

PART A - Findings Relating to Local Government

The Draft Report identified 21 Findings including several relating particularly to local government. These '*Findings*' are listed below with an Officer statement in response to each point.

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.

The Heritage Act of Western Australia 1990 mandates that all local government authorities within the State are to have a Municipal Heritage Inventory. However the manner and degree to which the Inventory is managed and utilised is left to the discretion of the responsible local government body. Within Western Australia it would be fair to say that local governments generally take a 'minimalist approach' whereby only a handful of places are listed and protected under Town Planning Schemes. The State Government certainly do have a role in providing detailed standard recommendations to assist in greater consistency for heritage management at a local government level.

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.

Limited guidance is provided by State authorities on how heritage places are to be best managed at a local level. However in regards to assessment and the inclusion of places on a heritage list, Municipal Heritage Inventories are generally compiled by professionals in the fields of architecture, planning, history and heritage and in the most part are assessed based on the principles of the Burra Charter prior to being listed. Given this professional approach, properties on local heritage lists do in fact have a statement of significance. A web search revealed that the City of South Perth, the City of Geraldton and the Town of Vincent all contain a statement of significance for each place on their respective local lists which appears on its electronic listings. Furthermore the Management Categories that are allocated to the properties listed in the three municipalities mentioned above offer guidance to the process of decision making on developments to these properties based on the statements of significance.

3. 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.

It is general practice that in the process of compiling and/or reviewing a Municipal Heritage Inventory a survey of the local area is conducted. The very nature of a survey means that not all places that '*may have cultural heritage significance*' will be identified. On occasions the situation will arise whereby in the event of a development application it is revealed that a place does have cultural heritage significance to the local community and thus demands the necessary regulatory controls. In such scenarios the Heritage Assessment that is conducted concurrently with the assessment

of the development application will guide the development appropriate to the subject place.

4. Many property owners do not fully understand the effect that heritage listings has on their property. This is not simply a reflection of a lack of awareness by owners of the implications of listing, rather it flows from unclear legislative requirements and inconsistent administrative actions. More specifically, it is a direct result of the failure of all State Heritage Acts to specifically require a statement of significance for heritage listing at the local level.

It is considered somewhat simplistic to suggest that the reason that many property owners do not fully understand the effects of heritage listings on their property is a result of the failure of all State Heritage Acts to specifically require a statement of significance for heritage listing at the local level. As outlined in point 3 above, many local governments do in fact have a statement of significance assigned to each of the places listed on its Municipal Heritage Inventory in order to guide the development options for those particular places and to provide owners with a clear understanding as to what is significant about the place. Whilst it is important that further guidance is provided at a State level, as with other planning concerns it is largely the responsibility of the local government to provide the necessary information to ensure that property owners of heritage listed places are aware of the implications of heritage listing.

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

There is little doubt that there is significant scope to improve the management of heritage conservation by local governments in its systems and processes for land use and planning. However it is considered that in order for this to take place the necessary resources are required and heritage needs to be viewed as part of the planning process, rather than just an obstacle to individual property rights. It is also worth pointing out that incorporating heritage into the planning process is a relatively new practice and as such time is required for this to be properly developed.

6. 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.

The impact of heritage listing on property values is commonly perceived negatively within the community. The direct relationship between heritage listing and property value is however considered simplistic and does not take into consideration the numerous other factors involved in measuring property value. Certainly as outlined within this finding, heritage listed properties located in 'character areas' within a municipality are more likely to be viewed in a positive light than those places that are located in either commercial zoned areas or high density areas whereby the perceived 'potential' of the land is not utilised if the heritage place has to remain in situ. Overcoming perceptions of the distinction between 'heritage' and 'character' are

important in this respect as is the formation of a good working Town Planning Scheme and associated Policies which address both the retention of '*character areas*' as well as '*heritage listed properties*'.

7. 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 conservation and, consistent with the principle of subsidiarity, aligns the scale of heritage significance with its level of government decision-making.

In theory the three-tiered legislative framework is an appropriate model for government involvement in heritage conservation. Certainly with the recent changes to heritage conservation and management at a Federal level this is made more apparent. Given these changes there is a strong delineation between the places that are listed at each tier of government with regard to the significance at the national, State and local level respectively. Concerns do however arise in that the vast majority of places that are on heritage lists are in fact on local lists, where commonly there is the least protection and the most inconsistency on how these places should be managed. This finding also draws on the need for a greater level of transparency and understanding between approaches and methods of protection between State and local lists. Local lists include all places - national, State and local and a clear understanding is required on how to best manage these places within the municipality.

8. Negotiated agreements are desirable as they facilitate voluntary conservation and ensure the costs of conservation are considered alongside the community benefits.

