



24 February 2006

Heritage Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Sir/Madam

Submission on the Productivity Commission Draft Report - Conservation of Australia's Historic Heritage Places.

Campbelltown City Council, on 14 February 2006 considered the report on the Findings and draft Recommendations of the Productivity Commission's (the Commission) Draft Report on the Conservation of Australian Historic Heritage Places. At its meeting, Council resolved to make a submission to the Commission, the salient points of which are discussed below. A copy of Council's report is attached.

- The implementation of many of the Commission's draft report Recommendations are underpinned by the introduction of Voluntary Conservation Agreements (CMAs) between Council and the owners of local heritage items. While the current legislation requires compulsory listing of items of heritage significance, there is neither a legal framework to compel private owners to conserve them, nor substantial funds to assist them in this regard. It would appear that the role of a CMA is to fill this void.
- In recent times, a number of privately owned heritage items within the Campbelltown Local Government Area have been neglected, including the Fisher's Ghost Restaurant (the Old Mill House), Campbelltown; Hansen's Cottage, Minto Heights; and the Union Church, Wedderburn. In each case the heritage item has fallen into a state of disrepair due most likely to a lack of sufficient funding to maintain each property or an owners future development ambitions. Had a CMA been in place, the heritage values of these properties would have been potentially preserved more effectively. Indeed, in some cases the ultimate fate of heritage-listed properties is demolition, having deteriorated to a point where they cannot be restored or have become a public safety hazard. A recent example of this is Hansen's Cottage, which was recently approved by Council to be demolished.
- The CMA represents an alternative way to preserve privately owned heritage items within the LGA, based on a voluntary agreement as opposed to the current (control) approach. However, the success of any such approach (ie: without control) would depend upon significant resources being made available to Local Government. Without an appropriate level of resources, there is a real risk that a number of heritage items will not be conserved.
- While the Commission has put forward a number of suggestions on how funds may be provided, there is not a great deal of detail on how this would be implemented at the Local Government level, nor any mention of potential financial support from Federal or State government.
- Council provides financial assistance to owners of local heritage items via the Local Heritage Fund. The Fund, is a dollar for dollar scheme with a maximum contribution by Council of

\$1500 available to each applicant. Clearly, for this scheme to be modified in the context of the Commission's draft recommendations significant additional funds would be required and/or a considerable reduction in the number of locally listed properties would need to occur. In addition, for any conservation local agreement scheme (of the suggested nature) to be effective, significant compliance resources would need to be put in place at each council.

- The concept of offering financial incentives has merit, subject to adequate funding being made available to Councils from the State or Federal Governments.
- The removal of planning incentives (currently heritage items can be used for a prohibited use within the zone) from Local Environmental Plans is not supported, but rather, should be used as a component of a CMA that is specifically related to assessing developments/uses that are not consistent with the agreed property uses/values as described in the CMA. Adopting this approach would ensure councils maintain discretionary powers regarding the use of locally listed heritage items.
- Without adequate funding being made available, the implementation of the Commission's recommendations through legislative amendments would represent a considerable cost shift to Local Government in relation to heritage conservation. In this context, any amendments to the EP&BD Act would not be supported.

The recommendation to implement heritage conservation recording system is supported as it would assist Council in monitoring expenditure with regard to heritage conservation within the LGA and facilitate a more strategic approach to heritage conservation in the longer term again, however, this would pose a significant cost burden upon Council.

Yours sincerely



Ian Curtis
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**TITLE Productivity Commission Draft Report - Conservation of
Australia's Historic Heritage Places**

Reporting Officer

Acting Manager Environmental Planning

Attachments

1. Findings and Recommendations of the Productivity Commission Draft Report.
2. Current Australian Heritage lists.

Purpose

The purpose of this report is to advise Council of the findings and recommendations of the Productivity Commission Draft Report *Conservation of Australia's Historic Heritage Places*.

History

The Federal Government has requested the Productivity Commission to assess the existing policy, regulatory and incentives framework for the conservation of Australia's historic heritage places. The inquiry commenced in April 2005. The draft Report, which was released in December 2005, presents the Commission's draft findings and recommendations following the consideration of 192 submissions from individuals, public and private organisations across Australia.

