

MOSMAN COUNCIL'S SUBMISSION TO THE PRODUCTIVITY COMMISSION DRAFT REPORT INTO THE CONSERVATION OF AUSTRALIA'S HISTORIC HERITAGE PLACES

INTRODUCTION

Mosman Council welcomes the opportunity to comment on the Productivity Commission's recently released draft Report into the Conservation of Australia's Historic Heritage Places. Mosman Council regards heritage as a vital component of Mosman's built and natural environment.

Mosman Council manages a comprehensive and effective heritage system. Two area-wide heritage studies have been completed within Mosman. These studies have led to the listing of 488 individual local heritage items. 14 items within the locality are listed on the New South Wales State Heritage Register. Mosman also contains 11 heritage conservation areas which include thousands of properties.

Council is committed to managing heritage through best practice. Examples include employing the services of an experienced Heritage Advisor and continually undertaking supplementary studies to ensure that all items of heritage significance within the locality have been identified and assessed. Council is confident it manages an effective heritage system which has the support of the majority of the community. Council believes it is vital to provide support for owners of heritage properties. 58% of heritage items within the locality are in private ownership. Heritage management by Mosman Council includes:

- i.** Engagement of a Heritage Advisor since 1995;
- ii.** Mosman Local Heritage Assistance Fund in operation since 1998;
- iii.** Mosman Good Design Awards run every second year;
- iv.** Continuing identification and assessment of potential heritage conservation areas and heritage items;
- v.** Interpretation Strategies and Plans (current examples include Clifton Gardens and the Curlew Camp Artists' Walk);
- vi.** Training for staff, Councillors and the community on heritage;
- vii.** Preparation of the Aboriginal Heritage Study (2005); and
- viii.** Management of the Heritage and Architecture Advisory Group

OVERVIEW

This submission to the Productivity Commission's draft Report will address and provide comments on each of the draft findings and recommendations which have implications for local government. It is not considered appropriate for Mosman Council as a local government authority to comment on findings and recommendations affecting government at State or Commonwealth level.

Council would like to provide some general comments on the draft Report. Overall, Council is supportive of any attempts to improve the effectiveness of the current heritage system operating at the local level within New South Wales. However Council has concerns regarding the scope of the draft Report. As the draft Report notes each State individually maintains its own heritage management system. These can vary substantially and are dependent on overriding respective State government legislation. On a more localised level, heritage management can vary substantially within States between urban and rural areas. It is highly dependent on each council's ability to fund heritage management based on resources at their disposal. Mosman Council does not consider that an accurate picture of heritage conservation at the

local level within metropolitan New South Wales can be achieved through a nationwide report. Council considers that a more adequate picture of heritage management would be achieved via State specific studies.

Council is also concerned that the draft Report fails to examine the differences between commercial and residential heritage items. The impacts of heritage may differ substantially between commercial and residential premises. These differences need to be further acknowledged and considered before the draft Report can claim to be a thorough and considered assessment of heritage within Australia.

Council questions the potential implications of the key recommendation for local heritage management. As noted in the draft Report, the vast majority of heritage items in Australia are of local significance and in private ownership. Under the key recommendation individual conservation agreements would need to be developed for all individually listed privately owned heritage properties. Whilst Mosman Council appreciates the aim of conservation agreements it has concerns regarding its implementation. Mosman Council currently lists almost 500 individual heritage items. The resources required to research and negotiate individual conservation agreements would be prohibitive. For example a heritage study recently compiled for a heritage item within Mosman, partly funded by Council, cost approximately \$6,000. Using this number as a base amount for negotiated conservation agreements the total cost to Council would be in the order of \$1.75 million. Council would not be able to commit to this expenditure, nor would it be viewed as responsible use of taxpayer rates.

It is likely that Council would need to employ extra employees to undertake these tasks. Council is not in a financial position to employ additional staff. It is likely that the responsibility would be placed upon existing planning staff and may cause further delays in the processing of development applications or divert scarce resources from other projects of benefit to the community as a whole.

Many councils need to balance competing demands with limited resources. The role of local government is to attempt to gain the best outcomes for their local community. To do so councils must ensure that their expenditure is focused on programs and works with wide reaching community benefits and support. Council does not consider that the key recommendation of the Productivity Commission's draft Report represents appropriate use of council resources. Council considers that the majority of the benefit of conservation agreements would go to individual property owners rather than the wider community. Such an outcome would be contradictory to the responsibility of local government and represent a misuse of community resources.

