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File No: 11/185848

Mr Sam Haddad
Director-General
Department of Planning & Infrastructure
GPO Box 39
Sydney NSW 2000

Dear Mr Haddad,

Heritage Council of NSW - Submission to the Green Paper - A New Planning System for NSW

The Heritage Council of NSW has reviewed the Green Paper 'A New Planning System for NSW' prepared by the Department of Planning & Infrastructure in response to the review of the NSW planning system. The intent of the review was to establish new legislation to replace the *Environmental Planning and Assessment Act 1979*.

The Heritage Council held a workshop on 22 August 2012 to ensure that its submission to the Green Paper accurately reflected issues of concern to not only the Heritage Council but also to its stakeholders who include professional organisations and individuals, community and interest groups. More than fifty persons attended the workshop.

The Heritage Council believes that its submission to the Green Paper provides an excellent opportunity to improve the integration of heritage management in the new planning system and related Planning Act. It is essential if community needs and expectations about growth and conservation are to be properly balanced and to enable the government to demonstrate leadership in heritage management in NSW.

In February 2012 the Heritage Council made a submission to the Issues Paper "The way ahead for Planning in NSW". The submission included recommendations which were provided to assist with development of policy options. None of the recommendations appear to be reflected in the Green Paper. Many of the recommendations still however remain valid. It is therefore hoped that the translation of the Green Paper into the White Paper and related Act will include due consideration and adoption of the Heritage Council's views.

The Heritage Council's submission (attached) is provided to assist the Department of Planning & Infrastructure with preparation of the White Paper and related Planning Act.

The Heritage Council of NSW is happy to attend a meeting with the Department of Planning & Infrastructure to further discuss the issues raised in its submission on the Green Paper.

Should you have any questions regarding the submission please contact Petula Samios,
Director of the Heritage Branch on (02) 9873 8551.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Lawrence Nield', with a stylized flourish at the end.

Professor Lawrence Nield 14 September 2012
Chair
Heritage Council of NSW

HERITAGE COUNCIL OF NSW SUBMISSION TO THE GREEN PAPER

Recommendations

Aboriginal Heritage

1. *The new planning system must address and recognise the disproportionate impact it has on Aboriginal heritage.*
2. *Strategic planning must better address Aboriginal heritage both through zonings and development controls.*
3. *Aboriginal heritage studies must be undertaken at the strategic planning stage and findings integrated into strategic planning, preparation of planning instruments and framing of development controls.*
4. *Conservation approaches should not be limited to lists of sites, but should be addressed by compatible zonings and development controls.*
5. *Consultation must be tailored to meet the needs of communities. The planning system rarely engages effectively with Aboriginal communities.*
6. *The exact location, nature and significance of Aboriginal heritage cannot always be made public. Planning must be carried out in accordance with protocols with local Aboriginal communities.*
7. *Aboriginal representation should be considered on Regional Planning Panels/Boards.*
8. *Incentive should be available through the planning system to encourage Aboriginal conservation outcomes, in recognition of the broad community benefit.*
9. *Given the nature of the resource, consideration should be given to the regional assessment of Aboriginal heritage, at the strategic planning stage, across LGA boundaries.*
10. *Recognition is needed of cultural differences across tribal boundaries.*
11. *The outcomes of this review as to how the planning system addresses Aboriginal heritage legislation will have direct implications for the Government's broader review into Aboriginal currently taking place.*

Code Assessment

12. *Proposed development that affects listed heritage items (including conservation areas and heritage streetscapes) should continue to be merit assessed.*
13. *Existing exemptions for minor works to heritage places should be carried through to the new related Act.*
14. *Further exemptions for minor works that have no adverse impact on heritage places be developed in conjunction with the Heritage Council for inclusion in the Housing Code.*

Community Engagement

15. *Community engagement in a heritage context must extend to provision of plans/elevations; zoning, building height, building envelope, floor space ratio and setback information; archaeological assessment; view and vista analysis; photo montages; conservation management plans and strategies so that communities are assisted in understanding the issues.*
16. *The White Paper and related Act should clearly articulate how community engagement will be undertaken as well as who will pay for it.*

Concurrences and referrals

17. *Referrals to the Heritage Council should be mandated in planning legislation for all items listed on the State Heritage Register, except where prior approval has been granted by the Heritage Council.*
18. *The requirements and timeframes for referrals to State agencies should be clearly articulated in the planning legislation, perhaps in a simplified table form.*

