

# STRATHFIELD COUNCIL

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Scanned copy of  
original submission

22 February 2006

Heritage Inquiry  
Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616

Dear Sir/Madam

**Re: Supplementary Submission on the Productivity Commission's Draft Report on the Conservation of Australia's Historic Heritage Places**

In July 2005, Strathfield Municipal Council lodged a submission to the Productivity Commission on the Conservation of Australia's Historic Heritage Places. The attached supplementary submission addresses recommendations of the Commission's draft report.

Strathfield Council is pleased to note that the Commission appreciates the benefits of our historic heritage places to the wider community. However, Council has concerns with some of the recommendations in the draft report and asks that these be reviewed.

For further enquiries Councils A/Strategic Coordinator, can be contacted on 9748 9975.

Yours faithfully

DAVID BACKHOUSE  
GENERAL MANAGER

SMC119730

## **Supplementary comments on the draft report by the Productivity Commission on the Conservation of Australia's Historic Heritage Places**

We note in particular the following.

### **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

Strathfield Council has a comprehensive maintenance and management program of all Council owned assets, which includes buildings, parks and items. Costs such as a heritage conservation plan are clearly heritage-related. However, it would be difficult to separate heritage-related costs from normal maintenance costs. An essential part of conservation of built heritage items is regular painting, however this is also a normal maintenance requirement. Inclusion of costs of painting or other maintenance work such as re-roofing or cleaning of gutters as a separate heritage-related cost would result in inaccurate reporting and overstate the genuine costs of heritage conservation.

Strathfield Council seeks grant funding, where available, to assist with program expenditure. For instance, the restoration of the heritage listed Coronation Arch at Strathfield South was partially funded by the Federal Government's Centenary Grants Program in 2001. The availability of this funding program allowed the Council to undertake works to stabilise and restore this heritage item.

### **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 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.*

Heritage is a planning issue and statutory heritage listings in NSW are contained in schedules to Local Environmental Plans. Local Government does not have the power to impose statutory heritage listings. Consent rests with the State Government as the Local Environmental Plan requires gazettal in order for a heritage listing to have statutory status.

### *Heritage review and statutory listings*

In NSW, statutory heritage items and conservation areas are listed by local government as schedules to Local Environmental Plans. This is a lengthy process involving a review by heritage professionals and a full public consultation process. The local environmental plan requires decisions by the democratically elected Council. Throughout this process, Council is required to consult with relevant State Government agencies. The plan requires gazettal by the State Government.

Strathfield Council commenced its second heritage review in 2001 with the engagement of experienced heritage consultants. The first heritage review occurred in 1986, which is the basis of most of the current heritage listings in Strathfield Municipality. By the late 1990s, it became obvious that Strathfield's local heritage schedules required review and updating. As a result of this and subsequent reviews, a draft Local Environmental Plan with additional heritage schedules was placed on public exhibition in late 2005. Council endorsed an amended Local Environmental Plan in December 2005, which has been forwarded to the NSW Minister for Planning with a request the plan be gazetted.

This is a brief description of the process that clearly demonstrates that the process is comprehensive and consultative.

The first heritage study of Strathfield (Fox & Associates) was undertaken in 1986-88 by consultants Fox & Associates. This study forms the basis of Strathfield Council's current list of heritage items and conservation areas. Current heritage items and areas are schedules 9 and 10 in the Strathfield Planning Scheme Ordinance. This ordinance has been amended by various Local Environmental Plans. The Local Environmental Plans which relate specifically to heritage include LEP 20 [1987 repealed by LEP 30], LEP 30 [1992], LEP 85 [1999] and LEP 94 [2001].

There have also been small and ad-hoc assessments and reviews over time, usually in response to building and development issues. Due to changes in the built and natural environment, in 1998 Strathfield Council resolved to commence a heritage review, once funding from the NSW Heritage Office was available.

NSW Heritage Office approved funding in 2001 and Council engaged experienced heritage consultants to conduct an updated heritage review. Their brief was to identify additional items and places, which may have heritage significance in the Strathfield Municipality.

Recommendations from the heritage review were considered by Council on 10 August 2004. At this meeting, Council resolved to notify owners that their property had been identified in this Review and to commence a process of consultation with owners. Council also resolved to maintain confidentiality of the draft heritage proposals during the initial consultation phase to allow owners to consider and comment on the draft proposal without potential external pressures.

#### *Private Consultation Stage [August 2004 - March 2005]*

Following the Council resolution of 10 August 2004, owners of properties identified in the heritage review were contacted for comment. This stage of consultation was private and final submissions were taken until 25 March 2005.

The private consultation stage, between Council and owners, was seven months in duration. During this time Council encouraged owners of properties on the proposed heritage listing to forward their comments for consideration by Council.

*Independent Review Assessment [January 2005 - June 2005]*

A second experienced heritage consultant was engaged by Council to assess the recommendations of the prior review and owners letters/submissions lodged during the private submission stage. Council stipulated in the tender process that the consultant should not have had previous involvement with past or current reviews to ensure the process was independently assessed.

