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File:11/18548

Mr Tim Moore and Mr Ron Dyer  
Joint Chairs  
NSW Planning System Review  
GPO Box 39  
SYDNEY NSW 2001

Dear Mr Moore and Mr Dyer

## **Re: NSW Planning System Review – NSW Heritage Council submission**

The Heritage Council has considered the Issues Paper “*The way ahead for Planning in NSW?*” released on the review of the NSW planning system. It is noted that the purpose of this review is to establish new legislation to replace the *Environmental Planning and Assessment Act 1979* (“the Planning Act”) and that the issues paper does not restrict submissions to the 238 questions it poses. The following comments on further issues and response to relevant questions are accordingly provided to assist with the next stage of the review to develop policy options.

### **1.0 The planning system is responsible for heritage management**

The Heritage Council believes this review is a vital opportunity to improve the integration of heritage management into the planning system so that planning in NSW balances the community needs for both growth and conservation.

Conserving the natural and cultural assets of the existing environment is considered a key part of planning for sustainable development. Heritage places are an irreplaceable asset — a non-renewable resource — with benefits to society, the environment and the economy. For society, heritage places represent those places most valued by communities because of their contribution to the sense of place and identity of neighbourhoods and as tangible links to Australia’s past and its culture. Retaining heritage buildings also benefits the environment by re-using embodied energy and, in this way, reducing 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 notes that the planning system is responsible for the majority of heritage places in New South Wales. Over 95% of listed places in NSW are managed within the planning system. This includes approximately 26,000 heritage items and areas of local heritage significance listed on Local Environmental Plans, compared to 1,600 state significant heritage items listed on the State Heritage Register under the *Heritage Act 1977*. All listing and development of these heritage places is managed under planning legislation.

Under the current planning system, multiple planning laws<sup>1</sup> also “turn off” the Heritage Act for the approval of major mining, infrastructure and other larger scale developments of state-listed heritage items, as described further in the next section of this letter. This means that the planning system now controls the greatest impacts on a number of local and state heritage items in New South Wales, independently of the Heritage Act.

The heritage items and areas managed under the planning system are diverse — representing the places the community wants to keep for their cultural value — from buildings and gardens to landscapes, bridges, railways and archaeology to name a few. These are the places with identified heritage significance because of their historical, social, associational, research or aesthetic value. This includes both Aboriginal and non-Aboriginal places and objects.

The Heritage Council notes that planning laws do not however contain specific provisions for identifying and considering heritage issues. The Heritage Council notes that heritage issues are often overlooked in local and state planning processes for both Aboriginal and non-Aboriginal heritage places, resulting in an increased risk of delays and conflicts at the development stage. Irreversible impacts on heritage places are also more likely when heritage issues are overlooked. To reduce these risks, the Heritage Council recommends:

**1.1 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.**

**1.2 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.**

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<sup>1</sup> These laws are listed in Section 2.0.

## 2.0 Integrated heritage management at the state level

While Part 3A of the Planning Act has been repealed, the Heritage Council notes that planning laws are still in force which “turn off” the Heritage Act for major developments including (but not limited to) the *State Environmental Planning Policy (Major Development) 2005*, *State Environmental Planning Policy (Infrastructure) 2007* and the *State Environmental Planning Policy (State and Regional Development) 2011*.

The Heritage Council notes this has two main effects for major developments of heritage sites. Firstly, it means that the state’s most important heritage items listed on the State Heritage Register are no longer protected from demolition by state law when major developments are proposed. It also means that the Heritage Council can no longer refuse major developments that degrade the significance of state-listed heritage items, potential heritage items affected by Interim Heritage Orders, and archaeological relics.

The Heritage Council supports streamlining development approvals into a consolidated process and believes it is the prerogative of state government to determine Critical Infrastructure and State Significant Development. The Heritage Council believes it is essential that any such decisions affecting state significant heritage items are made taking into account advice from the Heritage Council.

While the Heritage Council has generally been invited to comment on major developments, there is currently no legal requirement to seek or consider these comments under planning laws. Less time, resources, authority and information are given to the Heritage Council for assessing major developments than is otherwise required by the Heritage Act. Whereas the Heritage Act gives 60 days for assessment of major development, the referral period for the Heritage Council comments is usually insufficient for applications to be considered at the monthly meetings of the Heritage Council. In terms of resources, no fees are received for cost-recovery for this assessment, as otherwise occurs under the Heritage Act. The Environmental Assessments submitted with these development proposals often do not adequately identify or assess heritage features and archaeology to enable the Heritage Council to consider the extent of impact and advise the approval body of its views before developments are determined.

