



THE PADDINGTON SOCIETY Inc.
For Community and Heritage
Est 1964

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Department of Planning and Infrastructure
GPO Box 39,
SYDNEY NSW 2001

NSW PLANNING SYSTEM REVIEW – WHITE PAPER SUBMISSION FROM THE PADDINGTON SOCIETY

Key Requirements for Heritage Protection

The Paddington Society in its 50th year, is one of Australia's oldest and most successful heritage and community organizations. Paddington is possibly the world's largest intact Victorian heritage suburb. Since the 1960s, consistent efforts by the community, with strong leadership by The Paddington Society, has seen the retention of important aspects of the heritage and mixed use nature of the suburb despite proposals to demolish and redevelop wholesale parts of the suburb and, over the years, a number of council decisions to permit developments that had no regard to their heritage contexts.

The Paddington Society's ('the Society') submission is directed at those parts of the White Paper that will impact on the Society's capacity for involvement in the determination of the future direction of Paddington both at a 'strategic' level and to contribute in the assessment of development applications in Paddington. The Paddington Society seeks the improvement and protection of the heritage values of Paddington as a Conservation Area through the changes to the planning legislation, not the reverse.

We note that there are a mere three general references to heritage in the White Paper, which indicates the Paper has not properly considered this valuable aspect of our built environment, a significant part of our culture.

Community Participation

While the Community Participation Charter is a welcome inclusion in the Bill, many of the details to implement the Charter have been left to the development of future Community Participation Plans and guides. However, a review of the draft legislation indicates that the Charter does not have strong enforcement provisions as Community Participation Plans are not mandatory and the community will not be able to challenge plans.

Further, the reassurances that the community will be involved at the proposed top down approach to community consultation, by exhibiting the Draft Metro Strategy for Sydney (which will become the new Regional Growth Plan for Sydney) before the new planning system is in place, the Government is further eroding any confidence the community has of its promises in relation to meaningful and genuine community engagement.

It is disappointing that the White Paper is inviting community participation at the strategic level but curtailing or excluding participation when development proposals are lodged. Both opportunities should be available. In conservation areas, building materials, proportions and details, apparent only at DA stage, are intrinsic to heritage values.

Development Application Process

The White Paper and Part 4 of the Planning Bill sets out the proposed approach to development assessment. Development applications are to be streamed into five assessment tracks, based on the level of risk and impact of a development i.e. Exempt and Complying, Code assessment, Merit assessment, Impact assessment and Prohibited development

Of greatest concern to the Society is the Code Assessment stream. The White Paper proposes that additions to houses in a Heritage Conservation Area will be Code assessable. The proposal to change the development assessment process from classifying 23% of development as Exempt and Complying, as is the case now, to requiring 80% of development to be Code assessed or Exempt and Complying within 5 years will mean significant limitations for community participation as no consultation rights on code-compliant development will be provided.

No code assessable complying development should be permitted in Heritage Conservation Areas or development that would have direct or indirect effect on the significance of State or Local Heritage Items other than minor work consistent with the Heritage Council's minimum standard of maintenance. All existing Heritage Conservation Areas must be maintained and legally protected. All development applications in Heritage Conservation areas (unless Exempt or Complying) should be Merit assessed or determined by an expert panel, to safeguard the detailed quality requirements necessary for these areas. Past examples in Paddington have shown that Council assessment alone of a new development is not sufficient in these areas.

Referrals and concurrences

The White Paper proposes the reduction of requirements to obtain inter-agency concurrences and approvals now required to ensure compliance with relevant related legislation for the protection of the environment or cultural heritage. The White Paper outlines a four-month, internal government review of concurrences with the intention to remove or replace 'unnecessary' or 'straightforward referrals' and to establish a 'one stop shop' within the Planning Department for remaining referrals.

Concurrence requirements must be reinstated for State Significant projects, and retained for any proposal involving a cultural heritage issue. The Heritage Act must not be switched off for State Significant Developments. There is no justification for this. The Society is of the view that the role and powers of the Heritage Council and the legal effect of the Heritage Act should be restored to that originally intended in 1977. Further, the Society is concerned that the 'one stop shop' approach prioritises speed of approval over expertise.

Significant heritage planning and assessment expertise resides with the Heritage Council, its committees and specialised staff built over the years. The Heritage Council Pre Development Application consultations have proven very effective and efficient. There appears to have been no assessment of the efficiency and quality of decision outcomes of the Heritage Council and Heritage Branch leading to the proposed changes. The concurrence review must involve consultation and demonstrate transparency and clear reasoning.

A single, lot-based set of detailed development controls

Existing Heritage Development Control Plans, or equivalent policy planning documents of the same standing and intent, should continue to be applied. Site-specific Development Control Plans should be prepared for all large sites in Conservation Areas.

The Society is also concerned that standard codes, fewer types of zones and the replacement of Floor Space Ratios with building envelopes will require an enormous allocation of resources and time which are not and will not be available to achieve high quality design outcomes in sensitive localities such as in Heritage Conservation Areas.

As previously submitted in response to the Green paper, the Society is of the view that in the place of the current multi-document development controls, the Society would like to see a single parcel formatted control document available online by reference to a lot number.

Paddington is located in two Local Government Areas, the City of Sydney and Woollahra, whereas the whole suburb has a consistent heritage character. There are several differences between the controls within the City of Sydney compared with those affecting that part of Paddington located within Woollahra. Moving to a single document for Paddington would improve the protection of the heritage values of Paddington as a Conservation Area.

