

**Submission
No 207**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Ms Jennie Minifie

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Jennie Minifie

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Response to the NSW Heritage Act Review 2021.

Summary:

Over the past decade, there have been reviews and revisions of the NSW legislation applying to strategic planning, environmental planning, environmental protection, and development assessment and approvals across the State. While reviewing existing laws is standard practice, the review of the NSW Heritage Act, as set out in the terms of reference and accompanying documents, does not address the issues of major concern to the people of NSW regarding the protection and conservation of our rich and diverse environmental heritage.

The NSW Heritage Act commenced in 1977, in response to concerns from the public and many community organizations following the loss of properties, including both buildings and undeveloped land, to demolition and redevelopment, and the threat of more losses to come. Examples such as the demolition of Subiaco, on the Parramatta River at Rydalmere, and the Battle for Kelly's Bush at Hunter's Hill to prevent the clearing of natural bushland on the land for subdivision, generated great public interest in protecting Sydney's historic places as well as the "Green Bans" led by Jack Munday and his colleagues in the Builders Labourers Federation.

The Heritage Act was part of a suite of legislation, including the Environmental Planning and Assessment Act, 1979, and the Land and Environment Court Act, 1979. These legislative initiatives were once lauded as "best practice" around the World, but in NSW and Australia they have increasingly been denigrated as a barrier to development and economic growth.

The National Trust (Australia) NSW has consistently advocated for heritage conservation for more than half a century. The Nature Conservation Council of NSW and the National Parks Association and many other community and environment organizations have also contributed resources and energy to the identification and protection of the environmental heritage of NSW. There are also many hundreds of individuals, professionals and organizations that have also contributed their knowledge and time, including many Members of Parliament, Public Servants, Geologists, Engineers, Architects, Planners, Ecologists, Botanists, Climate Scientists, Artists, Journalists, Indigenous People, Families and Groups. It is a long list.

There is little recognition of the substantial and extensive contribution of these people and organizations to the conservation of the heritage of the State. Development has been the dominant theme of numerous consultations by the Government over the past decade and the development lobby has had the ear of both government and the media. This has the effect of devaluing our own heritage despite expanding global recognition of the unique and rich natural and cultural heritage that Australians share.

Conflicting views about the perceived "burden" of heritage conservation for development and property rights are flagged in the Discussion Paper, but it is not clear how the proposed modifications would improve the current situation. Should the terms of reference for this Inquiry be amended and interested people and organizations invited to participate in a broader discussion

about heritage conservation, and also environmental sustainability given the impacts of climate change?

The Discussion Paper makes little reference to the importance of the local dimension in heritage conservation, focussing on the perception of a higher, preferably State level of heritage significance and management. This approach denies the importance of local people and the community in caring for our shared heritage, whether objecting to inappropriate development, campaigning to protect heritage, or volunteering to secure our heritage, whether it is remnant bushland, an historic bridge, or a population of Little Penguins. It has always been the local people and the community that have been the “guardians” the conservation of their local heritage.

The questions that should also be addressed are:

What are the achievements under the existing legislation?

What has not been protected or conserved?

What legislative changes are required to integrate heritage conservation with planning and development?

Will the current Heritage Act Review identify positive incentives for the conservation of the State’s environmental heritage?

Does the Heritage Act place sufficient emphasis on increasing the awareness and appreciation by the rapidly increasing population of the State, of the rich and diverse heritage that we share, and for which we are all responsible?

There are many heritage issues of concern to the people of NSW.

There are critical issues of concern that deserve more attention but are not included in the current review. This submission seeks to highlight some of these concerns, as follows:

1. ***The Natural Heritage Charter, for the conservation of places of natural heritage significance, was first adopted in 1996 and a revised edition was published in 2002. It was published by the former Australian Heritage Commission, with the benefit of input from a number of well-informed organizations with a commitment to the conservation of Australia’s unique and diverse natural and cultural heritage. The NSW Natural Heritage Principles, published in 2000, see Appendix 1. The Principles should now be embedded within the NSW Environmental Planning & Assessment Act and the Heritage Act, but has not yet occurred. Why is that?***

This question should be part of the current review. Recent scientific and archaeological studies have demonstrated the significance of the natural environment of this country and it’s relationship to human occupation of the land. From the discovery of the Wollemi Pine in NSW to the archaeological evidence of indigenous occupation of land now submerged along the foreshores of Western Australia, the evidence is extraordinary. It is likely to rewrite our human history, and we should welcome the new discoveries and information.

