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

This is a submission in response to the draft Report of the Productivity Commission Inquiry into the Conservation of Australia's Historic Heritage Places.

As a Heritage Consultant to State and Local Government and the private sector in Victoria, my review of the draft Report has identified the following:

- That the Productivity Commission's understanding of heritage assessment and management in the Victorian Planning system is ill-informed and inaccurate.
- That the basis of some of the recommendations, including the proposed conservation agreements, is fundamentally flawed and does not reflect sound conservation practice.
- That the draft Report appears to go beyond the Terms of Reference identified on pp.v-vi, particularly in relation to 'possible policy and programme approaches' and the articles of the Australia ICOMOS Burra Charter.

1.0 Professional Background

I am Director of Authentic Heritage Services Pty Ltd, a heritage consultancy company offering heritage advice to Government and the private sector. I hold a Bachelor of Arts (Architecture), Bachelor of Architecture (Hons.1) and Doctor of Philosophy (Architecture). Over the past 10 years, I have worked as a Heritage Advisor in Local Government, and in the preparation of heritage studies and policies for Local Government, and Conservation Management Plans for Government and private owners.

I have been Heritage Advisor to the Surf Coast Shire since 1999 and the City of Greater Geelong since 2002. The extent of tasks carried out at the City of Greater Geelong between mid 2003 and mid 2005 (two days per week) are as follows:

- Assessment Reports of Planning Applications: 829
- Meetings with Owners & Consultants: 401
- Site Visits to Heritage Places: 297

A substantial majority of the planning permit applications I am involved with as Heritage Advisor are successful. Pre-application meetings are encouraged where any issues

(concerning the owner or concerning the specific local policies affecting the property) are discussed and outcomes negotiated (in most circumstances).

The preparation of Conservation Management Plans involves the owner's strategic directions for their properties. The assessment of the places and preparation of Statements of Significance are prepared which act as the underlying basis for the provision of conservation policies that account for the owner's strategies. Maintenance and restoration works are costed. Often, the Conservation Management Plans (including the cost estimates) are used to obtain Government funding for restoration. Since the late 1990s, at least over \$11M has been awarded to property owners who have had a Conservation Management Plan prepared by this office.

Basically, "conservation agreements" are already a fundamental part of my work as Heritage Advisor dealing with planning permit applications, and in the preparation of Conservation Management Plans. However, the underlying safeguard with these negotiated outcomes is the statutory planning control over the heritage place.

2.0 Victoria Planning Provisions

2.1 Understanding of Victoria Planning Provisions

Of particular concern in reviewing the draft Report is the Commission's lack of understanding of the Victoria Planning Provisions, and particularly the basis and function of the Provisions in relation to historic heritage places. Each municipality in Victoria has a Planning Scheme with a standardised approach, both in terms of formatting and language style. In relation to heritage, the Municipal Strategic Statement provides the Council's overall heritage strategy, with local heritage policies on how historic heritage places are to be managed, provided in Clause 22. Often these local policies, particularly in relation to heritage areas, have been based on Statements of Significance.

Local heritage policies, as in the case of the Greater Geelong Planning Scheme and the Surf Coast Shire Planning Scheme, provide the fundamental direction on how heritage places are to be managed, in terms of alterations and additions, demolition and subdivision. These policies have been derived from an understanding of the significant heritage assets in these municipalities, and from the principles and processes identified in the Australia ICOMOS Burra Charter. No permits are required for maintenance work.

2.2 Statements of Significance

The findings in the draft Report that the Schedule to the Heritage Overlay in the Victoria Planning Provisions (pp.83-84) is ill-informed and misleading, and that there is no requirement for Statements of Significance to be entered into the Planning Scheme is inaccurate. Firstly, the Schedule to the Heritage Overlay is a planning control. In most circumstances (using the City of Greater Geelong and Surf Coast Shires as examples), the controls identified in the "cells" in the Schedule have specifically been selected as a result of the information provided in the Statements of Significance for each of the heritage places. The Schedule to the Heritage Overlay in Clause 43 of Victorian Planning Schemes is not the appropriate place for the Statement of Significance and was not designed for the inclusion of the Statement of Significance. Secondly, all the Heritage Studies prepared for the municipalities include Statements of Significance for each individually significant heritage place, and for significant heritage areas. These Heritage Studies are Reference Documents in the Planning Scheme and need to be considered as part of the assessment of a planning permit application (this is supported by findings at VCAT - further details can be provided if required).