The reduced time, resources, information and authority for Heritage Council comments limits the expert heritage review of major developments. It also limits the ability of the Heritage Council to negotiate positive development outcomes for the state’s most important heritage items and archaeology as it has done in the past.

The Heritage Council therefore recommends the following adjustments to the consolidated state government approvals process:

### 2.1 The Heritage Council retains 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.

- 2.2 Referral to the Heritage Council is mandated in planning legislation at all stages in 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.**
- 2.3 Greater independence and standards for Environmental Assessment are stipulated in planning laws with requirements for:**
- a) Environmental Assessments to identify existing and potential heritage items and areas of local and state heritage 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 sub-standard assessments for revision.**
- 2.4 Heritage experts appropriate to the type of development are included in the decision-making body for these developments.**

### **3.0 Integrated heritage management at the local level**

As noted above, local planning impacts on 26,000 heritage items and conservation areas and is responsible for conserving over 95% of listed heritage places in NSW. Local council planning is also primarily responsible for managing places yet to be listed. For an orderly planning process, the Heritage Council therefore recommends local councils are equipped to pro-actively manage these issues in the following main areas:

#### **A) Local listing**

At the core of effective heritage management is the need to identify significant heritage places by listing on local environmental plans. This is the only way to ensure that heritage places are known and considered in an orderly planning process.

The Heritage Council acknowledges that both local and state heritage lists are incomplete. The total number of listed heritage items represent less than one percent of land parcels in NSW. A large number of properties identified in Heritage Studies have not been listed on local environmental plans.

The Heritage Council notes the Issues Paper again asks whether owners should instead determine listing. This issue has been repeatedly examined in reviews of heritage systems in NSW and Australia over the past 10 years. The Heritage Council believes that an owner's right to self-determine listing should not differ to their right to determine zoning or other development controls.

To deliver the over-riding purpose of listing for certainty in the planning system, the Heritage Council believes listing decisions need to be based on heritage significance and made impartially by government using transparent state-wide standards. This is because the main purpose and effect of local listing is to flag significant places where heritage will be an environmental consideration for developments.

Turning off or blocking listing does not remove the underlying heritage issues for historic places, only the measured process for managing them. Early listing of significant heritage places avoids the conflict, expense and delays that can occur when heritage issues are identified late in the development process. Listing gives owners and the community greater certainty that future development will be sympathetic ahead of important decisions such as purchase.

The effects of local listing are flexible. Any development for locally listed places can be assessed and approved by local councils on its merits, including demolition. Listing also activates further benefits for owners, such as flexible land-use, extra protection from inappropriate neighbouring development, rate reductions, tax breaks and improved access to heritage grants for conservation works.

When consulting owners for proposed listings, the Heritage Council believes it is important that owners are given sufficient information about the significance of an item so they can make their submission on whether they agree the place meets the criteria for listing. Each owner should therefore be notified in writing of an intention to list a property as part of the consultation process for Local Environmental Plans.

In making listing decisions, government can balance the needs of current owners with future owners and generations and the longer-term benefits of conserving heritage for the environment, society and the economy.

A planning system without an impartial listing process would risk endangering the majority of heritage places in New South Wales.

The Heritage Council therefore recommends:

- 3.1 Planning legislation 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.**

- 3.2 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.**

#### **B) Development consent for heritage listed places**

The management of heritage places in the NSW planning system is based on a flexible system of merit assessment for approving demolition and other changes. This implements the precautionary principle where changes with potential to degrade the heritage significance of listed places require approval. The purpose of the approvals process is to assess the impact of works on the heritage significance of listed places. This allows the individual circumstances of a diverse range of heritage places to be taken into account at the development assessment stage. The individual circumstances of an item, such as the original integrity of component features, are too varied and detailed to assess at the plan-making and listing stage.

The Heritage Council supports exempting minor works from the need to gain approval when they have no potential to degrade the significance of heritage listed places. The Heritage Council has exempted a number of works in this way through the *Standard Exemptions for Works Requiring Heritage Council Approval*. This includes a simplified notification and merit assessment model for exempting minor works on a case-by-case basis, which has recently been extended to local councils in the standard heritage provisions for Local Environmental Plans.

The Heritage Council therefore recommends:

- 3.3 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.**
- 3.4 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*.**

#### **B) Complying development**

Currently unlisted heritage places of local or state heritage significance can be demolished without notifying any government authority or the community using the complying development code through a private certifier. Private certifiers are not qualified or required to assess potential heritage values before demolition is approved.