2. **The lack of integration of environmental heritage into the strategic planning and the development assessment and approvals system, at State and Local levels of government is a serious concern. Are we conserving sufficient land for environmental protection and the open space needs of the population in the long-term? There is also a need for greater integration and co-ordination between these two levels of government and the Federal government. This should be a high priority for review.**

A development application has been submitted for land that was originally public land, adjoining the Lane Cove National Park at Macquarie Park in Sydney. The land was sold by the NSW Government to a private owner in the early 2000s and was approved for development as a Garden Centre, known as Eden Gardens, which has operated on the site since that time.

The property is now the subject of a development proposal notified in the Ryde LGA as Application 2021/0095 – 307 Lane Cove Road, Macquarie Park. An 18 storey office building is proposed on the land adjoining the Lane Cove National Park (LCNP). The development will impact on the Tunks Hill Picnic Area within the LCNP which is a popular and family friendly venue available for both small and large social events, of up to 300 people, in a natural setting. The entire area will be overlooked and overshadowed by the 18 storey office tower.

There is more to the history of the Lane Cove National Park, however, which is relevant to the review of the Heritage Act. The Ryde Heritage Study 1986, was prepared for Ryde Municipal Council and the NSW Department of Environment and Planning. It recommended the former Lane Cove State Recreation Area, now National Park, for heritage listing. A copy of the draft inventory sheet is attached at Appendix 2.

The listing of the National Park was subsequently delayed for two decades. It was only as a result of extensive advocacy by members of local community organizations and individuals in the Ryde local government area, including the Ryde Historical Society, Ryde Community Alliance, Brush Farm Historical Society and historian Mr Greg Blaxell, that Ryde Council supported the gazettal of 200 items of environmental heritage significance, including the Lane Cove National Park. Ryde Local Environmental Plan (LEP) No. 105 was gazetted on 17 January 2003.

The Ryde Consolidating LEP 2010 also listed the Lane Cove National Park as an item of environmental heritage. But, without explanation, the listing was excluded from the Schedule of Environmental Heritage Items in Ryde LEP 2014.

In 2021, the Lane Cove National Park, one of the most popular and most visited National Parks in NSW, is now subject to a development application on adjoining private land, which was formerly public land. The development site has no height restrictions or building envelope. Requests to Ryde Council to clarify this issue have not been answered. Clearly, the heritage listing was omitted from Ryde LEP 2014 in error and should be reinstated, and the applicant informed that the proposed development has unacceptable adverse impacts on the National Park, and is refused.

3. The review excludes issues of public concern relating to the ownership and management of public lands in NSW. Due to major changes of policy by the NSW Government over the past decade, property in public ownership, including land and buildings of significant environmental and heritage value, is now in urgent need of greater protection than current policy and practise provides.

The NSW Government is the responsible authority for a very substantial and significant portfolio of public property, including open space land, Crown land, and many public buildings having architectural and cultural significance. With specific reference to the Health Properties Portfolio it is very obvious that there has been a very substantial failure to protect the heritage significance of the many properties in the portfolio.

There are many properties that are currently of concern, including the **Cumberland Hospital group in Parramatta**, but there are more Health properties in Ryde LGA that have little or no protection as a result of the absence of heritage listing. In the past it was accepted that public lands would not

require specific heritage protections, but this no longer applies. The NSW Government's changing policy on the management and development of public land and buildings means that all of these properties are now at risk of loss of environmental heritage significance.

The **Macquarie Hospital site, North Ryde**, contains two identified areas of Critically Endangered Sydney Turpentine Ironbark Forest (STIF) along the two creek-lines that connect the site with Wallumatta Nature Refuge, several local parks, and the Lane Cove River. One of these areas has been cleared of the mature trees and under-storey, for the construction of 26 Group Homes, in complete disregard of the NSW Scientific Committee listing of the community including the seedbank. This development could have been located on one of the many alternative areas of the Hospital site, but despite objections being raised, was approved and developed on one of the most sensitive area of the site. Sadly, this apparently is only the beginning of the carving up by Health Properties of this valuable open space land with high natural and recreational values.

