



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EP&D:DH1b1577552

17 August 2018

Government Architect NSW and
the Heritage Council of NSW
C/ Level 3, 320 Pitt Street
SYDNEY NSW 2000

Dear Sir/Madam,

Draft Design Guide for Heritage

The Law Society of NSW appreciates the opportunity to participate in the consultation on the draft Design Guide for Heritage ("Guide").

The Law Society's Environmental Planning and Development Committee contributed to this submission. The Committee represents the Law Society on all matters relating to environmental planning and development law and advises the Council of the Law Society on issues relevant to that area of practice. Membership of the Committee is drawn widely from experienced professionals whose expertise has been developed in representing the interests of local government, government instrumentality, corporate and private clients.

General Comments

The foreword to the Guide states that it has been created to support heritage practice into the future and to build upon "the outstanding advice that was captured in our past publications *Design in Context: Guidelines for Infill Development in the Historic Environment* and *New Uses for Heritage Places: Guidelines for the Adaptation of Historic Buildings and Sites*".¹

We consider that *Design in Context Guidelines for Infill Development in the Historic Environment* ("Design in Context") and *New Uses for Heritage Places: Guidelines for the Adaptation of Historic Buildings and Sites* ("New Uses for Heritage Places"), a result of collaboration between the NSW Heritage Office and the Institute of Architects, provide useful informative guidelines and include relevant detailed case studies. We are concerned that the Guide, on the other hand, appears to portray heritage considerations as subordinate to principles supporting good design.

"The Design Guide for Heritage is part of the suite of documents developed by the Government Architect NSW to support the **Better Placed Integrated Design Policy for the Built Environment of NSW**. It expands and details the Better Placed Design Objectives in the context of heritage, and identifies the processes and principles that ensure that

¹ Government Architect NSW and Heritage Council of NSW, *Design Guide for Heritage*, 5.

good design supports and enhances heritage buildings, sites and precincts.”²

While the next paragraph states that the Guide should be read in conjunction with the Burra Charter, the Guide appears to be subordinate to the seven design objectives for NSW placed on the inside cover of the Guide as the overarching principles in this context: Better Fit; Better Performance; Better for Community; Better for People; Better Working; Better Value; Better Look and Feel. It appears that rather than viewing heritage as a worthwhile objective in itself, heritage, under the Guide, is being subordinated to the seven design principles.

This may be consistent with the Government Architect’s objectives. However, we suggest that it is not consistent with the objectives which have guided heritage considerations for almost 40 years under the *Environmental Planning & Assessment Act 1979* and for over 40 years under the *Heritage Act 1977*.

The way in which ideas of cultural or heritage significance are the basis for making decisions about heritage places is not given the primacy we suggest that it must be given. The suggestion that design decisions addressing the seven design tenets will somehow be good heritage practice, is erroneous and misleading. “Good design” may not necessarily deliver good heritage outcomes. There are procedures for determining conservation action by the understanding of the place in review, and the assessment of the impact that any use might cause. The Guide needs to take into account the laws and rules by which our heritage is conserved and managed. In this context, we do not consider that the Guide provides the practical assistance to stakeholders that ‘Design in Context’ provides.

Specific comments on the text of the Guide

Appropriate use of a building (p 10)

“[t]he best way to conserve a heritage building...is to use it”: This section should emphasise the need to conserve significance by selecting appropriate uses for buildings. Selecting the appropriate uses of the building is a function of the heritage assessment, not subject to a designer’s aspiration for a building.

Burra Charter terminology ‘place’ (pp 16-17)

The Burra Charter terminology ‘place’ should be used throughout the document, to encompass buildings, sites, streetscapes and precincts, along with landscapes, archaeological places, objects, and intangible values. This section should include heritage principles for making decisions on projects. The image of Lennox Bridge and its description seems inappropriate in this context, as the project was contested on heritage grounds. We do not consider that it is a useful example of a good heritage/design outcome.

Heritage specialists (p19)

We consider that the section “...this will depend on the level of reporting required...” should be amended along the lines of “this will depend on the significance of the site, and the experience of the architect in assessing significance and impacts.”

Where it states: “on most projects... a heritage specialist will be required to provide input into the design...”; the text should note that the best outcomes are when the

² Ibid 12.

heritage specialist is involved at an early stage – to assess heritage values, and to guide design interventions to retain the assessed significance.

Better Placed objectives (p 20)

Each of the seven identified design objectives are given equal weight; however, the key design considerations for heritage, which contribute to the retention of significance, should be given greater emphasis and explored in greater depth in terms of detail and case studies.

Ramp at the main entry to the Art Gallery of NSW (p 29)

It may be more helpful for the text to note the reversibility of the access ramp, which sits over the historic stairs rather than cut into them, and stress the need for new design to be comparable in quality with the heritage item.

Mason House (p 35)

It would be useful to refer to the relevant heritage controls and guidelines at Mason House, to give meaning to the photograph that has been included in the Guide.

Understanding heritage significance (p 38)

The text states: “identify, read and understand any existing statements of significance, conservation management plans... pertaining to the site.” Existing documents are often inadequate. We suggest adding: “commission new or supplementary conservation reports as necessary to guide new development. Early involvement of heritage advice is crucial to positive heritage outcomes.”

Cowper Street (p 45)

The text should clarify why Cowper Street housing is considered a good heritage outcome in a Heritage Conservation Area.

Arcadia (p 47)

We suggest that to provide guidance, this section should expand on the heritage outcomes from the project to the heritage residence, and select an image which illustrates this.

Form of Crown 515 (p 55)

We question whether this case study does illustrate the design objective of ‘better fit’ due to the scale and form of the new element.

Conclusion

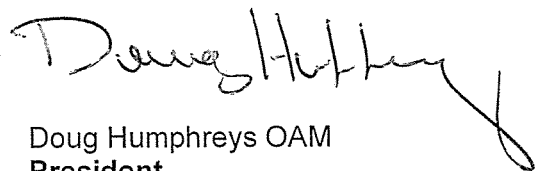
We do not consider that the Guide should replace ‘Design in Context’ until the issues we have outlined are addressed. We question whether the examples used in the Guide or its methodology accurately reflect the way the law relating to heritage conservation operates in practice in New South Wales.

The Guide should be modified to give cultural or heritage significance primacy as the basis for making decisions about heritage places.

Thank you once again for the opportunity to comment.

If you have any questions in relation to this submission, please contact Liza Booth,
Principal Policy Lawyer at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Doug Humphreys". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Doug Humphreys OAM
President