The Inquiry's main focus is on built heritage and does not include natural heritage, indigenous heritage, movable cultural heritage (such as paintings and aircraft) and intangible heritage (folk history).

The Commission was requested by the Federal Government to examine:

1. The main pressures on the conservation of historic heritage places,
 2. The economic, social and environmental benefits and costs of the conservation of historic heritage places in Australia,
 3. The current relative roles and contributions to the conservation of historic heritage places of the Commonwealth, State and Territory governments, heritage owners (private, corporate and government), community groups and any other relevant stakeholders,
 4. The positive and/or negative impacts of regulatory, taxation and institutional arrangements on the conservation of historic heritage places, and other impediments and incentives that affect outcomes,
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5. Emerging technological, economic, demographic, environmental and social trends that offer potential new approaches to the conservation of historic heritage places, and
6. Possible policy and programme approaches for managing the conservation of Australia's historic heritage places and competing objectives and interests.

The draft report (totalling 327 pages) comprises:

1. Key points
2. Overview
3. Findings
4. Recommendations
5. Report - Chapters 1 to 9
6. Appendices

The closing date for submissions on the draft report is Friday 24 February 2006. A final report is scheduled to be released in April 2006, after which the Federal Government will consider the Commission's final recommendations, and its response will be announced as soon as possible thereafter.

This report presents a summary of the main findings and draft recommendations, of the Commission's report, including significant implications they may have on the future management of built heritage within the Campbelltown Local Government Area (LGA).

The matter has not been referred to Council's Heritage Protection Sub Committee due to the timing of the release of the draft report and the closing date for submissions.

Report

Main findings of the Draft Report

A copy of the findings of the Commission's draft report is shown in Attachment 1. However, the following presents a summary of the most salient conclusions:

1. Overview of historic heritage conservation in Australia

- The Commission has found that there is little statistical information available on the conservation of Australia's historic heritage in relation to:
 - the number, quality and composition of listed places;
 - the nature, source and types of expenditures available for historic heritage conservation; or the effectiveness and cost-effectiveness of those expenditures.
- The Heritage Council becomes the de-facto planning authority for heritage properties listed under the State Heritage Register (unlike non-heritage items where generally the local council is the planning authority).

- Local Environmental Plans (LEPs) do not usually include a statutory statement of significance of heritage items. The absence of such a statement seriously impairs subsequent decision making about listed properties.

Planning Comment:

Campbelltown (Urban Area) Local Environmental Plan 2002 (LEP 2002) includes a schedule of all locally listed heritage items within Council's urban area and contains a number of specific controls focused on heritage conservation. However, it does not contain a statement of heritage significance, similar to the LEPs of most councils.

Regardless, in most cases a heritage study, which includes a statement of significance, would be prepared and presented to Council prior to the listing of any heritage item. These statements are available via Council's Heritage Register, which is available to the general public.

Importantly, the proposed State Government's Standard LEP Template contains compulsory provisions related to heritage conservation, including conservation incentive clauses for heritage listed buildings.

2. Planning controls and heritage conservation at the local level

- Heritage controls can be applied to properties that have not been individually listed or contained within a heritage conservation area and in this case the owner may only be informed upon seeking a development consent.
- There is significant scope to improve the management of heritage conservation by local governments in their systems and process for land use planning.

Planning Comment:

Current NSW planning legislation imposes a potential for restrictions to be imposed on properties within the vicinity of a heritage item. This situation will continue to apply following the introduction of the Standard LEP template which contains clauses regarding the development of properties that are in the immediate vicinity of a heritage item.

3. Analytical framework

- Heritage listing can have a negative impact on the price of individual properties, especially where there is an opportunity for redevelopment.
- Current methods of identifying historic heritage places for statutory listing focus the benefits expected to accrue to the community. There is little consideration of the costs imposed either on the owner or the community more generally.

Planning Comment:

The costs associated with maintaining privately owned heritage buildings is at present, largely the owners' responsibility. Financial support is available via a range of Federal and State Government funding programs. Council also makes a financial contribution to the maintenance of local heritage items through its Local Heritage Fund.

