

## **Response to the Productivity Commission Draft Report on the Conservation of Australia's Historic Heritage Places.**

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The following is provided as a submission to the Productivity Commission's (PC) Draft Report on the Conservation of Australia's Historic Heritage Places.

Council is committed to the protection of Heritage Places and recognises that heritage conservation plays a vital role in the community by providing a history and sense of identity. It is considered that the preservation of historical precincts, individual buildings and landscape elements also adds to the sense of place and the liveability of the municipality.

Council welcomes the review of Australia's Historic Heritage Places and is generally in support of a number of the Productivity Commission's draft findings. It is agreed that the absence of Statements of Significance for all listed properties (PC Draft Finding 5.2) impairs the credibility of the heritage place and the assessment for use and development on that site. It is also considered that the varied approach to the listing of locally significant places between state/territory and local governments (PC Draft Finding 4.2) creates ambiguity and a more consistent approach is required.

Council does not however, agree with a number of the final recommendations of the Productivity Commission's Draft Report. It is considered that the Productivity Commission has failed to understand the consequences that would result on heritage places if the recommendations are to be implemented. Concern regarding a number of the draft findings and recommendations is outlined below along with a number of examples of what has been achieved through the current heritage and planning controls by Bayside City Council.

### **1.0 Bayside's Heritage Places**

The City of Bayside has a rich and varied heritage from the period prior to and following European settlement through to the twenty first century.

Heritage studies undertaken by the former Brighton and Sandringham Councils identified and graded a number of individual sites and two residential precincts. At that time, there was only limited support for the implementation of planning controls because they were seen as an infringement on people's property rights. As a result, heritage controls were limited to approximately 80 significant buildings and works.

A number of buildings identified in the studies have since been demolished.

In 1999, in response to growing community concern regarding the loss of significant buildings, Council carried out *The City of Bayside Heritage Review*. The review was commissioned by the Bayside City Council to examine heritage structures, precincts and landscapes within the former Cities of Brighton, Sandringham and those parts of the former Cities of Moorabbin and Mordialloc-Cheltenham, Highett and Beaumaris, which now form the City of Bayside.

Conducted by Allom Lovell and Associates Pty Ltd, the study included a review of Andrew Ward's two previous studies, the City of Brighton Urban Character and Conservation Study (1986) and the City of Sandringham Heritage and Conservation Study (1989).

Individual structures were given a classification (A, B or C) according to their heritage significance. Twenty-seven areas, known as heritage overlay precincts were deemed to be of heritage significance. These were also identified and contributory buildings were ranked A, B or C within the precinct boundary.

The final report includes a Thematic History of Bayside, Citations, or Statements of Significance, for individual buildings and precincts and Landscape Citations (PC Draft Finding 5.2). These citations are publicly available and Council's website actively informs residents of the implications of the Heritage Overlay (PC Draft Finding 5.5).

Currently, Council now has over 700 individual properties and 16 precincts (comprising more than 800 properties) listed in the Schedule to the Heritage Overlay. The Heritage Overlay (Clause 43.01 of the Victorian Planning Provisions) indicates the purpose, scope and permit requirements for places listed in the Schedule for a particular municipality. The Heritage Overlay also sets out Decision Guidelines that are used when determining an application. In particular one of the decision guidelines states the Relevant Authority, prior to deciding an application, must consider:

*"Any applicable heritage study or any applicable conservation policy"*

The Bayside Planning Scheme also lists the *Bayside Heritage Review, February 1999* in the reference documents in the Local Planning Policy Framework at Clause 21.09. Therefore in assessing an application for use or buildings and works in a Heritage Overlay, the planner needs to take into consideration the Statement of Significance relating to that property.

## **2.0 The Planning Scheme Amendment Process**

In order for Local Government to make changes to the Planning Scheme in Victoria, including listing a property in the Schedule to the Heritage Overlay, they must undertake considerable public consultation through the Planning Scheme Amendment Process.

Council has been through an exhaustive process including a number of Planning Scheme Amendments in order to retain its heritage places. The process included obtaining interim controls over a number of heritage places in 2001 (Amendment C13) while Council exhibited Amendment C6. Amendment C6 proposed heritage controls for an additional 212 individual properties, 13 precincts and 50 landscape items as a result of the Heritage Review in 1999.