Heritage Incentives

19. *The new planning system should provide the following incentives for heritage conservation:*
 - *financial grants assistance through a Local Heritage Fund programme;*
 - *waiving of DA fees for applications relating to heritage items;*
 - *transferrable floor-space to encourage conservation and allow new development;*
 - *bonus floor-space;*
 - *permitting land uses which are not generally permissible within the land zoning;*
 - *exemptions from on-site car parking requirements ie: by not requiring on-site car parking ensures the retention of significant landscapes;*
 - *Heritage Advisors programme to provide valuable advice and education to property owners, and promote heritage within the LGA;*
 - *rate relief to heritage listed properties to enable greater availability of funds for conservation and maintenance works.*

Heritage 'Tools'

20. *Tools used for heritage management including a generic requirement for councils preparing local environmental plans that relate to heritage items, Aboriginal objects or areas of Aboriginal heritage significance or Aboriginal places should include provisions that facilitate conservation of items, Aboriginal objects or areas of Aboriginal heritage significance, listing and mapping heritage items and places in the heritage schedules of local environmental plans and standard heritage provisions in local environmental plans and be transposed into the new planning system and related Act.*

21. *The proposed NSW Planning Policies should include a mandatory requirement for councils preparing local environmental plans that relate to heritage items, Aboriginal objects or areas of Aboriginal heritage significance or Aboriginal places to include provisions that facilitate conservation of items, Aboriginal objects or areas of Aboriginal heritage significance.*

Minimum Standards of Maintenance and Repair for Local Heritage

22. *The new Act should include provisions that require the owners of locally listed heritage items maintain and repair their heritage items to minimum standards imposed by the Act (similar to the provisions in the Heritage Act 1977 for state listed properties.)*

State Vision for Heritage

23. *The strategic framework of the new planning system should be underpinned by an overarching State Vision for Heritage that articulates government direction on the management of heritage in NSW.*
24. *That the State Vision for Heritage encompass natural and cultural (Aboriginal, built, landscape, moveable, maritime and archaeological) heritage.*
25. *That an aim of the new planning system be the identification, protection and management of the natural and cultural (Aboriginal, built, landscape, moveable, maritime and archaeological) heritage of NSW.*
26. *That the objectives of the new Act include:*

“to encourage:

the identification, protection and management of items of environmental heritage, Aboriginal object or areas of Aboriginal heritage significance or Aboriginal places;

the protection of the natural environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities and their habitats.”

27. *Heritage as a specific issue should be included as a head of consideration in the new Act for development assessment.*

Strategic Studies

28. *That the strategic planning process in the new planning system include a heritage study/review of the study area so that evidence from an assessment of the heritage significance of heritage items or places informs decision making about land use and development.*
29. *The White Paper and related Act clearly articulate the when, what and how of the proposed strategic studies as well as who will pay for them.*

Character Areas

30. *That the strategic planning process in the new planning system include the identification of Suburban Character Zones so that such zones inform decision making about land use and development.*
31. *That controls for Suburban Character Zones preclude development that adversely impacts on local character and ensure that good urban design outcomes are achieved.*

Preamble

Heritage is evidence of our history. Conserving our heritage helps us to understand our past, and to contribute to the lives of future generations. Our heritage gives us a sense of continuity and belonging to the place where we live. It gives us a sense of living history and provides a physical link to the work and way of life of earlier generations. Heritage enriches our lives and helps us to understand who we are today.

Within NSW, there are approximately 27,000 listed items of heritage significance that provide testament to our State's history. These are items and places that have identified heritage significance because of their historical, historical association, aesthetic, technical/research, rarity or representative significance.

The heritage of our State is diverse and includes buildings, conservation areas, moveable objects, monuments, Aboriginal places and objects, gardens, bridges, landscapes, archaeological sites, shipwrecks, relics, bridges, streets, industrial structures and cemeteries.

Of the 27,000 listed items, approximately 1,600 items or less than 1% of the total listed items are listed as State significant on the State Heritage Register (SHR).

The remaining 25,500 items are items of local heritage significance listed in the heritage schedules of local environmental plans. These items are managed by local councils who have played a pivotal role in heritage management in NSW since 1985 when they were given responsibility for protecting local heritage through the local planning process.

Councils manage heritage through a system enshrined in cognate Acts - the Environmental Planning and Assessment Act 1979 and the Heritage Act 1977. The system, under which items are identified in a heritage study, listed and mapped in local environmental plans and managed through model heritage provisions of the local environmental plan, has successfully worked for more than twenty five years.

Identification of heritage items is the single most important step in the management and conservation of heritage. Robust heritage studies ensure that items and places satisfy heritage assessment criteria. Studies clearly identify what is significant to the community and what should be protected for present and future generations. Such studies with community can also potentially reduce conflict when the study's list of heritage items is recommended for adoption by council in the heritage schedule of its local environmental plan.

