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Amended to include table (26/11/2021)

TO: NSW Parliamentary Standing Committee on Social Issues

cc: Heritage Policy team, Heritage NSW

Attention: Damian Lucas,
Lucy Albani and Tannika Dartnell-Moore

**AUSTRALIAN INSTITUTE OF LANDSCAPE ARCHITECTS (AILA) SUBMISSION
Review of NSW Heritage Act (1977) & Regulation (2012)**

Minister Don Harwin - Call for response to Discussion Paper, April 2021 to a Parliamentary Committee Public Inquiry and

NSW Government Working Group: www.heritage.nsw.gov.au/what-we-do/nsw-heritage-act-review/.

PREFACE

The Australian Institute of Landscape Architects (AILA) leads a dynamic and respected profession: creating great places to support healthy communities and a sustainable planet. AILA is the peak national body for Landscape Architecture. AILA champions quality design for public open spaces, stronger communities and greater environmental stewardship. We provide our members with training, recognition and a community of practice to share knowledge, ideas and action.

A central purpose of the AILA (NSW) is the Landscape Heritage Group to inform, inspire and enrich the culture of the discipline of landscape architecture in Australia and particularly the identification and understanding of both natural and cultural landscapes in NSW together with the role of such knowledge in the processes of planning and design.

In response to the Review of the NSW Heritage Legislation, AILA (NSW) formed a Working Group of experienced, knowledgeable practitioners and academics to provide the following comments towards improved outcomes in terms of landscape heritage for New South Wales in the legislative review process. We make some general points relative to landscape heritage conservation and management and then respond to the Draft Review focus questions; see Table 1.



BACKGROUND

The international context at the time the Act was first drafted is well documented. The ICOMOS - International Federation of Landscape Architecture (IFLA) International Committee for Historic Gardens was established in 1971, resulting in the Florence Charter in 1981. In Sydney, the conservation movement found local expression in the Green Bans 1971- 1975. People of opposing political views were united on the need to conserve the public landscape asset. The culture of care they inspired, and the trust the public subsequently placed in Government to protect these hard-fought public places could be recognised as formative to the Act.

Lessons are to be learnt from allowing incremental urban sprawl right up to historic building envelopes, without respecting heritage assessment of landscape curtilage, as evident across the Cumberland Plain, after the recommendations of Colonial Cultural Landscapes of the Cumberland Plain and Camden (Morris & Britten 2001). These lessons have informed the AILA (NSW) Landscape Heritage Report 2018², supported by Office of Environment and Heritage and Heritage Council NSW and prepared by Christine Hay, Colleen Morris and James Quoye, to model a landscape approach to listing. The case studies in the report are examples of how heritage understanding brings the past, the present and the future together.

RECOMMENDATIONS

1. The 'features' distinguishing Categories 1 & 2 are confused. Research, as a prerequisite, must form the basis of these tier/category changes and the criteria that define them. All heritage places should be subject to rigorous studies, as has been undertaken under the current Heritage Act 1977. **AILA recommends the purposes of the Act remain, as they are equally or more relevant today. In addition to strengthening existing purpose, the act of stewardship of our heritage places should be incentivised through conservation grants and taxation relief. We are concerned when those purposes and objectives are 'turned off' for SSD and SSI.**
2. The language around the provisions of the Act is important. In the discussion Paper, Table 2 Category 1, it can be assumed that these heritage places will be well protected including such places as Willandra Lakes Regions. We recognise the subtle introduction of 'State significant landscapes and areas with large curtilages' and the notion of 'groups of landscapes' that begin to adopt a landscape approach to listing, as recommended in the AILA Landscape Heritage Report. While these changes are commended, they are given less protection than the Category 1 'items'. **AILA recommends this Category 2 be refined to allow stronger protection.**
3. **EXPERTISE:** Custodianship activation in the post-COVID environment, responding to the rapid and intense appreciation of public parks, is a dilemma. For example, custodianship must mediate activities to prevent these places being 'loved to death'. Centennial Park is an example of mature trees within a designed setting that



emulates a natural environment. Activation can enhance the existing sense of place. A strategic approach to this dilemma is presented by the UK based initiative "Culture in Crisis : Heritage Protection in a Post-COVID Landscape". However, 'Activation', if not informed by research and designed by qualified Landscape Architects with heritage experience, can allow unsympathetic land uses to proliferate in public space to the extent that they diminish the sense of place. Activation can be misread as revenue generation which could be interpreted by the Draft Review themes. Alternative, cross-sector themes to replace those in the Draft Review could include; cultural connection, diversity and inclusion. **AILA recommends there is a clear and pressing need for Landscape Architects with heritage expertise to be represented on the Heritage Council of NSW or, at least, its Advisory Committees.** AILA advocates for Landscape Architects to work across Government sectors to find workable solutions for conserving landscape heritage.

