



**Submission by the Greater Western Sydney  
Councils - Heritage Planners Network**

**To the Productivity Commission Inquiry into the  
Conservation of Australia's Historic Heritage Places**

February 2006

Western Sydney Regional Organisation of Councils Ltd

The Greater Western Sydney Councils – Heritage Planners Network, comprises heritage planners and advisors from both WSROC member Councils:

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**Bankstown**  
**Baulkham Hills**  
**Blacktown**

**Blue Mountains**  
**Fairfield**  
**Hawkesbury**  
**Holroyd**

**Liverpool**  
**Parramatta**  
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and MACROC – Macarthur Regional Organisation of Councils - member Councils:

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# CONTENTS

<b>1. Preamble .....</b>	<b>4</b>
<b>2. Context - about Greater Western Sydney .....</b>	<b>4</b>
<b>3. Comments - Negotiated Conservation Agreement.....</b>	<b>5</b>
3.1 <i>Is a Negotiated Conservation Agreement system suitable to Local Government? .....</i>	5
3.2 <i>Likely impacts of a Negotiated Conservation Agreement system on Local Government .....</i>	6
3.3 <i>Negotiations with owners under the current heritage system.....</i>	7
3.4 <i>An existing suite of benefits for heritage property owners.....</i>	7
3.5 <i>Statements of Significance – the key .....</i>	8
3.6 <i>(Mis)use of the Burra Charter.....</i>	8
3.7 <i>Each heritage item tells its own unique story.....</i>	9
3.8 <i>Protecting the Context of Statutory Listed Heritage Items .....</i>	9
3.9 <i>Heritage regulations constrain activities which diminish social capital .....</i>	10
3.10 <i>Heritage education and promotion .....</i>	10
3.11 <i>Reporting on heritage conservation costs.....</i>	11
3.12 <i>Compulsory acquisition of heritage places .....</i>	11
3.13 <i>Legislative amendments.....</i>	12
<b>4. Recommendations.....</b>	<b>12</b>

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## 1. PREAMBLE

WRSOC and its Heritage Planners Network (with membership from the 14 councils of Greater Western Sydney), welcomes the opportunity to make a submission on the Productivity Commission's draft report, *Conservation of Australia's Historic Heritage Places*. This submission focuses on the impact of the draft recommendations on Local Government and communities, and in particular, those of the Greater Western Sydney region.

We are pleased to note that the Commission appreciates the benefits of Australia's historic heritage to the broader community.

We recognise the efforts in the draft report, to explore a different perspective to conserving heritage, which attempts to balance public good with individual rights.

However, we are concerned that the key recommendation – that is, listing only after a negotiated conservation agreement has been entered into – is inadequate and patchy in its design. Entertaining the deregulation of the existing heritage framework, therefore, is dangerous if the ramifications and costs of the negotiated conservation agreement system have not been adequately tested.

We agree that the heritage system can be confusing to the broader public, and that this can feed an individual's unease about their property being heritage listed. However in the experience of the Heritage Planners Network, well supported public education programs and working openly with concerned owners under the existing heritage framework, does indeed build peoples knowledge and enthusiasm for heritage conservation.

We believe that the primary issue is *not* a flawed heritage regulatory system, but rather a critical lack of resources to effectively realise each step in the heritage process, especially at Local Government level.

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## 2. CONTEXT - ABOUT GREATER WESTERN SYDNEY

Greater Western Sydney is currently home to 1.7 million people. It is Australia's third largest metropolitan region after the rest of Sydney and Melbourne, and is expanding and changing at a frantic pace. In the next 15 years, more than 260,000 homes will be built, along with roads and other infrastructure to accommodate 510,000 more people, as the region's share of the metropolitan population grows to 44% (or 2.2 million).

Greater Western Sydney is a large region with many layers of heritage. Historic heritage places (as covered by this inquiry), include built heritage – from the period of European colonisation and contact with Aboriginal peoples from 1788 to the present, as well as evidence of migration heritage over the last 60 years - and modified rural landscapes. Much of this heritage has elsewhere been lost to development on mainland Australia.