Several Ministerial Planning Panels appointed under delegation from the Minister for Planning in Victoria in recent years have highlighted the need for effective Statements of Significance as part of the introduction of historic heritage places in Planning Scheme Amendments. Typical examples include Amendment C58 to the Ballarat Planning Scheme (January 2004), Amendment C49 to the Greater Geelong Planning Scheme (February 2004)

and Amendment C15 to the Surf Coast Planning Scheme (May 2005). The Productivity Commission is encouraged to review these Panel Reports to gain a further understanding of the pre-requisite of Statements of Significance for historic heritage places in Planning Scheme amendments.

Given the fundamental importance of Statements of Significance and associated Heritage Policies in Planning Schemes in Victoria, the inaccuracy of Draft Finding 5.2 in the draft Report has established a considerably flawed basis for the proposed different management programmes, including the conservation agreement system. The draft Report (p.87) highlights that, 'on average, a small proportion of heritage applications are rejected primarily on heritage grounds.' Yet, the recommendations provided do not relate to these findings and are certainly not based on any accurate assessment of the existing Victoria Planning Provisions and particularly how they are operating throughout the State of Victoria.

3.0 Development Approval for Historic Heritage Places

The draft Report (p.87) claims that there is a fundamental difference in the approach to heritage and non-heritage development. No justified documentation is provided to support the findings, and no evidence is given in relation to other non-heritage Planning controls that may also have an affect on development. To reiterate the findings of p.87 of the draft Report, 'on average, a small proportion of heritage applications are rejected primarily on heritage grounds.' In Victoria, the heritage overlay may be only one of a number of Planning controls on a particular property. As the finding on p.87 indicates, it is often not the heritage overlay that causes the refusal of planning applications. There may well be other Planning Overlays or zones that have affected the development, not particularly heritage issues. While the Terms of Reference for the draft Report only include historic heritage places, little attempt has been made to suggest that other factors, apart from heritage, may be involved in the 'affect' on development. Again, this creates a flawed basis for making highly important recommendations for the future management of historic heritage places around the country.

The claim that the discretionary basis of the heritage overlay in the Victoria Planning Provisions creates uncertainty as to the permissibility (and greater cost) of development for heritage places (p.87) is conjectural and unsubstantiated. No quantifiable evidence has been given to support this claim. To the contrary, my experience as Heritage Advisor and Heritage Consultant very clearly suggests that the discretionary nature of the Victorian Planning system, where supported by well-developed and clear heritage policies, minimises such uncertainty. At the City of Greater Geelong, the suite of local heritage policies, together with the City's Heritage and Design Guidelines (1997) (an Incorporated Document in the Greater Geelong Planning Scheme), certainly provides very clear direction on the opportunities and constraints for heritage places. In addition, the City's Heritage Advisory Service, whereby existing and potential owners can receive free pre-application and permit application advice through a discussion with both the Heritage Advisor and a Statutory Planning Officer, has an obvious reduction in any uncertainty in the understanding of the opportunities and constraints for future development.

Given the rarity value and uniqueness of most historic heritage places, the discretionary nature of the Victoria Planning Provisions allows the Heritage Advisor, Planning Officer and the owner or manager of a heritage place to negotiate an outcome for future development (based on an accepted understanding of the significance of the place) in most circumstances. This is supported by the results given at the commencement of this submission, as Heritage Advisor to the City of Greater Geelong. However, the safeguard for the conservation of the place is the statutory planning listing, which triggers the need for the negotiations in the first instance.

4.0 Proposed Conservation Agreements

4.1 Identifying Heritage Places

On p.195, the draft Report provides a discussion on the need for comparative analyses. In the assessment of most heritage places, comparative analysis already forms part of the rigorous assessment of heritage places proposed for inclusion as a Heritage Overlay in the Planning Scheme in accordance with the Victoria Planning Provisions. The relevant level of significance is in part determined by the quality, rarity and integrity of the place when compared to similar places, Australia ICOMOS Burra Charter and relevant Significance Assessment Criteria (particularly the Australian Heritage Commission Assessment Criteria or Heritage Victoria Assessment Criteria). In relation to Victoria therefore, this aspect of the assessment process is already in place. Further work on Significance Assessment Criteria could be considered.

