

Submission to the Productivity Commission in response to the Draft Report on the Conservation of Australia's Historic Heritage Places

Woollahra Council wishes to submit the following in response to the draft report by the Productivity Commission Inquiry into Conservation of Australia's Heritage Places.

1.0 Introduction

Woollahra Council considers it important to make a submission to this Productivity Commission in light of the current projects within the Woollahra Management Plan 2005 – 2008 and the considerable commitment by the Council to heritage conservation over many decades.

This submission to the Commission takes a firm position against the overarching key draft recommendations. This submission will address the individual recommendations which are relevant to the management of heritage at a local government level.

2.0 Woollahra Local Government Area

Woollahra Council currently has approximately 700 heritage items listed within the Woollahra Local Environmental Plan 1995, of which nearly half are also listed by the National Trust (NSW). Within the Municipality there are 27 identified items of State significance; 16 privately owned, 9 owned by State Government (including 1 owned by the Historic Houses Trust) and 2 owned by the National Trust (NSW).

The Municipality currently has 11 identified conservation areas, including Paddington, Woollahra and Watsons Bay. In addition to carrying out heritage studies of suburbs, zones and items, to continually inform and update an understanding of significance, the Council's Heritage Officers receive about 250 development applications each year upon which detailed heritage advice is provided.

3.0 Response to specific draft recommendations

Contained in the report are a number of recommendations which have a direct implication on the management of heritage at a local government level. The relevant draft recommendations are individually addressed below. Particular attention is paid to the key Draft Recommendation 8.1, as this proposes a fundamental change to the way heritage is managed at a local level.

3.1 Key draft recommendation

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.

Council understands a heritage agreement to be defined by the Commission as a two part process. The first is undertaken by the Council and would require not only an assessment of the individual item, but analysis of *how well those attributes are already represented by listed properties and by how well those attributes are already represented by listed properties and by prospective listings*. This is considered by Council as current best practice with regard to listing items and is supported.

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Aside from this point, however, it appears that the draft recommendation proposes to effectively dismantle the current listing process. On the basis of the information provided within the report it is considered that the draft recommendation espouses a negative attitude towards the current system. This key recommendation presents as a reactive approach to preventing illegal activity, such as demolition by neglect. The report does not cite positive cases of owners, public or private, who have taken on conservation initiatives to preserve heritage, for their own interest and subsequent greater good of the community.

Woollahra Council supports consultation with an owner regarding listing of their property, over and above that which is required in the current legislation. However, Council considers a formal heritage conservation agreement process flawed for a number of reasons.

- The implementation of a voluntary heritage agreement poses a logistical issue with compensating owners already on the list, and the potential to have items removed from a list should a heritage agreement not be reached. The financial implications for Council to undertake such a task for some 700 items is an expense which Council cannot reasonably accommodate with respect to staff time and resources required to negotiate such agreements.
- There is an apparent contradiction with accepted conservation principles with identifying items of significance. The draft recommendation relies on an owner's willingness to partake in the agreement. That an owner has the ability to reject a heritage agreement on the basis of other factors, negates the essence of the assessing significance process, and empowers an owner rather than an elected local authority, with the ability to determine what is formally identified as heritage throughout the local government area. Such a process has ramifications for the broader and long-term public interest.
- The recommendation provides no longevity, or security for the status of items listed through the agreement process. While it states the agreement should be reviewed as determined by case by case circumstances, at this stage an owner's responsibility to maintain the agreement is not clear. That an item *should remain listed only while an agreement is in force* indicates that the agreement is hinged upon the owner's approval and implies a lack of security in the listing, with owners being able to opt out of the agreement at any time.
- An agreement suggests it is a convenience to an owner, as long as there are no development plans in the future. It has been demonstrated through award winning conservation projects throughout NSW that the listing of a heritage item does not preclude future development. That an owner should not enter into an agreement because that agreement may impact on their development potential negates the principles for listing an item. Listing is a way to commence a consultative and dynamic approach to heritage conservation and does not deny an owner the opportunity to undertake development in the future. In contrast, listing can be seen as a positive mechanism which ensures that an item's significance is at the forefront of development.

