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AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION

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8 February 2005

Secretary  
Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616

Dear Sir

**Submission to the Productivity Commission's Draft Report on the Inquiry into the Conservation of Australia's Historic Heritage Places (December 2005)**

The Australian Local Government Association (ALGA) as the peak national body for Local Government in Australia is pleased to make the following submission to the Productivity Commission's inquiry on the Conservation of Australia's Historic Heritage Places.

As highlighted in the Commission's draft report dated December 2005, local government plays a major role in heritage conservation throughout Australia. Throughout local government it is widely acknowledged that the conservation of heritage places contributes significant cultural, social, economic and environmental benefits to both local and regional communities. For this reason, ALGA joins other State and Territory Local Government Associations and local government authorities (LGAs) in outlining policy areas that it considers are important in ensuring future protection and appreciation of heritage places at all scales and levels of Government are strengthened and enhanced.

The ALGA submission responds to the findings and recommendations arising from the release of the draft report in December 2005. The Association has reviewed many of the original submissions forwarded to the Commission in late 2005, and congratulates the many of the authors on the quality of arguments, evidence and advice they conveyed.

In summary, whilst ALGA appreciates the wide scope of issues relating to heritage conservation in Australia, it cannot accept that there is sufficient evidence or documented justification to introduce the draft report's key recommendation relating to the use of conservation agreements.

ALGA is most willing to provide further input to the Inquiry if required. Please note however that this submission has been prepared from the perspective of local government sector as a whole, and should not be read in isolation of submissions undertaken by any of the other State and Territory local government associations or individual LGAs. The strength of local government in Australia is this diversity of representation and the ability to speak on behalf of local and regional communities.

Should you require any further information regarding this submission, please contact the Senior Policy Adviser, on (02) 61229443.

Yours sincerely

**Chief Executive**

*Enc. ALGA's response to the draft report on Conservation of Australia's Historic Heritage Places (December 2005)*

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Australian Local Government  
Association

Response to the Draft Report on the Conservation  
of Historic Heritage Places (December 2005)

February 2006

Senior Policy Adviser  
Australian Local Government Association 8  
Geils Court, DEAKIN ACT 2600 Ph. (02)  
61229443 Fax (02) 61229401

## **1. The Value of Historic Heritage Places**

The principle of conserving Australian historic heritage places is strongly supported by local government. A majority of the Australian community appreciates and values the diversity of heritage places, be they buildings and structures, physical places and landscapes or specific sites of historic significance. This appreciation is evidenced by the both the growth in domestic heritage related tourism, heritage studies and Australian's continuing interest in international places of heritage value.

As stated in the background to the terms of reference for this inquiry, places of historic significance reflect the diversity of our communities. They provide a sense of identity and connection to our past and to our nation. Local government seeks to reflect the aspirations of local and regional communities and is therefore an important participant, either as a regulator, property owner or advocate for a significant number and diversity of historic heritage places.

The draft Report acknowledges the important role that is and can be played by the appropriate conservation of heritage places. It also acknowledges the significant role played by local government in Australia. ALGA welcomes and supports these specific findings.

However, ALGA is concerned that the draft report does little in attempting to comprehensively assess the benefits that arise from heritage conservation. ALGA and local government generally appreciate the growing importance heritage conservation has generated for local and regional communities over the past couple of decades in general. The revitalisation of main streets, the cultural tourism strength of attractive community towns and villages, and the increasing international interest in Australia's buildings, structures and physically created places and landscapes provide tangible examples of such benefits.

ALGA acknowledges the need to assess the costs and benefits of all public policy initiatives. However it is ALGA's opinion that the Productivity Commission has placed undue emphasis on the costs side of the equation. This criticism is made with the appreciation of the difficulty in comprehensively quantifying the benefits arising from heritage conservation.

What ALGA and local government generally find hard to accept is that the Commission is prepared to radically alter the current system on the basis of only concentrating on the perceived costs of the current system of heritage conservation.

## **2. Role of Governments**

ALGA welcomes and strongly agrees with the draft report's finding that there is a legitimate role and need for government intervention in heritage conservation. This need for both heritage services and financial support to actually assist with the conservation outcomes is especially relevant at the local government level.

Based on the draft productivity report's analysis, it is estimated that local government has responsibility in excess of 150,000 local significant heritage items. This scale of responsibility far exceeds those items listed at either the State or Commonwealth levels. It should be noted that whilst the number of properties and places protected by heritage conservation is substantial, the figure should be taken in context. That is, the number of local heritage items and places in relation to the total number of built properties and places that actually exist in Australia and its territories. It is only when doing such a calculation, that it is possible to really assess if the number of properties given some protection at the local level is deemed excessive, reasonable or deficient.