Concerns are also held by Council that the recommendations of the draft Report are contradictory to soon to be introduced Standard Local Environmental Plan (LEP) for New South Wales. The Standard LEP would introduce compulsory planning regulations regarding heritage for local governments within New South Wales. The draft recommendations of this draft Report do not reflect the objectives or policy direction of the Standard LEP. Council questions how the recommendations of this draft Report would be incorporated into the Standard LEP.

The following section provides comments on the draft findings and recommendations which affect local government.

COMMENTS ON DRAFT FINDINGS AND RECOMMENDATIONS

DRAFT RECOMMENDATIONS

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: Council has serious concerns about the potential impacts of Draft Recommendation 8.1 on heritage within Mosman. Council does not agree that negotiated conservation agreements would provide adequate protection for heritage items. Heritage listing should not be dependent on the support of the individual property owner. An owner's willingness to conserve a property does not reflect the heritage significance of that property. Mosman Council is concerned that heritage properties may be compromised or lost if individual owners are not supportive of maintaining heritage listings.

Heritage is an important issue within the Mosman community. It is highly valued and Council has a responsibility to maintain the area's existing character. Negotiated conservation agreements do not represent best practice in heritage management. The loss of even a small percentage of Mosman's heritage items would have the ability to detrimentally and irrevocably alter the character of the area. Council does not support policy changes which may lead to an erosion of Mosman's built environment. An owner's willingness to sign a negotiated conservation agreement may be dependent on the financial incentives offered by Council. As noted elsewhere in this submission Council would be unable to offer owners any additional financial support. The potential cost to Council of providing assistance is extremely prohibitive. Council is concerned that the number of heritage listings would decrease within areas where councils are unable to offer additional financial assistance.

The draft Report provides no evidence to suggest that negotiated conservation agreements are effective in heritage management. Rather, the draft Report notes that although voluntary conservation agreements are currently available to State and Commonwealth government agencies they are rarely undertaken. The draft Report uses the presence of a negotiated agreement for the Opera House as an example of a successful system. However the draft Report fails to acknowledge the differences between a building such as the Opera House and a local heritage item in private ownership. The Opera House is an iconic building currently under nomination for listing as a World Heritage Item. The structure remains in public ownership and is managed by the government on behalf of the community. A locally listed heritage item in private ownership should not be compared to a building of the Opera House's significance. Expenditure on the Opera House is for the benefit of the local and international community. In contrast, expenditure on local heritage items is often solely for the benefit of the private owner.

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: Council generally supports the recommendation to increase the amount of publicly available data on heritage and expenditure. Council currently collates certain data series on heritage, including the number of heritage items and heritage

conservation areas, and the level of listing afforded to each property. This information is publicly available.

Individual inventory sheets have been prepared for all heritage listed items within Mosman. These inventory sheets include details such as item descriptions, photographs and a brief statement of significance. Information is also available for properties contained within heritage conservation areas. Each property within a designated conservation area is given a ranking based on its level of significance. A statement of significance is available for each heritage conservation area in its entirety.

Financial reporting on heritage within the Mosman is also available. Annual expenditure by Council on heritage includes the allocation \$20,000 per annum for its Local Heritage Assistance Fund. A further \$20,000 is allocated for the employment of a part time Heritage Advisor. Other expenditure includes \$30,000 in 2004/2005 for the continuing assessment of potential heritage conservation areas and heritage items within the locality.

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: Council questions the recommendation that all government-owned statutory-listed properties should have a conservation management plan prepared. Council listed heritage items include roads, steps, sandstone kerbs as well as statues and plaques. Conservation management plans would not be necessary nor appropriate for some of these items. Conservation management plans are costly documents. Preparing conservation management plans for all these sites would be expensive and potentially irrelevant.

Mosman Council currently has to largely rely on funding offered through the State and Commonwealth heritage agencies to fund conservation management plans for items on the New South Wales State Heritage Register. An example of this is the recently submitted funding application to the Department of Environment and Heritage requesting \$25,000 for the development of a conservation management plan for a Council owned heritage item of State significance. Without the provision of additional funding it is unlikely Mosman Council will have the resources to fund more conservation management plans. The draft Report notes that the cost of conservation management plans can be prohibitive for private owners. Council would argue the cost is also prohibitive for local government.