4. Assessing Governments' involvement

- The existing three levels of legislative framework (Federal, State, and Local) is an appropriate model for Government involvement in heritage conservation.
- Negotiated conservation agreements for heritage items are desirable as they facilitate voluntary conservation and ensure the costs of conservation are considered alongside the community benefits.
- Management of Government owned places could be improved through the introduction of Conservation Management Plans and transparent reporting of expenditure on conservation of heritage items owned by Local Government.
- At the Local Government level, the management of heritage conservation under local planning schemes is not working well, because of:
 - the imposition of unclear restrictions on property owners;
 - the lack of a statement of significance for each heritage item listed locally;
 - inconsistent use and interpretation of heritage controls; and
 - the application of heritage controls to places that have little, if any, heritage significance in order to achieve other planning objectives.

Planning Comment:

While the current planning framework has its limitations, the introduction of the Standard LEP Template will unify the nature of heritage planning controls within NSW. The extent to which the controls will align with the recommendation of the Commission's final report remains the responsibility of the State and Federal Governments.

5. Getting incentives right

- Conservation of historic heritage on privately owned heritage property could be more effectively achieved through negotiated conservation agreements between Governments and owners.

Planning Comment:

The merits of individual conservation agreements are discussed in more detail later in this report.

Recommendations within the Draft Report

Key recommendation

The Commission's key recommendation states (Attachment 1):

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.

The Commission's Key recommendation is supported by a number of additional recommendations in relation to:

- a. Conservation agreements for privately owned heritage places.
- b. Getting incentives right;
- c. Legislative amendments;
- d. Overview of historic heritage conservation in Australia; and

e. Assessing Governments involvement.

The Commission's draft recommendations and their implications for local heritage management are discussed in more detail below.

a. Conservation agreements for privately owned heritage places

The implementation of many of the Commission's draft report recommendations is underpinned by the introduction of voluntary conservation agreements (CMAs) between Council and the owners of heritage items. The Commission argues that CMAs are a crucial element in securing the support of property owners in heritage conservation and thus avoiding the possibility that owners may otherwise neglect or even destroy the heritage values of their property.

While the current legislation requires compulsory listing of items of heritage significance, there is neither a legal framework to compel private owners to conserve them, nor substantial funds to assist them in this regard. The role of a CMA is to fill this void.

The draft report provides nine elements which would comprise a CMA, however they can be described in general terms as a framework which provides:

- An agreed statement of the places heritage values
- Works, development or uses that are permitted or prohibited
- A method by which prohibited uses can be assessed against the places heritage values
- How assistance will be provided to the property owner (e.g. via a one off payment or by ongoing contributions)
- A mechanism for dispute resolution and the reassessment of agreed heritage values at set intervals (e.g. every 10 years)

In essence, the Commission believes that CMAs will facilitate better heritage management by providing a clearly defined framework that articulates why an item is of heritage value, how it can be used, and the nature of any financial assistance provided by Council.

Importantly, the Commission's draft report recommends that a heritage item cannot be listed unless a CMA is in place and that if the item's agreement lapses, so too does its listing. However, an existing CMA would transfer with property ownership and remain in place until the agreed review date or a development application for the property is lodged with Council.

Specific recommendations relating to conservation agreements (CMAs):

- The Federal Government should implement processes whereby any additions of non-government owned properties to the National List occur only after a conservation agreement with the owner has been entered into, and that the property remain on the list only while an agreement is in force. Consistent with its stated preference of relying on agreements for the management of world and nationally significant historic heritage places, the Australian Government may wish to make this a statutory requirement under the Environment Protection and Biodiversity Conservation Act (1999).
- State and Territory Governments should modify heritage legislation to ensure that any additions of non-Government owned properties to their statutory heritage conservation lists occur only after a conservation agreement with the owner has been entered into, and that the property remains on the list only while an agreement is in force.

- State Governments should require their Local Governments to add non-government owned properties to a local heritage conservation list only after a conservation agreement with the owner has been entered into and remains in force.
- State Governments should put in place systems for their Local Governments to request compulsory acquisition in cases where this becomes the only way to ensure cost-effective conservation of places of local significance.
- Private owners of already listed properties, where the listing occurred after purchase of that property, should be able to apply for a negotiated conservation agreement and for listing to continue only if an agreement is reached.
- Private owners of already listed properties, where the listing occurred prior to the purchase of that property, would remain covered by the existing 'package' of restrictions and concessions (if any). These arrangements would be reassessed at the time of any substantive development application when negotiations for a new conservation agreement would occur and listing would continue only if an agreement is reached.
- 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

Planning Comment:

In recent times, a number of privately owned heritage items within the Campbelltown Local Government Area have been neglected, including the Fisher's Ghost Restaurant (the Old Mill House), Campbelltown; Hansen's Cottage, Minto Heights; and the Union Church, Wedderburn.