The *Western Sydney Heritage Review*<sup>1</sup> identifies that the range of heritage in the region is not well understood. The primary focus of most heritage lists has been the architectural and historic value of built colonial heritage. Heritage listings do not reflect the diversity of cultural values, with particular gaps in migrant and 20<sup>th</sup> century industrial heritage, and in documenting the explosion of housing estates and subdivisions (within the scope of the inquiry); as well as Aboriginal, moveable heritage, agricultural and historic landscapes (outside the scope).

The range and extent of this heritage has not been actively promoted either to the Greater Western Sydney community or to the rest of the state. There is little awareness that this cultural resource is threatened by increasing urban development pressure and uncoordinated local planning.

Continuing pressure for both infill developments and releasing new land for housing, industry and infrastructure in Greater Western Sydney, is driven by Sydney's dominance nationally in both international and domestic migration; the dwindling availability of land for new development; and the booming Australian economy.

Our concern is that, without sophisticated policy responses to our heritage, the rapid and dramatic changes to our (sub)urban and rural environments will destroy important historic heritage places before they can be identified and protected. The loss of significant places can fragment our communities and decimate the memories and sense of identity associated with places, thereby diminishing social capital.

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### **3. COMMENTS - NEGOTIATED CONSERVATION AGREEMENT**

*"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."*

Our main concern is with draft recommendation 8.1 (and related recommendations 9.1, 9.2, 9.3, 9.5, 9.6) which underpins the Commission's suite of recommendations, and in essence deregulates and dismantles the current framework for heritage protection.

#### **3.1 Is a Negotiated Conservation Agreement system suitable to Local Government?**

A negotiated conservation agreement system, as proposed, is based on practice used by the Federal Government for listing on the National Heritage List. This list to date contains just 15 items<sup>2</sup> – less than 0.01% of those on local heritage lists. So firstly, what evidence is there that a system used by the Federal Government will be:

- Relevant and transportable onto the systems of local government;
- Appropriate for identifying, managing and protecting local heritage items?

Secondly, conservation agreements have not been proven successful at the national level. Of the four privately listed properties currently on the national list, none have

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<sup>1</sup> NSW Heritage Office 2004, *Western Sydney Heritage Review* (unpublished).

<sup>2</sup> Productivity Commission 2005, *Conservation of Australia's Historic Heritage Places*, Draft Report, December, p45.

successfully negotiated an agreement<sup>3</sup>. On the other hand, the existing heritage conservation framework has successfully conserved more than 150,000 heritage places at the local level<sup>4</sup>.

### 3.2 Likely impacts of a Negotiated Conservation Agreement system on Local Government

The delivery of a negotiated conservation agreement system, as proposed, is not workable at the local government level. The draft report acknowledges that,

*“Implementing the Commission’s recommendations at the local government level would raise significant resourcing issues for councils in areas with many heritage properties of local significance.” (p194)*

but it fails to qualify what the resource implications would be, or where the extra resources would come from.

- Council’s are already charged with heritage conservation using limited resources and funds. Administering, managing and servicing individually negotiated conservation agreements would **divert funds away from existing heritage incentives**, services and programs such as heritage assistance grants, access to heritage advisors and public education programs.
- Individually negotiated conservation agreements will **reduce the scope, quality and diversity of local heritage lists**, resulting in an inadequate or biased reflection of the range of local heritage and stories. It would transfer the power of protecting items for future generations from local Councils to individual owners.
- **Abuse of the Negotiated Conservation Agreement system:** the current system of identifying potential heritage places (primarily through expert surveys, public submissions and studies) contributes to an initial list of considered heritage merit. The quality of listings is essential to maintaining the heritage significance of a locality. There is concern that the proposed conservation agreements may diminish the quality of listings and be subject to abuse by owners wanting to obtain funding for maintenance while on a short-term agreement. For example, owners could be given funding to restore a heritage building only to then sell the property at a substantial profit after government has funded the work, with the new owner then deciding not to renew the negotiated conservation agreement.
- **Public interest:** At what stage, during an individually negotiated conservation agreement, can the broader public have a say?
- **What would a Negotiated Conservation Agreement look like?** How prescriptive or flexible would it be? Would existing statutory heritage lists be dismantled immediately? What about transitional arrangements? How would new listings be proposed and existing lists reviewed? How would developments in the vicinity of a heritage item be managed? Would we see an army of surveyors and heritage advisors negotiating agreements in the first ten years? How would legislative amendments at the Federal level impact on State Government

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<sup>3</sup> *ibid.* p46.

