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Planning legislation updates 2017
NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001


Australia ICOMOS submission on the EP&A Amendment Bill 2017

This submission is provided on behalf of Australia ICOMOS.

ICOMOS – the International Council for Monuments and Sites – is a non-government professional organisation that promotes expertise in the conservation of cultural heritage. ICOMOS is also an Advisory Body to the World Heritage Committee under the World Heritage Convention.

Australia ICOMOS, formed in 1976, is one of over 100 national committees throughout the world. Australia ICOMOS has over 600 members across Australia in a range of heritage professions. We have expert members on a large number of ICOMOS International and National Scientific Committees, as well as on expert committees and boards in Australia.

Thank you for the opportunity to comment on the EP&A Amendment Bill 2017.

Ian Travers
President, Australia ICOMOS
General comments on the EP&A Amendment Bill 2017

ICOMOS considers that many of the proposed amendments to the NSW Environmental Planning and Assessment Act are appropriate and very positive. In particular, the intention of the NSW Government to enhance community consultation is strongly supported by ICOMOS as are the new ‘Objects’ for the promotion of heritage and the promotion of good design. The proposal to promote strategic planning is potentially also a positive initiative provided such planning is preceded, and informed, by detailed studies on matters such as heritage.

The cultural heritage of NSW is primarily protected and managed under the EP&A Act, rather than under the NSW Heritage Act, as is often thought. The latter protects approximately 1700 heritage items of State significance that are listed on the State Heritage Register. In addition to the State listings, there are approximately 27,000 locally-listed heritage items that are protected and managed through heritage listing in Local Environmental Plans as well as several hundred Heritage Conservation Areas (HCAs) across the State. Thus, over 99% of the heritage items and properties within HCAs in NSW are protected and managed through the planning system under the EP&A Act.

While it is laudable that the proposed amendments to the Objects recognise heritage as a fundamental element of planning, there are a number of weaknesses in the current wording of the Bill that will reduce certainty that the State’s cultural heritage will be adequately protected under the new system. Whereas natural heritage and biodiversity values etc are clearly required to be protected and conserved as part of an environmental protection Object, the Bill does not require the ‘protection’ of cultural heritage and it is thus not afforded the same safeguards as the natural environment. This needs to be rectified.

It is pleasing to see that the proposed amendments now include an Object to promote good design and thus give weight to the need for qualitative planning outcomes rather than focusing purely on achieving quantitative outcomes. A best practice planning system must overtly state that it aims to achieve both of these objectives and must also be designed to deliver both. Growth and development are not inimical to qualitative outcomes such as good design and heritage conservation outcomes. The wording of the Bill should be amended to ensure that the criteria and threshold tests for cultural heritage are similar to those of other environmental considerations. Thus, heritage principles, such as those contained in the Burra Charter, should be satisfied and achieved, rather than merely be ‘considered’ or had ‘regard to’.
It is concerning that the amendments do not specifically take account of global climate change or provide any objectives for managing the effects of climate change through the planning system through adaptation and/or mitigation measures.

**Specific Comments**

**Updated Objects**

The wording of the Object relating to cultural heritage (clause 1.4(e) is inadequate as it implies that conservation of cultural heritage will depend on finding a sustainable use. The term ‘sustainable management’ could easily be interpreted as ‘economic use’ of heritage places, which could create pressure for inappropriate change to heritage places. In the absence of other requirements, such as for identification, protection and conservation, this wording is insufficient and may jeopardise heritage values, including intangible or spiritual values. It is inadequate for protecting those places which are of such heritage value that they warrant conservation irrespective of whether there is currently a ‘sustainable’ use. The use of the word ‘conservation’ instead of ‘sustainable management’ would address this issue and would be consistent with the terminology of the *Burra Charter* prepared by Australia ICOMOS.

Further, an important principle in heritage management is that heritage values change over time. There is a need for periodic review and assessment, including the identification and listing of places that have become important to the community in the period since previous heritage studies were undertaken. The identification and protection (through listing and appropriate management) of cultural heritage are essential requirements for their successful management under the EP&A Act. Effective strategic planning will need to be preceded by comprehensive identification of all of an area’s heritage places and values, based on research, survey and wide-ranging community consultation.

ICOMOS submits that the wording of the proposed Object for cultural heritage as set out in clause 1.4(e), should read as follows:

*(e) to identify, protect and conserve built and other cultural heritage (including Aboriginal cultural heritage);*

The above wording should be used in the Objects of all subsidiary instruments and strategic plans, including the Metropolitan Plan, District Plans etc.

**Heritage Council’s Approval role in Integrated Development**

The NSW Heritage Council’s role in approving integrated development applications involving items listed on the State Heritage Register must not be weakened or overridden. It is concerning that it is proposed to enable the Planning Secretary to act on behalf of the Heritage Council in circumstances where the Heritage Council has not provided its decision within a specified timeframe. It must be recognised that many of the properties and development proposals dealt with as part of the Heritage Council’s
approval function are complex issues that often need a long time to resolve, often exceeding the statutory 60-day time limit currently provided under the Act. Complex planning matters often require extensive negotiations with applicants involving several design iterations and amended submissions. It is noted that this is not dissimilar to the case with Major Development determinations by the Department of Planning which often take several months to resolve. Applications involving heritage items of State significance must be decided by the Heritage Council, as the State’s expert heritage body, not the Secretary of the Department of Planning. The current proposal would jeopardise the State’s most important heritage items.

**Development Assessment System - Exempt and Complying Development**

The application of Exempt and Complying development must not be expanded in relation to heritage items or within HCAs other than for very minor changes. Development of heritage items, within conservation areas, or in the vicinity of heritage items in conservation areas must remain as merit assessment, unless of a very minor nature. Merit is always a critical consideration if good quality outcomes are to be achieved. This cannot be 'codified', irrespective of how small or large a development proposal may be. Heritage impact assessment cannot be reliant on a code. There is always an element of experienced judgement required.

**Independent Hearing and Assessment Panels (IHAPs)**

The proposal for independent expert panels to advise on and/or determine Development Applications could (if resourced with the appropriate expertise) assist in achieving high quality outcomes for heritage. However, it is important that these panels include heritage expertise, particularly in areas with a high concentration of heritage items/areas.

Australia ICOMOS would be happy to provide further information or to meet with representatives of the Department of Planning to discuss this submission.