

Submission  
No 236

## INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

**Name:** Name suppressed

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Partially  
Confidential

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NSW Legislative Council's Social Issues Standing Committee

### **Review of NSW Heritage Legislation**

Thank you for the opportunity to participate in discussions preliminary to the proposed review of the NSW Heritage Act.

I am a relatively recent (part) owner/ resident of a privately owned residential property listed on the current State Heritage Register, with some experience of the current regulatory framework relating to approvals/exemption to approval as provided for under the Heritage Act (the Act).

I welcome, in general, the sentiment of review, and particularly any opportunity to engage, advocate for positive change to the current Heritage regulatory framework that brings back the private residential owner rights. My current residence my bring a personal angle to my discussions, though as an experienced practicing architect I bring a professional, community basis to this endeavour.

There is much that can be improved with the legislative, political, bureaucratic and professional, education promotion context of heritage management. The Heritage Act is a good place to start.

My view is however that review of the legal mechanisms alone will achieve little, with much that can be improved also in the operations, policy, practices, of the Heritage Council, its Committees, its delegations, and its agency overall needing to be addressed.

Indeed the position of Heritage NSW within the Ministry of Premier and Cabinet, aside and distinct from Planning, Industry and Environment, places Heritage considerations in isolation from the many closely related issues Heritage is correlated to. This is particularly relevant given the strong representation of built environment items on the State Register.

As the April discussion Paper intimates, Heritage Management does not occur in isolation of, or above the owners rights, (or the community's).

Further, the conservation activity encouraged for heritage purposes, does not occur in isolation of other influencing considerations. Particularly for the sector of the Register that comprises buildings (and more so private residential buildings) there are many constraints and opportunities the endurance of the building needs to take into account to support a reasonable overall future. Without the overall comprehensive management, any efforts for conservation for the historic fabric will be diminished, or for nothing, if the building fails to provide reasonable amenity and economic security, become redundant. I am referring to health and safety, universal access, sustainability issues for example, and of particular relevance for private owners is the management of the financial commitment, expectations, capacity, opportunity cost to be managed with any reasonable conservation management. A building that does not address all parameters impacting its endurance with due balance, will not survive the transition through our time, to its future.

Conservation activities (as defined in the act, and/or as referred to in the often referenced Burra Charter) alone are insufficient for the management of built heritage items. The Heritage Act and heritage practices could be strengthened if the 'part play' only that conservation serves, amongst all the parts of any comprehensive, balanced management. The Heritage Act, and those who are vested with its functions should co ordinate with those vested with these other parameters, co ordinate with other planning and construction constraints/ opportunity and their regulatory context. This can occur maintaining due regard to the listing criteria, though I consider conservation activity needs to be supplemented with policy/mechanisms- that address the other impacting factors appropriately, and on balance with the conservation factors.

Further to the more comprehensive context being acknowledged and responded to, genuine consideration of heritage activities supplementary to those covered by 'conservation' should also be encouraged. Activities that 'promote' the understanding of an item's heritage significance could include – story telling, record making, models, drawing/ photographic records and archiving. Provision of indicative marking, selective community access to public owned buildings, interpretative installations, dismantling and storage for future reference, where relevant, public seminars, papers. School programs.

Heritage management of buildings would be better served if the legal mechanisms and practices broadened its perspective to our heritage. Not always, or solely looking backward – seeking to perpetuate the past but to support the transition of those items through our present, support the addition of the next layer to that history - and along with new works of the past, and of our time, to forecast the future for these items. Undertakings that value the contributions of our present day within the evolving heritage of built works, celebrate them, not hide or resist them can strengthen an overall story, the past, the present, the future.

A challenging concept – but I feel with certain built listings, or aspects of listings, what is paramount to its significance is not its fabric – but the 'qualities', 'spirit', 'essence' of places this fabric presents and/ or represents. In these cases, new fabric that similarly respects, and continues these 'values' should be encouraged of comparable merit with the existing.

Similarly, while what the community values is sometimes attributed to one phase in time, one event, one person, one creative or technical endeavour –with built items, places – it is often the essence of a place, an excellence, the cumulation of its evolving development, often grounded with its natural landscape that holds appeal, that is valued by a community. I suggest it is this quality/excellence, not always historic attributes that the community values and respects. This concept extends my argument relating to past, present, future. Identification of these qualities often arises in heritage assessments, though current heritage mechanisms are not necessarily well placed to foster them, as they seek to 'conserve' physical things – when it is the intangible, the conceptual, the essence of places that our community values and seeks to perpetuate.

This brings me back to my suggestion of placing heritage in closer connection with planning and design, as conservation is not the only method of encouraging the values and qualities.

Not sure how, to mandate these desirable qualities –perhaps reframe the Heritage Act as the Heritage and Culture Act, encouraging not only what we value of our past, but for our future, to champion these desirable qualities, in all that we develop.

