

**Submission  
No 180**

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

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# Review of the Heritage Act 1977 (NSW)

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## 1.0 Does the Heritage Act 1977 need changing?

Generally, the spirit and intent of the 1977 Act is as relevant today as when it was created.

It's the implementation of the Act that needs attention.

## 2.0 Streamlining heritage processes.

### Local Council assessment process

I believe that the current system of assessing developments at Local Council level works well for heritage properties. All Councils have relatively comprehensive heritage schedules, which are updated regularly with the LEP updates. The accompanying DCPs are often excellent documents, developed over decades (such as the Woollahra DCP), which provide clear guidelines for development of heritage items or items in Heritage Conservation Areas, HCA. The analysis of the values of HCAs and Character Zones is also progressively being improved, as is the knowledge and expertise of planning staff in Local Councils. The process of requiring the applicant to lodge a SHI with the DA documents provides scope for the applicant to argue the merits of their scheme while taking into account the LEP and DCP requirements. The process is clear and the guidelines are generally helpful. The gaps are usually in the expertise of the council staff in assessing the applications. Generally, the system is clear, the regulations are clear and the guidelines are helpful. This is what local councils are set up for, and the system works, if administered honestly and skillfully.

### Heritage NSW assessment process

Heritage NSW, however, is not well set up for making credible determinations of Development Applications under S60. The staff are often not trained as planners and they do not have access to planning guidelines, such as an LEP or DCP, by which to clearly and fairly assess the application. According to changes in the Heritage Act, the staff must assess the application against a CMP endorsed by the Heritage Council. The CMP process, as established by JS Kerr, sets out to establish significance and to set policies for protecting that significance. It acknowledges that client requirements and local planning regulations need to be taken into account in determining future outcomes for a place. CMPs are not written as planning assessment tools, but as significance assessment tools. Hence, Heritage NSW staff find it difficult to make decisions based on the CMP policies alone. CMPs vary in quality, and have often not been updated with recent changes to a place etc. and may be contrary to other regulations such as BCA. A CMP should be one of a series of assessment checks, but not the only one.

Recently, Heritage NSW staff have been resorting to generalised 'rules of thumb' by which to assess applications, in the mistaken view that they are being 'fair' and applying the same rules to all applications. These 'rules of thumb' include refusing an application if the proposed changes:

1. can be seen from a public place
2. involve alteration to original fabric
3. might set a precedent
4. mean that the place might end up looking different to its neighbours.

There are many flaws in this simplified assessment process, as attested to by the overturning of many staff assessments by the Heritage Council Approvals Committee (acting on behalf of the Minister), and include:

- Good alterations to heritage places should be celebrated, and not necessarily hidden from view. The Burra Charter provides guidance for adaptation of places to new uses and encourages contemporary additions not imitations. The assessment should be based on whether the new work diminishes the overall significance of the place or not, not on whether it can be seen or not.
- Sometimes original fabric can include a large amount of standard brickwork, of which there are many examples, and the proposed work involves removal of a relatively small amount of this fabric. Such a change can make an enormous difference to the livability of a place, while allowing the overall significance to remain, without destroying original fabric that might be rare. The skill lies in making the change according to Burra Charter principles, not just on whether the fabric is original or not.
- In planning law, precedents are not valid arguments. Each heritage property has its own unique significance, and applications should be assessed against the unique significance of that property. Therefore, a decision on one property cannot be transferred to another property, as the circumstances and significance will be different. Even within a seemingly unified terrace group, each terrace may have different characteristics from the others, and therefore must be assessed individually. Therefore, an assessment should not be based on whether the decision sets a precedent or not.
- A recent terrace house project of mine in Millers Point, in which the client wished to replace the corrugated steel roof (put in place during the Land & Housing ownership period) with slates, as per the original design, (and for which there was much documentary and physical evidence), had the application refused by Heritage NSW on the grounds that it did not match the adjacent terraces in the group, which also had 1990s corrugated steel roofs. Thus, the decision was not based on significance, but a general 'rule of thumb' that everything in a terrace row should look identical from the exterior, regardless of its significance. Now the new owners of the adjacent terraces are also wishing to replace their corrugated steel roofs with slate. This is not a credible position for Heritage NSW to find itself in.

My conclusions from these observations are that:

- All DAs for heritage places, especially residential properties, should be assessed at Local Council level and not by Heritage NSW. Already, City of Sydney has delegated authority from Heritage NSW to assess items of state significance, and this process seems to be working well, and quickly. It's too confusing and arbitrary to have two systems of approvals with different assessment rules for each.

- Items on S170 registers should also be assessed through the same local council assessment process, making government as accountable as private property owners.
- The suggested category 1 items, such as the Opera House, Sydney Harbour Bridge, Chief Secretary's building etc., can be referred for comment and advice from the Heritage Council.

### **3.0 What should Heritage NSW be responsible for**

#### **Identifying Heritage**

- the listing of items on the State Heritage Register;
- the administration of the SHR database,
- the celebration of places on the SHR – such as the recent announcement to place Blue Plaques on State items.

#### **Keeping good records**

- the keeping of records, the safe guardianship of information and the ability to readily access it, for the benefit of all owners of heritage property;
- So that a wealth of expertise over decades will be used and not wasted or expensively re-invented.

