

**Submission
No 157**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

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SUBMISSION: REVIEW OF THE NSW HERITAGE ACT 1977

As previously an owner of a State Listed heritage Building and now a resident of Morpeth, an historic river port on the Hunter River, and Vice President of the local Heritage Conservation group I have for many years been involved in restoring and attempting to save heritage buildings and places.

I am now of the conclusion that my entire life has been a wasted effort.

We need both local and state governments to have legislation which will protect and support heritage. At our local council level the tourist potential is seen as coffee shops and fine dining but we have far more that can be used to attract visitors. A single dimension strategy soon wears pretty thin - what is there to do after you've drunk your coffee?

Morpeth is a very historic village full of tourist potential which will, under the present legislation never be allowed to reach its full potential. Attempts to provide a more rounded visitor experience are ignored by the local council and the State Government owned historic railway station is now presented as a graffiti strewn, down at heel storage depot.

Developer threat continues unabated. Each new proposal requires a huge public effort to counter developer proposals that should never get past the council front desk. Developers have huge resources and scour the planning laws (particularly SEPPs) looking for loopholes which can be exploited to their advantage.

Conservation Planning Studies and Archaeological Management Plans are adopted and then filed in the darkest recesses of the Council's cellars. The Morpeth Management Plan which controlled development in the village mysteriously disappeared from the Council website. I don't think it was ever unadopted. These plans are becoming more difficult to enforce. Developers know that some plans are not legally enforceable and exploit this to their advantage. The local council, mindful of the ratepayers, will virtually always back down under pressure from a developer.

The most historic house in our village, constructed in 1826 by EC Close, was returned to its original appearance in 1988 as a bicentennial funded project. It was covered by a **Heritage Agreement between the Owner and the Minister for Planning**. That however did not stop the owner recently replacing the verandah with a previously unknown design and attempts to have this decision overturned were futile. **Why have Heritage Agreements if they cannot be enforced?**

Recent roadworks near Morpeth uncovered, at a depth of 2m, some large logs which were likely to be a part of an 1834 Convict built road. There was no attempt by **Maitland Council** to record their position or carry out more detailed investigation of the site. The logs disappeared without trace. This could have given some valuable detail of the original road construction. **Any archaeological remains should at least be recorded – why is there no requirement to do so?**

A recent dig approved by the **NSW Heritage Office** in Steamer St, Morpeth (a part of the convict built 1834 road and for many years unused) only permitted the top 30cm to be removed thus limiting any opportunity to possibly locate the original road and see its construction. I realised how naive I was. A permit to dig is limited in order that we **see nothing, find nothing**. How can we learn about the early settlement of Morpeth if we continue to hide everything? A dig should be presented as an opportunity to learn more and maybe provide our visitors with an opportunity to experience a part of our past.

Currently **Maitland Council** is reviewing its Morpeth **DCP**, including its boundaries. This came after a major developer withdrew, 2 hours before a council meeting, his application for a manufacture home site for 130 houses. This DA was using a recent **SEPP for Affordable Housing** but the development site was within the **Morpeth Heritage Conservation Area** and, as part of the visual landscape, this site was to be retained for rural use. No non-rural use was permitted.

Now we will soon see the outcome of this review.

I know this is probably not the sort of submission you are really hoping for but I am over the hours required to be spent putting together an acceptable reasoned submission. I am afraid there are too many heritage issues here that require my time.

Following is an edited extract from a paper my husband and I produced for a **NSW National Trust** Conference in 2003. This conference was looking at the issues experienced by those owning rural heritage items. It may be of some interest as it reflected the various attitudes of authorities to heritage preservation in rural areas.

OUT THERE?

YOU'RE ON YOUR OWN

**PRESENTED
BY**

HEATHER AND STEPHEN BERRY

This purpose of this paper is to recount our experiences, as the owners of an historic rural property, which by virtue of the nearby town's expansion is now faced with advancing urban development and the various pressures thus created. It will look at the problems encountered, when the more usual position of the owner wanting to redevelop and the Council intent on preservation, is reversed and the owners of the heritage item who are dedicated to its preservation are faced with an unsympathetic local council and lack of State Government support.

Our paper will summarise twenty years of fighting a losing battle with Maitland Council to preserve the amenity of Anambah House and its outbuildings. It will outline the time and energy expended on fighting for consideration and support, the resultant dilapidation of the heritage buildings and the problems of having to weigh up the cost of preservation against the mounting economic loss.

