

Submission
No 239

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Name suppressed

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Partially
Confidential

Review of NSW Heritage Legislation:

Introduction:

Yes Minister Harwin MLC, 'our heritage deserves to be protected and cherished'.

- I reply to the discussion paper as a community member of the Hawkesbury City Council (HCC) LGA;
- Also an inaugural member of HCC Heritage Advisory Committee (now Heritage Committee);
- a practicing conservation architect over 45 yers;
- a long term member of A.ICOMOS and Australia's delegate with voting rights on the International Committee on Vernacular Architecture;
- a life member of the National Trust of Australia (NSW);
- and an inaugural executive member of the NT Hawkesbury Branch; and
- a NSW member of the Materials Conservation Group

There is little community trust in the NSW Government for the manner in which it administers heritage conservation in NSW and there is insufficient funding and other resourcing to administer the existing Heritage Act properly. It is this lack of administration of the Heritage Act by those who oversee NSW's heritage not the Act that is the problem.

Q1: What should be the composition, skills and qualities of the heritage Council of NSW?

As a conservation architect that has over 45 years extensive amicable dealings with the Heritage Council of NSW (HC) and those who have delegation, it appears that over recent years things have changed, it is my belief that the composition of the HC and its delegates has changed detrimentally. It appears that the composition of people with extensive knowledge, sound heritage expertise and practical experience are missing from the current HC and its delegates and does not include senior representation of all aspects of heritage practice. The composition is currently unevenly weighted with few members containing credible heritage experience.

Many heritage experts have experience in a number of heritage disciplines and it is important that members and those who have delegated authority, are chosen from those who have a demonstrated range of skills and are senior within their fields of the majority of the State's heritage places.

A brief search of the State Heritage Register reveals that the vast majority of places are built heritage or have built heritage within the composition of the places. As such it seems logical that the expertise of staff should reflect being competent and being able to assess applications containing built heritage and not being assessed by other disciplines.

Based on my interactions with Heritage NSW in recent years it has become apparent that there is a shortage of senior heritage architects. Applications are often assessed by heritage consultants with educational qualifications in archaeology, and /or planning and with insufficient expertise in architecture.

Q2:How should Aboriginal Cultural Heritage be acknowledged and considered within the Heritage Act 1977?

Aboriginal culture and non-Aboriginal culture as well as the natural environment should form part of the one Heritage Act into the future. All aspects including the identification, assessment, conservation management and interpretation should be well integrated into legislation and its

administration and form part of the review of the 1977 Heritage Act to reflect current heritage conservation philosophy and practice.

Q3: Are the objectives of the Heritage Act 1977 still relevant?

The existing objectives of the Heritage Act 1977 are still relevant for the promotion, education, identification, assessment, statutory protection, and providing incentives and assistance to owners of the State's heritage.

The three 'guiding themes' from the Discussion Paper p7 –

- Making Heritage Easy;
- Putting heritage to work; and
- Making heritage relevant

are nebulous motherhood statements in comparison to the clear objectives in the 1977 Heritage Act.

These guiding themes are inappropriate to consider in the legislative review process.

Because of under resourcing what is missing is the ability of Heritage NSW staff to undertake site visits to fully understand applications, site complexities that would not be apparent from voluminous written word and photographs. It is understood that there has been a directive that staff are forbidden to visit sites. I contend that a simple site visit would save time and the financial burden to Heritage NSW, Local council's, applicants and their professional heritage consultants if these were permitted and would lead to expediting the proper assessment and approval process. This successful approach was available in years past and should be restored.

The Heritage Act does not need to be reviewed to arrange this. But would lessen much frustration from all parties involved in the assessment and approval process.

Q4: Does the Act adequately reflect the expectations of the contemporary NSW community?

It is acknowledged that the NSW community has changed over 45 years. Unless individual community members have been directly affected by the legislation they would not know of the Act. The Heritage Act must be amended continuously to reflect changing times. It is most disappointing that the NSW Government has been consistently using State Significant Infrastructure (SSI) and State Significant Development (SSD) to, in effect, turn off heritage regulation and legislation making the Heritage Act seem weak and not worth having to protect NSW heritage. SSI and SSD classification must not be able to be used to turn off the heritage watch dog or the Heritage Act must be drafted/changed to prevent this occurring. There are many examples of this, none more upsetting than the destruction of Australia's earliest remaining civic square, Thompson Square at Windsor. The determination by the Government that this replacement bridge project was worthy of SSI determination was nothing more than a blatant lie to turn off the Heritage Act.. How can a project be determined to be 'state significant' when it takes upward of 12 plus years to go through the assessment process to complete. Clearly this project was not as significant as it was purported to be. There are many other examples within Sydney CBD and Parramatta.

