

**Submission
No 258**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Queanbeyan-Palerang Regional Council

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25 June 2021

The Director,
Standing Committee on Social Issues,
Parliament House, Macquarie Street,
Sydney NSW 2000

Dear Stewart Smith,

Submission on review of NSW Heritage Act 1977

Thank you for the invitation to make a submission to the NSW Legislative Council's Standing Committee on Social Issues inquiry on the review of the NSW Heritage Act 1977.

The discussion paper on the Review of NSW Heritage Legislation, April 2021, has been reviewed together with the terms of reference for the inquiry. The attached submission has provided suggestions and input based experience of QPRC and related to the terms of reference and the points raised in the discussion paper. It has also considered aspects of the Heritage Act 2017 (Victoria) which is a recently new Heritage Act.

Council's Program Coordinator Land-Use Planning, Communities and Spatial Services, Lorena Blacklock, is available to clarify and expand on any points raised in the attached submission and can be contacted

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Yours sincerely,

David Carswell
Service Manager, Land-Use Planning
Queanbeyan-Palerang Regional Council

Encl.

OFFICES

144 Wallace St, Braidwood
10 Majara St, Bungendore
256 Crawford St, Queanbeyan

POSTAL

PO Box 90, Queanbeyan NSW 2620

PHONE

P: 1300 735 025

EMAIL/WEB

W: www.qprc.nsw.gov.au
E: council@qprc.nsw.gov.au

ABN 95 933 070 982

QPRC Submission on NSW Government's Proposed Amendments Heritage Act

Introduction

Queanbeyan-Palerang Regional Council (QPRC) is in the south east of NSW adjoining the ACT. The local government area covers the towns of Queanbeyan, Bungendore and Braidwood as well as the villages of Majors Creek, Captains Flat, Araluen, Nerriga, Mongarlowe, Rossi and Hoskinstown. Currently QPRC has 20 listed items of State Heritage significance under the NSW Heritage Act 1977, which includes the first and at this time, the only state heritage listed town, being Braidwood.

This Council has also actively promoted heritage through such things as local heritage grants, a free heritage advisory service and special heritage grants for many years.

Need for Legislative Change

In considering the discussion paper and the proposed review, a short analysis of the current NSW Heritage Act and the more recent Victorian Heritage Act was conducted. The review is attached for reference and is recommended to be reviewed as part of the process. The Victorian legislation has its Heritage Act as an all-encompassing Act that covers World, national, state and local heritage. This is recommended to be considered rather than having heritage covered in disparate acts.

Consideration to including Aboriginal Heritage either within the revised Act or be the subject its own Act should also form part of the review. The importance of Aboriginal heritage should be reflected by having its own Act rather than spread between Local Environmental Plans and the National Parks and Wildlife Act as it is currently. Effective engagement should occur with the community in developing the Act and the new Act or a revised Act should include objects directed towards effective communication with first peoples.

Many of the flaws in the system become evident in the process to manage development. There are continuing attempts in NSW to streamline the planning system to reduce complexity and improve timeframes for development. The review of the Heritage Act should be cognizant of this process and the unfortunate continued layering of legislation and process that has occurred and avoid adding to this problem.

There is the opportunity to learn from the more agile system of local heritage item listing and the review should take advantage of the experience of local government in managing locally listed heritage items. Collectively there are well over 20 000 locally heritage items listed in the various local environmental plans across NSW and a corresponding wealth of experience.

State listing has not kept up with the progress of local heritage listings, the use of community-based heritage studies and heritage advisory services that many councils invest in. Much has been learnt at the local level when engaging the community in the listing process and the options to deal with the political implications that often arise from proposals to list places against the wishes of landowners. Such lessons should be reflected in the provisions of a revised Act.

