

**Submission
No 127**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Willoughby Environmental Protection Association (WEPA)

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**Submission in response to the Review of the
Heritage Act 1977 (NSW) by the NSW Legislative Council**

The following submission is made on behalf of the [Willoughby Environmental Protection Association](#) (WEPA) in response to the call for comment by the Standing Committee on Social Issues, NSW Legislative Council.

WEPA

WEPA has been active since 1981 on Sydney's lower North Shore in protecting the natural and built heritage of our area. This work has brought home to WEPA the consistently high value our community places on its natural bushland, green open spaces and heritage buildings and conservation areas. These significant components help to make our area liveable and instil a sense of place, belonging and history in our community. WEPA has also, over a number of years, provided representatives to the Willoughby City Council voluntary advisory committee/s on heritage and bushland preservation. Finally, the author of this response has owned and resided for the past 11 years in a house which is included on Willoughby City Council's Heritage List.

MAJOR POINTS

At the outset of responding to the Inquiry's Terms of Reference and the more detailed queries raised in the NSW Heritage Discussion Paper, WEPA would like to make the following points:

- that cultural heritage makes a significant contribution to our identities, creating a sense of place and illustrating the varied and distinctive stories of Indigenous, settler, and migrant communities;
- the priority for legislative change should be the development of a framework for the protection of Indigenous heritage that is primarily led by Traditional Owners;
- despite the tone of the Discussion Paper which seems to infer the need to loosen regulation in relation to heritage, we believe that the majority of people care

passionately for places of local and State-heritage value and believe the Act should be augmented rather than weakened;

- one of the major problems with the current heritage system is that it has been under-resourced for some time;
- resource limitations have encouraged a diminished use of appropriate heritage professionals at all levels of government, which in turn has led to inflexibility and inconsistency in relation to conservation identification and management, as well as a failure to comprehensively address broader areas of heritage policy, strategy and community education;
- the NSW Government should be responsible for the national estate within its boundaries. If a large part of this work is delegated to local government then it should be accompanied by sufficient direct or in-kind support.

The following comments deal with the Inquiry's Terms of Reference before moving to address the focus questions asked in the NSW Heritage Discussion Paper.

COMMENTS ON INQUIRY TERMS OF REFERENCE .

1. That the Standing Committee on Social Issues inquire into and report on the Heritage Act 1977 (NSW) (the Act), with particular reference to:

- (a) the need for legislative change to deliver a heritage system that is modern, effective and reflects best practice heritage conservation, activation and celebration

WEPA would like to make the following comments:

- WEPA believes that the main need for legislative change in NSW at present is to finalise an **Aboriginal Cultural Heritage Act** which brings together and coordinates current scattered responsibilities and allows greater self-determination in relation to the protection and conservation of sites, landscapes, and relics for Indigenous peoples;
- there is a need for some modernisation of the legislation, but this has less to do with processes and more to do with the **focus of the Act**. Heritage has moved on from capturing early colonial buildings and High-style streetscapes to encompass more historically recent items (eg industrial sites; post-war housing; mid-century modern residences; Brutalist architecture; sites of community activism; places significant to LGBTQT groups; working-class legacies). It has allowed for the listing of conservation areas but needs to be utilised better to ensure the identification and interpretation of cultural landscapes and forms of intangible heritage such as traditions and

festivals. The fact that only an average of 22 State items have been listed per year in the last decade seems to indicate that the original momentum has been lost. Yet the need for a broader and more proactive form of listing is increasingly necessary in the face of the pressures of development, climate change and globalisation;

- to reflect best practice heritage conservation requires the involvement of **cultural heritage professionals** of all types and particularly within Government. Over the last two decades, there appears to have been a loss of expert staff from various levels of Government which has impacted not only the speed, efficiency and consistency of processes and outcomes but also the ability of State and local government to be more strategic in listing, adapting and activating heritage places. At the same time, community input has been curtailed by the current trend towards dissolving voluntary advisory committees at the State and local government levels.

(b) the adequacy of the Act in meeting the needs of customers and the community and the protection of heritage.

- It is difficult to understand what a ‘customer’ is in this context as the term is usually reserved for services involving a service provider undertaking a direct commercial transaction with another. If you understand ‘customer’ of this Act and its agencies to be the community in NSW, which wishes to see its heritage acknowledged, preserved and protected, then the Act is working adequately. The paper seems at time to be suggesting that there is another part of the community (heritage homeowners; developers) that are finding Heritage Listing and the subsequent management of heritage properties a burden. The difficulties they are having may best be addressed by providing the sort of resources and incentives which properly support the work of adapting and living in heritage places.

