



**NSW GOVERNMENT RESPONSE TO THE  
PRODUCTIVITY COMMISSION INQUIRY  
INTO THE POLICY FRAMEWORK AND  
INCENTIVES OF HISTORIC HERITAGE**

**February 2006**

## **Introduction**

The NSW Government recognises its role in leading the competent protection, care, management and interpretation of the cultural heritage of NSW.

The NSW Government welcomes the opportunity to respond to the Productivity Commission's Draft Report.

The NSW Government makes the following comments in response to the Productivity Commission's draft recommendations.

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### **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.

This recommendation is supported.

The NSW Government collects, maintains and reports on the identification, conservation and promotion of heritage in the State through the NSW Heritage Office Annual Report, and the *State of the Environment Report*.

### **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.

This recommendation is supported.

The NSW Government supports the conversion of the Register of the National Estate into a national data base of heritage places for use in the development of tourism, education and research products.

### **Draft recommendation 7.3**

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

This recommendation is not supported.

The National Trust reports to the NSW Minister for Planning. Existing NSW legislation provides a clear statement of the National Trust activities and objectives, and recognition of heritage in NSW. The legislation governing the operations of the National Trust does not confer statutory status on any National Trust lists and is not the source of any confusion between National Trust listing and State Heritage Register listing.

**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.

This recommendation is supported in principle.

As outlined in the NSW Government's first submission to the Inquiry, transparent management and annual reporting of heritage commitments and achievements is an ongoing obligation for NSW agencies under s. 170 of the *Heritage Act 1977*. NSW Government agencies are required to create a Heritage and Conservation Register of items listed at the state or local level. A management plan is encouraged for items listed on the State Heritage Register and a statement is made in the annual report of the condition of heritage items. Conservation management plans are required where disposal is proposed.

A reporting system identifying actual heritage expenditure has benefits in promoting areas of future review, and is accepted as sound business practice. Implementation would need to reinforce, rather than duplicate or compete with the existing asset management framework in NSW.

However, clear identification of costs associated with state government conservation work for the purposes of transparent reporting of all heritage activity requires detailed consideration and definition. Conservation is the normal care and management of a heritage place taking account of significance and heritage values. It includes protection, preservation, repair, restoration, adaptation and aspects of reconstruction. It would be extremely difficult to separate the specific costs of heritage works from normal recurrent maintenance or capital works.

**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.

**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 remains on the list only while an agreement is in force.

### **Draft recommendation 9.3**

State governments should require their local governments to add non-government owned properties to a local heritage conservation list only after a conservation agreement with the owner has been entered into and remains in force.

These recommendations are not supported.

The NSW Government maintains that the Productivity Commission has overestimated the scale and scope of the problems in the current system and that the use of negotiated conservation agreements would result in an inefficient, ineffective and inequitable system.

### **Overestimation of the scale and scope of the current system**

The number of properties affected by heritage listing in NSW is small. NSW has approximately 3.5 million parcels of land. Only 1,500 places, or 0.03% of the total parcels in NSW, are listed on the State Heritage Register (SHR) and 26,000 individual places, or 0.7% of total parcels, are listed locally. Of the 1,500 places listed on the SHR, 39 per cent (or 588 places) are in the private ownership of corporations, individuals and religious organisations.

Listing by State and local governments in NSW is subject to detailed notification and consultation processes. Listing at the State Government level generally does not proceed in the face of owner opposition as demonstrated in the table below.

NSW Heritage listing statistics (2002-03 to 2004-05)

	2003	2004	2005
Places listed on the State Heritage Register *	44 [8]	32 [10]	28 [14]
Places not recommended for listing ♦	7 [7]	20 [19]	35 [35]
Places listed where listing is opposed♥	1	3	3

\* = total number of places, [places in private ownership]

♦ = total number of places rejected [places rejected as not state significant]

♥ = HO negotiates with all owners before nomination considered by HC, virtually all owner issues resolved at that stage.

Local heritage lists in NSW are identified from local heritage studies in 80 per cent of cases and all include consultation with owners. Economic hardship is a frequent rationale for a listing not to proceed at the local level.

Heritage listing does not preclude development. Once a property is heritage listed, the listing elevates heritage as one of a number of heads of consideration for any development activity. Owners of State heritage listed items receive standard exemptions from development control at the time of listing.

The NSW Heritage Council and the NSW Heritage Office encourage adaptive reuse as an effective strategy to protect and sustain a heritage item.

Negotiations with owners and developers focus on how development can achieve and enhance conservation outcomes.

Since the creation of the State Heritage Register in 1999, a negligible number of development applications have been refused on heritage grounds (see Table below).