Heritage Listings, and the regulatory mechanisms brought to bear upon those should be proportionate to both relevance and capacity. In a changing, diversifying community the relevance of all current listings, should be reviewed. With a high quantum, the value of each is somewhat diminished – though the discussion papers suggestion to identify classes of listed items would go some way to address this. Varying levels of regulation, according to classes is also logical. This would also alleviate the administration for all, focussing it to where most warranted

Finding ways to indicate listed items, in place is a challenge, the current program proposing plaques is a great program. Publicise to the community the responsibilities these property owners applying the conservation practices bear for the community. Any programs that –have the community who are benefitting, share in carrying the burden would be welcome. Financially, and with due respect in all that occurs around them.

Beware the veil cast upon properties - if there are not administrative capacity to manage and respond – don't be so broad. If the veil is not a necessity, it is unfair and disproportionate. The community may be better served with education, inform to disseminate the values.

I value quality design and construction of the past ( and present), as well as place making with positive, endearing attributes, that reflect the intrinsic natural landscape and including those with built development sensitive to the positive attributes of the place of it has evolved.

My response will adopt the structure of the key questions posed with the 'Review of NSW Heritage Legislation' April 2021, answering the questions where I have capacity to respond. I also providing further insight to the particular topic, in addition to the particular angle of the question.

## Q1. Composition of Heritage Council of NSW.

Q1.A. Include a representative of the following on Heritage Council and Committees:

- public heritage ownership, and private ownership,
- building designer/architect with expert knowledge in current best practice of our time- to guide the necessary comprehensive approach to heritage management.

Other members should be appointed on basis of professional skills, knowledge and experience with heritage listing and management – not be political appointments.

The make up of the Council should have balance across all key aspects specific to and required for heritage management, not biased to law, finance and governance.

...

Similarly providing an owner advocate within the agency, or somehow include them in all strategic review, empower them to serve the owners, advocate for them on policy, and on specific applications.

....

Q1. B. The question was not posed, though I provide commentary on the functions of the Heritage Council.

These are in line with, and will be better understood with reflection on my commentary to follow later questions.

- support the Ministry/its agency to deliver the operations of the agency -with regard to \* all objectives of the Act – the scope of matters currently prescribed offers little to ‘assist owners’ or to encourage conservation – leaving much of this to ‘vulnerable agency policy’,
  - \* adequate resources with staff skills and processes,
  - \* suitably broad and comprehensive considerations adopted in assessments, requiring all other legislative constraints and opportunity to be tabled and considered alongside the heritage constraints and opportunities.
  - \* advise Minister on co related legislation – as it exists, as proposed changes are drafting to them, to ensure that heritage management occurs holistically,
  - \* ensure agency policy is in line with the Act . S62 requiring reasonable and economic considerations that are a consideration in the listing of an item, are given due regard in assessment process of activities including works to an item, and that other matters for consideration must include other co related legislation and constraints and opportunities in full for a heritage item’s management – not just the conservation constraints and opportunities.

Heritage Council would ideally be suitably composed, to lead the agency in:

- championing the listing criteria that relate to place making (c) and cultural values(d) – to other agencies – to ensure they have a consistent framework.
- Liaise with other agencies to check that and redraft of other regulatory mechanisms uphold heritage intent, and not complicate it or conflict with it, or prejudice owners of heritage properties through unintended constraint.

## **Q2. How should Aboriginal Cultural Heritage be acknowledged and considered with the Heritage Act?**

For sure, with due respect to their culture, particularly for its long standing in country.

However, balance and caution need to be applied with identifying specific cultural subsets within our increasingly diverse community.

There will be a tricky web to cast if the regulations seek to address each sector of our community the wide, and often disparate sensitivities and values of our current and future community.

This does bring into question if the current Act is unduly biased to its listings, with regard to built items, of European settlement through to early twentieth century.

## **Q3. Are the objectives of the Heritage Act still relevant?**

Firstly, I consider they do not address full extent of heritage responsibility

The following answers a question not asked – that perhaps needs to be in this review - I consider objectives a (Promote an understanding) e (encourage re – use) and g(assist owners) are currently poorly actioned/supported, in practice.

To the main question, I consider the following could be included to objectives:

to a) ,,promote an understanding of the State's Heritage – could be added 'and culture', to elevate \*significance of our time, in the timeline from the past – through the present to the future, & \*the qualities of place and items our community values and seeks to promote and pass on to future generations, not just physical fabric representing them.

to b)....to encourage Conservation....., could be extended to mandate heritage management include due regard to :

- not solely conservation – noting the objectives are to 'encourage' conservation it does not seek to exclude or diminish other activities that support heritage – though the value of these would be suitably elevated if included in the objectives. Other activities: - story telling, record making, models, drawing/ photographic records and archiving. Provision of indicative marking, selective community access to public owned buildings, interpretative installations, dismantling and storage for future reference, where relevant, public seminars, papers. School programs.
- (Particularly for built items) co ordination and management in relation to other correlated regulatory and site constraints,
- bringing culture of our time into play with historic items' transition through our time to the future

(c) to provide for identification and registration of items

(e) to encourage adaptive re-use

This could be extended to adaptation generally being encouraged as a viable activity, it is too readily overlooked amongst conservative practice. Too often misunderstanding of place, or history, of context leads to assessment erring to 'preservation', denying adaptation. Heritage management should apply seek understanding, apply wisdom, not caution.

