

Productivity Commission Submission:

General Comments:

Manly Council submits the following comments on the Productivity Commission Report:

- Manly Council, like many other Councils, benefited from funding provided by the State Government in the 1980s for the preparation of local heritage studies to identify places and items of heritage significance as well as conservation areas. Manly's was completed in 1986. This foundation study identified most of the items that are heritage-listed in the Manly Local Environment Plan (LEP) & is considered to be an excellent thematic study that, since being tabled, has provided sound guidelines for local listings. The process of listing items in the LEP also included community consultation and notification of affected property owners at the time. The NSW Heritage Office also provides clear guidelines. Council occasionally receives complaints from individual property owners or developers regarding heritage restrictions but the more dominant theme seems to be community concern that Council does not have enough resources to protect heritage adequately, or that it does not interpret its existing controls strongly enough.
- It is disappointing that the PC report overwhelmingly emphasises (& at times over states) potential negative implications of heritage listing. In Manly, heritage listing is often highly supported in the community, including by those who own heritage properties. We have even had cases of the residents of a street petitioning, with near 100% support, for their street to be listed in its entirety, or to have special controls to maintain its heritage character. The pressure to reduce heritage controls, & the controversial developments proposed as a result of fewer controls, comes overwhelmingly from non-resident private developers rather than from resident property owners.
- In the 1990s the NSW Government withdrew financial support for heritage planning in the Sydney Region, and redirected available funding towards 'regional areas'. This substantially increased the financial burden on the councils which accommodate a very high proportion of the historic and architectural heritage of the Sydney Region. Regrettably, insufficient funds have been made available to councils in NSW to address the issue over several years. Manly Council is highly committed to conservation but not highly resourced & has only recently been able to allocate the necessary resources to do a review of its 1986 report & of the general state of heritage conservation in the LGA.
- The report does little to address the lack of resources available to councils for heritage studies/surveys required to be carried out to inform their heritage listings. The comprehensive research carried out for these studies/surveys is first base for any proposed listings or from which any negotiation can commence, even including the negotiated conservation agreements suggested by PC. Arising from this process, also, is the research to inform State and National Registers. Despite all this, Manly Council, in embarking on a review of its 1986 heritage study and the state of heritage in the entire LGA will not be able to access any funding from the NSW Heritage Office. The PC should be considering opportunities to assist funding of these studies.
- Once excellent & successful model for funding of heritage at all levels of government that the PC should have examined is the UK system of funding for heritage through the national lottery. This has resulted in increased incentives to conserve heritage & increased community & public awareness of the importance of heritage. Another possibility is tax breaks to encourage people to keep original fabric of homes, rather than to knock down & rebuild.
- It is a concern that language used in the report underscores an anti-heritage bias. When positives are mentioned, it is generally along the lines of "there may be some benefits" while with potential negatives, the language is much stronger: "significantly negative", "detrimental impacts", etc. even though the evidence cited to support either side clearly should have equal merit & thus similarly neutral language should be used.
- The report does not make use of several reports recently done that examine the economic benefits of listing. This is a major & glaring omission. These include reports available on the NSW Heritage Office website.
- Obvious anti-heritage biases have the unfortunate result of undermining some of the good points & sound recommendations made in the report, for example, that property owners need to have good information on the significance of their property.
- The report treats the very different systems in each of the states as if they are the same. NSW has very clear guidelines on determining the heritage significance of an item.
- The report takes a simplistic view on heritage items versus heritage conservation areas when many, at not just local government level, are inextricably linked. Heritage items are many and varied in nature, particularly at the local

government level. Heritage conservation areas also often contain heritage items which are significant to the areas and warrant separate listing as items.

Comments on Findings & Recommendations:

Key Recommendation:	
<p><i>DRAFT RECOMMENDATION 8.1:</i> 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.</p>	<p>Manly Council strongly objects to this recommendation for the following reasons:</p> <ul style="list-style-type: none"> - The Productivity Commission seems to have an overly simplistic view of the complexity of local heritage lists. Manly Council has some 300 items, including streetscapes and conservation areas. The ownership of the items is not always straightforward. For example it is difficult to imagine the application of negotiated conservation agreements to the variety in the range of heritage items which are privately-owned including single trees, and groups of trees, stones walls, pairs of semi-detached houses, rows of houses, just to name a few examples. Also, for example, a conservation area is one item with multiple owners, as is a streetscape. The value (in both heritage & economic terms) of each individual item depends upon its relation to the uniform character presented by the whole. How would agreements work in this case? - Even an owner who has every intention of conserving the heritage features of their item would still have no reason to agree to a conservation agreement unless there was some kind of incentive, particularly if there is no assurance that it will continue to be protected if it is again sold. What incentives does the Commission propose to make a Conservation agreement a sensible option for an owner? - What resources would Councils be allocated to ensure that the terms of the negotiations are equal? It is easy to foresee a developer with the means that, if they agree to enter into the negotiations at all, simply hires a highly-trained lawyer, to negotiate on their behalf while Council staff are generally not formally trained to negotiate such agreements. - In Council areas such as Manly where non-resident developers comprise a significant proportion of re-development & new development, negotiated agreements are completely unfeasible. A developer will have no reason to negotiate a conservation agreement for a site which has been purchased with the very intention of demolition & redevelopment by a non-resident who has no vested interest in the long-term amenity or character of the area. - The report neglects to cite specific cases at the local level of successful examples of broad heritage conservation making use of negotiated agreements. Why seek to dismantle an entire system that generally works for the purpose which it is intended (ie. to protect heritage) to replace it with an unknown entity? On what basis are these negotiated agreements proposed? They may work on sites that are so high profile that there would be little disputing

