



HUNTER HERITAGE NETWORK

A PROFESSIONAL FORUM FOR HERITAGE ISSUES

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

Submission to NSW Planning Review - Hunter Heritage Network Incorporated

The Hunter Heritage Network was formed in 1999 as a member based group of people with a vision for conserving the Hunter's heritage through professional development, education, promotion and networking.

The Network was incorporated in 2006 as a not-for-profit professional forum for heritage issues. The HHN has over 30 core members representing local government, cultural heritage practitioners, town planners, the development industry, the education sector and community.

The Network is committed to advocating for the importance of heritage to the Hunter region; and to raising awareness of the significant economic and social benefits that the heritage sector brings to the communities of the Hunter.

The Network's principle aim is to develop and support an effective and professional heritage sector by empowering members through learning opportunities, workshops and seminars, advocacy, award events and offering knowledge, support and kinship to members throughout our region.

The Network has attached a number of responses to the Planning review, which we trust are beneficial in moving towards an improved planning system for NSW and better outcomes for our environment and our community. Please refer to the attached table for our responses.

Yours faithfully

Sarah Cameron

Sarah Cameron
PRESIDENT HUNTER HERITAGE NETWORK INCORPORATED

Feed back question	Hunter Heritage Network Inc Comments
<i>A1 – What should the objectives of the new planning legislation be?</i>	<p>Planning law must ensure that there is a holistic set of objectives to encompass all aspects of the natural, built, and cultural environment. To this extent, the objectives must place an equal emphasis on heritage conservation. We recommend that there be an objective to identify, conserve, and protect our heritage and it must encompass the three pillars of heritage - Aboriginal, natural and non-Aboriginal cultural heritage. In particular, it should be clearly defined that heritage places should be conserved for the benefits they provide to the State of New South Wales, economic, social and environmental.</p>
<i>A7 – Should strategic plans be statutory instruments with greater weight?</i>	<p>Yes – and there should be a statutory hierarchy of strategic plans. Regional plans should be underpinned by a regional heritage study that assesses the Aboriginal and non-Aboriginal heritage of a region. Regional heritage items should be resourced commensurate with their regional significance and managed through regional statutory heritage provisions.</p>
<i>C13 – How should landscapes of Aboriginal cultural heritage significance be identified and considered in plan making?</i>	<p>It is critical that the Planning legislation contains objectives regarding the conservation and recognition of Aboriginal cultural heritage. However, these objectives are best delivered through regional plans because landscapes of Aboriginal cultural significance are best understood through regional heritage studies, instigated and developed by regionally based Aboriginal Land Councils and the relevant Aboriginal communities.</p> <p>Furthermore, areas that are identified as culturally significant Aboriginal landscapes should be identified and mapped in a regional plan. The mechanism to deliver conservation outcomes therefore, would be through the regional strategic plan.</p> <p>Aboriginal landscapes would best be managed through a conservation framework agreed between regional Aboriginal Land Councils and the Department of Environment and Heritage, and included in the regional plan.</p>
<i>A15 – Should any changes be made to complying development and the process of approving it?</i>	<p>Yes – demolition of buildings should not be undertaken as a Complying development. Complying development is intended to streamline the approvals process for minor and low-impact development and to this end it is a worthy concept. However, by enabling demolition to occur outside the environmental assessment framework, expanding the development categories that are deemed to be “complying” has created unintended externalities. For example, the demolition of potentially significant places identified in heritage studies, but not yet listed in draft or gazetted planning instruments, is legal under Complying development. This undermines the precautionary principle that is enshrined in the environmental planning system.</p> <p>The HHN has identified this as a significant unintended loophole that must be addressed and resolved by this review. We recommend that demolition be removed as a category of complying development.</p> <p>A related issue that needs attention is the recent restriction on local government regarding the making of Interim Heritage Orders under delegation from the Minister (IHOs). Since 2002</p>