In 2001, 13 properties were removed through Amendment C5. Amendment C6 was abandoned in 2001 also. In 2003 Council exhibited Amendments C37 and C38, which included those properties on interim status abandoned in 2001. The purpose of these amendments was to make permanent the interim heritage controls for a number of individual buildings, landscape elements and precincts. The process involved extensive consultation with the community and direct notification to those individually impacted on by the proposed controls.

In this case a number of submissions were made requesting properties be removed from the Heritage Overlay. Council referred the submissions to an Independent Panel, appointed by the Minister for Planning. The Panel is required to hear representations from both parties including evidence from a Heritage Architect and makes recommendations based on this. The Panel is independent from Council and makes its decision based on the heritage significance of the property. Places are not recommended to be placed in the Heritage Overlay in order to achieve any other planning objective. (PC Draft Finding 7.8).

The Panel recommended that Council's assessment of 47 inter-war properties was insufficient and that further research was required before making a decision regarding these properties. Council will be undertaking assessment of these 47 properties as part of Amendment C37 (Part 2) in 2006.

It is considered that this process is transparent and inclusive of all affected parties. Property owners are given the opportunity to submit reasons why they consider a property should not be included and this evidence is given weight in deciding the status of a property. It is not considered that the imposition of potential heritage controls is unclear to property owners (PC Draft Finding 7.8) as there is extensive public consultation and direct contact with affected property owners prior to the listing.

The Planning Scheme Amendment Process is a lengthy and exhaustive process which has not been a cheap or thoughtless process for Bayside Council. It has required large amount of resources to achieve this consistent approach to heritage within the municipality.

Section 32 of the Sale of Land Act requires the vendor of a property to provide the potential purchaser of a property among other things, "*Information about planning or development restrictions*" before a Contract of Sale or Contract Note is signed. In most cases this is provided through the vendor obtaining a Planning Certificate which will outline if the property is covered by the Heritage Overlay. In this case the property owner has been given sufficient information regarding the heritage status prior to seeking a development approval (PC Draft Finding 5.4).

### **3.0 Planning Permits**

Council considers the imposition of the Heritage Overlay is not dissimilar to the imposition of other controls such as zoning and in Victoria, Overlay Controls. The imposition of any overlay control set out in the Victorian Planning Provisions (VPP) can be placed on individual properties or a group of properties following the appropriate Planning Scheme Amendment Process. Overlay controls vary but in all cases require the owner to seek a planning permit that may not have been required if not for the imposition of the overlay.

Council recognises the financial burden placed on property owners needing to obtain Planning Permits solely as a result of the Heritage Overlay. It is policy at Bayside City Council to waive the Planning Permit Application Fee for applications triggered only by the Heritage Overlay.

### **4.0 Voluntary listing and conservation agreements**

The proposed concept of negotiated conservation agreements is untried, untested and therefore flawed. It is considered that without compulsory planning controls over historic places, owners will 'opt-out' and not consent to the agreements. This in turn will result in the loss and significant modification to a number of heritage places as a result of inadequate controls.

The following concerns are raised in relation to the proposed negotiated conservation agreements:

- Owners not wanting to preserve a heritage place will refuse to consent to an agreement, resulting in the loss of modification to the heritage place (PC Draft Recommendation 8.1).
- It would foster an inconsistent approach to heritage places. The terms agreed to by one owner regarding a heritage place might be different to the terms agreed to by another owner of a similar heritage place. This raises an issue of equity.

- The community's perception of heritage would be reduced as a result of the inconsistent approach for different heritage places.
- The cost associated in setting up agreements initially and then as an ongoing cost each time the property is sold, is not economically feasible for Local Governments (PC Draft Recommendation 9.5).
- Planners are not trained in negotiation of conservation agreements. It would require a separate resourcing by Council to undertake such agreements, which would create further financial burdens.
- Council does not have the resources to acquire all properties on the Heritage Overlay.
- It does not involve the consultation of the broader community.
- It is unclear how it will be enforced and how it will relate to the planning system.