Council is generally supportive of the idea of preparing a separate report which outlines annual expenditure on heritage. Mosman seeks clarification on whether financial reporting would cover all heritage items, including roads and parks, or be limited to physical structures. Expenditure on assets such as roads and parks is generally deemed to be maintenance. Isolating heritage management expenditure of these items may be difficult. Council does not consider that the Draft Recommendation's proposed reporting system would accurately assess Council's expenditure on heritage conservation.

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: As the draft Report notes local government cannot compulsorily acquire land. Therefore it would be the responsibility of local government to inform the relevant State government of any situation where acquisition may be the best solution. Such a system would require the development of guidelines to assist local government in deciding whether to pursue compulsory acquisitions. The success of such a system would also be highly dependent on available funds at the State level to purchase properties from affected owners. Council is concerned that under this system heritage items may suffer under any funding cuts or fiscal reform. The inability of State governments to pay for acquisition may lead to loss of heritage items. Council does not support any recommendation which potentially removes protection for heritage items. Council also questions whether compulsory acquisition is an economically sound or responsible policy for the government to pursue.

Heritage listing can cause tension between private property owners and government agencies. Open dialogue and communication is an important part of defusing any tension and maintaining community support for heritage conservation. Council believes that compulsory acquisition is not an effective way to maintain community support and should only be used as a last resort when a heritage property is under considerable threat. It is considered that less intrusive methods exist to ensure that heritage values are retained.

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.*

Comment: Mosman Council reiterates its concern about the amount of resources required to undertake this task. Property owners of heritage items which were listed after purchase have already had an opportunity to make representations to Council regarding the listing. During this consultation process, property owners had opportunity express any concerns they had regarding heritage listing, including financial concerns. Negotiating conservation agreements after a property has been listed undermines the listing process.

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: As noted previously in this submission heritage listing involves a rigorous process of assessment and consultation between governments and affected owners. Mosman has undergone two area-wide heritage studies in which considerable community resources have already been invested. Over \$120,000 was spent on the 1996 Mosman Heritage Study and subsequent Commission of Inquiry. Implementation of negotiated conservation agreements would render these studies obsolete. This is not considered to be an effective use of resources and Council would argue that its current heritage assessments provide thorough synopsis of the area and should not be superseded by individually negotiated conservation agreements.

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: Mosman Council questions the applicability of Draft Recommendation 9.7 as it represents a direct contrast to the draft Standard LEP proposed for New South Wales. The draft Standard LEP seeks to regulate heritage controls across all local governments within the State. Council is concerned that Draft Recommendation 9.7 represents a policy shift from the Standard LEP. Council queries whether the Productivity Commission consulted with the New South Wales Department of Planning regarding the proposed recommendations to ascertain how they might fit into existing and proposed planning regulations.

DRAFT FINDINGS

Draft Finding 3.1: Little statistical information is available on the conservation of Australia's historic heritage - the number, quality and composition of listed places; the nature, source and types of expenditures on historic heritage conservation; or the effectiveness and cost-effectiveness of those expenditures.

Comment: As noted in the comment to Draft Recommendation 3.1 Mosman Council currently collates limited data series such as the number of heritage items and heritage conservation areas, and the level of listing afforded to each property. All councils which have completed a heritage study should have access to heritage inventory sheets and statements of significance for listed items. The Productivity Commission's survey findings indicate that over 80% of councils within New South Wales had furnished their heritage lists from heritage studies. The survey findings also indicate that 80.9% of listed places in New South Wales have heritage information provided for them. This number rises to 96.3% for Western Australia which also indicates that they did not have any heritage items which did not contain information regarding their listing. These figures do not support the findings contained within Draft Finding 3.1. Council is concerned that the draft Report has not accurately reflected the availability of heritage information across Australia.

Expenditure on heritage items is located within several separate sections of Council's budget. This reflects the range of heritage items within the locality. As noted to the comment on Draft Recommendation 3.1 Council expenditure on specific heritage programs such as the Local Heritage Assistance Fund and Heritage Advisor is readily available to the public.

The effectiveness of Council's heritage management system is evident through continued community support. An example of this is a proposed additional heritage conservation area in Mosman which was supported by 89% of affected residents. Council believes that its expenditure on heritage is effective in maintaining the environment for the community.

