

City of Adelaide's response to the Productivity Commissions Draft Report on the Conservation of Australia's Historic Heritage Places

1. Commission's Response to Council's comments on Issues Paper

In June 2005, the City of Adelaide provided comments on the Productivity Commission's Issues Paper. In Council's submission, areas of concern regarding heritage practice within Australia were raised and methods of addressing these concerns were suggested.

Some of these issues have not been adequately addressed in the draft report. These are summarised as follows:

Lack of incentives provided to owners by State and Federal government

The issue of incentives such as tax relief, grants or joint heritage conservation projects involving State and local government and the heritage owner are not discussed in any of the Recommendations set out in the draft report. For example, Recommendation 11 states that State Governments should request compulsory acquisition where this is the only way to ensure cost-effective conservation of places of local significance. The draft report makes no reference to funding assistance for such acquisitions.

Parity of incentives provided at the local and state level

While Recommendations 6 and 7 suggests the implementation of reporting systems for heritage related costs which would highlight the costs and responsibilities of heritage conservation on all governmental levels, it does not discuss how these costs will be funded and by who. Similarly, Recommendation 15 states that State and Territory government should remove identification and management of heritage zones and precincts areas from their legislation leaving these responsibilities to local government planning schemes. This places greater pressure on local governments to maintain areas and places with heritage significance (even where heritage values are of State or national significance) and takes the responsibility and ownership away from higher levels of government.

Incentives for upgrading commercial buildings

None of the recommendations address this issue.

Public perception that heritage listing reduces the value of a place

Recommendation 9 states that properties will only be listed when agreement is reached with the property owner. The current perception that heritage listing reduces the value of a place is not always factual. This recommendation will solidify the current perception rather than clarify the issue. Additionally, it will potentially result in a significant loss of the current stock of heritage listed properties. Similarly Recommendation 13 states that properties can be de-listed if a new owner

negotiates against that listing. This may also result in a loss of heritage properties and the manipulation of this proposed system by developers by holding local governments to ransom over unrealistic for financial contributions.

2. General Comments on the Draft Report

In opening, Council is particularly pleased that the Commission has adopted a wide definition of the term “place”. Such a definition encourages the recognition of the national importance of the City’s Parklands and the Plan of the City of Adelaide as a whole. The use of the term ‘Historic’ however, in the draft report cuts across the criteria for listing and hence is misleading. (In the Oxford English Dictionary ‘Historic’ = famous in history, normally used of past events’.)

The draft report proposes a significant change in direction and fundamental philosophy to the conservation of historic heritage places. The report’s focus is primarily on the management of heritage properties and the responsibility of such management; largely removing such responsibility from Federal and State Governments and placing more emphasis on Local Government.

While it is acknowledged that the Terms of Reference instructed the Commission to examine “the economic, social and environmental benefits and costs of the conservation of historic places in Australia”, the draft report is silent about the cost of its key recommendation. The Council is of the view that it and other inner city councils would not be in a position to meet the direct and indirect cost of the proposal for negotiated listing.

Further, the draft report overlooks the need to separate the issue of heritage merit or value of a place, with the responsibilities and ‘cost’ of retention and protection of the place. This is contrary to the fundamental philosophy of the Australia ICOMOS Burra Charter.

The draft report details only one mechanism for conservation. It does not describe a range of measures pertaining to different situations. It is Council’s view that other mechanisms need to be developed which are likely to be successful in inner city areas. The Council urges the Commission to broaden its set of recommendations and in particular to develop conservation measures which encourage conservation in the most difficult situation; that of city centres.

It has been a feature of listing processes that they are open to public scrutiny. Council makes its listing proposals available to the public, inviting representations by the public (including owners). All objections and comments are made in public sessions and are included along with the Council’s final recommendations for listing when it submits them to the State Government for approval. Thus it can be seen that the Council’s processes are open to public scrutiny at several points in the process. The mechanism proposed by the Commission appears to be a matter of private negotiation between owner and the administering body. It does not appear to be an open process nor to be one that takes into account views of the general public or the immediate adjacent owners.

It is disappointing that in its desire to improve conservation outcomes the Commission has placed so much emphasis on a single mechanism. Other less bureaucratic measures which offer other incentives to conserve are neglected: taxation relief is an obvious example as, indeed, is the Adelaide City Council's heritage grants system. Such initiatives are a means of recognising the broader community interest and benefit in heritage. It is Council's view that a broader range of incentives from the Federal Government need to be further explored to strengthen the heritage cause.

In conclusion, as rightly stated by the Federal Treasurer, Peter Costello, in the background statement to the Terms of Reference of the Inquiry:
"The conservation of our built historic heritage is important. Places of historic significance reflect the diversity of our communities. They provide a sense of identity and a connection to our past."

The fundamental recommendations of the draft report would make heritage listing of our places of historic significance entirely the prerogative of the owner and not necessarily in the best interests of the broader community. The approach would entrench the perception that heritage listing has a negative effect and over time would result in the loss of identity and connection to our past.

3. Response to Recommendations in Draft Report

In addition to the general comments made above the 15 Draft Recommendations contained in the draft report are discussed herein.

Draft Report Recommendation 1: (Key recommendation)

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.

Comment: The key recommendation of the draft report is made on the premise that the costs of conservation need to be taken into account (both to the property owner and the community, via government) when places are being considered for heritage listing.

