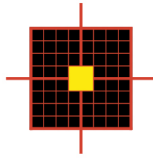


**Submission
No 211**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Design 5 – Architects

Date Received: 4 July 2021



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A R C H I T E C T S

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SUBMISSION TO THE STANDING COMMITTEE ON SOCIAL ISSUES BY ALAN CROKER in relation to the REVIEW OF NSW HERITAGE LEGISLATION

NSW Heritage Act Review

Background

My name is Alan Croker, I am an architect in private practice with more than 40 years' experience working with places that range from having world heritage significance, through to no identified significance at all. My firm, Design 5 – Architects, has a well established reputation for our work in cultural heritage management, conservation, adaptive re-use, and new work. Due to the nature of our work, we have regular interaction with Heritage NSW and the Heritage Council.

My personal involvement with the Heritage Act has included being an Alternate Member of the Heritage Council (2 years), a member of the Heritage Council's Approvals Committee (2 years), and chair of its Technical Advisory Group (TAG – 2 years). I also served as a built heritage advisor to the Heritage Council's Aboriginal Heritage Advisory Panel for 2 years.

I am currently involved with two state listed Aboriginal places. On these, we work closely with and for the Aboriginal organisations that either own them or have considerable stakeholder interest in them.

Submission

I wish to address a number of the Focus Questions raised in the *Review of NSW Heritage Act: Discussion Paper*. My submission is set out in order of the Focus Questions in the Discussion Paper.

Focus Question 1: What should be the composition, skills and qualities of the Heritage Council of NSW?

Clause 8 (3) notes that *Five of the appointed members* (out of the 8 stipulated in Clause 8 (1)) *are to be persons who, in the opinion of the Minister, possess qualifications, knowledge and skills relating to any of the following areas - ..* This is followed by a list of 14 disciplines.

In earlier Heritage Councils, the membership included many who were considered experienced experts in cultural heritage in their particular disciplines, particularly architecture, planning, engineering, archaeology, landscapes and First Nations heritage. This is not to say the other disciplines listed are not important, but the key values for the majority of state listed heritage items fall into these categories / disciplines.

On the present Heritage Council, these are presently either missing or under-represented, meaning deliberations and decisions can be easily swayed by members with experience or interests in other sectors such as banking, investment or property.

Recognised skills and experience in cultural heritage in these key areas must be included on any Heritage Council, and preferably nominated by their peers or professional bodies, not the Minister.

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

Aboriginal Cultural Heritage is a unique and ancient heritage, not readily grasped or understood by non-Aboriginal persons. It is therefore imperative that any deliberations or decisions about the significance and / or future of places with this heritage, are made by Aboriginal people themselves. They should have their own Heritage Council body that makes decisions on First Nations matters, including those presently administered by the National Parks & Wildlife Act. This body should have its own administrative staff and be properly resourced and funded.

Members of this body should be nominated and elected by First Nations peoples themselves to ensure they have the respect of their communities, but could, if required, include specialist non-voting advisors (including non-Indigenous) on particular aspects of cultural heritage. Their number and composition should be sufficient to represent the many First Nations in NSW, include the range of heritage types, including intangible, and include Stolen Generations. It is essential that their decisions are respected and upheld by the main Heritage Council, if necessary by way of joint sittings.

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

Yes – most definitely! All seven objectives were carefully and thoughtfully crafted and remain fully relevant today.

The problem, in my opinion, is that these objectives are not being followed through in the interpretation or administration of the Heritage Act.

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

In my opinion the Act itself does adequately reflect the expectations of contemporary communities, but some minor amendments may be warranted.

Since the Act was first introduced, there have been changes, or more accurately an expansion, in our understanding and appreciation of what constitutes heritage, particularly in relation to intangible values and Aboriginal or First Nations' heritage. It would therefore be important in the review process to revise / expand those parts of the Act that could relate to issues such as these. For example, the definitions in Section 4A *Heritage significance* in the Act should be revised to include *spiritual* values, and to include values to First Nations peoples.

In a similar manner to the periodic review of the Australia ICOMOS Burra Charter, the Heritage Act should reflect the evolving understanding of what constitutes heritage significance.

Streamlining Heritage Processes.

Focus Question 11: *Would streamlining enhance the listing process?*

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

The framework for the current listing and approval system is, in my opinion, reasonably sound – it may need some tweaking, but the problem is not in the Heritage Act itself. It is in the administration of the Act. The agency responsible for administering the Act – Heritage NSW, is presently starved of resources and expertise. This has come about as a result of progressive de-funding and stripping out of expertise.

Approximately 20 years ago the Heritage Office, as it was known then, was one of the most efficient and respected heritage approval authorities in the country. There was an informed and positive engagement with property owners, their consultants and with development. Officers were available to discuss the issues face to face, on-site if necessary, and the response provided was constructive, carefully considered, and delivered in a timely manner. The current office is under-resourced and often lacking expertise and therefore sometimes unable to fulfil their obligations under the Heritage Act to the extent expected of them.

This under-resourcing coupled with a lack of appropriate expertise in the membership of the Heritage Council has resulted in problems or delays in assessment and decision making for both listings and approvals.

This is of considerable concern to all of us as residents of this state of NSW, not just those of us who deal with the Heritage Act on a daily basis. In far too many cases, we do not understand the value of our cultural heritage places until they are damaged or destroyed – and then it is often too late.

Heritage within the planning system

I am aware that there are widely divergent views as to whether or not Heritage NSW should be within or part of the Department of Planning, the Arts or somewhere else. In my opinion there is an inherent and potential conflict between a department and Minister responsible for making decisions that relate to planning, development, natural heritage, or even mining, and one that is responsible for managing cultural heritage and maintaining it in a sustainable manner into the future.

This is not to say that one is wrong and the other right, but to acknowledge that many of these departments are inevitably about development, an area where pressure from investment and development lobbies is strong, while cultural heritage is often about less tangible values, including for communities and groups that may have little or no resources. Nonetheless they may be very important and should be protected.

I am strongly of the view that the Heritage Act should be administered under its own department with its own separate Minister for Heritage so that it has an equal voice in parliament.

Transparency and consultation in the review process

Finally, I very strongly urge that any review of the Heritage Act should be open and transparent. It should involve the community and peak cultural heritage bodies including the National Trust and Australia ICOMOS.

I hope the issues raised and suggestions made in my submission will be considered in the review process. If required, I would be happy to discuss these issues further.

Yours sincerely

Alan Croker

Director
Design 5 – Architects

4th July 2021