Adequacy of the Heritage Act in meeting needs of customers and the community and the protection of heritage

From a local government perspective, the needs of the community and customers relates to the ability to understand and manage the process for using and maintaining a heritage building or place. This need includes not just the system of management but the ability to access funding to support the maintenance of buildings. In the local case this has been a significant concern of the Braidwood community which has been consistently expressed to the Council since amalgamation in 2016. Notwithstanding this QPRC has run a successful heritage funding programs to support works on heritage listed buildings and places for nearly 30 years. The works funded mainly relate to maintenance and safety works. The maintenance burden of these buildings should be recognised with ongoing commensurate funding provided for the State heritage listed items together with the promotion of heritage. The promotion of heritage should also include the ability to access expert heritage advice.

It is also recommended that a review of the common issues associated with managing, conserving and adapting heritage listed properties would be useful in understanding the need of owners and users of heritage buildings and places. For example, at a local level the following issues regularly come up for works on local and state heritage items:

- Access
Issues of providing access to meet the Disability (Access to Premises – Buildings) standards.
- Carparking
Balancing the need to provide car parking with the retention of curtilage and impacts of basement excavations.
- Signage
Guidance of signage especially where the adaptive re-use of the building involving a commercial user or retailer wanting to use fixed corporate signage.
- Extent of land incorporated into listing
Often the easiest way to identify a property for listing is to reference the Lot and DP. In some cases, the building or place occupies a small proportion of Lot and the listing affects every other building or place on the lot even though it is not listed. This could be improved by limiting the extent of the area listed to the curtilage of the building. The expense of surveying curtilage would be made up in the savings to future applicants that do not have to go through the Heritage Act process for works that do not affect the heritage building (e.g. 50 Canberra Avenue Queanbeyan).
- Subdivision
Ensuring that any subdivision plan involving a state heritage item has all the buildings shown in relation to proposed boundaries. This could be easily remedied by requiring a survey to be submitted with a subdivision application. QPRC has been impacted by subdivision plans approved under the Heritage Act that have resulted in boundaries of new lots bisecting buildings that contribute to the heritage significance of the item and area.

Minor works and exemptions

Dealing with minor works on heritage items through the current Heritage Act approval process does not add value and an improvement is important for meeting the needs of customers and protecting heritage. There are a range of options to improve this process from ensuring that comprehensive site-specific exemptions are incorporated and regularly reviewed as part of the heritage listing process. There is also an option to explore to the use of heritage certifiers for minor works. Councils currently implement clause 5.10(3) of the standard instrument LEPs for works on a heritage item that are of a minor nature. Minor works and maintenance works are assessed using the exemptions for development under the SEPP (Exempt and Complying Development Codes) 2008 and using the expertise of our Heritage Advisor where further advice is required. This framework could also be used for State Heritage Items and is worthy of review for this purpose.

Site specific Exemptions

Site specific exemptions that deal with heritage items like showgrounds which have a lot of events and temporary uses could assist in streamlining or removing the complexity in managing and using these sites.

Heritage conservation areas

The management and listing of heritage conservation areas is a challenge and this has not been addressed explicitly within the discussion paper. The understanding of the collective importance of the buildings and elements within the area is often not well understood and is sometimes seen as an impost for individual property developments and proposals. It is recommended that some of the principles and current work that DPIE are carrying out with the Government Architect for the Design and Place State Environmental Planning Policy (SEPP) be reviewed for relevance for conservation areas and character precincts.

Categorisation of listings

The proposal for the four heritage listing categories in the discussion paper is supported. The inclusion of category 2 for the state significance heritage landscapes is supported especially in managing the state listed town of Braidwood. It is recommended that any tailored regulation to protect these areas involve the community. This will aid not only the process of preparing appropriate regulation, but also increase the community's understanding and buy in.

How the Act could more effectively intersect with related legislation

Review the success of the Integrated Development Planning legislation amendments of 1999 in bridging the gap between legislation that impacted upon development approvals.