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- An owner of an item may not hold the same considerations for heritage as a council or the community. An owner may not acknowledge the building's cultural significance and may refrain from a heritage agreement. While the recommendations provide a council with the option of acquisition, or in dire circumstances, compulsory acquisition, the reality of such an arrangement is questioned, particularly given the financial constraints under which council's operate.

3.2 Other draft recommendations relevant to local government

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.

Woollahra Council supports the merit of this draft recommendation. Currently Council has a number of projects within the Woollahra Management Plan 2005 – 2008 which are in the spirit of this draft recommendation. They include the preparation of thematic histories on suburbs throughout the area, the investigation of potential heritage items, and the up keep of a heritage database which makes information available online. Future management plans will continue to adopt tasks which seek to improve the level of information to the community on the conservation of Woollahra's historic heritage places.

While there is merit in this draft recommendation its implementation is dependent on political will and commitment at all levels of government and most importantly on the availability of financial resources. Unfortunately, the Council considers that the key recommendation of the Draft Report does not provide a supportive or positive basis for heritage conservation. It does not provide a positive message to local government or an incentive to invest in heritage conservation. This last point is particularly relevant due to the financial issue faced by councils.

Budgetary considerations require Council to prioritise services within the local government area. Council has essential tasks which must be undertaken and which require a considerable commitment of funds. Such priorities include the maintenance of infrastructure and the provision of other services throughout the community, such as local libraries, aged care services, public recreation facilities and waste removal.

Heritage programs compete with other programs for available resources. A strong and supportive attitude towards heritage conservation, particularly from Federal and State levels of government, will assist when financial consideration occurs during budget preparations.

Draft Recommendations 7.1 and 7.2

These recommendations make reference to the Register of the National Estate Database. It is Council's understanding that the Register of the National Estate Database has now been developed into the Australian Heritage database, managed by the Department of Environment and Heritage. Council considers this database to be an excellent repository to assist in searching for heritage items throughout the country and is supported by Council.

The recommendations to remove references to the Register of the National Estate are not a matter for Council to comment on.

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Draft Recommendation 7.4

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.

Woollahra Council supports this recommendation. Within the local government area there are a number of State significance items which are owned by government agencies. It is agreed that there must be accountability within government agencies for the management of their built heritage stock. The public reporting process is seen to provide an opportunity to the highest tier of government to lead by example demonstrating best practice heritage management.

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.*

Firstly, as with the previous response, it is considered important for not only National but also State, Territory and local government agencies to lead by example and undertake best practice heritage management when looking after government owned heritage items. Accountability to the public, through a transparent reporting process, would assist in demonstrating to the community Council's commitment to its own heritage items.

However, notwithstanding the will and intention to implement best practice heritage management, Council reiterates comments previous made in response to draft recommendation 3.1 regarding the limited financial resources available to heritage conservation in light of other demands within Council's budget.

Draft Recommendations 9.1 – 9.5

These recommendations pertain to National and State tiers of government and are not relevant to local government.

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.

This issue has partly been addressed by Council's response to the key recommendation 8.1. Council is of the opinion that this draft recommendation in essence enables an owner to circumvent the listing process and an item's assessed heritage significance.

Prospective owners are informed of the heritage listing status of a property, through documentation provided in a contract of sale. In NSW this documentation is provided in the form of a section 149 planning certificate. The certificate informs a buyer of not just whether

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heritage listing applies to a site, but also of all other development considerations which apply to the site, such as floor space controls, building heights and set backs. In essence, the certificate provides an owner with information about planning and development controls and requirements pertaining to a site.

In light of this Council cannot support the draft recommendation which would allow the removal of a listing simply on the basis that an owner, who had knowledge of the listing prior to purchase, wished to carry out a "substantive" development and did not wish to maintain a conservation agreement. Whether or not the application would be seen to have a positive or negative impact on the cultural significance of an item is irrelevant. The issue at hand is the owner's ability to disregard an item's significance because the draft recommendation empowers them to do so.

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.

Council is strongly opposed to this draft recommendation. Not only does it remove consideration of a proposed development within the vicinity of a heritage item, but also to those which directly abut a heritage item. Council believes that removing the ability to consider the impact on heritage for non heritage items will result in a poorer architectural outcome of infill buildings within an historic context.