<sup>4</sup> *ibid.* pXXIII (Table 1: Historic heritage places on statutory lists, at June 2005).

regulations, such as the pending Standard Local Environmental Plan (LEP) Template (which contains heritage provisions)?

### **3.3 Negotiations with owners under the current heritage system**

Negotiations with owners of listed heritage items is good practice – and one which is occurring now in many councils – but it does not require the current system to be abandoned. **Indeed, the protection provided under the current heritage framework, coupled with open negotiations and active listening between councils and property owners, are likely to achieve the best heritage outcomes.**

It is through the one-on-one negotiations that council officers can dispel some of the heritage myths that cause property owners to be suspicious about heritage listing. The two parties can develop a rapport and an understanding, allowing for genuine and open dialogue so that the owners can share their needs and aspirations, and council officers can clearly explain how the heritage system works, the implications of listing and why the property is culturally significant.

Some councils have also worked with the NSW Heritage Office to distribute various information brochures to heritage property owners including “*Heritage Listing: A Positive for Owners*” and the quality publication “*Heritage NSW*”. Feedback from these owners demonstrate that not only do they appreciate the information, but receiving the newsletter makes them feel “special” and part of a wider heritage caretaking community.

### **3.4 An existing suite of benefits for heritage property owners**

Local Government currently provides a range of incentives for owners of heritage listed properties:

- Funding assistance through Heritage Assistance Schemes
- Reductions/ exemptions or refunds for development application processing fees
- Rate rebates
- Developed bonus incentives
- Transferable development rights
- Low interest loans
- Heritage incentive clause for adaptive reuse which overrides any zoning prohibitions
- Free heritage advice for heritage property owners (through the Heritage Advisor Service)

A number of these benefits will be limited or lost if the draft recommendations are adopted.

For example, *draft recommendation 9.7* will negate a councils heritage incentive clause for adaptive reuse. Presently, the NSW Heritage Office’s model LEP heritage provisions provide that a council may grant consent to the use for any purpose of a heritage item, even though that use would otherwise not be permitted under the planning instrument’s zoning provisions. The Commission recommends that heritage provisions be removed from LEP’s and the negotiated conservation agreements would limit uses to only those permissible under the zoning applying to the land.

**We recommend that the Commission thoroughly research the existing resources that Local Government commits to assisting heritage property owners and the range of incentives that are offered. This should be the foundation from which to propose a full suite of 'sticks' and 'carrots' within the existing heritage system**

### **3.5 Statements of Significance – the key**

We agree that statements of significance are often lacking for heritage items, but this is not because councils disregard the statements' importance. Rather, it is due to a shortage of resources to *comprehensively complete* the statements.

Councils report that when resources *are* available to do thorough statements of significance, items are usually revealed to be *more* significant rather than less (eg: an item initially listed under one criterion, after investigation, may reveal significance under four criteria).

Interestingly, before discussions for an individually negotiated conservation agreement can begin, a comprehensive statement of significance is needed to provide knowledge of what is being conserved. **If it is proposed that a prime flaw in the existing system is a lack of statements of significance, why not simply better resource that task?** We would rather see more resources strategically targeted to the completion of statements, rather than being diverted to dismantling - then reconstructing - the heritage system.

### **3.6 (Mis)use of the Burra Charter**

The Burra Charter provides guidance for the conservation and management of places of cultural significance (cultural heritage places), and is based on the knowledge and experience of Australia ICOMOS members. The Charter is an intact and interconnected approach and individual clauses should not be taken out of context. It clearly states that:

“The Charter should be read as a whole. Many articles are interdependent<sup>5</sup>.”

It is a fundamental principle of the Burra Charter, in assessing and listing heritage places, that the identification process is based solely on heritage values and NOT on heritage management considerations<sup>6</sup>. This is because the core business of this first step is to determine cultural significance. The **Burra Charter process** is a *sequence* of investigations, decisions and actions which *starts* with identification, research and assessment of significance, and *then considers the arising obligations* and factors such as physical condition, and the owner's needs and resources, to inform the development of a suitable conservation policy.

The Commission seems to have ignored the fact that the current heritage framework does indeed require that owners' needs, resources and aspirations are considered during the Charter process. **Why not then, simply maintain the current system and**

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<sup>5</sup> *Australia ICOMOS Burra Charter*, 1999.

