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The Hon Brad Hazzard MP
Minister for Planning and Infrastructure
Minister Assisting the Premier on Infrastructure NSW
GPO Box 39
Sydney NSW 2001

Dear Mr Hazzard,

Re: Australia ICOMOS Submission to the NSW Planning System Review – A New Planning System for NSW – White Paper

Australia ICOMOS welcomes the opportunity to respond to the White Paper *A New Planning System For NSW*, released in April 2013.

Australia ICOMOS supports the objective of developing a better planning system for NSW, and to date has actively participated in the planning review process. This response follows on from our previous submissions at the Issues Paper and Green Paper stages of the review, and we also provided a preliminary submission when the review was first announced. Notwithstanding the broad scope of the issues raised in our various submissions, the focus of our concern has continued to be the conservation and management of our cultural heritage that we consider should be a fundamental objective of any planning system.

Having emphasised this concern in each of our previous submissions, we are particularly disappointed that the White Paper similarly fails to acknowledge the importance cultural heritage and lacks a clear and separate objective for its conservation and management. The '*conservation and sustainable use of built and cultural heritage*' is included as an objective, but only as what appears to be a lesser concern compared to the prominence given to the natural environment and population. Indeed, the word 'heritage' occurs only 14 times in the White Paper, and 5 occurrences are as part a formal title such as *Heritage Act*, *Heritage Council* or *Office of Environment and Heritage*. Aside from the aforementioned objective, 'heritage' is only used in relation to non-specific measures such as maps and future planning policies. Unlike economic growth and (sustainable) development, which is acknowledged as a key driver of the review and is given substantial prominence in the White Paper, cultural heritage is given only minor attention.

Australia ICOMOS notes that the White Paper also fails to address the range of related cultural heritage issues that were raised in our previous submissions to the planning review. Nevertheless, in good faith we offer the following comments on the White Paper, many of which we raised at the Issues Paper and Green Paper stages. We request that, even at this late stage of the process, due consideration should be given to these concerns so that the conservation and management of our cultural heritage is given appropriate emphasis in the review.

1. Key Objectives

The key objectives of the White Paper do not adequately acknowledge the importance of planning in providing the statutory basis for conserving and managing our cultural heritage. The objective '*conservation and sustainable use of built and cultural heritage*' is included, but implies this is a lesser concern compared to the natural environment and population. By contrast, economic growth and (sustainable) development is given prominence in the objectives, and this emphasis continues through the White Paper.

The conservation of cultural heritage must be identified as a specific objective of the planning system, and the qualification '*sustainable use*' omitted. The conservation of our cultural heritage is in itself sustainable on a broad definition of the term, and it is appropriate to include sustainability as an objective, but not as an exclusion. Sustainability is an appropriate qualification for determining conservation outcomes.

Similar comments apply to the lack of a clear objective for Aboriginal heritage, notwithstanding that under some definitions, cultural heritage is a broad term that includes Aboriginal heritage. At the very least, Aboriginal heritage should be mentioned in the recommended specific for objective cultural heritage, or preferably a separate objective included. The use of the '*sustainable use*' qualification for Aboriginal heritage is similarly inappropriate, and the term may also be offensive to Aboriginal people given that Aboriginal heritage also includes intangible or spiritual values.

2. Diversity of Cultural Heritage

The White Paper fails to acknowledge the complexity and diversity of what constitutes cultural heritage, simply referring to '*built and cultural heritage*' (Objectives, p15), '*natural, cultural and Aboriginal heritage*' (p69) or simply '*heritage*' (various locations). Aboriginal heritage is referred to only once (p69), and overall the White Paper does not demonstrate any awareness that cultural heritage also encompasses cultural landscapes, historical archaeology, moveable heritage, cultural routes, vistas and settings and so on.

The measures required by a planning system to identify, conserve and manage cultural heritage are necessarily sophisticated and complex. It is not expected that the White Paper would provide detailed procedures for dealing with the cultural heritage in all its facets, but it is disappointing that there is no acknowledgement of this diversity and the measures required for its conservation.

3. Planning Policies

Section 5.3 of the White Paper deals with the need to prepare a range of planning policies to 'provide a comprehensive yet succinct suite of plain English policies to guide planning across the state'. The section includes an indicative list of potential planning policies for issues such as housing supply and affordability, employment and economic growth, environment and conservation and infrastructure. There is no proposal for a cultural heritage planning policy, rather the White Paper suggests that '*...heritage, including natural, cultural and Aboriginal heritage, will be addressed in one or several planning policies (for example, housing supply and affordability and environment and conservation) and will have to be provided for in the Local Plan*'. This omission is further evidence that the White Paper has not accorded cultural heritage the prominence that it warrants, relegating it to a secondary consideration in the planning review.

Cultural heritage must be included as a topic for which a planning policy will be prepared, and the policy must contain clear objectives for its identification, conservation and management, and acknowledge the complexity and diversity that constitutes cultural heritage, including Aboriginal heritage.

