

Submission
No 244

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Name suppressed

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Heritage Act Review

Submission

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

- There should be a high level of expertise and diversity covering *all* areas for which the Heritage Council is responsible and there should be a balance of expertise across all relevant areas.
- The Council must include Indigenous representation
- Members should have deep knowledge and significant experience and skills in heritage conservation
- They should be genuinely independent and definitely not political appointees
- They should be sufficiently expert and skilled to end the outsourcing of assessment and decision-making to outside consultants
- Community heritage groups must have an advisory role – in addition to the National Trust (NSW), which I understand is the only remaining community group connected to the Heritage Council. These community groups must provide advice on development proposals and be listened to.
- The Heritage Council of NSW must be an independent body, not subservient to the political bureaucracy or state politicians/departments/Minister
- The bureaucratisation of the Heritage Council in recent years has had a deleterious effect on the management of NSW heritage.

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

- There must be Indigenous cultural representation on the Heritage Council as well as a structure that enables a voice for Aboriginal community groups connected to issues under consideration
- Aboriginal culture considerations must be part of a holistic approach to heritage – ie fully integrated
- The Uluru Statement from the Heart must be at the centre of this consideration
- An independent Aboriginal Heritage Act aimed at addressing the protection and conservation of Indigenous heritage has still not been enacted, despite having been under discussion for over 20 years. This task is the priority, more important than amending the current Heritage Act, whose objectives are acceptable, but whose implementation has been inadequate and whose politicisation needs to end.

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

- The objectives are reasonable – it is the way that they have been implemented that has been unsatisfactory for a considerable time.
- Better integration of Aboriginal heritage considerations is needed.

- A more nuanced and informed view of how to protect and conserve our environment, landscape and sense of place under the Act is needed.

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

- The *implementation* of the Act has definitely not reflected the expectations of the NSW community. It has demonstrably failed to do so under this government. The implementation of the Act has not been an independent process in recent years. It has been and is entirely political. I believe that the community has no trust in the NSW government's management of heritage in this state. This government has betrayed this trust time and time again.
- Heritage considerations must be integrated, as the first priority, into all state planning processes
- I expect the government and its legislation to provide effective and proper protection to our National Estate – in all its aspects – and in this case, in all areas of heritage. The government, in the people's name, is supposed to be the custodian of the National Estate – it has failed in this duty. It needs to provide leadership in demonstrating to individuals, the private sector and its own employees how to protect and conserve all aspect of heritage – instead, it has put an economic bottom line above this fundamental responsibility. We can see this very clearly in the rampant over-development that the government has enabled and encouraged on its watch and its removal of Heritage Act protections for state significant projects which have resulted in the destruction of so many heritage items and areas.
- As I understand it, in Victoria, Heritage Council advice cannot be ignored or overturned by the relevant Minister, as it can and is in NSW – this is a feature that I would like to see in the NSW process of decision making regarding heritage, along with the abolition of the ability of governments to turn off Heritage Act protections in the case of state significant projects, or any others for that matter. There should be no ability for politicians or bureaucrats to switch off protections under the Act.

Focus Question 5: How can the NSW Government legislation better incentivise the ownership, activation and adaptive reuse of heritage?

- By vigorously protecting NSW Heritage – you can't incentivise if heritage has been destroyed, either deliberately or by neglect. The NSW government is a prime destroyer of heritage, and enabler of individuals and companies to destroy heritage items, so it needs to first look at its own actions and aim to be a leader in protecting and maintaining the heritage areas for which it is responsible.

Focus Question 6: How can we improve incentives within the taxation system to help mitigate the cost of private heritage ownership?

Focus Question 7: What sort of initiatives might encourage activation and conservation of heritage through commercial and philanthropic investment?

Focus Question 8: How could tailored heritage protections enhance heritage conservation?