All proposed items and conservation areas were reassessed and amended heritage inventories including statement of heritage significance was prepared. Assessment of heritage significance was conducted in accordance with NSW Heritage Office guidelines. The recommendations made for each item considered submissions of property owners.

The elected Council on 7 June 2005 considered the heritage review report entitled 'Assessment of the Strathfield Heritage Review'. Council resolved to prepare a draft local environmental plan to address heritage issues in Strathfield local government area.

Council resolved:

1. That recommendations of the 'Assessment of the Strathfield Heritage Review' report be adopted.
2. That no further action be taken on items and conservation areas not recommended by the review report
3. That items and conservation areas recommended be included in a draft Local Environment Plan and placed on public exhibition.
4. That Local Environment Plan 94 containing 46 & 48 Beresford Road be rescinded.
5. That Council place the draft Heritage Local Environment Plan on Public Exhibition for a period of 28 days in pursuant to the requirements of the EP & A Act 1979.
6. That Council determines the items and conservation areas for heritage listing after the public exhibition process has been finalised.

Draft Strathfield Local Environmental Plan No. 105 was subsequently prepared in accordance with Council's resolution. As part of the preparation of the draft plan the comments of relevant Government Authorities and adjoining Councils was sought in accordance with section 62 of the Environmental Planning and Assessment Act, 1979.

*Draft Local Environment Plan 105 and Public Consultation Process*

Draft Local Environmental Plan 105 was on public exhibition from 11 August 2005 to 9 September 2005. By way of notifying the public of the heritage proposals and the provisions of the draft plan the following actions were taken:

- Advertisements were placed in the Mayoral Columns in the Inner Western Weekly 11 August 2005 and Inner West Courier and Strathfield Scene
- Information Postcards sent to all residences in Strathfield Local Government Area
- Letters to all affected property owners sent 9 August 2005 including copy of 'Heritage Submission Package'
- Public Exhibition Display including Draft LEP, Inventory Reports, Mapping and photographic display at Councils Customer Service Centre and Central Library
- Dedicated Heritage Review section on Councils web site including copy of Draft LEP 105
- Consultative Panel Meetings were held on 17, 20, 24 & 31 August. A total of 24 meetings were held as requested by owners

#### *Council consideration and finalisation of draft LEP 105*

At a meeting of Strathfield Council held on 6 December 2005, the report considering issues raised during the public exhibition was presented. Owners of the affected properties were notified in writing of the report recommendations, which included amendments to the draft LEP, prior to this meeting.

The decision of the Council meeting was to endorse the draft LEP with amendments to the schedule of heritage items and heritage conservation areas. This amended schedule replaces the public exhibition version of draft LEP 105. See attachments for link to this schedule.

The Council resolved to forward the draft Local Environmental Plan 105 to the Department of Planning under section 68[4] of the Environmental Planning and Assessment Act 1979 with a request that the plan be referred to the Minister for Planning for approval and gazettal.

The list of items and places recommended for heritage listing altered as a result of reviews and consideration of issues raised during consultations with owners and the public.

All proposed heritage items and conservation areas have individual heritage inventory sheets, containing clear statements of significance. All owners of affected properties have been provided with copies of heritage inventory sheets. Heritage inventory sheets are also publicly available at the Council customer service centre and libraries. The inventory sheets formed part of the public exhibition of Local Environmental Plan 105.

Public exhibition of the Local Environmental Plan also involved exhibition of the proposed planning controls. These controls are adopted from the NSW Heritage Office 'model provisions'. These matters were taken into consideration before places were included on the heritage list.

The heritage items and conservation areas finally endorsed and included in draft Local Environmental Plan 85 were carefully considered by Council. Each proposed heritage item and conservation area has been subject to two independent heritage reviews. The report to Council on 2 December 2005, following the public exhibition of the LEP, considered a range of issues relating to the heritage listing.

The draft LEP has been forwarded to the Minister for Planning with recommendation that the plan be gazetted. At this point, the implementation of the plan rests with the State Government.

#### *Individual items*

The recommendation to have individual negotiated conservation agreements in force when places are heritage listed is not a workable idea in practice. If one party to the agreement decides they are no longer happy with the agreement and the place can then be removed from the statutory heritage list, then there is little point in negotiating such an agreement. There is also little point in Council's allocating public funds and resources to comprehensive and lengthy heritage reviews and assessment processes and to heritage assistance programs for property owners, if the statutory listing is regularly changed.

Many owners of heritage properties have undertaken restoration and conservation work in the belief that their property will be maintained as a heritage item beyond their ownership and into the future. The potential lack of certainty of statutory heritage listings would discourage property owners undertaking restoration and conservation work as the next owner may not enter into a conservation agreement and opt to demolish or unsympathetically alter the property.

#### *Conservation areas*

Of particular concern is the impact of conservation agreements on heritage conservation areas as opposed to individual heritage items. The significance of a heritage conservation area is based on associations with other properties of significance within the conservation area. If each property in a heritage conservation area requires a conservation agreement, then it is likely an area will have some properties in an agreement and some without. There will be little incentive for owners in conservation areas to enter into agreements, if other properties within the group are not subject to planning controls.