<sup>6</sup> Burra Charter, *Guidelines to the Burra Charter: Cultural Significance*, item 1.5 Issues not considered, which states: “The assessment of cultural significance and the preparation of a statement do not involve or take account of such issues as the necessity for conservation action, legal constraints, possible uses, structural stability or costs and returns. These issues will be dealt with in the development of a conservation policy.”

**properly resource it, so that each step can be systematically and satisfactorily realised?**

The Commission referenced the Burra Charter (as well as the NSW Heritage Guidelines) in its development of the *Elements of an effective conservation agreement system* (Box 9.1 on p197). These elements are a cut-and-paste job on the Burra Charter, which undermine fundamental principles of the Charter (ie that it is intact and works through a methodical procedure). The Burra Charter is not a buffet. Taking actions out of context will see a further sidelining of heritage considerations, leading to poor heritage outcomes and featureless neighbourhoods which deny residents any sense of connection to the history of their locale.

### **3.7 Each heritage item tells its own unique story**

The Commission criticises the current heritage system for encouraging ‘non-selective’ listing of items. In actuality, no council in Greater Western Sydney is reckless when it comes to the listing process. Rather, listing is the result of extensive research and detailed studies, community liaison including consultation with affected property owners, and expert advice. This very process can take many years before lists are approved.

If councils were to limit the number of listings for each “type of heritage”, as proposed by the Commission, then what criteria would govern this decision? It seems the decision would be based on architectural value, because how could we compare social, aesthetic, scientific or historic values?

Heritage listing is about the relevance, meaning and significance of a place to the local community, and is therefore a signal for future management of that place, because of *its unique contribution to the local story*. The location and social context of the listed place indeed *matters* - not just what it looks like. This is why the Burra Charter does not accept relocation of items (ie removing items from their original context and place of most relevance) unless it is the “sole practical means of ensuring its survival.”

Additionally, the *temporary* nature of the proposed negotiated conservation agreement would endanger the listing of only ‘one type’ of heritage item.

### **3.8 Protecting the Context of Statutory Listed Heritage Items**

*“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 9.7 does not take into consideration the effects that development in the vicinity of a statutory listed heritage items can have on the heritage item. In this matter, we concur with Blacktown City Council’s submission:

“These effects can include loss of views to and from the heritage item, 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. It is often very important that Council take such issues into consideration.<sup>7</sup>

### **3.9 Heritage regulations constrain activities which diminish social capital**

When arguing the costs and benefits of heritage conservation, the Commission comments on a number of submissions received which note that “the rights of property owners are often regulated through urban planning laws and zoning changes.”

*“However, the Commission considers there are significant differences between a regulation which constrains activities which are harmful to others and regulation which coerces an individual to provide benefits for others (possibly at cost to themselves).” (p 143)*

Heritage regulations protect places which are culturally significant to local, state-wide and/ or national communities of Australia. It may be argued that heritage regulations constrain those activities which:

- *diminish* the social capital of an area;
- *threaten* a community’s connection (or sense of belonging) to a place, its history and to the national (or local) consciousness; and
- are *harmful* to a community’s social and cultural identity and the overall amenity of a neighbourhood.

A person’s health and wellbeing is not just about absence of disease or avoiding an injury, but his/her sense of attachment to a place. It is the development of local connections and roots that link to someone’s history and their feelings of comfort and security, which enable them to engage in the activities of daily living and achieve higher-order psychosocial development<sup>8</sup>.

### **3.10 Heritage education and promotion**

We agree that the heritage system can be confusing to the broader community, and that this can feed an individual’s unease about their property being heritage listed. However, Greater Western Sydney councils report that well supported public education programs, and working openly with concerned owners under the existing heritage framework, does indeed build people’s knowledge and enthusiasm for heritage conservation.

The importance and positive effect that heritage education and information provision has on the community was not addressed in the inquiry.

**We recommend that further research on the range of education, promotion and community engagement activities delivered by all spheres of government, and the effect these activities have on the wider community, is undertaken. This should be the foundation from which to propose solutions for combating confusion, and improving understanding of heritage conservation in the wider community.**

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<sup>7</sup> Blacktown City Council 2006, Submission to Productivity Commission, February.

