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The Commissioner
Productivity Commission
PO Box 80
Belconnen ACT 2616

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Dear Mr Bryson,

Re: Conservation of Australia's Heritage Places

Thank you for the opportunity to comment.

This submission focuses on heritage conservation in building regulation and is particularly relevant in the areas of adaptive reuse of buildings. In addition, anecdotal evidence is that a significant portion of reconstruction work is in response to requirements to mandatory requirements for improved health and safety systems as well as amenity arising from building regulations. A discussion on the impact of Building Regulation should be incorporated.

One of the outcomes of the Productivity Commission Research Report into the reform of Building Regulation [1] was the recognition that there needs to be a clear delineation between land use planning and building regulation. This recommendation (6.10) stems from the perception that there is unnecessary duplication and potential over regulation of building work.

The Building Code of Australia (BCA) [2] is the technical standard for new building work and is adopted by each of the eight jurisdictions with responsibility for building regulation in Australia. The BCA is the minimum requirement for the health, safety and amenity (as well as limiting fire spread to adjoining property) and has been written in the performance based style consistent with the Australian government's international obligations.

While the BCA purports to be the minimum community acceptable standard for health, safety and amenity the application of the Code to buildings of cultural significance is generally tempered. The following are examples:

Tasmania

A building surveyor, in accordance with the Building Regulations, may determine that any provision of the Building Code of Australia in relation to ... historic buildings be altered. Section 55(3) Building Act 2004 (Tas).

Victoria

Despite section 24, the relevant building surveyor may issue a building permit for the carrying out of building work that does not comply with the building regulations if the work is carried out on, or in connection with ... a building included on the Heritage Register established under the Heritage Act 1995. Section 28(1) Building Act 1993 (Vic).

On the one hand we have a performance based document (the BCA) which purports to be the minimum standard for the health safety and amenity of building occupants and on the other hand the legislation offers a lesser standard when the building work relates to a culturally significant building. Philosophically this approach appears unsound.

What appears to have happened is that the regulations traditionally have provided discretion to the building surveyor so that it is not essential to comply with the prescriptive building standards have not kept pace with the recent reforms that have brought the performance based building standard. As a function of the performance based reform it is possible to examine the idiosyncratic features of a heritage building and design systems which provide an acceptable level of health, safety, amenity and protection of adjoining property from fire spread and still comply with the BCA.

In acknowledgement of the existence of the performance based method it is recommended that the existing regulations which provide discretion to the building surveyor be removed and that all applications be examined against the performance based provisions of the BCA.

To achieve this simplification it would also be necessary to make similar reforms to those regulations that also provide discretion to the building surveyor when considering alterations to existing buildings.

The more significant issue, and burden for those who wish to change the use of modify an historic building where a building permit is required is that the discretion that is available is generally not exercised until after the proposed work has received approval under the land use planning system. As a consequence the decision making land use planning process is typically predicated on the presumption of rigid prescriptive rules which are no longer a requirement. The result is that the planning approval may presume or require work that may not be necessary under the building approval process.

For example, the building may be a four storey heritage warehouse with wooden floors and it is proposed that the building be adapted for re-use as apartments. In that instance

the developer may submit, or the planning authority may require, the lodgement of a fire engineered design which is likely to satisfy the building permit requirements. In that instance the fire engineer is likely to base the design on the BCA. If there are discretions that are necessary in anticipation of the building permit these can only be predictions until the decision of the building surveyor is received. These discretions may relate to sound attenuation between the apartment units or the provision of equitable access for people with mobility disabilities.

It is conceivable that a planning permit may be issued that cannot be sustained through the building permit process. This frustration for the developer may be significantly amplified where a protracted planning process involving appeal process has been the precursor.

The remedy to this situation, in my opinion, is to cast off the traditional barriers delineating planning and building approvals with respect to culturally heritage building work. It is recommended that a process be put in train where all discretionary matters are dealt with in the land use approval process. This would mean that a developer would need to submit concept solutions at the time of the planning application in support of fire safety, noise attenuation and equitable access (using the above mentioned example). The technical assessment of these elements will need to be examined and approved by a building surveyor as a function of the planning permit process.

Introducing this level of technical expertise into the planning process would also improve the quality and integrity of the planning approval.

The second phase of the approval process, the building permit, would then involve the development and approval of the detailed design which incorporates the discretionary decisions. In this arrangement, the traditional approach to the development of alternative engineered solutions away from the Deemed-to-Satisfy Provisions of the BCA would transfer to be a part of the planning process for the reasons outlined above.

How this type of reform would be introduced would be dependant on the various statutory schemes though in Tasmania the reform may be implemented by requiring the planning authority to refer relevant planning applications to a building surveyor for their assessment and report prior to issuing the planning permit. It is not seen as necessary to expand the scope of planning considerations because it is understood that planning authorities already make preliminary decisions on matters that are also dealt with in the building regulations. A modified appeal process would be necessary where the necessary technical skills are incorporated. Modification of the building regulations would be necessary so that the decision at the planning stage has binding effect on the subsequent building permit.

The implementation of such a reform would provide a more rational process for all developers and in particular those seek to adapt heritage buildings.

Thank you again for the opportunity.

Yours sincerely

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References

1. Productivity Commission, *Reform of Building Regulation - Research Report*. 2004, Productivity Commission.
2. Australian Building Codes Board, *Building Code of Australia*. 2005.