

Submission
No 222

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

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Partially
Confidential

Response to NSW Heritage Act Review

Introduction

We welcome the opportunity to make a submission to the Review of the Heritage Act 1977.

We are owners of a State Heritage Listed Building _____, which we totally renovated from being a derelict property to being a finalist in the National Trust Heritage Awards.

We were a beneficiary of a Heritage grant to reinstate the two storey verandah which had been previously been demolished.

Having experienced significant challenges from the existing processes we believe we can make a valuable contribution to this Inquiry.

The consultation document released by the government 'Review of NSW Heritage legislation' is a balanced and constructive basis to frame the consultation process. It makes many sensible suggestions and maps potential ways forward.

A balanced and sensible reform package combined with an elevation of public awareness of state Heritage issues will go a long way towards ensuring heritage items can be better managed and protected in NSW.

Responses to Consultation Questions

While there are nineteen focus questions, we propose to respond only against some of them, drawing from our experience in the restoration of _____.

Below is our response to some of the key focus questions.

Q1 What should be the composition, skills and qualities of the Heritage Council?

The membership of the Heritage Council of NSW is guided by the criteria under the Act of qualifications, knowledge and skills relating to any of the following areas:

- archaeology,
- architecture,
- the building, development and property industries,
- conservation of the environmental heritage,
- engineering,
- New South Wales or Australian history,
- local government,
- moveable heritage,
- natural heritage,
- planning,

- property,
- planning or environmental law,
- property economics,
- rural interests,
- cultural landscapes and
- one of the members is to possess qualifications, knowledge and skills relating to Aboriginal heritage.

This is an exhaustive list and there appear to be few reasons to expand it. If anything the qualifications, knowledge and skills as currently required may need to be tighter rather than expanded and relate more directly to the objectives of the Act and its heritage focus.

It is arguable that in the past some members of the Council did not actually have the core skills needed to meet the Act's objectives and that Council membership has not always had an appropriate balance of professional backgrounds and heritage experience.

In the context of the appointment of members the timing of the appointment to the Council is critically important. As the Heritage Council deals with a range of heritage matters, so it needs to have a range of expertise represented at any point in time.

Similarly each of the Heritage committees should have representatives relevant to all aspects of the matters under discussion.

A key question is whether the Council would benefit from a community representative from one of the peak heritage councils or other experts in the area, and in particular persons who have 'been through the process'. Members who are active on the ground heritage proponents can often bring a commonsense practical perspective to problems and a community member would assist promoting greater community engagement (focus Question 10)

Recommendations

- that the criteria under the Act for the qualifications, knowledge and skills be streamlined rather than expanded to focus on skills more related to the Objects of the Heritage Act
- that when members are appointed to the Council there is a clear relationship between the skill set of the proposed members and the required qualifications
- that when appointing members to the Council that at all times there should be a balance, with no one skill set (eg architects) being dominant
- that consideration be given to appointing a 'community representative' who has recent practical experience of the heritage processes.

Q3 Are the objectives of the Heritage Act still relevant?

The Act contains seven high-level objects as a general guide to the Act's purpose.

These are:

- (a) to promote an understanding of the State's heritage,
- (b) to encourage the conservation of the State's heritage,
- (c) to provide for the identification and registration of items of State heritage significance,
- (d) to provide for the interim protection of items of State heritage significance,
- (e) to encourage the adaptive reuse of items of State heritage significance,
- (f) to constitute the Heritage Council of New South Wales and confer on it functions relating to the State's heritage,
- (g) to assist owners with the conservation of items of State heritage significance.

While these objects all remain valid today, they should be updated in light of recent developments.

As detailed in the discussion paper, the Heritage Act 1977 was first introduced in response to widespread community concern that heritage was coming under increasing threat from overdevelopment. The Act was designed to halt the increasing loss of heritage, but has been amended to reflect changing circumstances.

But there remain deficiencies.

Firstly, the Act's objectives are reactive/passive rather than pro-active.

The Heritage Council seems to be reactive, rather than pro-active in promoting NSW Heritage (see consultation question 18).

A subtle word change to the objects of the Act with an emphasis on pro-activity would help.

Secondly, the SHR list is essentially static. There should be a requirement for the Heritage Council to review on a regular basis (say every five years), all listings to determine whether the SHR listing remains appropriate. The Council should also update the description of each listing to ensure it is up-to-date and accurate.

Thirdly, the Council should be vigilant in ensuring that all artefacts/heritage items that should be on the SHR list, are listed. This may involve reviewing locally listed cultural heritage to determine whether an item warrants SHR listing.

Finally, since the Act commenced the Burra Charter has become the standard of practice for those who provide advice, make decisions about, or undertake works to places of cultural significance.

