

**Submission
No 188**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Mr Francis Breen

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The Hon Peter Poulos MLC
Chair
Standing Committee on Social Issues
Heritage Act 1977 (NSW) Inquiry
Parliament House
Sydney NSW 2000

Dear Mr Poulos,

Please accept this submission in respect of terms of reference for the Inquiry. I am a resident of Birchgrove and I hold a BA (Econ) Macquarie University and Graduate Diploma (Environmental Studies) Macquarie University. For many years I have been doing bushcare in my local area and I have been active in local conservation groups. I was a Councillor at Leichhardt Municipal Council from September 2012 to May 2016 where I experienced first-hand the operation of the planning laws in respect of environmental heritage

My submission makes reference to the discussion paper 'Review of NSW Heritage Legislation April 2021'. I consider that the discussion paper does not provide an adequate analysis of the operation of the Act to permit an evaluation of its effectiveness and that the proposals made are not based on sound heritage conservation principles. A more comprehensive analysis is required before changes are proposed.

Please refer to my further comments in respect of the terms of reference for the inquiry as follows.

a) the need for legislative change to deliver a heritage system that is modern, effective and reflects best practice heritage conservation, activation and celebration

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

The Heritage Act 1977 (NSW) (the Act) needs little change. Its Objects are still relevant and fit for purpose. It is capable of delivering strong and effective identification, protection, promotion and conservation of heritage in NSW. The primary matter concerning the effectiveness of the Act is inadequate resources.

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

The Act allows for adaptive reuse and contains provisions for conservation agreements. The Act would be more effective if these provisions were more utilised. The barrier here seems to be resourcing and not the provisions.

Matters where I consider that changes could be made to improve its effectiveness of the Act include the following. (These changes do not necessarily require a change to the Act),

1 Ensuring items of environmental heritage of all NSW Government agencies and government owned corporations are identified and managed under the Act.

2. A more proactive approach be taken to identify items of environmental heritage that may be considered for protection under the Act.
3. Heritage protected under the Act should not be overridden by the provisions of other legislation including State Significant Developments. For example the Willow Grove property at Parramatta should be protected and the site for the proposed museum found at another suitable location.
4. The independence of the Heritage Council should be guaranteed to ensure full and frank advice.
5. The Heritage Council should include community representation and the majority of positions filled by people with heritage expertise.
6. The Heritage Council should be supported by specialist advisory groups.
7. The identification and conservation of heritage at the local government level should be supported by environmental planning instruments that have the effect of statutory requirements and not limited to being guidelines (i.e. Development Control Plans).

b) the adequacy of the Act in meeting the needs of customers and the community and the protection of heritage

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

The Act does not need to be watered down to meet the needs of customers and the community. The needs of the customers and the community are providing assistance in meeting the requirements to protect environmental heritage on the part of customers and the adequate identification and protection of environmental heritage on the part of the community.

Currently there are a range of provisions in relation to the Act to assist customers in meeting the requirements to protect environment heritage and the perceived concerns about the effectiveness of these are a consequence of the inadequate resources that are available for their application. The focus should therefore be on appropriate funding and not watering down the Act.

Similarly it is a resourcing problem in identifying and protecting environment heritage that leads to a shortfall in meeting these needs of the community.

Important matters that I have mentioned (see (a)above) are the State Significant Development decisions and the conservation provisions in the planning instruments for local government. The Act is not adequate in meeting the needs of the community where State Significant Development decisions override the Act and where local government planning instruments are guidelines only and are not statutory requirements.

State Significant Development decisions should not override the Act and the conservation provisions of local government planning instruments should have the status of statutory requirements.

c) *how the Act could more effectively intersect with related legislation, such as heritage elements of the Environmental Planning and Assessment Act 1979 and the National Parks and Wildlife Act 1974*

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

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

Two features of the *Environmental Planning and Assessment Act 1979* that are relevant are the State Significant Development provisions and Development Control Plans.

As stated above (see (a) above), State Significant Development decisions should not override the protection of environmental heritage that is provided by the Act. In the example discussed above concerning Willow Grove at Parramatta another site should have been identified for the location of the proposed museum. Protection of Willow Grove should have been a deciding factor in the decision making process.

The *Environmental Planning and Assessment Act 1979* should provide for the protection of environmental heritage that is subject to the Heritage Act.

