4 November 2011

NSW Department of Planning and Infrastructure
Planning System Review
PO Box 39
SYDNEY NSW 2001

Dear Sir/Madam

Australia ICOMOS – Review of the NSW Planning System and the Environmental Planning and Assessment Act 1979

Australia ICOMOS has recently become aware that the NSW Government is conducting a review of the NSW planning system, with a focus on the Environmental Planning and Assessment Act 1979 (the Act). We understand that a key aspect of the review process is public consultation, and that to this end the Government has established an independent panel to undertake the review and to conduct consultation forums with stakeholders. Written submissions are also invited from organisations and individuals with an interest in the functioning of the planning system in NSW.

ICOMOS – the International Council for Monuments and Sites – is a non-government professional organisation that promotes expertise in the conservation of cultural heritage. Australia ICOMOS, formed in 1976, is one of over 100 national committees throughout the world. Australia ICOMOS has over 500 members in a range of heritage professions and is managed by an Executive Committee of 15 people, elected from the membership. We have expert members on a large number of ICOMOS International Scientific Committees, as well as on expert committees and boards in Australia.

Our mission is to lead cultural heritage conservation in Australia by raising standards, encouraging debate and generating innovative ideas. Australia ICOMOS has no political or economic affiliations with any organisations involved in the development industry, and we rarely comment on the specifics of particular developmental or conservation issues – our involvement in such matters is generally limited to urging that an objective and rigorous assessment process be undertaken based on the Australia ICOMOS Charter for Places of Cultural Significance (the Burra Charter).

Unfortunately, Australia ICOMOS has only recently become aware of the review and the consultation process, and was not in a position to participate in a forum meeting with the panel, which we would like to have done. Moreover, as our National Executive Committee was only able to discuss the review at its quarterly meeting just over a week ago in Melbourne, we have not had sufficient time to
prepare a comprehensive response to the four main questions raised by the review by the 4 November deadline.

Nevertheless, we understand that this preliminary consultation stage of the review process will lead to the preparation of an Issues Paper, which is planned for early December 2011, and that feedback and comments will then be invited with a deadline of 17 February 2012. A Green Paper will then be prepared for consideration by the NSW Government. We therefore look forward to submitting a detailed response to the Issues Paper in the anticipation that the views of Australia ICOMOS will influence the preparation of the Green Paper.

Although as noted above we have not prepared a comprehensive response to the preliminary consultation stage, there are a number of general issues that we feel it would be appropriate to raise now, and which we anticipate we will develop further in our Issues Paper submission. In no particular order, these are:

- The protection and proper management of our cultural heritage must continue to be provided for under the NSW planning legislation. Given that the NSW Heritage Act has recently been amended and is likely to continue as the statutory measure for places of State heritage significance, the EPA Act must continue to provide the means for the protection of the majority of heritage places in NSW that do not meet the State significance threshold. The EPA Act also provides the mechanism for local government to manage its own heritage places for the benefit of its constituents (subject to the broad procedural safeguards provided for in the Act).

- The Aims and Objectives of the Act need to be amended to more clearly and emphatically include the protection and proper management of our heritage places.

- Notwithstanding the critical role of local government in the protection and proper management of its own heritage places, the Act should continue to provide for the review by the Heritage Council of key stages in the process, especially in the making of local environmental plans and heritage schedules. This review is critical to facilitate rigour and objectivity in the process.

- Provisions need to be added to the Act, similar to the minimum standards of maintenance and repair in the Heritage Act for places of State heritage significance, to control demolition by neglect of heritage places that are listed on local environmental plans and heritage schedules.

In a broader sense, the review provides an opportunity to undertake a reappraisal of how planning can achieve better outcomes for environmental, economic and social sustainability as well as heritage objectives.

In terms of the planning process, there are a number of measures that have been developed over recent years with the objective of improving the efficiency of the system. However, in practice some of these measures have resulted in adverse impacts in terms of heritage conservation, and should be reconsidered:

- The use of private certifiers has resulted in the approval of works with an adverse impact on heritage values by personnel with little or no expertise in heritage conservation.
• Under Exempt and Complying development processes, the demolition of potential heritage items which have not yet been identified in an LEP can proceed without rigorous review or public consultation.

• Under the former Part 3A provisions of the Act, as well as some SEPPs and other planning instruments, the jurisdiction of the Heritage Act was negated for places of State heritage significance. Although the Part 3A provisions have been removed, the other planning provisions which remove the Heritage Act from the process, also have the result that heritage impacts may not be adequately assessed and considered as part of the planning approval process. These other planning provisions which remove the jurisdiction of the Heritage Act for places of State heritage significance need to be reconsidered.

• The use of LEP standard provisions for dealing with heritage places can limit the ability of local government to consider heritage significance and impacts in determining a development application. In particular, the absence of provisions for consideration of the potential impacts of development in the vicinity of a heritage item or for non-structural internal alterations to a heritage item could result in the approval of development that would have substantial adverse impacts in both of these circumstances.

Thank you in anticipation of your consideration of the points raised above, and please accept our apologies for not having been able to prepare a comprehensive response by the 4 November deadline. Nevertheless, we look forward to reviewing the Issues Paper when it is available, and taking an active role in the next stage of the review process. Of course, should the situation arise, we would be pleased to meet with you to discuss these matters. We can be contacted through our Secretariat above.

Yours faithfully

DR JANE HARRINGTON
President