The diversity of local government authorities (LGA), both in their population size, rate base, history and type of development and geographical location makes it difficult to generalise the impacts on any given LGA. It is however widely agreed amongst many local government politicians and practitioners that the financing of local heritage conservation is problematic given the constraints placed on local governments and the historical implications arising from 'cost - shifting' as documented by the Hawker Report - Rates and Taxes: A Fair Share for Responsible Local Government (2003).

Due to the resourcing constraints of local government, it is important that the Commonwealth, State and Territory governments play stronger roles in both financial and policy assistance in the protection, education and celebration of Australian heritage conservation.

## **3. Individual rights vs. Community obligations.**

A key recommendation contained in the draft report is that private property owners play a disproportionate role in conserving much of Australia's built heritage, and that a fairer system would see greater usage of individually negotiated conservation agreements. The premise of the argument is that currently, Governments at all levels, but particularly local government, do not assess the true cost (direct and indirect) of conserving properties. They, particularly local government, largely rely on planning related regulations that restrict development opportunities. This in turn is considered both unfair to the owners in question and does little to achieve the positive conservation of places that the broader community wishes to achieve.

ALGA strongly disagrees with this broad assumption and the Commission's key recommendation that:

*Privately - owned properties should be included on a national, State, Territory, or local government statutory heritage list only after a negotiated conservation agreement has been entered into and should remain listed only while an agreement is in force.*

There are several reasons for ALGA's position. Firstly, ALGA strongly disagrees and rejects the Productivity Commission's interpretation and acceptance of the sacrosanct 'development rights' of the individual property owner. Development or property rights are not guaranteed in isolation of other legislation or broader societal needs and desires. In fact, the rights and responsibilities of individual property owners are derived from the legal frameworks provided by the Crown. The opportunities to use and develop land is not and never has been an absolute 'right', but something that is granted by society, subject to the adherence of planning, environmental and common laws.

Secondly, the practicalities of implementing such a policy have not been given sufficient consideration. The sheer volume of time that would be involved in negotiating individual agreements would be prohibitive. Given the nature of and diversity of a large proportion of local significant conservation, the complexities of dealing with individual landowners, with or without professional assistance of heritage consultants and facilitators would be considerable. The resources that would be required to enter into such exercises, would result in even further reductions in other heritage related expenditure or worse, decimating the ability of local government to protect items of particular local value.

From a local government's perspective, many LGAs would also need to employ additional staff or engage consultants to facilitate such conservation agreements. Many property owners and the local communities would also be impacted by additional costs in such instances. This impost would 'rub salt into the wound' given that many LGAs struggle to even properly resource their communities with appropriate full or part-time professional heritage staff.

ALGA, and the broader Australian community which local government represents, would not want to see a system introduced where the only items that are conserved are those limited to where some negotiation was agreed to regardless of the particular value of heritage item under consideration.

Given this position, the emphasis placed on the key recommendation of the draft report is totally rejected in relation to the many other outstanding issues raised and discussed in the draft report.

#### **4. Funding of Historic heritage conservation**

The draft report correctly describes the growth in heritage conservation since the 1970s. Supporting research shows that the Commonwealth, and each State and Territory has implemented their own planning legislation as it relates to heritage. The fact that laws have been enacted for such a length of time, would seem to give credence to the community's support for some degree of government intervention. ALGA agrees with the Commission that there is evidence of market failure in historic heritage conservation that warrants and justifies government intervention, and hence appropriate funding support.

Unfortunately however, financial support given by all levels of government to conservation has not grown accordingly. This is especially the case at the Commonwealth and State levels. It is not good enough for the Commonwealth to espouse the rhetoric that its' heritage conservation is and should be limited to matters of international or national significance and that it is the sole responsibility of the State's and Territories to look after their own particular heritage needs. The principle of subsidiarity does not negate the responsibility of the higher level of Government to adequately fund and assist with the actual implementation of the desired policy objectives. This criticism is equally relevant to State Government.

Local government appreciates the constraints of public sector finances and that it has a responsibility to finance many of the activities within its sphere of influence. ALGA is aware that local government currently supports heritage conservation in a multiple of ways. Support can occur through free heritage advice to owners and purchases of specific properties, rate reductions and minor renovation grants. However, a significant proportion of incentive mechanisms are not within the scope of local government. Specific incentives in terms of tax relief, land tax or stamp duty reductions, are solely within Commonwealth or State and Territory jurisdictions.