Draft Finding 4.1: The listing of properties onto a State or Territory Heritage Register results in the relevant Heritage Council becoming the de facto planning authority. This differs significantly from the approach to non-heritage places where the local council is generally the planning authority. This can result in the need for dual approvals for any proposed development. .

Comment: Heritage items listed on a State Heritage Register have been assessed as being significant to an entire State community. Therefore the significance of the item extends beyond the local area within which the item is located. As such it is appropriate for the relevant State heritage authority to give approval to any proposed changes. As individual councils' planning regulations relate only to their local areas, additional approvals may be necessary. Mosman Council does not consider this to be an unnecessary or unfair imposition on property owners. Similar referrals to State government authorities are undertaken to assess other issues of state wide concern such as bushfire prone lands and prominent foreshore areas. Council does not see this as a dual approval process but as a part of a comprehensive and thorough planning assessment system.

Draft Finding 5.1: There is a high level of discretion for decision-making on heritage matters at the local government level, derived in part from limited State government guidance and this has resulted in inconsistent outcomes within many local governments.

Comment: Mosman's heritage controls are contained within the LEP and Development Control Plans (DCPs). These controls contain aims and objectives for heritage properties and properties within heritage conservation areas. Applicants are required to meet these aims and objectives for heritage properties, or show due cause why Council should accept variations to these controls. Development Applications are also referred to Council's Heritage Advisor, who has been assessing proposals within Mosman for 10 years, for comment. This system is predominantly the same as the application process for non-heritage properties and outcomes are equally consistent.

Council considers that the use of the same Heritage Advisor for 10 years results in very consistent outcomes for applications. All development applications are required to meet the aims and objectives of Council's planning controls. Draft Finding 5.1 claims that the current system leads to inconsistent outcomes within many local governments without providing any specific examples of this. Without further evidence Council cannot support the claims contained within Draft Finding 5.1

Draft Finding 5.2: While statements of significance are recommended in State guidance material, no State requires its local governments to include a statutory statement of significance in their local heritage lists. The absence of such statements seriously impairs subsequent decision-making about listed properties.

Comment: The development of a detailed heritage assessment is a necessary part of the heritage listing process. A statement outlining the heritage values of an item is a vital component of this assessment process. This statement should then be used to assess any development proposals. Mosman concurs that the absence of a statement of significance has the potential to impair decision-making regarding heritage listed properties. However councils which have undertaken heritage assessments to furnish their heritage lists should have detailed statements of significance prepared for each item. The Productivity Commission survey indicated that 84.3% of items on heritage lists within New South Wales contain information on heritage values, rising to 93.1% for Western Australia. Mosman Council considers this information adequate for making appropriate decisions regarding heritage items.

Mosman's heritage lists have been furnished from two area-wide heritage studies. As part of this process a statement of significance has been prepared for all listed items within Mosman. It is considered the problem of lack of information could be more effectively resolved through availability of additional funding for councils

wishing to undertake initial or supplementary heritage studies. Funding for the employment of full-time Heritage Advisors would also assist councils to make appropriate decisions regarding heritage items.

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

Comment: Mosman Council does not agree with Draft Finding 5.3. Planning controls contained within the Mosman LEP and DCPs apply equally to heritage items and buildings located within heritage conservation areas. Properties located within heritage conservation areas are afforded a ranking of heritage significance. Properties within heritage conservation areas which are deemed detrimental to the value of the area and given a low ranking can be replaced with a more appropriate building. If a property is afforded a high ranking demolition or substantial alteration is unlikely to be approved by Council unless the application is complementary. Through these objectives Council seeks to maintain and enhance the visual character of the heritage conservation areas. It is the nature of heritage conservation areas that some buildings will be of greater heritage significance than others. Council would be no more supportive of an application for demolition of a highly ranked property within a heritage conservation area than it would be of an individually listed item.

Exempt and Complying provisions developed by the New South Wales State government affect equally heritage items and items within heritage conservation areas in Mosman. Exempt and Complying provisions are not applicable and therefore cannot be used for development to either heritage items or within heritage conservation areas. It cannot be argued that these provisions are more flexible within heritage conservation areas.