There is a question as to whether the objects of the Act should be update to reflect the contents of the Burra Charter,

Recommendations

- the objects of the Act be recast in a more pro-active form
- there should be a requirement for the Heritage Council to review on a regular basis all listings to determine whether the SHR listing remains appropriate.
- the Council should also be pro-active in ensuring that all artefacts/heritage items that should be on the SHR list, are in fact listed.
- the objects of the Act be updated to reflect the Burra Charter

Q5 How can the government better incentivise the ownership/activation and adaptive use of Heritage

While there is a general interest in the community in Heritage, currently the Heritage Council does little to promote or stimulate that interest.

Many people would like to live in a heritage property, but are unaware of their availability and are put off by the likely time, effort and costs of bringing such a property up to modern liveable standards as well as the costs of maintenance to appropriate standards.

The Heritage Council should consider developing a web page seeking input from the community on their experience with Heritage buildings, the challenges of restoration, the grants available and potentially work with the private sector to list potential restoration projects.

The website could include:

- links to grants available and land tax discounts
- a section devoted to properties 'available'.
- case studies of renovation projects along with contacts (where owners are willing)
- updated entries on the heritage website when properties are renovated, and give kudos to those involved (with their permission).
- a list of those who have been involved who are willing to help/advise others embarking on such a project.

Such an initiative would be a low cost way of incentivising ownership of Heritage buildings.

Q6 How can we improve incentives within the taxation system to help mitigate the cost of private Heritage ownership?

Ownership of Heritage buildings is expensive, particularly their renovation, their running and maintenance costs.

NSW residents often own Heritage buildings because of the love for the building and a commitment to protecting heritage, rather than for capital gains.

While owners derive a benefit from their ownership, so the community also derives benefit from heritage architecture including an experience of history and place and there needs to be a recognition of this.

Around one-third of items on the State Heritage Register are privately owned. While heritage owners have a natural proprietary incentive to maintain their heritage item, they often face more expense when it comes to simple things like insuring and maintaining their properties.

We agree that in order to encourage more people to do the same requires tax incentives.

Currently, owner incentives are supported by statutory provisions in the Valuation Of Land Act 1916 (s.14G) the Land Tax Management Act 1956 which can reduce land valuation and consequent charges on heritage listed properties. However there are multiple problems with these arrangements including that:

- the overwhelming majority of Heritage buildings owners are unaware of the program
- the policy parameters as set out in the Valuer General's Policy document, June 2019¹ are almost incomprehensible
- the existing policy settings do not incentivise the ownership of heritage buildings, and in some cases (including for) the Heritage discount on the rates decreased as the building was restored
- there is no consistency of treatment between Heritage buildings in the same locality, with some obtaining significant discounts, where buildings in virtually the same situation receiving negligible discounts

Recommendations

Some policy options that could be considered include:

- more prominently display on the Heritage web site of available incentives
- that on receipt of an application for a works approval, the Heritage Council when responding should include details of the support and incentives available
- the adoption of a simpler methodology for the reduction of land valuation for the rates concessions. For example that there be a fixed percentage reduction in payable rates of eg 40% for SHR listed property and 20% for locally listed Heritage items, rather than the incomprehensible system currently in place.

¹ See Valuation of Heritage Restricted Land, June 2019

Q10 Would greater community engagement deliver a more robust Heritage Register

Greater community engagement would heighten interest and awareness and incentivate the next generation to be more involved in heritage issues, helping to maintain our heritage now and into the future.

Community engagement could also provide a wider network of people at grass roots level who could work alongside the community and also be responsive to any Heritage Council requirements for appropriately skilled and experienced personnel.

The question is how do we achieve greater community involvement?

There are multiple ways forward that could include setting up of a network of Heritage Council Officers based in the regions where they would have responsibility on a number of fronts including:

- running community involvement activities and programs, including school based visits and excursions. (also Q18)
- working in conjunction with the local council and community to ensure that all relevant properties/areas are listed as appropriate
- ensuring any developments are appropriately assessed (also Q14) and compliant (also Q16).

Q14 How could we improve heritage consideration within the land use system

There needs to be greater consistency between heritage restrictions at SEP, LEP and DCP levels, and Council officials need to be more aware of their heritage obligations.

The current approval system (ie Integrated Development) includes avenues which circumvent the input from the local community.

Two local examples which have drastically deleteriously impacted the curtilage of include:

- a three storey modern development at 18 Bond Street Newcastle given interim approval by the Heritage Council when local advertising had failed to include any reference to the fact it was heritage, or that the application was an IDA.
- heritage approval for modern additions to 90 Scott Street Newcastle after **advertising only in Sydney newspapers** much restricting local input.

There needs to be better procedures to ensure that the local community ALWAYS has the opportunity for input relating to developments that impact the local area.

While the independence of the Heritage Council should remain, the processes governing their decision making needs updating.

For example, if the Heritage Council overturns a strong recommendation from its officials then the Heritage Council (or its subordinate Committees) then the Heritage Council must provide reasons in the public domain² for the reason for overturning the officials' recommendation.

