

## **Submission to the Productivity Commission into the Conservation of Australia's Heritage Places**

This submission relates to the listing of an entire town, Braidwood NSW and its setting on the NSW State Heritage Register. Our family settled in Braidwood in 1946 and the family appreciates the heritage aspect of the town. I still have family living there, in a house that is listed with the local Palerang Council as a house of "heritage significance".

It appears the concept and process for listing an entire town and its setting by the NSW Heritage Office is significantly flawed. This is due to the rushed and ad hoc manner in which the NSW Heritage *Office* has *approached* the listing of Braidwood and its setting.

In mid-March 2005 the Braidwood community was first notified that the NSW Heritage *Office* was considering listing Braidwood and its setting on the State Heritage Register. The NSW Heritage Office set up and participated in four public information sessions, limited to twenty five people per session, scheduled to last one hour including half an hour for questions (see Attachment 1, Meeting Agenda). This was the sole consultation process provided for a listing that is the first of its type in Australia and to be in perpetuity. The meetings were run from 14 to 16 April 2005 - over two years after the Heritage Office was first approached regarding listing Braidwood and its setting on the State Heritage Register - and one month before the 16 May 2005 closing date for submissions regarding listing to Heritage Office.

So far the process has seriously affected the social fabric of the Braidwood community. The division in the town over heritage has caused rift and acrimony amongst families, friends, and neighbours with strong feeling, lack of information, misinformation and real concern regarding economic security fuelling the situation. It has been the cause of publicly malicious and harmful comments in the community and local paper and prompted the formation of a concerned group that comprises almost 50% of the town's adult population. This group is known as Save Braidwood Inc.

At time of writing the Heritage Office is proceeding with the listing proposal with closure for submissions from the community now being 7 October 2005, even though the community has not yet seen the new Local Environment Plan or the new Development Control Plan written largely by the Heritage Office. There is concern about the land included in curtilage around the town. The community has been provided with minimal information about this. The attached (Attachment Two) is the only information the Heritage Office has supplied. We note that because of the pressure of the Save Braidwood group the Heritage Office is only now planning to hold a meeting for affected landholders.

There is still enormous concern and disquiet within the local community regarding this proposal. It has huge ramifications for the town, yet it is seemingly continuing to proceed without adequate information or due consultation, and again within a very rushed and limited time-frame, all set by the Heritage Office.

There are still many questions which remain unanswered, some of which are listed below.

**Unanswered questions:**

- What is the rationale for the whole town and its setting being listed when 75% of houses and buildings within the town are not of heritage significance?
- Why is an independent impact study not mandatory before the Heritage Office is able to nominate a town (like Braidwood) and its settings for listing on the NSW Heritage Register?
- What opportunity do residents have to evaluate the NSW Heritage Office's nomination? By *this* we mean the opportunity to formulate benchmarks for forging agreement through the process of information exchange, consultation, and negotiation, rather than the approach of "top down" information talks that the NSW Heritage Office took in April 2005
- Where is the opportunity for negotiators and community representatives to be prepared for and involved in public negotiations in relation to the listing of a town and its setting?
- What is the starting point for the development of community-based policies and regulations relating to a whole town and its setting in such a heritage listing? In Braidwood the Heritage Office has sought to implement what is largely its own 90 page Development Control Plan.
- Where is the opportunity to obtain feedback on principles and policy development from the NSW Heritage Office who are proponents of government responsibility principles?
- If there is a significant drop in values of rural land adjoining the town in the proposed curtilage what are the ramifications for such land that is mortgaged? What are the insurance ramifications for either houses and/or land if placed on the State Heritage Register? Is it likely that premiums will rise?
- What role will the local Council have, that is the people elected by the local residents, if the listing goes ahead? Will listing mean the community is effectively administered by the NSW Heritage Office which does not appear to have the holistic expertise needed in such a situation?
- What appeal mechanisms will residents have, if any?