Within Mosman development proposals for both heritage items and properties located within heritage conservation areas are assessed by Council's Heritage Advisor. Due regard for the heritage aims and objectives of Mosman are afforded to all development proposals based on the level of significance of the property. Council considers Draft Finding 5.3 to be misleading and to perpetuate misunderstandings of heritage.

Draft Finding 5.4: *Heritage controls can be applied to properties that have not been individually listed or contained within a heritage conservation zone. Typically, the owner is informed only upon seeking development approval.*

Comment: General planning objectives are applied to all development proposals within Mosman. These objectives cover a range of issues including amenity, privacy, overshadowing, bulk and scale. Developments are also assessed in context to their surroundings. New development which is deemed to have an inappropriate impact on a surrounding property will not be deemed acceptable, whether the surrounding property is heritage listed or not. Mosman would argue that general planning controls are applied to all development applications regardless of their heritage status. Council would not support any development which is deemed to have a detrimental impact on surrounding properties. All residents have access to Mosman Council's planning controls which clearly articulate the aims and objectives for all development within different zones and localities.

Draft Finding 5.4 implies that Councils unfairly impose heritage restrictions on properties without their prior knowledge. Mosman Council refutes this finding. All proposed heritage listings are subject to extensive consultation with affected owners.

Property owners are encouraged to provide comment to Council on the proposed listing. Potential purchasers of heritage listed properties are made aware of the status of the building through information provided in section 149 certificates. Owners are also able to view Mosman Council's planning documents or contact Council officers for a full list of heritage properties within the locality.

Draft Finding 5.6: There is significant scope to improve the management of heritage conservation by local governments in their systems and processes for land use and planning.

Comment: It is considered that Mosman runs an effective heritage system through its existing planning controls. Draft Finding 5.6 does not specify which areas of the heritage system are identified as requiring improvement. General assertions made within Section 5.4 cannot be seen to apply to all local government areas and therefore should not lead to an accurate draft finding. Whilst Council encourages a review of the current system to improve efficiency, it does not agree with generalised statements on the operation of the current heritage system. Mosman Council manages an effective planning system which incorporates heritage in an efficient manner which is supported by the community. Council clearly articulates planning objectives in relation to heritage within its controls. The availability of statements of significance for items, as well advice from a professional Heritage Advisor, ensures that Council's heritage management system is effective and without need for substantial improvement.

Draft Finding 6.1: While under some circumstances (particularly where neighbourhood amenity is to be preserved) heritage listing can have a positive impact on property values, the constraints on development potential associated with listing can have a significant negative impact on the prices of individual properties. The potential for owner detriment arising from development controls may differ significantly between properties.

Comment: In assessing development applications Mosman Council seeks to respect and preserve amenity of all areas regardless of their heritage status. The character of Mosman, including its heritage characteristics, has assisted in maintaining demand for housing within the area. Mosman as a suburb is highly valued for its extensive Federation architecture. It enhances the character of the area and helps to make it a desirable place to live. The draft Report tends to overlook the possibility that people choose to buy heritage properties for the aesthetic value. Mosman Council believes that this is often the case, particularly within heritage conservation areas.

Following the Mosman Heritage Review undertaken in 1996 Council commissioned a Public Hearing to resolve disputed proposed listings. The Commissioner examined 46 items to assess whether undue financial hardship would be caused by heritage listing. Where undue financial hardship was proven (approximately 17%) these items were removed from the proposed list. Therefore Mosman Council is sensitive to the financial impacts of heritage listing. The issue of the financial impact of heritage listing is the subject of various studies. It is very difficult to conclusively argue the financial impact that heritage listing has on a property. The impacts will vary for each individual property making comparisons difficult. Council would argue that in the majority of cases heritage listing enhances property value within the Mosman area.

Mosman Council is concerned by the implication in the draft Report that heritage is a constraint on development and that heritage listings are to be avoided. There are instances where redevelopment, particularly on a large scale, will not be supported by Council on heritage grounds. However that does not mean that all forms of

development are prohibited. Mosman Council would argue that constraint on development potential is more commonly caused by zoning controls rather than heritage listing.

Draft Finding 6.2: Current methods of identifying historic heritage places for statutory listing focus on the benefits expected to accrue to the community. Typically, there is little, if any, consideration of the costs imposed either on the owner or the community more generally.

