the Environmental Planning & Assessment Act (1979)
- the Aboriginal Land Rights Act 1983,
- Native Title Act (NSW) 1994
- Threatened Species Conservation Act 1995

are all concerned with our heritage in different ways, covering relics, items, places and landscapes. They all use differing terms which is confusing.

These acts are administered by the portfolio of the Department of Planning Industry and Environment and the Minister of the day appears to have the power to decide which Act takes precedence.

We have seen that by declaring an issue one of 'State Significance' the Acts can be overruled without proper consultation and transparency.

If a development or project is of State Significance, there should be a robust process with community consultation where a Heritage item or place is to be compromised. This should most certainly never happen in the case of an unsolicited proposal being made to the Government of the day. This all leads to lack of public trust and undermines our democracy.