

**Submission
No 268**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Mr Robert Gasparini

Date Received: 5 July 2021

To Whom It May Concern

REVIEW OF THE HERITAGE ACT 1977

I am a registered architect in NSW with close to twenty years' experience in private practice specialising in heritage, conservation and new work. I have been involved with a broad range of projects involving SHR an locally listed properties including architecture, traditional conservation, heritage policy and heritage assessment.

My personal involvement with the Heritage Act has been through applications related to buildings proposals and assessments including:

- Section 60 and Section 65(A) applications.
- Applications for Standard Exemption under Section 57(2) including the recent changes to self-assessments.
- Endorsement of Conservation Management Plans (now disbanded)
- Application for Site specific Exemptions.
- Work in association with archaeologists including archaeological permits.

As part of this response, I have reviewed and considered the Discussion Paper and the Terms of Reference that were issued by the Standing Committee for comment. I have also spoken to colleagues in the architectural and heritage community including attendance at the recent National Trust forum held in Sydney on 9th June 2021.

As part of this submission, I will be addressing the Terms of Reference directly which are quoted below followed by my comment:

(a) the need for legislative change to deliver a heritage system that is modern, effective and reflects best practice heritage conservation, activation, and celebration

I would like to address this item in separate parts as follows:

- **Independent Heritage Council:**

I strongly support keeping the Heritage Council of NSW and its committee's an independent statutory body. In addition, I strongly recommend that Heritage NSW is a separate and independent department within government with a dedicated minister. In the past decade, Heritage NSW has been rebranded and shifted to different departments and ministries, many of which see heritage as secondary role or may inherently conflict with the broader goals of a particular department. A strong and independent Heritage Council and Heritage Office will ensure that NSW's heritage is better protected and managed.

- **“Switching Off” the Act for SSD and SSI projects:**

A substantial and critical flaw in the current use of the Act is the “Switching Off” the Act with SSD and SSI projects. This is highly problematic and a conflict of interest given that only the State Government can declare what type of projects are “State Significant”. It is noted that 66% of SHR items are owned by Government, so that the overwhelming advantage of these provisions are not the private individual but Government.

- **Self-Assessment S.57(2) applications:**

Recent changes to self-assessment (S.57(2) applications), have potential to be highly problematic. Self-assessment removes the checks and balance and review process that formerly existed with staff at the Heritage NSW. Many applications that would have been submitted as a S57(2) notification will now move to a S.60 process due to the risk of self-assessment. It may therefore increase the regulatory burden rather than reduce it (which appears to be the objective). It could also result in heritage professionals being pressured to assist clients to self-assess borderline applications which could result in poor documentation and poor heritage outcomes.

If Self-Assessments are to remain, they should only occur where there is a comprehensive CMP in place which is endorsed by Heritage NSW (thus require a return to the endorsement of CMPs).

- **Increase support and resourcing of the Heritage Council:**

Finally, in my experience of dealing with the Act, it currently serves the day to day needs very well and reflects best practice in heritage conservation, activation, and celebration. Based on my experience, the Heritage Council does not currently have the staff, resourcing and arguably the expertise that is needed to assess applications in an efficient, transparent, and consistent manner. I therefore strongly recommend that support and resourcing of Heritage Council and Heritage NSW needs to be enhanced.

In addition, administration of the Act will be substantially improved by first reviewing the Heritage Council members and ensuring there are a range of disciplines represented including architecture, conservation, engineering, construction, and planning. Particularly, individuals with involvement with real projects and actual experience. Secondly, properly resourcing staff at Heritage NSW with appropriate experience in these same areas would help to see best outcomes achieved. At present, there appears to be an emphasis on archaeologists, whilst critically important, it needs to be mixed with other disciplines, experience, and knowledge.

(b) the adequacy of the Act in meeting the needs of customers and the community and the protection of heritage

I support making heritage accessible and better understood and appreciated. In my experience, some building owners', and managers of SHR items or local heritage items, view heritage as a perceived "risk" that must be mitigated rather than opportunity to be celebrated and valued.

