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9 September 2021

The Hon Peter Poulos MLC
Chair
Standing Committee on Social Issues
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Poulos

Review of NSW Heritage Legislation - Response to Question on Notice

I write to provide a response to the Question on Notice raised by Mr David Shoebridge MLC during the Hearing of Friday 13 August 2021. The question raised by Mr Shoebridge was whether the Government should reprioritise and work first on protecting First Nations heritage.

The Australia ICOMOS position on this aspect of the review was covered in our submission (No. 291) in response to the Discussion Paper, but I have attached an extract from the submission for your information.

As discussed with Mr Anthony Hanna of the Upper House Committees Secretariat, I also attach the Australia ICOMOS submission to the NSW Government in response to the proposed Central Station Western Gateway Development. This development utilises the SSD approval process, and Australia ICOMOS considers that the project encapsulates many of the concerns that we have about the approval process for major heritage projects in NSW. I referred to the Western Gateway Development in my response to a question from Mr Shoebridge. The submission is a public document and is available on the Australia ICOMOS website.

Yours sincerely

Peter Romey
Australia ICOMOS Representative

Review of the Heritage Act 1977

Australia ICOMOS Response to Question on Notice (Mr David Shoebridge MLC)

Question:

At the moment the Government's—the impetus in here is to largely do non-Aboriginal heritage, non-First Nations heritage. It seems an odd timing to bring that before statewide Aboriginal heritage reform, given the protections for Aboriginal heritage are found, first of all, in a way that is offensive for First Nations peoples in the National Parks and Wildlife Act and, secondly, Aboriginal heritage is so badly protected in New South Wales. Do you think that the Government should reprioritise and work first on protecting First Nations heritage?

Response:

The Discussion Paper raises the need to integrate Aboriginal cultural heritage into the heritage system, and asks the question '*How should Aboriginal Cultural Heritage be acknowledged and considered within the Heritage Act?*' (Focus Question 2). However, the paper provides no proposal for progressing the issue.

The most pressing heritage area in which statutory reform is warranted in NSW is in relation to Aboriginal cultural heritage. This process has been underway for some years, and **it should have greater priority than changes to the Heritage Act**. Important matters to be covered include a process for identifying who speaks for Country, empowerment of Traditional Custodians to make decisions that affect their heritage places, and identification and protection of Aboriginal places of cultural value that are not necessarily defined by the presence of 'Aboriginal Objects' – for example cultural landscapes or places with intangible associative values. It is particularly important that Aboriginal heritage is managed through a separate NSW statute and not relegated to a subsection of the *National Parks and Wildlife Act 1974*.

It is important that new Aboriginal heritage legislation be derived from a thorough consultation process with Aboriginal people and particularly those who are Traditional Custodians. It would be an abrogation of the importance of remedying the current shortcomings of the NPW Act, and the consultation that has already occurred, to change direction and attempt to rely on the Heritage Act, with its place-based focus on heritage, to recognise and protect Aboriginal cultural heritage.

Notwithstanding the point raised above, the Heritage Act of NSW purports to protect and present the places that are significant to the Heritage of NSW. The first 2 objectives of the Act are to:

- (a) to promote an understanding of the State's heritage*
- (b) to encourage the conservation of the State's heritage*

It is not possible to do this adequately without appropriate recognition and inclusion of Aboriginal history and heritage. Currently, there is a missed opportunity to promote an understanding of Aboriginal heritage and the narrative of shared values.

Nevertheless, It is a positive aspect of the application of the Heritage Act in NSW that it does enable places to be listed for their Aboriginal cultural heritage values.

It also provides the opportunity to recognise that many places have Aboriginal and non-Aboriginal values concurrently. This enables a recognition of shared and or conflicted heritage that is key to a full understanding of heritage significance and provides opportunities for increased understanding.

The absolute separation in legislation in some states about places of Aboriginal and so-called historic heritage value leads to a State endorsed 'invisibility' of Aboriginal heritage in the colonial period especially in Queensland. Despite the potential for a more comprehensive narrative on the heritage of NSW provided by the legislation in NSW, in practice Aboriginal Heritage values of listed places have not been consistently assessed. Many properties listed for other values are likely to also have Aboriginal values some of these are likely to meet the threshold for state significance.



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29 March 2021

The Honourable Rob Stokes MP
Minister for Planning and Public Spaces
GPO Box 5341
SYDNEY NSW 2001

By email: pittwater@parliament.nsw.gov.au

Dear Minister

Proposed Central Station Western Gateway Developments (Block A & Block C)

Australia ICOMOS is writing to you to express our serious concerns in relation to developments that are proposed within the Western Gateway Sub-precinct (Central Railway Station and Railway Square). We note that the period for submissions for two of the proposed developments – the Atlasian office and hotel development (Block A) and the proposed rezoning adjacent to the Former Parcels Post Office (Adina Hotel, Block C) has closed. However, given the heritage significance of the precinct and the potential for these proposed developments to impact adversely on this significance, we urge that you give due consideration to this submission.

ICOMOS – the International Council on Monuments and Sites – is a non-government professional organisation that promotes expertise in the conservation of cultural heritage. ICOMOS is also an Advisory Body to the UNESCO World Heritage Committee under the World Heritage Convention. Australia ICOMOS, formed in 1976, has over 700 members in a range of heritage professions and is one of the largest national committees of international ICOMOS.

Australia ICOMOS does not generally engage in advocacy for or against a particular development unless there is reason to question the adequacy of the planning process to achieve proper consideration of heritage issues. Unfortunately, it appears that the management of the Western Gateway Sub-precinct development proposals to date warrants our raising our concerns in this respect.