My experience is that of agency and committee attitude/policy is not in line with this objective. Assessment stifles even modest, subtle, adaptations – dismissing them without regard for their benefit – simply due to even the slightest impact, no matter how small, or to location of modest significance only.

(g) to assist the owners with the conservation of items of State Heritage significance.

This should be revised with 'conservation of' replaced with the 'management of' items of State heritage significance, including conservation'. This will enable the other co related considerations to be duly considered alongside, and not forsaken for conservation pursuits in isolation – the other regulatory mechanisms that have bearing, the economic considerations.

The objectives should acknowledge the rights and respect of the owners, particularly of residential property, safeguarding privacy and due regard of the complexity conservation and other management brings to ongoing occupation of heritage buildings.

My answer to Q12 provides suggestions for improving this assistance to owners, not only in the permit application phase that question frames, but through the heritage management overall.

Further, draft a new objective to:

Supplements the conservation principles of heritage management for buildings. Sustainable heritage of buildings can not rely on the Burra Charter alone, though should also mandate for appropriate evolution – to enable our time and place to lay down its layer of history, and to ensure the place is well managed and adapted to provide function into its future.

Appreciate specific needs for buildings/built environments, in difference to other forms of heritage items places,

Mandates the history of our time to be provided for alongside that of the past, and to forecast and plan/act so that what we conserve and evolve enduring function and purpose – not just fabric (as the function and purpose is intrinsic for longevity).

#### **Q4. Does the Act adequately reflect the expectations of the contemporary NSW Community?**

No, it does not provide for current constraints to be appropriately considered alongside the values of the past/existing items, for current history layer to be laid down alongside that from the past.

Without review of the items, the Register risks not adequately representing all facets of the diverse community groups' heritage.

No, in my opinion the majority of community is not well versed or engaged in heritage considerations, values, its potential to appreciate or have appetite for its constraints. Education and engagement should be a focus.

No, as heritage mechanisms pay little regard for, or show consideration to other current pressing community concerns and objectives, for climate change, sustainability, health and safety, aging in place and universal design.

#### **Q5. How can the NSW government legislation better incentivise ownership, activation, adaptive re-use of heritage?**

Update the approval/exemption process for simplicity, transparency, consistency – and support – not procedural injustices that occur now.

Heighten the respect for owner rights, require rigorous demonstration of necessity of listing, command respect for the burden the owners bear for the community and seek to relieve this wherever possible.

Increase technical heritage skills within the agency and make this a resource available to owners.

Place owner advocate/s within the agency to assist progress through activation, adaptation. Place an owner representative on the Heritage Council.

Anything to stamp out agency attitude'

**Q6. How can we improve Incentives in the taxation to mitigate cost of private heritage ownership?**

- i. Rates/charges subsidy to any fees in relation to the property due to government agencies
- ii. For primary residences (who already have Capital Gains tax benefit as the rest of the community not burdened by heritage constraints) provide Income tax relief commensurate with the value for works that enhance and support heritage,
- iii. establish a commensurate reduction/offset to stamp duty at sale of property to offset economic constraints retarding comparable capital growth for state listed property. This exemption from stamp duty could provide a bonus/kick start/top up to private funds available for conservation on purchase –and granted on the proviso it is spent on conservation, or levied at the next sale/exchange against the vendor.
- iv. Subsidise the building insurance premiums, to the extent the premium is above comparable ‘un listed’ properties of similar scale/location – to offset the age and detail relevant for heritage properties -features forming the significance but directly escalating the insurance risk/cost
- iv. GST exemption for conservation work to listed items in all instances.

**Q7. Incentive to encourage activation and conservation through commercial and philanthropic investment.**

Great idea, however this is not my area of expertise.

Broadening the scope of £2 1 c, and 62, 64 could facilitate this.

**Q8. How could tailored heritage protections enhance Heritage?**

Agree a tailored approach has merit. Not all items warrant the same level of protection, of permit rigour.

Along with the suggested framework for this I note the private, interiors of private residences should be less constrained than the exterior. If overstated, the protections are a burden to the owners and occupants for little benefit to the community at large and in the long term.

In s62,64 of Act stipulate measured approach be commensurate with public benefit. If not visible to public as contained in a private place - I strongly believe the community would not expect an owner be denied reasonable amenity for no commensurate loss of benefit to the community.

**Q9. How should heritage items that are residential properties be accommodated under a proposed category scheme**

With due respect that public have little access now, nor are likely to in the future.

Any prescriptive controls need to be carefully drafted, to reflect the widely divergent range of residences.