This places potential heritage items of state and local heritage significance at direct risk of demolition. This risk may be increased after an item has been identified in an environmental study and before listing on the local environmental plan or State Heritage Register can be completed.

While local councils in NSW are being authorised to make Interim Heritage Orders for endangered potential heritage items, the complying process does not alert councils or the community or give councils sufficient time to use this emergency measure before demolition is certified and occurs.

The Heritage Council therefore recommends:

- 3.5 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**

### **C) Heritage item interiors**

Many listed heritage items have significant interiors which retain fine original or early features. However, changes to the standard provisions for Local Environmental Plans have removed the requirement to gain approval for non-structural internal alterations. This means that elements such as original ceilings, floors, timber stairs, doors, joinery, fireplaces and other decorative finishes and features could be removed or altered without assessment or approval, eroding the significance of heritage items. The significance of individual features of a heritage item, including its interiors, is not generally known at the plan-making stage for specification in the listing. While not all heritage items have significant interiors, the requirement for approval enables this detailed impact to be assessed at the development stage, consistent with the precautionary principle to ensure significant features of heritage items are not removed or irreversibly damaged.

This recommendation does not apply to all internal changes. Damage or demolition of significant fabric, not the introduction of reversible new features, is the primary impact requiring assessment. Therefore, internal changes introducing reversible new features such as new furnishings, air conditioning units and painting already painted surfaces can continue to be exempt from development consent. Where in doubt, owners can also notify the local council to seek case-by-case exemptions as set out in the standard heritage provisions for Local Environmental Plans.



The Heritage Council therefore recommends:

- 3.6 The standard provisions for Local Environmental Plan are modified to require development consent for internal demolition of both structural and non-structural features of heritage items.**

#### **D) Setting of heritage items**

Heritage items can lose their significance when their visual setting is adversely affected by unsympathetic development on sites in their vicinity. The requirement for consent authorities to consider the impact of development in the vicinity of heritage items was recently removed from the standard heritage provisions for Local Environmental Plans. The “development in the vicinity” provisions are considered an important component of Local Environmental Plans to ensure neighbouring development does not detract from the significance of heritage items. This accords with Burra Charter principles which recognise that the retention of an appropriate visual setting is an essential part of conserving the heritage significance of heritage items. This is also a measurable benefit to owners of heritage items as added protection against inappropriate neighbouring development which is important to maintain.

The Heritage Council therefore recommends:

- 3.7 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.**

#### **E) Conservation Incentives**

The Heritage Council supports the retention of existing Conservation Incentives in the standard provisions for Local Environmental Plans, including the flexibility in permissible land uses which maintain heritage significance.

The lack of incentives for heritage conservation has been identified as a major risk to heritage in the 2011 national *State of the Environment* report. This review is an opportunity to therefore expand incentives in the planning system, such as through floor space transfers, established for example by the City of Sydney, development ‘bonuses’ and the use of development contributions for the purpose of conserving heritage. The Heritage Council therefore recommends:

- 3.8 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.**



### **3.9 Development contributions should be able to be used for the purpose of conserving heritage.**

#### **F) Maintenance of heritage items**

While demolition of locally listed heritage items requires council approval, local councils have no capacity to prevent unapproved demolition by neglect. The Heritage Council believes local councils should be able to require a basic level of maintenance to prevent the deliberate neglect of heritage items, based on the Heritage Act standards known as “minimum standards of maintenance and repair”. These standards do not require restoration. They only require essential maintenance such as to protect buildings from damage by water penetration, fire and vandalism.

The Heritage Council therefore recommends:

#### **3.10 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.**

### **4.0 Feed-back questions**

The Heritage Council’s response to relevant feed-back questions contained in the Issues Paper is annexed.

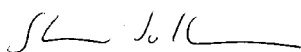
### **5.0 Further consultation**

The Heritage Council would welcome the opportunity to meet with you and your panel to discuss this submission.

The Heritage Council also intends to hold a workshop for heritage professionals and other heritage bodies on heritage management in the planning system to identify possible innovations to feed into this review of the planning system. The Heritage Council would welcome your attendance at this workshop likely to be held in April following the release of the Green Paper.

Should you have any questions regarding these comments or if the Heritage Council can assist in any other way for this review, please contact Petula Samios, Director of the Heritage Branch on (02) 9873 8551.