Listing of items and places in a local environmental plan provides the items and places with statutory protection. It triggers the need for a merits based assessment process when changes are proposed to heritage items and places and underpins local heritage management in NSW.

Management and conservation of heritage may sometimes be overlooked in local and state planning processes and in planning instruments. Uncertainty about the development potential and heritage status of items may result in delays for land owners and applicants. Irreversible impact on heritage items and places may also occur when such issues are overlooked.

The standardisation of local environmental plans across NSW has provided better consistency in the management and protection of items and places in NSW. The model heritage provisions of Clause 5.10 *Heritage Conservation* of the Standard Instrument Principal LEP set out requirements for the management, protection and conservation of environmental heritage, heritage items, heritage conservation areas, archaeological sites and Aboriginal places and objects.

It should also be highlighted that the conservation of heritage places is a key part of planning for sustainable development. Heritage places are an irreplaceable asset and a non-renewable resource – with benefits to society, the environment and the economy. Retaining heritage buildings also benefits the environment by re-using embodied energy and, in this way, reduces the energy consumption involved in development. For the economy, heritage properties provide the assets to support jobs and investment in the tourism, real estate and construction industries. Heritage places deliver both public and private benefits in these ways.

The Heritage Council firmly believes that the integration of heritage in the new planning system is essential to provide for the protection of heritage items and places in NSW.

The Green Paper

The Heritage Council acknowledges that “the NSW Government is proposing transformative changes to the planning system in NSW with a significant shift to a more strategic and streamlined system that facilitates economic growth and upfront community participation”.

It further acknowledges that the changes to the planning system foreshadowed in the Green Paper are based on pillars of community participation, strategic focus, streamlined approval and provision of infrastructure.

The Heritage Council believes that the system of heritage management that has operated in NSW for more than twenty five years should carry through to the new planning system.

The Heritage Council of NSW’s Recommendations to the Planning System Review

In February 2012 the Heritage Council of NSW made a submission to the Issues Paper “The way ahead for Planning in NSW”. The submission included sixteen separate recommendations which were provided to assist with the development of policy options.

None of the Heritage Council’s recommendations appear to have been included in the Green Paper. Many of these recommendations, however, still remain valid. It is hoped that the translation of the Green Paper into the White Paper and related Act will include due consideration and adoption of the Heritage Council’s views.

The Heritage Council of NSW – Assumptions about the Green Paper

The Heritage Council’s submission to the Green Paper has been prepared based on the following assumptions. These include that under the new planning system the Heritage Council will undertake functions ascribed to it under the Heritage Act 1977 and retain an approvals role under the Heritage Act 1977 for items of State heritage significance listed on the State Heritage Register in NSW.

A further assumption is that the Minister for Heritage and local councils will retain the right to make Interim Heritage Orders over items under threat. An argument, however, exists that if a heritage study has been prepared and strategic work undertaken a local council should not be permitted to make an Interim Heritage Order over an item under threat because the item should have been identified in the strategic planning work undertaken during preparation of the local environmental plan.

The Issues

1 Aboriginal Heritage

Aboriginal heritage includes places with physical evidence of past Aboriginal occupation of an area, such as Aboriginal sites, as well as places of spiritual or cultural importance with no obvious associated physical remains. It includes places that are older than the first European contact of that region, places associated with the first contact, and places of more recent times. Aboriginal heritage is inextricably linked to Aboriginal communities of today and their living culture. It is considered that Aboriginal people are the descendents of the oldest continuous living culture in the world.

Many people often underestimate the breadth and depth of Australia's rich Aboriginal heritage and consider it to be limited to pre-contact 'traditional' sites only. While the thousands of years of pre-colonial heritage are important, the heritage places associated with the first contact between Aboriginal and non-Aboriginal people are also very significant, as are those places that have become important to Aboriginal communities subsequently. For example, a rock shelter site with hand stencils connects people today with those people of perhaps a thousand years before. Likewise, a place where Aboriginal people were massacred is an important story place to explain the journey of an Aboriginal community from the past to the present. Finally, an Aboriginal mission or meeting place associated with more recent historical events explains how Aboriginal people of today have survived and how individuals and communities have worked to maintain and enhance their families, communities and Australia. Both tell part of the story about race relations in Australia.

In Aboriginal culture there are some places that are restricted to certain people or individuals and unauthorised people are not supposed to go there. For example, some places are gender specific - perhaps a place is known as a 'woman's site' and men are discouraged from visiting. Other sites may be visited only by initiated men. Places are confidential in this way to ensure that the features of the site or the activities that are subject to strict Aboriginal cultural lore are not violated. Also, the location of many important sites may have to be kept confidential due to the ongoing threat of vandalism.