#### *Resource impacts of conservation agreements*

The practicalities of implementing a policy of conservation agreements would require a substantial budget and resource allocations. This would redirect resources and funds away from Council programs, which actively assist owners of heritage properties. At Strathfield Council this would affect heritage assistance programs such as the heritage assistance fund, access to the heritage advisor service, rebates of development application fees and other heritage programs such as awards. Strathfield Council believes that public funds are better directed to assisting owners of statutory listed heritage properties.

In practical terms, Council would need to increase either staff or consultants to negotiate conservation agreements. These additional costs would have an adverse impact on Council's entire budget and other programs.

It is likely that a system would develop where only some items are conserved, where other items which the community may perceive as having greater heritage significance would be not, because agreements can not be made with the owner.

#### Support from all tiers of government

In our previous submission, Strathfield Council argued that heritage conservation requires greater levels of support and financial assistance from all levels of government. Heritage does not neatly divide into local, state and commonwealth jurisdictions or responsibilities as suggested by the report. Many mechanisms for providing assistance to property owners are not within the jurisdiction of local government such as tax relief, land tax rebates and stamp duty reductions. It is the view of Strathfield Council that all tiers of government should be concerned and support heritage conservation. It is disappointing that these issues have not been addressed in the draft report.

#### 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

Heritage listing is one of many potential planning constraints that can affect a property but Councils are not expected to acquire properties affected by other planning issues such as local overland flooding. Planning controls such as zoning, place constraints on the development potential of an individual property. Owners of property in Australia are not compensated for changes to land use zoning nor are owners taxed for obtaining financial gains from zoning changes leading to higher land values.

Heritage is a planning issue and not dissimilar from other planning issues. For instance, is the Productivity Commission suggesting that individual property owners should be compensated because they are unable to building high rise developments on land not zoned for that purpose? Is there a suggestion that a negotiated agreement is required for changes in planning controls such as zoning?

Councils do not compensate property owners when other planning controls are imposed nor do they receive a benefit when planning controls are changed to allow intensified development, which may result in increased land values.

It is not a reasonable expectation of local government to acquire properties for this purpose. It is more important that Councils have programs in place to assist property owners in dealing with any potential constraints.

#### Draft Recommendation 9.5

*Private owners of already listed properties, where the listing occurred after purchase of the property, should be able to apply for a negotiated conservation agreement and for listing to continue only if an agreement is reached.*

#### Comment

As previously noted, the principle of negotiated conservation agreements for local government statutory heritage listings is not workable.

#### **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 above, the principle of negotiated conservation agreements for local government statutory heritage listings is not workable. It is noted that a substantive development application is often the time when Council has the opportunity to negotiate some conservation works or alterations/extensions to be undertaken on a statutory heritage listed property.

#### **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

Council is required to take a variety of matters into consideration in determining planning and development decisions. Heritage is one of a number of planning considerations.

This recommendation does not take into consideration the impact of development in the vicinity of a statutory listed heritage item. These effects can include aesthetic impacts and overshadowing of the heritage item, effects on landscaping associated with the heritage item, potential structural effects, and the diminished importance of the heritage item on a townscape or streetscape. Instead, this provision provides security for owners of heritage properties, whose own property could be devalued or compromised by unsympathetic developments in close proximity. It is important that Council take such issues into consideration in order to minimise the impact on the value and significance of heritage listed properties.

It should be noted that provisions relating to development within the vicinity of a heritage item or heritage conservation area requires consideration of heritage issues. In a practical sense, this does not require a new development to mimic nearby heritage properties but



that the impact on existing heritage items is considered in the design of a new and sympathetic development.

### **Other Comments**

Many of the submissions to the Productivity Commission in regards to this inquiry raised the need for greater assistance to owners of heritage properties. This issue was raised by Strathfield Council in our submission of July 2005. Many of the submissions to the Productivity Commission addressed this issue, which has not been adequately addressed in the recommendations of the draft report.

Heritage assistance programs have proven to be of great benefit in conserving heritage places. In our previous submission, Council provided examples of the benefits of assistance programs for owners but the improvements in streetscapes, particularly in heritage conservation areas in Strathfield Municipality. The major focus on the inquiry should be on ways to provide assistance to owners of heritage properties. This would be a better use of the resources of government at all levels than introducing a complex, expensive and problematic process of mandatory conservation agreements for all statutory heritage listed properties.

Many of the report's recommendations, if implemented, would place enormous financial burdens on local government. In fact, the bulk of responsibility for heritage in Australia would shift to local government without any financial compensation from either State or Federal Government. There seems little consideration by the Productivity Commission how these recommendations would be funded or resourced nor has there been any consideration by the Productivity Commission about the impact and cost of these proposals on local government's entire expenditure and program activities.

We hope that the Productivity Commission will take these comments into consideration before finalising its Report on the Conservation of Australia's Historic Heritage Places.