Heritage (ACT Heritage Guidelines) Notice 2007

Property Council of Australia

Submission

October 2007
Introduction

The Property Council of Australia (ACT) would like to make a number of comments in response to the ACT Heritage Council’s invitation to make comments on the draft ACT heritage guidelines.

1. What is a heritage guideline?

   The Heritage Council is authorized to make heritage guidelines in relation to the conservation of the heritage significance of places and objects.

2. How are heritage guidelines applied?

   2.1 Heritage Act

   A function under the Heritage Act that relates to the conservation of a place or object must be exercised in accordance with any applicable heritage guidelines, in particular to the following functions:

   (a) advice to ACTPLA in relation to ways of avoiding or minimising the effect of a development on the heritage significance of a place or object;

   (b) giving advice to an owner or occupier of a place or object to do or not to do something to conserve the heritage significance of a place;

   (c) the Supreme Court making a heritage order; and

   (d) the making of a heritage agreement between the Minister and a person in relation to the conservation of the heritage significance of a place or object.

   2.2 Land (Planning and Environment) Act

   Under the Land Act, ACTPLA must give the Heritage Council notice of each development application that relates to a place registered, or nominated for provisional registration, under the Heritage Act. ACTPLA must, in approving or refusing to approve a development application, consider any advice given to it by the Heritage Council in respect of that application and can only act inconsistently with that advice if satisfied that:

   (a) the following has been considered:

   (i) all applicable heritage guidelines:
(ii) all reasonable development options and design solutions;

(iii) any prudent and feasible alternative to the proposed development, or relevant aspects of it;

(b) as far as practicable, the decision avoids or minimises any adverse impact on the heritage significance of the place, and

(c) on balance, the decision is consistent with the objects of the Territory Plan.

3. The draft guidelines – areas of concern

3.1 Inconsistency between mandatory and discretionary requirements

The Guidelines are expressed in terms of mandatory conservation requirements (ie, rule-based) as well as requirements which are subject to the discretion of the decision maker (ie, based on performance standards).

There are occasional inconsistencies between the mandatory and discretionary requirements. For example, in Part B.1-5.0 “Doors and Windows”, one mandatory requirement is “The installation of anew door or window opening in an existing wall visible from the public domain shall not be permitted.” However, the discretionary requirement is expressed as follows: “A new opening in an existing wall which is visible from the public domain should be a simplified interpretation of the existing to show it is new but shall respect the scale, form and proportion of existing openings”.

These inconsistencies should be resolved.

One method for resolving this inconsistency would be to amend the Guidelines so that they more closely mirror the development assessment track process contained in the draft restructured Territory Plan (DRTP). The assessment track process under the DRTP provides that a development proposal can satisfy either the rules or the criteria that apply under the relevant code. Where the development satisfies the rules, the planning authority must approve the development. Where the development does not satisfy the rules, the development may nonetheless be approved if it satisfies the criteria that applies to the development. In other words, the Guidelines could be amended to provide that development proposals satisfy either the rule-based requirements or the performance-based standards, but do not need to satisfy both.
3.2 Exception for economic reasons should be expanded

Some of the mandatory requirements contain an exception where it is not economically viable. For example:

(a) total or substantial demolition may be permitted where the place is so structurally unsound as to be beyond reasonable economic repair or where the place poses a significant health and safety risk that is beyond economic repair; and

(b) where it is no longer economically or technically feasible to carry out repairs and maintenance, reconstruction work shall match the original fabric in all respects as far as practicable.

This exception should be extended to all mandatory requirements.

3.3 Application of guidelines to adjacent development

The guidelines apply to new development within the cartilage of a heritage place and/or on sites adjacent to a heritage place. This poses a problem in two respects:

(a) the heritage register includes places or objects which are nominated, provisionally registered or fully registered. There is not a separate link for places that are adjacent to such places. Owners and/or occupiers are likely to be unaware of the obligations which will now apply to them when developing the site; and

(b) the Land Act is only obliged to notify the Heritage Council of developments that relate to a place registered, or nominated for provisional registration, under the Heritage Act. This obligation does not extend to notifying the Council of development applications which relate to places adjacent to heritage places.

Further, the mandatory requirements which apply to development adjacent to a heritage place are very broad and consequently uncertain. For example:

(c) new development adjacent to a heritage place shall not detract from the significant features of the place.

(d) the scale of new development shall not have an adverse impact on adjacent heritage place and settings.

The guidelines should only apply to heritage places, and not places adjacent to heritage places. Alternatively, the mandatory requirements should be revised so that they are clearer and more certain.
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