

**Submission  
No 179**

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

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

## TERMS OF REFERENCE

(a) and (b) - While the objectives of the Act are certainly as relevant, if not even more relevant, in 2021 as when the Act was originally drafted, it is not easily understood and does not meet the needs of the people of NSW.

The Act has been adjusted many times and sections deleted with the result that it is not coherent. Currently the Act is not clear about responsibilities and support for local items on the State Heritage Register which are not State Heritage listed but must meet the criteria established by the Heritage Council. It is essential that the Act be amended to allocate more resources for local heritage and for conservation areas.

### FQ1 Composition of the Heritage Council

Since the Act was first introduced, the numbers and composition of the Heritage Council have changed considerably. We believe that this has resulted in a less effective implementation of the Act. It is very clear that the list of qualifications, knowledge and skills currently listed for members is too broad as members may have skills in all the areas of development and property, planning, planning or environmental law or property economics, yet have no knowledge or skills in anything related to archaeology, conservation, environmental or cultural heritage. If any members are not representative of a related heritage organisation or group, we consider that they should have expertise in several areas and at least one which is related to actual heritage.

### FQ2 Aboriginal Cultural Heritage

We understand that for some years changes have been promised to the National Parks & Wildlife Act to improve the processes for Aboriginal Heritage in NSW but that the draft Aboriginal Cultural Heritage Bill (2018) has still not been legislated. We have been told that the Heritage Council manages the Aboriginal Heritage Management System and that a committee has been established to advise the council but it is unclear as to how this interacts with the implementation of the NP&W Act.

Whilst there is a great diversity among aboriginal groups, the current situation in NSW does not recognise this. Currently a developer can choose a local group to undertake the required consultation. We believe that this system needs to be changed and consultation required through groups representative of all Aboriginal groups concerned.

### FQ3 Objectives of the Heritage Act

In regard to the comment in the discussion paper regarding 'an increased focus on community-driven strategic planning is not reflected in the heritage system', our understanding is that, as local government has no legislative powers, any adoption of local plans is entirely at the discretion of the Planning Department at any one time and heritage listings of the Heritage Council. Over the past ten years the planning authority 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.

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

We have found the Act and related legislation very unclear about the status of local conservation areas in Local Environment Plans which are approved by the Government. As residents of Balmain for over 45 years, it has been our experience that, whenever an unsympathetic development application has been made, the Land and Environment Court has frequently overruled the local decision.

#### FQ9 Residential Properties

This proposal seems to divide 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 and the draft Aboriginal Cultural Heritage bill. This would seem to indicate that this legislation is not to be pursued but that the Government wants to appear to recognise Aboriginal cultural heritage

The definition of Category 2 is rather vague.

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

Category 4 - As there appears to be minimal changes proposed in relation to the majority of heritage items, we believe that a system that 'is modern, effective and reflects best practice heritage conservation action and celebration' is not possible and only results in a reduction in support for items on the State Heritage Register.

#### FQ10 Greater Community Engagement

We can see no where in the review paper that seeks to address the need for increased public funding as a demonstration of the Government's commitment to heritage. The Heritage Council needs to include representatives and have sufficient funding to enable the establishment of expert committees to manage all aspects of its portfolio.

It is clearly evident from the majority of heritage listings being in LEPs that local communities clearly support conservation and restoration.

We would support a proposal for the Government to extend land tax incentives to items of local heritage and to subsidise owners for the additional fees that need to be paid to obtain permits for rebuilding and 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 State Heritage Register so that they can be used in compatible ways. Local councils have been starved of funds over many years by the State Government rate pegging and also by transferring costs (e.g. funding for fire and emergency services) so there is an obligation to ensure that the Heritage Act and legislation supports local heritage through additional funding defined for that purpose.

## Summary

We agree that the current legislation no longer serves the objectives of the Act. However, in promoting ideas to streamline processes, the discussion paper would seem to reduce support for State Heritage Register items. Moreover, if the Government is seeking to support the objectives of the Act, support must be given to communities for local heritage items.

David and Robyn Longhurst