Actual decisions on property transactions, be they selling of properties, reuse of buildings have and continue to be made by higher levels of government in isolation of Councils. How many traditional post offices, court houses or police stations have been abandoned by various government departments, resulting in further pressure placed on the LGAs to deal with the new owners that may not share the heritage aspirations of the local community. ALGA would like to reinforce the point raised in the initial submission made by Newcastle City Council, NSW that highlighted specific evidence of such experiences.

ALGA argues that the draft report should have investigated and discussed alternative and additional financial incentives required to properly conserve items of significance, be they of a national, state or local nature. The use of conservation agreements is but one policy

instrument available to governments, the others involve a range of other incentives, including education, skills training, promotion and on-going research.

## **5. Australian, State and Territory government's heritage systems**

In principle, ALGA accepts the need and logic of a three-tiered system of heritage conservation in Australia. However, from a local government perspective, this does not mean that this justifies either the dearth of heritage funding assistance or inconsistent leadership in heritage conservation shown predominantly by the Australian and to a lesser extent by the State and Territory governments.

The principle of subsidiarity is supported by local government throughout Australia. Local Government agrees that there is a legitimate role for the various spheres of Government in protecting Australian places of historic heritage value. However, those particular items and places that fall within the local or regional communities remit, does not negate the responsibility by higher levels of government to adequately fund or provide the resourcing mechanism's to allow local government to undertake the task assigned to it.

The Draft Report criticises the State and local governments for what it considers is "an over-reliance on prescriptive regulation to achieve heritage conservation objectives" based on a listing process that "does not provide a mechanism for rigorously identifying costs and benefits of conserving a place". This criticism is considered unfair and to a large degree unsubstantiated.

It is ALGA's assertion that the heritage conservation systems in Australia, at the State and local government levels, are relatively sound and are not overly onerous or disadvantage individual property owners to such an extent that it would justify the implementation of many of the Productivity Commission's recommendations. ALGA fails to see the evidence that sufficiently justifies radically altering the existing heritage provisions that apply at the local government level as a consequence of implementing the Commission's key recommendation.

The identification of places of significance at a local level are usually based on a heritage study, undertaken by professionals and are subject to both transparency and wide community and stakeholder involvement. The timeframes for such investigations and consultation processes are in most instances quite lengthy and the actual regulatory impact only occurs once a democratically elected Council resolves to adopt the study findings within a planning scheme or policy. This process would also involve the appropriate State government department, especially when considering that all statutory planning schemes need to be gazetted under the relevant planning and/or heritage legislation.

Whilst there are differences in the approaches adopted by local government in how they protect items and places of conservation significance, this diversity is justified on the basis that communities also reflect such diversity in histories, values and ability to support such activities. The latter, is particularly the case for those more remote and less populated areas.

## **6. Planning controls and heritage conservation at the local level**

The draft report does not acknowledge that a considerable community consultation and participation already takes place in the development of planning strategies and schemes, as well as during the approval processes. Heritage conservation, when it is implemented at the community level, occurs only after a transparent and inclusive opportunity for individuals and any other interested stakeholders to have their say.

ALGA is of the opinion that the Draft Report does not fully comprehend or appreciate the legislative and related local government practices when dealing with heritage issues. LGAs are bound by State legislative requirements in how they protect and conserve places of historic heritage significance. This in turn involves Council's commissioning heritage studies that rely on respected set of charters and guidelines that document standards and principles for the conservation and principles for the conservation of places of heritage significance. The Burra Charter - the Australia ICOMOS Charter for Places of Cultural Significance, is such a document widely used by local government to ensure best practice implementation.

The development of such strategic heritage studies are time consuming and are dependent on considerable non-government and individual community support and involvement. It is common practice for local government to ensure that appropriate community participation and consultation opportunities are made available as part of such investigations. It is here where the questions relating to the financial implications of conserving properties or places can be considered, as well as examining the role to be played by education and other incentives. This in turn provides the first step in protecting the rights of individuals to participate in debating the value of a given property or place's heritage significance.

The actual statutory listing process involves yet another opportunity for the community to participate in the planning exercise. This also involves a process of public notification where the individual and community have opportunities to actively participate in the decision making process, before any statutory instrument is gazetted.

The only rare instances when controls are placed on a property or site at short notice, is when such properties or sites are deemed to be under immediate threat of demolition or other equally negative impacts. There

are extensive Australian examples of the loss of important heritage items through illegal works and neglect thanks to insufficient community protection mechanisms in the form of planning controls.