The **Ryde Hospital, Denistone** is now up for redevelopment. What will happen to the Blue Gum High Forest that occupies a large proportion of the land? And what of the historic buildings, including Denistone House, that are situated on the Hospital site? Will the current Heritage Act review recommend that public lands be included within the scope of the Act? Or will the public be forever trying to protect the heritage values of their local areas only to be ignored by the NSW Government, time and time again?

- 4. All heritage places, buildings and cultural heritage, including the natural environment and intangible heritage, are of "Local" heritage significance. Movable heritage and relics are transportable, but in many instances, their place in the environment is part of their intrinsic heritage value; remove them from the local setting and some or all of the heritage significance is lost.**

As the pressures for greater development have increased over the past decade, the idea of relocating buildings of identified heritage significance has become more acceptable in order to allow development to proceed. Currently there is the proposal to relocate "Willow Grove" at Parramatta for the development of the Power House Museum on the site. It leads to the question, where shall it be moved? And, what of its heritage value? After half a century of Environmental Planning and Heritage Laws, isn't it a good idea to give further consideration to this issue?

- 5. Many people, community groups, and interested individuals in NSW have a very strong commitment to the protection of their "Local" heritage. The review does not address this in the terms of reference, but the oversight should be addressed. There are excellent examples in NSW where the local people have advocated for the protection of their "Local" heritage, and continue to be the proud and effective guardians of it, for the Australian people.**

The Discussion Paper makes little reference to the importance of the local dimension in heritage conservation, focussing on the perception of a higher, preferably State level of heritage significance and management. This approach denies the importance of local people and community in caring for our shared heritage, whether objecting to inappropriate development, campaigning to protect it, or volunteering to secure it, whether it is remnant bushland, an historic bridge, or a population of Little Penguins. It has been the local people and the community that on many occasions have acted as "guardians" and made a lasting commitment to the conservation of their local heritage items.

- 6. In NSW, our Local and State governments must have the resources to progress the objects of the Heritage Act 1977, but unfortunately, this has been a common feature of environmental planning and heritage conservation since the commencement of these**

particular laws in the Seventies. It is long overdue that this be remedied, including a computer based knowledge system that is available to the public.

As more information is gathered and research provides more details it is important that it not be lost to time and policy shifts, but should be carried forward into the future to inform planning decision making in the future. Some locations have had multiple studies carried out, and used to inform decisions on a site by site basis. But they also can and should inform strategic planning for a larger geographic area such as a beach, an inlet, a harbour, or a neighbourhood, a district, or a community.

Numerous archaeological and other studies have been carried out for the area now occupied by the Barangaroo Precinct Development, but these did not influence the planning decision to approve redevelopment over a large part of the Darling Harbour Foreshores. The heritage significance of the foreshore area was revealed in the many well-documented studies, but this was not sufficient to raise concerns that the re-development would obliterate an area of mercantile and marine activity that led to the rapid economic growth of the Colony of NSW in the 19th Century. There are many opportunities to address this omission in situ, but it is the policy of disregarding our Australian history and heritage that has to change.

- 7. The education of people to work in the multi-disciplinary field of environmental planning and heritage conservation is in urgent need of upgrading to ensure that practitioners, regardless of their specialist qualification, have a sound knowledge of the relevant laws which apply in NSW, and opportunities to upgrade their existing qualifications. This issue is also linked to the absence of an accreditation system for practitioners.**

There are many qualifications that are relevant to planning and heritage conservation, but it is critical that practitioners have knowledge of the relevant laws, their objects and the provisions in carrying out any work. It is not unusual to find that many specialists do not understand the constraints or the requirements that apply to work being carried out on behalf of property owners, developers, or government agencies. This can be addressed by way of provision of education about the laws of the State by the relevant agencies, and updated regularly, as needed. It should be highlighted as an ongoing priority for every stage of the life cycle from young children to adults.

- 8. The exclusion of Indigenous heritage from the “mainstream” heritage laws and practice in NSW is a major failure of the current legislation, but it is not part of the current review. There is every reason to ensure that is part of NSW heritage legislation and practice.**

It is imperative that Indigenous heritage be included as part of the Heritage Act. To not do so runs the risk of it being overlooked within the planning and development assessment and approvals processes in NSW.

Yours sincerely,

Jennie Minifie
B.A. UNSW, M.U.R.P. USyd.