Other matters

Resourcing to support the functions of the Act

QPRC has experienced delays and inconsistencies in Heritage Act Approvals for Development Applications and Part 5 works activities. Some integrated development referrals for the Heritage Act approval have taken over 12 months and involved more than three different contact officers. This results in frustration at customer and Council levels and has an adverse impact on recognising the value of heritage conservation. An example of inconsistency was one of the works approvals for road upgrading had an approval issued that was inconsistent with the site-specific heritage controls for Braidwood. Options to improve this situation is to have adequate staff to support the functions of the Heritage Act; having an area based case officers that are trained and familiar with the state heritage items (especially for the State listed town of Braidwood) of their area. Extending regular training through to heritage advisors and Council staff would also assist in ensuring that positive conservation outcomes are achieved in an effective timely manner.

Delegation of approval functions to Councils

Consideration is recommended for delegating some approval functions under the reviewed Heritage Act to councils. This possibility has been raised in discussions with the Heritage Council but is not explicitly referred to in the discussion paper. With the appropriate ongoing training and funding from the State, this could assist in achieving consistency within areas, timeliness of assessments and the building of local knowledge and access to officers at a local level.

**Attachment
Comparison of Heritage Acts in NSW and Victoria**

ACT	Victorian Heritage Act 2017	NSW Heritage Act 1977	Comment
Structure	Part 1 Preliminary Part 2 Heritage Administration Part 3 Victorian Heritage Register Part 4 Underwater Cultural Heritage Part 5 Permits Part 6 Archaeological Heritage Part 7 Covenants Part 8 Orders Part 9 World Heritage Part 10 Enforcement and legal proceedings Part 11 Heritage Fund Part 12 Hearings Part 13 General Part 14 Repeal, Savings and transition provisions Schedule 1 Further heritage administration	Part 1 Preliminary Part 2 Heritage Council of NSW Part 3 Interim Heritage orders Part 3A State Heritage Register Part 3B Heritage agreements Part 3C Protection of historic shipwrecks Part 4 Effect of Interim heritage orders Part 5 Stop work orders Part 6 Other measures for conservation Part 7 Implementation and Enforcement Part 8 Miscellaneous Schedule 1 Savings and transitional provisions Schedule 2 Members and procedure of heritage Council Schedule 3 Transferred provisions - Walsh bay	The Victorian Act appears more logically structured, succinct, and cohesive than the NSW Heritage Act. Recommendation <i>That the review of the consider structuring the NSW Heritage Act and more logically and consolidating related parts.</i>
Categories for registration	Registry – categories including places and objects; world heritage items; historic shipwrecks and artefacts; archaeological place or object; protected zones (for land underwater containing shipwreck/archaeological place/artifact)	place, building, work, relic, moveable object or precinct	The Victorian Act includes several categories and greater number of definitions - the registry, inventory and World heritage areas are addressed separately within the Act. Recommendation <i>Consider expanding the categories for registration where different categories require different treatment/assessment under the Act, for example World heritage areas vs State heritage register and local heritage items.</i>

ACT	Victorian Heritage Act 2017	NSW Heritage Act 1977	Comment
	In Victoria, Aboriginal Cultural Heritage is protected under a separate Act the Aboriginal Heritage Act 2006	The NSW Heritage Act 1977 protects natural and cultural heritage, including Aboriginal heritage.	See earlier comment in submission.
	Inventory - archaeological sites and approved sites of archaeological value. archaeological site means a place (other than a shipwreck) which— (a) contains an artefact, deposit or feature which is 75 or more years old; and (b) provides information of past activity in the State; and (c) requires archaeological methods to reveal information about the settlement, development or use of the place; and (d) is not associated only with Aboriginal occupation of the place. (an archaeological site maybe underwater)	The term 'Inventory' is used once in the Act in section 21(e) Functions of the Heritage Council, otherwise the term registry is used	The Victorian Act includes part dealing with the protection of archaeological sites, which is a defined term. Recommendation Consider expanding and refining definitions.
	World Heritage Areas – requirement for strategy plans, publishing of plans; submissions; planning schemes to be amended to identify areas of World heritage.	Reference to World heritage is not included in the NSW Heritage Act and items e.g. Blue Mountains are not reflected in the NSW Planning Instruments.	The Victorian ACT includes an entire part dedicated to World heritage and includes requirements for preparing and implementing strategy and management plans, amending of planning schemes. The requirement to amend planning schemes ensures that controls are in the one document making it easier and faster to understand and implement. The standardisation of NSW LEP's means that there is potential for cross-referencing to relevant strategic plans. Recommendation Consider including provisions dedicated to World Heritage items and requiring LEP's to identify World Heritage areas, to ensure that all levels of heritage are recognised within the one instrument.