	their significance (such as the Opera House) but are unlikely to be appropriate to the much more subtle & complex nature of local heritage significance.
3 Overview of historic heritage conservation in Australia	
DRAFT FINDING 3.1 <i>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.</i>	<ul style="list-style-type: none"> - This implies, then, that the key finding of the Commission is based upon a very incomplete picture, given its own finding that there is little statistical information available. Should adequate statistical information not be gathered & conclusions drawn after all necessary information is received? To propose sweeping changes based upon "little statistical information" is irresponsible.
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.	<ul style="list-style-type: none"> - All levels of government should be given the resources to do this. Local government would not have the administrative capacity to compile this information with the current level of resources for heritage. - In addition to providing funding to Councils, legislation may be required to make Councils do this.
4 Australian, State and Territory governments' heritage systems	
DRAFT FINDING 4.1 <i>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.</i>	<ul style="list-style-type: none"> - non-heritage places can also require dual assessments such as developments affecting waterways, agriculture etc. - The NSW State Government has mechanisms whereby applications involving both state and local assessment are assessed concurrently. - The NSW Heritage Council & Office has provided local councils with delegated authority to determine S.60 applications and has also provided guidelines to assist local government assessments. Council sends the Heritage Council a copy of the approvals under this delegation. - In Manly the number of State significant items is small and the need for concurrent approvals is infrequent.
DRAFT FINDING 4.2 <i>The commitment to identify, conserve and manage publicly-owned historic heritage places varies considerably between States and Territories.</i>	<ul style="list-style-type: none"> - How related is this to the level of available resources? While the commitment may be there, the resources are not always available.
DRAFT FINDING 4.3 <i>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.</i>	No comment.
5 Planning controls and heritage conservation at the local level	
DRAFT FINDING 5.1 <i>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</i>	<ul style="list-style-type: none"> - NSW offers very comprehensive guidance and criteria. Certainly, discretion rests with the local level, as it does with most planning controls. - Inconsistency can also be a result of changing views over time.

<p><i>and this has resulted in inconsistent outcomes within many local governments.</i></p>	<p>What might look like inconsistency can be a reflection of changing attitudes, values & controls over a certain period of time.</p> <ul style="list-style-type: none"> - Inconsistency can also be a reflection of the lack of resources available to councils over time. Some councils have reviewed their 1980s plans, others have not. Heritage conservation practice has evolved over time since it was first introduced and a higher quality of study is required now.
<p>DRAFT FINDING 5.2 <i>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.</i></p>	<ul style="list-style-type: none"> - In Manly Council, we follow the NSW Heritage Office inventory sheets for guidance for both assessing properties for heritage significance & providing as much information as possible. This includes a statement of significance. Professional heritage staff would never recommend an item for listing without a Statement of Significance although the quality of the SoS's in our current listings (based upon the 1986 study) are of varying degrees of detail. - Manly Council supports a recommendation to make this a requirement so property owners can have adequate information & further supports appropriate funding being provided to local government to enable improvement.
<p>DRAFT FINDING 5.3 <i>Heritage conservation areas impose less stringent restrictions on the ability to demolish and redevelop properties than do individual heritage controls.</i></p>	<ul style="list-style-type: none"> - In Manly, this is because certain items can be non-contributory to the character of the Conservation Area & therefore more extensive re-development is permitted subject to an assessment of whether or not there is any original fabric that is significant & could be restored.
<p>DRAFT FINDING 5.4 <i>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.</i></p>	<ul style="list-style-type: none"> - When this happens, it is usually because there has been community opposition to what is proposed to replace the item, or the community sees the item as valuable but Council has not yet had the resources required to assess it for listing. - It is rarely an initiative of Council that this happens but it supports the case for having more resources allocated to pro-active conservation measures so this does not occur, the community is satisfied that heritage is being adequately protected by Council & property owners are satisfied that controls are applied consistently. - Legislation in the Manly LEP clearly states the planning requirements for development in the 'vicinity of a heritage item', and is one of the standard heritage clauses in NSW LEPs which all property owners have access to. - It is similar in both practice & principle to general planning controls which require assessment of impacts on adjacent sites, such as privacy, overshadowing & heritage.
<p>DRAFT FINDING 5.5 <i>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.</i></p>	<ul style="list-style-type: none"> - Probably the most common misconception is that property owners think they can't do anything to their heritage listed property when in fact they can. - The legislative requirements are very clear & are outlined in our LEP & Development Control Plans (DCPs). Not everyone agrees with them but they are certainly clear. - Manly Council employs at least 3 staff with heritage specialist training and/or skills to assist its community to understand heritage, particularly on an individual basis. Poor public perception of heritage in general, including poor publicity on a much broader than LGA scale, makes this task difficult. Greater leadership and support