The four major factors surrounding the listing of Braidwood and its Setting on the NSW State Heritage Register that most concern us are:

1. **The listing of the town and its setting is "in perpetuity".**  
This decision has the potential to impact on future generations in social and economic ways that due time and consideration are not being given to in this rushed process thus far.
2. **The listing of a town and its setting has not been done before in Australia.**  
After much lobbying from the community, Palerang Council passed a motion that there be an independent Impact Study done on the effects of the proposed listing before debate on the formal adoption of the Development Control Plan envisaged by NSW Heritage Office. As this proposal is a first it is critical that the results of the Impact Study do not rely heavily on other models that do not relate specifically to our situation. Never before have 75% of the buildings to be listed in an item been of no heritage value as individual items.
3. **No consideration is being given to alternative models for protecting the heritage of our town whilst allowing it to grow and prosper in challenging *times* for rural communities.**  
At present we have a Heritage Office developed and driven model and DCP. Unlike in Victoria there has been no public consultation with the public of NSW and professionals in the field on the development of a model that will meet the needs of all areas of the community. As this listing will, as suggested by Mr Michael Collins (Chair of the NSW Heritage Council), establish a process for listing other towns, we believe it deserves adequate time and serious consideration to ensure we have it right.
4. **The Heritage Act requires that the listing of an *item* not proceed if it could be shown that such a listing could create economic hardship.** Economic hardship in Braidwood may well be the result of the implementation of the Local Environment Plan and Development Control Plan - neither of which are available for public comment. If Braidwood is listed as proposed before these two documents are available it will not be possible to argue economic hardship in the invited submissions to the Heritage Office due by 07 October, nor can they be given due regard in the Impact Study. The Heritage Office in its haste to list Braidwood and its Setting is denying the residents of Braidwood and surroundings the democratic right to the opportunity to establish the true economic impact this proposal may have on the town and area.

**The current relative roles and contributions to the conservation of historic heritage places of the commonwealth and the state and territory governments, heritage owners (private, corporate and government), community groups and any other relevant stakeholders.**

- There appears to be no "court of appeal" or its equivalent if the state heritage office decides to list a town. There appears to be no organisation, no umpire, and no arbitration opportunity to air concerns over the proposal put by the heritage office.
- There appears to have been no concerted effort or development of a plan or process to list an entire town by the Federal, State or Territory governments.
- There appears to have been no process involving the people of NSW in identifying the NSW town and its setting that is most worthy of preservation. Is there a list somewhere? Which town is next on the list?
- The town of Braidwood and its setting has been treated as one item, something it is clearly not when it comes to looking at its future viability, and something it will clearly not be when residents begin applying for grant assistance.
- There appears to be no compulsion on the part of the State heritage office to enter into extensive community consultation at a level appropriate for the proposal to list an entire town and its setting
- The NSW Heritage Office were directed by the Deputy Premier of NSW in March 2003 to consult with the people of Braidwood about the possibility of listing Braidwood and its setting, and 25 months later, and one month before the close of submissions, in April 2005 the NSW Heritage Office called four "Public Information Sessions", each limited to 25 people.
- The unwillingness of the State heritage office to listen to the people's concerns and no other government organisation to turn to for adjudication or arbitration has meant a very stressful time for the people of Braidwood as they have struggled to come to grips with the listing process and seek time and support to ensure the decision is based on sound knowledge of all the pressures on a small country town, social, economic, cultural and environmental, and not solely based on heritage issues/values.
- The State heritage office seems unable to grasp that unless the town remains economically and socially viable the very fabric they wish to preserve will disintegrate.
- On the one hand we are told that the heritage office skills and abilities are limited to the valuation of heritage items and that the consideration of social and economic issues is outside their brief, but at the same time we are told by these

same people, self-confessed experts in only one area, that we will be fine socially and economically.