ACT	Victorian Heritage Act 2017	NSW Heritage Act 1977	Comment
Definition	place includes— (a) an archaeological site; and (b) an area of land covered with water; and (c) a building; and (d) a garden; and (e) a landscape; and (f) a precinct; and (g) a shipwreck; and (h) a site; and (i) a tree; and (j) land associated with anything specified in paragraphs (a) to (i);	Section 4 item means a place, building, work, relic, moveable object or precinct place means an area of land, with or without improvements. relic means any deposit, artefact, object or material evidence that— (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and (b) is of State or local heritage significance.	The Victorian Act specifically includes areas under water and trees over and above what the NSW act covers. The VIC Act also specifically includes land associated with an item (what NSW would consider to be the curtilage). Recommendation <i>Consider expanding the definition of item to include trees, areas of land covered with water, as well as land associated with an item.</i>
Delegation	Section 116 Permits - The Executive Director, by instrument, may delegate to <u>the responsible authority</u> for the area in which a registered place or registered object is situated any of the Executive Director's functions, duties or powers under this Part in relation to that place or object and responsible authority may sub-delegate to officer, subject to certain conditions for the approval of permit	Section 169 (3) The Heritage Council may, with the consent of the Minister, delegate to a person, or to a committee established by the Heritage Council, the exercise of any of the Heritage Council's functions, other than this power of delegation.	The Victorian Act provides a clear line of delegation from the ED to the responsible authority for the area in which a registered place or registered object is situated. Recommendation <i>Consider expanding certain delegations where appropriate, together with adequate funding and training.</i>
Permit	Act prescribes timing for determining (60 days); extensions for determining (60 days), timing for the issuing of permits (7 days), timing for request review (within 60) days of refusal/issue of permit; stop the clock provisions	Section 65 – 40 days to approve or 60 days where public notice has been given - Deemed refusal gives the proponent an avenue to appeal, although this requires additional time and expense.	Referrals to the Heritage council can result in lengthy delays to development applications putting owners of State heritage items at a disadvantage. Recommendation <i>Consider expanding certain delegations where appropriate, together with adequate funding and training.</i>

ACT	Victorian Heritage Act 2017	NSW Heritage Act 1977	Comment
Matters to consider in determining application	Section 101 – Impact on heritage significance Impact of refusal on Reasonable/economic use of place Submissions Impact on world heritage status/ approved WH strategy plan Other relevant matters Impact on adjoining property subject to heritage requirement/control or Heritage item	Section 62 Impact on significance of item Submissions Other matters relating to conservation of item/place Applicable conservation management plan Other relevant matters	Victorian Heritage Act – assessment requires consideration of the impact on World heritage status – and has greater coordination of relevant legislation across federal and state levels of government. Recommendation <i>Consider greater integration of relevant legislation, for example including the impact on World heritage status and strategic plans as part of matters to be considered when determining applications.</i>
Regulations	VIC Heritage Regulation 2017 – predominately deals with Fees and Forms Heritage (Underwater cultural heritage) Regulation 2017 – prohibited activities, notification, shipwrecks, fees and infringements	NSW Heritage Regulation - fees, forms, standard of maintenance, inspections. Maintenance and repair also considered under Part 6 Division 5 of the Act	Recommendation <i>Consider simplifying the Act and regulations to include all requirements for standards of repair, maintenance within the Act.</i>