In each case the heritage item has fallen into a state of disrepair due most likely to a lack of sufficient funding to maintain each property or an owners future development ambitions. Had a CMA been in place the heritage values of these properties may have been preserved more effectively. Indeed, in some cases the ultimate fate of heritage listed properties is demolition, having deteriorated to a point where they cannot be restored or have become a public safety hazard. A recent example of this is Hansen's Cottage, which was recently approved by Council to be demolished.

Thus, CMAs represent an alternative way to preserve privately owned heritage items within the LGA, based on a voluntary agreement as opposed to the current (control) approach. However, the success of any such approach (ie: without control) would depend upon significant resources being made available to Local Government. Without an appropriate level of resourcing there is a real risk that a number of heritage items will not be conserved.

b. Getting incentives right

In order for heritage conservation to work effectively, particularly with regard to privately owned items, it is essential that sufficient incentives are provided to ensure it is embraced by the community as a whole.

In this respect, the underlying principle recommended by the Commission is that the community should directly, or indirectly through Government, absorb the additional costs incurred. The report puts forward three beneficial effects of the community acknowledging and funding the additional cost associated with heritage listing and protection:

1. Owners will be willing partners in conservation and thus the current pressures to degrade heritage values over time will be reduced.
2. It will provide an important incentive for the wider community to consider the balance between the benefits and the costs of conservation when deciding on the extent of heritage conservation that should occur.
3. It will compel prioritisation of conservation demands, focusing attention on areas where the community benefits are greatest in comparison to the cost involved.

Planning Comment:

Implicit in this approach is the rationalisation of listed properties within the LGA, ranging from those items of highest value perhaps being purchased and maintained by Council to those of more minimal value being delisted. The difficulty in implementing this approach lies in the prioritisation of existing items, particularly in situations where the community does not place significant value on heritage conservation, and if given a choice, would prefer Council resources to be directed elsewhere.

While the Commission has put forward a number of suggestions on how funds may be provided, there is not a great deal of detail on how this would be implemented at the Local Government level, nor any mention of potential financial support from Federal or State government. Indeed, the Commission's recognise the substantial financial impact this approach would convey toward councils and that it "*would raise significant resourcing issues for councils in areas with many heritage items of local significance*".

In Campbelltown, there are 112 heritage listed items, of which 12 are owned by Council, 11 by the Department of Planning, 8 by other public authorities, and the remaining 81 items are in private ownership. Twenty one (21) of these items are listed under the State Heritage Register, 2 of which are owned by Council and 19 under private ownership.

At present, Council provides financial assistance to owners of local heritage items via the Local Heritage Fund. The Fund, is a dollar for dollar scheme with a maximum contribution by Council of \$1500 available to each applicant. Clearly, for this scheme to be modified in the context of the Commission's draft recommendations significant additional funds would be required and/or a considerable reduction in the number of locally listed properties would need to occur. In addition for any conservation agreements scheme (of the suggested nature) to be effective significant management/supervisory resources would need to be put into place at each Council.

Specific recommendations relating to incentives:

- 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.

Planning Comment:

Incentives can also be provided via clauses within planning legislation and specific planning instruments. Campbelltown (Urban Area) Local Environmental Plan 2002, and various Interim Development Orders allow owners of heritage items to apply to Council for approval to use their property for a use which is prohibited under the zone, providing that there is no adverse impacts on the heritage item itself as a result of the proposed development. This situation will continue following the introduction of the State Government's Standard LEP Template, which contains similar conservation incentives.

However, it should be noted that the Commission's report contains the following points in relation to how it believes conservation agreements should relate to individual planning instruments:

- Conservation agreements should be consistent with the general zoning of the property. That is, it should not allow any activity that is prohibited or restricted by the existing zoning regulations (this is different to the existing incentive scheme).
- The heritage attributes of properties would be managed under the conservation agreement, and as such heritage matters should not enter into planning decisions for other properties, which are not listed.
- The heritage conservation agreement should clearly list the assessing authority (Heritage Council or Local Council).

