

Local Government
Association of NSW



Shires Association of NSW

**SUBMISSION TO THE AUSTRALIAN
GOVERNMENT'S PRODUCTIVITY COMMISSION'S
INQUIRY INTO CONSERVATION OF AUSTRALIA'S
HERITAGE PLACES**

September 2005

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**Local Government Association of NSW and Shires Association of NSW
SUBMISSION TO THE
PRODUCTIVITY COMMISSION'S ISSUES PAPER**

INQUIRY INTO CONSERVATION OF AUSTRALIA'S HERITAGE PLACES

Executive Summary

Introduction

The Local Government Association of NSW and Shires Association of NSW (the Associations) welcome the opportunity to provide comment in response to the Issues Paper.

The Associations represent the 152 general purpose councils in NSW, all of which are involved in the conservation of the majority of heritage items in NSW. The Associations recognise the importance of measures designed to enhance heritage conservation and protection. This is reflected in our policies on heritage conservation.

Purpose of this Submission

The aim of this submission is to:-

- Show the extent of involvement of Local Government in conservation of historic heritage places;
- Highlight the issues currently faced by Local Government in the area of heritage conservation;
- Highlight the need for greater integration of all levels of government and rationalisation of the processes and responsibilities in heritage conservation;
- Highlight the need for greater funding to all levels of government to assist the processes of conserving historic built heritage;
- Respond to questions raised by the Productivity Commission in its Issues Paper prepared on this inquiry as far as they relate to Local Government role in heritage conservation; and
- Provide recommendations on what the Associations seek of this inquiry.

Issues faced by Local Government in NSW

Issues include:-

- Heritage conservation is not one of the core responsibilities of Local Government in NSW, however it consumes significant council resources.
- Heritage conservation is a subjective and expensive area of work for councils as it frequently involves the engagement of heritage consultants, and resource-intensive community consultation. Heritage training is also costly as it involves specialist input.
- NSW Local Government has limited resources to apply to heritage conservation.
- The Heritage Incentives Program run by the NSW Heritage Office has provided a kick start to heritage conservation in many local councils. It has a proven track record, however total funding available to the Program is inadequate. There are councils which have not benefited from the Heritage Incentives Program to date.
- Heritage training is costly as it involves specialist input.
- The overwhelming majority of historic heritage places in NSW are listed at Local Government level. However, Local Government has no powers available to it to enforce acceptable minimum standards of maintenance and repair of any items on its Local Government lists.
- NSW Local Government owns a significant proportion of the large number of historic heritage places under Local Government listings including buildings, bridges, monuments, parks and streetscapes.
- In many places publicly owned heritage places are ageing resulting in increased burden on maintenance costs for Local Government and associated resource implications.
- Local Government listings include items of state and national significance. Many locally listed items have potentially broader significance, however Local Government does not have the resources to prepare the applications required for assessment for state and national listings.

The above comments are discussed in more detail where relevant in the body of the submission.

We also encourage the Inquiry to also look to submissions by individual NSW councils for specific responses to the issues.

Response to Issues Paper

This section of the Associations' submission provides responses to many of the questions raised in the Productivity Commission's Issues Paper - Conservation of Australia's Heritage Places (May 2005). Responses relate to the involvement of Local Government in NSW. The comments in this section also serve as specific comments in response to the Inquiry's Terms of Reference.

Conclusion - Recommendations

Through consideration of the issues paper and the terms of reference of this inquiry, it has been possible to identify a number of recommendations on behalf of Local Government in NSW, including that:-

- **The existing commitment, responsibilities and achievements in heritage conservation by Local Government be acknowledged.**
 - The Australian Government should acknowledge the extensive commitment of Local Government in NSW to the conservation of historic heritage places. The responsibility of heritage conservation is largely devolved to Local Government without the associated resourcing needed to carry out that responsibility.
 - The assistance provided by the NSW Heritage Office to Local Government in NSW should be acknowledged and there should be a commitment from the Australian Government that funding for heritage incentives schemes in NSW not be reduced or withdrawn, but that they be augmented to enable further assistance to Local Government in its significant role in heritage conservation.
- **Greater funding and power be allocated to Local Government to assist its role in conservation of historic heritage places.**
 - There be increased funding to assist all levels of government in addressing the lag in listings.
 - There be increased funding from State and Federal governments to assist Local Government with the costs of heritage studies and study reviews, and training.
 - There be recognition that changes are required to NSW State Government legislation to enable councils to enforce the maintenance of heritage listed buildings to acceptable minimum standards and that associated financial assistance for enforcing such powers be allocated to local government.
- **There is a need to improve intergovernmental involvement in heritage conservation.**
 - There be agreement at all levels of government as to the terminology to apply to historic heritage places, to assist in also greater education of the community about heritage. It is suggested that more consideration to the definition of the heritage should come from the inquiry. There should be consistency in the understanding of terms and approach to use of the terms "historic" and "heritage".
 - There be a review of the heritage funding structure and existing portfolios to best reflect the burden of responsibility carried out by each level of government.
 - There be a comprehensive survey of existing heritage surveys be carried out by State and Federal Government, informed by Local Government.