Yours sincerely



28/02/2012

Sharon Sullivan AO  
**Acting Chair**  
**Heritage Council of New South Wales**

## Annexure A: Response to feed-back questions contained in the Issues Paper

Feed-back question	Heritage Council recommendations
<b>A1)</b> What should the objectives of the new planning legislation be?	<p>The Heritage Council recommends the revised planning system acknowledge its responsibility for heritage conservation and contain a greater focus on outcomes, rather than just process, by specifying the following objectives for the planning legislation:</p> <ol style="list-style-type: none"> <li>1) Protection and conservation of heritage, including Aboriginal heritage;</li> <li>2) Promote ecologically sustainable development;</li> <li>3) Promote quality urban and rural environments in the long-term;</li> <li>4) Encourage design excellence in development.</li> </ol>
<b>A2)</b> Should any overarching objectives be given weight above all other considerations?	<p>The Heritage Council recommends that the over-arching objective of the planning system should be for ecologically sustainable development (ESD) as set out in B2.</p>
<b>A3)</b> Should there be strict controls in plans?	<p>Yes, the Heritage Council considers strict controls that set upper limits on development potential and exclusionary use zones are considered a vital component of town planning for transparency and community certainty about future development, with the following provisions:</p> <ol style="list-style-type: none"> <li>1) Controls are established based on a thorough assessment of all place-specific environmental issues for both growth and conservation;</li> <li>2) Identifying places or heritage significance and other areas of environmental sensitivity (such as areas of high archaeological potential) is an essential part of developing realistic expectations for development;</li> <li>3) The flexibility is contained in the merit assessment of individual proposals within the framework of these strict controls;</li> <li>4) Conservation incentives are incorporated into these controls for heritage places, such as for transferable floor space and allowing a broader range of uses that conserve significance, so that the development potential established through strict controls does not encourage demolition or diminish significance of heritage places;</li> <li>5) Re-zoning proposals require an equal or greater degree of rigour than the plan-making process to ensure zonings are consistent with heritage objectives.</li> </ol>
<b>A4)</b> Should applications that depart from development controls be permitted?	<p>Yes, the Heritage Council agrees provided the test for departures specifically excludes development which adversely affects heritage items or conservation areas and their setting.</p>
<b>A5)</b> What should be the test for a proposed variation?	<p>Tests recommended by the Heritage Council are that development will:</p> <ol style="list-style-type: none"> <li>1) meet or better previously identified outcomes or standards, not merely numeric standards;</li> <li>2) conserve heritage places and archaeology in line with the above recommended conservation incentives;</li> <li>3) not adversely affect heritage items, areas and their setting.</li> </ol>

<p><b>A7)</b> Should strategic plans be statutory instruments with greater weight?</p>	<p>Yes, the Heritage Council considers that strategic regional planning, underpinned by thorough Environmental Assessment, should be the cornerstone of a new planning system. For considered planning that reduces environmental conflicts, the Heritage Council recommends that statutory provisions require these plans to:</p> <ol style="list-style-type: none"> <li>1) Be informed by Heritage Studies within the region as part of the thorough Environmental Assessment;</li> <li>2) Include identification of heritage items and precincts (Aboriginal and non-Aboriginal) of local and state heritage significance recommended by the Heritage Studies;</li> <li>3) Include identification of potential archaeology of local and state heritage significance;</li> <li>4) Incorporate appropriate stakeholder and community participation, including Aboriginal communities.</li> </ol>
<p><b>A8)</b> How should the implementation of strategic plans be facilitated?</p>	<p>Strategic regional plans should be facilitated as whole-of government plans, with responsibility for delivering key parts of the plan clearly allocated to state bodies, including the Heritage Council for heritage issues.</p> <p>Appropriately resourcing (across all agencies) the preparation of these plans is essential. Co-funding by contributions from various industry sectors and stakeholder groups and Government is an option.</p>
<p><b>A9)</b> In a new planning system, how can we improve community participation opportunities? How can we improve consultation processes for plan making and development assessment?</p>	<p>The process for consultation should specify:</p> <ol style="list-style-type: none"> <li>1) Where the listing of properties on heritage schedules is proposed, specific letters to the owners should be sent not just public notices.</li> <li>2) timeframes in business days, not calendar days, for agency and community comments on plan making and development assessment to ensure this takes into account weekends and public holidays.</li> </ol>
<p><b>A13)</b> Should Joint Regional Planning Panels decide development applications? If so, which applications should the panels decide? Who should identify these?</p>	<p>Whichever panels or planning body determine applications, the Heritage Council recommends a heritage expert forms part of the decision-making panel when considering proposals affecting heritage items and areas.</p> <p>The Heritage Council is an excellent example of an expert decision-making panel containing representatives from a number of relevant disciplines and organisations in order to make decisions for heritage items of state heritage significance.</p>

