Comments on the
STATE HERITAGE REGISTER GUIDELINES FOR LISTING AND DE-LISTING

Thank you for this opportunity to comment on the guidelines. I need to preface our comments by re-stating that Australia ICOMOS remains opposed to the principle of including economic considerations among reasons for listing or delisting heritage items. In our submission to Parliament on the draft legislation, Australia ICOMOS commented:

*In the opinion of Australia ICOMOS, the proposal to include consideration of economic use and financial hardship among the reasons for listing items on, or removing items from, the State Heritage Register is a serious and fundamental flaw in this legislation. It is inconsistent with accepted principles of heritage conservation, and will result in NSW relinquishing a flagship position in heritage conservation in this country.*

We note that the Guidelines refer to the Burra Charter, in that ‘...the decision about long term conservation should be guided by the heritage significance of the item’. Indeed the Heritage Council would be aware that the entire emphasis of the charter and its guidelines is that decisions about how a place can be conserved (or indeed if it can be) must be separated from decisions about its heritage significance. The amendments to the Act therefore are arguably contrary to this basic principle and of great concern for that reason.

Nevertheless, given that these provisions have now been incorporated into the Heritage Act, Australia ICOMOS considers that they must be applied with great caution where items of State significance are concerned. It is very important to ensure that the (sometimes temporary) financial difficulties of a particular owner or lessee, perhaps resulting from an injudicious investment decision, should not be given undue weight when the Council or the Minister are making decisions about the future of items of State significance. There are numerous examples of heritage items such as the Queen Victoria Building and the Woolloomooloo Finger Wharf that were at one time argued to be incapable of reasonable or economic use, but which have now been successfully adapted and conserved.

The existing condition of an item, and the cost of its conservation, are frequently cited by owners as reasons why the item should not be listed. It is not unknown for the poor state of an item to result from lack of even the most basic maintenance by
its owner, or even deliberate acts (such as removing roofing) to hasten decay. Where there is evidence of such behaviour, Australia ICOMOS submits that the condition of an item should not be given great weight in any decision concerning listing or de-listing. There are several examples of apparently ruinous places (such as Lyndhurst or Harrisford) which have been successfully conserved. Moreover, compromising the setting of a place should rarely if ever be grounds for not listing or for delisting. The setting of a place may be recovered in the future, as has occurred with Elizabeth Farm.

The example of the City of Sydney Heritage LEP gazetted in the early 1990’s is one of many that demonstrate the dangers of relying on economic considerations for listing or de-listing. When the draft list was exhibited, the owners of several of the buildings on it obtained reports from reputable consultants asserting that their buildings were incapable of economic repair or use, and that listing would be ruinous for their businesses. Most of those buildings (including the Dymocks Building, the John Sands Building, the Edinburgh Castle Hotel and Qantas House), despite being subsequently listed when the LEP was amended, are still in active and economically viable use today.

The argument that the zoning of a potential heritage item should be a factor in deciding whether to list or de-list it is also a dangerous one. Zonings are typically applied to areas rather than individual properties, often without consideration of any other factors (such as heritage or other environmental constraints such as overshadowing of public parks).

In considering any proposal not to list or to de-list for reasons other than significance, the Heritage Council needs to keep in mind why it is there, and why there is a Heritage Act. The Act was originally formulated to protect significant heritage places. The need to ‘protect’ is a direct response to the recognition that sometimes there are threats to these places and that on occasions there might even be resistance or overt opposition to the adequate conservation of these places. If owners were all enthusiastic and co-operative about heritage, or if there were no short term economic disincentives to conserve heritage, both the Act and the Council would be unnecessary. It is precisely because of the economic environment that the Heritage Act is needed to conserve the environmental heritage of NSW. Australia ICOMOS considers that any guidelines should be prefaced by a strong statement that the primary considerations of the Heritage Council will be heritage significance, and that other considerations will be taken into account only in exceptional and extreme cases. Such a strong statement would go some way to reassuring the people of NSW that the Heritage Council was committed to fulfilling its primary role as protector and advocate of the state’s most significant heritage places.

For these reasons Australia ICOMOS considers that the present draft guidelines are not a good set of principles to direct future decisions by the Heritage Council. They offer too many avenues for arguing against listing, or for de-listing for owners or tenants for whom listing would be merely an inconvenience. Indeed, the number of guidelines, and the way in which they are phrased, almost make them a guide for unscrupulous owners on how to avoid State heritage listing.
If the guidelines are to be adopted in some form however, we suggest that the following amendments be inserted:

(i) The Undue Financial Hardship provisions should not include the financial circumstances of the particular owner as a primary consideration. The emphasis should be on the hardship that would apply to any owner in the particular circumstances.

(ii) The documentation to be prepared by an expert(s) in support of an application under the Reasonable or Economic Use or the Undue Financial Hardship provisions should be commissioned by the Heritage Council rather than the owner (although the Heritage Council may require that the owner fund the preparation of the report(s)).

Notwithstanding our concerns about the amended provisions, Australia ICOMOS supports the preparation of guidelines to clarify their implementation, and appreciates the invitation to provide comment. We look forward to further opportunities to assist the Heritage Council in its ongoing management of the heritage of New South Wales.

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