

**Submission
No 215**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

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Review of NSW Heritage Legislation

Introduction

My name is James Nicholson. I am the director of Adaptive Architects, an architectural firm that works with heritage items and as heritage consultants. I have worked with the NSW Heritage Act for 25 years since 1996 with firms Clive Lucas Stapleton and Partners, Tannner & Associates, and Paul Davies & Associates before starting my own firm 10 years ago.

There are weaknesses in the NSW Heritage Act, but it remains critically important to preserving the identity of our communities and to inform our future. It should not be watered down, but instead strengthened, as it is already being progressively eroded primarily by government action.

My interactions with NSW government agencies in a regional context have largely been to either support the demolition of government owned heritage items, or to oppose the demolition of government owned heritage items. I have not yet been asked by the State Government to repurpose any of their structures, while I do this continually with the private sector. There is no creativity, imagination, or interest in retaining and adaptively reusing buildings despite our arguments that these buildings have ample opportunity for adaptive reuse. When I discuss it with the people responsible it always comes down to a lack of foresight, and there is no funding in the budget to address the heritage item. That is easily remediated if those planning these projects would stop for a moment and consider the requirements of the Heritage Act and that their own role should be as an exemplary owner and manager of the heritage item, to demonstrate to the private sector what good heritage management involves. Instead, what I see are a lot of lazy projects that take the easy way out and seek demolition. So, I would like to see a role in the NSW Heritage Act that strengthened controls on Government owned properties so that they had to consider adaptive reuse of their heritage items.

Question 1 – Composition of the Heritage Council

There must be at least half of the Council with heritage expertise. This Act cannot be run by politicians and property owners representatives.

Question 3 – Heritage Act objectives still relevant?

Yes, of course it still is relevant.

Question 4 – Heritage Act reflect expectations of the community?

At some level, the Act must lead the community as many do not understand history or its relevance to current affairs or how it shapes our identity. Heritage is most understood when it is gone and the impact that can have on communities, but by then it is too late. Heritage cannot be driven by popularity; it has value to people who do not yet understand it. Having a better promotion and explanation of heritage is valuable.

Question 5 – Incentivise the ownership, activation, and adaptive reuse of heritage?

Improving incentives for reuse needs to be explored, and any method that improves on the current situation should be considered. The current system is woefully inadequate and is far too little and too long between grants. The Government needs to recognise that heritage item owners are carrying out a public service when they adaptively reuse and preserve a heritage item. That should involve a public contribution either in grants, or tax benefits, or other concessions to make the works affordable. That contribution should be about half of the works budget to acknowledge that this is the work more of a custodian than an owner. That should come with responsibilities as a custodian that the works conform to a standard and that the heritage item is partially a public asset.

There needs to be some heavy lifting by the government to bring a heritage item into a new use after a period of being unused. In these cases, the benefits to the community outweigh the benefits to the owner and should be reflected in very generous concessions.

I heartily endorse this intention.

Question 7 – What sort of initiatives?

I think the idea of making a conservation or adaptive reuse project an entity that has DGR status could do a lot to help raise funds for conservation works. It would need to be dedicated to that project in the same way that DGR projects are currently. This would be a simple expansion of the current DGR status for certain building types to all heritage items on a Local and State register. They can have the same reporting requirements and governing legislation.

But it does need to go much further than that. There are floor space bonuses for affordable housing, and this might be another method to incentivise heritage conservation and adaptive reuse, particularly on a large site with a heritage item.

Exemptions from taxes to incentivise investment has precedent as well, and in fact was the way that the city of New York escaped its malaise in the 1970s. This could make heritage projects more attractive to investors and take some pressure off the heritage grants scheme.

Expanding the Endangered Housing Fund beyond the Sydney Living Museums would also assist in regenerating heritage items that would otherwise be financially unviable. It might be possible to have a set of guidelines that any organisation could set up such a fund and be supported by the Government for their start-up funds if the project were able to break even.

Question 8 – How could tailored heritage protections enhance conservation?

This looks to me like a solution looking for a problem. There is no need to adjust controls for the complexity of the heritage item unless you wish to start imposing one size fits all regulations. The present regulations can be flexible according to the item and this sort of approach is not necessary.

I am particularly concerned at the suggestion that houses would be listed externally only, and the interiors could be modernised. There is nothing worse than a heritage home where the interior is completely inconsistent with the exterior. There are often exceptionally valuable internal elements that should not be dismissed such as heritage stairs and fireplaces that would all be lost if this option were pursued. The current system makes an individual assessment of what is valuable and what is not. Changing this would devalue heritage.

Question 10 – Greater Community Engagement

Introducing a community driven nomination process would reduce heritage values to a crude popularity contest with most of the community completely unaware of the heritage values of their own place. This looks to be a way to leverage the community's apathy about the built environment to undermine heritage values.

Most heritage assessment requires a trained consultant to determine the value of heritage items. The community often react with little understanding and concern for their own property value before they can have the facts explained to them. This knee jerk reaction happens time and again and shows how little people invest in understanding their own built environment.

How can a community driven nomination process improve heritage outcomes when they have such poor reactions to heritage studies? Generally, once the purpose and values are explained their response is more accepting. This is not something that should be driven by the community. It needs expertise.

Question 11 – Streamlining the listing process

Streamlining the amendment process is a good idea but has little value overall.

Streamlining the delisting process is not a good idea. Any delisting should have the same rigorous process applied to list the item. To make it easier to delist without a rigorous process will be open to abuse and make it easier for Government to delist their own heritage items and remove their responsibilities under the Act. This is transparent and must not go ahead.

What does need to happen is the original listing process needs to be properly resourced. Waiting for years to get a building listed, or worse, to be dismissed because of the lack of staff is the extremely poor system that we presently suffer under. Get some dedicated staff to address these items and become proactive in the listing process instead of making it next to impossible to do so.

Question 12 – Current Permit System

The move to self-assessment of standard exemptions has been a particularly good move in allowing minor works to happen more efficiently. Fast track applications are also a good option. This is all about the lack of staff to undertake assessments, but if there needs to be these options to make the system work then that is a good thing.

You must not loosen things up too much though as there are many item owners (particularly houses) who will take advantage to do works that are not sensitive to the heritage item. There still needs to be oversight and regulation.

Question 14 – Land Use Planning

One thing you do need to do. Make Councils and Certifiers aware of the self-assessment of heritage exemptions. The SEPP still requires a s57(3) approval for complying development, and these agencies are struggling to respond to the self-assessment process.

Question 17 – Understanding be enhanced

It would be nice to have the State Government understand that there are thousands of heritage consultants working every day to improve the community's understanding of heritage. It would be good if we were seen to be on the same side working together. We are the available resource that the Government could make more of in achieving this goal.

Question 18 – Heritage Tourism

There definitely needs to be a whole system created to provide incentives, concessions and grants to encourage heritage tourism. It ends up paying back the community many times over but often fails to start through lack of funds. This could be a way to revitalise many small communities that could survive on the right sort of heritage tourism. These incentives might be long term and sizeable, and would need to have good management to ensure a return to the community.

Question 19 – Publicly Owned Heritage

As I noted in my opening paragraph, I see a lot of lost opportunities in this area. Many buildings that have good potential for the community either demolished or boarded up. You need to build the right sort of team with the right skills to achieve this aim. The current regulatory system does not have the creativity and imagination to achieve this. You would need a body like the old Government Architects Office and fund them properly to achieve this. Either that or find a method to form private groups to do the same thing. That would need the right incentives and the right budgets per project.