Heritage NSW appears to be under resourced and in recent years very difficult to contact. The establishment of the SHR and the transfer of responsibility for local heritage to Local government authorities has reduced the community's involvement with the Heritage Act.

Q5. How can NSW Government legislation better incentivise the ownership, activation and adaptive reuse of heritage?

From experience it appears that the general community are unaware of heritage incentives as owners of identified heritage places. The knowledge of incentives available by owning a heritage place can be beneficial to reduce property valuations that affect land tax, local Council rates etc. This is not well enough known. Greater education for the community focussing on the benefits of owning heritage places and the available incentives will be of benefit. Greater emphasis could be provided in Local Council LEP's and DCP's.

If the Heritage Act is to be reviewed in the future, it should be changed to make taxation incentives easier to apply for and obtain for heritage conservation works. A considerable increase to grant allocations for bonafide conservation and maintenance works would also assist.

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

Legislate so that private owners of heritage places who undertake substantial and necessary conservation works can claim tax deductability for their expenditure.

Q7. What sort of incentives might encourage activation and conservation of heritage through commercial and philanthropic investment?

Similar to Q6, incentives could include:

- Transfer of development rights; and
- Better articulation of the current heritage incentive provisions within the LEP's and DCP's

Q8. How could tailored heritage protections enhance heritage conservation? and

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

Classifications have the potential of diminishing the value of "local items" as they will be compared unfavourably to places in higher categories.

All recognised heritage places at Local and State levels should be vigorously protected to the same level.

Those classified at lower categories run the risk of being undervalued and able to be dispensed with.

The locally recognised places of construction materials, be it sandstone, brick, timber / weatherboard or timber slab or other more modern materials are all heritage items of significance and must be treated with the same vigour. Because of categorisation the general community have differing perception of importance for these places to be preserved.

Q10. Would greater community engagement deliver a more robust State Heritage Register?

This is a confusing question.

By robust SHR do you mean a strong and healthy document? I take the question at this meaning, strong and healthy.

The current Heritage Act is a robust piece of legislation and must not be 'watered down'. Greater community engagement in the support for the SHR can only be achieved through better education and advising the community of prospective additions to the SHR.

As the majority of SHR places are within Government ownership it must be the community and Heritage NSW together that decides inclusions and exclusions and not be vetted by a Government Minister.

Political decisions are not the appropriate means of adding or subtracting places to the SHR.

Assessments in accordance with the A.ICOMOS guidelines and conservation principles of the Burra Charter must be the guiding assessment process to provide greater community engagement.

Also greater community involvement in the recognition of any communities heritage is by their involvement in heritage studies that review or identify additional listings.

This method of investigating heritage places involving the community can be more time consuming and this would benefit from greater Government funding to consultancy teams undertaking these studies.

Q11. Would streamlining enhance the heritage listing process?

This question is also confusing as to what is meant by 'streamlining'.

I would expect what is meant is providing 'greater efficiency'

Better financial resourcing for assessment staff/personnel within Heritage NSW would speed up the listing process and also provide for rigorous significance assessments against the established criteria. Assessments from senior professionals with experience and appropriate skill for the places.

Q12. How could we improve the current approval permit system? and

The need for Integrated Development Applications as well as Section 60 and other applications for the same project is doubling up and expensive for both Heritage NSW, Local Council and the Applicant including their heritage consultants.

From experience assessments that are legislated to be determined within 40 days, just does not happen. In recent years IDA's and S60 applications have taken between 6 and 8 months, some even longer. This is absurd and causes much anxiety, unduly extends approvals and costs the community financially.

Individual Heritage NSW assessors seem to be frustrated in their respective fields and take the opportunity with applications to try and redesign rather than to assess the application as presented, thus overstepping their involvement in and delaying the approval process.

Q13. Are the current determination criteria for heritage permits still appropriate?

Permits are not an area that I have been involved.

Q14. How could we improve heritage consideration within land use planning systems?