These arrangements would be contrary to current planning controls, which allow owners of heritage items, at Councils discretion, to use the item for a use that is prohibited within the zone. Clearly the approach suggested by the Commission also contradicts the provision contained within the State Government's Standard LEP Template.

Regardless, it is essential that appropriate incentives (financial and planning based) are made available to owners of local heritage items, for without them it is unlikely that owners of heritage items will agree to have their property listed or willingly maintain their properties.

Overall the concept of offering financial incentives has merit, subject to adequate funding being made available to Councils from the State or Federal Governments. The removal of planning incentives from Local Environmental Plans is not supported, but rather, should be used as a component of a CMA that is specifically related to assessing developments/uses that are not consistent with the agreed property uses/values as described in the CMA. Adopting this approach would ensure councils maintain discretionary powers regarding the use of locally listed heritage items.

c. Legislative amendments

As discussed, the Commission's draft report recommends expanding the use of negotiated agreements between heritage owners and local councils to eventually include all locally listed heritage items. This would require State and Local Governments to dramatically change their planning controls to accommodate the proposed conservation agreement approach.

The draft recommendation may be implemented through amendments to the Environment Protection and Biodiversity Conservation Act, 1999 (EP&BD Act). Such an amendment would require State and local planning legislation/policies to be amended to ensure they were consistent with the EP&BD Act.

Specific recommendations relating to legislative amendments:

- State and Territory Governments should modify their planning legislation and regulations to remove any requirement to take heritage considerations into account in relation to any individual property other than those requirements relating to zoned heritage areas.

Planning Comment:

Given the pending release of the State Government's Standard LEP Template (containing heritage provisions), any amendment to the EP&BD Act would necessitate further changes to

the LEP Template. However, without any legislative impetus to embrace the recommendations of the Commission (particularly with regard to CMAs), it is unlikely councils will alter their current approach to heritage conservation other than that required by the LEP Template. Thus, if the Federal Government is committed to implementing the Commission's recommendations via changes to the EP&BD Act, it is imperative that the resulting amendments be considered by the State Government as soon as possible. This is particularly relevant for councils that have been given either a short (1 year) to medium (3 years) time frame to complete their consolidating LEP. In this regard, it is essential that councils, such as Campbelltown, that are commencing the preparation of their standard instrument are confident that the Template will remain unchanged during the preparation period. Any uncertainty surrounding the nature of the Template would only serve to undermine and prolong the preparation of the document.

Without adequate funding being made available, the implementation of the Commission's recommendations through legislative amendments would represent a considerable cost shift to Local Government in relation to heritage conservation. In this context, any amendments to the EP&BD Act would not be supported.

d. Overview of historic heritage conservation in Australia

During the course of its investigation, the Commission found that it was not possible to derive an accurate assessment of the mix and condition of listed historic heritage places, or trends in their condition/quality due to a lack of adequate information. Nor has it been able to establish overall expenditure on the conservation of historic heritage places by Governments, in any jurisdiction, or any reasonable breakdown of expenditure type.

Specific recommendations relating to overview of heritage conservation in Australia:

- 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.

The Australian Government should implement reporting systems that require Government agencies with responsibility for historic heritage places to document and publicly report on the heritage related costs associated with their conservation.

State, Territory and local governments should:

- produce adequate conservation management plans for all Government owned statutory listed properties; and
- implement reporting systems that require Government agencies and Local Governments with responsibility for historic heritage places to document and publicly report on the heritage related costs associated with their conservation.

Planning Comment:

The implementation of this recommendation would assist Council in monitoring expenditure with regard to heritage conservation within the LGA and facilitate a more strategic approach to heritage conservation in the longer term again, however, this would pose a significant cost burden upon Council.

e. Assessing Governments' involvement in heritage conservation

The Commission is of the opinion that the current tiers of heritage listings operating within Australia is sufficient (Attachment 2). However, it recommends that the National Estate Register be removed and absorbed as part of National, Commonwealth, State or local heritage lists. The Commission believes that such an amendment would remove any ambiguity resulting from double listing of properties and clearly define an item's level of heritage significance.