APPENDIX 1.

The Natural Heritage Principles.

HERITAGE INFORMATION SERIES

NATURAL HERITAGE PRINCIPLES

Ryde Heritage Study 1986 – Inventory Sheet – Lane Cove State Rec'n Area now National Park.

prepared for Ryde Municipal Council and
NSW Department of Environment and Planning
by Jonathan Falk Planning Consultants Pty Ltd in association with
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HERITAGE INFORMATION SERIES

NATURAL HERITAGE PRINCIPLES



NSW
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NSW Heritage Office
Locked Bag 5020
Parramatta NSW 2124
Ph: (02) 9873 8500
Fax: (02) 9873 8599
www.heritage.nsw.gov.au

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Front cover graphics:

Aboriginal hand stencils, South Coast. *Photograph courtesy of National Parks and Wildlife Service*

Interior of Belltrees shearing shed, built near Scone in NSW in 1879 by architect J. Horbury Hunt.

Artefacts from the site of first Government House Archaeology Collection. *Photograph courtesy of Museum of Sydney on the site of first Government House*

Grose Valley, Blue Mountains, NSW. *Photograph courtesy of NSW National Parks and Wildlife Service*

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Australia Square, Sydney

Entrance to the central temple, Sze Yup Temple, Glebe. *Photograph by Karl Zhao*

Lands Department Building, Sydney

The bow of iron steamer, *Merimbula*, wrecked near Currarong in 1928. *Photograph by David Nutley*

Snowy Mountains Scheme. *Photograph courtesy of the Snowy Mountains Hydro-electric Authority*

St Mark's Anglican Church, Darling Point, Sydney. *Photograph by Stuart Humphreys*

Belltrees Shearing Shed, near Scone, NSW.

Detail from the crypt floor of St Mary's Cathedral, Sydney. *Photograph courtesy of St Mary's Cathedral*

NATURAL HERITAGE PRINCIPLES TO GUIDE THE HERITAGE COUNCIL OF NSW

The principles in this document have been developed to guide the Heritage Council of NSW in considering community requests to protect natural heritage items and in exercising generally its responsibilities under the Heritage Act. These include recommending protective measures, such as the making of Interim Heritage Orders (IHOs) or listing on the State Heritage Register (SHR).

1.0 BACKGROUND

The environmental heritage of NSW includes components of the living and non-living environment. It consists of both natural heritage – land resources, marine, estuarine and inland waters and diverse animal and plant life – and cultural heritage, reflected in the evidence of human occupation and settlement.

Over the past 40,000 years of human occupation and, in particular, the last 200 years of European settlement, the natural environment of NSW has been modified dramatically and in many areas the rate of extinction and modifications is accelerating. The recognition of the value in conserving our remaining natural heritage estate is vital.

A broad range of legislative and non-legislative measures provides for the conservation and management of natural areas in NSW. The Heritage Act is one of them.

The definition of ‘heritage significance’ under the Heritage Act includes items of scientific, cultural, natural or aesthetic value. Thus, the Heritage Council may recommend to the Minister that an item of natural heritage be protected under the provisions of the Act, by the making of an Interim Heritage Order or nomination for listing on the State Heritage Register.

Natural heritage encompasses a broad range of areas, including natural ecosystems, geological sites, water systems, modified landscapes and parks, gardens and significant trees. The Heritage Council’s actions have to date included recommendations for the making of various orders under the Act, negotiation with affected parties, acquisition of properties, protection under an Environmental Planning Instrument (EPI), assistance by way of grants and provision of specialist advice.

The 1987 amendments to the Heritage Act provided, under section 170 of the Act, for State Government Agencies to list heritage items under their ownership and control on Heritage and Conservation Registers. In 1998 further amendments to s170 provided for the maintenance of items in registers with due diligence and the publication by the Heritage Council of management

guidelines for the conservation of these items. Items and land identified on s170 Registers may also be listed on the State Heritage Register.

The initial listing of State significant natural areas managed by the National Parks and Wildlife Service (NPWS), Department of Land and Water Conservation (DLAWC) and State Forests NSW (SFNSW) on the State Heritage Register will provide a clear indication to the community of the importance of this part of the State's environmental heritage. The nationally developed comprehensive, adequate & representative (CAR) reserve system comprises formal and informal reserves, and protection by prescriptions.