Current land use planning systems are permitting unsightly development.

Significant historic cultural landscapes with scenic and/or agricultural production values are being subdivided into small lot and dense housing estates containing oversized housing in close proximity.

Heritage, cultural landscapes and land use planning should be synonymous and led by Government to provide sustainable design of these assets and their values within communities.

The linking of Heritage NSW with the Premier's Department is a backward step. Heritage NSW should be linked to the Department of Environment and Planning so that developments around heritage places and within cultural landscapes can be reflective of Local council's development

controls and not necessarily dictated by Government forcing minimum development numbers into Local Council areas. Subdivisions should consider the inherent character of the local areas, the environment, sustainability, orientation for housing to gain solar access and distance between housing and other buildings to ensure open space for deep rooted landscape trees and shrubs etc. Not just a sea of black roofs on top of big boxes with no space between.

Q15. Are there opportunities to enhance consideration of heritage at the strategic level?

Heritage must be considered concurrently at the strategic level and be considered with equal weight to land use, transport, employment, education and health provisions.

The Government needs to restore public trust and not use SSI and SSD to push through unwanted developments as was the needless replacement Windsor Bridge project and other hair-brained proposals like the Powerhouse redevelopment in Parramatta to name just two.

Q16 How could heritage compliance and enforcement be improved?

The NSW Government is just ‘a paper tiger’ and does not use the powers under the Heritage Act to stop owner’s neglect of recognised heritage places. Wilful neglect, to my knowledge has never been tested and it appears that the Government is reluctant to invoke this part of the legislation.

There will always be those who will try to circumvent heritage controls and the state and local levels, neglecting minimum maintenance, allowing uncontrolled vandalism, as well as the carrying out of unapproved works. Compliance can be improved through greater education, a few prosecutions and heritage incentives.

The system relies on others ‘dobbing in’ their neighbour which is an unfortunate necessity.

Q17. How could understanding of state heritage be enhanced?

Utilising community involvement in the production and assessment of heritage studies and reviews is a good start. All heritage whether it be categorised as State or Local importance are located within local communities and cherished with equal values. Having the community owning the assessment and being part of the identification process will ensure continued ownership and long term care of their heritage assets.

Q18. How could we improve heritage tourism or help activate heritage places for tourism?

Heritage NSW grants program could be expanded to include targeted grants for education, tourism and interpretation signage, digital media and apps to promote these areas.

Other benefits are likely to follow on with adaptive reuse of heritage places for tourist accommodation, and other infrastructure that support this initiative eg food outlets, museums, displays etc.

Q19. How could public heritage buildings be activated to meet the needs of communities?

The adaptive reuse of places must be carefully considered and with utmost consideration of their cultural significance both externally but particularly the fabric and finishes and layout of their interiors. Facadism is not appropriate in many instances, particularly those large Government sandstone buildings located in Sydney CBD, for example.

Heritage significance is not restricted to the exterior, it includes the interiors, landscaped curtilages, pleasure grounds etc to present the full story and ability to interpret the place.

Other Considerations:

- Every Local Council must be given the opportunity to have on staff, planners or other staff whose role it is to deal with the areas heritage places. Some Council areas that are rich in heritage assets must have dedicated heritage expertise on staff not just reliant on Government handouts for the infrequent attendance of 'heritage advisers'.
- 'Heritage Advisers' also must have the appropriate expertise in fabric and architecture rather than history, archaeology and planning.
- The inclusion of terms and definitions such as 'curtilage', 'setting' and 'cultural landscape' should form part of the Heritage Act terminology.
- Better provision for the ongoing storage of specialised reports and aboriginal artefacts as well as non-aboriginal relics. Many of these remain in the archives of individuals and are unable to be retrieved. Specific reports on the layering of wallpapers and paint schemes in buildings given to the NSW Heritage Council repositories suddenly disappear or are not adequately catalogued, so have been lost. The archaeology and original reports should be housed , with appropriate funding, within the locality where they were investigated.
- Political interference has no place in the assessment of grant applications, nor the recognition of heritage listings, but alas, from personal experience, political interference seems to have infiltrated into the process and is unwelcome . An example of this is the 'Smarty Grants' from recent years. The administration of these grants has also been less than acceptable by Heritage NSW and the Local Council's when the administration of the works has been overseen by unskilled personnel.