CONCLUSION

Our response to the Draft Review sees our discipline as fundamental in assessing, evaluating and guiding necessary reform. We advocate for strategic multidisciplinary collaboration at National, NSW Heritage Council level to Local Government, working closely with planners, architects, engineers, arborists, communities and research partners to find innovative solutions. Landscape Architects strike the balance between development and conservation, skilfully recognising where change can be sympathetic and complimentary to its heritage setting. We welcome further opportunity to engage in Hearings, White Paper Discussions and Reviews to follow.

Sincerely yours,

Tanya Wood

AILA NSW President

SUBMISSION TEAM

This submission has been prepared by a working group of AILA NSW members, co-ordinated by AILA Landscape Heritage Group



REFERENCES:

ALLA Landscape Heritage Report 2018 prepared by Colleen Morris, Christine Hay, & James Quoyle, supported by Heritage NSW.

Armstrong, H. 1991. 'Environmental heritage inconsistencies in a multi-cultural new world', A paper given at the Faculty of Architecture Research Symposium Series, by the Cultural Landscape Research Unit, School of Landscape Architecture, University of New South Wales.

Morris, C. & Britton, G. 2001, Colonial Cultural Landscapes of the Cumberland Plain and Camden. National Trust Australia.

V&A <https://www.vam.ac.uk/info/culture-in-crisis-cultural-heritage-protection-in-a-post-covid-landscape>



Table 1. AILA Responses to Focus Questions

	Focus Question	Initial AILA response	Example or Reference
1	<p>What should be the composition, skills and qualities of the Heritage Council of NSW?</p>	<p>a) A reinstatement of this integration of relevant expert knowledge, skills, and experience in heritage conservation could benefit from added representations from AILA, Historic Houses Australia and owners of heritage landscapes. The Heritage Commission was formerly comprised of planning commissioner, Government Architect, nature conservation, community organisations (National Trust and Royal Australian Historical Society) and local government, all with heritage experience.</p> <p>b) AILA Fellows must be represented on the Heritage Council of NSW Committees and the Heritage Council of NSW. Landscape Heritage practitioners, educators and researchers in the canon of Architecture, Landscape Architecture, and related disciplines, succession planners, mentors to next generation scholars and experienced practitioners in the specialised fields. Generalists also encouraged, to prevent the silo effect. Possibly environmental psychologists.</p> <p>c) A clearly defined differentiation between the listing and management concerns of the Heritage Council of NSW.</p>	<p>AILA members include people with decades of experience, expertise, specialisations in landscape heritage conservation and management. They lead projects and work closely with planners, architects, engineers, arborists, communities and research partners to find innovative solutions for the design and management of cultural landscapes. The collaborative nature of the discipline positions Landscape Architects well to contribute.</p> <p>Landscape Architects are able to articulate the heritage values that change through time in their unique discipline of evolving landscapes. The value of mature trees is often overlooked, as exemplified by many infrastructure developments in recent years.</p> <p>A typical example of how this occurs is the incremental loss of mature trees through 'streamlined' processes in former Church owned sites. Problems caused by streamlining- 45 degree rule allows Former Huskisson Church developer to remove 100-200-year-old trees that hold social, cultural, ecological and carbon positive value to the local community and visitors.</p>



2	<p>How should Aboriginal Cultural Heritage be acknowledged and considered within the Heritage Act?</p>	<p>Consult with all indigenous representatives to work towards an Indigenous Voice to Parliament, capacity or pathway. Require RAP participants and Cultural competency in every decision, Aboriginal Cultural Heritage must be acknowledged and regenerated, as no place is disconnected with the land and Aboriginal Ways of Knowing.</p>	<p>Indigenous perspective: Continent (Australia wide)- <i>Our Knowledge, Our Way : in caring for Country guidelines, 2020</i> CSIRO, NAILSMA, IUCN-NCA, Aust. Govt. NESP, NAER Hub State: <i>Connecting with Country</i> suite of documents, GA NSW</p>
3	<p>Are the objectives of the Heritage Act still relevant?</p>	<p>Very important. These objectives are still relevant and need revitalised programs to strengthen them</p> <p><i>To promote an understanding of the State's heritage</i> needs to be strengthened. The understanding of heritage has been diminished and has resulted in the undermining of our heritage fabric, Research to evaluate the data on successful protection and lost heritage will determine the changes warranted.</p>	<p>The Conservation Plan process as set out by Kerr, and the Burra Charter, taking into account relevant LEP, DCP and BCA, form the basis of Heritage NSW determinations of Development Applications.</p> <p>Where this is failing may be the inadequate resourcing for support and training to fairly assess the balance between development and conservation. Act</p>
4	<p>Does the Act adequately reflect the expectations of the contemporary NSW community</p>	<p>Very important. Unless we are vigilant, the economic focus will overshadow the original intentions of the act</p>	<p>Education programs can be celebratory, and owners can be inspired to conserve.</p> <p>For example: In Rouse Hill, where much of the landscape setting is already lost, a 19thC Hunting Lodge is being restored.</p>
5	<p>How can the NSW Government legislation better incentivise the ownership, activation and adaptive reuse of heritage?</p>	<p>Conservation grants to be strategically expanded. Working cross-sector to see partnerships arising from the alternative themes: health, education and community.</p> <p>Look to research partnerships, cultural connection training, innovative Industry organisations and awards such as the European Landscape Convention and guidelines such as those produced by the Australia ICOMOS ISCCCL.</p> <p>Privatisation of public open space is to be guarded against</p>	<p>Working group and further studies to focus on reports and guidelines;</p> <ul style="list-style-type: none"> • better integration of natural and cultural heritage • rural landscapes • 20th Century landscapes • Complexes • Difficult to categorise 'items' or landscapes • Curtilages. <p>An example is Fernhill, Mulgoa Valley, where assessment work revealed the landscape between the items needed protection.</p>
6	<p>How can we improve incentives within the taxation system to help mitigate the</p>	<p>Conservation grants.</p>	<p>Legislation must reflect the need for assessment must be carried out to ensure sensitive design of 'sustainability' works. An example where this has diminished heritage</p>