Prior to 1788 there were over 400 different languages in Australia and a similarly large number of tribal areas - also referred to as nations or countries. However, this isn't what Aboriginal people refer to as 'country'. 'Country' refers to much more than a tribal area or a piece of land. It refers to an intimate connection to land that represents all that is important. Country supports the plants and animals and it carries the water essential for survival. It is where one comes from at birth and where

one returns to at death. Country is the physical expression of the Dreaming and the scene of present experience.

In the past Aboriginal people were often not consulted on matters of Aboriginal heritage or planning. This is no longer acceptable practice and it is recognised by governments, professional bodies and the wider community that Aboriginal people must be consulted and involved in issues of Aboriginal heritage. It is also recognised that Aboriginal culture is a living, evolving culture where people are working to keep those traditions continuing. (Source Heritage Branch Website)

The National Parks and Wildlife Act 1984 and the Heritage Act 1977 should not be relied upon, in the main for the management of Aboriginal heritage in NSW.

The State Heritage Register currently lists a very small portion of Aboriginal heritage.

Inappropriate planning can destroy a significant amount of the State's Aboriginal heritage through zoning and development control decisions. Notwithstanding this better strategic planning will reduce land use conflicts for Aboriginal heritage because Aboriginal heritage will be a head of consideration in decisions about land use.

The assessment of Aboriginal heritage should not be limited to sites but also include areas and landscapes.

As standard community consultation models for strategic planning, draft planning instruments and proposed development rarely address the needs of Aboriginal communities, consultation will need to be tailored to meet the needs of communities.

The new planning system must therefore fully embrace Aboriginal heritage and ensure that it is considered in an integrated matter with other planning considerations.

Recommendations:

- 1. The new planning system must address and recognise the disproportionate impact it has on Aboriginal heritage.*
- 2. Strategic planning must better address Aboriginal heritage both through zonings and development controls.*
- 3. Aboriginal heritage studies must be undertaken at the strategic planning stage and findings integrated into strategic planning, preparation of planning instruments and framing of development controls.*
- 4. Conservation approaches should not be limited to lists of sites, but should be addressed by compatible zonings and development controls.*
- 5. Consultation must be tailored to meet the needs of communities. The planning system rarely engages effectively with Aboriginal communities.*
- 6. The exact location, nature and significance of Aboriginal heritage cannot always be made public. Planning must be carried out in accordance with protocols with local Aboriginal communities.*

7. *Aboriginal representation should be considered on Regional Planning Panels/Boards.*
8. *Incentive should be available through the planning system to encourage Aboriginal conservation outcomes, in recognition of the broad community benefit.*
9. *Given the nature of the resource, consideration should be given to the regional assessment of Aboriginal heritage, at the strategic planning stage, across LGA boundaries.*
10. *Recognition is needed of cultural differences across tribal boundaries.*
11. *The outcomes of this review as to how the planning system addresses Aboriginal heritage legislation will have direct implications for the Government's broader review into Aboriginal currently taking place.*

2 Code Assessment

The new planning system proposes expansion of the development types that can be exempt from any approval and increase the use of code complying assessment. For example *“new low risk low impact developments types”* will be subject to code assessment such as *“new industrial buildings on industrial land, additions to those buildings, additions to existing commercial buildings, townhouses, terrace housing and villas and housing on smaller lots.”*

The Heritage Council has significant concerns that the application of code assessment to heritage places (including heritage items, conservation areas, and heritage streetscapes) has the potential to adversely impact the heritage significance of the places.

Currently, the management of heritage places in the NSW planning system is based on a flexible system of merit based assessment. The Heritage Council, however, believes that in order to achieve good heritage and quality design outcomes, a merit based approach is necessary and that this requires design and heritage skills as well as good judgement. It further believes that simple compliance with a building envelope, setback or height control as proposed in the Green Paper will not adequately protect the heritage significance of such places nor engender design excellence.

Code assessment, the Heritage Council believes, has significant potential to result in adverse impact on heritage places and their settings.

In May 2012 the Heritage Council made a submission to the Department of Planning & Infrastructure's Local Planning Panel in regard to concerns it had about the need for Clause 5.10(4) of the Standard Instrument Principal Local Environmental Plan to be amended so that the potential impact of development proposed in the vicinity of heritage items and places was considered by councils before determining an application. The Heritage Council is currently awaiting the outcome of advice from the Department of Planning and Infrastructure about Clause 5.10(4).

The Heritage Council also does not believe that private certifiers have the required knowledge and experience to be able to make qualitative decisions about heritage places.