Conclusion

The Associations trust that the issues and concerns raised by this submission and those of our member councils will be given consideration by the inquiry. We look forward to further participation in the process of inquiry if required and to consideration of the findings.

**Local Government Association of NSW and Shires Association of NSW
SUBMISSION TO THE
PRODUCTIVITY COMMISSION'S ISSUES PAPER**

INQUIRY INTO CONSERVATION OF AUSTRALIA'S HERITAGE PLACES

A. GENERAL COMMENTS

Introduction

Together the Local Government Association of NSW and Shires Association of NSW (the Associations) represent 152 general purpose councils in NSW. Special-purpose county councils and Regional Aboriginal Land Councils are also members.

The Associations welcome the opportunity to provide comment in response to the Issue Paper.

Local councils in NSW are involved in conservation of historic heritage places as owners/managers of the majority of heritage items in NSW. Councils also play a major regulatory role through planning processes.

The Associations recognise the importance of measures designed to enhance heritage conservation and protection. This is reflected in our policies which include that Local Government:

- Supports the principles of heritage conservation contained in the Burra Charter which establishes a framework for identifying and managing heritage places and objects;
- Recognises that councils have a role to play in the conservation of Aboriginal, natural and cultural heritage places (and movable items);
- Recognises that heritage considerations should form an integral part of social and environmental planning;
- Recognises the role of heritage in providing a balance between continuity and change in the local environment and acknowledges that this balance is the hallmark of a rich and productive culture;
- Should assist all cultural groups in their local communities in the identification, assessment and on-going management of heritage places in their local area;
- Should actively participate with the service providers of professional development short courses in Heritage Management to identify the professional education needs of Local Government and have input into course content and structure; and
- Believes that councils should adopt a heritage conservation strategy, that applies to all council services and regulatory functions, that provides for the conservation of heritage.

The Associations acknowledge the work of the NSW Heritage Office and the assistance it provides to Local Government particularly through technical advice and through the Heritage Incentives Program.

The Associations' Learning Program offers Heritage Short courses for NSW Local Government. These courses were developed by the NSW Heritage Office and are now administered by the Associations with Heritage Office sponsorship. Participants include councillors, senior managers, and Local Government officers.

Purpose of this Submission

The aim of this submission is to:-

- Show the extent of involvement of Local Government in conservation of historic heritage places;
- Highlight the issues currently faced by Local Government in the area of heritage conservation;
- Highlight the need for greater integration of all levels of government and rationalisation of the processes and responsibilities in heritage conservation;
- Highlight the need for greater funding to all levels of government to assist the processes of conserving historic heritage places;
- Respond to questions raised by the Productivity Commission in its Issues Paper prepared on this inquiry as far as they relate to Local Government role in heritage conservation; and
- Provide upfront the recommendations the Associations seek of this inquiry.

Issues faced by Local Government in NSW

Issues include:-

- Heritage conservation is not one of the core responsibilities of Local Government in NSW, however it consumes significant council resources. Local Government in NSW has limited resources to apply to heritage conservation, and competing demands for those resources;
- Heritage conservation is a subjective and expensive area of work for councils as it frequently involves the engagement of heritage consultants, and resource-intensive community consultation. Heritage training is also costly as it involves specialist input;
- The Heritage Incentives Program run by the NSW Heritage Office has provided a kick start to heritage conservation in many local councils. It has a proven track record, however total funding available to the Program is inadequate. There are councils which have not benefited from the Heritage Incentives Program to date;
- The overwhelming majority of historic heritage places in NSW are listed at Local Government level. However, Local Government has no powers available to it to enforce acceptable minimum standards of maintenance and repair of any items on its Local Government lists;
- Local Government listings include items of State and national significance. Many locally listed items have potentially broader significance, however Local Government does not have the resources to prepare the applications required for assessment for State and national listings;
- Local Government in NSW owns a significant proportion of the large number of historic heritage places under NSW Local Government listings including buildings, bridges, monuments, parks and streetscapes. The individual approaches often warranted for the different items in each local government area add to the costs of owning and managing heritage items; and
- In many places publicly owned heritage places are ageing resulting in increased burden on maintenance costs for Local Government and associated resource implications.