	<p>cost of private heritage ownership?</p>	<p>Deduct taxation for existing assessable climate/ environmental/ health /social and cultural qualities (existing green canopy, air quality, embodied energy, water cleansing, vegetation and soil carbon, biodiversity, UHI mitigation, flood & erosion mitigation, reversing desertification, increasing evapotranspiration and so on). Assess positive contribution to the local and regional culture, diverse communities, broad landscape views, social life such as open garden schemes, training, cultural collaborations.</p>	<p>values is the broadscale application of solar cells on slate rooves on street frontages.</p>
<p>7</p>	<p>What sort of initiatives might encourage activation and conservation of heritage through commercial and philanthropic investment?</p>	<p>Again, broaden the appeal beyond economic asset to add value to the community for social cohesion and cultural vitality.</p> <p>A project to inspire landscape heritage conservation as part of the Review;</p> <ul style="list-style-type: none"> • Publish Craig Burton's list of significant places of NSW as a proactive declaration and • Support the mapping of these places integrated with SHR spatial data. • Select within this framework representative case studies. • Document success stories of conservation and sensitive adaptive reuse and • Celebrate all the people behind them • Identify the environmental, social, cultural and economic benefits and • Assess findings to recommend necessary changes to Heritage Act 1977 and Regulation 2012 <p>This is the area that needs some creative thinking - not only in terms of economics. Community arts, revisit NSW Arts Council's Creative Village Programme 1992-2000</p>	<p>AILA Landscape Heritage study 2018 : Appendix I - Craig Burton list of significant places of NSW</p> <p>Guidelines, reports and studies to identify inspirational landscapes, to build on the Australian Heritage Commission work of 2003.</p> <p>Refer 5 above.</p> <p>One excellent example to demonstrate activated and celebrated heritage is the work Landscape Architects and the City of Sydney have done to activate laneways, using the built fabric of the city to enliven the public domain. Another example is the activation of sites such as Carriageworks and parts of South Everleigh.</p>
<p>8</p>	<p>How could tailored heritage protections enhance heritage conservation?</p>	<p>All places should be subject to rigorous studies as has been undertaken under the current Heritage Act 1977</p> <p>Category assumptions need to be refined to allow stronger protection.</p> <p>There is also the State wide need for a comprehensive process to;</p>	<p>An example where this is not workable is the 'Green Necklace' of Sydney Harbour landscape listings, including the Coal Loader at Balls Head</p>