	2002-03	2003-04	2004-05
NSW	0.0% 0 of 224	1.8% 4 of 226	0.9% 2 of 229

No Heritage Council decisions have been appealed on heritage grounds since 1999. This demonstrates a high level of satisfaction with the process and its outcomes.

The Productivity Commission's local government survey revealed that councils in NSW in 2004-05 refused an average of only 2.8 per cent of development applications for historic heritage places on heritage grounds. An average of 10.4 per cent of refused applications was appealed, and subsequently 4.7 per cent of these appeals were upheld. In the same survey, 66.2 per cent of NSW local councils reported no rejection of development applications on heritage grounds.

A scan of the Class One appeals considered by the NSW Land and Environment Court (where appeals against local government decisions are heard) between 2000 and 2004 shows only 1.5 per cent of appeals cited heritage as one of the key issues. Character was more frequently cited as a key issue. This counters the view that local government disguises concerns for character and streetscape behind a stated concern for heritage.

Demolition as a consequence of listing is infrequent. A survey of 22 local government areas in NSW, including metropolitan, regional and rural areas, reports loss of 51 heritage items or 1.1 per cent of listed items out of a total 5,357 over a five year period.

Any loss of heritage is of concern. On closer examination, the majority of damage occurs to properties that are not in use. Lack of occupancy poses a far greater threat than premeditated obstruction of listing.

### **Implications of implementing negotiated conservation agreements**

The introduction of negotiated conservation agreements would result in poor heritage outcomes, including:

- reduced efficiency by increasing transaction costs for government and private owners;
- reduced effectiveness by significantly reducing the quantum and certainty of heritage outcomes;

- creation of inequity by restricting access to government resources (such as conservation grants) to those property owners who have been able to enter into negotiated agreements;
- a limited number of new listings – with no new resources there will be little scope for listing agreements to be formed or incentives to encourage owners to ‘opt into the system’;
- a decrease in the number of existing listings – as owners take up the option to ‘opt out’ on the basis of a development application or sale of property;
- a decline in the level of certainty for the community and owners as timeframes for heritage assessment slow down and existing lists are eroded;
- little encouragement of economic development – opportunities to generate economic development through heritage regeneration will be lost; and
- uncertainty of investment – because voluntary agreements may be limited in duration there is a real risk to long-term management planning with associated investment from both public and private sectors; and

The NSW Government notes that the Productivity Commission has not addressed how the negotiation of conservation agreements by state and local governments with private property owners will be funded.

If the Australian Government provided resources to state and local governments for the introduction of negotiated conservation agreements, any funding would need to adequately provide for:

- legal costs for governments and the property owners – NSW experience with negotiation processes suggests that such legal costs could, on average, equal about \$5,000 for each party, a total of \$10,000;
- costs for specialist heritage reports which vary dramatically with the complexity of each place’s heritage characteristics; and
- costs associated with government officers’ time – while this may generally be in the order of \$5,000 per agreement, more complex heritage issues may result in significantly higher costs.

Even if the negotiation of conservation agreements were to be fully funded, the Productivity Commission has not established whether there is any interest from private property owners to enter into such agreements.

#### **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.

This recommendation is not supported.

NSW experience shows that wide-scale compulsory acquisition leads to poor heritage outcomes.

From 1919, local government legislation in NSW allowed for protection of significant items and required the local government authority to acquire the identified item. This was replicated in the County of Cumberland Planning Scheme introduced as an amendment to the *Local Government Act* in 1951.

Between 1951 and 1975, protection of heritage items in NSW was contingent on acquisition of the property. The result of linking listing with compulsory acquisition was that few items were protected. In 1961, ten years after the scheme was introduced, only 5 buildings had been declared by the Governor. Over the next fourteen years, only a further 11 buildings were added to the list of declared properties, making a total of 16 buildings protected in the 24 year period.

In the current climate, a compulsory acquisition program is not supported as it is inefficient, ineffective and inequitable and:

- requires and locks up significant capital resources over long periods;
- raises expectations for further resources for management, maintenance and access;
- limits the number of items conserved as the conservation cost to government is so high; and
- limits the number of communities that benefit from heritage investment as available capital is invested in a very small number of projects.

Instead of introducing compulsory acquisition, a comprehensive package of incentives is required to address cost-effective conservation of places of local significance. Access to an Australian Government revolving fund as recommended to the Environment Protection and Heritage Council in 2004–05 would be particularly useful to local government that require resources to conserve locally significant items.

**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.

**Draft recommendation 9.8**

State and Territory governments should remove the identification and management of heritage, zones, precincts or similar areas from their heritage conservation legislation and regulations, leaving these matters to local government planning schemes.

These recommendations are not supported.