(c) how the Act could more effectively intersect with related legislation, such as heritage elements of the Environmental Planning and Assessment Act 1979 and the National Parks and Wildlife Act 1974

- While a separate Heritage Act is certainly required, there is a need for further integration of heritage issues within the Environmental Planning and Assessment Act (EPAA).
- There is also a need to reconsider the ability of State Significant Development and infrastructure to turn off heritage provisions and turn heritage into a box-ticking process often carried out by the wrong type of expert. The State Government cannot expect continued respect for the heritage process when it is able to override its provisions and the wishes of the community in question.

(D) the issues raised and focus questions posed in the Government's Discussion Paper

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

- The Heritage Council should be an active, independent champion for heritage in NSW, acting at arm's length to Government.
- While not meaning to comment negatively on the capabilities of any individual currently on the Heritage Council, we believe that it was a mistake to change the Act to allow the Minister to appoint 8 out of 9 Council members. It is inevitable that this leads to concerns that the Council members are picked to represent Government interests and not the status and protection of heritage.
- The Council should be advising the Minister and for this to be effective it needs to provide him or her with diverse views. There is a need for a greater range of heritage, history and architectural experts on the Council, particularly those from outside the public service.
- Heritage Victoria is widely acknowledged as a model which is separate from the political process. The Heritage Council of Victoria decides what to include in the Victorian Heritage Register. The Victorian Minister cannot refuse a listing and with a permit or consent application may only refer a review to an independent tribunal for determination. This type of model generates respect from the whole community for heritage and the processes protecting it.
- Alarming, there is no guarantee that a historian will be included on the Council. It is hard to imagine how a Heritage Council of architects, developers and bureaucrats will determine the relevance of particular sites without the insights of qualified historians. History underpins heritage by providing a context through which to understand the significance of places, buildings and objects. A role for historians should be mandated in relation to the Heritage Council composition.
- The expertise of the Heritage Council should be supported by additional voluntary committees of heritage and history experts to add depth of experience and knowledge – this should also include community members so that their knowledge and expertise can be better respected and utilised.
- Broad scale changes in the public sector, including the introduction of policy generalists to replace experts, drops in staff levels, the increased mobility of staff, and the out-sourcing of projects has appeared to undermine the level of expertise and the consistency of advice available to the Heritage Council from the NSW State Heritage Office. The Heritage Office needs to be better resourced so that the History

Council does not have to rely as much as it does on outside consultants for guidance and advice.

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

- The NSW Government should finalise the implementation of new standalone legislation that respects and protects Aboriginal cultural heritage. It should protect those parts and features of the landscape that are of cultural value to Aboriginal people in traditional, historical and contemporary terms.
- The integration of Aboriginal cultural heritage should start early in the approval processes, be based on cultural mapping and follow the appropriate education and resourcing of consent authorities.
- The exception for State Significant Development/Infrastructure which exists for other heritage items should be removed as major projects are more likely, due to their nature and scope, to cause disturbance and destruction of Aboriginal Cultural Heritage sites.

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

- The objectives of the Act are still relevant but could be strengthened to encompass the stated need for State heritage to be **protected** by the NSW Government.
- There should be a stronger sense in the wording of the Act that the Heritage Council is proactive in this endeavour rather than taking the more reactive approach foreshadowed in the objective's reference to interim protection orders.
- This might include providing in the objectives for a role for the Heritage Council in working with relevant areas of Government on strategic planning schemes. While individual buildings/places have been a common focus to date it is becoming clearer that the Act should be able to conserve cultural landscapes. Heritage needs to be in the forefront when new precincts and urban redevelopment are being considered which will impact the overall sense of place a community wants to preserve eg North Parramatta; Mulgoa Valley.
- Heritage conservation needs to be better resourced at all levels of government to ensure that the objectives can be met.

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

- The Government needs to engage in genuine consultation with the community about heritage issues. The community is disappointed with the overall lack of protection for heritage items in recent years. Consultations are held but widespread community views are not respected or actioned eg as seen most recently in the destruction of Haberfield houses for Westconnex; infrastructure impacts on the historic town of Windsor and the refusal to protect Willow Grove in Parramatta.
- The community expects the Government to be proactive in adding items to the State Heritage Register (SHR). The number of items added has plateaued in recent years (around 22 new listings per year). Important buildings like the Art Gallery of New South Wales are still not listed. This is particularly important given current development pressures.
- Community voices need to be empowered at the local level. Heritage committees with community representation need to be restored at the council level and councils should be made to heed their advice. The views of the community should be respected and acted upon or reasons provided.

