

**Submission
No 201**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Dr Mary Casey

Date Received: 4 July 2021

4 July 2021

Standing Committee on Social Issues
NSW Parliament

RE: INQUIRY INTO THE HERITAGE ACT REVIEW 2021

I have provided a response to the Inquiry and the *Terms of Reference for the Standing Committee on Social Issues inquiry into and report on the Heritage Act 1977*. My comments on this review are below.

Please contact me if you have any further questions.

Yours sincerely,



DR MARY CASEY
DIRECTOR

Casey & Lowe
Archaeology & Heritage Pty Ltd
mary.casey@caseyandlowe.com.au

TERMS OF REFERENCE

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

This key reference point shifts quite quickly to linking the heritage system as to only being able to be adjusted through changing the *Heritage Act*. The system actually works relatively well when it is considered the environment in which Heritage NSW works:

- Staff cuts and reorganisation every 2 years or so.
- Understaffing and underfunding of the heritage team.

The current legislation was updated in 2009 and the way it is managed is constantly being updated based on digital resources and internal systems. The current Heritage system is modern in that it responds to the situation in which it is placed by the State Government. It manages significant and complex sites which are a key resource for the State and local communities.

As I'm sure you are aware, local sites are managed by local councils under the *Environmental Planning and Assessment Act*. Council as the managers of Development Applications are therefore best placed to continue to manage these sites.

In relation to the Heritage Act and the system reflecting best practice management this is difficult to do. If one considers the sell off of Millers Point, a suburb listed on the State Heritage Register, from a government agency who had not invested in their buildings for decades and eventually sold these to private individuals. These houses were bought by successful professional people bought. There was a poor fit between the dilapidated working class which needed major restoration and the new owners. While Conservation Management Plans (CMP) were produced for every house being sold this does not mean the new owners did not have expectations beyond what their CMP and heritage architects said was possible. We have seen time and again where new owners have made illegal changes, clients not will to pay for professional works or take advice from their heritage consultants.

In an attempt to rectify this potential loss of significance to a highly important resource Heritage NSW has implemented seminars to inform new owners of opportunities for their houses and how to think through the process of managing their heritage property. Therefore, the assumption that owners of State significant houses in a State significant suburb can be relied upon to understand the limitations of what they can do to maintain the heritage values of a 150 plus year old houses is to assume they are heritage architects or what is important about the house and the location. This requires skilled professional expertise or they will all have aluminium windows and bright tiled rooves and garish colour schemes. And their houses will have a considerable loss in value when they come to sell it.

In relation to managing heritage sites, by far the majority of heritage items in NSW were listed on Local Environment Plans (26,000 items) and managed by Councils, 1600 items are listed on the State Heritage Register and managed by the Heritage Council and Heritage NSW. There are also relics or archaeological sites, may of

which have never been funded to be identified while many are listed in zoning and management plans and many are owned by the State government.

It is important to realise that heritage is not a sustainable resource, it is not being replaced and once lost it is no more. It can be lost by a thousand cuts or by one fell swoop.

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

This term of reference appears to prioritise the 'needs of customers' over the community and the protection of heritage. The Heritage Act is designed to protect Heritage and the values placed on it by the community. In terms of what the 'needs of customers' might be would this include:

- i. Exemptions for minor works?
- ii. Pre-lodgement meetings to discuss issues and ensure any proposed works and applications meets Heritage Council guidelines and to ensure an understanding of the approval process.
- iii. List of appropriate professional heritage architects/engineers to manage, advise, and design the process for an owner?
- iv. On line lodgement and tracking system for permits?
- v. Database of heritage sites and why they are significant?
- vi. Online digital library of many current and earlier heritage reports as an important resource for professionals, the community and owners?
- vii. Website which is current, up to date and provides many resources including all guidelines?
- viii. Training of Council Heritage Advisors?

I'm sure there are more actions which may be required but everything above has been implemented, some years and some a few weeks ago. Many of these changes did not require amendments to the Heritage Act. They all require resources, time and money and support.

Therefore, the act is adequate to meet the needs of customer, the community and protection of heritage. Changing the act will not provide new resources, or training, or staff who would improve the processes and timing of approvals.

Who is the customer?

