

**Submission  
No 266**

## **INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977**

**Name:** Mr Robert Allan Moore

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July 4<sup>th</sup> 2021

Hon. Shayne Mallard MLC  
Chair, Standing Committee on Social Issues  
Upper House Committees Legislative Council  
Parliament of NSW

Dear Mr. Mallard

**Submission in response to the Discussion Paper : NSW Heritage Act 1977(as amended)**

I am an architect and heritage consultant who has worked in NSW for some 40 years. I came to NSW from my home state of QLD to work for the inaugural NSW Heritage Council. As a consulting professional I have worked for Local, State and Commonwealth Government authorities. The matters variously raised in the Review of the Heritage Act are of deep concern to me and I offer the following comments. I have not addressed all questions, but those which matter most.

The opportunity for members of the public, informed, involved or just interested, to comment on the NSW Government's discussion paper on the NSW Heritage Act is most welcome, and an essential part of any fair and genuine review of the Act. Contrary to observations in the Paper the Act has been significantly changed, having been amended at least twice. Its regulations have been changed, and as successive state governments have addressed the challenges and opportunities consequent from the Act, and the changes in the times in which we live, the context in which the Act operates has indeed evolved.

However, the essential purpose and responsibilities of the Act are not changed – it exists for the State Government, on behalf of the NSW community, to be able to pursue the **conservation** of the heritage and cultural resources of NSW for the benefit of the whole community. Conservation as defined in the Australia Icomos Burra Charter encompasses all actions involved in such a task – not just “preservation”. The true broad management of heritage places, so that what is important about them endures, for our descendants, is what heritage conservation is about.

As a community we value those places and cultural works which have been protected and bequeathed to us. We do not appreciate the poor decisions of the past, of which there have sadly too many, and neither will the generations that follow us appreciate our poor decisions.

Addressing the focus questions posed in the Paper :

*FQ1 What should be the composition, skills and qualities of the Heritage Council of NSW?*

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The first Heritage Council, under Chairman Mr. Justice Robert Hope, was composed of individuals representing the bodies nominated in the Act who were of undoubted relevant skills and expertise - known and respected in their fields and able to bring extraordinary experience and wisdom to the task set them. Their various engagements with heritage did not mean they could not offer relevant, comprehensive or unbiased advice to the government.

Over recent times the membership of the Heritage Council has not maintained a similar level of expertise in both breadth and depth, and the heritage expertise now offered by the Council is patently reduced. The advice that the Council gives Government should first and foremost be on how to ensure the State's heritage – by definition places of State significance - is protected.

In the broad strategies of discovery and management by which our State heritage is sought out, and contextualised, and in the individual cases of interest or conflict, brought to the Council's or Government's attention, the Heritage Council's advice as the foremost expert heritage body in the State should be respected and given the weight with which it should present.

It is evident from the membership of recent Councils that economic, development and property interests are dominant and the relevant capacities and influence of the Heritage Council are subsequently narrowed.

The exercise of Ministerial appointments to the Heritage Council should return to the ratification of nominations from those bodies set out in the Act as both capable and appropriate to be represented on the Council. It is essential that members of the Architectural and Planning disciplines be represented, as these professions are central to the "best practice" delivery of most heritage projects.

The Heritage Council should be seen by the public as an independent body offering the State government the best advice it can secure about the heritage of the NSW community.

*FQ 2 How should Aboriginal Cultural Heritage be acknowledged and considered within the Heritage Act?*

The aims and objectives of the Act should encompass all cultural heritage within NSW. The complexities of both Indigenous and non-Indigenous heritage suggest that the Act requires separate divisions to address each, with appropriate expertise and guidance available for the management of both. The technical problems of conservation will overlap in many fundamental ways, but the challenges of management will be very different and in particular the Indigenous community needs to have its trust earned by the consultative process essential in the drafting of such legislation, and thereafter its sincere operation.

There should be one apposite Heritage Act for all the people of NSW.

*FQ 3 Are the objectives of the Heritage Act still relevant?*

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The enduring objectives of the Act are relevant and appropriate. It relates to **State** Heritage – those places of the most elevated significance to NSW and its community. Its powers to protect and manage such places should be supported by government commitment, professional expertise, and targeted resources. The owners and managers of such places should be supported by the State government through co-operation, professional advice and where appropriate, financial assistance all directed at maintaining what is important about the places concerned. Proposals that are inappropriate for these special places must be called out, and those which are intelligent, positive and respectful can be promoted. This requires people with expertise, and after over 40 years of supporting the Council and the Act, the Heritage Office is still under-resourced in people and funds for its role.

If there is any confusion and sense of disfunction with the Act, it is not so much in the powers that can be actioned, but in the conduct of their management. Conflicts with the Act's powers should not be resolved by "turning off" the Act's operation in matters and applications in which it has important work to do, and an important voice to be heard. In these instances the disempowerment of heritage issues and those who might constructively resolve them appears only suspect and discrediting.

In terms of objectives and scope, the relationship between the Heritage Act and the Environmental Planning and Assessment Act - the latter of which establishes the mechanisms of the conservation of our **LOCAL** heritage – must be re-focused.

The Heritage Act sets out provisions for the operation and powers of the Heritage Council under the Act, advising the Minister, and the Minister's powers. Some 2,500 State Heritage Items are scheduled and subject to the Act and its regulations, of which it is known, only a small proportion are privately owned. The majority of these are houses, important milestone houses within our community heritage, some of which are within State listed heritage conservation areas. The Act's, and the Heritage Council's protection of these is absolutely essential, and requires experienced, professional management by specialists of appropriate skills. This is primarily a matter of resources and skills.