Natural heritage values protected in these ways include:

- reservation of forest ecosystems;
- high conservation value old growth;
- wilderness;
- rare species;
- geographic variation; and
- other factors important for long term conservation.

Recent Comprehensive Regional Assessments of forests in Eden, North East and Southern NSW have provided extensive and detailed datasets including the identification of a legislatively recognised reserve system meeting criteria of comprehensiveness, adequacy and representativeness.

Natural areas will be included as an integral part of the nomination of items of Aboriginal heritage significance to the State Heritage Register.

Currently, little statutory protection is available for geological and fossil sites. The Heritage Council may need to give particular attention and priority to the identification, assessment and protection of this specific type of natural heritage in its strategic plan.

Consistent with the Government's 1996 Heritage Policy and the recent amendments to the Heritage Act, the Heritage Council will encourage the community and local councils to play a greater role in the conservation of items of local significance which are of natural heritage value.

2.0 PURPOSE

The Natural Heritage Principles below recognise and support co-operation with the community and government organisations in developing a holistic approach to conserving natural heritage in New South Wales.

The principles clarify and strengthen partnerships between the Heritage Council of New South Wales and the community and key natural resource agencies in NSW. There is also the opportunity to promote closer liaison between the Heritage Council and Commonwealth agencies with an interest in natural heritage.

In particular, the Heritage Council will work with the National Parks and Wildlife Service, State Forests and the Department of Land and Water Conservation and their associated scientific and advisory committees. Specialist natural heritage committees and panels established by these authorities include the Scientific Committee, the Native Vegetation Advisory Council and the Australian Heritage Commission's Natural Heritage Advisory Panel for NSW.

The principles focus on making the most effective use of all measures available to identify and conserve significant natural heritage items.

The principles recognise the importance of:

- researching, understanding and retaining the significance of natural heritage as an integral part of the environmental heritage of New South Wales;
- documenting and conserving natural heritage as part of our heritage legacy to future generations;
- promoting the appreciation of the value of natural heritage through access, education and interpretation;
- managing natural heritage items across their full range of values;
- encouraging private individuals and community custodians to care for natural heritage; and
- working in partnership with State and Commonwealth Government organisations, community organisations and private owners on strategies to identify and manage natural heritage.

3.0 THE PRINCIPLES

The Heritage Council of New South Wales recognises that :

1. The natural environment underpins the State's environmental heritage as *natural heritage*.
2. This natural heritage is an essential component of the culture and heritage of indigenous communities.
3. Significant information and expertise on the State's natural heritage is held by Government Agencies, such as the National Parks and Wildlife Service, State Forests and the Department of Land and Water Conservation, and their skilled and specialised staff and committees.
4. The provisions of the Heritage Act complement other conservation and management systems.
5. The identification of natural heritage items of State heritage significance, their listing on the State Heritage Register and the conservation of natural heritage items identified under s170 of the Act provide for the comprehensive conservation of natural heritage within the Crown Estate.
6. Community organisations and individuals play an important role in conserving the State's natural heritage. Continued community education on identifying and managing the natural estate, together with voluntary measures and heritage agreements, assist in conserving this asset.
7. The State Heritage Register plays an important public information role as a record of the State's heritage.

Therefore, the Heritage Council will:

8. Concentrate on those parts of the natural heritage environment that require special attention for identification, assessment and protection (such as scientific sites of geological and palaeontological value).
9. Consider requests for action under the Heritage Act in consultation with relevant agencies and related expert committees, in a manner consistent with the whole-of-government approach to conserving natural heritage in New South Wales (see Flowchart, Appendix A).
10. Consider requests for action under the Heritage Act to protect items with natural heritage values on a case-by-case basis and with regard to the merit of the matter before them.
11. Support government acquisition of items of natural heritage where there is no other prudent or feasible alternative.
12. Adopt the following roles in relation to natural heritage:
 - statutory protection of items of natural heritage value on a merit based case-by-case basis;
 - referral to other agencies in seeking information and comment on the place proposed for protection under the Heritage Act
 - advocacy with local government regarding items of natural heritage in schedules to local environment plans;
 - education on a holistic approach to the State's environmental heritage, through State Heritage Register listings and other measures.

APPENDIX A

REQUESTS FOR PROTECTION OF NATURAL HERITAGE PLACES

PROCESS FLOW CHART