The above comments are discussed in more detail where relevant in the body of the submission.

We also encourage the Inquiry to also look to submissions by individual NSW councils for specific responses to the issues.

B. RESPONSE TO ISSUES PAPER

This section provides responses to several of the questions raised in the Productivity Commission's Issues Paper - Conservation of Australia's Heritage Places (May 2005).

Comments in this section also serve as our response to the Inquiry's Terms of Reference.

1. About this Inquiry (page 5)

The central issues of the inquiry are noted as being:-

What is the rationale for government involvement in historic heritage conservation and what principles should guide that involvement?

How does the policy framework for historic heritage conservation currently operate and what are its strengths and weaknesses?

What are the current pressures and emerging trends influencing the conservation of historic heritage places and, in light of these, how can the policy framework be improved?

In response, the Associations believe that:-

- **Government involvement** is critical to heritage conservation because as history has shown, the market can not be relied upon to conserve significant items of our historic heritage.
- **The policy framework for** historic heritage conservation currently operates under the requirements set out in the Heritage Act 1977, and more specifically through listings on Local Environmental Plans (LEPs) made under the Environmental Planning and Environment Act 1979.
- **Strengths** of the policy framework include that the LEP process involves community consultation, opportunities for improving the community's understanding of heritage and the implications for individual property owners. Listing under LEPs formalises the protection, and brings with it powers to control unsympathetic development.
- **Weaknesses** include the lack of resources available for all levels of government to work within the policy framework. Specific weaknesses include:-
 - The high costs and time-consuming processes involved in the listing of items, and of heritage conservation generally. The preparation and the exhibition of the heritage studies and LEPs, and consultation with communities are lengthy and costly processes;
 - Heritage is a controversial, subjective and misunderstood area, which impacts on the consultative process. There is a general lack of general understanding of what heritage really means;
 - Heritage necessarily involves reliance on expert input into the research and study preparation (employment of specialist consultants) which is costly; and
 - Councils do not have powers to protect heritage items from deterioration through neglect, it is only when development activity is proposed that consideration of appropriate, enforceable development can be effected through the development consent process.
- **Current pressures** include:-
 - Greater community interest in heritage;
 - Increased development activity threatening continued existence of heritage items and/or threatening the vicinity of heritage items;
 - Lack of agreement on what is considered as having "heritage" value;
 - Skills shortages experienced by all levels of government; and
 - Lack of resources to adequately identify, list, conserve and/or protect historic heritage places.
- **Emerging trends** include:-

- Heritage is increasingly being used as an opportunity to halt or delay development activity with implications for council resources; and
- More “recent” places are being identified under heritage studies (eg flat buildings from the 1960s and 1970s), a trend met with some resistance from communities.

The policy framework can be improved through:-

- Increased public education on heritage;
- Clearer guidelines and rationalisation of roles and responsibilities of all levels of government (better integration);
- More funding assistance to assist policy preparation, implementation and review; and
- More powers to assist protection of heritage items.

What are ‘historic heritage places’? (page 5)

It is agreed that the use of the term “built” would preclude many other examples of “historic heritage places”.

The term “historic heritage” raises further questions as it is not clear what “historic” means. Historic has connotations in terms of applying dates. When would historic start and how recent is historic? The use of the term “historic” does not conjure images of “recent heritage”. Could something erected today with strong and obvious heritage value be precluded from listing until it reached a certain age?

There is also some confusion in communities over what the term “heritage” means.

On **page 7** the listing of shipwrecks is noted and it is suggested that shipwrecks and related/other on/offshore relics should be included under the description of historic heritage and therefore part of this inquiry. It is not clear, however, where such relics would fit in the list given on page 5.

How are historic heritage places recognized? (page 6)

Do current lists adequately recognise degrees of cultural significance of historic heritage places? If so, are the factors which determine degrees of cultural significance appropriate?

The inclusion of heritage items on Local Government lists in NSW varies widely for a number of reasons. Items are identified as being of local, state or national significance. There is particular confusion about the definition of local significance. Local is not to be confused with the local government area boundaries, but often is.

The listing of items per se does not clarify the significance nor what options are available in conservation/ alteration terms. The inventory attached to the listing is the relevant article of information. There are minimum requirements for the information which is to be included on the inventory. It is often the “Statement of Significance” on the inventory which is the key to what can or cannot be done to the item, and in many cases the information is lacking for the lay person to understand, and requires a heritage expert to interpret it. This adds to the costs associated with heritage.

On **page 7** under State and Territory heritage registers, it is stated that “Listing may also provide access for grants and loans, and local rates concessions.” This is also the case for Local Government lists (for example heritage items listed under Local Environmental Plans) in NSW.