- I totally reject the proposed NSW Heritage listing categories – the groupings are artificial and could be quite dangerous in terms of their use as they are presented as a hierarchy of importance.
- All items listed are of local significance – to have a separate “local” category as the last category (#4) does not reflect the value/importance/significance etc of many of these items – I note there are no examples provided in this category.
- I also reject the comment on page 15 *“Before deciding to add an item to the State Heritage Register, the Minister should consider not only if reasonable and economic use would be affected by the listing but also what opportunities there are for adaptive reuse and activation.”*
 - I do not agree with this level of political interference
 - I believe that it is vital that such decisions are independent and not in the hands of the Minister
 - What does “reasonable” use mean?
 - Economic use should not be the priority – heritage protection should be the priority.

Focus Question 9: How should heritage items that are residential properties be accommodated under a proposed category scheme?

- See answer above

Focus Question 10: Would greater community engagement deliver a more robust State Heritage Register?

- Of course it would.
- If the “engagement” is authentic.
- If community views are genuinely sort, published promptly, listened to and acted on.
- There are many relevant, keen and experienced community groups out there who have been ignored by the Heritage Council over many years – it would be an excellent exercise to gather them up and listen to how all stakeholders think a genuine, collaborative system would work best – the Heritage Council could reach out, communicate, listen and work together with the many community groups out there who would be delighted to be consulted on how a new collaborate process might work best.
- In my experience, the NSW government and its agencies (eg RTA) pretend to go through a poorly constructed, ambiguously/vaguely worded community consultation process, often poorly organised (deliberately?), do not publish the results and completely ignore the issues/objections/suggestions made. This affects the credibility of the government and makes the community frustrated and angry about the complete waste of their time. It is a deeply disrespectful process on the part of the government.

Focus Question 11: Would streamlining enhance the listing process?

- Of course – if it is done well and only if it is not designed to more efficiently remove the heritage protections in place.

- This question really can't be answered without seeing exactly what this streamlining would look like.
- Who would benefit and how?
- With regard to delisting, with the NSW government owning around 66% of heritage listed items, I fear that this exercise would be a political one designed to make it even easier for the government to prioritise economic benefit over heritage preservation, and ditto developer lobbyists. Sadly, it is easy enough for it to achieve that now.
- If streamlining is about making it even easier for the NSW government and developers to gain access to heritage areas/items for economic advantage, then it would be detrimental.

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

Focus Question 13: Are the current determination criteria for heritage permits still appropriate?

Focus Question 14: How could we improve heritage consideration within land use planning systems?

Focus Question 15: Are there opportunities to enhance consideration of heritage at the strategic level?

- Employ experts within the Heritage Council and return to a recruitment regime within the related public service that makes heritage expertise a mandatory capability for employment – end the concept of general capabilities that can apply across the public service – the lack of specific expertise and specialist experience at all levels is crippling the public service (not only in heritage, but generalists in education, health etc etc etc are leading those critical areas into terrible trouble because of their lack of relevant specialist experience and the deep knowledge/understanding that are critical to good policy development and decision-making.)
- The Heritage Council itself must be independent – the ability of politicians/the Minister to override advice must end
- The membership of the Heritage Council must be independent – this is no place for political appointees
- The consideration of heritage must be integrated across all levels of consideration in environmental, land use and built planning
- The Heritage Council must be resourced to be able to make judgements in its own right and not need to outsource assessments to external consultants – its members must have a high level of expertise to enable it to make authoritative recommendations
- With regard to the three key themes outlined on page 7, I object to #2 – *“Putting heritage to work”*.
 - I hope this is just a clumsy way of expressing the notion that heritage can provide the opportunity for economic benefit – eg, by attracting tourism to a particular area. It is a pity that this was not a key consideration when the state government buried the unique and irreplaceable 1810 convict built brick barrel drain under the concrete foundations of the new Windsor Bridge. There are so many examples of destroyed opportunities that make including this as a legislative theme insincere.
 - I think this statement is around the wrong way – the state government should be put to work protecting heritage – if this is done carefully and respectfully, then

heritage, whether environmental, cultural or built, will be preserved for the benefit of future generations of our citizens (not “customers”).