In recent years, Heritage NSW have operated like a closed shop where the outcome and timing of applications is entirely unpredictable and dependant on the officer assigned to assess an application. It is often difficult to speak with the assessing officer, arrange a meeting or have the same officer see an application from start to finish. In the past, there had been a higher level of engagement, collaboration, and discussion. A more open and collaborative approach by Heritage NSW with resources and appropriate skills would have several advantages for heritage including:

- Remove the adversarial mentality when dealing with Heritage NSW.
- Help to manage the expectations of building owners and managers.
- Creates certainty for owners and managers to invest.

This will ultimately result in best outcomes for the management and care of NSW heritage.

In summary, the Heritage Office would better serve by a more public voice to the community, be approachable and resourced sufficiently to better serve its core objectives.

(c) how the Act could more effectively intersect with related legislation, such as heritage elements of the Environmental Planning and Assessment Act 1979 and the National Parks and Wildlife Act 1974

At present, there is duplication with the processing of Integrated Development Application (IDA) (under the *Environmental Planning and Assessment Act 1979*) and the Section 60 Application process (*under the Heritage Act 1977*).

In some instances, conditions appended to Section 60 approvals can include design changes that conflict with IDA approvals. A harmonisation of the Section 60 and IDA process that is collaborative and transparent, would reduce duplication, time and reluctance for heritage owners and managers to submit proposals for heritage items.

Finally, Aboriginal Cultural Heritage is a complex issue and may not be best administered under the Heritage Act or the National Parks and Wildlife Act. First Nations people may not view their sacred

places and lands as “heritage”, or something that exists in the past, but it may be defined as something different and more nuanced. I recommend that Aboriginal places of cultural significance must be dealt with by a stand-alone and independent Act that places First Nation voices at the centre of the discussion.

(d) the issues raised and focus questions posed in the Government's Discussion Paper, in particular:

(i) a category approach to heritage listing to allow for more nuanced and targeted recognition and protection of the diversity of State significant heritage items

Categorisation of heritage as suggested could be a positive approach if the categorisation is kept equal. However, the concern is that inevitably, the categorisation will be used to rank heritage and therefore de-value items on category 3 or 4. For this reason, I find it difficult to support a category approach to heritage listing at this time.

(ii) consideration of new supports to incentivise heritage ownership, conservation, adaptive reuse, activation and investment

I strongly support incentive systems, perhaps through tax or otherwise. From 2008 to 2012, my office, Design 5- Architects, was involved with the Sydney Living Museum's *Endangered Houses scheme*. The project involved the conservation and restoration of Exeter Farm in Glenwood which consisted of two c1850s modest timber cottage buildings from certain loss through neglect and deterioration. The project restored the buildings which involved major structural repair, replastering, re-roofing, recladding, new floors, and services. The building was resold to the private market recouping funds that were invested. In 2012, the project was recognised with several major architectural and conservation awards including the AIA (NSW) Greenway Award for Heritage Architecture and UNESCO Asia-Pacific Awards for Cultural Heritage Conservation. Further information can be found here: <https://design5.com.au/index.php/gallery/exeter-farm/>

This project is an example of how an innovative scheme under good management can benefit cultural heritage whilst also stimulating jobs and skills in traditional construction while providing a return on investment.

(iii) improvements to heritage compliance and enforcement provisions (iv) streamlining heritage processes

Currently, non-compliance is dealt with by either warning letter or prosecution (meaning not many prosecutions take place). The Discussion Paper proposal is to introduce an intermediate infringement notices similar in other acts. I support this change since it will more likely be used for minor breaches of the Act, such as failure to meet Minimal Standards. However, Prosecution provisions should remain if non-compliance remains an issue or for substantial breaches. Enforcement provisions for large breaches, including wilful demolition to improve development options, should be if not already, result in seizure of land and criminal prosecution. There have been examples in the media where fines do not appear to be a sufficient deterrent when heritage stands in the way of large scale development opportunities.

As a final statement, I support the review and strongly encourage an ongoing consultation process with peak cultural heritage bodies including Australia ICOMOS and The National Trust and other stakeholders including the Australian Institute of Architects.

I hope this letter is of assistance for the review process.

Yours Sincerely

Robert Gasparini