<p><b>A15)</b> Should any changes be made to complying development and the process of approving it?</p>	<p>The Heritage Council acknowledges that state and local heritage lists are not comprehensive with many heritage places of local and state significance yet to be listed. Currently unlisted heritage places can be demolished without notifying any government authority or the community using the complying development code through a private certifier. Private certifiers are not qualified or required to assess potential heritage values before demolition is approved. The Heritage Council therefore recommends:</p> <ol style="list-style-type: none"> <li>1) A requirement is inserted into the process for certifiers to notify local councils when complete 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.</li> <li>2) Alternatively, complete demolition should no longer be permitted as complying development.</li> </ol>
<p><b>A18)</b> Should there be a right of review or appeal against a council decision concerning the zoning of a property?</p>	<p>This question applies equally to listing decisions. The Heritage Council believes right to appeal a listing decision should extend to proposed new listings, not existing, and only on the grounds of heritage significance. Other concerns such as economic viability are considered at the time of development assessment when local council can approve demolition.</p>
<p><b>A20)</b> If there is to be a right of appeal or review of a council zoning decision, who should decide that appeal or review?</p>	<p>The Heritage Council recommends that any party given the responsibility for reviewing the right of appeal would have:</p> <ol style="list-style-type: none"> <li>1) additional resources to reasonably support this process;</li> <li>2) the appropriate heritage expertise, especially where rezoning decisions affect heritage items and precincts.</li> </ol>
<p><b>A21)</b> What are appropriate measures that might be implemented in a new planning system to create public confidence in the integrity of environmental impact statements (and their supporting studies) for major development projects?</p>	<p>To improve public confidence in the assessment process for major developments, it is recommended that:</p> <ol style="list-style-type: none"> <li>1) consultants undertaking assessments be jointly selected by the consent authority and the proponent, with funds collected from the proponent.</li> <li>2) For major development the Environmental Assessment should address conservation matters, including the assessment of potential heritage places and archaeological relics, not only those currently listed.</li> <li>3) Heritage Council comments be required on both the environmental assessment undertaken at the plan-making stage, as well as any subsequent development, where it has an impact on state significant heritage items.</li> </ol>
<p><b>B1)</b> What should be included in the objectives of new planning legislation?</p>	<p>See recommendations of A1.</p>

<p><b>B2) Should ecologically sustainable development be the overarching objectives of new planning legislation?</b></p>	<p>The Heritage Council agrees with this provided:</p> <ol style="list-style-type: none"> <li>1) The definition of sustainability takes into account embodied energy in terms of the reduced energy consumption benefits from re-using existing buildings and materials versus new construction;</li> <li>2) Equal weight is given to the three arms of sustainable development, namely: the environmental, social and economic;</li> <li>3) Heritage conservation is recognised as part of sustainable development by safeguarding the economic, social and environmental benefits that heritage places deliver, outlined below.</li> </ol> <p>For the economy, heritage properties support investment, jobs and economic growth in tourism, real estate and construction. Heritage places such as the Rocks provide key attractions for tourism and associated investment. As an indicator of investment generated by heritage places, the latest NSW grants program records over \$22 million of investment in conservation activities for 2009-2011. Over \$1.12 billion of development was approved by the Heritage Council in the past financial year for state listed places. For communities, heritage places play a major role in the sense of identity of neighbourhoods and embody cultural values that are irreplaceable. For the environment, conserving heritage buildings reduces energy consumption by recycling embodied energy. For instance, the Heritage Council notes it has been calculated that re-using instead of demolishing an average nineteenth century terrace is equivalent to saving 15,000 litres of petrol or five car trips around the planet in embodied energy.</p>
<p><b>B5) Should the objectives address the operation of the new planning legislation?</b></p>	<p>Yes, amongst other provisions, the new Planning Act should provide:</p> <ol style="list-style-type: none"> <li>1) certainty, predictability, consistency and transparency in decision-making for the community, government, and developers; and</li> <li>2) consideration of cumulative impacts of development</li> <li>3) protection for heritage items and areas and their setting including Aboriginal heritage</li> <li>4) clear linkages and coordination between land use planning, natural resource management planning and infrastructure planning;</li> <li>5) cost recovery for state agency assessment of development proposals through a share of application fees</li> </ol>
<p><b>B3) Should some objectives have greater weight than others?</b></p>	<p>See Heritage Council comments in A2</p>
<p><b>B6) Are the current definitions in the Act still relevant or do they need updating?</b></p>	<p>The Act needs to be updated to reflect current heritage practice in its definition of heritage terms, including the criteria for heritage significance.</p> <p>Heritage terms need to be updated to reflect those definitions incorporated into the present standard instrument for all Aboriginal and heritage terms.</p>
<p><b>C4) Should there be required consideration of the 'public interest' in the plan making process?</b></p>	<p>Yes, public interest should be the driving force behind statutes and government activities they prescribe.</p>