With due respect that residences are built for purpose, with that purpose generally understood to require change over time. Understanding that this natural evolution is fundamental for its longevity, the very endurance conservation seeks. As an example, enable and support adaptation – this may include *some* loss of original fabric – in order to facilitate insertion of new fabric for current needs. Keep sight to the overall items form, and the overall history including its successful passage into a long future – free up response to the minutia, the little seen, facets not intrinsic to the listing criteria.

Moderate reference to isolated principles – avoid reverting to isolated articles of the Burra Charter, but apply logical balance and understanding to the dynamics and capacity of family use. Unless likely to be placed in public ownership, consider if it is the exterior/overall design/form and setting – its streetscape that establishes the listing criteria – enable adaptation internally , where out of view.

As the residence indicates a past living pattern – allow it to show the current society’s evolution from that, its current resourcefulness in adapting it. Its resources, logic, sustainability to adapt it.

Do not require all of the past fabric to be retained as if that is the only way to demonstrate its existence in the past , this could demonstrated in part, or by interpretation, or by physical , photographic, digital recording with written word and drawings.

Not require current and future owners to live their current and future lives, with its changing demands and opportunities, in an unnecessary historic time warp – a locked in phase, denying innovation and all the health, safety, environmental and evolving family, social patterns of our times. Enable adaptation.

A creative response, of our time, could be a very positive outcome for the item, increasing knowledge and appreciation for the heritage, and assisting its values to transition to the future.

#### **Q10 Would wider community engagement deliver a more robust Register?**

Firstly, invite owners of State Heritage properties to Heritage NSW conferences, ensure they are represented in speakers. The majority of these owners value their property’s significance, and genuinely seek to enhance and celebrate that heritage. Actively engaging with this cohort, supporting their genuine endeavours, could provide a substantial demonstration of the positives from sound heritage practice – encouragement to all.

No amount of legislation will eliminate the selfish disregard of a few, which is not to say the community and its agency representatives should lower their guard on that front. Conversely, positive, clear, reasonable and relevant legislation can foster excellent outcomes for those whose efforts are akin to the intent of the community, and should avoid inadvertently curtailing this with enforcement regulation or processes.

Engagement is always good, if genuine. Challenging, but beneficial. To list items of significance to the people of NSW, the agency needs to establish, and keep updating what it is the people of NSW value?

If the item is listed for its ensuring ‘quality’ and or ‘qualities’, rather than a specific historic consideration, the listing should test whether this is important to the *heritage* of the *people of NSW*, and treat this cultural identification as such – and alleviate it of heritage regulation.

We are a diverse community. What may in the 1970s, 1980s have been valued (for its part in a developing European settlement) may not be so with our diverging community.

Heritage listing needs to take its place alongside other pressing community concerns.

This should be considered in assessments and expectations, especially for private residences.

Listen to the range of regard, and appetite/capacity to act the community actually has– so the legislation can respond proportionately, not to some greater extent beyond expectation.

#### **Q11. Stream Lining the listing, and review to listing process.**

Yes – that would be very welcome. Here are a couple of suggestions:

Register: provide resources to ensure listings:

- To a quantum that the agency has the capacity to interact with,  
Are reviewed so the Statement of Significance is based on listing criteria, concise, and by so being provide guidance to conservation... not just descriptions, or historical commentary,
- Are reviewed when LEP and other policies impact the strategic context, and. or when surrounding development impacts the context – particularly the curtilage,

\*Review listings – not just to add, though update significance, or remove items that are much changed, or whose context is changed , such that it is no longer of heritage value to the people of NSW.

Be mindful/careful of the long term implication of seemingly simple statements within past listing reports, especially where:



- interiors of private properties are prescribed significance or preferred conservation actions without access and/or with scant analysis,
- Streetscape status, presentation or scale is referenced, without regard for intergrity and with aesthetic appreciation current at the time of the report rather than historic reference relevant to the key listing criteria,

See last bullet point in section – as the zoning, and planning controls evolve surrounding Listed Items, a review of its listing may be required. This is particularly relevant if context, streetscape if a notable consideration intrinsic to its listing. The setting, the planning status/potential for that place but more importantly for those that surround it should co exist, respond one to the other.

### **Q12 How to improve the current approval system.**

Approval system – Approval is for works to listed properties – it should not be for ‘conservation’ activities only to be considered, or if it remains that way – then the agency must be required to consider the conservation in light of other reasonable actions for the heritage management, and all other constraints to the endurance of the item, not just the endurance of the heritage values.

(Just as preservation is not the only conservation activity permissible/appropriate for listed properties, neither is conservation alone the only activity availed to a listed property. The Act objectives state the act ‘encourages conservation’ - it does not say ‘allow conservation only for listed items, or ‘allow conservation denying any other activity. Interpretation, innovation, new design insert could be possible either in conjunction with, or alongside the specifically heritage focussed activity)

Ensure that both the points required to be considered on listing (Part 32) requiring reasonable and economic use, and that listing is necessary in the first instance – are given due consideration in assessment of any proposal. These questions should form part of a balanced and fair assessment. Where there is a reasonable need for adaptation, the economic impact of its approval (or not) should have a bearing on the decision to approve the works.

