

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Bathurst Showground Land Manager

Date Received: 24 June 2021



BATHURST SHOWGROUND
LAND MANAGER

The Honourable Peter Poulos MLC
Chair
Standing Committee on Social Issues
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Poulos

Inquiry into the Heritage Act 1977 – Bathurst Showground Land Manager Submission

This submission to the above review is provided by the Bathurst Showground Land Manager. Bathurst Showground demonstrates a continuity of historic activity, the site being used continually as a showground since 1878 and was included on the NSW State Heritage Register, established under the Heritage Act in 2015, as SHR item 5051812.

During 2020-21 a c\$3.5 million conservation, repair and upgrade program has been undertaken at Bathurst Showground, funded by COVID stimulus and 'Crown Lands Improvement' funding, with eight major pavilions conserved; plus, security fencing and ancillary works: all guided by the Conservation Management Plan.

The experience in seeking required approvals under Section 63 of the *NSW Heritage Act* has been difficult, and at times unreasonable; apparently made worse by limited resources for Heritage NSW – which have not enabled, for example, a site visit by those involved in making the relevant statutory decisions. The result has been disappointing and frustrating for the Applicant and for the project.

This submission makes a single point: improving the effectiveness of the NSW Heritage Act does NOT require statutory change, so much as improvement to the manner in which the Act is actually administered. There needs to be more focus on conserving heritage values in a practical manner and better resourcing for Heritage NSW.

The process and issues are illustrated in the attached letter, which related to just one minor pavilion, that would be part of the current program – except that, after 7 months, approval has not been granted for the proposed works. This example is provided to the Standing Committee on Social Issues as a case study showing a real experience of the application of the *NSW Heritage Act* – as it is currently implemented, for a major government-funded project at a place that is not only of State Significance, but also highly valued by the local community.

Should the Committee wish, I would be happy to meet in person to discuss my experience.

Yours Sincerely,

Andrew Fletcher
Administrator
Bathurst Showground Land Manager
Attachment: Letter to Chair of NSW Heritage Council 7 June 2021



admin@bathurstshowground.com.au
www.bathurstshowground.com.au



Kendall Ave & Great Western Hwy
BATHURST NSW 2795



Mr Frank Howarth, AM, PSM
Chair
Heritage Council of NSW
Locked Bag 5020
Parramatta NSW 2124

E: heritagemailbox@environment.nsw.gov.au

Dear Mr Howarth,

**Re: Bathurst Showground: SHR item 5051812 – listed 2015
Application Under Section 63 of the NSW Heritage Act:
Demolition and Replacement of Ern Prior Pavilion – lodged 22 December 2020
NSW Heritage Council Approvals Committee Resolution – 1 June 2021**

I refer to the above application under Section 60 of the NSW Heritage Act and to the decision by the Approvals Committee of the NSW Heritage Council on 1 June 2021, which has not determined the application but has instead made a number of requests that are inappropriate to the circumstances of the SHR item (Bathurst Showground) and the subject building (Ern Prior Pavilion).

I write to seek an urgent determination and to suggest some approval conditions that may address some of the concerns of the Approvals Committee. The matter is urgent, as the application is now more than five months old and the project is at the point of not proceeding, despite being a high-priority NSW Government-funded initiative.

General Background

The entirety of Bathurst Showground is the State Heritage Register Item. It is significant for its association with agriculture and the Bathurst region, as a focus of rural community activity and because of the comprehensive and aesthetically cohesive suite of showground buildings.

Bathurst Showground contains more than 30 Pavilions; the Ern Prior Pavilion is NOT a major pavilion; it was built in the 1950s, re-located in the 1990s; and is only used 3 days per year to house bulls during the Bathurst Show. Its earth floor and dilapidated state make it unfit for other uses.

The SHR entry describes the Ern Prior Pavilion as:

. . . Simple unpretentious pavilion with classical rural character built 1952. Traditional form and construction blends well with the older buildings. Timber framed, partly open and partly vertical boarded under a broad gabled iron roof with flanking skillions. Roof is supported by undressed poles. The Pavilion differs significantly from the traditional pavilion form, probably as a result of scarce steel supplies in the Post-War period . . .

but it is NOT individually heritage listed, is NOT mentioned in the NSW heritage assessment criteria evaluation of the SHR entry, nor in the CMP Statement of Significance – it's contribution to the totality of the SHR item is ascribed 'moderate'.

The Ern Prior Pavilion is in poor physical condition, such that it constitutes a danger to the public. A structural assessment by Calare Civil Engineering advises that:

. . . in summary, a number of primary elements are considered inadequate and impose catastrophic risk to users of the facility. It can be seen that the "Unlikely to Almost Certain" likelihood and the catastrophic consequences results in high to extreme risk . . .

such that the building is currently fenced-off from public access and not used.

The Conservation Management Plan for Bathurst Showground includes substantial sections on other pavilions, but NOT the Ern Prior Pavilion – which is, as noted above, of only moderate significance.

