

7 March 2006

Mr Neil Byron  
Presiding Commissioner  
Heritage Inquiry  
Productivity Commission  
PO Box 80  
**BELCONNEN ACT 2616**

Dear Mr Byron

**SUBMISSION IN RESPONSE TO THE PRODUCTIVITY COMMISSION'S DRAFT REPORT INTO THE  
'CONSERVATION OF AUSTRALIA'S HISTORIC HERITAGE PLACES'**

The following is provided as a submission from the City of Boroondara in response to the Draft Report into the 'Conservation of Australia's Historic Heritage Places' (the Draft Report), released by the Productivity Commission on 9 December 2005.

Council considered the Draft Report along with a Council officer assessment of the Draft Report's findings, at its Urban Planning Special Committee meeting on 6 March 2006.

It is the view of the Council that the Draft Report is a narrowly drafted document that places current private economic interests above long term community interests, desires and expectations. It appears to lack an understanding of the basic premise of heritage conservation, particularly in relation to intergenerational equity, and makes recommendations based exclusively on current economic paradigms and demands. It has failed to properly evaluate existing mechanisms for the protection of cultural heritage in Victoria, and has made recommendations in relation to heritage management that will negatively impact on the conservation of Australia's significant heritage places in the foreseeable future.

Council is strongly opposed to the Draft Report's Key Recommendation that privately owned properties should only be included on local government statutory heritage lists once a negotiated conservation agreement has been entered into. This approach is not considered feasible in relation to the management of heritage places at the local level.

Under the Victorian planning system, the inclusion of places within a Heritage Overlay requires a planning scheme amendment. The planning scheme amendment process ensures a thorough assessment of the significance of heritage places, often including review by an expert, Independent Panel appointed by the Minister for Planning. It is considered that this process is workable and appropriate in the context of municipal planning. The Heritage Overlay provisions provide for some flexibility in terms of the ongoing management of heritage places (especially through the inclusion of an Incorporated Plan as part of the Schedule to the Heritage Overlay), and are consistent provisions in all Victorian Planning Schemes. This is of great benefit in providing the community with a level of certainty as to the provisions which apply to heritage places, and in providing an understanding of how the planning controls operate in relation to the conservation of heritage places.

Following is Council's response to the:-

- Key Recommendation of the Draft Report;
- Elements of the Draft Report's Draft Findings; and
- Suggestions of additional matters which should be considered by the Productivity Commission which would assist heritage conservation practice, particularly at the local government level.

#### 1. Productivity Commission's Draft Report Key Recommendation:

*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.*

#### City of Boroondara Response:

Voluntary negotiated conservation agreements, as recommended by the Productivity Commission, are considered to be inappropriate for use in heritage management at the local government level for the following reasons:

- Negotiated conservation agreements are often prohibitively expensive for both owners of heritage places and the local government body negotiating the agreement. The use of 'pro forma' style agreements, as advocated in the Draft Report, does not acknowledge the diversity of heritage places, the different types and degrees of heritage significance and the likely differences in the individual desires and expectations of place owners. It is likely that specialist legal and heritage advice would need to be sought by all parties to the agreement, to determine an appropriate conservation management plan for the place and to determine the issue of financial compensation. This would be a significant deterrent for owners and local governments to enter into such agreements.
- Negotiated conservation agreements are likely to result in a great diversity of on-going management arrangements, because they will need to be specific to individual places. This will lead to a high level of complexity and confusion in the management of heritage places. This may act as a deterrent for local governments to enter into individual negotiated agreements.
- Negotiated heritage agreements are time intensive and lengthy to negotiate without a guarantee that a final agreement will be reached, especially if ownership of the place changes during negotiations. This may be a disincentive for local governments' to enter into such agreements and will result in the loss of significant heritage places.
- Considerable resources would be required from local governments to monitor and constantly renegotiate such agreements. This extra burden on local governments may be a disincentive to pursue such agreements.
- The level of compensation for a heritage place owner would be difficult, if not impossible to calculate in a negotiated agreement. As the Draft Report states on p142, '*Intangible benefits – such as the value to a community in having a link to its past or the aesthetic appeal of heritage places – may be difficult, if not impossible, to quantify*'. It is questioned how the community and social value of a heritage place can be quantified in economic terms in order to inform negotiations on whether financial compensation for owners can be justified. From a property owner's point of view, it is likely that maximum financial compensation would be sought. For example, if a heritage place is located within a zone that allowed multi-unit development, the current or projected future market value of such a development may influence the amount of compensation sought. It would therefore not be an option for the local government to pursue an agreement because of the difficulty in determining a basis for compensation and the lack of resources available to fund such agreements.