Works should not be assessed solely on the impact to heritage significant fabric, though primarily for the subsequent bearing on Heritage significance of the item overall, including taking into consideration other factors influencing the management of the building regardless of heritage focus– its cost, its amenity, its safety – for without purpose, reasonable function and economic validity, the future for the item will be tenuous. Respecting the owners face all these constraints, and giving them due regard, will go a long way to assisting the conservation activities.

Enhance the early engagement of applicant and agency with proposed works, management planning.

Keep key policy that agency are guided by, manage with – up to date and front of centre on Heritage NSW publications list – so owners know the current ( and hopefully not – but if so, changing) assessment context. Log/list the updates, so public know what has changed.

This must include the Key listing Criteria, the Values used in assessment, the Statement of Significance parameters/drivers of heritage management policy, the basis of Ranking fabric significance. Ensure the core reference documents, policy are available and up to date, with a log to show rolling changes for quick reference. This should include – Listing Criteria, Material Threshold, Statements of Significance, Attribution of ranking levels to fabric,

Clarify standards/ templates for use with - testing/substantiating listing criteria, statements of significance, (attributing ‘values’, a Burra Charter language), fabric analysis, ranking of fabric, management guidelines/policy. Frame them to provide for interaction and consideration of correlated constraints and opportunities in conjunction with history, for the management of the heritage property.

Prescribe to procedural fairness through out the assessment process, particularly at presentation to committee

Make staff assessment reports available to applicants prior to Presentation to the Approval Committee at Heritage NSW.

Include the applicant in the committee room while the staff introduce the application to the committee.:

This is in keeping with, reporting and panel procedure of other planning processes.

Provide the opportunity to appeal a delegated decision, or a approval committee decision – not only the current limited high level appeal.

With any application assessment, consider how the heritage permit process plays into other approval required for building works – including but not limited to the EP&A Act, the DBP Act, Codes SEPP, Design & Place SEPP (Apartment Design Guide, BASIX), and Federal policy such as Universal Design and Aged Care ( supporting aging in place).

With this in mind, simplicity and compatibility to the other permit regimes would be welcomed. **See below re Codes SEPP**

b. Include innovation to heritage management alongside conservation practice.

To that end, not rely on the Burra Charter's 'conservation' alone, extend heritage management to include with built works current best practice for design and construction, sustainability so that conservation and evolution are equally considered in heritage practice, and to include other 'related heritage activities' of recording, interpreting, etc etc.

Give due regard to the benefit of these other 'offsetting' activities – in some instances these undertakings may increase the public information and access, albeit indirectly to an item. They can also off more permanent reference than an ageing building.

c. Review and Refresh the assessment process:

i. Squash practices and processes that:

- elevate preservation and demote adaptation, that tend to 'no', rather than 'yes, if you can demonstrate ...',
- focus on the minute – without due regard for the overall. Be prepared to lose a little, to gain a lot... A small loss of low significance to the overall heritage value of a place, may well provide for the inclusion of an element that adds a complimentary, supportive layer – ensuring the retention of the item.

ii. Update assessment protocols or templates to include consistent language – referring to legislation and Heritage NSW Policy, frameworks – not mixing with Burra Charter terminology. BC is a resource, it is not a legislation. There are 7 listing Criteria for review in CMS/CMP – yet there are reports that refer to BC values- they are similar, but different. The disparity is not helpful.

iii. Publications that guide assessment must be updated more promptly, or removed from circulation. A forward, or cover note to explain the extent of superceding could be provided, if part only is superceded.

It is unhelpful to reference a document on Heritage NSW website, to find it contains out of date information, has in part been super ceded.

iv. Resource agencies sufficiently for board, consistent governance, of innovation alongside conservation.

v. Frame policy to encourage excellence, not to thwart those who will inevitably evade responsibility and requirements. Dampening down regulation in order to resolve avoidance is counter productive. Provide resources and penalties that are prohibitive, and provide resources to enforce the regulations. Leave scope for innovation and good balance of conservation and innovation in heritage in the regulations. Educate and support staff in agencies to act on both these aspects.

d. Place an 'owner advocate' within the assessment an approval team/s.

The aim, to keep some balance and pragmatics to assessments. This could go a long way to 'assist owners' with conservation.

This owner advocate possibly on rotating roster, to keep them fresh and agile.

e. Place a design excellence advocate within the approvals team/s.