Further, the differentiation between individual buildings requiring conservation agreements and not precincts will create further problems. It creates inequity between those in precincts and those individually listed. Segregating these two very similar controls creates two different systems which in turn creates confusion and ambiguity for property owners. Councils are also likely to 'create' precincts around individual buildings in order to regulate and maintain the heritage place.

Sandringham City Council attempted voluntary listing of heritage places in 1990 which resulted in approximately 20 listings out of 1200. This led to a significant loss of heritage places within the municipality as a result of demolition. Council attempted to pursue voluntary listings again in 1999 and it was not supported by the Minister for Planning who retained the interim controls over the heritage properties.

Council endorses the comments as outlined by Marcus Spiller, President of PIA, and the comments outlined by Chris Gallagher, Chair of the Heritage Council published in Planning News Volume 32, No.1 February 2006 (copies attached).

Council also endorses the comments of the Australian Council of National Trusts contained in their submission (February 2006, Page 9) regarding the voluntary listing and conservation agreements.

## **5.0 Government Owned Places**

It is agreed that conservation management plans need to be developed for government – owned heritage places however there is concern over costs associated with this for Local Government if it was to become a mandatory requirement. (PC Draft recommendation 7.5). Council currently has a conservation management plan in place for Black Rock House, a Council owned, State-listed property. Council is also seeking funding to prepare a Conservation Management Plan for Kamesburgh House, another Council owned, State-listed property.

## **6.0 Suggestions**

It is considered that refinement to the current process in Victoria would facilitate better outcomes in relation to heritage places. Compulsory negotiation at the pre-application stage would help inform owners of the effect the heritage overlay will have on potential development. Bayside City Council offers a free service to owners whereby Council's Heritage Advisor will meet with owners on-site to discuss the site constraints from a heritage perspective. This helps resolve many conflicts prior to a planning application.

Ensuring that all listed properties have a statement of significance and have met a certain standard of criteria, such as the Australian Heritage Commission Criteria for the Register of the National Estate is important. The Productivity Commission's recommendations do not specify how it will be determined if a property is 'worthy' of retention and what criteria are to

be met. It is considered that a national set of criteria will help create consistency between listed heritage places across the nation. All individual properties and precincts within Bayside have separate statements of significance, or citations, approved as part of the planning scheme amendment process

It is noted that some owners of individually listed properties may require financial assistance. Initiatives such as the Melbourne Heritage Restoration Fund (MHRF) should be encouraged. Through the MHRF, Council facilitated the restoration of 'Munro's Building' on Church Street in Brighton including the reinstallation of original verandah and façade restoration. The total project cost \$250,000.

Council does not support the funding for general maintenance and upkeep of buildings, as this does not generally require a planning permit under the Victorian Planning System. Section 43.01-2 of the VPP states:

*"No permit is required for:*

- Repairs or routine maintenance which do not change the appearance of a heritage place.*
- The repairs must be undertaken to the same details, specifications and materials. Anything done in accordance with an incorporated plan specified in a schedule to this overlay."*

## **7.0 Conclusion**

It is considered that the current Victorian approach to the conservation of heritage places should remain in place. The process of placing a property in the Heritage Overlay is not frivolous. It requires Council to undertake extensive research on that place and provide justification for its listing. Community consultation prior to a property being listed is extensive and the process is transparent, justified, and accountable.

Heritage needs to remain a planning issue and should not be taken out of the Victorian Planning System. Council notes that approaches in other states and territories to heritage may not be as efficient as the Victorian approach and modification to state and local planning legislation may be required. Unfortunately, unless a nation wide approach to planning is adopted, there will be inconsistencies between state and territory approaches to planning and therefore heritage.

The Victorian approach to planning is working for the vast majority of listed heritage places. It is agreed that refinement of this process to ensure all listed heritage places are justified in their listing and that property owners are assisted with potential financial burdens is warranted.

Council endorses the comments of the Australian Council for National Trusts (February 2006) particularly in reference to comments on the inadequate research base and financial data contained in pages 14-15 of their submission.

It is considered that the introduction of negotiated conservation agreement will create greater inconsistencies, inequity and the loss of significant heritage places. It is for these reasons that the recommendations which are under question in this submission should be reconsidered or abandoned.