

KU-RING-GAI COUNCIL

SUBMISSION ON THE PRODUCTIVITY COMMISSION'S DRAFT 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.

Comment: Idealistically the concept of properties entering into a negotiated conservation agreement could provide for an effective heritage management system, however, in reality there are many obstacles that would prevent this form of management from being successful. If heritage were to be managed according to this recommendation there would be a significant increase in the time and resources required to prepare heritage agreements by Council in consultation with each individual heritage property owner. There could also be a lack of consistency in heritage management of different listed items because each property owner will have a different agenda and various issues to be considered. Significantly greater funding would be required by Council to effectively manage heritage through agreements and Councils have limited resources for such work.

At present, the NSW system of identifying and listing properties involves considerable community consultation, and strategies have been adopted to assist individuals in the entire process of heritage listing. For example, the State's Heritage Advisory Service provides free advice to individual owners while Ku-ring-gai Council offers free heritage advice to heritage listed property owners.

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.

Comment: Recommendation supported. Council currently provides all heritage information to the NSW Heritage Database.

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.

Comment: The National Estate has already been replaced and is being phased out.

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

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Comment: Recommendation noted. This is an issue for the State Government, however, it is important to note that National Trust listings are non-statutory and the National Trust acts as a lobby group.

Draft recommendation 7.3

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

Comment: It is unclear as to the affect or potential benefit that would result from the actions of this recommendation.

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.

Comment: Recommendation supported. There are certain considerations to be addressed including the additional time and resources required by Council. The Commission could also clarify the benefit of the information and its specific use. Another issue is the proposed reporting system to be used to report on heritage related costs and associated with 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.*

Comment: Determining what costs relating to heritage places are specifically related to their conservation would be very difficult to determine in many cases. While the additional cost of a Conservation Management Plan might be easily quantified, a number of heritage places under Council management would normally require a management plan due to other government requirements so the additional cost, if any, might be difficult to quantify. Maintenance work on heritage properties would generally be expected as part of property management, whether or not the place is listed as a heritage item. Creating a separate reporting system for additional "heritage-related costs" is likely to be difficult to manage and accurate reporting may be difficult.

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.

Comment: The recommendation to have individual negotiated conservation agreements in force when places are heritage listed is not considered a workable idea in practice. If one party to the

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agreement can decide they are no longer satisfied with the agreement and the place can then be removed from the statutory heritage list, then there is little point in negotiating such an agreement. Other obstacles associated with conservation agreements may include the time and cost to Council in entering into and making agreements with owners. There may also be a lack of consistency in heritage management of different listed items because each property owner may have a different views and various issues to be considered. Significantly greater funding and education would be required by Council to effectively manage heritage through agreements. Further, there would also be considerable time and costs associated with the process for property owners.

9 Conservation agreements for privately-owned heritage places

Draft Recommendation 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 Recommendation 9.2

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 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.

Comment (9.1-9.3): In relation to the above three recommendations there are several issues that need to be addressed, firstly the resources required by local government agencies to carry out this recommendation would require significant budget allocation. This may take away funds that Council uses to actively assist owners of heritage properties through the services of a heritage advisor. These services are of greater value to the owners of statutory heritage listed properties than a conservation agreement. Secondly if the change in the heritage management system was to occur there would need to be a transition period between the two systems, consideration of this transition period is crucial. Furthermore little is said about the on-going management of heritage items once an agreement is in place, thus more information is required about the on-going management of heritage items under agreement.

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.

Comment: This action would in theory assist in the protection of heritage items at the local level, however it is unlikely to be a 'cost effective' method of conservation particularly where so many of these items are privately owned dwellings. Local Government does not have the funds to purchase large numbers of properties with heritage significance. Furthermore, Councils are not expected to acquire properties affected by other planning issues such as local overland flooding, heritage listing

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is just one of many issues that can affect a property and it is more important that Councils have programs in place to assist property owners to understand and deal with such issues. Even if Council were to purchase such properties, the issue of what to do with the properties once purchased by Council is important as is the ongoing costs associated with owning residential properties. Further information is required in relation to the actual costs and resources that the outcome of this recommendation would require from councils. The impact of which would vary from council to council depending upon the number of heritage items and property values. State governments are unlikely to contribute meaningful state funds towards the acquisition of items of local heritage 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.

Comment (9.5-9.6): As noted above, the principle of negotiated conservation agreements for local government statutory heritage listings is not considered workable. It is noted that a substantive development application is often the time when Council has the opportunity to negotiate some conservation works to be undertaken on a statutory heritage listed property. If this system was to be implemented, an important issue that needs consideration is the establishment of a review mechanism for the conservation agreement. This is particularly pertinent in situations where there may be a conflict between Council and the owner of a property.

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.

Comment: This recommendation does not take into consideration the effects that development in the vicinity of a statutory listed heritage item can have on the heritage item. These effects can include loss of views to and from the heritage item, overshadowing of the heritage item, effects on landscaping associated with the heritage item, potential structural effects, and the diminished importance of the heritage item on a townscape or streetscape. It is often very important that Council take such issues into consideration. Ultimately, this appears to be an issue for the State Government that goes beyond the control of Council.

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.

Comment: Important considerations include the potential implications for local government from the legislation and regulation changes and what additional resources will be required by Council

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and whether a local environmental plan is the most effective place to be dealing with those matters outlined in the recommendation.

Specific mention of Ku-ring-gai in draft report

Urban redevelopment and infill were identified as a 'pressure' on heritage items and the consequence of increasing urban populations and the governments response of limiting the 'negative externalities of urban sprawl through policies directed at urban infill' (p:16). The report quotes from a submission which discusses the affect of urban infill on older suburbs such as Ku-ring-gai where older homes are being replaced with multi-unit housing developments.

The draft report further made reference to the NSW State Environment Planning Policy (SEPP) No. 53 which aims to provide for multi-dwelling houses to facilitate urban infill. The draft report found that the heritage related effect of SEPP 53 has been to "magnify the incentive for using heritage conservation as the justification for circumventing State-imposed rules that permit developments to which the local council is opposed" (p:95). This comment is made in reference to *Rahmani v Ku-ring-gai Council* [2004] NSW Land and Environment Court 595 where Ku-ring-gai council was "allowed to reject a development allowed under State planning policies because of its effect on surrounding heritage place" (p:95).

The draft report further discusses the issue of the 'imposition of heritage controls over non-heritage places' and the use of general heritage controls and the influence of National Trust listing. With reference to Ku-ring-gai the case of *Hughes v Ku-ring-gai Council* [2000] NSW Land and Environment Court (Unreported, 7 June 2001) is cited where the Court allowed the demolition of a dwelling that was not listed individually within the planning scheme, nor within a Heritage Conservation Area, but was within a National Trust conservation area. The court held that demolition could not be refused on planning grounds and that demolition could occur provided that a photographic record of the interior and exterior was prepared (p:142).

It was further noted that "while evidence on the costs of listing may be provided, there is typically no explicit estimate of the community benefits involved" (p:184). The example given referred to a submission received from a Ku-ring-gai resident (sub. 8, p. 1) who argued against the listing of their property on the basis on the belief hat heritage listing would devalue their property.