The aim, to ensure our current society's best practice opportunities are embraced and included within the conservation of the State's heritage, in order that our place in the timeline of the items not only enabled but encouraged.

f. Provide a review option to challenge Heritage NSW delegated determination, and similar from the Assessment Committee – prior to and less onerous than appeal to the Minister or to the Land & Environment Court. (Similar to a review option to a consent authority decision).

g. Stamp out agency Attitude. How refreshing it would be to be met with ‘help me understand your needs, to assist me be wise in considering sympathetic ways to achieve them’ rather than ‘no, we need to be cautious’ –or ‘you have a listed property, you should realise it is hard to change’...

h. Reports assessing proposals should be required to include:

a statement of necessity of the listing, demonstration in the first instance the listing is reasonable,

a statement of the extent of economic impact the heritage listing places on the property in comparison to other similar unlisted property, as a measure of financial duress of the listing.

a table of all other planning and environment, construction constraints, to outline the extent of other parameters impacting the longevity of the item, its provision of amenity, to ensure the heritage considerations are kept in balance with all other considerations – and that the opportunity for the best endeavours of our current time can be included into the history of the property.

give clear, relevant reason why any proposal/part proposal are not supported, not simply ‘no’ it impacts significant fabric. The reason should refer to whether that impact materially effects the significance of the item overall, not just the specific fabric affected. Further, to refuse the report should ensure all mitigating, moderating alternatives that could offset the impact of the works – alternative heritage activities to conservation were not available, or insufficient.

Properties with complex setting, or proposal should be visited to enable a full understanding of the place. If this is not availed to the application, credibility of the applicants support documents should stand as read and accepted.

As one objective of the Heritage Act is to ‘assist owners with the conservation of’ listed items, the practices the Act prescribes or its agency adopts should keep the owner interests equal to, though preferably above the community benefit– as without the conservation and maintenance of the owner, the item will be a diminished prospect to the community.

•Support current and future owners to live their current and future lives, with its changing demands and opportunities, adapting the fabric as necessary, not hold it in a historic time warp – a locked in phase, denying innovation and all the health, safety, environmental and evolving family, social patterns of our times. Enable adaptation, where necessary and appropriate.

•Be realistic, pragmatic with build heritage items, particularly dwellings which are rarely conceived or constructed to be endure forever. They are not artefacts in museums protected in isolation. They provide amenity and function to occupants, owners, they stand in the environment, to survive they need to adapt. This is a very simple fact that is often given little regard with conservation practice. Heritage practice that requires stagnation to any one form/presentation, has the potential to be counter productive to the very longevity the heritage management seeks , unreasonably burdening successive owners with little measurable benefit to the community. Assess, analyse and guide wisely and with empathy when placing constraints on buildings conserved beyond their physical and service capacity or without due regard to evolving amenity expectations.

Be wary of preservation of all, rather seek a balance, blended approach including adaptation and interpretation to areas warranting change alongside preservation of others. Blanket preservation may be counter productive with little really a wise undertaking in all instances of an intelligent community.

When a heritage perspective suggests constraint to the current and future use and presentation, fabric for a place – the assessing agency should be required to assess, analyse and report on the benefit to the community of such constraint, to test if it is real and reasonable, requires the tangible constraint to meet the perceive heritage informative role.

Assessment should exercise Moderation and Measure, particularly for private property, especially interiors.

- expect little constraint to small, lower significance items, or components of items.

- Accept that 'original' does not mean 'significant', nor obviate cautious practice if that original fabric is of little specific significance in and of itself.

The Material Threshold policy measuring the extent of change as guide, in order to select the assessment pathway/authority level required for assessment, should be used for that purpose, and not as a measure of decision/support itself. That is to say – while it identifies for all concerned a measure of change, and who should assess it, that measure of change in and of itself is not the basis of supported, or otherwise of a project.

In my experience, that fact of a change to original or significant fabric – without regard to the scale, the location, the relative significance of the fabric changed, its prior surrounding change, its bearing on the key values/listing criteria - and necessity for the change, the potential benefit gained for the property overall, including its capacity to endure into the future with the assistance of that change – has thwarted support to good, solid proposals. Without regard to limited or now general community's visibility to those works.

I advocate for assessment teams to include 'visiting current designers' – to balance the heritage assessment of historic values – with the design merit of adaptation proposals – to champion for the future of the heritage property – not only for its past. Such visiting members, informed and experienced with all the other legislations is the only way the heritage assessment could be delivered with the balance it should aim for. Visiting – only practitioners who have current service across the building sphere would be in a position to appreciate the complexity of all design and building constraints.

I welcome at least a couple of architects, builders, designers onto the Council Heritage NSW, who have comprehensive design capability showing leadership and the balance this space should embrace, keep our history-making – not deny its part in the story for our future generations.

Provide scope for innovation and balance of conservation with innovation in heritage management, its regulations and assessments. Educate and support staff in agencies to have the capacity to be open to, assist these aspects.

### **Q13 Are current determination Criteria for heritage permits still appropriate.**

Comments to the question above address some of the current inadequacy, with determinations taking too narrow a view, and caution beyond necessity. This does little to assist the owners in the heritage and other management of their property.

Standard Exemptions are welcome, though relocation of some works to s60 – albeit in a fast track process raises complications with approval/exemption pathway through the EP&A Act. The drafting of the latest exemptions with its test of impact on significance, has unintended limitations to its intended implementation.