Notwithstanding the above, the Heritage Council supports exempting minor works on listed heritage places from the need for approval where proposed works have no potential to degrade the heritage significance of the place. Exemptions currently exist for heritage items under *SEPP (Exempt and Complying Development Codes) 2008* as well as Clause 5.10 of the Standard Instrument LEP provisions that permit minor works. These provisions should be carried through to the new legislation.

The Heritage Council currently has a set of standard exemptions for minor works that may be applied to items listed on the State Heritage Register. The exemptions reduce red tape saving applicants both time and money. Additional exemptions may be acceptable provided that they have been thoroughly tested through worse-case scenarios.

Recommendations:

- 12. Proposed development that affects listed heritage items (including conservation areas and heritage streetscapes) should continue to be merit assessed.*
- 13. Existing exemptions for minor works to heritage places should be carried through to the new related Act.*
- 14. Further exemptions for minor works that have no adverse impact on heritage places should be developed in conjunction with the Heritage Council for inclusion in the Housing Code.*

3 Community Engagement

The Green Paper states that communities will be engaged in the strategic planning for an area.

The Heritage Council supports community participation in the making of State Planning Policies, Regional Growth Plans, Subregional Delivery Plans, and Local Land Use Plans. The Heritage Council, however, has concerns about how this will occur during preparation of strategic studies that will underpin the proposed regional, subregional and local strategic plans. If evidence based decision making is to occur with the full participation of communities as proposed in the Green Paper, heritage studies/reviews will be required to properly inform the strategic studies and plans. It is unclear from the information provided in the Green Paper how community engagement will be undertaken and perhaps more importantly who will pay for it.

Community engagement can be expensive and time consuming. The tools necessary for this in a heritage context include plans/elevations; zoning, building height, building envelope, floor space ratio and setback information; archaeological assessment; view and vista analysis; photo montages; conservation management plans and strategies.

The Heritage Council therefore believes that the White Paper and related Act will clearly need to articulate how of community engagement will be undertaken as well as who will pay for it.

Recommendations:

15. Community engagement in a heritage context must extend to provision of plans/elevations; zoning, building height, building envelope, floor space ratio and setback information; archaeological assessment; view and vista analysis; photo montages; conservation management plans and strategies so that communities are assisted in understanding the issues.

16. The White Paper and related Act should clearly articulate how community engagement will be undertaken as well as who will pay for it.

4 Concurrences and Referrals

The new planning system proposes “switching off” requirements for concurrences and referrals with the aim of reducing timeframes and providing certainty. Whilst the Green Paper recognises the important role that these approval arrangements play, it believes that many are unnecessary if the matters relating to future development can be resolved with the government agencies at the strategic planning phase. It is also understood from the Green Paper that where concurrence is required (“in exceptional circumstance”), the Council can grant a deemed approval if no response is received within the specified timeframe, in accordance with standard conditions and guidelines.

The Heritage Council supports the streamlining of development approvals; however, it does not believe that all heritage matters can be addressed at the strategic planning stage. Heritage considerations are site specific and merit based with qualitative outcomes. The Heritage Council therefore requests that concurrences and referrals are not switched off for developments relating to State Heritage Items. The Heritage Council has responsibility to review a proposed development for an item that has been listed under the Heritage Act, and it is essential that any decisions that affect State significant heritage items be made taking into account advice from the Heritage Council.

Current planning laws “turn off” the Heritage Act for State Significant Development applications which means that there is no legal requirement to seek or consider the comments of the Heritage Council, where developments affect the state’s most important heritage items listed on the State Heritage Register. This is unacceptable. Referral to the Heritage Council should be mandated in planning legislation.

Delays with referrals may arise when applicants (or councils) are unaware of the requirements for State agency approvals. This occurs because requirements for are not clear in legislation or planning documents. The Heritage Council believes that the new planning system should make the referrals process much clearer and that this could be addressed by including a table of referrals in the legislation or documents. The table would outline when and why referrals to State Agencies are required for certain development and provide a timeframe for response. It would clearly state

whether the referrals was statutory, or non-statutory. It would also provide a checklist for planners and applicants, and could be worked into the development timeframes. Such a table would direct applicants to discuss proposals with relevant agencies so key issues would be made known to them at a pre-lodgement stage.

Recommendations:

17. Referrals to the Heritage Council should be mandated in planning legislation for all items listed on the State Heritage Register, except where prior approval has been granted by the Heritage Council.

18. The requirements and timeframes for referrals to State agencies should be clearly articulated in the planning legislation, perhaps in a simplified table form.

5 Heritage Incentives

Although listing an item or conservation area in the schedule of a Local Environmental Plan provides statutory protection, incentives are necessary to promote heritage and encourage conservation works.

