18 April 2018

Pauline McKenzie, Executive Director Heritage
Office of Environment and Heritage (OEH) NSW
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ach.reform@environment.nsw.gov.au

Dear Pauline,

**PIA INPUT ON PROPOSED ABORIGINAL CULTURAL HERITAGE REFORMS**

The Planning Institute of Australia (PIA) appreciate the opportunity to offer a submission on behalf of the planning industry. We have also appreciated having the opportunity to meet with you during the course of the last year and provide some input to benefit both aboriginal heritage and planning outcomes.

**PIA supports direction of reform**

PIA strongly supports the reform aims to empower Aboriginal communities to determine heritage impacts and tailor land management responses to proposed development. Having Aboriginal ‘ownership’ of the means by which an Aboriginal Heritage Cultural Management Plan (ACHMP) is prepared and governs future use of a site, is a very positive step.

PIA has an interest in Aboriginal heritage decision-making processes being well integrated with the planning system, such that rezoning and development assessments are able to be well informed and progressed in an orderly and timely fashion.

**Framework for enabling ACH reforms**

PIA has obtained a good understanding of the proposed legislative framework for enabling the new regulatory system and commends the quality of information to support and explain the ACH reforms and draft legislation. However, there is a significant amount of detail on how the new system will operate that we believe has not yet been formulated. Ideally, such a major transformation should be considered with all the details including the regulatory framework, operational practices and procedures, and organisation(s) responsible for implementation and administration. From a planning standpoint, this is particularly important as the preparation and implementation of ACHMPs is being aligned around statutory processes under the *Environmental Planning & Assessment Act 1979*, as well as the revised Environmental Planning & Assessment Regulations.

PIA requests continued consultation from OEH as more detail on the Regulation, operation and policies of the new ACH regulatory system is formulated. PIA is particularly interested in gaining an understanding of the ‘Negotiation Framework’ and the guidelines that will inform the processes and procedures that will need to occur before lodging a development.
application. PIA believes this process, especially the negotiation process, needs to be positive and also set out some benchmark timeframes in order to link in with a planning process. The lack of alignment will lead to frustrations for developers, councils and aboriginal elders. However, the process should allow for timely engagement between ACH and development representatives. The process and operations procedures also needs to clarify the requirements for how ACH values are identified and assessed in a draft ACH assessment report.

**Recommendation:**

Closer working relationship or small working committee with OEH, ACH and PIA NSW to discuss and work through more detailed options/solutions linked to the planning system.

**Integrated Development offers practical Pt 4 development assessment pathway**

PIA has provided input to OEH on development decision making processes (Attachment A) and agree that the integrated development pathway offers the best means of linking the obligations to fulfil an Aboriginal Cultural Heritage Management Plan with conditions of consent issued under Environmental Planning and Assessment Act. PIA looks forward to working with OEH on the detailed drafting of rules that frame consent conditions, the contributions of funds as well as the modifications and appeals process.

The legal means and wording of any consent condition to give effect to relevant obligations arising from an AHCMP are not yet clear. PIA urge OEH to consider preparing guidance on a model condition of consent for this purpose, as imposing non-standard conditions that repeat the specific obligations of a ACHMP should be avoided. A standard condition to give effect to (nominated development related) obligations under the ACHMP should be considered. This would mean that the relevant obligations would become conditions of consent under the EP&A Act with implications for modification, appeal and enforcement that would need to be carefully considered. PIA also supports the process for managing potential inconsistencies of other conditions of consent with achieving the intent of an ACHMP.

**Recommendation:**

PIA NSW works with you, using our expertise, to draft model on conditions of consent or provide comments/input to your process.

**Mapping and assessment of low key development in urban areas**

PIA urges the OEH to work through the practicalities of the ACH assessment process on areas that are mapped as a ‘sensitivity area’ but are covering small lots in an urban zone. PIA has been advised of the potential for development housing blocks to be subject to a basic or even a standard ACHMP process where this may not have been the intention of the reforms.

OEH should avoid unnecessary deployment of resources and Aboriginal engagement effort for multiple ‘low key’ developments in urban areas by:

- ensuring the resolution of ‘sensitivity area’ mapping offers a very high degree of confidence in urban areas;
- considering the scope of exemptions for low key development (eg minor / exempt / complying) from the ACHMP process to avoid potentially unnecessary deployment of resources and engagement efforts; and
• offering a streamlined consultation process for undertaking a basic ACHMP in lower risk / lower impact situations – especially where low key development is occurring on small lots in urban areas.

We acknowledge that the mapping is critical and essential, however ground truthing will take time. It may be best to undertake priority areas, for example in identified government growth areas or identified new land release areas in regional areas, to ensure certainty and implementation process in those areas.

Recommendation:

Develop a streamlined consultation process for undertaking a basic ACHMP in lower risk / lower impact situations – especially where low key development is occurring on small lots in urban areas. We would be happy to meet to discuss or provide input.

Part 3 Planning Proposal Pathway

PIA would appreciate the opportunity to work with OEH to consider ways to better integrate the ACH assessment pathway with the planning proposal pathway (Pt 3 EP&A Act), and to provide further clarity on how an ACHMP will influence the preparation of a planning proposal to rezone land.

While PIA understands that public authorities must consider an ACHMP when evaluating planning proposals, it is unclear how the proposed ACH assessment pathway is integrated with the existing planning proposal pathway as defined under the Act, as well as the Guidelines documents by Department of Planning and Environment. This carries a risk of having two distinct processes for the assessment of planning proposals that are not streamlined and could create duplication in submission requirements for proponents, Councils or extensions to timelines for the review of planning proposals undertaken by Planning Panels.

Recommendation:

PIA offers to hold a workshop with OEH, and then ongoing liaison to develop a joint pathway to benefit both aboriginal and planning processes.

Conclusion

PIA NSW is excited about, and support, the biggest reform on aboriginal heritage for significant years. Like yourselves, we would want the best integrated system that empower Aboriginal communities, but simultaneously integrates with various planning processes. We offer our assistance/input to achieve the best outcome in this critical reform.

Should you wish to discuss our response please contact myself or our Principal Policy Officer, John Brockhoff on 0400 953 025 or john.brockhoff@planning.org.au.

Yours sincerely,

Jenny Rudolph
President, PIA NSW