

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Name suppressed

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Partially
Confidential

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Comments on the Review of NSW Heritage Legislation Discussion Paper.

To whom it may concern,

I am the person who successfully nominated the St John's Anglican Church Precinct – Camden (SHR 2006) for inclusion in the NSW State Heritage Register. Later I went on to unsuccessfully nominate the place for inclusion in Australia's National Heritage List.

From around 1986 to c.2015, I was Treasurer or Church Warden for the Camden Anglican Parish. This Parish is in both the Camden Council LGA and Wollondilly Shire LGA. I was involved with maintaining the Parish properties and many grant applications for maintenance and restoration. The most successful were significant grants under the Bicentennial Grants scheme and the Rudd Government's Economic Stimulus Plan. The period saw the continued use of the buildings. It included modifying the St John's Rectory, constructing a new hall at Mt Hunter, and obtaining development consent for a new multi-million-dollar worship centre on the St John's Precinct.

Since the listing of St John's, I've made several submissions on development applications for heritage places in the Camden LGA and addressed the Camden Local Planning Panel.

Generally, I found the State Heritage Register Listing process straightforward but time-consuming by the NSW Government helpful. The National Listing process was more opaque. My dealings with local government were the most complicated and times confusing and obstructive.

I offer the following observations based on my experience.

- Ownership and governance of heritage places

Many of the older heritage and potential heritage places in NSW are associated with a religious or benevolent organisation. Often these heritages places are not owned but held in a trust whose trustees permit the organisation to use the place.

Sometimes original donor was a prominent person, fully aware of the future significance of their gift and the likely future costs. Such trusts were usually created with precise terms and sufficient assets to protect the place and ensure its future.

Sometimes the original donor simply willed money to the organisation for a specific purpose without supporting trust documents.

Similarly, things (typically burial sites) were sold for varying amounts for fees, which included perpetual maintenance.

Over time the NSW Parliament has delegated authority to these organisations to alter the terms of the original trust through organisation specific legislation.

Also, the organisations are often operated as charities that enjoy exemptions from governance standards (e.g. ACNC Basic Religious Charity) and seemingly not required to account for the expenditure of trust funds.

These trusts and contracts often include more rigorous protection of a place than any existing heritage legislation. It seems the delegated authority and governance exemptions might operate to undermine the intrinsic heritage protection of a place.

For example: At Camden, the Anglican Church Trust Property Act 1917 has allowed the sale of over 300 acres of land in the last 100 years. The land's original trusts contained specific provisions for the application of funds and maintenance of structures. Further, the St John's Precinct site contains nearly 1900 interments typically paid. Yet, the last set of Parish accounts shows no provision for maintenance or disposition of funds from previous sales.

Perhaps it is time to repeal the organisational specific delegated authority and return all trust administration to the courts (as is the case in Victoria and Queensland).

Perhaps it is time to remove the ACNC governance exemptions.

- Charitable organisations and heritage.

I suggest an underlying tension between maintaining heritage buildings and the standard operational requirements of charitable organisations, be they religious or benevolent. Charities intrinsically have liquidity problems. There is almost always more to do than funds permit.

I suggest the decline in religious observance and membership of established churches presents unprecedented problems. Maintenance of cemeteries, empty spaces and large buildings is falling on fewer and fewer people. It seems the impact is not only in resources but also in imagination. Organisations simply cannot imagine a productive way of using a building or space, so they sell. Such sales effectively transfer a public space into private hands while giving the organisation a windfall gain (places were often gifted initially).

Perhaps it is time for the public acquisition of significant heritage places and spaces (primarily cemeteries).

For example, St John's at Camden claims two-thirds of their precinct is too expensive to keep, of no use to the Church, and so must be sold for development. The ample empty space would make an excellent addition to the nearby council operated Macarthur Park.

- Development applications and consent recommendations.

It is not unusual for Councils to require a heritage impact study or conservation management plan to accompany a development application.

I noticed the quality and content of these documents varies. The worst are unreferenced and lack any reference to generally held professional views expressed in professional organisations' articles, publications, or policies.

Perhaps it is time to formulate and enforce standards for heritage documents (both HIS and CMP) prepared for development applications.

Perhaps it is time for the formal accreditation of HIS and CMP authors.

- Long-standing development consent.

Heritage places are sometimes held by an organisation for many years. It is not unusual for a development to be granted and the work not started or completed for many years.

Community standards and views on heritage change over time, and so a previous development consent might no longer be appropriate.

Perhaps it is time to place time limits on development consents for heritage places.

- Uncertainty.

Much of the legislation and regulations surrounding heritage are imprecise. The decisions and processes are distinctly different according to LGA. Further, my local LGA seems to have difficulty retaining skilled heritage officers.

From what I can see, the percentage of development applications for State Heritage Register listed places, or significant development and demolition of local items, or items within a Heritage Conservation Area is small. It seems a waste of resources and a drag on both councils and developers to deal with a tiny number of unusual matters across different LGAs.

Perhaps it is time to place more rigour in the rules and create some type of complying development scheme for heritage items and refer all exceptions to a central body.

- Community driven process

I strongly support the proposed reform, provided it has a mechanism for emergency protection and protection during the evaluation period.

- Abridged delisting process

I am wary of an abridged delisting process. Some places are listed despite opposition from their owner, usually by community members.

Listing is a time and resource-consuming process. I fear an abridged delisting process may be abused and seen as little more than a cost of doing business.

Perhaps abridged delisting should only be permitted after holding the property for, say, 50+ years after listing.

- Ministerial approval

I do not see a role for ministerial approval in heritage matters. Approval should be automatic upon recommendation by the relevant expert body.

Perhaps Parliament should have the ability to override decisions by some sort of disallowable instrument.

- List categories

I feel a categories system like the one used in the UK would be more appropriate. This system is based on age and rarity, aesthetic merits, selectivity and National Interest.

Under this system, the use is 'appropriate and viable, but modifications require approval.

Perhaps a category system based more on heritage criteria and less on economic criteria would be more appropriate.

- Funding of heritage places.

There is a need to recognise some heritage places do not have a compatible 'adaptive reuse', or the reuse would require closing the place to the public. For example: Converting a Church to a private residence, a Church Cemetery.

Perhaps there is a need for more heritage funding sourced through something like the UK's National Lottery Heritage Fund or taxes on windfall gains when a heritage place is sold.

You may contact me on _____ to discuss this submission or require further information.

Yours Faithfully,