

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Ku-ring-gai Council

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Hon Shayne Mallard MLC
Chair, Standing Committee on Social Issues
Upper House Committees | Legislative Council
Parliament of New South Wales
Via email Committee.SocialIssues@parliament.nsw.gov.au

Dear Mr Mallard

Ku-ring-gai Council Submission on NSW Heritage Act Discussion Paper

Council acknowledges that the current Heritage Act 1977 discussion paper is in the first stage of review, noting the economic impacts of climate change, the 2019 bushfires and Covid-19 pandemic, as well as a renewed focus on Aboriginal Heritage.

Council is generally supportive of the themes of *Making heritage easy*, *Making heritage relevant*; and *Putting Heritage to work*, however maintains that further details are required to ensure appropriate 'heritage' outcomes are achieved. Council raises some concern in relation to the focus on, or compartmentalisation of state heritage items rather than considering a more holistic view to heritage items within NSW.

1. Focus on heritage value primarily

Council supports the concepts of providing owner incentives and encouraging philanthropic investment outlined under 'Activating Our Heritage' as long as the focus does not become about the acquisition of heritage for financial gain rather than the protection and conservation of the heritage values of the place.

2. Heritage At Risk Register for NSW?

The use of the Heritage Enterprise Grants UK as a case study is interesting and raises the question as to whether NSW should also develop a 'heritage at risk' register.

3. The reality of heritage identification in NSW – interiors matter

Under the umbrella of heritage identification, the concept of tailoring protections in response to the nature of the heritage item is logical. However, in the majority of cases in relation to state heritage items, an experienced heritage professional is involved in the process, undertaking an assessment of significance (including determining those individual elements of significance). The process is usually collaborative, with input from a number of experienced stakeholders and it is highly unusual that elements of little or no significance require preservation.

It is therefore questioned whether the New York approach, which appears to allow unfettered removal of interiors from heritage-listed residential buildings, would be appropriate within NSW, where there is high regard held for interior spaces, places and fabric. This regard is reinforced by Ku-ring-gai Council who have been successful in taking legal action against residents who have undertaken unauthorised internal works.

4. First principles of heritage - considering significance is key

Categorisation of heritage to allow flexibility and streamlining around works that could be undertaken to heritage items would need to be considered on a case-by-case basis as each heritage item is significant for different reasons.

5. Streamlining may lead to dismissing best 'heritage' practice

The reputation of the approvals process both at local and state level is often discounted as lengthy, inefficient and time-consuming. However, Council staff have a breadth of experience within the public and private sectors, where the approval process can be efficient and streamlined. It is evident that the process usually comes down to the experience and expertise of the applicant and their ability to interpret the legislation and provide the requisite information. The majority of qualified heritage professionals would attest to the fact that the 'system' can be efficient if the applicant is educated in relation to the process, notwithstanding professional disagreements that occur.

6. Community-driven nomination undermines the heritage profession

Council maintains that the local community plays a large role in maintaining and promoting heritage within the Ku-ring-gai local government area. However, whilst it is important to engage with the community in relation to heritage, instigating a new community-driven nomination process could lead to large inefficiencies in the system as different agendas are funnelled through a heritage mouthpiece. It is not appropriate for the heritage process to continue to be vulnerable to ongoing and unrestricted public influence as this could undermine the integrity of the system, notwithstanding that this would be very unlikely to happen in any other profession.

7. Further clarification is required in relation to changing 'heritage permits'

Whilst not containing many state heritage items within its jurisdiction, Ku-ring-gai Council has some concerns around the proposed future discretion relating to heritage consents for state heritage items. The Standard Exemptions under Section 57 of the Heritage Act already allow flexibility in relation to 'maintenance' and 'conservation' so it is not clear why further flexibility is required. If too much flexibility is introduced at state level, this eventually filters down to the local level and sets a lower benchmark for Council in relation to their management of local heritage items.

8. Relaxation of enforcement measures are not appropriate

At a local level, Councils' experience non-compliance with legislative provisions on a daily basis. In the Ku-ring-gai Council area, a certain percentage of this relates to heritage matters. It is likely that easing compliance and enforcement measures in relation to heritage would simply further encourage non-compliant work.

9. Heritage promotion and engagement should be a priority

Educating the community about heritage is crucial to its ongoing survival. Whilst other nations seek to preserve their heritage, Australia does not seem to hold its heritage in the same regard. In the current context, heritage education could be best achieved through tourism and the positive activation of publicly-owned heritage spaces. Making this a priority might negate the requirement to completely overhaul the heritage Act.

10. State significant Development affecting heritage places

It is essential that the Heritage Act outlines provisions to ensure the protection of heritage places, which are vulnerable to all types of development.

11. The Importance of the Burra Charter

The Burra Charter is the underlying guideline document for works to heritage items and heritage places in NSW and has been a foundation charter in the identification and management for heritage across many decades. The Charter outlines the listing criteria for heritage items and provides a clear and structured approach to managing heritage places. It is essential that any revision of the Heritage Act references this document.

12. Function of the NSW Heritage Council

It is essential that the function of the NSW Heritage Council, as a governing body of representatives with a wealth of heritage knowledge and experience, continues. The role of the NSW Heritage Council should be carefully outlined in any revision of the NSW Heritage Act and the Council relied on for decisions, to ensure there is an adequate level of expertise at the highest possible level. This will ensure that important decisions relating to heritage are informed and are based on best practise heritage principles. Membership should have suitably experienced and qualified heritage practitioners

13. Consistency with Environmental Planning & Assessment Act 1979

Any proposed amendments to the NSW Heritage Act need to be wholly consistent with the Environmental Planning & Assessment Act and Regulations and strategic planning practice in NSW.

If you require any further information please do not hesitate to contact me.

Yours sincerely

Antony Fabbro
Manager Urban & Heritage Planning