- Heritage has an intrinsic value that this discussion paper does not acknowledge or seem to appreciate. That value can include a dollar value. And its loss can result in a potential dollar value loss as well – I don’t see that this is ever factored into decisions regarding development that destroys heritage areas or items (eg North Parramatta).
- All Local Councils must have a Heritage Advisory Committee – and take advice from that committee on all matters of local heritage. This process must be reported on. Very few local councils now have active/existing HACs. This needs to be a requirement of all NSW local councils. They have disappeared over time and this should never have been permitted to occur.
- All local councils must have Heritage Officer – there needs to be a common core of position criteria for this role for all local councils that could then be added to by each council, to cover unique local circumstances.

Focus Question 16: How could heritage compliance and enforcement be improved?

- This needs to be dramatically improved. Firstly, start by enforcing the act in a systematic way.
- Removing the exception under the Act for state significant infrastructure which the NSW government and its agencies have used as a major loophole – what has been destroyed through this loophole is a total disgrace.
- Self-regulation and self-assessment are not appropriate – they do not work
- Enforcement and regulation only work if there are sufficient funds for this to occur, so funding needs to be properly allocated – as an example of this broader problem: The NSW Building Commission reported recently that of 500 buildings surveyed, 36% had serious defects and only 17% of those had been reported to the regulator.
- In short, regulate and resource this adequately.

Focus Question 17: How could understanding of state heritage be enhanced?

- By educating the NSW government and all its departments as a priority for a start.
- By properly funding the Heritage Council and the public service that supports it so advice is quickly accessible; guidelines are up to date and available online; support materials and quick tutorials developed and posted to assist the public.
- Seek advice from the many heritage community groups out there, including the National Trust (NSW) – they have much to offer – ideas, suggestions, experience, expertise.

Focus Question 18: How could we improve heritage tourism or help activate heritage places for tourism?

- I find this question disingenuous in the face of so many lost opportunities due to the destruction of heritage places by private developers who have operated without appropriate constraint, and also inexcusably, by the NSW government itself.

- Just one example is the deliberate destruction, despite innumerable attempts over a period of years, by the local community, heritage and historical groups, local councillors, academics, individuals (voters) to prevent it, of Thompson Square in Windsor, designed by Governor Macquarie and which now has the irreplaceable 1810 convict built brick barrel drain buried under tons of concrete and roadway running onto the new Windsor Bridge. The old Windsor Bridge, also of historic significance, has also been determinedly destroyed. In York, UK, I was able to sit in a coffee shop and admire the Roman built foundations of the Roman City through reinforced Perspex glass; in Galway, Ireland, I was able to visit the foundations of a Roman Villa in the centre of the city, carefully and proudly preserved by their district government – both terrific tourist attractions and representative of innumerable tourist attractions across the globe. The Windsor convict barrel drain is the oldest piece of colonial engineering discovered – it is of national significance – irreplaceable - and the RTA and the NSW state government thought it ok to pull out a few bricks (whereabouts unknown) and then permanently bury the rest. It beggars belief. This could have been a major tourist drawcard, as was pointed out by informed community groups many times, for the Hawkesbury, but there is no chance of that now due to the stubborn determination of the RTA and the NSW government to refuse to engage with the relevant groups, academics and advocates.
- There are so many examples of this kind of deep disrespect for heritage, extreme ignorance and failure to listen to the recommendations and wishes of not only the local community (including the local Aboriginal community) but experts in the field.

Focus Question 19: How could public heritage buildings be activated to meet the needs of communities?

- By preserving them so they still exist to be activated would be a good start.
- We have lost so many opportunities to benefit and appreciate the delight and joy that can come from connection with our heritage/history/stories/country that heritage sites provide. So much has been squandered through neglect and by enabling state government and private developers to ride rampant over the interests of individuals and communities.
- The process of activation has not been open and transparent – too often, secret deals have been arranged out of the public view between the government and private developers, cloaked by “commercial in confidence “ arrangements. This is entirely unacceptable and often a squandering of public assets for huge developer profit (and not commensurate with taxpayer benefit). Only after long periods of time have elapsed and often through long GIPA/freedom of information efforts, has the public, far too late, had access to relevant information that reveals the unacceptable nature of these projects. I think we can all think of many examples without my naming them.

Thank you for the opportunity to offer my thoughts to the committee.