



POSITION PAPER

PLANNING LEGISLATION UPDATES

BACKGROUND

In March 2017 the National Trust formally commented on the publicly exhibited proposed updates to the NSW planning legislation. The Trust was pleased to read that one of the key upgrades to the legislation will be in terms of the objects of the Act where an issue to be addressed will be the recognition of design and heritage. The Trust also welcomed the retention of an object relating to ecologically sustainable development — ‘b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.’

However, it was deeply disappointing to find that there was no object relating to the key issue of climate change and the need for planning to take into account and plan for climate change impacts. Ultimately, the roles and responsibilities granted to local government are designated by state government. In many instances, such legislation has yet to incorporate future climate change, which subsequently affects the legal mandate of local government to adapt. The Trust was particularly concerned to hear that when council planners have, in the past, attempted to incorporate climate change in Local Environmental Plans, they were rejected when submitted for state endorsement and, similarly, were not embedded in Development Control Plans. It would be unconscionable if newly revised planning and development legislation did not deal with the effects and impacts of climate change and give clear and concise directions for local government to follow in their development of Local Environmental Plans and Development Control Plans to deal with those impacts and effects.

The Trust has strongly urged that:

- State planning legislation must take into account the effects and impacts of climate change and give clear and concise directions for local government to follow in their development of Local Environmental Plans and Development Control Plans to deal with those impacts and effects.
- Heritage Development Control Plans should be individually tailored to protect each individual place. Standard (one-size-fits-all) DCPs are not appropriate in heritage areas for protecting the heritage values of those areas.
- The requirements for Community Participation Plans should be developed in consultation with the community and input should also be sought from the National Trust.

The Trust raised many individual planning issues which had previously been outlined in its various Policies and Position Statements. These are as set out in the attached Appendix A — Planning Issues

NATIONAL TRUST POSITION

- The Trust will urge that State Significant Development and State Significant Infrastructure must not “switch off” any of the provisions of the Heritage Act.
- The Trust will continue to urge that State planning legislation must take into account the effects and impacts of climate change and give clear and concise directions for local government to follow in their development of Local Environmental Plans and Development Control Plans to deal with those impacts and effects.
- The Trust will urge that an object of the State planning legislation should be to actively encourage compliance with approved made plans.
- The Trust will continue to urge that Heritage Development Control Plans should be individually tailored to protect each individual place.
- The Trust will urge that the requirements for Community Participation Plans should be developed in consultation with the community and the National Trust would also seek input.
- The Trust will urge that there should be third party merit appeals following public hearings as a public hearing is no substitute for merit appeal rights to the courts.
- The Trust will urge that community participation should be undertaken as early as possible for all developments to minimize applicants’ costs and maximize public input.
- The Trust will urge that there be rationalization of the very different and potentially conflicting roles of District Commissioners as plan makers who should engage with the community as much as possible and District Commissioners as Chairs of District Planning Panels who, in their application assessment roles, are not to engage with the community in that assessment role.
- The Trust will urge the adoption in the planning legislation of the positions and policies in Appendix A accompanying this Position Paper.

ACTION TO PROMOTE THE TRUST’S POSITION

The Trust will promote its views on this issue with Councils, the NSW government and in the media.