The NSW Government does not support the removal of heritage as one of the heads of consideration for a consent authority when determining a development application. Section 79C of the *Environmental Planning and Assessment Act 1979* states that in determining a development application the consent authority is to take into account (apart from other things) the likely impacts of that development on both the natural and built environment, the social and economic impacts on the locality, the suitability of the site for the development and the public interest. There is no justification for the exclusion of heritage from these heads of consideration.

As part of the recent reforms to the planning system, the NSW Government has introduced a standard local environmental plan (LEP), which all councils will be required to use when preparing new LEPs for their areas. The introduction of standardised definitions and provisions (including those for heritage issues) will remove any inconsistency or uncertainty from different local government areas.

If implemented, Recommendation 9.7 would create inequity in the planning system by limiting owners of listed items to only making changes appropriate to the heritage significance of the property, while their neighbours would be able to make changes that may have a significant detrimental impact on a heritage place and even destroy its significance. On the premise that heritage is valued by the community and should be regulated, to regulate only the item and not the cause of potential damage does not result in a more effective system.

The NSW Government does not support the removal of heritage zones of state significance. Without such heritage zoning at a state level, iconic places such as Walsh Bay, the Rocks and Millers Point would never have been conserved and their heritage significance would be eroded over time once the heritage zoning was removed.



## Supplementary comments

### *Incentives for private owners*

Section 8.3 (page 182) of the Commission's Draft Report usefully presents seven classifications of heritage items and discussion of the financial impact of listing on their respective owners.

The NSW Government notes that the Productivity Commission has not quantified the number of properties in each of these groups. There is no analysis of the extent of additional costs, whether existing mechanisms are sufficient to the address costs or consideration of other mechanisms that could be devised.

The NSW Government encourages the Productivity Commission to undertake further analysis of the actual costs and benefits to owners of these types of items to address:

- the number of items within each classification;
- the extent or range of costs associated with each item;
- whether existing incentives and management tools are commensurate with costs; and
- whether additional targeted incentives and management tools would be beneficial.

The NSW Government also recommends that the Australian Government establish a national built heritage investment scheme to assist private owners of historic heritage places. This would complement the Australian Government's \$3 billion Natural Heritage Trust Scheme. The Natural Heritage Trust Scheme provides resources to the individuals, community groups and the States and Territories on the basis of accredited, integrated natural resource management plans.

This analysis and funding will provide practical guidance and support to State governments for the development of incentives to address real cost imposts.

### *Australian Government management*

The Productivity Commission's draft Report recognises that the current three-tier framework provides a sound basis for government involvement in the identification and conservation of heritage places.

Increased coordination across all jurisdictions would reduce duplication and deliver a rigorous, robust and consistent environment for heritage conservation. An integrated national heritage strategy should be developed that addresses:

- agreed roles and responsibilities between the Australian Government and State and Territory Governments on policy issues;
- nationally agreed listing criteria and thresholds for all three levels of government;
- national guidelines for the conservation, development and management of heritage places;
- the framework for the collection of data and the development of reliable estimates of the economic impact of heritage tourism activities, at both national and regional levels;
- the establishment of nationally agreed measures for state of environment reporting on historic heritage that can be used by all levels of government and resources to monitor these measures; and
- a comprehensive and sustainable incentives program across all jurisdictions in accordance with the recommendation in *Making Heritage Happen*.

The preparation and implementation of this strategy should be fully resourced by the Australian Government.

Current duplication of regulation between national and state heritage listing systems could also be minimised, particularly for public assets such as national parks. A number of public areas within NSW are listed on the World, National and State Heritage Lists, as well as being listed on the s. 170 Heritage and Conservation Register of a NSW State Government agency or covered by national park legislation. These assets are subject to the management and reporting requirements of both jurisdictions and require additional resources without increasing heritage outcomes.

#### *Local government management*

The NSW Government currently provides extensive policy, technical, training and promotional resources to local councils. The NSW Heritage Council provides significant resources to local government to assist in carrying out their heritage responsibilities consistent with the state policy framework and the values of their communities.

Funding is provided to local government to cover:

- the development of heritage studies to ensure informed and appropriately significant listing;
- access to a professional heritage advisor for policy and program work and development assessment; and
- seed and annual funding for a local heritage fund.

Submissions from all States and Territories consistently raised issues with the excessive time and expense required by local government and property owners to achieve satisfactory conservation solutions for local heritage items. A number of submissions highlight that this situation is exacerbated by inconsistencies in process and the shortage of resources, particularly conservation knowledge, expertise, and experience amongst local council staff.

Local councils are seeking leadership, guidance and resources to be able to provide property owners with more timely, sound and consistent heritage advice and assistance.

The NSW Government would welcome the Australian Government as a funding partner for the existing NSW program supporting councils in NSW. Additional resources and training funded by the Australian Government should be provided to improve the management of heritage conservation by local governments.