## **7. Missing Policy mechanisms?**

Given the research undertaken by the Commission and the considerable information and advice received through the submission process, it is surprising that the draft report does not canvass a range of additional recommendations designed to enhance the operation and outcomes for historic heritage conservation.

It is ALGA's opinion that there is a clear need for a package of supportive incentives for historic heritage conservation that will assist in delivering positive net benefit to the community. As previously argued, the emphasis on pursuing greater reliance on negotiated agreements is not considered practical or realistic given that there are other proven policy initiatives that assist in generating positive community outcomes.

ALGA joins other organisations, such as the Australian Council of National Trusts and the National Heritage Forum, in calling for more support in the provision of community education, heritage related research, professional skills and trade development, and investigation into introducing additional incentive mechanisms and funding programs.

Given the important contribution played by heritage conservation, particularly in linking the past, with the current and the future, there is a need to ensure sufficient community education is provided to the Australian community. Community education programs, such as Protecting Local Heritage Places - A Guide for communities (Australian Heritage Commission, 2000) are valuable initiatives in better understanding and celebrating the importance of heritage items and places for all Australian communities. Further education will also assist the individual and community stakeholders to better understand how heritage conservation actually works and what rights and responsibilities come with heritage conservation. Hopefully over time misinformation and neglect of historic heritage places will diminish.

The need for additional research and dissemination of information on heritage conservation would appear to be acute. As raised previously in this submission, there is a lack of information on the quantifiable benefits and costs associated with heritage conservation. This would extend to having a better understanding on the number and types of heritage places listed in registers and planning instruments, the role and contribution played by the community and non-for profit sectors, national and international best practice advice and a range of monitoring and evaluation studies. Whilst all levels of government have responsibility for such research, ALGA would argue that the Australian Government could greatly enhance the role it plays in such work.

Another area that is undervalued relates to the processes for both heritage assessment and restoration works. ALGA would support any initiatives that would enhance the professional training of heritage advisers and the variety of trades that are required in the important task of sympathetically restoring places and items of conservation value. It should be noted that local government throughout Australia is a significant employer of specialist staff, either as heritage officers or consultants. The advice provided by such professionals to the community is largely free, and consistent with the community development ethos underlying local government practice.

Finally, ALGA wishes to argue that more resources need to be provided to both local government and heritage stakeholders (individual property owners and community groups) to properly protect, conserve and celebrate places of heritage significance. For its part, the Australian and State Government's could investigate the value of introducing a raft of additional incentives, be they in the form of taxation, land tax or stamp duty rebates. On a national scale, ALGA would welcome the Commonwealth introducing a similar grant program along the lines of the Natural Heritage Trust, but designed specifically for the built and cultural environments.

## **8. Conclusion**

ALGA congratulates the Productivity Commission in producing the draft report and making itself available to interested parties to discuss the draft findings and recommendations. The interest in historic heritage conservation and the subsequent debate generated by the investigation is considered healthy in a policy sense and long overdue.

On behalf of local government, ALGA hopes that the Commission will give serious consideration to the issues raised in this and the other submissions produced by State and Territory Local Government Associations and individual Councils.

Whilst ALGA appreciates the wide scope of issues relating to heritage conservation in Australia, it cannot accept that there is sufficient evidence or documented justification to introduce the draft report's radical recommendation relating to the use of conservation agreements.

## **Recommendations:**

The following recommendations are submitted to the Productivity Commission for consideration:

1. That ALGA supports the principle that all levels of government should put in place measures for collecting, maintaining and disseminating relevant data series on the conservation of Australia's historic heritage places.
2. That the Australian Government in particular should play a stronger leadership role in heritage conservation, and give serious consideration to ways in which greater resources can be made available to strengthen this sector of the community, particularly for local government.
3. That the use of conservation agreements is acceptable only on the basis that this mechanism is one of several policy instruments used by Governments to conserve places of historic heritage conservation.
4. That the Australian and State Governments explore options to increase the degree of policy relevant research, and the level of education and training in heritage skills undertaken in Australia.
5. That a review be undertaken of Commonwealth, State and Territory legislation to seek ways in which the implementation and understanding of heritage and planning laws can be further streamlined and enhanced.
6. That all levels of Government join forces in acknowledging the community and voluntary sector in the work and commitment they continue to do in the field of heritage conservation.
7. That the Australian Government give serious consideration to establishing a Cultural Heritage Trust comparable to the principles and desired long term outcomes espoused by the Natural Heritage Trust.