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

- In relation to ownership, the Government needs to allow for greater resources and support for owners of heritage properties.
- Adaptive reuse of heritage-listed items is already provided for under the current Heritage Act. The adaptive reuse of the Griffin Incinerator by Willoughby City Council – which now houses a café and a community art gallery – is an example worth emulating. The interpretation by Council of the site has educated the local community and added to their pride in the building and the renewal of the surrounding Bicentennial Reserve site from tip to sports fields and parkland.
- A master lesson in **how not to incentivise** the adaptive reuse of heritage places is provided by the NSW Government's current proposal to destroy bushland/parkland near the Griffin Incinerator/Bicentennial Reserve. The bushland, at Flat Rock Gully, Naremburn, which has been earmarked for the Beaches Link Tunnel dive site, was part of the original tip in this area but has been worked on for 25 years or more by local Council and volunteer bush carers to regenerate the local bush and return it as a place of contemplation about our natural heritage. Its proposed clearing is a prime example of why 'State Significant Infrastructure' should not be exempted from the Heritage Act.

- The emphasis in the Discussion Paper on ‘activating’ and ‘adapting’ heritage sites seems to be pointing towards a need for more commercial adaptations. As over 66% of the State Heritage listings are owned by Government this wording suggests that there is also a push underway to make these buildings ‘pay their own way’. Great care should be taken to ensure that this emphasis on commercialisation does not lead to inappropriate uses which might devalue the items cultural and aesthetic significance and undermine the very reasons for which they were listed in the first place.
- Any emphasis on activation and adaptation should also be carefully watched to ensure that it doesn’t lead to jarring or overbearing surrounding development which detracts from or destroys the settings for the heritage buildings and its site.

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

- It is generally agreed that heritage owners, who are protecting public heritage, should be compensated in some way for this contribution. Generous state grants and tax incentives should be provided to encourage appropriate and sensitive maintenance and adaptive reuse. These include tax incentives, grant programs, revolving conservations funds and other similar suggestions made in the Discussion Paper.
- Existing provisions for heritage conservation incentives need to be better explained and publicised.
- Owners of heritage places should receive useful advice, effective financial incentives and adequate conservation grants to ensure well informed ownership of heritage places leads to good outcomes for heritage preservation.

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

- We agree with the Discussion Paper's recommendation to expand the Commonwealth Cultural Gifts Program to encourage more philanthropy for heritage-listed items and places.

Focus Question 8: How could tailored heritage protections enhance heritage conservation?

- We are concerned over the suggestion that heritage might be graded under different categories. All heritage items have value and contribute to the state and national sense of place and belonging. We would not like to see such an approach marginalise local and/or Aboriginal heritage.

- We do not support the Discussion Paper's recommendation that “before deciding to add an item to the State Heritage Register, the Minister should consider not only if reasonable and economic use would be affected by the listing but also what opportunities there are for adaptive reuse and activation.” Management issues are quite separate to, and should not influence, listing decisions based on heritage significance.
- There is a real concern that the use of a hierarchy of categories as proposed would provide developers with a loophole, particularly in relation to ‘Category 4’ local items, which would be used to justify large-scale modification or even demolition of a heritage property.

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

- Rather than adoption of a separate category we would prefer to see private heritage owners assisted by expert advice, grants and taxation support.

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

- There is a strong sense in many parts of the community that change in their areas is proceeding faster than they would like and that their views on the preservation of place are not being represented by the State Government.
- We are hearing from communities across the state that advisory committees to councils are being disbanded in line with State Government policy. This is a backward step. The majority of these committees include people with a professional and/or passionate interest in local heritage as well as a deep understanding of local history and change. The presence of these committees provides consistent advice and harnesses local knowledge and organisational networks. These groups help local citizens understand heritage processes.
- We recommend that the Government mandates councils to establish local heritage committees with strong community representation. Too often, councils rely upon in-house heritage officers who live away from the area or outside consulting firms that do not have the depth of local knowledge and experience to make decisions in the best interests of the community.
- Greater thought needs to be given by the Heritage Council to ways to engage the broader community in identifying places of heritage value. This includes the need to encourage the engagement in the heritage process of people from recent and historic immigrant backgrounds.

Focus Question 11: Would streamlining enhance the listing process?

- WEPA agrees with the suggestion that there be more community engagement in the listing process and that greater effort, at State and local level, go into proactive identification of potential places for listing.
- Great care is undertaken in nominating and listing items for State Heritage listing. The steps which would be 'abridged' under the reform proposal are not detailed. A similar level of care would need to be utilised to ensure that listed properties were not streamlined through delisting in order to meet economic or development pressures rather than those of preserving heritage.

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

- Greater attention should be given to providing technical guidance prior to application. The current technical guidelines are widely considered to be out of date. The Heritage Council and Heritage Office need to be appropriately resourced to provide expertise and timely support to those seeking an approval permit for works.
- We do not support the suggestion that the Minister be authorised to determine thresholds and introduce fast-track applications for permits under the Act. If any changes are to be made to the permit system it should be the result of discussion by appropriately qualified heritage officials and professionals.