	from the Australian Government in defining heritage and in guiding the strengthening of statements of significance at all 3 tiers of government would assist all.
DRAFT FINDING 5.6 <i>There is significant scope to improve the management of heritage conservation by local governments in their systems and processes for land use and planning.</i>	- Yes, this is true. Resources should be allocated accordingly. These should include a permanent fund for assistance in the conservation of privately-owned locally listed items and funding for all Councils to do a comprehensive review of their original heritage studies.
6 Analytical framework	
DRAFT FINDING 6.1 <i>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.</i>	- The language in this point indicates an anti-heritage bias. While it is grudgingly acknowledged that heritage can have a positive impact, the report does not cite the numerous reports on the benefits of heritage listing & instead stresses the potential negative impact with terminology like "significantly negative" & "owner detriment" while similarly positive terminology is not used when discussing the benefits.
DRAFT FINDING 6.2 <i>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.</i>	- This report fails to cite recent research on the benefits of heritage listing. - Redressing the gap between public & private benefit is significantly a failing of the federal & state governments to provide adequate incentives in the form of tax breaks, heritage grants & a dedicated fund (such as the English lottery fund for heritage). The problem is not that there is little consideration of the cost, the problem is that there are few avenues to do anything about this that will directly assist owners in the conservation of important local heritage.
7 Assessing governments' involvement - *General comment: it is confusing that the recommendations in this section do not relate to the findings as they do for the previous sections. How can there be recommendations that are not based upon findings? This needs to be clarified.	
DRAFT FINDING 7.1 <i>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.</i>	- If so, funding provisions to local government need to be reflect the amount of heritage in a local Council area as the bulk of heritage (government & privately owned) is in local government areas. - The framework could also be improved if the attention of PC in this inquiry was drawn to improvements in practice at all 3 levels from a "best practice" perspective.
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.	- What finding led to this recommendation? - What does this mean to the existing list of items on the Register? Does this mean the existing National significant sites are suddenly no longer significant? The Register is an important indicator of the significance of a place, (both nationally & locally) & should be retained for reference purposes at least.

<p>DRAFT FINDING 7.2 <i>Negotiated agreements are desirable as they facilitate voluntary conservation and ensure the costs of conservation are considered alongside the community benefits.</i></p>	<ul style="list-style-type: none"> - Negotiated agreements are not in any way desirable or appropriate for local government, particularly in the absence of any proposed incentives programs that would genuinely “facilitate voluntary conservation”. - There is an unfounded assumption that conservation always costs the individual and that there are always benefits to the community.
<p>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.</p>	<ul style="list-style-type: none"> - What finding led to this recommendation?
<p>DRAFT FINDING 7.3 <i>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.</i></p>	
<p>DRAFT RECOMMENDATION 7.3 Those State governments that have specific legislation governing the operations of the National Trust should repeal such legislation.</p>	<ul style="list-style-type: none"> - What finding led to this recommendation?
<p>DRAFT FINDING 7.4 <i>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.</i></p>	<ul style="list-style-type: none"> - How would reporting of expenditure on conservation be achieved & how would it clearly reflect the balance between cost & benefits (ie. those that are difficult to quantify such as the advantages of having a heritage character for attracting tourists, creating a desirable sense of place, etc.
<p>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.</p>	
<p>DRAFT RECOMMENDATION 7.5 State, Territory and local governments should:</p> <ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> - Conservation Management Plans can themselves be a large & expensive undertaking & are not always necessary unless redevelopment or change of use is proposed or likely. For local government they can be an especially cumbersome task generally requiring the services of a heritage consultant. - This could be supported as long as the reporting systems present a balanced view of the costs vs. the benefits & are supported by adequate extra resources.