The application for approval for development adjacent to _____, is a case in point:

- The departmental official familiar with the property and the curtilage who assessed the application very strongly recommended AGAINST the proposed development. The officials recommendation was then reviewed by an internationally recognised expert Dr Siobhan Lavelle and she supported the officials position.
- Yet this strong recommendation that the proposed development **not be approved** was inexplicably overturned by the Heritage Council³ with no reasons given, without explanation, with no appeal mechanism and with no publication of the outcome to allow legal challenge within the set time frame.

I should note that this Heritage Council decision has been disastrous from a Heritage perspective and has destroyed all views of the Italianate architecture of _____

The Heritage Council must be accountable for its decisions. It should not be permitted to make decisions without explanation and without being held to account.

Recommendations

- put in place procedures to ensure that the local community has real opportunity to provide feedback on any proposed developments.
- regional officers⁴ (see Q10 above) could be involved in the development of heritage DCP guidelines, in conjunction with local councils.
- ensure that committees of the Heritage Council are composed of people with appropriate expertise and **local** knowledge to make appropriate decisions.
- ensure that Heritage Council decisions when they deviate from the expert advice of Heritage experts in the Office are explained in detail. This will ensure that the public has confidence in the Council.

² ie be noted in the minutes of the Heritage Council meeting

³ The Chair at the Time was Professor Lawrence Nield, who has since retired

⁴ Note: local government heritage officers, where they exist in local areas are often not in very influential positions. A regional officer could be at a higher level with a degree of independence from the local council that would enable them to have greater influence.

Q16 How could heritage compliance and enforcement be improved?

Currently, the Heritage Council may place conditions of consent on developments, but the enforcement is often handed over to the local Council, who cannot be relied upon to ensure the conditions are met either during the development or afterwards. Developments are often given a leeway during the development stage such that the conditions are overridden.

For example in relation to the development adjacent to _____, a condition of consent was set by the Heritage Council to provide an archaeological report which was to be made publicly available (eg local library).

We have made a number of requests to obtain this report (from the library, from local council and from departmental officials - to no avail). While this may be considered to a relatively minor breach, there is nevertheless a breach as future generations may need to research the archaeology which is now lost under the new development.

The Consultation paper made a number of sensible suggestions to enhance enforcement and we would support these.

Recommendations:

- that a series of intermediate enforcement powers be introduced to allow heritage regulators to take a graduated and proportionate response to noncompliance. This would include investigative powers allowing Heritage NSW the ability to gather sufficient evidence to prove an offence, along with the ability to issue penalty or infringement notices.
- that a network of regional heritage officers (see Q10 and others) be put in place whose include responsibilities could include the monitoring of developments and renovations to ensure conditions of consent were met.

Q18 How could we improve Heritage Tourism

As the consultation paper points out, the first object of the Heritage Act is to 'promote an understanding of the State's Heritage', and if heritage understanding were improved so would heritage tourism.

Many would argue that the Heritage Council has failed against the benchmark, probably not because of lack of will, but because of lack of resources.

This issue needs to be fixed.

As this is a legislative requirement the Heritage Council needs to redouble its efforts to ensure these objectives are achieved; a responsible Chair of the Heritage Council would immediately develop a dedicated program and appoint an officer at the appropriate level to

get things moving. Again this could be achieved through a network of regional heritage officers.

Officials should report regularly to the Heritage Council on progress against agreed objectives. This should be a standing item on every Heritage Council agenda - it is a legislated requirement.

At a personal level, we find it incomprehensible that a foreign TV personality such as Tony Robinson has already recorded TV shows on Newcastle's history, whereas no locals have done so far to date as far as we are aware.

There are so many opportunities and an integrated program would not only promote domestic tourism, there is much of international appeal too.

There are a number of simple things that can be done that would substantially lift NSW Heritage tourism, included in the recommendations below.

Recommendations

- The Heritage Council immediately establish a unit within the office with a responsibility of promoting the State's heritage and that a regular report on progress against the program be prepared for each Heritage Council meeting.
- Some ideas for the promoting Heritage Tourism in NSW could include:
 - a page on the Heritage Council website which provides a list of Heritage items by location with a description of each item to enable easy community accessibility
 - Heritage Council working with local councils to encourage the establishment of similar lists by locality so that a visitor can go to one website and obtain a comprehensive list of all heritage items in that locality
 - consideration be given to developing a plaque/information board for display at each Heritage item which (if appropriate) informs the public about that item (similar to the blue plaque system in UK)
 - that local Councils be encouraged to develop a similar plaque/information board policy
- that the Heritage Council consider working with the TV/media to develop shows similar to Tony Robinson's *Time Walks*⁵ or the recent *Secrets of the Tower of London*.

⁵ Tony Robinsons TV shows - Tme Walks include Parramatta, Newcastle, Alice Springs and Woolloomooloo. Why can't we do similar and better?