

**Submission
No 129**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: City of Canada Bay

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The Hon. Peter Poulos MLC, Chair
NSW Standing Committee on Social Issues
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Sir

Review of the Heritage Act 1977 - Submission

Thank you for the opportunity to provide a submission on the review of the Heritage Act 1977 being undertaken by the Standing Committee.

The City of Canada Bay is proud of its heritage and is committed to protecting its heritage places for present and future generations. A similar commitment to the conservation of the State's heritage places is sought from the State government.

The submission takes the form of responses to the focus questions set out in the discussion paper prepared by Heritage NSW - *Review of NSW Heritage Legislation Discussion Paper, Standing Committee on Social Issues, April 2021*.

However, of overriding importance is that decisions about the management of the State's heritage are made in accordance with the Articles of *The Burra Charter. The Australia ICOMOS Charter for Places of Cultural Significance, 2013*.

Focus Question 1 – What should be the composition of the Heritage Council of NSW?

The Heritage Council of NSW should comprise members with a high degree of heritage expertise as the Council makes decisions on heritage matters that often have a high degree of technical complexity. Preferably, heritage qualifications would be held by Council members.

The selection of the members for the Heritage Council should not be politicised, and should be undertaken by a non-political entity. The members of the Committee should

have a broad range of direct heritage expertise reflecting the nature and proportion of the matters the Council considers, e.g. architectural, urban design, industrial, landscape, archaeology etc. Someone who has only at times dealt with heritage matters would bring too little expertise to the Heritage Council.

Heritage Council meetings should be open to the public.

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

Aboriginal cultural heritage would be best protected and managed under separate legislation, rather than under the Heritage Act. The Government's draft model for Aboriginal cultural heritage laws was released on 11 September 2017 and a consultation draft Bill on 23 February 2018. This matter should be finalised as a priority. The Heritage Council would then not need to consider matters of Aboriginal heritage, and places of Aboriginal cultural heritage would be removed from the State Heritage Register. Instead, Aboriginal people should direct the listing and management of places with Aboriginal values in accordance with Aboriginal cultural heritage laws.

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

The primary objective of the Heritage Act should be to conserve the heritage values of the State's heritage – not just to "encourage" their conservation.

The encouragement of the adaptive re-use of items of State Heritage significance should not be an objective of the Heritage Act. The objective "to assist owners with the conservation of items of State heritage significance" is sufficient.

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

Protection of heritage is important to the residents of the City of Canada Bay. A goal of the Canada Bay Community Strategic Plan, *Your Future 2030*, is - "Our sense of place and of belonging is strong with our diversity respected and celebrated and local heritage and character promoted in friendly village neighbourhoods and vibrant and prosperous centres". It can be inferred that the conservation of the State's heritage is an expectation of the local community.

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

The conservation of the State's heritage should be incentivised through appropriate means. Careful detailed research should be undertaken into potential appropriate options.

The focus on incentivising activation and adaptive re-use, and of prioritising these over other conservation approaches, could place heritage at risk. Adaptive re-use is only

one facet of conservation – and must be undertaken in a way that conserves all the heritage values of a place.

It is unreasonable to burden heritage places with the requirement to stimulate economic growth. The degradation of heritage values in order to achieve a short term economic benefit would result in a permanent loss to present and future generations. However, the proper conservation of heritage places can have economic benefits, both now and into the future.

The priority should be conservation rather than economic benefit and adaptive re-use.

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

This matter is worthy of detailed research and the analysis of a range of options. Research should provide information on the cost of private heritage ownership – is it greater or less than, or the same, as owning a non-heritage listed private home? – does heritage listing affect the purchase price of a dwelling? The research findings should be made public.

Other ways to mitigate the cost of private heritage ownership should also be researched. For instance - by making heritage applications free, by providing free advice and site visits by staff from Heritage NSW, by providing free technical information on common issues, by providing more funding for grants for conservation works, etc.

It has not been demonstrated in the City of Canada Bay that it is more expensive to own a private heritage item, however detailed research on this has not been undertaken. Financial support from the State government to undertake this research would be welcomed.

The City of Canada Bay has a small works grants program to assist owners of heritage items. This program is very popular.

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

The focus of incentives should be on the conservation of the heritage values of a place. A range of options to achieve this through commercial and philanthropic investment should be explored. A poor outcome would be investment that resulted in the loss of the heritage values of a place.