Significant recommendations relating to Government's involvement in heritage conservation:

- The Australian Government should phase out the Register of the National Estate for historic heritage purposes, beginning with the closure of the Register to any new nominations.
- State and Territory Governments should remove any reference to the Register of the National Estate from their planning and heritage legislation and regulations.
- Those State Governments that have specific legislation governing the operations of the National Trust should repeal such legislation.

It should be noted that the implementation of this recommendation would require legislative amendments at both the Federal and State level, but in doing so would provide clearer guidance in terms of the heritage values attributed to listed properties.

Planning Comment:

This is a matter for Federal and State Governments to resolve given the level of heritage significance associated with the items listed on the national estate.

Conclusion

The Productivity Commissions Draft Report on the Conservation of *Australia's Historic Heritage Places* has made a number of recommendations regarding the future management of built heritage throughout Australia. Many of the recommendations, if implemented by the Federal Government, would introduce a new and radically alternative approach to heritage management and require Council to review and most likely rationalise its current list of locally significant heritage items. While Council Officers have identified some merit in many of the Commission's draft recommendations, without adequate funding to support their implementation, the recommendations represent a significant cost shift in relation to heritage management to Local Government. Thus, if the changes were to be introduced without sufficient funding, the recommendations of the Commission should be robustly opposed by Council.

Officer's Recommendation

1. That Council note the information provided in this report.
2. That a submission be made to the Productivity Commission in the terms raised in the above report.
2. That a copy of this report be provided to the next meeting of Council's Heritage Protection Sub Committee for their information.

ATTACHMENT 1

Findings

3 Overview of historic heritage conservation in Australia

DRAFT FINDING 3.1

Little statistical information is available on the conservation of Australia's historic heritage — the number, quality and composition of listed places; the nature, source and types of expenditures on historic heritage conservation; or the effectiveness and cost-effectiveness of those expenditures.

4 Australian, State and Territory governments' heritage systems

DRAFT FINDING 4.1

The listing of properties onto a State or Territory Heritage Register results in the relevant Heritage Council becoming the de facto planning authority. This differs significantly from the approach to non-heritage places where the local council is generally the planning authority. This can result in the need for dual approvals for any proposed development.

DRAFT FINDING 4.2

The commitment to identify, conserve and manage publicly-owned historic heritage places varies considerably between States and Territories.

DRAFT FINDING 4.3

The level of assistance provided to non-government owners of historic heritage places varies considerably between States and Territories. The level of expenditure on government-owned heritage places is difficult to calculate since no jurisdiction requires explicit budgetary recognition of such expenditure.

5 Planning controls and heritage conservation at the local level

DRAFT FINDING 5.1

There is a high level of discretion for decision-making on heritage matters at the local government level, derived in part from limited State government guidance and this has resulted in inconsistent outcomes within many local governments.

DRAFT FINDING 5.2

While statements of significance are recommended in State guidance material, no State requires its local governments to include a statutory statement of significance in their local heritage lists. The absence of such statements seriously impairs subsequent decision-making about listed properties.

DRAFT FINDING 5.3

Heritage conservation areas impose less stringent restrictions on the ability to demolish and redevelop properties than do individual heritage controls.

DRAFT FINDING 5.4

Heritage controls can be applied to properties that have not been individually listed or contained within a heritage conservation zone. Typically, the owner is informed only upon seeking development approval.

DRAFT FINDING 5.5

Many property owners do not fully understand the effect that heritage listing has on their property. This is not simply a reflection of a lack of awareness by owners of the implications of listing, rather it flows from unclear legislative requirements and inconsistent administrative actions. More specifically, it is a direct result of the failure of all State Heritage Acts to specifically require a statement of significance for heritage listing at the local level.

DRAFT FINDING 5.6

There is significant scope to improve the management of heritage conservation by local governments in their systems and processes for land use and planning.

6 Analytical framework

DRAFT FINDING 6.1

While under some circumstances (particularly where neighbourhood amenity is to be preserved) heritage listing can have a positive impact on property values, the constraints on development potential associated with listing can have a significant negative impact on the prices of individual properties. The potential for owner detriment arising from development controls may differ significantly between properties.

DRAFT FINDING 6.2

Current methods of identifying historic heritage places for statutory listing focus on the benefits expected to accrue to the community. Typically, there is little, if any, consideration of the costs imposed either on the owner or the community more generally.