	<p>Councils have been able to exercise this delegation as a quick way to have a property assessed for heritage listing or have an archival record made prior to demolition. Our members have recently received correspondence from the NSW Office of Environment and Heritage that the delegation will be removed. Our members have raised significant concerns about this on the basis that it is inconsistent with the <i>Guidelines for Local Government Heritage Management 2002</i>, and creates further impediments in being able to react quickly when an un-listed potential heritage place is earmarked for demolition. Removing this delegation effectively creates inefficiencies and means local councils will now be dependent on the NSW Heritage Office to act, and act quickly, in these matters.</p> <p>It must be noted that local government has primary responsibility for the bulk of heritage in NSW. Being closely connected with local communities, it is in the best position to enact IHOs in a speedy manner.</p>
<p><i>C29 What should be the processes prior to listing an item of local heritage in an LEP?</i></p>	<p>The processes currently used are generally heritage assessment, exhibition, and consultation. Although these processes are generally effective, there is a need to de-politicise the process surrounding heritage listing in an LEP. To this end, owners should not have a right of veto except on the basis of insufficient heritage significance.</p> <p>Assessment - heritage assessment is the technical basis for heritage listing and is designed to objectively evaluate the significance of an item or place. This is based on the ethos of the Burra Charter of Australia ICOMOS which directs that significance should be understood before policies or decisions which affect a place are considered. In NSW, there is a well developed process of heritage assessment and an intrinsic culture of objectivity within the profession. The assessment of heritage significance is underpinned by criteria set by the NSW Heritage Council. This process has technical merit, is transparent and accountable, and should continue.</p> <p>Where the process is weak is in allowing councils the discretion not to list an item if an owner objects. Our members are concerned that too frequently, issues un-related to heritage significance such as perceived affectation on private property rights, is cited as a reason not to list in a planning instrument. When draft instruments are placed on exhibition for comment, owners can and often do object to heritage listing. Generally, such objections are upheld. If there is to be an effective means of managing heritage via local plans as the delivery mechanism, the technical recommendation by a heritage practitioner regarding the listing of an item in an LEP should be upheld unless a valid case is made that the item does not meet the listing threshold. Owners do not have the ability to veto constraints such as bush fire prone land. There is no sound reason why a veto should apply in the case of heritage listing.</p> <p>Listing heritage in a local or regional planning instrument is a means of flagging that heritage significance needs to be taken into consideration as part of the development assessment process. The standard instrument does not contain any provision that would prevent the demolition or part demolition of an item listed. While there is a perception that listing means demolition is prevented, this is legally incorrect. Items listed are capable of significant redevelopment or demolition if the consent authority has approved</p>

	<p>it. Therefore, listing cannot be said to place restrictions on property owners and they should not have a right of veto on that basis.</p> <p>Our recommendations are:</p> <ol style="list-style-type: none"> 1. The process of heritage listing should be de-politicised. If a council has received objections to a proposed heritage listing in a planning instrument, the matter should be referred to the OEH Heritage Branch for peer review. The NSW Heritage Council or delegate should be given the legislative power to peer heritage studies and assessments where there are objections by property owners. 2. OEH Heritage Branch should adopt a formal system of accreditation for practitioners of heritage assessment. Only accredited practitioners should advise on listing items in an LEP. Only the NSW Heritage Council or delegate should have the ability to challenge a practitioner's heritage assessment or LEP listing advice. 3. Exhibition and Consultation - consultation should occur when a heritage study or heritage assessment is placed on public exhibition for comment. This consultation should be confined to technical matters of heritage significance. Owners should be consulted about the outcome of the heritage assessment or heritage study and comment sought on the technical information in the heritage assessment. Consultation should not include a right of veto to a recommended heritage listing, unless it is on the grounds of insufficient heritage significance.
<p><i>D5 How should councils be allowed local expansions to any list of exempt and complying development?</i></p>	<p>Exempt development for heritage items should be reviewed to make it more attractive to carry out maintenance and repair of heritage items. This should include clearly defining the category of minor works not deemed to materially affect heritage significance – such as the standard exemptions under the Heritage Act. Prolonging the life of heritage items through effective maintenance and repair should be included as an objective in the standard heritage provisions.</p>
<p><i>D6 Should there be a public process for evaluating complying development applications?</i></p>	<p>Our Network is not qualified to make a judgment on this, however, we repeat our position that demolition should not be a category in complying development. We believe the expanded codes SEPP has gone too far in regards to demolition and undermines the precautionary principle as it applies to our planning system.</p>
<p><i>D31 How should state significant proposals be assessed?</i></p>	<p>State significant development should not switch off valid legislation developed to safeguard our environment and quality of life. State significant proposals should be assessed having regard to the fulcrum of planning related issues such as non-Aboriginal heritage, Aboriginal heritage and so on.</p>