The Bathurst Showground Land Manger has been undertaking a c\$3.5 million conservation program, funding by COVID stimulus and 'Crown Lands Improvement' funding, with eight major pavilions conserved; plus fencing and ancillary works: all guided by the Conservation Management Plan. The proposal for the Ern Prior Pavilion is one of the final elements of that program.

The proposed action for the Ern Prior Pavilion is consistent with the Conservation Management Plan, which includes the following acceptable options (in order of preference):

- (a) Retention in situ*
- (b) Re-use elsewhere on site*
- (c) Removal*

The CMP also specifies that:

new buildings should be designed so that their style, scale, form and use of materials harmonise with the older significant structures . . .

which is precisely what the Section 60 application proposes.

Repair and re-building would require major intervention and replacement of defective fabric. The building fabric which might be retained comprises: the timber panels & bull-hitching rings, the front façade truss and facing, the roof purlins (if re-used) and those timber columns which are not rotted.

The proposal in the Section 60 Application also allows for retention of timber panels & bull-hitching rings, the front façade truss and facing, and those timber columns which are not rotted. In addition, the proposal in the Section 60 Application would also maintain the floorplan, but as a single utility space, have a new structurally-sound steel frame, reconstruct the roof form, add a concrete floor, provide weather protection, and enable more frequent and more extensive use.

Relevantly, the proposal in the Section 60 Application would make the same visual and functional contribution to the 'Historic Exhibition Zone' of Bathurst Showground, would maintain the 'Ern Prior' name and historic associations, and would continue the structure's historic use. The appearance of the new building, at the same location, featuring the same form and clad in vertical corrugated metal (as used on a number of Bathurst Showground pavilions), of the same colour would interpret the

‘style, scale, form and use of materials’ of the older significant structures that contribute to the aesthetic values of Bathurst Showground.

In short: there would be no ‘material detriment’ to the heritage values of the SHR item; being Bathurst Showground.

Section 60 Application Process

All of the additional information and clarifications requested by Heritage NSW have been provided.

The advertising process for the Section 60 Application had to be repeated owing to an error in the original advertising.

No inspection of the site / subject building has occurred – despite an invitation from the Land Manager – and a visit by an officer from Heritage NSW to affix a corrected advertising notification to the site.

On two occasions officers from Heritage NSW have provided incorrect advice, in writing, to the Bathurst Showground Land Manager, as follows (my emphasis):

Email advice from Heritage NSW 25 February 2021:

Demolition under Section 63(3) of the Act can only be supported if
a) the building constitutes a danger to the users,
b) it is to be relocated or
*c) **the building is not of significance** and the demolition would not have a material effect on the heritage significance of the place.*

Email advice from Heritage NSW 24 May 2021

*I would look at section 63(3)(c) of the Heritage Act that says **the Heritage Council can’t approve demolition of an item on the state heritage register if that item contributes to the overall significance of the sites listing.** The Prior Pavilion is listed as ‘moderate’ significance and therefore does not meet the requirements outlined above for demolition and we have noted that in our assessment.*

Section 63(3) actually states:

(3) Nothing in subsection (2) prevents the approval body from approving an application referred to in that subsection if:

(a) it is of the opinion that the building or work constitutes a danger to the users or occupiers of that building or work, the public or a section of the public, or

(b) it is a condition of the approval that the building or work be relocated on other land, or

(c) the building or work is situated (whether wholly or partly) in a place or precinct that is an item of State heritage significance, but is not itself such an item, and the approval body is of the opinion that the demolition of the whole of the building or work will not have a materially detrimental effect on the heritage significance of the place or precinct.

Note: “or” means that ONLY one of (a), (b) or (c) needs to be satisfied. The Ern Prior Pavilion meets both (a) and (c).

It is misleading for Heritage NSW to have advised the Applicant that Section 63(3)(c) requires that: ***the building is not of significance***. That is not the case. The correct, lawful test is whether the action would have a materially detrimental effect on the entire SHR item. It is also misleading for Heritage NSW to have advised that ***the Heritage Council can’t approve demolition of an item on the state heritage register if that item contributes to the overall significance of the sites listing***. There is a reasonable concern that these apparent misconceptions have itself ill-informed the decision making in this matter.

The Bathurst Showground Land Manager requested to see a copy of the Heritage Office report to the Approvals Committee – but that request was declined with advice that a GIPA application could be made – after the event.

At the Approvals Committee meeting on 1 June one member directly suggested that the condition of the Ern Prior Building might be construed as ‘demolition by neglect’. That is an ill-informed and unfounded allegation. Since the time of the listing of Bathurst Showground on the State Heritage Register in 2015, the condition of the SHR item has been greatly improved and it has been the current Bathurst Showground Land Manager that has secured the necessary resources and managed a multiple conservation projects. The current Application is directed at the poor condition of the Ern Prior Pavilion. The ‘demolition by neglect’ remark is unacceptable.