<b>C9)</b> What information and data should be used when preparing plans?	<p>The Heritage Council recommends the following information for preparing plans:</p> <ol style="list-style-type: none"> <li>1) Heritage Studies identifying potential heritage items and conservation areas of local and state heritage significance in accordance with Heritage Council guidelines;</li> <li>2) Statements of significance for heritage items and conservation areas, updated with each review to reflect changing significance and values; and</li> <li>3) Predictive archaeological management plans to identify areas of archaeological sensitivity.</li> </ol>
<b>C12)</b> Should biodiversity and environmental studies be mandatory in the preparation of plans?	Yes, including Heritage Studies identifying potential heritage items and conservation areas of local and state heritage significance in accordance with Heritage Council guidelines.
<b>C13)</b> How should the landscapes of Aboriginal cultural heritage significance be identified and considered in plan making?	<p>The following measures are recommended:</p> <ol style="list-style-type: none"> <li>1) Improved consultation with Aboriginal communities;</li> <li>2) Specification of Aboriginal heritage as an environmental consideration in the planning laws for all stages of the planning process;</li> <li>3) mandatory referral to the office administering Aboriginal legislation (noting a review is currently underway) and the Heritage Council of NSW.</li> </ol>
<b>C18)</b> Should there be State environmental planning policies? If so, should they be in a single document? Or should they be provisions in a local environmental plan?	<p>The Heritage Council considers that a hierarchy of state, regional and local environmental planning instruments (EPIs) can work effectively.</p> <p>Determining the basic question of whether development consent is required and by which authority is currently very complicated in the planning system because of multiple pieces of overlapping state legislation, codes, policies and consent authorities that have been created over time. This is further complicated because each exemption SEPP or similar has its own unique applications, exclusions, requirements and ability to over-ride other state laws or policies. For a more user-friendly system, it is therefore recommended that:</p> <ol style="list-style-type: none"> <li>1) The many state plans and policies that establish when consent is NOT required is rationalised into a single stand-alone schedule of exempt and complying development, which can then be amended as necessary when any further exemptions are required.</li> <li>2) Local and state planning controls are integrated through a web-based mapping system as has been established for Victoria to show all controls relating to a single site.</li> </ol>
<b>C19)</b> Should there be statutory public participation requirements when drafting SEPPs?	Yes, matching consultation for preparation of local environmental plans.
<b>C21)</b> Should there be a review process to deal with issues arising between the Department and councils that relate to the preparation of LEPs?	Yes. And this should incorporate the other government agencies with issues.



<p><b>C26)</b> Should there be a right for a landholder to seek compensation for the consequences or a rezoning of their land?</p>	<p>No because the execution of planning is the government's function required by law, and the legal costs as well as the sum of compensation would be unreasonably born by tax payers. The same question and response applies equally to heritage listing decisions.</p> <p>This is distinct from land acquisition (for example for road widening) which should remain subject to fair market value tests and management under the Just Terms Compensation Act.</p>
<p><b>C29)</b> What should be the processes prior to listing an item of local heritage in an LEP?</p>	<p>The Heritage Council believes that local listing serves a vital role in managing NSW heritage within the three-tiered framework for local, state and national heritage. Heritage listing on local environmental plans is responsible for conserving most heritage places in NSW – over 95% of currently identified items and areas.</p> <p>The Heritage Council believes the community expects planning for sustainable development to balance both growth and conservation. Heritage listing of significant places on LEPs is a key part of this balanced process.</p> <p>The main purpose of local heritage listing is to flag significant places where heritage will be an environmental head of consideration and provide greater owner certainty. Early listing of significant heritage places avoids the conflict, expense and delay than can occur when heritage issues are identified late in the development process. The effects of local listing are flexible. Any development for locally listed places can be assessed and approved by local councils on its merits, including demolition and uses which would otherwise be prohibited by the zoning.</p> <p>The Heritage Council acknowledges that the state and local heritage lists are incomplete. The total number of heritage listed items represent less than one percent of land parcels in NSW. A large number of properties identified in Heritage Studies have not been listed on local environmental plans.</p> <p>The following process for listing and managing heritage places is therefore recommended:</p> <ol style="list-style-type: none"> <li>1) The Heritage Council supports the listing process echoing the process for other development controls like zoning, as currently, 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 then made independently by the planning authority.</li> <li>2) Changes to the Exempt and Complying legislation are required so that potential heritage items identified in a Heritage Study can not be approved for demolition by a private certifier before they are listed on a heritage schedule.</li> <li>3) Statements of significance should be prepared for heritage items and conservation areas, and reviewed as part of reviews of the LEP heritage schedules.</li> <li>4) Heritage significance is maintained as the measure for listing and defining listing boundaries using the established assessment criteria of the Heritage Council. Development and other management issues are considered at the development assessment stage.</li> </ol>