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

The category scheme proposed in the discussion paper is strongly opposed. The category scheme proposed would unnecessarily complicate the management of the State's heritage. Differences in heritage values are well able to be accommodated within the current system.

A better approach is to prepare detailed guidelines for how the heritage values of different types of places can be conserved in relation to new development. These guidelines must be based on *The Burra Charter: the Australia ICOMOS Charter for Places of Cultural Significance, 2013*. Local councils already have a similar system in place – their development control plans providing detailed controls to support the provisions of the local environmental plan – so it would be familiar to the community, including developers.

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

The category scheme proposed in the discussion paper is strongly opposed. Residential properties should not be separated into a different category. The category scheme proposed would lead to people thinking that residential properties listed on the State Heritage Register do not require the same level of protection as other places listed.

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

Community engagement with State heritage is encouraged, and the community should be invited to nominate places for listing on the State Heritage Register. However, an understanding of what places warrant listing on the State Heritage Register requires technical expertise at a professional level. It is usual for the government to seek professional technical advice on a wide range of matters, heritage should not be treated differently in this regard. The assessment of significance of potential new State heritage places requires expert analysis.

Focus Question 11: Would streamlining enhance the listing process?

An abridged delisting process is not needed as an assessment of heritage impacts is based on an understanding of the heritage values of a place. If a place has been destroyed, so has its heritage values, therefore the assessment of heritage impacts is straightforward and quick. This should be a matter of process rather than legislation.

The emphasis on a fast track de-listing process, rather than a fast track listing process, is unfortunate.

“Streamlining” of the development approval process under the Heritage Act could be achieved by better integration of development approvals required under the Heritage

Act with those required by the integrated development approvals process (see response below).

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

The current requirement to obtain approval under the Heritage Act as well as approval under the integrated development provisions of the Environmental Planning and Assessment Act should be streamlined as this “double dipping” can extend the time needed for approvals. Approval under the Heritage Act could be required to be given as part of the integrated development application process.

Heritage NSW staff should be readily available to discuss proposed development throughout the early stages of the design as this would help ensure that heritage issues were resolved prior to an application being lodged. The collaboration of local council staff in these early discussions is also important.

The enforcement provisions should remain as the threat of prosecution can be an effective deterrent. The enforcement provisions should not be weakened. The State’s heritage is important and irreplaceable, and its loss or degradation affects the broader community and future generations.

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

The Minister responsible for heritage should not be responsible for determining the regulatory thresholds for standard exemptions, fast-track applications and standard applications for permits under the Act. These are technical matters that should not be politicised.

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

The Minister responsible for heritage should not be able to override the decisions of the Heritage Council.

Heritage needs to be considered in any strategic planning work. Too often, heritage is not considered in a strategic way in planning. Heritage reports are provided – but these are usually more of a description of existing heritage resources, rather than a strategic proposal for heritage in areas undergoing change. Heritage places are important in local character and can provide inspiration for new thinking about a place.

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

Suggested opportunities for enhancement of heritage at a strategic level are:

- A comprehensive review of the existing State Heritage Register listings should be undertaken to determine if all the currently listed places warrant being retained as State heritage items. This would also provide an opportunity to update the heritage inventory sheets and the management recommendations for each item, thus assisting the owner of the item.
- A comprehensive State wide heritage study, or series of studies, should be undertaken to determine if there are potential new heritage items that should be listed on the State Heritage Register.
- Decisions as to whether or not to list a place on the State Heritage Register should be made promptly by the Minister responsible. However, preferably, the decision as to whether or not to list a place on the State Heritage Register should be depoliticised by being made the responsibility of an expert panel. The views of the community should also be considered by this panel, with the opportunity for the property owner, local council, and community members, to make representations to the panel.
- Moveable heritage items that form part of museum collections should not be listed on the State Heritage Register.
- Greater guidance and technical support should be provided for the owners of State heritage places.

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

Heritage compliance and enforcement could be enhanced by providing greater resources for this work.

However, the primary focus should be on helping property owners understand their responsibilities, and on providing guidance as to how to meet their responsibilities. It is better to help property owners do the right thing than to focus on penalties.

Should you require any further information please contact Council's Strategic Planning team on .

Yours sincerely

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