

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

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SHORT SUBMISSION TO THE PARLIAMENTARY STANDING COMMITTEE ON SOCIAL ISSUES

INQUIRY INTO THE NSW HERITAGE ACT 1977

JULY 2021

Submission lodged by Mr L Bennett –

James Colman

1. Introduction

- a. This submission reflects Mr Laurie Bennett's experience as a long-standing resident and ex-Councillor of the City of Paramatta. In addition it derives from James Colman's position as an architect and planning consultant of long standing and considerable experience of working within NSW planning and heritage laws. Mr Colman was a Ministerial appointee to the inaugural NSW Heritage Council in 1978.
- b. The submission is focused in the main on recent professional experience gained whilst working with civic and heritage interests in North Parramatta, one of the oldest urban precincts in Australia.

2. Submission relating to Term of Reference (a): *the need for legislative change...*

- a. Forty-five years ago there was no Environmental Planning and Assessment Act in NSW. The NSW Heritage 1977 was a first of its kind for Australia, and broke new ground. It pre-dated the computer, digital data collection and storage, and CAD. For these and many other reasons the Act requires review and "up-dating" to align its provisions with those of cognate legislation, and with the needs of contemporary heritage practice and cultural change.
- b. Government has a responsibility to maintain the relevance, content and legal integrity of major pieces of social and environmental legislation. This involves (inter alia) a diligent review process which would take into account social and cultural change, and would assess similar review work of other governments to see what lessons can be learned from other places.

- c. New legislation should provide for a strengthened Heritage Council with direct access to the responsible minister and supported by a dedicated multi-disciplinary full time staff
Legislation should also embrace the fact that responsibilities for ownership and maintenance of heritage items in public ownership are often shared across jurisdictions. There should be no loopholes or opportunities for agencies to escape such responsibilities without legitimate reason, and without having to face public scrutiny by way of an inquiry or similar.

3. Submission relating to Term of Reference (b): *the adequacy of the Act ... with special reference to current planning activity in North Parramatta*

- a. There appears to be a mismatch between policy and practice. Grandly worded policy documents (eg from the DoPIE or the Greater Sydney Commission) urge or require councils to “identify, conserve and promote natural and cultural heritage” (for example) but in the real world, such action is either ignored or given token attention – with no mechanism open to the community to seek redress or disciplinary action and no apparent opportunity within the law for agencies to penalise blatant offenders. The general public sees this bureaucratic hypocrisy as further evidence of a Heritage Act which seems to have no teeth.
- b. In addition to Heritage Conservation Areas, the Act should provide for a new classification to cover historic precincts. These areas (such as North Parramatta) will typically accommodate listed items ; but in addition they will carry evidence of historical or cultural events which contribute to their special “ambiance” and attraction (perhaps as cultural tourism attractions). The Cumberland Hospital and Female Factory precinct in North Parramatta is an excellent example – as is The Rocks in Sydney. They would typically be wider in area than Heritage Conservation Areas. They would be identified through expert study and survey, consultation with Elders and experts, and only listed after a democratic assessment process.
- c. The Act should reference the Burra Charter.
- d. The Act should reference World Heritage protocols.
- e. One of the most important (and frequently ignored) issues shared to a lesser or greater degree by both heritage and planning law is urban design. The planning Act (either explicitly or implicitly) encourages good design. However, our heritage legislation says nothing about design but has an indirect influence on urban design by way of the listing process which requires consent authorities to have regard to impacts which might be experienced by listed items and their curtilage insofar as they might be affected by nearby development.
- f. Perhaps a regulation could cover the above circumstance, requiring designers to submit evidence to consent authorities that their proposals will not bring adverse impacts to a heritage curtilage by way of excessive height in particular. This proposal is offered following recent experience in historic North Parramatta where the precinct’s heritage character faces adverse impacts from 30-storey tower blocks proposed for nearby sites. North Parramatta’s “natural and cultural heritage” stands to be permanently degraded by an extended cluster of 24 to-30 storey towers in a wedge more than half a kilometre long and two blocks wide, stretching north from the river. This is the opposite of ‘conserving’ and ‘promoting’ the area’s cultural heritage.

- g. Cultural tourism is another activity which lacks legislative support in both planning and heritage law. Given its economic importance it deserves recognition in a new heritage Act.
- h. There are inherent conflicts in statutory statements of aims and objects in both the EPA Act and Local Environmental Plans. Consent authorities are left to determine their own priorities when it comes weighing economic aims against those seeking conservation of heritage. Typically, heritage will suffer. Government should provide guidance here.
- i. Heritage is a fast-disappearing resource: once gone, it is gone forever. If a community has identified items for listing, the message is clear. They are to be kept, regardless. Conservation becomes the top priority – not to be relegated down the line to help fly-by-night developers make their profits before moving on to fresh pastures. It follows that councils should be required (possibly by law) to prioritise their LEP objectives according to the circumstances of the case. In areas with little or no heritage character, promoting economic growth would take top place. Conversely, in areas with heritage richness (such as North Parramatta) conservation would be the first priority. As things currently stand, a council will typically pay lip-service to conservation objectives, making token noises in favor whilst happily approving development proposals bringing self-evident damage to local heritage, with no redress.
- j. There is evidence that the monetary value of heritage conservation can sometimes be greater and more long-lasting than the short-term returns from a typical high-rise property investment.
- k. Investment in cultural tourism is a legitimate economic activity which deserves more stimulus and support, especially at the local government level where heritage “battles” are typically fought and where tourism is important to the local economy. Evidence worldwide shows that cultural tourism and intensive high-rise commercial development are uncomfortable bed-fellows – yet the Parramatta case reveals a council intent on encouraging speculative high rise development in a heritage-rich precinct on the approaches to an area with World Heritage potential. This is the antithesis of conservation and there should be legal constraints, restrictions and even penalties for such insensitive decision-making.
- l. Local character areas are referred to in many planning documents, but the concept of “local character” is vague and mis-understood (despite good work by the Government Architect). There is a strong link between local character and local heritage values: it would assist consent authorities if this link could be codified in some way to assist in evidence-based decision-making.
- m. Heritage items are cultural assets and should be recognized as such in local cultural plans.
- n. Heritage is not a “tick-the-box” activity. The heritage of a precinct as an organic entity involves the streets, public and religious institutions, landscapes, pathways, and the scatter of numerous local heritage items, seen and holistically assessed and documented. Unless this contextual richness is recognised, heritage protection

