

Submission
No 247

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Name suppressed

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Partially
Confidential

This submission is based on 40 years experience as an educator and conservation practitioner as well as an owner of a State and a locally listed property. It challenges some or many of the unsubstantiated claims made in the discussion paper made without any supporting research or underpinning documentation.

All heritage items significant at the local government level are important to the local community. Some locally significant items are also significant to the people of the State whilst others also meet the established criterion for listing National and or World Heritage levels.

The overwhelming support for local heritage against inappropriate development is amply demonstrated by the recent community outcry over proposal for such heritage items as Willow Grove in Parramatta, Thompson Square, Windsor and the Sirius Building in Sydney. There is also significant distrust of the current NSW Government who have demonstrated their distinct disregard for State significant places in recent years.

There is a considerable level of misinformation being promulgated by those with self interest such as some State Government entities who are responsible for the maintenance and protection of around 2/3 of State heritage items. Some state entities such as the Attorney Generals Department have over many years budgeted to prepare Conservation Management Plans to guide works on their asset. Security systems have been installed where essential, upgrades in technology integrated into the buildings, disabled access provisions complied with. In contrast other state entities such as the RTA now RMS appear to have ignored the requirement for maintenance of State Items and then use the state of neglect as an excuse to demolish State listed items. This inconsistency of care for State listed items leads to distrust amongst heritage practitioners and creates confusion in the community.

Until recently grant applications were submitted to a specialist heritage grant application officer, assessed by an independent expert panel including such skills as quantity surveyors to assess the budget, conservation practitioners such as heritage architects, historians and others where relevant expertise was required. Letters of support from the heritage advisor or similar were a required component as was an indicative budget. Recent observations reveal that criteria appears to have changed with letter of additional support from the State Member as an essential component for the application to be considered. Some political party members boast on their facebook pages of their role in obtaining grants.

It is this inconsistent approach and application of the requirements of the Heritage Act, particularly by some State government agencies coupled with political interference in listings, awarding of grants, works programs, underfunding of the section and the current lack of breadth and relevant expertise of staff and their inexperience that could be the catalyst underpinning the claim that "*a perception has developed that heritage listing can be a burden, with the most minor activities subject to costly regulatory obstacles*" as the major issue, not the Act itself.

The questions posed in the discussion paper will be addressed against the background statement above.

Focus Question 1. What should be the composition and skill set of the Heritage Council of NSW.

All members should have a background in heritage with many being representatives of the organisations who are skilled in heritage, preferably with a minimum of 15 years relevant experience. Organisations / professional fields that could nominate appropriately qualified representatives are identified below but not limited to:

RAIA

Institute of Planners

RAHS
National Trust
Land and Environment Court
Representative of the first nations people
Institute of Landscape Architects
Institute of Archaeologist
Property Council of Australia
Development of the Australian Curriculum Australia

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

Firstly this question should be resolved by discussions with the First National People prior to any adjustment to the Heritage Act.

One area that may begin to address the potential for integration any proposed integration of Aboriginal Cultural Heritage into the Heritage Act could be the inclusion of Aboriginal consultants in community based heritage studies.

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

The objectives of the Act remain relevant today

The three 'Guiding Themes' on page 7 of the Discussion Paper, 'Making heritage easy', 'Putting heritage to work' and 'Making heritage relevant as themes reveal ignorance of legislative requirements by those involved in preparing this discussion paper. As objectives these themes for the Heritage Act translation in to legislation is not possible.

It is the current lack of meeting the objectives by those whose role it is to implement the objectives that is a current issue This includes some of the recent NSW State government developments.

Management of the objectives of the Act has not been adequately supported in recent years by ensuring there is a relevant and complete range of skill set and experience in heritage within the staffing profile. Some of the current staff have no real world experience in heritage when you review their profile. Long term public service experience is not an acceptable substitute for professional experience.