	<p>5) Support the retention and expansion of Conservation Incentives in the standard instruments such as flexibility in uses that maintain heritage significance, protection against inappropriate neighbouring development that detracts from the setting of items through the “development in the vicinity” provisions, transferrable floor space or bonuses.</p> <p>6) The Planning Act should incorporate the requirement for basic maintenance of locally listed places, consistent with the Heritage Act requirements known as “minimum standards of maintenance and repair”, to empower councils to prevent unapproved demolition by neglect.</p>
<b>D1) How should development be categorised?</b>	<p>The Heritage Council support four levels of development assessment where the degree of environmental impact assessment is commensurate with the complexity and extent of impacts of the proposal as follows:</p> <ol style="list-style-type: none"> <li>1) Major or state significant development that requires: <ul style="list-style-type: none"> <li>• Minimum statutory timeframes for consultation with state agencies, the community and other stakeholders;</li> <li>• transparent consideration of submissions and Environmental Assessments with decision making and all submissions made public;</li> <li>• See <b>Section 2.0</b> in the Heritage Council covering letter.</li> </ul> </li> <li>2) Locally significant development – assessment by local councils, integrated with the Heritage Act for state listed items, requiring community consultation.</li> <li>3) Minor (or complying) development – some level of assessment and community consultation.</li> <li>4) Exempt development – no assessment or community consultation required.</li> </ol>
<b>D4) What development should be exempt from approval and what development should be able to be certified as complying?</b>	<p>The Heritage Council acknowledges that state and local heritage lists are not comprehensive with many heritage places of local and state significance yet to be listed.</p> <p>Currently unlisted heritage places however can be demolished without notifying any government authority or the community using the complying development code through a private certifier. Private certifiers are not qualified or required to assess potential heritage values before demolition is approved. The Heritage Council therefore recommends:</p> <ol style="list-style-type: none"> <li>1) the complying development code include a requirement for certifiers to notify locals councils when complete demolition is proposed to give councils a minimum of 14 days notice to use the Heritage Act authorisation to make Interim Heritage Orders over potential heritage items before demolition is approved.</li> <li>2) Alternatively, complete demolition should no longer be permitted as complying development.</li> </ol> <p>For listed heritage items and conservation areas, works should not be exempted that have potential to adversely impact on significance and therefore require merit assessment. Some minor works, such as external rendering and window changes, can have a negative cumulative impact on the significance of listed areas and items.</p>

<b>D5)</b> How should councils be allowed local expansions to any list of exempt and complying development?	A standard exemption from Heritage Act approval establishes a simplified notification process to seek exemptions on a case-by-case basis for minor works with no adverse heritage impact. This model has been in part extended to the standard provisions of Local Environmental Plans.
<b>D6)</b> Should there be a public process for evaluating complying development applications?	As noted above, complying development provisions should require certifiers to notify locals councils when complete demolition is proposed to give councils a minimum of 14 days notice to use the Heritage Act authorisation to make Interim Heritage Orders over potential heritage items before demolition is approved.
<b>D7)</b> Should there be an absolute right to develop land for a purpose permitted in the zone subject only to assessment of the form proposed?	No, because the acceptability of heritage impacts is determined through a merit-based assessment on a case-by-case basis, rather than numeric standards. Development standards are not sufficiently detailed to ensure all aspects of heritage significance are retained for the vast range of heritage items and areas, including Aboriginal items, cultural landscapes and archaeological relics.
<b>D9)</b> Should conceptual approvals be available for large scale developments with separate components?	Only following a rigorous strategic planning process including: <ol style="list-style-type: none"> <li>1) a thorough assessment of heritage issues and impacts;</li> <li>2) identification of potential heritage items, areas, relics and Aboriginal places, not only those currently listed;</li> <li>3) obtaining approval from the Heritage Council for state-significant heritage items or disturbance of relics as required by the Heritage Act.</li> </ol>
<b>D15)</b> Should there be a system of transferable dwelling entitlements to permit owners of an agricultural holding to: <ul style="list-style-type: none"> <li>- transfer a dwelling entitlement from that land to another parcel of land?</li> </ul>	As an incentive for conservation of heritage items, transferrable floor space should be considered in line with the system established by the City of Sydney.
<b>D31)</b> How should State significant proposals be assessed?	See <b>Section 2.0</b> in the Heritage Council covering letter.
<b>D36)</b> How can the integrity of an environmental impact statement be guaranteed?	The Heritage Council believes the following measures would improve, but not guarantee, the integrity of impact statements and Environmental Assessments which include heritage matters: <ol style="list-style-type: none"> <li>1) Consultants undertaking assessments are jointly selected by the consent authority and the proponent, with funds collected from the proponent.</li> <li>2) By submitting draft impact statements to authorising state agencies for a “test of adequacy” and the ability to send back sub-standard assessments for revision.</li> <li>3) Obtaining Heritage Council comments on submitted impact statements involving heritage affecting state heritage Items listed on the State Heritage Register and excavation of archaeology.</li> </ol>