In reference to **page 8** it should be noted that some places may be listed on more than one list. In NSW it is highly likely that the majority of State Heritage Register items are also included in the Local Government list for the Local Government Area in which these items are located. Significantly also there are many items on Local Government lists which have been determined under heritage studies as being of state or national significance and warranting inclusion on the State and/or National Heritage Registers.

What is the current state of historic heritage places? (page 8)

Is there a need for a comprehensive survey of historic heritage places in Australia? If so, who should fund such a study and how would its findings be used?

Local Government in NSW has funded a considerable number historic heritage surveys as a necessary component in preparing heritage studies. The majority of councils have produced initial heritage studies for their Local Government Areas since the initial requirements were introduced in the 1980s. Subsequent reviews of these studies have also been undertaken by some councils.

Heritage studies have been prepared by Local Government in NSW as background to the preparation of LEPs for the formal listing of heritage items and heritage conservation areas. Listings are not static however, and as the review process requires significant time and resources, many LEPs would contain items which have since been demolished or significantly altered. The currency of listings has also been compromised where the nature of development consents granted prior to a survey being undertaken were not accounted for.

A comprehensive study for a Local Government Area necessarily relies on specialist heritage input, and can cost into the tens of thousands of dollars per study. The NSW Heritage Office Incentives Program, does provide assistance to councils for the preparation of heritage studies, however this is capped at \$10,000 per council. While the NSW Heritage Program has provided assistance to commence such studies, the overall burden has been on the time and resources of council staff involved in managing consultants and undertaking strategic planning based on these studies.

The information provided in a comprehensive heritage study of a Local Government Area is valuable to all levels of government. The studies identify items of potentially "local" , State and National significance. This provides the groundwork for assessments of State and National significance. A major issue is that Local Government can not in turn provide further resources to carry out the necessary applications to seek listing of these items at the higher levels.

As a first step, therefore, a comprehensive review of all existing heritage surveys would be a useful exercise, especially if it could result in a comprehensive database of all existing information. Ideally it would include an assessment of the data, when it was produced and some comparison, and consideration of when it might need to be reviewed. A combination of State and Federal funding should be provided as the outcomes will assist their roles and responsibilities in heritage conservation.

2. Assessing the Policy Framework (page 10)

It is stated that a central issue to this inquiry is the extent to which governments should participate in the conservation of historic heritage places and the principles which should guide that participation.

If not for government participation in heritage conservation, it could easily be argued that there are many buildings of historic heritage value which would have been subsumed by development, particularly in the Greater Sydney Metropolitan Area. We would not have the particularly valuable reminders of our city's heritage, now also significant tourist attractions such as The Rocks and the Queen Victoria Building.

Governments are also able to provide financial and other incentives (e.g. development bonuses) to counteract potential neglect/decline and loss of heritage places. Incentives are critical to effective heritage conservation.

Although not one of its core responsibility areas, the reality in NSW is that Local Government is heavily involved in heritage conservation. As noted by the Commission, the overwhelming majority of places are listed at Local Government level.

Are market failures present in the conservation of historic heritage places? If so, do they differ in significance or scope from those which may exist in other forms of conservation (such as conservation of natural heritage)?

Our heritage is a far richer mixture of social, cultural, economic, scientific values than the market can provide for. The market will only assist for short periods of time in conserving what might be fashionable, and coincidentally heritage (e.g. Federation era dwellings). Market mechanisms will not provide for protection of all phases of our heritage and will not predict protection for particular phases.

As owners of heritage places/building, councils have experienced market failures resulting in heritage burdens. Many listed public buildings/structures were purpose-built, and when the markets no longer support certain uses, it is not always possible to cost effectively promote or adapt these buildings/structures for other uses. Other issues and costs come into the equation, including zoning, maintenance and upgrade requirements (BCA fire safety, access for disabled). Buildings might lie dormant for years and suffer deterioration as a result.

To what extent does historic heritage conservation generate benefits for the community? How do these community-based benefits compare to the personal benefits which owners of heritage places would receive through conservation?

Community benefits of historic heritage places include that their physical and visible existence contributes to:-

- The cultural and social identity of the development of suburbs, towns and regions;
- The education of school-aged children in particular of the history of their local areas, and how that fits in with the broader Australian history;
- The local economies through attraction and appeal to tourists and other visitors;
- Encouraging other efforts to conserve and protect related heritage places; and
- Civic pride and community appreciation/celebration, and follow-on effects when historic places are well-maintained and celebrated.

How well do existing government regulations or activities specifically address market failures that are directly relevant to conservation of historic heritage places?