<sup>8</sup> Rivlin (1982) and Giddens (1984) as referenced by Iain Butterworth 2000, in *The Relationship Between the Built Environment and Wellbeing: A Literature Review*, the Victorian Health Promotion Foundation, Melbourne.

### **3.11 Reporting on heritage conservation costs**

*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. (Draft Recommendation 7.5)*

*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. (Draft Recommendation 3.1)*

*The Australian Government should implement reporting systems that require government agencies with responsibility for historic heritage places to document and publicly report on the heritage related costs associated with their conservation. (Draft Recommendation 7.4)*

Local government already has a reporting system for the costs of maintaining properties in its care. Separating out the heritage-related costs from normal maintenance costs is difficult because often the work is indistinguishable. Referring to the cost of painting a building for example as a heritage-cost would give an unrealistic figure of the costs of heritage conservation.

On the other hand, how would we measure the range of benefits - including future benefits and other intangible benefits of heritage conservation - as well as the costs of not listing (and potentially the costs of losing social capital)? What about the costs saved because of the longer durability of heritage materials (eg: a slate roof -v- a Colorbond roof)?

Cost-benefit analysis can incorporate the social and cultural values of heritage however the method of appraising these values (eg: contingent choice method) is extremely expensive and for local governments onerous. Just as local governments are not expected to undertake the costly exercise of regulatory impact assessments, the expense of a cost-benefit analysis for local heritage would divert funds from other vital heritage initiatives including conservation and education.

### **3.12 Compulsory acquisition of heritage places**

*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. (Draft Recommendation 9.4)*

The capital cost to undertake this recommendation is prohibitive to local government, and unrealistic. In this matter we concur with Blacktown Council:

“While Blacktown City Council has acquired a number of heritage listed properties to ensure their long-term conservation, this is not a reasonable expectation of local government. Councils are not expected to acquire properties affected by other planning issues such as local overland flooding or mining subsidence. Heritage listing is just one of many constraints that can affect a

property and it is more important that Councils have programs in place to assist property owners to understand and deal with such constraints.<sup>9</sup>

### 3.13 Legislative amendments

Example: “*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.*” (Draft Recommendation 9.8)

Reasonably, the draft report is underpinned by the ‘principle of subsidiarity’ which suggests that “responsibility for a function should be assigned to the lowest level of government that is able to exercise it effectively, and thus as close as possible to consumers to allow them choice as to the services they receive.”<sup>10</sup>

This principle must be qualified, however, in that government needs to be able to *exercise effectively* the relevant function. Effectiveness may be limited by a range of factors such as inadequate access to funds, resources and skills<sup>11</sup>.

Without the qualification of resource implications and appropriate funding being made available, the implementation of the Commission’s recommendations through legislative amendments would represent a considerable cost shift to Local Government in relation to heritage conservation (which compounds a mass of other cost shifting exercises), and one that is robustly opposed by WSROC.

In addition, there is an increasing tendency for developments to be called in by the Minister. If there are no heritage controls at the State level, then local heritage places will be completely vulnerable to the agendas of other spheres of government.

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## 4. RECOMMENDATIONS

We recommend:

- The Commission thoroughly research the existing resources that Local Government commits to assisting heritage property owners and the range of incentives that are offered. This should be the foundation from which to propose a full suite of ‘sticks’ and ‘carrots’ within the existing heritage system
- That further research on the range of education, promotion and community engagement activities delivered by all spheres of government, and the effect these activities have on the wider community, is undertaken. This should be the foundation from which to propose solutions for combating confusion, and improving understanding, of heritage conservation in the wider community.

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<sup>9</sup> Blacktown City Council 2005, *ibid*

<sup>10</sup> Productivity Commission 2005, *ibid.*, pXXI; p190.

<sup>11</sup> Chairs of the Heritage Councils of Australia and New Zealand 2005, *Managing Australia’s Historic Heritage: Looking to the Future*, submission to the Productivity Commission Inquiry into the Conservation of Historic Heritage Places, October.

- That the existing heritage system is properly resourced, so that each step – including the preparation of comprehensive statements of significance - can be systematically and satisfactorily realised; RATHER THAN dismantling a system that has successfully conserved more than 150,000 heritage places at the local level<sup>12</sup>, and making legislative amendments that would represent a considerable cost shift to Local Government.

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<sup>12</sup> Productivity Commission 2005, *ibid.*, pXXIII.