Comment: It is not appropriate to generalise on the additional costs, if any, of heritage listing. As the draft Report notes costs are dependent on a number of factors and can vary substantially.

Council does not agree that heritage listing places an undue financial burden on owners. As previously noted properties within Mosman which were assessed as potentially suffering undue financial hardship from listing were not included in the heritage schedule gazetted in 2001. Council is currently reviewing its Section 94 levy on development. It is proposed that the levy be set at 1%, however it is also proposed that heritage items be exempt from this levy. This is an example of heritage listing providing a financial bonus rather than cost to property owners.

It is the responsibility of local councils to balance the needs of the community with individual needs. Mosman's heritage is very highly valued by the community. Therefore Council considers that it is appropriate to pursue outcomes which will benefit the community rather than individual property owners. Mosman Council is concerned that the recommendations of the draft Report will benefit individual property owners over the general community.

Draft Finding 7.1: The three-tier legislative framework is an appropriate model for government involvement in heritage conservation. It delineates the responsibility of each level of government for historic heritage conservation and, consistent with the principle of subsidiarity, aligns the scale of heritage significance with its level of government decision-making.

Comment: Council agrees that the current three-tier system is an appropriate model for government management of heritage conservation. Mosman Council, as a local government body, is in the best position to adequately assess and manage heritage items of local significance. Local government is able to more accurately reflect the sentiments of the local community regarding heritage and conservation.

Council considers this draft finding to be contradictory to draft Finding 4.1 which questions the need for consensus from a State heritage agency. Council considers that referrals for items of State significance are necessary and in line with the three-tier framework system for government heritage management.

Draft Finding 7.2: Negotiated agreements are desirable as they facilitate voluntary conservation and ensure the costs of conservation are considered alongside the community benefits.

Comment: Council questions the validity of draft Finding 7.2 due to lack of evidence. The draft Finding appears to be based on one case study of the Opera House, a property of national, and potentially global, heritage significance. Council does not see any similarities between the heritage values of the Opera House and an item of local heritage significance. Mosman Council does not support draft Finding 7.2 as it

considers negotiated conservation agreements to be inappropriate for local heritage management.

Mosman Council has specific concerns regarding the lack of consideration the draft Report has given to the financial costs of negotiated conservation agreements. As noted previously in this submission Mosman has 488 individually listed heritage items, over half in private ownership. Under the key recommendation of the draft Report Council would be required to individually negotiate contracts for the majority of heritage items. The time and resources needed to negotiate the contracts would be prohibitive for Mosman Council. Additional staff would be necessary to undertake this work. Without additional funding Council would not be able to employ staff to undertake this work. Mosman considers that many councils would be financially unable to undertake this additional work.

The draft Report notes that negotiated conservation agreements are designed to ensure that the costs of conservation are considered. Under the agreements financial assistance is potentially offered to owners of heritage items to offset any additional costs. The cost of heritage is very difficult to calculate. Potential costs vary for each individual property. Councils would have to ascertain whether costs imposed on heritage listed properties vary from non-heritage properties. Mosman Council believes that in the majority of cases heritage listing does not impose additional costs. As indicated earlier in this submission heritage property owners have access to a heritage consultant free of charge. Council also runs a heritage assistance fund which provides funding for conservation works. These programs have been effective in reducing any additional costs imposed through heritage listing. Mosman Council is not in a financial position to offer additional financial assistance to heritage property owners without the provision of external funding.

Draft Finding 7.3: The current arrangements for (i) agreed management plans and (ii) heritage protection on the sale of property provide a sound basis for the conservation of Australian Government-owned heritage properties. However, clearly identifying expenditure on conservation would improve accountability and provide more incentives for government agencies to better conserve listed heritage places.

Comment: As noted previously total expenditure on heritage by Mosman Council is not listed as a separate budget item. Mosman Council would support a system where expenditure on heritage items was clearly defined. However, as noted earlier in this submission, the range of heritage items within the locality would make exact amounts difficult to ascertain. Council does not agree that such a system would be an incentive for government agencies to better conserve listed heritage properties. Councils have a responsibility for management of their local government areas. Competing needs must be balanced within often limited budgets. Mosman Council considers that it currently efficiently manages its heritage listed properties and that this would not be improved through specific financial reporting.

