

**Submission
No 275**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Clarence Valley Council

Date Received: 9 July 2021

We have read the Terms of Reference for the Standing Committee Review of the Heritage Act 1977 and would like to offer a response to those as listed below:

- TOR 1(a) Need for legislative change – the Clarence Valley Local Government Area contains 1354 land parcels containing 'heritage items', and 13 'heritage conservation areas' comprising nearly 4200 land parcels that are listed under the *Clarence Valley Local Environmental Plan 2011 (CVLEP)*. With 128 local Councils in NSW the collective number of heritage items and properties covered by heritage conservation area status would be immense. This is compared to the 1700 items listed on the State Heritage Register that, themselves in the majority of cases, would also be listed as heritage items under LEPs administered by local Councils.

Standard heritage clauses adopted by many LEPs in NSW provide for management of heritage item and places within a heritage conservation area equally, ie there is no point of difference between administration for a listed heritage item and a property that is not individually heritage listed and is within a heritage conservation area. Realistically, there must be a difference otherwise why would we list individual heritage items (other than for individual sites located outside heritage conservation areas) and instead create conservation areas. For 'minor works', that are not significant in terms of their impact on heritage significance, there is a streamlined process, however when managing thousands of 'heritage' land parcels and requiring written approval for almost any work done to the building or place, administering this becomes unwieldy, onerous and unworkable. Further, it is not a great advertisement for owning or managing a heritage property. In reality, many owners of these properties complete works without complying with the LEP provisions. I suggest they don't do this to be rebellious and they are probably simply unaware of how far the heritage requirements go or they simply believe that they are doing something that is acceptable (as most of the time it isn't).

To make management of heritage at the local government level practical and fit for purpose there needs to be a review of the standard LEP heritage provisions such that the status of a heritage item has a different and higher standard of process than a place within a conservation area that in its own right and on merit cannot sustain a heritage item status. To clarify, I suggest that the level of assessment for a 'heritage item' should be much the same as it is now, while the level of assessment and scope of works requiring approval for non-heritage item places in a heritage conservation area should be significantly reduced. The former (now repealed), Grafton LEP 1988 contained a local heritage clause that could be used as a starting point to creating a standard provision that gives such difference. As mentioned later in TOR 1(d)(iv) the *State Environmental Planning Policy (Exempt and Complying Codes) 2008* identifies and recognises that difference, however the standard instrument heritage clauses in LEPs do not;

- TOR 1(b) Adequacy of the Act - Council has no comment to make;
- TOR 1(c) Relationship of Heritage Act to related legislation – the above comment relates to the *Environmental Planning and Assessment Act 1979* and instruments such as Local Environmental Plans (LEPs) and SEPPs made under that Act. In relation to the *National Parks and Wildlife Act 1974* and management of Aboriginal cultural heritage and objects Council is aware of the intention of the NSW Government to prepare a separate piece of legislation to manage such heritage. Even though that action is considered to effectively be a symbolic

gesture it is supported as it is something that the NSW Aboriginal community and NSW Aboriginal Land Council have requested for some time and the NSW Government has committed to. That commitment needs to be followed through to;

- TOR 1(d)(i) Category approach – we would question the need for this at the State heritage level, however as mentioned above at TOR 1(a) there would seem to be a strong case for category approach at the LEP level to provide for differential management regime for heritage items and those other places or features that are non-listed and located in a conservation area;
- TOR 1(d)(ii) Supports to incentivise heritage ownership - LEPs with the standard heritage clause, such as the CVLEP, contain a provision at subclause 5.10(10) that already offers conservation incentives for owners of heritage items. In addition, the NSW Government and local Councils, such as Clarence Valley Council, provide funding programs to assist maintenance and repair of heritage items or places in conservation areas. The volume of money for funding of heritage management could always be increased, however the funding should generally remain as an incentive style and not fully fund works;
- TOR 1(d)(iii) Heritage compliance – there is never enough resource allocated to compliance and enforcement. Always one of the 'biggest rooms for improvement' in a range of legislated matters in NSW;
- TOR 1(d)(iv) Streamlining heritage processes – See also response to TOR 1(a) earlier. The *State Environmental Planning Policy (Exempt and Complying Codes) 2008* and related Codes recognises that heritage items have a higher status in that when a 'heritage item' exist on land is more often than not turns off the ability to complete exempt of complying development, however 'conservation area' status has less impact on exempt and complying development opportunities; and
- TOR 1(e) Other related matters – Council recognises the great value that heritage items and places provide to the culture, history and knowledge of the State of NSW, whether local or State heritage listed items and this value needs to be recognised and appropriately managed without a 'one-size-fits-all' approach.

Thank you for the opportunity to provide some comments to the Review. It is likely that we are happy for this to be a public comment and we will confirm next week.

Please contact me should you have any clarifications or questions. I would be happy to discuss these thoughts.

Kind regards

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We acknowledge the Bundjalung, Gumbaynggirr and Yaegi people as the Traditional Owners of the land on which we live and work. We honour the First Nations peoples culture and connection to land, sea and community. We pay our respects to their Elders past, present and emerging.



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