On Woollahra's side, the Paddington Development Control Plan is a locality-wide set of detailed design guides for restoring and up-grading Victorian structures, which, in the Society's view when enforced, has better protected Paddington's heritage than the City of Sydney's DCP. The suburb has been zoned in the Woollahra Local Environmental Plan as a Heritage Conservation Area. It would be relatively simple to include the current Paddington Development Control Plan and any relevant development controls from other Environmental Planning Instruments and Development Control Plans in the new Local Plan for the whole suburb. This would include the land use controls from the Local Environmental Plan.

The current blanket and standard zoning controls in the Standard Local Environmental Plan, which are examples of the one-size-fits-all planning policies of the Department, could then be adjusted to meet the needs of heritage conservation and the enhancement of the mixed use activities which are so much a feature of Paddington.

On the City of Sydney side of Paddington new controls have just been adopted. These are to be found in a number of separate documents, reflecting the inability of the Standard Local Environmental Plan, notwithstanding a Heritage Conservation Area listing, to provide a coherent single document of controls applying to a place. Users have to read and reconcile a number of parts of the Local Environmental Plan and Development Control Plan before the controls applying to a place can be identified.

Again it would be relatively simple to consolidate from those documents and any other of the many Environmental Planning Instruments applying to the City of Sydney, all the relevant controls for Paddington. For each lot a single digital lot-formatted control document could then be prepared incorporating any adjustments required for any specific parts of the suburb.

Further, as heritage controls are directed at conserving and restoring heritage detailing where necessary and ensuring any new development is contextual, the detailed controls in Paddington (and other Heritage Conservation Areas) should allow for minimal discretion.

Determination of Applications

As previously submitted, the Society believes that elected Councillors or Ministers should not determine development applications. Where there are detailed technical controls such as in Paddington, the Society considers that there should be a standing expert panel conducting hearings into disputed Development Applications and determining applications with written detailed reasons.

Having to provide written reasons for individual decisions is a far more effective accountability mechanism. In this respect, the Society notes that in Woollahra, Councillors representing other wards make decisions dealing with planning policy and the assessment of development applications for Paddington.

Private Certifiers

No private certification should be permitted in Heritage Conservation Areas or for development that would have a direct or indirect impact on State or locally listed heritage Items. The Society is of the view that all development concerning heritage items should be dealt with by specialist staff either within Council or the State Heritage Branch. If no expertise exists within Council, then Council should engage consultants to undertake the assessment rather than have the proponent of a development engage the certifier.

The system of private certification has been a disaster for the development control system through out NSW and for the protection of heritage in Paddington. As previously submitted, the execution of design detail is critical to the conservation and preservation of heritage items. Private certification has had the following consequences:

- Because Council does not as a rule see the detailed construction drawings, a proponent is required to prepare detailed drawings before knowing whether a proposed development will be approved. Development Applications are now required to be highly detailed to construction level and are therefore expensive to prepare. Asking applicants to amend an application can also be expensive and results in good outcomes in amendments to applications being difficult to achieve.
- Few certifiers understand heritage detailing. However, even if a certifier does have the necessary skills, the Society has had many cases of certifiers, who can be under pressure from clients seeking certification, approve changes in critical detailing and even outright design changes.
- Fixing mistakes is difficult and costly for Councils. As a consequence, Councils can be reluctant to take the necessary action and the Court may not order rectification or demolition.

The Society would like to see a return to the separated two staged Development Application / Construction Application process. Certification of both stages should be limited to Council certifiers or those on a qualified heritage specialist's list. Where a private specialist is used, certificates should be endorsed by Council, as being in conformity with a development consent.

Merit appeal and decision review rights

The White Paper suggests that appeal and review rights will be largely unchanged. However, development proponents will retain recently established review rights against a decision to refuse 'spot rezoning', and will have appeal rights against a Council's failure to approve code-assessed development within 25 days.

The new planning system should provide an expanded role for the public in conciliations, and more equitable appeal rights for objectors such as for projects that significantly exceed code-based standards but are approved 'on merit'. The restriction of third party rights is contradictory to the language of the White Paper regarding the importance of transparency, accountability and community consultation.

The imbalance of appeal rights between developers and community members will continue to undermine the already frayed community confidence in the proposed system outlined in the White Paper.

Summary

The Paddington Society seeks the improvement and protection of the heritage values of Paddington as a Conservation Area through the changes to the planning legislation and not the reverse, as appears to be the situation outlined in the White Paper. Heritage needs to be given more importance in the new planning legislation.

The Society considers the proposed system to be a retrograde as it appears to diminish protection of heritage items by the diminution of the role and standing of the of the Heritage Council and the expertise and skill required in the assessment of proposals that impact on directly or indirectly on heritage items.

Contrary to the Green Paper the White Paper is silent as to the role of Private Certification of applications concerning Heritage Items and in Heritage Conservation Areas. The Society is totally opposed to the use of Private Certifiers accredited or otherwise in dealing with heritage assessment.

It is disappointing that the White Paper is inviting community participation at the strategic level but curtailing excluding participation when development proposals are lodged. Both opportunities should be available. All additions to existing buildings and new infill in Heritage Conservation Areas should be Merit assessed to enable community scrutiny and involvement.

As previously submitted, the Society believes that elected Councillors or Ministers should not determine development applications. Where there are detailed technical controls such as in Paddington, the Society considers that there should be a standing expert panel conducting hearings into disputed Development Applications and determining applications with written detailed reasons.

Further, the exercise of any discretion in the application of planning controls in the determination of development applications should only be made by a standing panel of experts, thereby ensuring consistency of decision-making and certainty for applicants, staff and the community.

Existing Heritage Development Control Plans, or equivalent policy planning documents of the same standing and intent, should continue to be applied. However, in the place of the current multi-document development control, a single set of controls for each parcel of land in Paddington should be discoverable digitally by reference to the lot number.

The imbalance of review and appeal rights and participation between developers and community members will continue to limit community confidence in the system.

Yours faithfully



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