There are successes, however existing government regulations and activities have been inadequate in addressing market failures due to the lack of resources available at all levels of government for this purpose.

Does government involvement in heritage conservation displace private sector involvement which would otherwise occur? If so, to what extent?

Observations would indicate that private sector involvement can complement government involvement and both sectors can work successfully in tandem.

What are the costs of government involvement in the conservation of historic heritage places and who bears them?

Costs to Local Government can be divided into 2 main areas:-

- Direct costs being those which can easily be quantified (for example – building and restoration costs, costs of heritage studies by consultants, costs of heritage advisors, DAs, advertising of DAs for heritage items); and
- Indirect costs being those which are difficult to determine (for example - costs of community consultation and education, servicing heritage advisory committee/ panels of council, staff time fielding enquiries relating to heritage-listed properties/conservation areas – pre-purchase, pre-DA, LEP exhibition, etc; servicing councils' heritage committees; administering heritage assistance schemes (hugely administrative), review of Heritage LEPs).

Councils own a significant range of historic heritage places including monuments, parks, sandstone kerbing, various public buildings, and bridges. As owners, councils are responsible for ongoing maintenance and costs associated with ensuring appropriate conservation. In many cases council-owned items fulfill a community service but fall short of generating sufficient, if any, income to offset the cost of their maintenance.

With limited revenue, councils have competing spending priorities, and costs therefore include costs to the community in council having to limit its spending in other areas to meet the heritage-related costs.

Have these costs changed as a result of economic trends? For example, have pressures on government finances limited the amount of resources available for public heritage conservation?

Yes. The amount of resources available have diminished and costs of involvement have increased.

How do these costs vary depending on the nature and extent of conservation?

There are a lot of variables affecting relative costs of conservation including the condition of the structure, the rarity of the materials and the skills required to replicate the design. Access to specialist skills is also limited in some areas more than others.

Capturing the benefits of historic heritage conservation (page 11)

What are the benefits from government involvement in the conservation of heritage places and to whom do they accrue?

As noted above, government involvement assists retention/conservation of items otherwise subject to market failures. The results include community benefits (refer to earlier list of benefits in response to page 10 of Issues Paper).

What are the benefits to tourism from heritage conservation, and what impact does heritage tourism have on the conservation of heritage places?

Heritage is central to tourism strategies in many NSW Local Government areas. The relationship between heritage and tourism can be described as mutually supporting.

Do governments and public funding bodies use benefit–cost analysis in allocating funds between heritage conservation projects? Are any types of benefits or costs commonly omitted from these analyses? Are alternative approaches used, such as cost effectiveness?

Cost-benefit analysis occurs to a varying extent across Local Government in the normal business case and budget planning and assessment processes, which aims to ensure the efficient allocation of limited resources.

Can the benefits and costs of the conservation of heritage places be satisfactorily quantified to aid decision making?

It is difficult to quantify “community benefits/costs”. It is noted that the NSW State Government has attempted to quantify costs and benefits in the Heritage Regulation 2005 Regulatory Impact Statement (prepared by AgEconPlus Consulting for the NSW Heritage Office, May 2005). A noteworthy principle applied in this document is that the public benefits by the creation of additional heritage through government regulation. The public benefit associated with heritage protection is also quantified on the basis of specific research that measures the maximum amount of money that individuals in a community would pay for protection of a particular item.

3. Current Responsibilities for Historic Heritage Conservation (page 14)

3.1 Private Sector

Individuals and businesses (page 14)

The Associations submit the following comments based on the involvement of NSW Local Government in development application processes and community consultation.

What proportion of historic heritage places are owned by the private sector?

Except in a small number of cases, private sector ownership of heritage places is predominantly restricted to residential and commercial buildings. The majority of other historic heritage places listed in NSW are under public ownership.

What are the strengths and weaknesses of private ownership of historic heritage places?

Strengths exist where there is a direct link between historic heritage places and their attractiveness to their owners (restoration of listed residences), the business of the owners (tourist attractions, tourist accommodation etc) or other market forces. In these specific instances private ownership is more

likely result in investment for the purpose of conservation. Weaknesses exist where these links do not exist, which can result in dilapidated or derelict historic heritage places.

How is the private sector contributing to the conservation of historic heritage places?

By funding conservation activity through development activity.

Are there impediments to commercial conservation activities (for example, perception by owners that conservation costs are prohibitive compared to benefits to them)?

Yes. There are costs involved in seeking the services of heritage specialists (architects, consultants) and in sourcing the appropriate materials for conservation activity.