		<ul style="list-style-type: none"> • evaluate what has been listed, protected or lost • define levels of protection afforded by the Heritage Act and • commission research to find a collaborative, comprehensive, proactive strategy for protection. 	
9	How should heritage items that are residential properties be accommodated under a proposed category scheme?	These needs funded, scholarly research to find a reasonable methodology for 'tailoring' regulation	Local heritage must not be divested to Local Government. A state wide, consistent approach to locally significant heritage is required
10	Would greater community engagement deliver a more robust State Heritage Register?	No its fragility is due to State significant override decisions, failure to implement a proactive listing strategy such as the Burton list in collaboration with First Nations people. Yes, if mediated by experts to ensure equity, diversity and inclusion, and objective, critical evaluation.	<ul style="list-style-type: none"> • Refer Burton list (7) above. • Guidebook.
11	Would streamlining enhance the listing process?	No, expert critical evaluation is required to ensure thorough understanding of the place values before decisions are made that may impact the significance.	Heritage Near Me is an excellent program but stops when funding ends. Consistency is needed. Heritage NSW, AILA and AIA to work with developers to achieve better design outcomes and avoid sameness of urban sprawl or densification.
12	How could we improve the current approval permit system?		
13	Are the current determination criteria for heritage permits still appropriate?	<p>These criteria do not adequately address landscape listings or group listings.</p> <p>It seems a lot of time is wasted reviewing 'half-baked' submissions with documents missing and reports prepared with too much 'lean in' to the development proposed rather than clear and independent assessment advise as to how to conserve and enhance heritage items.</p> <p>Essentially if documents are missing, lodgement must be rejected.</p>	<p>Heritage Council is aware of the importance of landscapes and the limited scope of listings and AILA is best placed to be a partner in this transition and for the Heritage Committee to continue to provide expert advice as needed.</p> <p>Many Land and Environment cases highlight this inefficiency.</p>
14	How could we improve heritage consideration within land use planning systems?	<p>Landscape conservation to be considered in genuine, non-tokenistic ways in land release planning.</p> <p><i><u>We need the big vision.</u></i></p>	Case study : The Olmsted designed Park and Boulevard systems of Chicago and Boston's "Emerald Necklace" in early 19 th Century thrive today as extensive protected,



		<p>Strategic thinking to be encouraged. AILA Landscape Heritage Report models strategic approach to Landscape Heritage Conservation</p> <p>Work cross sector to educate DPIE to protect curtilages and consider Heritage sensitivity when releasing land.</p>	<p>connected systems over 26 miles and 1,100 acres respectively.</p> <p>AILA Landscape Heritage Report</p>
15	<p>Are there opportunities to enhance consideration of heritage at the strategic level?</p>	<p>Knowledgeable people and previous ways of working out solutions across sectors to be reinstated within Government Offices.</p> <p>Create and Award systems for innovative conservation planning.</p> <p>Reinstate Government Heritage Landscape Architect.</p>	<p>AILA Landscape Heritage Report 2018. Example 'Green Necklace' Sydney Harbour Cultural Landscape</p> <p>Think tanks of selected professionals for a particular precinct strategically, like the former Public Works Advisory Board.</p> <p>Community Involvement in Heritage Management Guidebook – July 2017, Publisher: Organisation of World Heritage Cities /OWHC/City of Regensburg, Editor: Matthias Ripp Monica Göttler</p> <p>file:///C:/Users/harms/Downloads/FINAL_OWHCGuide_book2017.pdf</p>
16	<p>How could heritage compliance and enforcement be improved?</p>	<p>Elevate significant trees from local to State significance in accordance with the Premiers Urban Green Canopy and Carbon capture targets.</p> <p>Require more innovative and stringent heritage training and regulation across the urban design, property management, built environment and arboricultural industry.</p>	<p>Make site inspections mandatory.</p>
17	<p>How could understanding of state heritage be enhanced?</p>	<p>Refer Project proposal in (7) above.</p> <p>Technical publications, recordings of places demolished and Conservation Management Plans are difficult to find. These are an important part of intergenerational transfer of knowledge, education and a guide for design and for approvals, as stated in the Act, and must be accessible.</p> <p>Create a library where conservation reports are made available.</p>	<p>Refer Burton list (7) above.</p> <p>A search online for the AILA Landscape Heritage Report does not link to the Heritage NSW system. How have this report and other technical guidelines produced in the late 1990s been promoted for use and application. Is funding of further studies and updated strategic or technical guidelines being considered, as recommended?</p>



		Digitizing programs for reports	
18	How could we improve heritage tourism or help activate heritage places for tourism?	<p>Tourism isn't the only answer to community development.</p> <p>Refer Alternative Themes, cross-sector alliances will have unexpected tourism outcomes.</p> <p>Educate all sectors including WaterNSW to understand and protect landscape heritage.</p>	<p>For example, food markets in Everleigh Railway.</p> <p>Car parking areas can be designed, by qualified landscape architects, and managed to protect landscape heritage. An example is compaction on River Red gums on Water NSW land due to lack of understanding of landscape heritage.</p>
19	How could public heritage buildings be activated to meet the needs of communities?	<p>This is the area that has suffered most in terms of meaningful heritage management. NSW government does not have a good record of heritage stewardship.</p> <p>Avoid dilapidation due to absentee ownership by offering incentives for community outreach.</p> <p>Affordable or social housing models to inform adaptive reuse, if heritage experts approve.</p>	<p>Case study Kenmore Hospital site, Goulburn, formerly shared by cricket players of the local community. One suggestion is to bind into revised 1990s Heritage Asset Management Guidelines a strengthened Section 170.</p> <p>This need for strengthening Asset Management extends to the management of Public as well as privately owned State Heritage landscapes.</p> <p>Examples of housing project needing more qualified heritage advice are found in Double Bay, Epping and Telopea.</p>