The assessing agency should at the least apply due regard, as appropriate, to all conservation activity, not just preservation, and 'encourage' adaptive reuse – not stamp it out however possible

### **Q14. How to improve Heritage Consideration within Land use planning?**

### **Q15. Opportunities to Enhance consideration of heritage at Strategic level?**

These 2 questions follow discussion on interaction with other legislation.

I sees issue not just with EP&A Act, but with other Act (DBP Act ) –Design & Place SEPP Apartment Design, BASIX), Codes SEPP....

One example is the interplay of 2020 update re s57(2) revision for standard exemptions and the Codes SEPP for Exempt, or Complying work to buildings on SHR.

Another example is the sites of buildings on SHR should given adequate 'buffer' in zoning review that will permit building type, form and scale likely to be disparate from it. OR- a commensurate review of the item's criteria for listing should be undertaken concurrent with the strategic planning review. Otherwise, items will be left isolated, locked in time, within the evolving

landscape/townscape. Such properties are most likely denuded in heritage value with the changing scale of surrounding development, yet burdened by the conservation limitations to its own potential evolution. This is unjust burden to the owners, occupants. This compounds the challenge of retaining purpose for the item, which if too great, presenting unreasonable impediment/countering to the conservation endeavours.

#### Planning for property proximate to items on the Register.

Understanding of heritage values would be better served if regulation and process allowed commensurate treatment for actions, care, development of the adjacent and surrounding property to listed items, not just the items themselves.

- regulation and process for the private properties should be no more onerous than those required of the property that surround them, where the development of either impacts a key value of the heritage item..
- Similarly, mandate surrounding property owners, and authorities granting consent or approval proximate to properties adjacent, surrounding listed properties give full and proper consideration to the impact of change upon listed properties.

As a society we seek and respond well to change, where needed to foster our community. Cities become more dense, zonings evolve, planning controls on bulk and form change. Building standards adopt the expectations evolving technologies present. So too, Heritage practice can include change, adaptation and new where appropriate with respect to the history that is determined to be important, the current times and future prospects for the place.

Either legislation and practice needs to be broadened to capture adjacent/proximate properties – or relaxed for the listed properties, so equity and fairness prevails with potential actions in balance with this situation. Review the type of offences, judge value to investigate, enforce– v's- alleviate regulations to permit...consider how resources spent here ( and I'm not suggesting they aren't) are worthwhile for overall improvement to heritage outcomes for NSW – vs resources spent incentivising conservation by owners, users, and engaging with community to canvas and keep abreast of changing values.

Adjacent, and proximate development should pay due regard, not just lip service to items on the Register. Local Authorities should be required to notify heritage NSW of proposed work 'near to' SHI, and to resource their agency to provide appropriate review and feedback.

Planning certificate on property sale contracts should include the listing, and reference to the significance, and EP&A Act /Heritage Act require this consultation and assessment for proximate property. This is particularly the case where the item has aesthetic value, and/or if its design has heritage value and its context is intrinsic to the design.

If the community is the beneficiary of the heritage legislation, all community should bear the burden in sharing the benefit. Not just the owners.

Sites of buildings on SHR should have a 'buffer status', or similar in zoning/planning controls that will mandate particular appropriate building type, form and scale likely to be sympathetic with it. OR-if that is considered too onerous, inappropriate – then similarly, equitably there should be a commensurate review of the item's criteria for listing itself.

Some properties are most likely denuded in heritage value with the changing scale of surrounding development, yet burdened by the conservation limitations to its own potential evolution. This is unjust burden to the owners, occupants. Changes in context challenges the conservation practice of the item itself, potentially to the extent that one or several of its key listing criteria are diminished. This should be reflected in a review of this listing itself. and its heritage management expectations.

#### **Q17. How can understanding of State Heritage be enhanced?**

Introduce the concept of State Heritage into NSW Primary and secondary core history education, engaging with pupils and their families in interactive programs, that could include some submission for analysis to heritage NSW – to be evaluated, responded. to....

Introduce heritage component to core information of property sale ? title, ?? into a planning certificate. Planning certificate could lists say the '5' closest State Heritage Listed properties to it, with link to the Register for each – increasing the awareness to all new property owners.

Program like ‘safehouse’ – to identify SHI properties – with a QR code linking to information at boundaries.

Heritage practice to be commended in as many design award programs as possible. Not only category of Heritage, but embracing heritage considerations to general design categories. Celebrate the value of retaining and incorporating heritage fabric in innovative ways, not only as guided by ‘conservation’.

Invite owners of State Heritage properties to Heritage conferences, ensure they are represented in speakers.

Providing a consistent message would benefit heritage outcomes.

The Good Design for Heritage Places’ document co authored by Heritage NSW, the NSW Government Architect, and others – is surprisingly seldom referred to, or acknowledged, or its principles endorsed or adopted in assessment of proposals for works to Listed item. This silence seems to reinforce a much more conservative leaning with the functioning of the agency than represented in this recent publication. ....Very mixed messages for the public, for owners of heritage property.

### **Q18. Heritage Tourism?**

There will be others with experience and ideas on this, though I support the concept in principle.