The *Environmental Planning and Assessment Act 1979* should also elevate Development Control Plans (DCP) to the status of statutory requirement where the DCP provides for the protection of environmental heritage at the local government level. Currently DCPs provide guidance only in respect of development applications and cannot provide adequate protection for environmental heritage when challenged by development proposals.

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

A priority for legislative change should be the enactment of contemporary stand-alone legislation to protect and conserve Indigenous Heritage. New legislation should be developed in consultation with NSW Aboriginal communities with input from experts in Indigenous heritage. Relevant changes should be made to the provisions of the *National Parks and Wildlife Act 1974*.

d) *the issues raised and focus questions posed in the Government's Discussion Paper*

(i) *a category approach to heritage listing to allow for more nuanced and targeted recognition and protection of the diversity of State significant heritage items*

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

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

It is not clear from the discussion paper that the category approach is consistent with the principles of the Burra Charter of Australia ICOMOS. The Charter is the basic document on which heritage conservation and practice in Australia is built. It is essential that any change to the Act be consistent with the Charter and a full analysis should be made to establish the situation regarding the category approach.

The category approach does not seem to treat environmental heritage according to its significance. It seems instead to classify environmental heritage according to other factors such size or type and this may not be consistent with its significance.

The Act must be consistent with the Burra Charter and it has not been established that the category approach meets this requirement and therefore cannot be supported.

(ii) consideration of new supports to incentivise heritage ownership, conservation, adaptive reuse, activation and investment

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

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

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

The Act allows for adaptive reuse and contains provisions for conservation agreements. The Act would be more effective if these provisions were more utilised. The barrier here is resourcing and not the provisions of the Act.

(iii) improvements to heritage compliance and enforcement provisions

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

The measures proposed in the discussion paper seem reasonable. They will require adequate funding to be implemented and, as mentioned earlier in this submission, resourcing to effectively implement the current provisions of the Act has not been adequate to date.

A compliance system requires adequate resourcing otherwise the proposed changes will not have the desired outcome.

(iv) streamlining heritage processes

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

I support the reform proposal to introduce a community-driven nomination process. This must be supported by adequate resources to enable Heritage NSW to provide assistance with applications and for Heritage NSW to have available objective expert advice.

Focus Question 11: Would streamlining enhance the listing process?

There is not sufficient information in the discussion paper to support an abridged process. The discussion paper states that the update process is onerous without providing adequate evidence to support the statement. There is not adequate explanation of the suggested abridged process.

Resourcing is a relevant consideration in respect of updating heritage listings. The process would be less onerous with adequate expertise and assistance being available.

An abridged updating process is not supported without suitable safeguards to ensure that reassessment is based on heritage significance.

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

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

The discussion paper states that *'Some heritage owners can find the permit processes to be confusing, costly and time-consuming'*.

These concerns can be addressed by better resourcing of Heritage NSW with more qualified experts and administrative support to provide advice and support in a timely manner.

I do not support changes to the current determination criteria for heritage permits.

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

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

Ongoing refinements to relevant land use and planning regimes should take into account the provisions of the Heritage Act. For example the discussion paper does not seem to provide evidence of any significant obstacle for the *Environmental Planning and Assessment Act 1979* with its increased focus on community-driven strategic planning, to reflect the heritage system. Such strategic approaches should provide for the identification and protection and enhancement of environmental heritage and such protection should be in the form of statutory requirements.

An example is the plans developed by the Greater Sydney Commission, which must be taken into account and observed in planning decisions.

As discussed earlier in my submission (see (a) above) State Significant Development decisions should not override the protection of environmental heritage that is provided by the Heritage Act.

The *Environmental Planning and Assessment Act 1979* should also be amended to elevate Development Control Plans (DCP) to the status of statutory requirement where the DCP provides for the protection of environmental heritage at the local government level. Currently DCPs provide guidance only in respect of development applications and cannot provide adequate protection for environmental heritage when challenged by development proposals.

e) Any other Related Matter

Focus Question 17: How could understanding of state heritage be enhanced?

The discussion paper states,

'There are no dedicated programs to promote community heritage understanding, engagement or promotion. The NSW Government could seek innovative ways to support and celebrate local heritage, for example, through best practice guidance on local heritage management'.