becomes yet another box to be ticked by a consent authority. Government should do more to encourage a holistic approach to the management of this declining asset.

- o. Councils should be encouraged (by way of expert advice from the state) to investigate options for adaptive reuse of heritage items in their areas. Owners of such items would then have access to such advice to assist them to make sound decisions about their future use.
- p. Councils typically commit themselves to “enhance, embellish and revitalise Heritage Conservation Areas” in their development control plans. Such action will be impossible if area-wide or spot rezonings for high-rise development are introduced in the immediate proximity to HCAs.
- q. Heritage listings should require the preparation of *scenic and cultural landscape assessments* as a matter of course. Cultural landscapes should be included in the standard LEP Heritage Schedule.
- r. In the North Parramatta case the evidence points to what appears to be a serious mis-carriage of planning policy, together with a dis-connect between official policy and actual action on the ground. The public interest in heritage has been ignored or dealt with through token concessions or generic controls whilst private interests are being well served with expectations of generous “uplift”. In North Parramatta, two Heritage Conservation Areas have been identified and numerous individual local heritage items have been “listed”, but protection of the overall historic and heritage significance of the precinct (viewed as an entity) has never been embodied in a planning instrument.
- s. Implementation of official state policy which is clearly supportive of heritage conservation and which is administered through the Department of Planning, Industry and Environment, the NSW Heritage Council and Heritage Office, and the Greater Sydney Commission has been side-stepped – with no opportunity for community redress. Likewise, advice from expert heritage sources such as the National Trust is often ignored or downplayed. The end result is that private interests are well served whilst the public interest suffers through the apparent indifference of the Council and State.

4. Official policy positions – council and government (citing recent experience in Parramatta)

a. Department of Planning, Industry and Environment

The Department is the custodian of the Environmental Planning and Assessment Act 1979. Under the Act, the Department’s statutory obligations include the promotion and sustainable management “of built and cultural heritage, and the promotion of good design and amenity of the built environment.” Its policy position is clearly evident in its Circular PS 18-001 which discusses heritage as an important element in determining local character. “Character is a critical element “ of local areas. The circular advocates the preparation of “local character statements” and notes that heritage items can often shape local character in Heritage Conservation Areas (for example). Such is clearly the case in North Parramatta where two HCAs have been listed.

b. Greater Sydney Commission: A Metropolis of Three Cities

The DoPIE's Gateway Condition for the Parramatta CBD Planning Proposal required the Parramatta City Council to assess the proposal against the 2018 GSC Plan for metro Sydney. The requirement was to "describe how the proposal gives effect " to that Plan, whose vision affirms that Parramatta's rich heritage "will be preserved and celebrated" Objective 10 of the GSC Plan requires the protection of scenic and cultural landscapes.

c. Greater Sydney Commission - Central City District Plan

Planning Priority C6 requires the City Council to create and renew "great places" ...and to respect "the District's heritage". In 2020, the Commission urged the Council to work with the DoPIE on the preparation of a strategic approach to heritage planning., but reference to this project is not evident in current Council papers.

d. Parramatta City Council : Local Strategic Planning Statement

This statement is void of policies, strategies or directives for North Parramatta as a distinct place. although it contains numerous generic priorities and actions for the city as a whole which are supportive of heritage conservation.

e. Parramatta City Council – Culture and Our City 2017-2022

"Heritage is a cornerstone of future development" in the city. The city will develop its own cultural identity, "drawn from the history of the area."

f. Government Architect NSW

In 2007, the GA's office released "Better Placed – an integrated design policy for the built environment in NSW". Objective J promotes good design as being " place-based and relevant to and resonant with local character, heritage..."

g. NSW Department of Planning Industry and Environment – Planning Circular PS 18001 - local character

This circular promotes the study and recognition of local character and heritage

NOTE: In addition to the policy statements outlined above, the current Minister for Planning is on the public record as being personally opposed to "spot-rezoning" as a planning tool.

SUMMARY: DESPITE ALL THE OFFICIAL POLICIES AND GUIDELINES CITED ABOVE, THE EVIDENCE ON THE GROUND AND IN THE COUNCIL'S CURRENT PLANS IS THAT CONSERVATION REMAINS A LOW PRIORITY IN PARRAMATTA. TOKENISM RULES; AGENCIES HAVE NO "TEETH" WHEN IT COMES TO NON-COMPLIANCE WITH THEIR DIRECTIVES; AND THE COMMUNITY HAS NO REDRESS. THE SITUATION DEMANDS REFORM BEFORE ONE OF AUSTRALIA'S OLDEST AND RICHEST HERITAGE PRECINCTS IS LOST TO POSTERITY.

Submission signed by James Colman and Laurie Bennett, 10 July 2021