Have shortages of skilled trades people acted as an impediment to historic heritage conservation? If so, to what extent do these shortages reflect economic cycles in the building industry?

Councils are aware that shortages of specialist skills exist, and some regions suffer more than others due to distance from the skills source. Shortages add to development and conservation activity costs.

Are there constraints on the availability of finance or insurance for historic heritage buildings?

Councils advise that there are insurance difficulties. It is understood that premiums tend to be higher (if insurance is offered at all) for properties which are the subject of heritage listings.

Non-government organizations (page 15)

How do non-government organisations contribute to the conservation of historic heritage places?

Such organizations often attend to areas of conservation where government involvement is no longer possible. Many local councils in NSW have found themselves particularly reliant on volunteers to assist where council revenue and resourcing is restricted.

What are the strengths and weaknesses of the involvement of non-government organisations in historic heritage conservation?

Strengths of non-government organizations include:

- They are often single purpose and do not face the competing demands and priorities that governments do.
- They can provide time and resources to promote and assist maintenance of their special interest items, and for valuable research which can inform heritage studies.

Weaknesses include that they have limited resources and they rely on staff/volunteers who may lack the particular skills and expertise required for certain activities.

What are the impediments to the conservation activities of volunteer organisations. For example, are there implications for conservation activities of an ageing volunteer community, and concerns about the health and safety and insurance of volunteer workers?

An ageing population is likely to result in an increased number of volunteers as it is often retirees who have the time to commit to voluntary work. However, the age of volunteers does limit their ability to perform a range of physical tasks necessary for the physical conservation and maintenance of heritage items. Furthermore, as heritage conservation is such a specialized area, there is often not the expertise amongst the volunteers to assist in the more costly areas of conservation activity.

3.2 Public Sector

Public administration of historic heritage conservation

In summary, the activities undertaken by local councils include:-

- Investigating and researching heritage, managing of local studies collections/libraries;
- Preparation of heritage studies, including engagement of heritage consultants;

- (Extensive) Community consultation on heritage and heritage-related matters;
- Preparation of LEPs for listing of heritage;
- Promotion of heritage services;
- Administration of heritage advisor service (making appointments, screening calls, screening referrals);
- Applying for funding of heritage projects, promoting funding opportunities;
- Providing pre purchase advice to enquirers re heritage properties on the market;
- Providing advice to owners/applicants re proposed alterations and additions to heritage listed properties;
- Educating the public on what heritage is in general, and what it means to have a heritage-listed property;
- Educating staff, councillors on heritage; and
- Managing and maintaining heritage items in their ownership.

State/Territory policy frameworks (page 18)

In NSW the Heritage Regulation 1999 (under the Heritage Act 1977) is due for staged repeal. The new Heritage Regulation 2005 is proposed to repeal and remake the Heritage Regulation 1999. The Associations support the existence and objectives of these Regulations. The proposed 2005 version however contains fee increases which will directly impact on councils as owners of a significant proportion of listed heritage places.

The Associations appreciate the need for the NSW Heritage Office to achieve a certain level of cost recovery for its heritage protection activities but are concerned at about the extent of fee increases and the degree to which costs would be shifted to councils as heritage property owners. The Associations believe that the NSW Heritage Office should be sufficiently resourced to enable these items to be assessed and if listed, that appropriate minimum maintenance standards are met.

Are State and Territory heritage councils (or authorities) producing efficient outcomes for heritage conservation? Are their functions appropriate? How well do they balance private and public development needs with historic heritage conservation?

Yes, but they are under-resourced.

Policy framework efficiency (page 19)

A major failing of the policy framework in NSW is that the powers available to the State Government to insist on minimum standards of maintenance and repair of buildings, works and relics listed on the State Heritage Register (under the Heritage Regulation 12999, and proposed replacement Heritage Regulation 2005) are not also available to Local Government for all other items (refer later comments in response to questions on Page 21 of Issues Paper about State and Territory lists).

Heritage listing (page 20)

A fundamental point regarding heritage listing is that Local Government provides the basis, through the heritage studies it has prepared, to inform not just local but state and national listings. However Local Government has not been given the resources required to reasonably assist with the cost of these studies, nor any resources to manage nominations of these places for listings by the responsible levels of government.

National lists (page 20)

Should the potential costs of conservation be included in listing criteria to better target scarce government resources?

Yes. An issue is that the cost of conservation may not relate to heritage value.

Given that the lists are expanding and government conservation resources are scarce, is there need for further prioritisation such that some on the lists are able to receive more conservation activity than others?

The lists have not caught up with the lag identified by heritage studies carried out by councils. Prioritisation needs to be informed by the existing information (refer earlier responses to page 8 of

issues paper on the need for a comprehensive survey of all existing surveys), and needs immediate assistance through extending powers of protection and associated financial assistance to Local Government.