Meanwhile some 40,000 LOCAL Heritage Items and Heritage Conservation Areas are managed by LOCAL government. Effectively these Items and Places are of more impact in our daily lives, and importantly this is reflected in the recent initiatives of the DPIE and the NSW Government Architect, whose guidance through the "Better Placed" series of publications places heritage squarely in the centre of better design for our community's future. Heritage is one of the compelling forces in the shaping of the environment we live in, urban and non-urban, but it remains mistrusted and burdened by negative associations relating to what can't be done, rather than what CAN be done, and the benefits and uplift demonstrably achievable through support of heritage within environmental planning.

*FQ 4 Does the Act adequately reflect the expectations of the contemporary NSW community?*

The NSW community expectations of the Heritage Act could only be truly assessed by actually surveying the community, and assertions of what those expectations might be are

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simply that – assertions. The community might expect the Heritage Council to offer independent, wise and knowledgeable advice on heritage matters, on an unbiased and impartial basis. It might expect the Act to provide the basis for both protection and ongoing care. Those who have interacted with the Heritage Council or the Heritage Office would have a view. Your view of heritage changes if you have sought the protection of a place, only to see it lost.

Where expectations are abroad in the community is on the issues of dealing with the NSW Heritage Office (or Division). The difficulties of engaging with relevant persons in the Office, and the low perceptions of accessibility, of collaboration, of timely response and concern are the most frequent stories abroad.

Again, these are issues of resources – funding and human. The Act can't be expected to succeed if its support and operational basis are inadequate.

*FQ 5 How can the NSW Government legislation better incentivise the ownership, activation and adaptive reuse of heritage ?*

The Heritage Act originally empowered the Minister to act jointly with other Ministers to pursue the achievement of good heritage outcomes by agreeing on appropriate relief measures through their respective Ministerial roles. Planning controls relating to use or development scope are the most obvious area of possible (game-changing) flexibility.

The Act can also obviously support grants, low-interest loans, or State taxation benefits and while these have been active in the past, they could be enhanced multi-fold by the availability of more funding for planning or works implementation.

However, any measures of incentivising development must be appropriately reconciled with the heritage significance of the place concerned.

*FQ6 How can we improve incentives within the taxation system to help mitigate the costs of private heritage ownership?*

Taxation measures within the powers of the State Government can be implemented to positively advantage owners of heritage property – most obviously in regard to Land Tax, and the imposition of GST on repairs and maintenance works.

The State should petition the Commonwealth Government to make conservation works on heritage items and within heritage conservation areas tax-deductable. However, this process has been shown to encourage “over-restoration” in other countries, unless adequate oversight was maintained.

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*FQ 8 How could tailored heritage protections enhance heritage conservation?*

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In my opinion, not very well at all. The heritage management process, as refined in Australia through the use of the evolving Burra Charter methodology of Australia Icomos, is simple to grasp and manage. If the heritage significance of a place is to be genuinely protected, “tailored provisions” which imply the omission of steps in the key, targeted heritage management of a place, are risky and dangerous in heritage terms. The most appropriate “tailored heritage protections” are those which come from a properly executed Conservation Management Plan.

*FQ 9 How should heritage items that are residential properties be accommodated under a proposed category scheme?*

The proposed category scheme should not be supported. Implicit within it is a derogatory, dysfunctional attitude to places of LOCAL heritage significance, which must be avoided at all costs. Such “ranking” systems only result in diminution and damage to items in the “lesser categories”, as has been proven in other countries and other jurisdictions. Further uncertainties and complexities in heritage processes would be introduced, rather than any simplification or advantage for owners of residential properties. They should be accorded State or Local significance, and managed accordingly to their cultural heritage significance.

*FQ 10 Would greater community engagement deliver a more robust State Heritage Register?*

The community engagement which is missing and adversely impacting the Register is the lack of staff resources to engage with the community in regard to nominations.

*FQ 11 Would streamlining enhance the listing process?*

“Streamlining” implies the minimisation of listing procedures, rather than enhancing their conduct through the availability of well-trained staff. There simply are not enough people adequately trained and experienced to support the Register’s development.

*FQ 12 How could we improve the current approval permit system ?*

- Consult the users of the system
- Apply more human resources to the assessment of applications
- Develop permit assessment staff as consultants to work with permit applicants  
So as to facilitate the process, and achieve quicker less adversarial turn-arounds.

*13 FQ Are the current determination criteria for heritage permits still appropriate?*

Generally, yes. The introduction of “self assessment” systems, without policing measures, must be regarded as worryingly risky.

*14 How can we improve heritage consideration within land use planning systems ?*

The value of heritage input within strategic planning processes has been successful and enduring in other countries where there is belief in its contributions to culture in its

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broadest sense. It is only by according heritage issues a value in the range of considerations that land use planning MUST make that it will be a participant at the table.

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*18 How could we improve heritage tourism or help activate heritage places for tourism?*

This question raises the need for a two-streamed assessment of the heritage resources of NSW. Firstly, there is still no ongoing comprehensive assessment of the State's heritage resources, and secondly, of what and how successful heritage places "work" in tourism.

The problems of conserving heritage places in the face of the demands of tourism have been examined in depth – there are many resources to draw upon.

*FQ 19 How could public heritage buildings be activated to meet the needs of communities ?*

Conservation Management Plans which comprehensively assess the significance and potential uses of such buildings should be the starting point. Their potential should be identified and then promoted, rather than left to be "discovered" by those with an educated eye for opportunity. The availability of public buildings for community use is generally welcomed if communities can source the resources needed for their adaption to suit community "activation".

I trust these submissions will be of assistance to the Standing Committee.

Yours faithfully

Robert Moore