It is noted the State government is the largest owner of SHR listed items (54%), with other owners being:

- Local government (10%),
- Commonwealth government (2%)
- Private companies (16%)
- Religious organisations (7%)
- Community organisations (5%)
- Private people (5%)

This raises the question of who is the customer the government is most concerned about? The State and its ownership of many places which have been in the hands of government for more than 100 years. Or the 5% of private owners? Or the ability of the State to demolish SHR listed building and places? Or their ability to sell off critical buildings and places owned by the State? I suggest this question of which customers

has the attention of this review and the State and it is an issue worth investigating under this term of reference.

(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

The Heritage Act was designed to intersect with the *Environmental Planning and Assessment Act* and there are a number of cross-references. They work well together. While the NPW Act is under review, notably the Aboriginal heritage sections of the Act it would be difficult to make changes to the Heritage act which meaningfully responded to this term of reference.

(d) the issues raised and focus questions posed in the Government's Discussion Paper, in particular:

- 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
- ii. consideration of new supports to incentivise heritage ownership, conservation, adaptive reuse, activation and investment
- iii. improvements to heritage compliance and enforcement provisions
- iv. streamlining heritage processes

A more nuanced and targeted recognition of sites is more likely to complicate a system for which there are many supporting documents and guidelines, and which is mostly managed outside of the Heritage Act. The current system recognises the values of a place are a reflection of who is a suitable manager of a place. Therefore, local items are managed by local councils and State significant items are managed by Heritage NSW. It is as streamlined as it can possibly get. Any changes would be inclined to make it more complicated.

Therefore, it is suggested the purpose of d(i) actually contradicts d(iv). Certainly, it is important for the Heritage Council and Heritage NSW to offer strategies to recognise and protect the diversity of the 1500 items they have statutory management of but it is the owners, mostly the State government, who are responsible for developing and implementing such strategies.

Identification of items that are iconic and special – many SHR items are this - is a great idea, if the current use of the place would allow activation. Such as the Colonial Secretary's building and the Land Department building. Both were previously in the ownership of the State, they could have celebrated by them, and they could have activated and invested in them. But rather than do this the 99-year leasehold was sold off for hotels. While this may provide access to these buildings to travellers staying in the hotels it does not really provide public access. The heritage investment is not for the purpose of the community but purely for the purposes of the customer. By selling them the money was used to offset infrastructure investment rather than invest in managing heritage.

There can be real conflicts between managing all the heritage values of a site, such as the archaeology, the buildings and the use of the place. This was most obvious to me when working on the Conservatorium of Music (1998-2001). The archaeology of this

Francis Greenway building was so significant it was conserved *in situ* and I wrote a PhD on it. Often the management of archaeology (relics) is complicated, both as a known unknown and an unknown unknown. Is it to be salvaged or so significant it needs to be conserved in situ? Sometimes archaeology can be as equally significant or more rarely of greater significant than the heritage buildings on the site.

This can sometimes be the case at numerous sites in Parramatta where the archaeological resource is now speedily being excavated from Parramatta site's and only those relics within SHR-listed sites are sometimes being conserved. Examples of conservation are in Parramatta Park, the Parramatta Children's Court and the Parramatta Justice Precinct. All have values to the Sate, some to the Nation and the World. Therefore, many of these exceptional sites are already be celebrated by National and World listings. The State has sought to celebrate it range of convict sites listed as part of the 11 Convict World Heritage sites, such as Hyde Park Barracks and Parramatta Park. Therefore, there is already a system which offers more nuanced and targeted recognition. Yet still, these sites and their values have to be fought for on a regular basis. Yes, who is saying certain themed SHR sites cannot be celebrated across the sites and in regions? They can be. They should be, but does the Heritage Act need to be change for this to be done? No, we could do it tomorrow. No one is stopping this happening now.

Many times, it is the vision of the project which is low level, lacking nuance and poorly targeted because of the customer, their budgets and the intent of the owners. Not because of the Heritage Act or the Heritage Council or Heritage NSW. The committee should review a number of case studies to see how the Heritage Act operates as the Discussion Paper does not do justice to the daily practice or thoughts of people, both in Heritage NSW and in the heritage profession.