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

- WEPA notes that many works are already exempt from the heritage permit process. We generally agree with the Discussion Paper's view that minor changes (up to a value of \$150,000) can be made to a listed property and that the focus should be on the sustainability of the heritage building rather than individual elements when managing change. However expert consideration must be retained in order to ensure the work upholds the heritage significance of the item. In many cases this will require support for heritage place owners as outlined in response to Focus Question 6.

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

- Government, which is entrusted with the care of 66% of State heritage items, should provide a model to the community in its management and protection of these

buildings and places. Unfortunately, this has not been the case in recent times. State Significant Development and Infrastructure projects have been used to exempt Government from this protection eg in the NSW Government proposal to drown a significant portion of river, bushland and Indigenous heritage in the World Heritage Blue Mountains in order to facilitate development on the flood plain or the proposal to tunnel through bushland and under historic houses in Northbridge for the proposed Northern Beaches car tunnel which is again posited on potential development in that region rather than current need or community desires. We need a planning system at the State level which prioritises our heritage over developers' wishes.

- At the local level, there is a need to strengthen Development Control Plans (DCPs) by referring to them in the Heritage Act. Currently, unlike Local Environmental Plans (LEPs), DCPs are not legally binding and are only loosely regarded by developers, applicants and councils. Heritage conservation areas are at risk due to the flexibility with which DCPs are treated. Councils have a tendency to overlook non-compliance with the DCPs as they are concerned about the high cost of litigation. There is a need for DCPs to be strengthened in NSW due to the escalating pressures of development.
- Heritage issues should also be in the forefront of large scale landscape planning and rezoning exercises. We should not see heritage trailing planning as happened recently in relation to the historic Mount Gilead property in Campbelltown which is recognised for its sweeping colonial estate. Its listing came after the area surrounding it was rezoned for residential housing thus negating a large part of the reason for its initial listing. Properties and landscapes of this type should be considered proactively and in context prior to rezonings.

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

- Strategic consideration of heritage would be enhanced, as mentioned earlier in this response, by:
 - involving appropriate heritage experts who are au fait with emerging issues relating to heritage policy and policy implementation;
 - providing the resources which allow the Heritage Office and local councils to retain in-house heritage experts and to reduce the use of outside consultants;
 - investing in identifying and understanding NSW heritage before major new developments or redevelopment are proposed; and
 - returning to genuine consultations with local communities.

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

- Heritage resources are irreplaceable and play an important role in community identity and quality of life. Their loss affects a community more widely than the individual site owner and the impact of damage, destruction or dereliction is often difficult if not impossible to redress. In light of this, it would seem reasonable to maintain appropriately high penalties.
- WEPA does not support the suggestion in the Discussion Paper that compliance measures should be weakened to avoid court action. The laws should be strengthened to deter illegal action and to encourage Councils to undertake court action when appropriate. There is a need to discourage those developers who factor the cost of defiance into their redevelopment budget for a heritage site.

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

- Gaining an understanding of heritage fosters an ethic of care for heritage places and items. It is important that interpretation, the stories and the reasons behind the protection of a place, are widely known.
- According to the Heritage Act, the Heritage Council should be carrying out an educative role but there appear to be few or limited programs dedicated to this aim. This lack should be addressed.

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

- The contribution of heritage to promoting tourism needs to be better acknowledged by both the state and federal governments.
- Given the important role that heritage plays in promoting tourism, the Discussion Paper's acknowledgement that "the Heritage Act currently provides no incentives, concessions or grants to support or encourage heritage tourism" needs to be urgently addressed. Suggestions in the Discussion Paper that 'removing red tape' would assist, risks undermining – through over-commercialisation – the very ambience that makes heritage places attractive to tourism in the first place.

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

- The term 'activation' is currently popular in the NSW Government's planning lexicon suggesting a greater use and public enlivenment of a place. Arguably, it is a term which doesn't always fit with the range of listed heritage items and places, some of

which are valued because they speak of a quieter, less 'activated' time, are remote, solitary and/or encourage a serenity amongst those experiencing them. Many in the community would prefer them to stay this way.

- Rather than activation, which in line with recent planning use seems to foreshadow over-commercialisation and over-development, we would prefer to continue to see an adaptive community-focused reuse which pays attention to the protection of heritage values and which, because so many heritage places are owned and managed by Government bodies, prioritises community over commercial use.
- When commercial use is made of a heritage building or place that use should continue to be on the basis of short-term leases and should focus on good heritage, community and economic outcomes for the State and tax-payers.

WEPA would be available to expound further on these issues if required.

Dr Meredith Foley

WEPA Executive Committee