

Carlsa J. Carter  
21<sup>st</sup> February 2006

Heritage Inquiry  
Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616

Dear Sir/Madam

**Re: Conservation of Australia's Historic Heritage Places Draft Report**

I wish to express my dismay with the Key Recommendation 8.1 that:  
“Privately owned properties should be included on a national, State, Territory, or local government statutory heritage list only after a negotiated heritage agreement has been entered into and should remain listed while an agreement is in force.”

It is very perplexing, given our experience here in South Australia, particularly in the City of Adelaide, and the lack of coherent and factually based argument provided in the document, to understand how the Commission has arrived at this extraordinary position.

The consequences arising out of the adoption of such an extreme regime change to the process of heritage conservation is of utmost concern. Objective heritage assessment criteria and statutory listing have developed over the last generation following widespread loss of Australia's built heritage in the 1960s and 1970s. This finding proposes to turn back the clock, subsume community interest to private interest and in the process embed local government in a mire of conservation agreement negotiations. It proposes the commitment of public funds without any security for the future preservation of a heritage property whatsoever.

**Comparisons with the Conservation of Natural Heritage**

The Conservation of Australia's Historic Heritage Places Draft Report (the Draft) in section 8.3 argues for “Purchasing public-good heritage characteristics” (p.176) and quite rightly stresses the need for public funding of heritage conservation that cannot be achieved through private funding alone.

It draws on experience in the field of natural heritage conservation and in particular the Land for Wildlife and Trust for Nature (Victoria) described in Box 8.2, to support the argument for voluntary agreements. These are very limited examples that:

- a) do not apply in South Australia where under the Native Vegetation Act 1991 all native vegetation is protected from clearance and a voluntarily negotiated and covenanted Heritage Agreement over native vegetation merely overlays a higher level of protection than the Act itself, and
- b) the heritage sites described in the example are protected in perpetuity through a covenant on the title. This is contrary to what is proposed in the Draft where heritage listing would lapse on the property's change of ownership or the lodgement of a development application. Accordingly this is not a valid comparison.

Comparison with the protection afforded by the Environment Protection & Biodiversity Conservation Act 1999 (Cmth) is again not valid because heritage protection is more thorough than that proposed under a regime founded on voluntary listing. Under this Act endangered species and vegetation communities are protected on private land by law and not by voluntary agreements. The Draft admits that this Act “provides greater protection for our natural heritage values” and this is protection through regulation.

Nature conservation is recognised as contributing to broader environmental outcomes such as soil and water conservation, lowering salinity and improving farm productivity and not just the conservation of flora and fauna. There are other broader district and regional imperatives for farmers to voluntarily conserve bushland than just the residual flora and fauna and amenity values contained in the heritage site itself. Again the comparison with voluntary listing for individual heritage properties is invalid.

### **Property Rights**

The Commission has canvassed many views in regard to property rights and provides a selection of opinions in Box 7.3. While there is merit in their conclusion in Draft Finding 7.7 that property owners need more incentives and that a “better balance is needed” (p175) instead exploring funding and administrative opportunities to remedy this minority position they opt for a single simplistic model to apply to all heritage listed properties. There is a case, as the Draft discusses to, for fair compensation. This could be achieved through matched for conservation works and for the provision of tax and rate rebate incentives. The Commission has surprisingly allowed property rights dominate its recommendations despite affirmations in their Draft in a similar vein to those below.

“Places of cultural significance enrich people’s lives, often providing a deep and inspirational sense of connection to community and landscape, to the past and to lived experiences. They are historical records that are important as tangible expressions of Australian identity and experience. Places of cultural significance reflect the diversity of our communities, telling us about who we are and the past that has formed us and the Australian landscape. They are irreplaceable and precious.”

“The Illustrated Burra Charter” 2004, ICOMOS.

### **Consequences of Voluntary Heritage Listing**

Some of the consequences of adopting Key Recommendation 8.1 are that:

1. Negotiations can be very expensive in terms of time and resources and if they fail the Commission suggests that the only option for conservation is compulsory purchase. This requires more public expenditure and if protracted negotiations have failed the costs could be unacceptably high.
2. Local government is most likely to run out of funds for the assessment, the development of conservation plans and the protection of heritage places. Conservation plans are expensive. In addition negotiations may end up resembling auctions where one property owner seeks to negotiate a deal at least as “good” if not “better” than

their neighbour. The Draft does not suggest where local government will secure the funds to undertake this process.

3. Voluntary negotiations are fraught with difficulties and unlikely to succeed. The Commonwealth Government (with resources and clout than local government) has not been able to successfully conclude “conservation by agreement” on any of the 15 privately owned properties on the National Heritage List (p45).

4. Local government elected members and staff can be particularly susceptible to the unrepresentative pressures of local real estate owners and developers. For this reason the assessment and listing of heritage properties must be kept at both state and local levels so independence, balance and review can be kept transparent and objective.

5. Heritage properties could be demolished while negotiations are underway since the whole regime is “voluntary” and the properties remain “unlisted” and unprotected until the agreement is signed off.

6. Intergenerational equity issues are entirely ignored. The rights of younger generations to enjoy their cultural heritage are lost to the taste and whim of individuals and the profits to be made in the property market.

7. There is absolutely no protection in perpetuity for the public monies invested in the conservation of any privately owned heritage property since the Commission (astonishingly) proposes that listing should lapse on the sale of the property or the lodgement of a development application. This certainly doesn't happen in the covenanted (on the title) natural heritage voluntary agreements that are used in the Draft to support this recommendation and it is highly unlikely that the public would agree to such a profligate waste of their money.

### **Conclusion**

While the Commission proposes that the overriding concern is the wellbeing of the community it illogically champions the interest of a minority group – the disgruntled owner of a heritage listed property - over the interests of the wider community.

This Draft is a very unconvincing document both in the rigor of its research and the force of its argument to bring about such an extreme change in heritage conservation in Australia. It undervalues the legislation, policies and processes that have been developed over the past thirty years in response to the loss of significant heritage places and the resulting community demand for greater protection. By proposing a simplistic voluntary model for conserving historic places it shows a lack of understanding of the historical, sociological, legal and administrative complexities of current heritage conservation practice.