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

There is currently an elevation on the recognition of Australia as a multi cultural society. Whilst it is acknowledged that this continues to occur it is not a phenomenon that has occurred since 1977 when the Act was promulgated. Migration during the gold rush eras and World wars have and continue to impact on migration to Australia. The current Act provides for recognition of any place provided it meets the established criterion regardless of culture with examples of State items where the mix of cultures is recognised and celebrated such as at Hill End.

There is however a distinct lack of awareness particularly amongst owners of local heritage items about the resources available to provide guidance on maintenance and such potentially complex issues such as salt attack and rising damp on the NSW Heritage web site. This statement is underpinned by personally experience when undertaking a review of 25 local items. Despite years of advice home owners are still using cement render to hide or "fix" rising damp and dissimilar metals usage remains as an issue for roofing repairs. This lack of awareness is a reflection on those responsible for implementing the objectives of Act.

There is nothing wrong with the Act but there is considerable concern amongst practitioners that the current expertise mix at Heritage Council level, Senior Management and staff do not meet expectations of the contemporary NSW community. The Act outlines deadlines for responses but in recent times staff repeatedly fail to meet these deadlines because the staffing level is inadequate and the staff don't have the skill set or experience to actually professionally assess the application. We have recently experience a delegated assessor interpreting a silt barrier as a retaining wall whilst a more senior staffer stated that surveillance cameras and a video is appropriate as a surveillance system in support of another delegated staffer suggesting a relocation of a swimming pool to a location where visual surveillance would no longer be available. Whilst the appropriateness of this suggestion is out of order the fact that it was given goes to the concerns raised about the appropriate skill and expertise of some staff.

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

The NSW Government could better incentivise care and conservation of heritage items by increasing the scope and funding of grants to private owners but also by removing all political interference from any grant assessment process and ensuring that grants are awarded to owners, groups who can demonstrate that they have both access to the appropriate professionally competent advice and the independent funds to complete the works proposed.

By way of an example. In our community around 30 applicants applied for funding under the Heritage Near Me program. Some were initially culled because they were assessed as not meeting the grant criterion. The remaining were lumped together for further assessment EXCEPT the one that the State Minister / State member had personally visited and provided a letter of support This church the received the maximum funding in the first round. Another church with similar request for repairs was awarded the minimum amount as a wind up of the grant program. The significantly different treatment of all of these owners of heritage items has left many owners disgruntled about heritage and their unfair treatment.

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

Simplify the financial incentives, make it compulsory, currently discretionary, for all Local government to implement the rating concessions for owners of listed heritage items.

Tax incentives for conservation and maintenance works as well as including information with annual rate notices from local government about these and any additional tax incentives developed.

Any incentives must have long term benefits and include requirements for the ongoing maintenance of the item for any recipient of such benefits.

Consider adopting schemes such as the Heritage Enterprise Grants scheme in the UK.

Some Councils include a heritage component in their rates, others don't. If introduced across NSW this heritage rate component could then be used as funding grants for local heritage items, initially in council ownership as good practice examples then later to individual owners of heritage items based on a merit grant scheme to owners who also demonstrate the capacity and will to continue to maintain their asset. Rating discounts should be removed if the owners fail to continue to maintain their heritage item based on say a 10 year reassessment timeline or when a change of ownership occurs.

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

Taxation incentives for sponsors/ owners who undertake conservation of vacant or currently unoccupied heritage places for adaptation to a prior or new use.

Taxation incentives for owners of State Items who discount rent to allow heritage based community to use the place.

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

All heritage items should be treated equally under any legislation. Tailored protections are inappropriate. The proposed categories are at odds with the well established criterion for establishment of the significance of the place. If an item is assessed as meeting the criterion in accordance with the assessment of significance guidelines, its ownership, its classification ie cultural landscape, relic, object, or a building etc is irrelevant. State heritage items are of significance to the people of NSW and all items deserve same level of protection. Independence Professional assessment of the individual components of the place should then guide any proposal for change.

The recent amendments to the Standard Exemptions rely on self-compliance and reporting by owners and run the same risks as those associated with private certification of developments.