7 Assessing governments' involvement

DRAFT FINDING 7.1

The three-tier legislative framework is an appropriate model for government involvement in heritage conservation. It delineates the responsibility of each level of government for historic heritage conservation and, consistent with the principle of subsidiarity, aligns the scale of heritage significance with its level of government decision-making.

DRAFT FINDING 7.2

Negotiated agreements are desirable as they facilitate voluntary conservation and ensure the costs of conservation are considered alongside the community benefits.

DRAFT FINDING 7.3

The current arrangements for (i) agreed management plans and (ii) heritage protection on the sale of property provide a sound basis for the conservation of Australian Government-owned heritage properties. However, clearly identifying expenditure on conservation would improve accountability and provide more incentives for government agencies to better conserve listed heritage places.

DRAFT FINDING 7.4

State, Territory and local governments do not have a systematic framework for the management of, and expenditure on, the conservation of government-owned heritage places. Management of government-owned places could be improved through the introduction of conservation management plans and transparent reporting of expenditure on conservation.

DRAFT FINDING 7.5

At the State, Territory and local government levels, there is an over-reliance on prescriptive regulation to achieve heritage conservation objectives. In many cases, this has led to poor outcomes, through for example, inappropriate listing imposing

unwarranted costs (such as denial of redevelopment opportunity) and possibly perverse effects (such as destruction to avoid maintenance costs).

DRAFT FINDING 7.6

The current listing process does not provide a mechanism for rigorously identifying the costs and benefits of conserving a place. Typically, the assessment process does not prioritise places according to heritage significance or conservation need, and little or no account is taken of the added costs of conservation when the decision is made to list a place and impose regulatory controls. As a consequence:

- the community has an incentive to over-list (or be non-selective) as they do not bear the costs of conservation; and*
- property owners can suffer an erosion of property rights and loss of value. As a result, they are unlikely to actively conserve heritage values and may, in some cases, have an incentive to degrade or destroy the heritage place.*

DRAFT FINDING 7.7

The assistance available to private owners of heritage properties is poorly targeted, and in some cases, falls well short of the additional costs of obligations imposed on owners as a result of listing. In these circumstances, property owners will not have an incentive to actively conserve heritage values.

DRAFT FINDING 7.8

At the local government level, the management of heritage conservation under local planning schemes is not working well, primarily because of:

- the imposition of unclear and uncertain restrictions on property owners;*
- the failure to prepare a statement of significance for each place listed on a local list;*
- inconsistent use and interpretation of heritage controls; and*
- the application of heritage controls to places that have little, if any, heritage significance in order to achieve other planning objectives.*

8 Getting incentives right

DRAFT FINDING 8.1

Conservation of historic heritage on privately owned heritage property could be more effectively achieved through negotiated conservation agreements between governments and owners.

OVERVIEW

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Recommendations

The Commission's key recommendation is as follows:

DRAFT RECOMMENDATION 8.1

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.

The following lists the recommendations in chapter order:

3 Overview of historic heritage conservation in Australia

DRAFT RECOMMENDATION 3.1

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.

7 Assessing governments' involvement

DRAFT RECOMMENDATION 7.1

The Australian Government should phase out the Register of the National Estate for historic heritage purposes, beginning with the closure of the Register to any new nominations.

DRAFT RECOMMENDATION 7.2

State and Territory governments should remove any reference to the Register of the National Estate from their planning and heritage legislation and regulations.

DRAFT RECOMMENDATION 7.3

Those State governments that have specific legislation governing the operations of the National Trust should repeal such legislation.

DRAFT RECOMMENDATION 7.4

The Australian Government should implement reporting systems that require government agencies with responsibility for historic heritage places to document and publicly report on the heritage related costs associated with their conservation.

DRAFT RECOMMENDATION 7.5

State, Territory and local governments should:

- *produce adequate conservation management plans for all government-owned statutory-listed properties; and*
- *implement reporting systems that require government agencies and local governments with responsibility for historic heritage places to document and publicly report on the heritage-related costs associated with their conservation.*

8 Getting incentives right

DRAFT RECOMMENDATION 8.1

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.