4. One Stop Shop

A key strategy of the White Paper is the establishment of a 'One Stop Shop' process, whereby single general terms of approval, advice or recommendations will be issued by the Department of Planning and Infrastructure *'as if it were the agency whose advice or concurrence was needed'* (p117). The Planning Bill 2013 (Exposure Draft) includes the Heritage Act and the National Parks and Wildlife Act in Table 3 as legislation that will be subject to the 'One Stop Shop' process. It is unfortunate that the White Paper does not more clearly acknowledge how this strategy will actually remove the checks and balances that have evolved over a considerable time under the current approval process.

The White Paper proposes to bypass the approval role of the Heritage Council, the State's independent expert heritage body responsible for items on the State Heritage Register. The White Paper notes that the Heritage Council was one of the government consent authorities that, *'...took the longest to assess and process referrals in 2011–2012 to decide on development proposals'* (p104). However, this assertion does not recognise that, in dealing with the 1700 or so places that are of heritage significance to the people of NSW, the Heritage Council has been able to successfully negotiate better outcomes and determine what are in many cases complex applications.

The members of the Heritage Council are appointed on the basis of their expertise and background in a broad area of expertise, including heritage conservation but also other areas including planning and property development. The Heritage Council is supported by professional staff who are experts in their own right in the diverse disciplines that constitute heritage conservation. The Department of Planning and Infrastructure is a bureaucracy which does not have this level of heritage expertise. Removal of the Heritage Council's role in determining development applications involving items listed on the State Heritage Register will jeopardise the conservation of the State's most important heritage items and compromise the process of constructive negotiation to achieve high quality development outcomes on these State significant sites.

Similarly, the removal of the Office of Environment and Heritage from its current role in determining permits to destroy Aboriginal heritage sites (S90 AHIPs) by the same 'One Stop Shop' process' is equally unacceptable as it will inevitably result in expediency being given precedence over rigour and transparency.

5. Local Plans & Development Guides

The White Paper states that *'The current planning system, which comprises an array of strategic planning documents, environmental planning instruments and development control plans, is overly complex, difficult to understand and is not transparent'* (p64). Although it proposes that *'The new Act will contain provisions to transition existing Standard Instrument Local Environmental Plans and Development Control Plans'* (p92), it is clear that DCPs in particular will progressively be replaced with a new hierarchy of plans that *'will focus on facilitating economic growth and environmental and social outcomes through evidence based analysis, emphasising those issues appropriate to the relevant planning scale'* (p64).

The concern here is that, as for so much of the White Paper, the overriding objective is economic growth rather than qualitative development that responds to cultural heritage as well as other (less quantifiable) environmental and amenity considerations. Without giving undue attention to nomenclature, it is important to recognise that Development Control Plans evolved over time in response to the need for a greater level of certainty for both new development and alterations to heritage items, especially at the local/precinct/conservation area level. Although many current DCPs are flawed, we believe that DCPs will need to have currency in the heritage development process, at least until such time as they are progressively replaced with guidelines

that provide a similar degree of detail in order to ensure a substantial measure of certainty and confidence.

6. Code Assessment Development in Heritage Conservation Areas

The White Paper contains little information about heritage conservation areas, although it states that *'...items of heritage significance and heritage conservation areas will continue to be identified and managed in Local Plans'* (p97). However, it is proposed that additions to a house in a heritage conservation area will be subject to code assessment, and that *'The code will require a judgement as to whether a proposal meets the standards as assessed by a planner working within a council. Where a development meets the standards it cannot be refused'* (p130).

The proposal neglects to mention that the code assessment would (or should) not apply to a house or other building within a heritage conservation area that is a listed heritage item. More importantly, it is of great concern that the approach does not recognise the complexities of designing alterations or additions to even an unlisted building within a heritage conservation area, particularly where the building contributes to its heritage values. For example, the construction of a carport may result in a substantial adverse impact on the significance of a heritage conservation area, whereas in another case the addition of a second storey to an existing building may not. Merit assessment is essential for development to both individually listed heritage items and within heritage conservation areas.

7. Ongoing Concerns & Recommendations

In our previous submissions in response to the Issues Paper and Green Paper stages of the review we raised a number of concerns which we believe have not been addressed. These concerns are set out about

Strategic Planning & Code Assessment

The Metropolitan Plan, housing code and zonings in Local Environmental Plans are all examples of existing strategic planning that are currently part of the planning system. These have not demonstrated that strategic planning and code development have the capacity to resolve all impacts ahead of a complying proposal. In fact, the reverse may be true. Complaints to the planning review about the housing code and private certifiers have already exposed weaknesses in coded development, especially for delivering quality development outcomes, such as compatible additions in conservation areas.

Development in the Vicinity of a Heritage Item

An ongoing concern exists in regard to development in the vicinity of an individually listed heritage item. One of the objectives of a good planning system is to create an environment for good development to enhance its neighbourhood. Best practice in the management and conservation of cultural heritage requires the assessment of the potential impact of development on the values of a heritage item or heritage conservation area in the vicinity of a heritage item. This requirement was recently omitted from the standard LEP template and is therefore currently only optional for consent authorities to consider. In a future standard template it should be mandatory for consent authorities to consider the potential impact of development in the vicinity of a heritage item or heritage conservation area.