Approvals Committee Resolution

Following the detailed presentation made on behalf of the Bathurst Showground, and responses to all of the Committee’s questions, the Approvals Committee nevertheless resolved on 1 June:

- 1. The Heritage Council Approvals Committee generally supports an adaptive reuse of the building, however, has concerns with the application in its current form.*
- 2. It is recommended that the applicant withdraw the current Section 60 application and lodge a revised proposal as follows:*
 - a. The proposed adaptive reuse of the structure expressly incorporates as much of the existing fabric as possible (e.g. front façade, naming plate, timber wall cladding, galvanised roof sheeting, bush posts) and where necessary incorporate complementary traditional material.*
 - b. Support new steel roof trusses resting on bush posts with a concrete floor. The proposed total new steel frame is not supported.*
 - c. The adapted building should replicate the existing structural grid.*
 - d. The central dividing wall could be relocated elsewhere in the building.*
 - e. The plan be prepared as part of the application detailing the fabric to be retained together with graphic images showing the final form of the new structure.*
 - f. The proposed development application be widely advertised, and the applicant engage in specific consultation with the Prior family and all other major stakeholders.*

Response to Approvals Committee Resolution.

The Bathurst Showground Land Manager presses the point that the extant structure is beyond reasonable repair, especially given its moderate contribution to the heritage significance of the SHR item, and that replacement incorporating historic fabric, while maintaining the historic use and name of the Ern Prior Pavilion, is a reasonable and practical approach, which will not have a materially detrimental effect on the heritage significance of the SHR item.

The Bathurst Showground Land Manager therefore declines the request to withdraw the application.

It is regrettable that no member of the Approvals Committee inspected the site; which has seemingly contributed to proposals and requests that are impractical and unreasonable in the circumstances.

The proposal already incorporates as much of the existing building fabric as practicably possible.

The galvanised roof sheeting is not suitable for re-use – as noted in the engineer’s report.

Many of the poles are split or rotted – hence the proposal to retain and use them as decorative and evocative pilasters, but supported by a sound steel structure, not holding up the roof.

The proposal includes new steel structure and a concrete floor; and the proposal to re-make new steel trusses (replacing defective ones which were possibly added as recently the 1990s) is unwarranted. A new steel frame is appropriate for this moderately significant utilitarian structure.

The existing structural grid can be replicated – as was already offered during the Approvals Committee meeting.

Retaining the central dividing wall is not warranted and would be impractical, as there will be insufficient timber poles to support it, and its inclusion – even if moved elsewhere within the building – will obstruct the greater utility of the building that the proposal intends to provide.

It would be feasible to provide plans and schedules of fabric to be retained and graphic images showing the final form of the new structure to Heritage NSW or the Approvals Committee. However, with respect this request involves a level of ‘hands on’ intervention that is non commensurate with the ‘moderate contribution’ that this minor utilitarian structure makes to the Bathurst Showground, and it is surprising that such a detail could not be left to the Applicant’s heritage adviser.

The proposal has already been advertised. While it is acknowledged (and regretted) that the Prior Family was not consulted before the public advertisement, they have now been approached. Their opposition to the proposed works is acknowledged, but the proposal would keep as much of the historic fabric originally donated by the Prior Family as possible and would continue the Prior Family name. Other major stakeholders have also been consulted already – it would be helpful for the Approvals Committee to appreciate that in a small community like Bathurst there will always be diverse views and the proposed works also have many supporters.

Proposed Consent Conditions

Having regard to the above circumstances, the discussions at the Approvals Committee meeting and the resolution passed on 1 June, the Bathurst Showground Land Manager proposes the following conditions of approval:

The new Ern Prior Pavilion structure must have the same:

- name;
- location, footprint, form, scale, configuration and orientation as the existing building;

- expressed external structural grid, with seven posts along each long side;

The new structure must incorporate the following fabric from the existing building:

- front façade;
- naming plate;
- sections of timber wall cladding along the full extent of northern and southern facades;
- bull hitching rings – where attached to retained timber wall cladding panels;
- timber posts to be placed internally along each of the northern and southern facades.

An interpretation sign or panel must be provided, the content of which must be determined following consultation with the Prior family.

A heritage adviser must be appointed to oversee works, including selection of historic fabric to be retained and on-site interpretation.

Request of NSW Heritage Council

This letter is a formal request that the subject Section 60 Application be determined, please – preferably by approval and subject to the conditions proposed above.

Could this approval please be issued before 25 June, after which time it will no longer be possible to pursue this project – and other maintenance works to Bathurst Showground will be undertaken instead, to use the remaining available funds.

Yours Sincerely,

Andrew Fletcher
Administrator
Bathurst Showground Land Manager

Copy: Mr Eddie Love
Manager Built Assets – Regional
Crown Lands, Department of Planning, Industry and Environment