Without such incentives, heritage items and places face neglect from the stigma associated with heritage being seen more a hindrance to development rather than a development and economic benefit.

Many councils in NSW have adopted a variety of approaches to encourage and promote heritage conservation in their local government areas. A number of programs, initiatives and provisions have been successfully implemented that have served as 'incentives' for heritage.

The incentives are designed to provide positive assistance to property owners and custodians and to achieve a desired and specific heritage outcome for example to improve or enhance the heritage significance of an item or place.

Incentives may take the form of a financial grant to assist and contribute to conservation works or relaxation of statutory planning controls to offer a development incentive.

Examples of incentives that have been successfully implemented throughout NSW include:

- *financial grants assistance through a Local Heritage Fund programme;*
- *waiving of DA fees for applications relating to heritage items;*
- *transferrable floor-space to encourage conservation and allow new development;*
- *bonus floor-space;*
- *permitting land uses which are not generally permissible within the land zoning;*
- *exemptions from on-site car parking requirements i.e. by not requiring on-site car parking ensures the retention of significant landscapes;*
- *Heritage Advisors programme to provide valuable advice and education to property owners, and promote heritage within the LGA;*
- *rates relief to heritage listed properties to enable greater availability of funds for conservation and maintenance works.*

Currently, the provisions of clause 5.10 of the Standard Instrument Principal Local Environmental Plan include 'conservation incentives'. Clause 5.10(1) allows relaxation of the other provisions of the local environmental plan where proposed development that would otherwise be inconsistent with the instrument, can be undertaken on the basis that a positive heritage outcome is achieved.

The provisions of Clause 5.10(10) assume that the development that is proposed does not capture works that involve the ongoing conservation and maintenance of an item.

Approximately 25,000 of the 27,000 listed items in NSW are of local heritage significance. The critical issue is that a new Planning Act should recognise that a variety of tools and initiatives are required to enable a more comprehensive, yet positive approach, to the conservation and management of these heritage items.

Recommendations:

19. That the new planning system provide the following incentives for heritage conservation:

- financial grants assistance through a Local Heritage Fund programme;*
- waiving of DA fees for applications relating to heritage items;*
- transferrable floor-space to encourage conservation and allow new development;*
- bonus floor-space;*
- permitting land uses which are not generally permissible within the land zoning;*
- exemptions from on-site car parking requirements ie: by not requiring on-site car parking ensures the retention of significant landscapes;*
- Heritage Advisors programme to provide valuable advice and education to property owners, and promote heritage within the LGA;*
- rate relief to heritage listed properties to enable greater availability of funds for conservation and maintenance works.*

6 Heritage 'Tools'

The Green Paper is silent on how heritage is proposed to be managed under the new planning system.

A number of tools have been used to manage heritage in NSW to date including:

- S117(2) Ministerial Direction 2.3 Heritage Conservation
- the listing and mapping of heritage items and places in the heritage schedules of local environmental plans
- standard heritage provisions in local environmental plans

The Heritage Council believes that these tools should be transposed into the new planning system and related Act to provide continuity and certainty.

The Heritage Council notes however that the Green Paper proposes deletion of S117(2) Ministerial Directions including Direction 2.3 Heritage Conservation and

replacement with NSW Planning Policies. The Heritage Council considers that the requirement for councils preparing a local environmental plan that relates to an item of heritage significance, Aboriginal object or area of Aboriginal heritage significance or Aboriginal place to include provisions that facilitate the conservation of items of heritage significance, Aboriginal objects or areas of Aboriginal heritage significance or Aboriginal places should be retained in the NSW Planning Policies and remain mandatory. The requirement is necessary to ensure that the strategic work undertaken for Regional and Subregional Plans is articulated into Local Land Use Plans.

Recommendations:

- 20. Tools used for heritage management including a generic requirement for councils preparing local environmental plans that relate to heritage items, Aboriginal objects or areas of Aboriginal heritage significance or Aboriginal places should include provisions that facilitate conservation of items, Aboriginal objects or areas of Aboriginal heritage significance, listing and mapping heritage items and places in the heritage schedules of local environmental plans and standard heritage provisions in local environmental plans and be transposed into the new planning system and related Act.*
- 21. The proposed NSW Planning Policies should include a mandatory requirement for councils preparing local environmental plans that relate to heritage items, Aboriginal objects or areas of Aboriginal heritage significance or Aboriginal places to include provisions that facilitate conservation of items, Aboriginal objects or areas of Aboriginal heritage significance.*

7 Minimum Standards of Maintenance and Repair for Local Heritage

The Heritage Act 1977 currently includes provisions that require the owners of a heritage item listed on the State Heritage Register to ensure that items are maintained and repaired to minimum standards imposed by the Act. The standards cover protection of the item from damage or deterioration due to the weather, prevention and protection of the item from fire, security, essential maintenance and repair.