In and of itself it suggests adaptation of built items, and access to them for others to experience, a good example of innovation of evolution playing a role alongside conservation in heritage management.

### **19.Public Building Activation**

Not my area of expertise, though if public buildings are to be ‘activated’, with adaptation lubricated with legislative change – so too should privately owned buildings.

This question should apply to all buildings, they are all resources to be used, adapted, re used sensibly, logically – balancing future and present needs alongside the historic fabric remaining from its past.

In closing, I support ongoing consultation.

Please provide as much opportunity for public interaction prior, and during any draft proposals.

Regards

PM

**Appendix \_ FYI: copy of an earlier submission to Heritage NSC re s57 exemption modification.**

## **Appendix**

Excerpt from PM response, 9.11.20, to draft /gazetted Order under Section 57(2) of the Heritage Act 1977, prior to FAQs for this order being published..

*To Whom it may concern,*

*As an architect with extensive heritage experience, and (part) owner/resident of a State Heritage Item., I anticipate some welcome change to the Heritage Act with the 2020 Standard Exemptions s57 gazetted 9.11.20.*

*However, I foresee several issues arising with the tightening of the parameters to several of the exemptions, as I understand is proposed, and particularly revision to and specifically relocating a 'fast track' process from s57 to s60.*

*Please excuse these comments if they are in part, or even entirely premature or overstated, as the 9-11.20 gazetted order is new and I review it without support of FAQs or references as yet unpublished, as too a reportedly proposed 'fast track' 'approval' to fill some of the retraction from prior standard exemption necessary to offer boundaries to the new self-checking regime.*

***In the hope that there may be time to address a couple of pressing issues before this policy is set.***

***To this end I raise the following issues:***

- 1. The correlation of the s57 Exemptions General Condition parameter #5) precluding from Std Exemption 'removal of significant fabric' and the obligation of owners under the Heritage Act and Regulations to carry out 'Essential maintenance and repairs', which in all practicality may require removal of significant fabric (deteriorated, or similar).*

*One solution is the General Condition 5 be reworded to enable St Exemption 18 to include removal significant fabric as will from be time to time be necessary, due to the nature of the specific exemption itself 'essential maintenance'. If not, it should be offered a 'Fast Track' 'approval', though with the 'fast track' 'approval' within s57, not s60 (for reasons outlined below).*

- 2. The denial of Exempt or Fast Track pathway through the Heritage Act under s57 for this and other for works with no or little impact on heritage significance of State Heritage Items, is not only onerous for the Heritage step of the total approval pathway required.*

*For the next step, a proponent progresses to consideration against the Codes SEPP for Exempt and Complying parameters, or LEP/DCP for pathway through the EP& A Act approval requirements.*

*The wording of that Codes SEPP mandates for State Heritage Items that only if an exemption from the Heritage Act under s57 has been obtained, not under s60, can this Codes SEPP be considered.*

*The Codes SEPP wording refers (1.16 and 1.17) to the Exemptions obtained under s57 (not also under s60) for State Heritage Items, allowing those opportunities that exist for some of the exempt and complying pathways so described in that policy at each subdivision, to occur.*

*One solution to this could be positioning the proposed Heritage Act fast track 'mechanisms' (in lieu of requiring written correspondence with Heritage NSW for exemption, or a full s60 Approval) to be within a subsection of s57, not to s60.*

*For example, the prior std Exemption 7: minor Works', and various other works precluded either by the S57 General Conditions or each new St Exemptions specific Relevant Standards This will to keep the inter relationship of these Heritage Act Exemptions and its co related 'fast track' 'mechanism', consistent with the potentially numerous EP& A Act Codes SEPPs potential pathways currently referencing the s57 part of the Heritage Act.*

*This could also have similar correlation to the some LEP DCP policy and other Instruments under the EP&A Act which local consent authorities, or Certifiers use to grant heritage or other exemption*

*from the full DA/CC approval process, when the scale of the work is also below a threshold warranting planning or building scrutiny and regulation.*

*Until such time as these two issues are updated, the gazetted policy will require, in my opinion, any essential maintenance that requires removal of any significant fabric, as well as numerous other simple works with no or little impact on heritage significance of the State Heritage items, to progress via the DA/CC pathway.*

*This is overly onerous, not reasonable nor necessary.*

*These changes may serve to relieve Heritage NSW of participation/obligations, though in changing its policy without regard for flow on effect within other legislation, is leaving the owner/applicants with what I consider is an unintended legacy of increasing, not decreasing approval red tape.*

*Heritage NSW is well placed to mitigate this by expedient drafting and/or redrafting of their policy, being mindful for how it is referenced in other Acts and their instruments.*

*I trust these insights are helpful, and urgent attention can be given to addressing the issues expediently, and provide my apologies again if the points I raise are indeed 'in hand' or my concerns premature to the full resolution of these changes.*

*I look forward to Heritage NSW addressing what I consider are impediments to not support to owners managing Heritage properties. "*

*end*