4.2 Conservation Agreements

Accepted Conservation Practice

The proposed Conservation Agreement system does not appear to account for accepted conservation practice. There are notable differences between the existing and recognised conservation practice in the assessment of cultural significance and listing process, and the proposed conservation agreement system.

The existing system, as guided by the Australia ICOMOS Burra Charter and Victoria Planning Provisions, separates the assessment of significance and listing, from the ongoing management issues and associated costs of the place. The Burra Charter - which the draft Report (p.28) acknowledges as 'the standard for conservation management in the private sector' (and which also read Government sector) - points out that:

The assessment of cultural significance and the preparation of a statement do not involve or take account of such issues as the necessity of 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.'

My review of the proposed conservation agreement system does not accord with the above philosophy, as both the significance and the policy for future development is "negotiated" with the owner.

The apparent contravention (misguided or otherwise) of the Burra Charter suggests that the findings and particularly the recommended Conservation Agreement system goes beyond the Terms of Reference identified at the beginning of the draft Report. Recommendations that are contrary to the Australia ICOMOS, where significant heritage places may be put at risk (whether by inappropriate change, demolition or an unsustainable cost-burden system) cannot be considered an appropriate management approach. This is especially so when considering the Background to the Terms of Reference which state that 'The conservation of our built historic heritage is important ... There is a need for research to underpin how to best manage the conservation [my underlining] and use of our historic heritage places.' (p.v).

Other Issues with the Proposed Conservation Agreement System

Demolition by Neglect. The draft Report draft suggests that demolition by neglect (or dereliction) is a problem in the existing Planning system. My experience as Heritage Advisor at the City of Greater Geelong for the past four years suggests otherwise. Of the 829 planning permit applications assessed, there have been only 2 incidents of demolition by neglect. Indeed, the City's Heritage and Design Guidelines (an Incorporated Document in the Planning Scheme) identifies this issue and references the Administrative Appeals Tribunal (now VCAT) Appeal No. 1993/024690, Moloney vs. City of Geelong West (p.3), where the Tribunal found:

¹ *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance, Australia ICOMOS Inc., Burwood, 2000, p.11.*

"The question to be asked is whether the owners of the land should be able to benefit from the neglect of the site. Take a situation for example where two listed buildings exist side by side and the owners each seek permits to redevelop. One building has been carefully tended and preserved. The other has been neglected and left open to the elements and to vandals. There would be little prospect of the owners obtaining a demolition permit in the first example. Why then should the owners of the second example gain a benefit through their neglect?"

- Overseas Precedents: From my review of the draft Report, no overseas voluntary conservation agreement systems has been documented to support the conservation agreement system proposed and that it leads to little heritage loss and effective and efficient conservation management. It is my understanding that conservation agreements (as proposed) are not part of the conservation management systems in New Zealand and the United Kingdom.
- Heritage conservation outcomes may well be determined by individuals with resources to negotiate and consult. There could well be inequity for individuals without these resources.
- There is potential for inequitable and inconsistent management outcomes through the conservation agreement system. Are the agreements to be public or private documents? How will the proposed system be transparent and fair?
- The draft Report provides no detailed and considered recommendations on the enforcement and arbitration of the proposed conservation agreement system.
- The proposed conservation agreement system has the potential to cause heritage loss, such as at the time of sale of a heritage property. At that time, it could well be very difficult to negotiate a conservation agreement.
- The proposed conservation agreement system has the potential to create a system of "benevolence" where there are incentives to gain financially from a funding system (albeit a funding system not articulated in the draft Report), irrespective of the need for the funding and where funding may not be appropriate.
- The concept of owners of heritage places "opting in" for a conservation agreement is not only unsustainable, but also potentially unworkable. Conservation agreements are actually not necessary for willing participants. It is the owners where negotiations are not possible where potential difficulties lie. No safeguards have been given in the proposed conservation agreement system. The concept of compulsory acquisition is unsustainable and unrealistic and is therefore contrary to sound conservation practice and the Australia ICOMOS Burra Charter.
- The conservation agreement system perpetuates a fear that significant heritage places are more expensive to maintain. However, conservation includes retention of existing fabric and regular maintenance. Every place as a maintenance cost, irrespective of its heritage value or otherwise. How with the funding component be regulated in the conservation agreement system to avoid payments for 50 plus years of deferred maintenance? How would this be equitable to owners of heritage places that have regularly maintained their properties?