9 Conservation agreements for privately-owned heritage places

DRAFT RECOMMENDATIONS 9.1

The Australian Government should implement processes whereby any additions of non-government owned properties to the National List occur only after a conservation agreement with the owner has been entered into, and that the property remain on the list only while an agreement is in force. Consistent with its stated preference of relying on agreements for the management of world and nationally significant historic heritage places, the Australian Government may wish to make this a statutory requirement under the Environment Protection and Biodiversity Conservation Act.

DRAFT RECOMMENDATIONS 9.2

State and Territory governments should modify heritage legislation to ensure that any additions of non-government owned properties to their statutory heritage

OVERVIEW

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conservation lists occur only after a conservation agreement with the owner has been entered into, and that the property remain on the list only while an agreement is in force.

DRAFT RECOMMENDATION 9.3

State governments should require their local governments to add non-government owned properties to a local heritage conservation list only after a conservation agreement with the owner has been entered into and remains in force.

DRAFT RECOMMENDATION 9.4

State governments should put in place systems for their local governments to request compulsory acquisition in cases where this becomes the only way to ensure cost-effective conservation of places of local significance.

DRAFT RECOMMENDATION 9.5

Private owners of already listed properties, where the listing occurred after purchase of that property, should be able to apply for a negotiated conservation agreement and for listing to continue only if an agreement is reached.

DRAFT RECOMMENDATION 9.6

Private owners of already listed properties, where the listing occurred prior to the purchase of that property, would remain covered by the existing 'package' of restrictions and concessions (if any). These arrangements would be reassessed at the time of any substantive development application when negotiations for a new conservation agreement would occur and listing would continue only if an agreement is reached.

DRAFT RECOMMENDATION 9.7

State and Territory governments should modify their planning legislation and regulations to remove any requirement to take heritage considerations into account in relation to any individual property other than those requirements relating to zoned heritage areas.

DRAFT RECOMMENDATION 9.8

State and Territory governments should remove the identification and management of heritage, zones, precincts or similar areas from their heritage conservation legislation and regulations, leaving these matters to local government planning schemes.

ATTACHMENT 2

AUSTRALIA'S HERITAGE LISTS

There are many different lists or registers of natural and cultural heritage places throughout Australia, comprises of heritage places that have been identified and recorded up to the present time.

A heritage register listing usually includes the location of a place, ownership and title details, a description of the place, and sometimes a statement of significance explaining why the place is important.

Current Heritage Lists are:

1. World Heritage List

This is a list of places that are important to all the peoples of the world. Australia currently has 15 properties on the World Heritage List. World Heritage sites in Australia are fully protected under Australian Government law.

2. National Heritage List

This is Australia's list of places with outstanding heritage value to the whole nation. The heritage values of these places are protected by Australian Government laws and through special conservation agreements with state and territory governments and with private owners.

3. Commonwealth Heritage List

The Commonwealth Heritage List is a list of natural and cultural heritage places owned or controlled by the Australian Government. These include places connected to defence, communications, customs and other government activities that also reflect Australia's development as a nation.

Australian Government agencies that own or control places included in the Commonwealth Heritage List are legally required to develop a plan to protect those places.

4. Register of the National Estate

The Register of the National Estate is a list of important natural, Indigenous and historic places throughout Australia. It is a statutory register established under the Australian Heritage Commission Act 1975, which has now been repealed but the Register of the National Estate has been retained under the Australian Heritage Council Act 2003.

5. State and territory heritage lists

The states and territories all maintain lists or registers of heritage places that have particular importance to the people of a particular state or territory.

In NSW, State significant heritage places are generally listed under the NSW Heritage Act 1977.

Most states and territories limit their lists to places of historic and Indigenous importance. Others have lists that include natural, historic and Indigenous places. Places on a state or territory list are protected by that jurisdiction's laws.

6. Local government lists

Generally, the local heritage places are listed under a local environmental plan. A local environmental plan usually contains provision to ensure the protection of the heritage items.

7. National Trust list

This list is maintained by the National Trust in each state and territory.

The National Trust of Australia is a community-based organisation with independently constituted Trusts in each state and territory. Most National Trusts compile a heritage list for their state or territory, primarily of historic places, but they also include some Indigenous and natural places. Listing helps to provide recognition, and promote public appreciation and concern for local heritage.