<b>D41)</b> Should a new planning system permit adverse impacts on the value of properties in the vicinity of a proposed development to be taken into account when considering whether a development should be approved?	<p>No comment is made about impacts on financial value.</p> <p>In relation to impacts on heritage values, the Heritage Council recommends the reinstated inclusion of the “development in the vicinity of heritage items” provisions in the standard Local Environmental Plan. This provision in local environmental plans protects the setting of heritage items from neighbouring development that will diminish its significance. This accords with Burra Charter principles and also provides a benefit to owners of heritage items.</p>
<b>D44)</b> Should a consent authority be required to consider any cumulative impact of multiple developments of the same general type in a locality or region? Should this be a specific requirement in assessment criteria?	<p>Yes, there should be a requirement and associated methodology for considering and managing cumulative impacts on the heritage significance of heritage items and heritage conservation areas.</p>
<b>D45)</b> As part of the assessment process for some classes of development projects, should there be a mandatory requirement in a new planning system for full carbon accounting to be considered?	<p>This should take into account embodied energy to recognise the reduced carbon footprint achieved by retaining rather than replacing existing buildings and their fabric.</p>
<b>D55)</b> When should an amended application be re-exhibited and when is a new application required?	<p>An application should be re-exhibited when the changes increase heritage or other impacts and not when changes reduce these or other impacts in response to public submissions. A new application should only be required if there are major changes since the first exhibition.</p>
<b>D58)</b> How should concurrences and other approvals be speeded up in the assessment process?	<p>For the Heritage Act consents, this has already been explored through delegation of certain development applications to some government agencies and councils with appropriately skilled officers and heritage controls in place. However, few councils and state agencies have the necessary expertise and controls for these delegations. The decision to delegate should be made by the concurrence authority.</p>
<b>D62)</b> Who should make decisions about State significant proposals?	<p>See <b>Section 2.0</b> in the Heritage Council covering letter.</p>

<p><b>D69)</b> Should the development assessment criteria for the Planning Assessment Commission be the same as for any other development assessment process?</p>	<p>Yes.</p>
<p><b>D91)</b> Should new planning legislation make it possible to impose performance bonds or sureties unrelated to the protection of public assets?</p>	<p>One of the issues to address when considering an application under the Heritage Act and the Planning Act is the long term conservation of a heritage item. To date, Heritage Agreements have been put in place on items (as provided by Part 3B of the Heritage Act) where there is either money placed into Trust or bonds given to enable long term conservation works to be carried out. In many circumstances the developer is also entering into Voluntary Planning Agreements. It should be possible to combine both planning and heritage agreements.</p> <p>The Heritage Council considers these agreements useful, although very time consuming and costly to negotiate on a project-by-project basis. Therefore, a standard template or legal clauses should be employed if they are to remain in the system.</p>
<p><b>D127)</b> What might be done to have power delegated by the Commonwealth to State authorities or councils to give approval under the Commonwealth Act?</p>	<p>The Heritage Branch has entered into discussions with the Commonwealth for bi-lateral agreements so that places listed under the Commonwealth legislation will only require approval under State laws. However these negotiations are very resource intensive. As Commonwealth listed heritage items are generally also listed on the State Heritage Register, reinstating the full Heritage Act protection for items of state heritage significance may assist with these negotiations to demonstrate state laws are comprehensively protecting these places.</p>