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

Refer to the answer above

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

Community involvement which challenges the current State government proposals to heritage places is ignored. Some State agencies and some developers appear to be well aware the all that is currently needed is to “tick” the box to address community engagement requirements.

Until the last few years Heritage NSW staff were accessible to consultants and the general community willing and able to be contacted to discuss applications or seek general heritage advice. This contributed to a positive experience, timely outcomes and well considered advice. The current phone service contact for Heritage advice has little or no ability to assist any general community member with an acceptable level of advice. Emails go into the ether with either no response or a reply that does not address the issue.

An email sent a couple of months ago expressing community concern about unauthorised works on a State item remains unanswered and when followed up with the answering service the only advice provided was that there was a confidential letter re this project in the file. I am no longer expecting a response and I suspect that further damage is being undertake to the particular State item which does not have any public record of any approval for works but is shrouded by scaffolding.

Last week when seeking clarification/ confirmation of the most recent State listing sheet for a couple of state items with multiple listings I have received two different listing sheets for the same item with significantly different information some of which is clearly incorrect. To date request for further clarification via return email remain unanswered. As an experienced practitioner I am able to identify these obvious error, challenge the accuracy of the information provided but it should not be my role. As a community member as well as practitioner this experience has further seriously undermined my reliance on the ability of the staff to provide basic and accurate information to consultants and the community.

Focus Question 11: Would streamlining enhance the listing process?

The reform proposal was trialed many years ago by the NSW Heritage Office and whilst assisting in identifying many obviously missed state significant items, many community group submissions were not acknowledged or actioned. The Federal Government has previously used a similar system requesting submissions for National nominations. Some community submissions assessment remained incomplete for over 14 years repeatedly replaced by following year nominations until the then Minister ruled that anything beyond the top 10 nominated items would be removed from further consideration. It is obvious that the current staffing levels and expertise are insufficient to assess the existing nominations and the proposed reform will simply exacerbate the current situation and further antagonise practitioners and the community.

More appropriately qualified and experienced staff resourcing coupled with appropriate assessment teams within Heritage NSW could speed up the listing process. Rigorously researched significance assessment against the established criteria must always underpin the listing process.

Many heritage colleagues have recently expressed the opinion that there is nothing wrong with the Act but the issue is the productivity, expertise and lack of accountability by those administering the Act.

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

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

The recent introduction of the Approval Pathway Decision Tree which rely on self-compliance and reporting by owners and run the same risks as those currently associated with private certification of developments.

What mechanisms are in place for significant alterations and inappropriate works leading to the loss of significance to be expedited by a series of works undertaken under this self assessment process over a limited timeframe but divided into sections of works self determined as minor in nature and deliberately sectioned into works with a value of under \$150,000 undertaken by non heritage contractors and supported by documentation prepared by non heritage experienced consultants without adequate supervision of heritage practitioners? This may already be happening!

The premise that proposed works under \$150,000 are minor in nature are flawed and in conflict with a recent determination by heritage staff under delegated authority.

By way of example a state agency applied for a Minor works exemption to address a WHS issue late last year. An extremely experienced Conservation Architect very familiar with the site prepared the documentation in association with former HSW Heritage office staff now located in another state agency. Both these practitioners have had considerable experience in the preparation of successful exemption applications for over 30 years and considered that an exemption was the appropriate path. The initial recommendation supporting the exemption was overturned by a more senior staff member. The 21 day determination limit advising of the refusal was not met. The Heritage staff then participated in a site visit but rather than a specifically focused site visit those involved took time to indulge themselves roaming around the site and taking photos of themselves in the building. This experience was in total contrast to any previous site visits where staff have behaved in a timely and professional manner.

The value of the works was \$15,000. The final determination took 3 months, unnecessarily cost the state agency, considerably delayed the proposed works which had hoped to be scheduled during the Christmas closure of the place and required relocation of work to another location involving further cost to the State agency.

The objective of the Act to assist owners with conservation of their assets was not demonstrated by the staff involved in this case study and in comparison to past Section 57 applications submitted in over 40 years of practice. One staff member seemed to believe that he had a role in designing a solution rather than independently assessing the proposal.