State and territory lists (page 21)

What are the listing criteria for State and Territory heritage registers?

Listing criteria are available through the NSW Heritage Office via the following link
http://www.heritage.nsw.gov.au/07_subnav_04.htm

How does inclusion on a State or Territory register protect historic heritage places?

In NSW protection is provided in various ways. Most importantly, State Heritage Register (SHR) items are subject to minimum acceptable standards of maintenance and repair under the Heritage Regulation 1999 (and proposed replacement Heritage Regulation 2005).

The NSW SHR is far from up-to-date with items which have been surveyed and recognised by council studies as potentially having state significance. The Heritage Council of NSW is responsible for adding items to the SHR. The Heritage Office itself notes that there are many examples of items which would be of State Heritage significance and worthy of listing. However there have not been the resources to process and register all such items as yet. As indicated in the "Heritage Regulation 2005 Regulatory Impact Statement" May 2005 (page 5) "There may be as many as 8,000 items that warrant inclusion on the Register" but resources only allow the processing of around 50 items per annum.

There are critical issues related to the backlog of assessment of items of State Significance, including that:-

- Items of potential state (and national) significance may suffer neglect and decline as councils are powerless to insist on minimum standards of maintenance and repair; and
- Owners of potentially State significant items are currently missing out on funding assistance offered only for items actually on the State Heritage Register, (site works and presentations). It could be many years before some items are included, and development opportunities for successful adaptive reuse arising in the current market could be missed as a result.

Is there adequate opportunity for public input in the listing process? Are the review and reporting requirements adequate?

There is adequate opportunity for input in the listing at Local Government level.

Local government lists (page 22)

How does local government recognise and protect historic heritage places?

In NSW the Local Environmental Planning process under the Environmental Planning and Assessment Act 1979 is the process by which local government recognizes and protects historic heritage places. This process comprises:-

- The preparation of heritage study, necessarily by heritage specialists (engagement of consultants at high cost). High costs. Some assistance available under the Heritage Incentives Program, but bulk is funded by council;
- Preparation of LEP to identify listings - heritage items, heritage conservation areas; and
- Exhibition of study and LEP. Some councils might choose to publicly exhibit study first as comprehensive studies take some time to prepare, and there can be significant interest in them.

This statutory process enables enforceable protection of heritage items through the development application process.

There is no doubt that the preparation of heritage studies is a necessary and critical component of the conservation of historic heritage places. They are a legislative requirement as they inform the LEP process. (Refer also previous comments on heritage studies in response to Part 1 of the Issues Paper.)

What criteria do local governments use to list historic heritage places and how do these relate to those used by other levels of government?

Local Government in NSW uses the recommendations of the heritage studies, and community response to exhibition of the studies and the LEPs to consider listings of properties.

The criteria used in the research process for the heritage study includes:-

- Historic research, including subdivision searches;
- Identification of historical themes;
- Physical survey of sites (for a comprehensive study, the entire Local Government Area is surveyed, via the public domain – ie what can be seen from streets and public places).
- Assessment of themes and comparisons from the survey work; and
- Preparation of inventories on each item, including identification of potential significance (local, state, national).

The underlying philosophy for heritage conservation is expressed in the Burra Charter, which identifies best practice. The Burra Charter sets a standard of practice for those who provide advice, make decisions about or undertake desk top investigations of places of cultural significance. This may include owners, managers and custodians. It also recognizes that there is a need to involve people in the decision-making process, particularly those that have strong associations with a place. Sections utilized in informing the heritage conservation process include:-

- Conservation principles;
- Conservation processes; and
- Conservation practice.

Additional detail about individual items is often exposed through the community consultation process, including the actual condition of the buildings/structures which may not be readily visible during the survey process.

How well do local governments resolve conflicts between protecting private property rights and achieving legitimate heritage conservation objectives? Should governments (at any level) be required to compensate for their actions which infringe on the property rights of private owners?

In recognition of private property rights, NSW Local Government offers incentives including:-

- Free heritage specialist advice for individuals regarding their own properties (through the Heritage Advisor Service);
- Reductions/exemptions from development processing fees;
- Funding assistance for small conservation projects (publicly visible) through Heritage Assistance schemes;
- Rate rebates; and
- Developed bonus incentives.

These incentives go some way to resolving conflicts in many cases.

To what extent do local governments provide clear guidance about the rights and responsibilities of owners of heritage-listed properties?