- There is a need, when a whole town and its setting are considered, for an accepted policy and process to be put in place at both the federal and state levels to ensure that experts from many fields relating to the viability of small country towns are involved in ensuring the continued viability of the town involved.
- By definition, a small country town will not have the facilities, the know-how nor the resources in time, people, infrastructure or money to ensure it is fairly treated. If it is important for the *people of* Australia to preserve a small country town and its setting then it is surely equally as important that their continued social and economic well-being are carefully considered and preserved. This may require ongoing government funding to permit the townspeople to live with the limitations placed upon them by the form of the heritage listing, or it may require modification of the type or way in which a listing is undertaken. Either way it should warrant extensive public consultation over a significant period of time and the consideration of a number of ways of preserving both the built heritage of the town and the social and economic well-being of the community to ensure the satisfaction of both the community and the Heritage Office.
- This raises the question of how much is enough? As more and more of our heritage is listed it becomes less and less rare and hence less and less valuable. As it becomes less and less valuable it also becomes more and more expensive to retain. What level of funding is the government, at Federal, State and Territory level prepared to maintain, and to increase, to pay for the spiralling cost of the yearly additions to the nation's heritage registers?
- Is there pressure on the state heritage offices to continue to find heritage items to list each year to justify their existence, or is there a master plan that identifies all sites that are worthy of preservation and we are just steadily working through them and by carefully looking at the rate of listing we can forecast the end of the process and so identify the ongoing resource requirements needed to maintain that collection of heritage items?
- Does such a list need to be prepared so that a complete picture of the state of our nations heritage can be compiled, and appropriate plans set in place with full knowledge of what our heritage is worth, and what *it* costs?

*Are the roles and responsibilities of each level of government clear, appropriate and mutually supportive?*

While the negotiation of agreements is commonly touted as the way forward, for example between indigenous communities, land holders, and mining companies *in* relation to

native title, we are concerned that given the absence of effective formal rights such negotiations often take place from positions of unequal power.

In June 2005 the NSW Heritage Office sought to have the relevant NSW Minister, Diane Beamer, place an Interim Heritage Order on the town and its setting. This followed the Palerang Council meeting in which two development applications were approved by Council - approved after much involvement and discussion with NSW Heritage Office and compromise on the part of the applicants. It is hard to avoid the conclusion that if the Heritage Office does not approve of a legitimate decision, taken by the elected representatives of a local community looking after its own best interests, the Heritage Office will (attempt to) intervene and override the local community, regardless of the feelings and needs of that local community. In the case of Braidwood one of the development applications is for a Senior Living development (SEPP) or aged-care facility, an amenity that the town currently does not have but desperately needs, (The proposed Interim Heritage Order (IHO) was not gazetted after more than 400 faxes were sent from this small community to the Minister's Office in the two days following the mooted IHO.)

The situation described here raises two issues of vital concern regarding the role of heritage organizations -

- (i) the role of local government and the right of local communities to have their democratically elected representatives make decisions that are rightfully made at a community level. Surely such decisions, (provided they fulfill all requirements of relevant Local Government Acts, as these two applications did), should be able to be made without interference and over-riding by another government department?
- (ii) The lack of an appeal process or any independent arbitration to decisions made by the Heritage Office. There appears to be no "court of appeal" or its equivalent if the Heritage Office makes a listing decision. There appears to be no organisation and no arbitration opportunity to air concerns or grievances over proposals put by the heritage office. A major concern is this lack of appeal if indeed the Heritage Office becomes the de facto sole consent authority for all building/development applications in the town if listed on the State Heritage Register. This apprehension has been exacerbated by the unwillingness of the State Heritage Office to listen to people's concerns so far.

With these considerations in mind, it is clear agreement-making processes need to be established by the NSW Heritage Office. Furthermore such a nomination must include principles of sustainable development and government responsibility.

The principles of equality requires that governments ensure that the level of protection extended to free-hold land under a heritage listing is the same as that enjoyed by any other land holder in relation to their property.

It is clear to me that the NSW Heritage Office needs to go back "to the drawing board" and develop clear and transparent principles and a policy that enables inclusive and

genuine involvement of all concerned parties before it embarks on such an enormous undertaking as the listing of a town and its setting in perpetuity. In particular all factors involved in such a listing, such as social, economic, sustainability, cultural, and environmental, must be evaluated, not just a very narrow heritage perspective. In the case of Braidwood such a listing has enormous unforeseeable ramifications in perpetuity for a small rather impoverished community. Let us hasten slowly.

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11 August 2005