On the one hand the owner of a heritage item can be prosecuted under the NSW Heritage Act for failing to maintain the property but on the other hand the laws are not designed to assist in its preservation.

We believe there are major shortcomings in the NSW Heritage Act, the NSW Environmental Planning and Assessment Act and the Council's Local Environmental Plan all of which fail to provide adequate control over impacts associated with surrounding development. These impacts are usually not physical but are amenity issues which whilst not causing physical damage to the property may so erode its environment that conservation of the heritage item becomes unviable. It is a policy of the Heritage Council to integrating heritage management into the overall planning process by handing the

power for protection of heritage to the local council. This policy is fraught with danger as we will demonstrate in the following case study.

In rural areas, where local council's are keen to foster any form of economic development and where personal influences are far more prevalent than in the larger cities, there is often scant consideration given to heritage issues. The rural countryside is particularly vulnerable to large scale developments such as open-cut mines, quarries, sand mining, power stations, intensive agriculture such as piggeries or chicken farms and land rezoning for new residential suburbs.

Anambah together with its attendant outbuildings and garden, is a major item of the Hunter Valley's rural heritage. It is listed on the State's Heritage Register, is the subject of a Permanent Conservation Order, and is classified, along with its garden, by the National Trust of NSW. As such Anambah would appear to be regarded as an important part of the heritage of Maitland and on a broader level of the State of New South Wales, yet as far as our local council is concerned it would appear that the preservation of Anambah is of no importance whatsoever.

The City of Maitland

When we arrived in Maitland in 1980 the land around Anambah, even though the property is only some eight kilometres from the centre of town, was still very much as it would have been when the house was built. Our visual catchment across the Anambah lagoon to the rural land beyond remained unchanged from Emily Mackay's 1908 photograph and the approach to the property along Anambah Road was still dominated by the rural landscape.

In the 1980s the signs on the edge of the town displayed "Welcome to Historic Maitland" and we felt that here was a town that had retained and still valued much of its early heritage. Now the signs have been removed Council's formally constituted Heritage Committee has been downgraded to a Heritage Group with issues to be discussed being strictly controlled by senior planning staff.

In recent years Maitland has undergone a rapid expansion particularly in the residential and industrial sectors. The rural land across the far side of the Anambah lagoon is now zoned for residential development. At this very moment some of the bushland seen in Emily's photograph is being bulldozed to make way for more home sites. Reacting to the demand for industrial land Council will shortly release an Industrial Land Study that proposes industrial development along both sides Anambah Road.

The Issues

Our very first approach to the local Council was dismissed with a statement that, Anambah, whilst being an historic structure, was "known to be a farm house". This was our first indication that council placed no value on the preservation of Anambah and that residents living in a rural zone were apparently to be treated as second class citizens.

In 1983 Maitland Council supported an application, submitted by ourselves, for the inclusion of Anambah on the State's Heritage Register. Such a commitment should be binding on the Council. If Council did not intend to honour its obligations to Anambah then at this point it should have refused to support the listing and declared its intentions for the future of the house.

Indeed it has become clear to us over this period that when faced with an unsympathetic council both the Heritage Act and the EP&A Act fail to provide any protection and **you are on your own.**

The NSW Heritage Act

One would have thought that the NSW Heritage Act would provide some protection, however the Act appears only to concern itself with the neglect or damage to a heritage item where it is caused by the owner, with punitive penalties including fines of up to one million dollars or six months imprisonment for an offence against the Act. Impacts from outside sources do not appear to be addressed.

LEP Model Heritage Provisions

The NSW Heritage Office requires that councils include certain model heritage provisions in their Local Environmental Plans. Only one of these provisions addresses the impacts created by development in the vicinity of a heritage item. In this case the relevant clause states that:

“The Council shall not grant consent to an application to carry out development on land in the vicinity of a heritage item unless it has made an assessment of the effect the carrying out of that development will have on the heritage significance of the item and its setting”.

Our experience suggests however that, in the case of an unsympathetic Council, this provision places no onus on the Council to ensure that development does not impact on a heritage item, but merely requires the Council to assess the impact of the development before granting approval. The planner’s report usually states “Anambah, a State Significant heritage item, is impacted by noise from the development but this development (because it has already started) will not create any additional noise impacts”.

