

GENERAL MANAGER'S OFFICE

3 March 2006

Heritage Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Sir/Madam,

**Re: Submission to the Productivity Commission's Inquiry into the
Conservation of Australia's Historic Heritage Places – Draft Report**

The Willoughby City Council local government area is situated on the lower North Shore of the Sydney Metropolitan Area. There are approximately 18,000 individual properties (figure excludes strata properties) and the Willoughby Local Environmental Plan 1995 (WLEP 1995) has 200 items of Environmental Heritage and 4,100 properties in twelve Conservation Areas. Willoughby City Council is also in the process of draft amendments to WLEP 1995 which will increase the number of items of environmental heritage to 220.

The attached submission has been prepared in response to a resolution of Council at its meeting of 27 February 2006. Council at this meeting resolved:

1. *That Council make a Submission on the Productivity Commission Draft Report generally in terms of the points raised in Attachment 1 including additional information circulated to Councillors.*
2. *That the submission conclude that whilst there may be a divergence in views in the community regarding the value and most effective process for heritage conservation in society, Council's primary submission is that:*
 - (i) *Heritage Conservation as part of the NSW planning system is a legitimate and highly valued mechanism for recognising and protecting our cultural heritage;*
 - (ii) *Heritage item listing in a Local Environmental Plan is the preferred means of recognising and protecting the cultural heritage of local areas as it provides long term certainty for owners, neighbours, intending property purchasers and the community.*
 - (iii) *Council does not support the essential proposition of the Draft Report that heritage conservation should be best achieved by temporary, voluntary agreements between Councils / the community and private property owners.*

Attachment 1 referred to in Council's resolution forms the basis of the submission with the additional information circulated to Councillors included in 'Arguments Supporting the Productivity Commission Recommendations.'

Thank you for this opportunity to provide comments. If you require further information or clarification on any part of the submission please contact Lynette Morris, Heritage Planner (Tuesday to Friday) on 9777 7502.

Yours faithfully

John Owen
GENERAL MANAGER

WILLOUGHBY CITY COUNCIL

Submission to the Productivity Commission's Inquiry into the Conservation of Australia's Historic Heritage Places Draft Report

Willoughby City Council promotes and supports the protection of heritage properties by formally recognising the heritage significance of these items by including them in the Willoughby Local Environmental Plan 1995 (WLEP 1995) and regularly undertaking heritage studies and reviews to identify additional properties. Council provides support, benefits and assistance to the owners of heritage properties by providing a range of incentives and assistance as outlined in the following submission.

Arguments Against the Productivity Commission Recommendations:

- There is no constitutional power available to the Federal Government to impose the recommendations of the Draft Report on State Government or Local Councils. The State Planning system is embodied in the Environmental Planning and Assessment Act and the Heritage Act so it would need the support of the NSW Parliament to enact changes to the legislation and support of councils to give effect to the system proposed in the report.
- The underlying premise of the Draft Report and its recommendations is to safeguard the generation of wealth through property ownership in Australia. Such a position is flawed without proper recognition of the social and community values surrounding cultural heritage.

The focus of the report on the use of "voluntary agreements" completely misses the implications of the Federal Government's taxation systems, particularly capital gains tax, on private property ownership and the way that the taxation system already favours investment in heritage home improvement compared to other forms of capital investment.

The report fails to place the role of heritage in the broader issue of housing costs and its implications to the economy, patterns of tenure and investment trends. If such an analysis occurred, it would likely reveal that heritage conservation, as it currently occurs, has a minimal real net cost on total housing costs in Australia.

- The listing of a property under a Statutory Instrument provides ongoing certainty and consistency of protection of heritage places independent of ownership.

The Commissions proposed 'conservation' agreements have no certainty for the long term, as they are only good for the time of ownership by a property owner – no assurance that public money spent as a result of the agreement will have long term value for the community. Subsequent owners can negate previous action and funding.

Because agreements are individual and voluntary for owners, there is likely to be inconsistency in agreements and hence heritage outcomes between properties. This can lead to inequitable arrangements.

- Heritage protection development controls are in principle no different to other planning controls and development standards which also impact on property values / rights eg. height / floor space ratio / landuse zones / setbacks / SEPP 65.

Heritage is just one component of environmental planning that inherently involves governments setting limits to the rights and responsibilities of private property ownership in order to achieve community objectives. A system based on 'voluntary planning' as proposed in the Productivity Commission Draft Report would inevitably lead to community confusion, potential for exploitation and corruption, a laissez faire approach to urban development and gross inequities in the rights and responsibilities of property owners. 'Voluntary heritage' would suffer the same consequences.

- In conjunction with heritage listing in the WLEP 1995, for owners of heritage property in the Willoughby Local Government area, Council provides the following assistance:
 - Waiving of Development Application Fees.
 - Provision of free heritage advice from Council's qualified heritage architect and assistance with development applications.
 - When a property is listed as a heritage item in WLEP 1995, the property may be developed for any purpose (eg commercial, small business and other uses), provided that the proposed development does not have a detrimental effect on the heritage significance of the item or amenity of the neighbourhood.
 - Concessions are also possible for determining the floor space ratio and parking requirements of the new development.
 - Education programmes regarding heritage and conservation issues and recognition through heritage awards and the Civil Heritage Plaques Project.
 - Free advice to prospective buyers and estate agents.

(Included for your information are copies of Willoughby City Council's education pamphlets 'Heritage Listing – A Guide for Property Owners' and 'Conservation Areas – A Guide for Property Owners').