Draft Finding 7.4: State, Territory and local governments do not have a systematic framework for the management of, and expenditure on, the conservation of government-owned heritage places. Management of government-owned places could be improved through the introduction of conservation management plans and transparent reporting of expenditure on conservation.

Comment: As stated in the comment to draft Recommendation 7.5 Council does not consider that the development of conservation management plans is appropriate for all government-owned heritage items. Conservation management plans are costly to prepare. Mosman recently applied for funding for the preparation of a conservation

management plan for a Council owned heritage item of State significance. Without the funding, Council will be unable to proceed with the preparation of the conservation management plan.

Draft Finding 7.5: *At the State, Territory and local government levels, there is an over-reliance on prescriptive regulation to achieve heritage conservation objectives. In many cases, this has led to poor outcomes, through for example, inappropriate listing imposing unwarranted costs (such as denial of redevelopment opportunity) and possibly perverse effects (such as destruction to avoid maintenance costs).*

Comment: Mosman's planning controls apply to all properties regardless of their heritage status. Planning regulations are used within Mosman to ensure that the area's environment and character are not adversely affected by development. Council does not consider that planning regulations are used excessively or exclusively to achieve heritage objectives. Council considers Draft Finding 7.5 to be inconsistent with Draft Finding 5.1 which declares that the current heritage system leads to inconsistent outcomes. This is contrary to Draft Finding 7.5 which declares that councils are over reliant on prescriptive regulations.

Regulations controlling heritage items may be more flexible than for non-heritage properties. For example Clause 38 of Mosman Local Environmental Plan 1998 states:

(1) The Council may consent to the use, for any purpose, of a building that is a heritage item or of the land on which any such building is erected (including its conversion to multiple dwellings), even though the use would otherwise be prohibited by this plan, if it is satisfied that:

(a) the proposed use would not adversely affect the heritage significance of the item or heritage conservation area, and

(b) the conservation of the building depends on the granting of the consent, and

(c) the amenity of the locality would not be adversely affected by the proposed use of the building or land

(2) When considering an application for consent to erect a building on land on which a heritage item is located, the Council may, for the purpose of determining:

(a) the floorspace ratio, and

(b) the number of parking spaces to be provided on the site,

exclude the floorspace of the building from its calculation of the floorspace of the buildings erected on the land, but only if it is satisfied that:

(c) the exclusion would not result in development that would adversely affect the heritage significance of the heritage item, and

(d) the conservation of the heritage item depends upon the exclusion.

Such exceptions and flexibility are not afforded to non-heritage structures. Clause 38 allows for the redevelopment of heritage items within reason. Clause 38(1) is

consistent with heritage Model Provisions developed for local governments for inclusion within their LEPs.

Mosman's planning controls do not limit development opportunities for heritage listed properties. Restrictions on development are more likely to be due to zoning regulations rather than heritage restrictions. Mosman's heritage management system does not fit into the description contained within Draft Finding 7.5. Council is concerned that this Draft Finding does not apply to all government agencies and therefore cannot be considered to be a valid draft finding.

Draft Finding 7.5 states that poor outcomes such as inappropriate listings imposing unwarranted costs have been the result of an over-reliance on prescriptive regulations. However the draft Report fails to provide any specific examples of this occurring. Council does not see how over-reliance on prescriptive regulation would lead to inappropriate listings. Rather Council would argue that local councils must adhere to guidelines established by the New South Wales Heritage Office in order to list a property. This involves undertaking a detailed heritage assessment. It is not considered that under the current system inappropriate listings are common at the local government level.

The Draft Finding also notes that another potential impact of inappropriate listing is the possibility of perverse effects on heritage items. There have been only two examples of deliberate destruction of a heritage item within Mosman in the past 10 years. This is a very small percentage of the 488 heritage listed properties within Mosman. Deliberate destruction of local heritage items is not a common occurrence even within Mosman which has very high average land values.

Draft Finding 7.6: *The current listing process does not provide a mechanism for rigorously identifying the costs and benefits of conserving a place. Typically, the assessment process does not prioritise places according to heritage significance or conservation need, and little or no account is taken of the added costs of conservation when the decision is made to list a place and impose regulatory controls. As a consequence:*

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

Comment: Heritage listing involves an exhaustive process of heritage assessment and community consultation. Affected owners have the right to make representations to Council to argue against heritage listing. Owners are able to oppose listing on the ground of undue financial hardship. As noted in the comment to Draft Finding 6.1 proposed heritage items from the Mosman Heritage Review 1996 were removed when undue financial hardship was proven. Mosman Council does not agree that there is a tendency to over list heritage properties. Rather, Council would argue that the complexity of the consultation process and expense of detailed heritage assessment encourages selective listing.