The concept of custodianship often used to describe the obligation of ownership of a heritage property does not appear to extend to the local council.

Advertising of Developments

Living in a rural zone, some kilometres distant from our neighbours we are unlikely to observe any Notice of Proposed Development displayed on their gatepost and yet, as we do not actually adjoin the development site, there is no legal requirement that we should be notified.

However one would expect that, as council under its own LEP is obliged to consider the impacts of developments in the vicinity of a heritage item, the owners of the heritage item concerned would be notified as a matter of course.

The Heritage Council and Heritage Office

The role of both the Heritage Council and the Heritage Office appear to be confined to protecting heritage from the actions of the owner. Our attempts to obtain assistance from both bodies have brought little result.

Of particular concern was a statement by the NSW Heritage Office that our problem was not a heritage issue but an amenity issue. As we pointed out if nothing is done to preserve the building’s amenity then as sure as night follows day the buildings will be left to deteriorate. So it must clearly be a heritage issue.

Economic Factors

In the country property appreciation is much lower than in the city and to maintain a heritage item may mean spending more money than you can ever expect to recover. It is therefore far more important that the amenity of a rural heritage item is maintained in order to ensure its ongoing preservation.

From our experience many lending institutions will not lend on a heritage building particularly in rural areas. Many insurance companies will not insure heritage listed buildings and we can no longer afford the public liability insurance required so that we can open the house for Heritage Week or the occasional coach tour.

In the country it is difficult to find tradesmen skilled in heritage work. Any work, other than minor maintenance on a heritage item may require the submission of a development application. This in turn may require the production of various conservation reports, all of which would generally require the input of a heritage expert. This adds significantly to the cost of the work to be carried out and deters most tradesmen from even quoting on the job.

The Time Factor

Particularly over the last six years we have found it very difficult to juggle the time need to meet our obligations to Anambah under the Heritage Act and the time required to spearhead the campaign to try and maintain our amenity. Keeping residents informed of progress, holding committee meetings, writing submissions to Council, letters to the newspaper, lobbying Councillors and all other jobs necessary to keep a campaign going take an inordinate amount of time.

As the battle has intensified it has been necessary to increase the time spent fighting for our amenity and we have been left with insufficient time to maintain the fabric of the building and keep the garden in order. It is a long time since we actually made some progress in the necessary conservation work and our family and social life have been compromised.

Summing Up

The preservation of Items on the State Heritage Register is deemed important to this and future generations. If we allow items to become so seriously impacted by outside sources that their preservation is put in jeopardy then there appear to be two courses of action: either

Heritage items under threat should be removed from the Heritage Register

or

The impact created by developments in the vicinity of heritage items should be controlled.

The first option, removal from the register would totally discredit the philosophy of heritage preservation.

If we are serious about preserving our heritage then controlling the impact would appear to offer the only viable approach. We would therefore like to conclude our submission with some suggested improvements to the current legislation.

Whilst we agree it would be impossible to amend the legislation in order that all impacting development be stopped in the vicinity of a heritage item we would like to see an attempt made to minimise any adverse impacts.

The model provisions incorporated into the LEP should require Council to not only assess the impact of the proposal but also to outline measures to be taken to mitigate those impacts.

The LEP should also require the council to notify the owners of heritage items of any proposed development in the vicinity that may create an impact on that item.

The Heritage Act should be amended to empower the Heritage Office to require local councils to explain their actions in relation to the heritage provisions contained in their Local Environmental Plans.

The Heritage Office must become far more proactive in the support of rural heritage items. Owners of rural heritage quite often have very limited resources and have no surrounding population to draw on for support if issues arise. They are very much on their own.

The Heritage Council must be given the power to convene round-table conferences if a proposed development is deemed likely to cause a significant impact on an item listed on the State Heritage Register. These conferences should be attended by the local council, the owners of the heritage item and possibly the proponent of the development. Mediation can quite often achieve far more than months of writing letters and reports.

During the past twenty years we have been harassed, we have been threatened with having our house burned down and we have had to contend with a litany of misleading information from Maitland Council.

Whilst Anambah is a heritage item it is also our home and we have experienced some very happy times there. However the constant battle has taken its toll and the future looks bleak, particularly in the light of existing heritage legislation which has completely failed to offer any support or protection.

The reality is **OUT THERE, YOU'RE ON YOUR OWN.**

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