I support the development and implementation of dedicated programs to promote community heritage understanding, engagement and promotion. I also support the NSW Government seeking innovative ways to support and celebrate local heritage.

These matters do not necessarily require changes to the Heritage Act and are matters that may be progressed with appropriate planning and funding by a task force with relevant expertise.

Focus Question 18: How could we improve heritage tourism or help activate heritage places for tourism?

I support improving heritage tourism subject to safeguards to protect the heritage significance of the heritage sites.

I do not support the South Australia Heritage Tourism Strategy as it incorporates features that I discussed above in respect of changes to the Heritage Act and that I do not support, for example streamlining proposals. Cutting red tape also suggests measures that may not fully take into account the heritage significance of the relevant site.

World's best practice should be investigated to provide the basis for developing a strategy that ensures environmental heritage significance is safeguarded.

Focus Question 19: How could public heritage buildings be activated to meet the needs of communities?

The discussion papers states,

'While most public heritage buildings remain in active use, many may now be considered surplus to need due to changing service delivery needs, expensive maintenance costs or other reasons. These surplus assets require ongoing conservation and maintenance, even when idle. At the same time, local communities across NSW are contending with population growth and development, putting pressure on existing community and commercial spaces and facilities'.

This statement suggests that heritage buildings should be recycled in the same manner as the Sirius building in Cumberland Street, The Rocks NSW. This building was erected as public housing and has now been converted to private residences attracting very large prices on their sale. The building was saved because of its heritage significance and the benefits of this have now been appropriated by private interests. This is not an appropriate outcome and the building should have been retained for public housing or other public purposes

This is an example of NSW Government's political priorities and not the failure of the Heritage Act to protect environmental heritage.

Environmental heritage should not be seen as surplus assets to be disposed as a revenue raising activity. The NSW Government should retain ownership of its environmental heritage and provision made in the state budget for necessary maintenance and other costs.

Each environmental heritage asset subject to changing service delivery needs should be considered in the light of world's best practice for activation that respects the heritage significance of the asset and be retained as environmental heritage of the NSW Government.

Further related matters

The inadequate analysis presented in the discussion paper

I stated at the beginning of my submission that I consider that the discussion paper does not provide an adequate analysis of the operation of the Act to permit an evaluation of its effectiveness.

A more comprehensive analysis of the operation of the Act is required which includes evidence of the causes of the perceived shortcomings of the Act and discussion and evidence of the successful operation of the Act.

The analysis should include the impact of inadequate resources on the effectiveness of the Act and how this has contributed to perceptions about the operation of the Act.

No changes should be made without such analysis.

Further consultation in respect of any proposed changes to the legislation

Any changes proposed as a result of this review must be presented for public consultation with a genuine opportunity for contribution and amendment by the community and relevant professional expertise.

Heritage protection at the local government level

The operation of heritage protection at the local government level requires further inquiry into the resourcing of heritage identification, assessment and protection at this level.

The provision of training, staffing and resources for conservation and community involvement has also been a significant factor in the perception of customers about the operation of the Act and related matters at the local government level.

Conclusion

The Heritage Act needs little change. Its Objects are still relevant and fit for purpose. It is capable of delivering strong and effective identification, protection, promotion and conservation of heritage in NSW.

The primary matter concerning the effectiveness of the Act is inadequate resources. Perceived concerns can be addressed with more adequate resourcing for administration of the Act.

More can be done to make environmental heritage more proactive and to improve community engagement and compliance.

The proposals made in the discussion paper are not based on sound heritage conservation principles and any changes to the Act must be consistent with the principles of the Burra Charter of Australia ICOMOS.

Changes to the *Environmental Planning and Assessment Act 1979* and the *National Parks and Wildlife Act 1974* and the enactment of contemporary stand-alone legislation to protect and conserve Indigenous Heritage are required to ensure that environmental heritage is identified and protected.

Each environmental heritage asset subject to changing service delivery needs should be considered in the light of world's best practice for activation that respects the heritage significance of the asset and be retained as environmental heritage of the NSW Government.

The discussion paper does not provide an adequate analysis of the operation of the Act to permit a sound evaluation of its effectiveness. A more comprehensive analysis is required before changes are proposed.

Further inquiry is needed in respect of environmental heritage at the local government level.

Francis Breen