The sites proposed for the intensive redevelopment referred to above (Blocks A and C) are within and immediately adjacent to the State Heritage Register listed Central Railway Station complex. The sites are also within the broader Railway Square precinct that is characterised by low and medium rise late 19th and early 20th century buildings, many of which are listed as heritage items on either the State Heritage Register or the Sydney LEP 2012, or both.

We note that, under the substantive provisions of the Sydney LEP 2012, the height controls for new development within the Western Gateway Sub-precinct vary from 7.5 to 35 metres, with the former control specifically applicable to Block A. For those sites within Railway Square immediately to the west, the predominant height control is 45 metres. The LEP control limits new developments within the Western Gateway Sub-precinct to an FSR of 3:1. We understand that these height and FSR controls were originally formulated in recognition of the predominant scale and character of the broader Railway Square precinct in general, and the highly significant Central Railway Station in particular. The medium rise late 20th century commercial office buildings that occupy the sites, while unambiguously contemporary in their design, are respectful of and compatible with their historic context.

It is with considerable concern that we have become aware of relatively recent amendments to the LEP provisions that have set aside these controls. We understand that in July 2019, you announced the designation of the 'Central Precinct' as a State Significant Precinct (SSP), with the intention of establishing a large technology hub within the precinct. In August 2020, you approved the amendments (Cl.6.53-Western

Gateway Sub-precinct) to the Sydney LEP 2012 for Blocks A and B, which increases the allowable heights for new development on Blocks A and B to more than RL200. The floor space limits for both sites were also substantially increased, to 77,000m² for Block A and 155,000m² for Block B.

The cumulative impacts of these changes will be that both the scale and bulk of new buildings allowable on these sites will be dramatically increased, with a consequent adverse visual impact on the existing low to medium rise context. The recently exhibited Atlassian office and hotel development for Block A was the result of a Competitive Design Process, and was selected from five final designs. As would be expected, the final designs all were compliant with the increased height and floor space controls allowed under the Cl.6.53 amendment, rather than the original LEP controls for the precinct.

Block C was not included in the initial Western Gateway rezoning process, but has subsequently been the subject of a rezoning proposal. In late 2020 a draft SEPP report was prepared and exhibited for public comment. The purpose was '*...to support and facilitate the future rezoning of Block C of the Western Gateway Sub-precinct, as part of the first stage of the Central Precinct SSP*' (Section 1.1). The proposal seeks to amend the LEP controls as they apply to Block C, similar to the previous amendment legislated for Blocks A and B. Under the rezoning, the allowable height for new development would be increased to RL212, and the floor space increased to 43,000m².

We understand that, should the rezoning be approved and the building height and floor space controls increased as proposed, a Competitive Design Process would also be undertaken for Block C. We anticipate that any competition entry would be required to accommodate the additional height and floor space allowed under the amended controls. It is probable therefore that the resulting building would result in an even more profound adverse visual impact on its historic context than for Block A, particularly as we note in that the proposed high rise building would overhang the very significant Parcels Post Office.

Australia ICOMOS is extremely concerned that the planning process adopted to date appears to have been formulated to facilitate the particular NSW Government objectives for the Western Gateway Sub-precinct, rather than as an appropriate response to the important heritage and urban character of the precinct. However, we accept that the precinct may have additional development capacity and potential new landuse opportunities beyond the original controls set out in the LEP. We note the statement included in the draft SEPP report, which outlines the attractiveness of the precinct as a 'Tech Central' focus:

'The grandeur of the Main Station Building, the concourse and the Clocktower, along with the historical and social significance of the broader place, makes Central Station and its surrounds a highly unique and remarkable location within Sydney' (Explanation of Intended Effect, Department of Planning, Industry and Environment, November 2020).

The developments currently proposed for Blocks A and C would, at the very least, dramatically alter the predominant scale and composition of this important heritage precinct. They would diminish (if not destroy) the visual prominence of key heritage elements of the overall composition of the Central Railway Station complex, especially the Clocktower, the Parcels Post Office and highly significant landscape elements such as retaining walls that provide visual evidence of the early functioning of the station. They would also result in severe physical impacts on some elements, particularly the Former Inwards Parcels Shed, which would be demolished and partially reconstructed as the incongruous base of the proposed Atlassian tower building. This aspect of the proposed development is described in several documents as 'adaptive reuse' but this is clearly inconsistent with the Burra Charter and the defined conservation process of 'adaptation'.

Australia ICOMOS does not intend to provide detail comment on the heritage impacts and implications of the proposed developments. We do believe however that the planning process to date has been flawed because of a lack of sufficient regard for heritage values which would allow a high intensity 'Tech Central' facility in a very important heritage context that would unfortunately be substantially compromised by the developments. It would be a poor outcome for the precinct, and for Central Sydney more broadly, to impose an intensity of new development that would prejudice and overwhelm these important heritage values.

We accept that the development proposals for Blocks A and C have been the subject of extensive deliberation with considerable planning and architectural input, but a sensitive appreciation of heritage values and appropriate measures to protect these appears to not have been a key driver of the process. We understand that neither development has yet been submitted for development approval. Australia ICOMOS strongly urges that the process be suspended and the revised height and floor space controls for the Western Gateway Sub-precinct be set aside so that a more nuanced amendment to the Sydney LEP 2012 development controls can be formulated that respects its heritage values while allowing for sympathetic

additional development capacity and new landuse opportunities in line with the objectives of the NSW Government for the precinct.

Australia ICOMOS is willing to advise on an appropriate process, and looks forward to your response.

Yours sincerely

Helen Lardner
President