- Local governments do not have the financial resources to compensate individual owners of heritage places.
- The legal standing of a voluntary negotiated agreement is not clearly stated. It is not clear how such agreements are to be formalised and whether they would be registered on the title or run with the land.
- Statutory protection of significant heritage places through prescriptive regulation at the local government level (i.e. through the provisions of a local planning scheme) is an appropriate means of conserving cultural heritage. In Victoria, inclusion of a place within a Heritage Overlay is a transparent and thorough process involving the heritage assessment of the subject place and public consultation. For the Productivity Commission to claim that statutory regulation for heritage conservation is an inappropriate practice denies the community desires and expectations from the 1970s onwards that have led to the consideration of the conservation of heritage places within the broader framework of town planning.
- The current Victorian system has achieved a reasonable level of community acceptance (particularly in the metropolitan context) and is reasonably well understood by the community. The proposal of the Productivity Commission to require a negotiated conservation agreement as a pre-requisite for inclusion of a place within a Heritage Overlay is inappropriate, and will add to the complexity of the planning system.
- Council does not support the view that there are other options available in the event that a voluntary conservation agreement cannot be reached for a significant heritage place. Page xxxiii of the Draft Report states:

*"If agreement could not be negotiated with the property owner, governments would have a number of options. In the first instance, depending on the nature of the heritage values whose conservation is being sought, the government could seek to conserve such values from other owners of similar places, including by tender. Alternatively, the government could consider the next highest ranking property for a heritage conservation agreement".*

Heritage places are generally individually significant for unique reasons. To claim that governments can simply find a similar place or go to the next highest ranking property in order to secure a heritage conservation agreement, demonstrates a lack of understanding of both Australian and international heritage conservation and management practice.

## 2. Productivity Commission's Draft Report Draft Findings:

***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.***

### City of Boroondara Response:

It is acknowledged that Victorian legislation does not specifically require a statement of significance to be prepared for local heritage places; however the following processes are in place to ensure that statements of significance are prepared prior to a place being included in a Heritage Overlay:

- When Councils are considering applying a Heritage Overlay to a place, the Victoria Planning Provisions (VPPs) Practice Note 'Applying the Heritage Overlay' must be adhered to. The practice note specifies that a statement of significance should be prepared.
- In applying to the Minister for Planning for authorisation to prepare a planning scheme amendment in order to include a place within a Heritage Overlay, the municipal council must advise (among other things) why the proposed amendment is required, how the proposed amendment implements

the objectives of planning in Victoria and what the strategic justification is for pursuing the amendment. In order to provide this information, a statement of significance should be prepared.

- If a proposed planning scheme amendment receives objections, the Minister for Planning will appoint an independent panel to consider the amendment under Section 153 of the *Planning and Environment Act 1987*. It has been demonstrated that independent planning panels in Victoria will not support an amendment to include a place within a Heritage Overlay unless a thorough statement of significance has been prepared.

These three requirements mean that heritage controls cannot be applied to a place without appropriate assessment of the significance of the place. The nature of planning scheme amendments in Victoria also means that heritage controls cannot be applied without the owner's knowledge. Through the planning scheme amendment process, owners can make a submission to either support or object to the amendment, and all objections are considered by an independent planning panel prior to adoption of the amendment and its subsequent approval.

***Draft Finding 5.3 - Heritage conservation areas impose less stringent restrictions on the ability to demolish and redevelop properties than do individual heritage controls.***

#### **City of Boroondara Response:**

In Victoria, development applications for all properties that fall within a Heritage Overlay, regardless of whether it is an individually significant building or part of a heritage precinct, are assessed using the same VPP clause within each municipal planning scheme (Clause 43.01). A local heritage policy may also be included within the planning scheme to guide heritage development assessment. This policy however, must be consistent with Clause 43.01. As a result, heritage precincts (or conservation areas) have the same level of control in terms of demolition and redevelopment as individually significant places, unless a place within a heritage precinct has been assessed as either non-contributory or intrusive.

*Draft Finding 5.3* also fails to acknowledge that the heritage profession supports the appropriate redevelopment of individually significant heritage places to ensure continued use. It is widely acknowledged within the heritage profession that the best way to protect heritage places is to have them occupied and used. Appropriate redevelopment and demolition of intrusive or non-contributory fabric to allow this is generally supported, especially for locally significant heritage places. This is supported by a principle tenet of the Burra Charter which states, 'Do as much as necessary to care for the place and to make it useable, but otherwise change it as little as possible so that its cultural significance is retained' (p10 'The Illustrated Burra Charter', 2004).

***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.***

#### **City of Boroondara Response:**

It is submitted that there is no conclusive evidence in relation to the economic impacts concerning the inclusion of individual properties within an Heritage Overlay or other statutory heritage list. Many factors influence the market value of a property including the supply and demand of different property types, geographic location and the macro-economic environment.

In making such a finding on the minimal evidence available to it, the Commission has potentially misrepresented the financial impact of heritage listing on heritage place owners.

### **3. Additional matters suggested for consideration by the Productivity Commission:**

The City of Boroondara acknowledges that heritage conservation can be managed better at the local government level in Victoria if the following issues are addressed:

1. There is greater guidance from State and National heritage agencies in terms of heritage significance assessment criteria and the assessment of planning applications for heritage places. This would serve to improve consistency throughout the country in heritage assessment and development outcomes.
2. There are increased funding opportunities from the State and Federal Governments for conserving local heritage places.
3. There is development of a cross-government public education program relating to the identification, assessment and conservation of places which are of cultural heritage significance.

It is suggested that these issues be addressed in the Key Recommendations of the Productivity Commission's final report in the 'Conservation of Australia's Historic Heritage Places'.

Should you require further clarification please contact Fiona Banks, Manager Strategic Planning on 9278 4849.

Yours sincerely,

**Phillip Storer**  
Director City Planning