5.0 Recommendations

It is recommended that the Productivity Commission become more fully informed of the Victoria Planning Provisions and the benefits and costs that the heritage overlay provisions have brought to Victoria. The draft Report provides no information on the costs associated in establishing the current system and the combined conservation and economic cost to Victoria if the current system was removed.

It is also recommended that the Productivity Commission inform itself and consider some of the outcomes of the Victorian Government's draft *Victorian Heritage Strategy* (November 2004) that provides the vision and strategy for Victoria between 2005 and 2010.

It is further recommended that the Productivity Commission seriously and carefully reconsider the proposed Conservation Agreement System to provide a more balanced policy and programme approach to conservation and competing objectives. The Productivity Commission is encouraged to:

- Investigate the current Victorian Planning system in considerably more detail and provide policies and possible programmes for improving the current system. Several improvements of the current Planning Scheme have been given in the Survey Results in draft Report on pp.245-246. These should be closely reviewed as the proposed recommendations in the draft Report (including the conservation agreements) does not accord with these results. These and other improvements to the existing system should be used as a basis for revised recommendations in the final Productivity Commission Report.
- Consider improvements to the current Victoria Planning Provisions that enable greater flexibility in managing historic heritage places, but not to the detriment of these places through loss of statutory controls and the potential negative impact on the integrity of significant fabric. Improvements could include (but may not be limited to):

General permit exemptions to some historic heritage places, particularly historic and non-historic heritage places situated in heritage areas.

General permit exemptions to some individual historic heritage places of particular types (ie. residential places).

Further community education about Australia's historic heritage places, heritage significance and information on best-practice methods of conservation management.

Further community advertisement of the availability of Heritage Advisors in Local Government, and the opportunity to freely discuss the heritage values and consequent opportunities and constraints for any development, prior to lodging a Planning Permit Application. Such advertisement could be through marketing campaigns involving different media, revitalisation of "Heritage Week" programmes, etc.

Further education and training to Heritage Advisors in relation to the Victorian Planning system, negotiation and facilitation skills, mentoring programmes, etc.
Further education for Planners and others working in the Victorian Planning system.

Innovative methods for establishing funding programmes from both Government and the private sector for managing Australia's historic heritage places, particularly those places at the local level. More rigorous, accepted significance assessment criteria, with inclusion and exclusion guidelines and specific examples and case studies across Victoria/Australia. The Assessment Criteria developed by the Australian Heritage Commission provides an ideal basis for new Criteria.

- Clear and accepted Heritage Guidelines for managing historic heritage places across Victoria. These Guidelines should be accessible and understood by all in the community.

Consider the retention of the existing Victoria Planning Provisions and the statutory listing of historic heritage places with a conservation agreement system as an incentive for further clarifying the extent and specific management controls of particular historic heritage places. That is, a conservation agreement (as a public document) could be negotiated with an owner in relation to how the place is to be managed (controlled) through the preparation of a Conservation Management Plan. If no agreement is established, then the place should be managed under the existing Victoria Planning Provisions for the whole property. The conservation agreement should only involve the management of the significant fabric, not debate the significance assessment (which should remain as a separate exercise). The conservation agreement, through the preparation of a Conservation Management Plan, should therefore be included in the Schedule to the Heritage Overlay of the Planning Scheme as an Incorporated Plan. The Conservation Management Plan and ongoing management of the historic heritage place should be carried out in accordance with the Burra Charter Process as outlined on p.10 of the Charter (see attachment).

The Productivity Commission is strongly encouraged to become more fully informed and to accurately account for the actual system of heritage management in Victoria. In doing so, a review of the proposed recommendations in the draft Report is encouraged, so that alternative recommendations in the final Report supports and improves upon heritage management in the current Victorian planning system.

Yours sincerely,

Dr David Rowe
Director