Heritage is often misunderstood and councils, being close to the community, are sometimes faced with the difficult task of explaining what heritage means generally, and also what it means to individuals. Heritage is also a specialist area and for councils to provide clear guidance they are often reliant on access to specialist advice and resources.

Due to limited resources, and competing interests, the opportunities for Local Government to consult individually with its community are extremely limited. Community consultation on proposed heritage listings often raises concerns over infringements of property rights and also misunderstandings about what heritage listings truly mean for individuals. Practice has shown that where councils have been able to provide individuals with heritage specialist about their own properties, many initial fears of what heritage listing might mean for them are allayed.

How do local government regulations designed to protect historic heritage places relate to more general planning regulations?

Heritage regulations generally add another layer of regulation and are often considered by practitioners and owners to be more onerous. Certainly the assumption is often that the regulations on heritage listed properties are more onerous than general planning regulations, and also warrant specialist advice to be sought at greater cost to the applicants. The Heritage Advisor services go some way in assisting but still often seek that the applicant submit own specialist advice to be assessed by councils advisor and staff.

Government ownership and management of heritage properties (page 24)

In NSW the opportunity for management plans is the preparation of Conservation Management Plans. These are not required in all cases but are required for items listed on the State Heritage Register. They can be beneficial by:-

- Informing the conservation process;
- Providing clarity about when development consent would and would not be required;
- Providing clarity for owners and prospective purchasers; and
- Subsequent providing long terms benefits and savings in development activity costs.

Conservation Management Plans however, represent a significant upfront cost due to the specialist advice required in their preparation. Little is known in the community about their benefits and councils lack communication/promotion budgets necessary to provide this information to owners.

Is there greater scope for adaptive reuse for publicly owned heritage places than for those in private ownership?

Many councils actively encourage adaptive reuse, however due to the nature of many purpose-built properties, there may not be alternate marketable uses available to them. Further, depending on the condition of the building/structure, the costs of upgrading and conservation works may prove to be prohibitive (refer also to previous comments on costs of government involvement under Part 2 of Issues Paper).

Funding and other assistance (page 25)

Are these the only ways in which governments can encourage greater private involvement in historic heritage conservations? How effective are these policies at increasing private conservation activities? What are the costs and benefits of each of these policies?

The list provided on page 25 appears to cover government support options. These methods do assist as tools for Local Government to encourage greater private involvement in historic heritage conservation. They do however come at significant cost, particularly in specialist and council staff time.

Have the criteria and significant priorities for funding been transparent and consistent, and what improvements could be made?

In NSW, the criteria and priorities for funding have been transparent and reasonably consistent. There could be improvements as there are groups who miss out on funding opportunities, and there is insufficient funding all-round.

C. CONCLUSION - RECOMMENDATIONS

Recommendations

Through consideration of the issues paper and the terms of reference of this inquiry, it has been possible to identify a number of recommendations on behalf of Local Government in NSW, including that:-

- **The existing commitment, responsibilities and achievements in heritage conservation by Local Government be acknowledged.**
 - The Australian Government should acknowledge the extensive commitment of Local Government in NSW to the conservation of historic heritage places. The responsibility of heritage conservation is largely devolved to Local Government without the associated resourcing needed to carry out that responsibility.
 - The assistance provided by the NSW Heritage Office to Local Government in NSW should be acknowledged and there should be a commitment from the Australian Government that funding for heritage incentives schemes in NSW not be reduced or withdrawn, but that they be augmented to enable further assistance to Local Government in its significant role in heritage conservation.

- **Greater funding and power be allocated to Local Government to assist its role in conservation of historic heritage places.**
 - There be increased funding to assist all levels of government in addressing the lag in listings.
 - There be increased funding from State and Federal governments to assist Local Government with the costs of heritage studies and study reviews, and training.
 - There be recognition that changes are required to NSW State Government legislation to enable councils to enforce the maintenance of heritage listed buildings to acceptable minimum standards and that associated financial assistance for enforcing such powers be allocated to local government.

- **There is a need to improve intergovernmental involvement in heritage conservation.**
 - There be agreement at all levels of government as to the terminology to apply to historic heritage places, to assist in also greater education of the community about heritage. It is suggested that more consideration to the definition of the heritage should come from the inquiry. There should be consistency in the understanding of terms and approach to use of the terms "historic" and "heritage".
 - There be a review of the heritage funding structure and existing portfolios to best reflect the burden of responsibility carried out by each level of government.
 - There be a comprehensive survey of existing heritage surveys be carried out by State and Federal Government, informed by Local Government.

Conclusion

The Associations trust that the issues and concerns raised by this submission and those of our member councils will be given consideration by the inquiry. We look forward to further participation in the process of inquiry if required and to consideration of the findings.