- Perceived negative impact on owners of heritage item listing is exaggerated. Council provides assistance as outlined in the above dot-point. Furthermore, heritage valuations by the Valuer General mean lower council rates and state land tax. Also, heritage listed properties that earn an income can claim a tax deduction against the assessed income for maintenance or depreciation.
- The Conservation Agreement system provides no opportunity to recoup the potential capital appreciation from the owners of the heritage building – only a 1 way process.
- Cost of conservation agreements will be borne at the local level. The large majority of heritage listings are local in the Local Environmental Plans rather than at Federal or State level. Heritage is not just for the local community (eg. Walter Burley Griffin houses in Castlecrag) but the local community would bear the whole of the cost. Councils have limited avenues for raising revenue to fund the agreements or property acquisition. The Commission's report also proposes that if a conservation agreement is not entered into, then Councils can always compulsorily acquire the property(s).
- Each legally prepared Conservation Agreement would cost Council in the vicinity of \$20,000.00 (\$4 million in total for 200 existing heritage items) in addition to staffing costs. Costs to renegotiate an agreement when a property has new owners would require an annual budget of up to \$1 million.

- The Draft Report does not adequately deal with the transitional arrangements for existing agreements heritage items to be drawn into the new agreements regime.
- Inadequate funding both at State and Federal level make acquisition of significant heritage properties an unviable proposal. Permitting councils to have a special heritage rate (similar to special environmental, roads or drainage levies) to pay for heritage acquisitions and maintenance of properties would be necessary. Even if Councils on sold the properties with conservation agreements the borrowing, legal, administrative and upgrading costs would be prohibitive under existing budgetary constraints.
- The responsibility for conservation of important cultural and architectural heritage items should be with property owners. The impact of the report proposals will likely be a large reduction in the number of properties conserved due to limitations on Council finances and the dis-inclination of owners to enter voluntary agreements.

Arguments Supporting the Productivity Commission Recommendations

- The Productivity Commission's Draft Recommendations may lead to more accurate accounting of costs in the conservation of heritage properties
- The Productivity Commission's Draft Recommendations give property owners more say and input into listing.
- The Productivity Commission's Draft Recommendations indicate that individuals do not bear the costs of achieving the community's values but benefit from buying a heritage property.
- The agreements scheme could assist in being more pro active about management, maintenance and specific works to be done on a heritage item, subject to an agreement that provides sufficient incentive for the owner to participate.
- Heritage properties may be improved by removing the potential for demolition by neglect (Conservation Agreements can enforce a minimum standard of Repairs and Maintenance on items of Local Significance).
- The issue really is largely about the personal rights of private property owners and the imposition of restrictions against their wishes, irrespective of considerations of values or costs. It is probably true to say that most councillors support heritage listing of significant public buildings where appropriate but there is less agreement with listing of private property against its owners wishes unless the item is seen as particularly worthy because of the potential adverse financial impacts on these owners.
- Some councillors have expressed concern about "spot" Heritage listing because there is evidence that this will impact unfairly on owners should they wish to sell or redevelop but are less concerned about listing properties in Conservation Areas, where the Heritage implications are shared by all.
- Some councillors are concerned that some owners solicit Heritage listing because it then prevents neighbours from developing their properties because of proximity to a Heritage item.
- Some councillors are concerned that if a listing does have a negative impact on value or an on going cost, compensation for both is not currently provided by the party who benefits from the listing namely local, state or federal governments. In the case of

private property, currently the cost is borne by its owner, not the whole community which is purported to benefit from the listing.

- There is a need to address the core criteria for determining whether heritage listing is appropriate in the first place: the current criteria are extremely subjective and do not require proponents to establish community benefits nor a cost benefit analysis.
- The Burra Charter attempted to provide some broad guidelines but as the draft report correctly states, governments, federal, state and local have imposed their own interpretations leading to wide inconsistencies.
- Questions of “importance and significance” always beg another question—to whom? In some cases the answer is vocal minority interests. This is not to imply that these vocal minority interests are always wrong; without doubt the wider community has a lot to be grateful for as a result of minorities who were prepared to fight for listing of some items. They are not always representative of the wider community and perhaps not always right either?
- Further, with changing demographics, questions of “importance or significance” are dynamic and will mean different things to different people or groups of people at different times.
- All proponents of heritage listing should establish a clear case focused on community benefit and cost justification.
- The commission ought to provide for a review of the core criteria in each state with a view to establishing a common, workable, national approach to this complex issue including clear, precise national guidelines for anyone responsible for considering the merits of Heritage listing properties particularly private properties. It is hoped that this would result in a balance between conservation and development interests, taking into account community benefits, costs and the economic, cultural and social impact of the any decision to list or not to list.
- Fair compensation from a national fund in cases where heritage listing would have an adverse financial impact on owners would alleviate many concerns. Local councils do not have the resources to fund such compensation, and given the current NSW State policy of rate pegging, are unlikely to be in a position to offer such compensation in the future.

Conclusion

This submission concludes that whilst there may be a divergence in the community regarding the value and most effective process for heritage conservation in society, Council’s primary submission is that:

- **Heritage Conservation as part of the NSW planning system is a legitimate and highly valued mechanism for recognising and protecting our cultural heritage;**
- **Heritage item listing in a Local Environmental Plan is the preferred means of recognising and protecting the cultural heritage of local areas as it provides long term certainty for owners, neighbours, intending property purchasers and the community.**
- **Council does not support the essential proposition of the Draft Report that heritage conservation should be best achieved by temporary, voluntary agreements between Councils / the community and private property owners.**