Protection of Interiors of Heritage Items

Provisions to protect interiors of heritage items are essential so that development, including non-structural works to heritage spaces, can be guided to protect significant aspects of the interiors of heritage items. This requirement was recently omitted from the standard LEP template and is therefore currently only optional for consent authorities to consider. In a future standard template it should be mandatory for consent authorities to consider the significance of potential impact of development on the interior of a heritage item.

Wilful Neglect of Heritage Listed Sites

Provisions should also be made in the new Act to enable Local Government to respond to demolition of heritage items by wilful neglect.

Targets for Cultural Heritage

The targets proposed for measuring the effectiveness of the new planning system are strongly focussed on easily measured data, such as economic returns and numbers of new buildings. Unless qualitative and quantitative targets are set for cultural heritage (just as important, but harder to measure), the planning system will not deliver outcomes that provide for the management and conservation of cultural heritage, to the detriment of the people of NSW.

Community Participation

Improved strategic planning and early community consultation will facilitate better strategic planning as proposed in the White Paper. However, this approach can not be a substitute for assessing the environmental and neighbouring impacts of development when a development is actually proposed. However thorough, strategic planning cannot foresee, and therefore cannot resolve, all environmental impacts before a development is proposed, especially when it involves heritage items or a heritage conservation area. Without detailed drawings and impact assessment, regulators, planners and residents alike can only guess at the possible impacts of a future development.

Resources for Detailed Strategic Plans

The White Paper envisages a hierarchy of detailed strategic planning documents (including designating allowable development envelopes), but does not indicate how such the preparation of these plans will be funded. If the detailed strategic planning is flawed or inadequate because it is poorly resourced, there will be no sound basis for the evidence-based assessment that the plan proposes. Moreover, the community involvement that is proposed to occur at the strategic planning stage will be ineffective because the community will not have the detailed information required to allow it to assess the local impact of regional strategic plans.

Heritage as an Asset

The White Paper does not recognise that cultural heritage is an asset, a tourism drawcard, which can enhance the appeal and creativity of regions and bring money into the economy, and make a substantial contribution to the amenity of an area. Cultural heritage is an economic driver in the re-use of urban and industrial historic sites and is an important employment generator.

The recognition, celebration and retention of the State's heritage assets should be a clear aim of the new planning system. A good planning strategy should achieve both development and retention of the State's heritage. Heritage does not need to stop change but heritage protection allows management of how the change happens.

Some of the Heritage and Regional Development aims of the ***Paris Declaration on Heritage as a Driver of Development*** (17th ICOMOS General Assembly, Paris 1.12.11), noted below, could be incorporated into the new planning system:

Controlling and Redistributing Urban Development

- To preserve heritage items and historic districts (conservation areas or character zones) and encourage their restoration and regeneration;
- To establish and direct work on regeneration and increased urban densification, promoting a harmonious, balanced and coherent approach to street and plot layout, streetscapes, massing and height of urban developments, and reclaiming urban

wastelands and peripheral urban zones, in order to recreate multifunctional, landscaped urban neighbourhoods, restoring the concept of urban boundaries;

- To promote balanced planning and development in order to ensure the most appropriate allocation of activity zones, including educational, cultural, tourism and leisure facilities.

Revitalising Towns and Local Economies

- To encourage the selective retention and reuse of built heritage in towns and rural villages in order to foster socio-economic regeneration; increase the density of urban cores to contain the anarchic spread of new buildings;

Preserving Space

- To preserve open spaces, which are non-renewable; to maintain rural landscapes and the organisation and scale of their agriculture and forests; to conserve indigenous plant and aquatic heritage; to protect geological and archaeological heritage, groundwater and ecosystems;
- To maintain regional and local transport networks and allow for future network corridors (railway heritage, roads, navigable waterways) to transport people and goods, and to ensure the provision of local services; to promote alternative modes of transport;
- Preserve rural heritage, ensuring its appropriate reuse while maintaining integrity of spatial distribution and functional elements; strictly limit urban sprawl and place conditions on the right to build, stipulating that development should respect the historic landscape and traditional settlement patterns.

Heritage Assessment Methodology

Heritage assessment is one of the few of the non-numerate methods of assessment that has a rigorous methodology – design quality or view analysis is often assessed in a less rigorous, more objective fashion than in heritage assessment. Methodologies such as the Australia ICOMOS *Burra Charter* could readily be adopted into the new planning system as standards for environmental assessment. The *Burra Charter* is recognised internationally, by the courts and many councils in NSW, and should be embedded in future planning controls.

Australia ICOMOS values ongoing involvement in developing best-practice conservation policy and heritage management throughout New South Wales. We trust our submission in response to the White Paper will be given appropriate consideration. Should you wish to discuss our recommendations further, please do not hesitate to contact us at our Secretariat address above.

Yours sincerely



ELIZABETH VINES
President

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