Design within the vicinity of a heritage item, or historic environment does not require a replication of historic design styles. Indeed such a design would contradict current conservation principles.

Council fears that should this draft recommendation become active it will result in the preparation of poor architectural responses for development in the context of a heritage item. The consideration of heritage is not to be seen as a detriment to a proposal, but rather the opportunity of a new building to respond to an historic environment, and provide a positive contribution to the setting of an item.

The issue of heritage consideration for non-listed properties and properties outside heritage areas is addressed in a publication title *Design in context*. This document was the result of a joint initiative between the NSW Heritage Office and the Royal Australian Institute of Architects.

An architect's responsibility is not just to the client. As professionals we are equally required in our work to consider the benefit to the community at large and to the environment¹. The consideration of a heritage item within the vicinity of a new proposal is not seen as an impediment to development opportunities. Rather it is a flagging process by which Council can monitor development, providing Council with the appropriate powers to seek professional comment on how a new development will impact on the significance of an item, and endeavour to ensure the outcome is complementary to a particular historic environment.

¹ *Design in Context*, NSW Heritage Office, The Royal Australian Institute of Architects (2005), page 1.

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The guidelines seek to *provide parameters by which architects can contribute to the future in a creative and aspiring way, while ensuring the special qualities of a heritage place are retained.*² This initiative clearly demonstrates that the consideration of heritage does not detract from new design potential, but rather enhances the quality of responses.

Further, this recommendation has the potential to isolate heritage items. It would remove from consideration the impact on matters that contribute to an item's significance such as views and vistas, both to and from the item, expanded curtilages, streetscape relationships and landscape and open space settings. As an example, Woollahra is a local government area which, by virtue of its harbourside location, has many significant sites and locations where harbour views are identified as culturally significant. Development proposals adjoining a heritage item site or in its vicinity can have a detrimental impact on these significance views and vistas.

Finally, Woollahra Council strongly supports the retention of heritage zones and conservation areas, as a management tool for local government. As previously stated, Woollahra Council currently has 11 conservation areas. The management of these areas, predominantly through Heritage Conservation Area Development Control Plans (HCA DCP), has facilitated a consistent planning approach throughout an area. Such a planning mechanism as a HCA DCP provides the community, and owners directly impacted, with a clear understanding of the cultural values of the place and a desired future character of an area. Council believes that that this has facilitated positive outcomes for the locality, in terms of high level of conservation achieved, improved community interest and awareness of cultural issues and improved property values.

This is best demonstrated by the success of the Paddington Conservation Area, which was first established in 1972. The special character of Paddington is derived from its historical development and associations, evident in its interrelationship of buildings, spaces, topography, landscape settings and land uses. Since the establishment of the conservation area, the cultural values have been retained and enhanced through sensitivity and innovative design solutions, for old and new buildings, facilitated by the Paddington Heritage Conservation Area Development Control Plan. The outcomes of such a planning mechanism have undoubtedly been positive in terms of celebrating the cultural values of the place. Further, the DCP has been strongly supported by the community and residents alike. The success of the conservation area has transformed Paddington into highly sort after and prestigious inner city location which celebrates its unique historic environment.

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.

The removal of duplicity which is evident in the current legislative system as a result of multiple listings is supported. This is relevant to the assessment of development applications where replication between state and local governments often occurs. Council believes the current system can be better integrated to become a more time efficient and cost effective process.

² *ibid.*

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However, there is a concern that the removal of a heritage area from a State or Territory register has the potential to diminish an areas assessed level of significance. For this reason Council cannot support the recommendation.

4.0 Conclusion

The Council sees merit in several draft recommendations of the Draft Report, subject to financial and other resource-based issues being overcome. These recommendations relate to

- Dissemination of heritage material;
- Opportunities to remove duplication in the development assessment process; and,
- Establishment of parameters for public body accountability.

The Council strongly opposes the key draft recommendation relating to negotiated conservation agreements. In its proposed form, the Council considers the agreement concept to be regressive and not to the benefit of the broader and long-term community interests.

As this recommendation forms an underlying philosophy of the Draft Report, Woollahra Council does not give its support to the Productivity Commission and the Draft Report on the Conservation of Australia's history heritage places