#### **Setting policy and standards**

- preparation of policy documents that cover both state and locally listed items;
- setting of heritage standards;
- Setting standards on the maintenance of historic buildings and fabric. The TAG (Technical Advisory Group) operated for many decades proving both individual advice to property owners and numerous excellent technical publications freely available. This valuable group provided practical help to owners of heritage properties and built up much credibility and good-will between property owners and government.
- advice to government;
- advice to government agencies.
- negotiation of outcomes in situations that become intractable at local level, before reaching the courts (for state listed items);

#### **Promoting heritage**

- By the administration of heritage grants and their celebration on completion.
- By the dissemination of heritage values to communities in a positive way.
- By working with communities at all levels to understand and work to conserve and enhance our heritage.

### **4.0 Summary - Important principles**

#### **Prevent the politicization of heritage.**

- This can be achieved by strengthening the heritage expertise of both the Heritage Council and the staff.
- Provide adequate support and funding for Heritage NSW so that it remains an expert department, based on expert knowledge of heritage. This will ensure that decisions emanating from Heritage NSW will be respected, being based on sound heritage

principles, not on arbitrary generalized rules. If decisions are made on political grounds or for expediency, they will not be respected, and therefore not followed.

- There will always be a tussle between development and heritage (this is what keeps our city lively), so it is essential to have robust processes to keep this balance in check. The Heritage Council should be equally represented by the various groups with a stake in good heritage outcomes. Currently, it is too development focused with not enough heritage expertise, and thereby loses credibility.

### **Government should lead by example**

- The government cannot expect private property owners to respect the heritage listings and accompanying restrictions if the NSW Government doesn't respect the heritage listings and accompanying restrictions for its own state-owned heritage properties. For example, Millers Point residents are required to proceed through an onerous series of approval mechanisms before starting work on their properties, while Place Management in the adjacent, and equally historic, Rocks, proceed with mammoth changes to historic fabric with little process or consultation, making changes to historic fabric that would never be approved in Millers Point.
- Section 170 needs to be strengthened and tied into the Heritage Asset Management Guidelines developed by Premiers Department in the 1990s. Government needs to be held to the same levels of accountability as private citizens.
- If government keeps resisting the listing of its own properties on the SHR, or even local heritage lists, how can it expect private owners to do the same, or respect the listing process?
- If government keeps finding ways to subvert the heritage processes (e.g. by means of SSD), then it loses credibility with the community. Isn't it better to work with the community and be transparent?

### **Keep good records and make information readily available**

- The NSW Heritage Act has been in operation for just over 40 years. In that time, an enormous amount of information has been accumulated by Heritage NSW, and many useful publications produced at government expense. Our heritage system has been admired and copied by numerous countries around the world. But where is that information now, and is it easily accessible? No. The latest version of the SHR seems to have lost information in the translation to the new platform. Where are the precious CMPs referred to in the Heritage Act and used as a guide for approvals? Why are they not available on-line? Many excellent technical publications were produced in the period 1977-2003, but hardly any since. Where are the previous publications? Home owners now access the Heritage Victoria publications or those from Western Australia, as NSW Heritage publications seem out of date or not readily available. Planning regulations at local and state levels often require elaborate sets of archival recordings of places before demolition, or before major changes are undertaken. Where are these recordings kept? Are they available for research?

### **Make the archaeological provisions meaningful**

- The archaeological provisions of the Act are not working, in my opinion. The provisions are onerous for private property owners. Employing an archaeologist can be a major expense, with little to show for the expense. Archaeologists often take years, or decades, to finalise the cataloguing of artefacts which the owners never see again. There has been no follow-through from Heritage NSW to ensure that there is a meaningful outcome to the

archaeological work. Information on findings should be shared with the local community, so the community can jointly develop a better understanding of its past.

- I worked for a client in Millers Point who employed an archaeologist at great expense. The client became very frustrated when they could not access either the artifacts from the expensive archaeological work or the reports. When it was suggested to the archaeologist that the client would like to display the artifacts in a specially built cabinet in their house – the archeologists were shocked and surprised, and said they'd never come across such a request before.
- In many cases, owners destroy the archaeological evidence so that an archaeologist is not required.
- I have suggested that Millers Point Community Centre set aside a room to become a display area for archaeological finds in the area, so that the whole community can be informed and enjoy the artefacts. Although this would need funding, it's a far better use of money than is currently being wasted on archaeological work and reports which are never seen by the clients and provide zero benefit back to the owners or community. The archaeological work and research should be contributing back to the community and a better understanding of the place where we live – for us, for future generations and for visitors to the area.

### **Activate heritage through good practice and lively interpretation of heritage**

The best way to activate heritage is by not by turning every old building into a hotel, restaurant or shop, but by providing all property owners (public and private) with a level of confidence, respect and certainty regarding their properties, so they can activate their properties in a myriad of individual and collective ways, such as:

- Historic schools celebrating their history and buildings and including their local community in this celebration (this happens in many places)
- Communities celebrating small examples of authentic detailing (a good example of stone re-pointing, colour schemes, reconstruction of missing details) which collectively can add up to an impressive streetscape which attracts visitors.
- By avoiding Disneyfication and over-development of popular tourist areas such as The Rocks, by ensuring a good balance between authenticity and commercial return. The Rocks is deteriorating rapidly as an authentic historic area and it will soon no longer be a valuable heritage precinct.

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