<p>DRAFT FINDING 7.5 <i>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).</i></p> <p>DRAFT FINDING 7.6 <i>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:</i></p> <ul style="list-style-type: none"> • <i>the community has an incentive to over-list (or be non-selective) as they do not bear the costs of conservation; and</i> • <i>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.</i> <p>DRAFT FINDING 7.7 <i>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.</i></p>	<ul style="list-style-type: none"> - Can the Commission cite some concrete evidence of this? What does “in many cases” mean? In Manly, it would be rare that either listings are inappropriate or that they lead to “perverse effects”. Perhaps “in some cases” or “in a few cases” would be much more appropriate, unless an actual proportion can be determined. - It would certainly not be the norm that owners of heritage properties do not conserve their heritage values. Most property owners in this area take extremely good care of their homes. - It is not true that assistance is poorly targeted but it is certainly true that there is hardly any available. Manly Council would welcome the efforts of the Productivity Commission in recommending that much more funding be available.
<p>DRAFT FINDING 7.8 <i>At the local government level, the management of heritage conservation under local planning schemes is not working well, primarily because of:</i></p> <ul style="list-style-type: none"> • <i>the imposition of unclear and uncertain restrictions on property owners;</i> • <i>the failure to prepare a statement of significance for each place listed on a local list;</i> • <i>inconsistent use and interpretation of heritage controls; and</i> • <i>the application of heritage controls to places that have little, if any, heritage significance in order to achieve other planning objectives.</i> 	<ul style="list-style-type: none"> - This point is absolutely untrue in Manly Council. Restrictions are neither unclear nor uncertain. Controls are clearly outlined in the LEP & DCPs. - In Manly LGA, there have been attempts to use heritage controls for other planning objectives at the initiative of the community but this approach is strongly rejected by professional heritage staff in Council & does not succeed. - At the local level, the most helpful thing that would clarify heritage would be the funding of comprehensive heritage reviews for all LGAs in order that they can update information of listed items, re-assess their significance, respond to community concerns/views, understand concerns of heritage-listed property owners & implement policies where necessary.
<p>8 Getting incentives right – General comment: none of these actually address incentives. Does this mean it is the position of the PC that there should not be any? The PC should investigate other options as well, and not disregard over thirty years of heritage conservation in NSW.</p>	

<p>DRAFT FINDING 8.1 <i>Conservation of historic heritage on privately owned heritage property could be more effectively achieved through negotiated conservation agreements between governments and owners.</i></p>	<ul style="list-style-type: none"> - The objections of Manly Council have already been made to this finding above. - This is a significant and major change in the current state and local management of heritage protection. Improvements to the current system should be investigated, including incentives, funding, education, etc. rather than dismantling the existing system.
<p>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.</p>	<ul style="list-style-type: none"> - Manly Council strongly disagrees & observes that the PC report fails to understand the more complex & diverse nature of local heritage & local listings. - No evidence is provided to support this approach as effective at heritage conservation. How can councils and the community be ensured that negotiation works in conserving heritage? It may work for National items which are fewer, known 'icons' & often government owned, than local items. - The current system should not be thrown out, but resources must be provided at the local level to assist in improving the current system and testing the negotiation approach as an additional tool in the conservation process.
<p>9 Conservation agreements for privately-owned heritage places. General comment: again, it seems strange that some of these are not based upon or cross-referenced to a specific Finding in this report.</p>	
<p>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.</p>	<ul style="list-style-type: none"> - This may be appropriate at the national level but it is not at the local or state level.
<p>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 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.</p>	<ul style="list-style-type: none"> - Disagree as outlined above under comments for Findings & Recommendations 8.1.
<p>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.</p>	<ul style="list-style-type: none"> - As above.

<p><i>DRAFT RECOMMENDATION 9.4</i> 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.</p>	<ul style="list-style-type: none"> - As above.
<p><i>DRAFT RECOMMENDATION 9.5</i> 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.</p>	<ul style="list-style-type: none"> - As above.
<p><i>DRAFT RECOMMENDATION 9.6</i> 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.</p>	<ul style="list-style-type: none"> - The PC should be aware that determining what properties on the local list were purchased when is a whole other cumbersome requirement that would be a difficult & potentially unworkable obligation for local councils. How does the PC envision this could be accomplished effectively & accurately? - This will result in increased pressures on staff resources and potential loss of a significant amount of heritage in the local area and cumulatively the state.
<p><i>DRAFT RECOMMENDATION 9.7</i> 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.</p>	<ul style="list-style-type: none"> - Manly Council disagrees that non heritage items should not be subject to controls if they are in the vicinity of a heritage item & if changes are proposed that would affect the significance of the heritage item.
<p><i>DRAFT RECOMMENDATION 9.8</i> 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.</p>	<ul style="list-style-type: none"> - It is not clear in the PC report what impact this has on local government resources for heritage management of such areas. - Council's LEP already has a heritage conservation area clause which manages impacts of change in the area on the heritage significance.

End of Submittal