Page 71 of the Draft document outlines that '*There is little doubt that among participants that focusing on 'conservation by agreement' would result in more beneficial conservation outcomes.*' Certainly it is desirable that an owner is aware and supportive of heritage listing. However '*formulating heritage agreements*' deviates strongly from the premise of protecting heritage as an asset to the community, to protecting heritage as an asset to the property owner. All property owners whether their place is listed on a Heritage List or not have the responsibility to maintain their property. At a local government level owning a property on a heritage list demands no more responsibility for conservation and general maintenance than does a property not on such a list. It is questionable therefore that such an emphasis should be placed on generating the perception that those who own heritage properties are '*victims*' and as such have to be compensated. It is considered that generating a greater community pride and recognition of the importance of heritage within the community, coupled with prescriptive regulation is a more suitable approach to achieve '*voluntary conservation*', than organised agreements that would see the protection of a select few places within a local government jurisdiction.

9. 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).

The regulation of heritage listed properties to achieve conservation objectives is appropriate within the planning context. It is difficult to ascertain in this instance what is meant by *'inappropriate listing'* outlined within this finding. Is it inappropriate because it has inconvenienced the property developer who would like to demolish the place or inappropriate because it does not meet the threshold outlined within the principles of the Burra Charter. A local government cannot on the one hand promote heritage as a key asset to the character and integrity of the municipality and then denounce the use of prescriptive regulation which attempts to protect this heritage. Over a period of three financial years the Town of Vincent Heritage Officers have assessed 180 development applications requesting demolition. Of these 180 referrals to the Heritage Officers 156 (92.5 percent) were recommended approval for demolition. This strongly illustrates that the impact in which heritage has on the wishes of the individual property owner is miniscule and heritage clearly cannot be considered as an impediment to development within the Town of Vincent.

10. 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*
- *the application of heritage controls to places that have little, if any, heritage significance in order to achieve other planning objectives.*

In owning a heritage listed property there is always going to be some degree of uncertainty in regards to the appropriate development. However the extent of this can certainly be diminished with proper assessment and management of heritage places that form part of local town planning schemes.

The central component of *'heritage listing'* is the statement of significance, failing to include this statement in any heritage list that forms part of a local town planning scheme is not adhering to good heritage practice and leaves the responsible local government open to criticism. If a heritage list is going to be used within local planning schemes the statement of significance is central to guide development and to provide owners with a degree of certainty.

Inconsistent use and interpretation of heritage controls and applying heritage controls to meet other planning objectives are dependent on having clear and concise guidelines provided in town planning schemes and associated policies which distinguish between *'character'* and *'heritage'* and well thought out procedures in place for adopting heritage controls in development applications.

11. Conservation of historic heritage on privately owned heritage property could be more effectively achieved through negotiated conservation agreements between governments and owners.

Managing privately owned heritage property through negotiated conservation agreements between governments and owners would neither be cost or administratively effective at local government level. Questions arise over how this is to be afforded and administered. The arrangement would not result in a simple pro

forma being drawn up between the various parties involved. Each identified heritage place would have to be looked at independently in relation to its heritage significance and agreements would have to meet in regards to compensation. It is considered that a better use of resources would be to improve the existing framework for the management of heritage listed properties through prescriptive regulations with greater resources, than to adopt a system that undermines good heritage and town planning practice.

PART B - The Report's Recommendation

Based on the Report's 'Findings', the Commission has made the following Key Recommendation.

Privately owned properties should be included on a national, State and 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.

This recommendation raises the following concerns:

- The key recommendation does not provide a workable framework to alleviate the concerns that were raised in the initial inquiry. Instead it is considered that the Draft Report has selected arguments from the submissions which best suit a predetermined outcome that place current private economic interests above long term community goals in the protection of Australia's Historic Places.
- The key recommendation undermines all existing structures that have been put in place to assist in providing a workable framework for heritage to be considered within the town planning process. Statutory protection through prescriptive regulation of significant heritage places is an appropriate means of conserving cultural heritage. To allow solely on '*conservation agreements*' is not considered to be an appropriate measure to protect historic heritage places. This approach strongly deviates from the Findings in Table 2.1 page 15 of the Draft Report which indicates that of those surveyed in relation to heritage - related benefits, 80.2 percent of people '*Strongly agree*' and '*agree*' that '*The historic houses in my area are an important part of the area's character and identity.*' The protection of this heritage is not expected to be met with the proposed negotiated conservation agreements.
- The application of the conservation agreements is unclear and would be considered unworkable for local governments in its current state. Considerable resources would be required from local governments to monitor and constantly renegotiate such agreements. Furthermore local governments do not have the financial resources to '*compensate*' all individual owners of heritage places which are considered to have significant heritage value to the local community.
- Developing conservation agreements between the relevant jurisdiction and owners as the principal vehicle for conservation and subsequent listing does not promote good heritage management practice. The notion of a heritage

agreement suggests that an owner of a heritage listed place is disadvantaged and thus should be compensated. This approach will encourage only those who think that they are being '*rightfully compensated*' to enter into an agreement. Given this scenario the opportunity to promote heritage as a long term benefit within the community is lost.