Given that the majority of listed items in NSW are of local heritage significance, the Heritage Council believes that minimum standards of maintenance and repair provisions should similarly apply to local items to ensure that the items are maintained and repaired to minimum standards. The new related Act should include provisions that require the owners of items listed in the heritage schedule of a local environmental plan to ensure that the items are maintained and repaired to minimum standards imposed by the new Act.

The need for minimum standards of maintenance and repair for local items has been raised a number of times with the Heritage Council by local councils.

Recommendations:

22. *The new Act should include provisions that require the owners of locally listed heritage items maintain and repair their heritage items to minimum standards imposed by the Act (similar to the provisions in the Heritage Act 1977 for state listed properties.)*

8 State Vision for Heritage

The Green Paper states that the new planning system will substantially shift its emphasis to a strategic planning framework this will include NSW Planning Policies, Regional Growth Plans, Subregional Delivery Plans and Local Land Use Plans.

Whilst the Heritage Council supports the use of a strategic planning framework for the new planning system, it believes that this should be underpinned by an overarching State vision for heritage that clearly articulates government direction on the management of heritage throughout the state. The State vision for heritage should inform strategic planning through the proposed hierarchy of NSW Planning Policies, Regional Growth Plans, Subregional Delivery Plans and Local Land Use Plans.

The State Vision for Heritage should encompass natural and cultural heritage. By cultural heritage the Heritage Council means Aboriginal, built, landscape, moveable, maritime and archaeological heritage.

The State Vision for Heritage should state that an aim of the new planning system will be the identification, protection and management of the natural and cultural heritage of NSW. This aim of the new planning system should be formally enshrined as objectives in the new related Act as follows:

“to encourage:

the identification, protection and management of items of environmental heritage, Aboriginal objects or areas of Aboriginal heritage significance or Aboriginal places;

the protection of the natural environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities and their habitats.”

Furthermore, heritage, as a specific issue should be included as a head of consideration in the new Act for development assessment.

Recommendations:

23. *The strategic framework of the new planning system should be underpinned by an overarching State Vision for Heritage that articulates government direction on the management of heritage in NSW.*

24. *That the State Vision for Heritage encompass natural and cultural (Aboriginal, built, landscape, moveable, maritime and archaeological) heritage.*

25. *That an aim of the new planning system be the identification, protection and management of the natural and cultural (Aboriginal, built, landscape, moveable, maritime and archaeological) heritage of NSW.*

26. *That the objectives of the new Act include:*

“to encourage:

the identification, protection and management of items of environmental heritage, Aboriginal object or areas of Aboriginal heritage significance or Aboriginal places;

the protection of the natural environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities and their habitats.”

27. *Heritage as a specific issue should be included as a head of consideration in the new Act for development assessment.*

9 Strategic Studies

The Green Paper identifies that strategic planning will become the cornerstone of all planning decisions under the new planning system and evidence based at all levels.

The Heritage Council agrees that the hierarchy of planning under the new planning system that is NSW Planning Policies, Regional Growth Plans, Subregional Strategies and Local Land Use Plans should be informed by strategic studies.

The Heritage Council believes that the strategic planning process at each level of the new planning system should include a heritage study/review of the study area so that the “evidence” from an assessment of the heritage significance of heritage items or places informs decision making about land use and development. More importantly the evidence from such assessment can be formulated into development controls/guidelines that provide for the protection of the heritage items or places.

Evidence based on the assessment of the heritage significance of items and places has been at the heart of the system of heritage management in NSW. The Heritage Council therefore believes that an evidence based system should be carried through to the new Act.

As the when, what and how of such studies is not stated in the Green Paper these issues together with who will pay for the studies will need to be addressed in the White Paper and related Act.

Recommendations:

28. *That the strategic planning process in the new planning system include a heritage study/review of the study area so that evidence from an assessment of the heritage significance of heritage items or places informs decision making about land use and development.*

29. The White Paper and related Act clearly articulate the when, what and how of the proposed strategic studies as well as who will pay for them.

10. Character Areas

The Green Paper identifies that there will be some locations in local government areas that will explicitly preclude development that adversely impacts on local character – Suburban Character Zones.

The Heritage Council supports the use of Suburban Character Zones. The Heritage Council however believes that it is essential for such zones to be formally identified in the strategic studies for each area so that they can properly inform local land use plans. The zones should reflect the “local character” of an area and specifically preclude development that adversely impacts on this. Heritage is or can be central to the Suburban Character Zones. Controls will need to be formulated to support the Suburban Character Zones to ensure that good urban design outcomes are achieved.