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

Require all councils to employ a full time heritage officer or a staff member with expertise in heritage considerations. Many councils do not have Heritage Advisory committees and recently many councils appear to be disbanding these community advisory committees.

Funded heritage advisory positions were introduced after the establishment of the Heritage Act as an educational and awareness strategy associated with the new Act. It is now 45 years later and Local Councils are still being funded under this program. The continuation of this program has allowed many Local government areas to rely on this program rather than ensuring a qualified and experienced heritage officer position is included in the recurrent staffing profile. Councils relying on part time 2

days per month and coupled with ongoing free advice to the community has been to the detriment of heritage. Free advice by eg archaeologist and or a historian on building fabric deterioration issues or complex planning issues to the community is occurring and this is to the detriment not only of heritage fabric but to the community's understanding of heritage.

A community member cannot obtain free traffic advice or structural engineering advice and the writer has held a long term view that the long standing provision of "free" heritage advice has undermined the importance of heritage in the community and allowed Councils to avoid their responsibility under the provisions of the Heritage Act allocating by it to a part time activity.

Private practitioners are required to undertake "continued professions development" but it is clear that many public servants are not required to do the same. Placing the same requirements on professional qualified public servants to undertake relevant professional development might also improve planning decisions at all levels of government.

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

In addition to the suggestions made above and by the NSW government reinforcing via its budget allocation, compliance with including annual reporting of their consideration of heritage at a strategic level. Ie lead by example as the owner of 2/3 of the NSW State items.

Include Heritage as a significant item for consideration within the State Significant Infrastructure provisions.

Similarly require all proposals for development adjoining State Significant items to be independently assessed.

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

Enforcement of controls on SHR-listed places requires greater resourcing and a broadening of the skills and expertise of Heritage NSW current staffing profile. Improved heritage compliance and community confidence in the current system by mandating an immediate investigation for all reports of unauthorised works. Action should involve an experienced Conservation Architect who has been delegated with stop work powers.

The annual report should include a list of any stop work orders issued identifying the sites and those involved as a deterrent against non compliance.

This will only be possible if reports by the community and practitioners are taken seriously and investigated. This is currently not occurring, particularly if reported to the Customer Strategies Team via 9873 8500 or Heritage Mailbox. The writer of this report and colleges can confirm that when raising non compliance issues over the past few years these appear to have been ignored with no investigation being undertaken by Heritage NSW staff.

There is also a perception by some owners that they are not required to notify Heritage NSW and that they can do as they please, particularly if undertaking internal changes. Removal of heritage features such as significant ceiling and wall detailing and decoration or re plastering of walls with cement render all lead to not only the loss of significance but considerable deterioration of historic fabric requiring expensive remedial works at a later date.

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

If the NSW Government led by example by respecting State Heritage and promoting well considered heritage outcomes rather than invoking State Significant Infrastructural and ignoring Heritage Council advice their community would have a considerably better understanding of enhancing and also respecting heritage significance.

Recent State government actions such as the Windsor Bridge Replacement Project and Willow Grove appear to empower developers and state entities such as the RMS that heritage is an impediment rather than an asset to be maintained and enhanced with appropriate development.

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

The State Government could establish a specific grants program with a dual focus, one for community groups who are currently operating heritage tourist attractions to improve their access to technology and promotional marketing and a second to support willing owners of heritage items to consider adaptive reuse of these items as bed and breakfast accommodation or similar. Whilst this has and is continuing to occur there are examples of heritage ruins, former houses and outbuildings no longer useful which could with some financial support be adapted to accommodation.

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

Any adaptation of any building regardless of ownership, public or private must be individually assessed taking into consideration its heritage significance. State agencies who have redundant State listed items should be funded to explore and annually report on community consultation regarding opportunities for local community use of such items, including potential costs and ongoing maintenance should the asset be made available for a community use perhaps at a reduced rental. A Conservation Management Plan and Maintenance plan would be the minimum information need to guide such community use. Occupied and regularly used buildings are more likely to be adequately maintained.