The argument that heritage listing leads to an erosion of property rights and/or loss of value has not been proven in the draft Report. Council does not agree that heritage listing results in a loss of property rights and/or loss of property value. Planning regulations are not designed to deny property owners development rights. Rather they are designed to ensure development is consistent with the wishes of the community. Council does not agree that the effect of planning regulations on

heritage items can be viewed in isolation from the effect on non-heritage properties. Such statements unfairly imply that restrictions on heritage items are vastly different to non-heritage items. It is the perpetuation of such notions that causes unnecessary concern amongst heritage property owners. It is important that heritage be seen as an integral part of the planning process, rather than an additional restriction for certain owners.

Council does not agree with the assertion that heritage listing leads to a loss of property value. The draft Report does not argue conclusively that property values are reduced through heritage listing. It is more likely that property values will be affected by zoning controls which stipulate development potential. Council would argue that heritage properties gain value from their aesthetic appeal and historical association with famous people or events. Heritage conservation areas are especially valued for their streetscape appeal and established character. Whilst it could be argued that this is the case in Mosman due to a high quality built environment and premium location, it also gives weight to the argument that you cannot generalise across the nation about local issues.

Draft Finding 7.7: The assistance available to private owners of heritage properties is poorly targeted, and in some cases, falls well short of the additional costs of obligations imposed on owners as a result of listing. In these circumstances, property owners will not have an incentive to actively conserve heritage values.

Comment: Council runs an effective and wide reaching heritage management program. All property owners are able to meet with Council's Heritage Advisor, a conservation architect of other 30 years experience, free of charge. Council also runs a Local Heritage Assistance Fund to provide financial assistance for conservation works. Council does not consider these services to be poorly targeted or inadequate.

Council expenditure on heritage includes;

- Local Heritage Assistance Fund - \$20,000 per anum (2002-2006)
\$15,000 per anum (1999-2001)
\$4,000 in 1998
- Heritage Advisor - \$20,000 per anum (heavily discounted rate equivalent to approximately \$80,000 per anum)
- Maintenance and works on Council owned heritage properties - \$22,000 per year (approximate for structural items)
- Additional Heritage Studies - \$30,000

The draft Report fails to acknowledge that some property owners purchase their properties specifically for their heritage values. For example heritage conservation areas are valued for their streetscape values. Many owners proudly maintain the heritage values of their properties and choose to embellish them with period details and features.

Costs involved in maintaining a property exist regardless of heritage value. The draft Report needs to acknowledge that maintenance costs are, and should remain, principally the responsibility of the property owner. Council considers that a tax incentive scheme for private heritage property owners would be a more effective way to encourage heritage conservation. If the highest quality items in private ownership were liable for taxation relief there would be an incentive for owners (in the manner espoused in this report) to self select.

Draft Finding 7.8: *At the local government level, the management of heritage conservation under local planning schemes is not working well, primarily because of:*

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

Comment: Council does not agree with the claim in Draft Finding 7.8 that heritage management systems at the local level are not working well. The list of reasons given for the alleged failure of the heritage system at the local level do not apply to Mosman Council. Draft Finding 7.8 provides some very broad comments regarding heritage controls across Australia. Council does not consider that these general findings can accurately represent the role of heritage conservation at the local level. As noted elsewhere in this submission it is not appropriate or accurate to generalise across governments. Mosman is concerned that it is not the only council which fails to be represented within the Report's draft findings. The failure of the draft Report to thoroughly examine heritage management at any level of government in detail means that it cannot adequately assess or make comment on heritage management at the local level.

Draft Finding 8.1: *Conservation of historic heritage on privately owned heritage property could be more effectively achieved through negotiated conservation agreements between governments and owners.*

Comment: The draft Report provides no evidence to support the claims made in Draft Finding 8.1. It is possible that negotiated conservation agreement may work in some cases. However Mosman Council cannot agree with this statement without more evidence. As previously noted the presence of a negotiated conservation agreement for the Opera House does not provide a useful comparisons.