Recommendations:

30. That the strategic planning process in the new planning system include the identification of Suburban Character Zones so that such zones inform decision making about land use and development.

31. That controls for Suburban Character Zones preclude development that adversely impacts on local character and ensure that good urban design outcomes are achieved.

Annexure A

Heritage Council of NSW Submission to the Planning System Review February 2012

Recommendations

- 1 *Core heritage management principles are incorporated into the new planning system as follows:*
 - a) *Heritage is recognised as an environmental issue in planning laws;*
 - b) *Protection of natural and cultural heritage is specified as an objective of the Planning Act;*
 - c) *Aboriginal heritage is recognised as part of cultural heritage in planning laws;*
 - d) *Heritage is identified and managed at every level of the Planning system;*
 - e) *Heritage considerations are made known at the plan-making stage for certainty;*
 - f) *Heritage is specified in the Planning Act as a head of consideration for development assessment.*
- 2 *Planning laws require strategic environmental studies to identify all forms of heritage so that heritage issues are known early in the planning process before the submission of costly development applications. This includes identification of heritage items and conservation areas, potential archaeological sites and Aboriginal places and objects of local and state heritage significance.*
- 3 *The Heritage Council retain its Heritage Act approvals role for development of items and archaeology of state heritage significance, except for development that is of primary importance to the State.*
- 4 *Referral to the Heritage Council is mandated in planning legislation at all stages of the assessment process for development of state significance with requirements for:*
 - a) *Consideration by the approval body of Heritage Council comments for State Heritage Register items, and other places and archaeology identified in environmental assessments as having state significance;*
 - b) *Specific timeframes for Heritage Council comments;*
 - c) *Publication of Heritage Council comments for transparency;*
 - d) *Heritage Council cost recovery for this assessment as part of application fees equivalent to the fee structure of heritage legislation.*
- 5 *Greater independence and standards for Environmental Assessment are stipulated in planning laws with requirements for:*
 - a) *Environmental assessment to identify existing and potential heritage items and areas of local and state significance, including Aboriginal sites and potential archaeological relics;*
 - b) *Consultants undertaking assessments to be jointly selected by the consent authority and the proponent, with funds collected from the proponent;*

- c) *Submitting draft assessments to authorising state agencies, including the Heritage Council, for a “test of adequacy” and the ability to send back substandard assessments for revision.*
- 6 *Heritage experts appropriate to the type of development are included in the decision making body for these developments.*
- 7 *Planning legislation to make it mandatory for local councils to include items and areas “of local or state heritage significance” on heritage schedules of local environmental plans to ensure significant heritage places are identified at the plan making stage.*
- 8 *The listing process continues to match the process for other development controls like zoning, as currently, where places are assessed in an independent environmental study (a heritage study) and the community is informed about draft plans. Owners of properties nominated for listing should be separately notified and given the opportunity to comment before decisions are made independently by the planning authority.*
- 9 *Development consent is required for demolition and other works with potential to degrade the heritage significance of heritage items and conservation areas to enable a merit assessment of the impacts.*
- 10 *Minor works to heritage items and areas are exempted from development consent requirements when they have no potential adverse impact on heritage significance, using the model established by the Heritage Council known as the Standard Exemptions for Works Requiring Heritage Council Approval.*
- 11 *The Complying Development Code is amended to ensure potential heritage items can not be demolished before they are assessed for possible listing by:*
 - a) *Including a requirement for certifiers to notify local councils when demolition is proposed to give councils a minimum of 14 days notice to use the Heritage Act authorisation for making Interim Heritage Orders over potential heritage items, and thereby prevent demolition of potential items;*
 - b) *Alternatively, complete demolition should no longer be permitted as complying development.*
- 12 *The standard provisions for Local Environmental Plans are modified to require development consent for internal demolition of both structural and non structural features of heritage items.*
- 13 *The requirement for consent authorities to consider the impact of development in the vicinity of heritage items be reinstated in the standard provisions for Local Environmental Plans to ensure the impacts of neighbouring development on the significant setting of heritage items are considered.*
- 14 *Conservation incentives for heritage items are maintained in local instruments, such as flexibility in permissible land uses, and expanded where possible, such as through floor space transfers or “bonuses” applied where they do not degrade the significance of heritage items.*

- 15 *Development contributions should be able to be used for the purpose of conserving heritage.*
- 16 *Planning legislation incorporate the requirement for basic maintenance of locally listed heritage items, consistent with the Heritage Act requirements known as “minimum standards of maintenance and repair”, to empower councils to prevent unapproved demolition by neglect.*