This approach does not support the fundamental philosophy which underpins the Australia ICOMOS Burra Charter, whereby the heritage value of the place is the primary basis for subsequent management decisions (i.e. protection).

This approach also essentially proposes to treat heritage conservation, particularly local heritage listings, differently to other controls placed over privately owned places through the planning system. Much greater responsibility will be felt by local government because the imposition of a heritage listing would become optional, based on the owner's opinion, rather than being based on the merits of the proposal.

Planning and building controls place restrictions over private property, irrespective of whether private property owners agree to the controls. These include issues such as zoning, height, density, stormwater management, significant tree retention, sustainability and public health and safety. To proceed down the path of allowing one aspect of the planning system (in this case local heritage places) to be optional, could set an undesirable precedent. The regulation of activities, land uses and development are critical factors in providing a safe, amenable and attractive environment that the majority of Australians enjoy.

The use of conservation agreements can prove useful in the management of heritage places, particularly when a Government owned property is disposed of, or where unusual ownership/management arrangements are in place. But these should be limited to management arrangements and not be the tool for negotiating the heritage status of a place. The approach put forward would result in local government having to unreasonable 'pay' for heritage protection of individual properties.

Draft Report Recommendation 2: 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.

Comment: Agree. Promotes accountability and ability to easily collate and compare information relating to the identification, protection and management of heritage places across Australia.

Draft Report Recommendation 3: The Australian Government should phase out the Register of the National Estate for historic heritage purposes, beginning with the closure of the Register to any new nominations.

Comment: Agree. The Register is superfluous given the new Environment Protection & Biodiversity Conservation Act.

Draft Report Recommendation 4: State and Territory governments should remove any reference to the Register of the National Estate from their planning and heritage legislation and regulations.

Comment: Agree (see comments for Recommendation 3).

Draft Report Recommendation 5: Those State governments that have specific legislation governing the operations of the National Trust should repeal such legislation.

Comment: No comment, this is a State issue, and does not effect local government.

Draft Report Recommendation 6: The Australian Government should implement reporting systems that require government agencies with responsibilities for historic heritage places to document and publicly report on the heritage related costs associated with their conservation.

Comment: Agree. However, it is understood that Government is already accountable through the State of the Environment and Annual Report processes in South Australia. The reporting systems should also document the benefits of conservation works undertaken to heritage places to reflect a more balanced and comprehensive view of 'costs'.

Draft Report Recommendation 7: 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.

Comment: Recommendations already met. Council already prepares conservation management plans for Council owned heritage buildings. The financial commitment and expenditure for such plans and other heritage related projects are outlined in Council's budget.

Draft Report Recommendation 8: The Australian Government should implement processes whereby any additions of non-government owned properties to the National List occur only after a conservation agreement with the owner has been entered into, and that the property remains on the list only while an agreement is in force. Consistent with its stated preference of relying on agreements for the management of world and nationally significant historic heritage places, the Australian Government may wish to make this a statutory requirement under the Environment Protection and Biodiversity Conservation Act.

Comment: If a place is worthy of National heritage listing, it should be legally protected regardless of whether an agreement is in place or not. The issue of greater clarity with regard to the criteria used to list a place as a heritage item needs to be considered. (See comments for Recommendation 1).

Draft Report Recommendation 9: State and territory governments should modify heritage legislation to ensure that any additions of non-government owned properties to their statutory conservation lists occur only after a conservation agreement with the owner has been entered into, and that the property remains on the list only while an agreement is in force.

Comment: Disagree. There is a great need to build upon respective responsibilities between all levels of government (See comments for Recommendation 1).

Draft Report Recommendation 10: State governments should require their local governments to add non-government owned properties to a local heritage conservation list only after a conservation agreement with the owner has been entered into and remains in force.

Comment: Disagree. (See comments for Recommendation 1) There is however opportunity for greater clarity in criteria to determine the heritage value of local heritage places.

Draft Report Recommendation 11: 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.

Comment: Disagree. Funds are better directed to incentives encouraging maintenance and conservation by the owner. (See comments for Recommendation1).

Draft Report Recommendation 12: Private owners of already listed properties, where the listing occurred after purchase of that property, should be able to apply for a negotiated conservation agreement and for listing to continue only if an agreement is reached.

Comment: Disagree. (See comments for Recommendation 1) This may result in a great number of properties being de-listed (although it should be recognised that such a change in policy would require a change to Council's Development Plan via a PAR). This should be avoided by offering incentives such as Adelaide City Council's Heritage Incentives Scheme.

Draft Report Recommendation 13: 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.

Comment: Disagree. Owners would have been aware of the heritage listing prior to purchase and were therefore prepared to continue with the purchase of the property on that basis and at a price that would have taken into account such matters. (See comments for Recommendation1).

Draft Report Recommendation 14: 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.

Comment: Disagree. In South Australia, heritage places are consciously identified and managed through the planning system in recognition that local heritage is one of many issues to be considered as part of the development assessment process.

Draft Report Recommendation 15: 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.

Comment: Disagree. It is considered appropriate for State government to be responsible for the identification and protection of State government heritage resources, including places, zones etc. of State heritage value. This recommendation fails to recognise that all three spheres of government need to play their part through legislation, promotion and financial incentives.