

City of *Burnside*

Scanned copy of original submission

23 February 2006

Heritage Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Sir/Madam

Productivity Commission - Conservation of Australia's Historic Heritage Places

The City of Burnside has considered the Productivity Commission's public enquiry into the policy framework and incentives for the conservation of Australia's historic built heritage places and in particular, the draft report, entitled 'Conservation of Australia's Historic Heritage Places', which was released on 9 December 2005.

The Council, at it's meeting on 21 February 2006, resolved unanimously to advise the Productivity Commission that:

1. The City of Burnside is opposed to its draft recommendations regarding the listing of heritage places on a negotiated basis.
2. The City of Burnside supports the continued practice of the identification and management of heritage areas or zones under the relevant planning legislation, rather than through specific heritage legislation.
3. The South Australian Local Government Association be advised of the City of Burnside's response.
4. The City of Burnside believes that the Commission's position seeks to elevate economic theory to unreasonable levels of relative importance to the detriment of the consideration of the social and environmental benefits of heritage protection.

A copy of the Council report is included with this covering letter and forms the basis of the City of Burnside's submission in response to the draft Report.

If you would like any further information or clarification of the above, please do not hesitate to contact me on 8366 4201.

Yours faithfully

Chief Executive Officer

Item No. 4.2
Date 21 February 2006
To Operation Services Committee
From • General Manager Planning and Infrastructure
Subject Productivity Commission - Conservation of Australia's Historic Heritage Places
Attachments • Nil
Desired Outcome: Preservation of the historic character of the City

Purpose

The purpose of this report is to summarise and comment on the key recommendations of the Productivity Commission's Draft Report into the Conservation of Australia's Historic Heritage Places. Submissions to the Draft Report are due on Friday 24 February 2006.

Recommendation

1. That the report be received.
2. That the Productivity Commission be advised that the City of Burnside is opposed to its draft recommendations regarding the listing of heritage places on a negotiated basis.
3. That the Productivity Commission be advised that the City of Burnside supports the continued practice of the identification and management of heritage areas or zones under the relevant planning legislation, rather than through specific heritage legislation.
4. That the South Australian Local Government Association be advised of the City of Burnside's response.

PRODUCTIVITY COMMISSION - CONSERVATION OF AUSTRALIA'S HISTORIC HERITAGE PLACES

Background

1. With amendments to the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999 commencing on 1 January 2004, providing greater protection of our national heritage values, the Federal Government considered that it was timely to review the current pressures and issues associated with heritage conservation.
2. Although there has been significant research into the policy framework and incentives for the conservation of our natural heritage, there has been less work undertaken on historic heritage places and their social and economic value in the context of Australia's overall natural, indigenous and historic heritage.
3. 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 and to our nation. There is a need for research to underpin how best to manage the conservation and use of our historic heritage places.
4. In this context, the Federal Government has requested that the Productivity Commission undertake an inquiry into the policy framework and incentives for the conservation of Australia's historic built heritage places in accordance with the Productivity Commission Act 1998. The Productivity Commission, an independent agency, is the Australian Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians. The Commission has commenced a public inquiry into the policy framework and incentives for the conservation of Australia's historic built heritage places.

Scope Of The Inquiry

5. The Productivity Commission examined:
 - The main pressures on the conservation of historic heritage places.
 - The economic, social and environmental benefits and costs of the conservation of historic heritage places in Australia.
 - The current relative roles and contributions to the conservation of historic heritage places of the Commonwealth and the State and Territory Governments, heritage owners (private, corporate and government), community groups and any other relevant stakeholders.
 - The positive and/or negative impacts of regulatory, taxation and institutional arrangements on the conservation of historic heritage places, and other impediments and incentives that affect outcomes.
 - Emerging technological, economic, demographic, environmental and social trends that offer potential new approaches to the conservation of historic heritage places.
 - Possible policy and programme approaches for managing the conservation of Australia's historic heritage places and competing objectives and interests.

Key Points Raised by the Productivity Commission

6. Historic heritage places provide important cultural benefits to the wider community, in addition to the use value they provide to their owners.

7. There is extensive private sector involvement in the conservation of historic heritage places. Governments at all levels not only own heritage sites, but also identify, list and provide strong regulatory protection for non-government heritage places, to provide broad community benefits.
8. The recently adopted three-tier framework (whereby the Australian Government takes responsibility for nationally and internationally significant places; the States and Territories for State-significant places; and Local Governments for locally significant heritage places) provides a sound basis for government involvement. However, significant deficiencies remain in particular, an over reliance on prescriptive regulation.
9. Prescriptive regulation can lead to ineffective, inefficient and inequitable outcomes, particularly for less significant (marginal) places. Typically, the regulations restrict development and use, which can inappropriately and unnecessarily erode property rights and values. There is little, or no:
 - restraint on the tendency to list all properties identified with heritage values, irrespective of degree of significance; and
 - consideration of the added conservation costs (of operation, maintenance and use restrictions).

Recommendations of the Inquiry of Particular Significance to the City Of Burnside 10.

10. The Commission's key recommendation is as follows:

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.

11. The following list of recommendations are also considered to be of particular significance to the City of Burnside:

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.

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.*

Draft Recommendation 9.2

State and Territory Governments should modify heritage legislation to ensure that any additions of non-Government owned properties to their statutory heritage 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.

Draft Recommendation 9.3

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.

Draft Recommendation 9.4

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.

Draft Recommendation 9.5

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.

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.

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.

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.

Comments on the Productivity Commission's Report

Planning Policy and Practice

12. The Productivity Commission report states that:

"Urban planning laws and by-laws are designed to internalise what are usually localised externalities. That is, where the effects are largely confined to neighbours. For example, the opportunity cost to one party of not being allowed to build a certain

development may be broadly offset by the fact that their amenity will not be diminished by an adjacent development by a neighbour. While such reciprocity is unlikely to be exact, there is a rough symmetry of costs and benefits, which may explain the broad acceptance of those rules and the absence of compensation.

However, where individual properties are heritage-listed, any associated development restrictions will impact on the owner (and on the property's capital value). Any benefits, however, will accrue to the general community. Another consideration which reduces the validity of comparing general planning laws with heritage regulations is that, in many cases, changes to planning laws financially benefit landowners. Invariably, changes to zoning restrictions, in response to pressure for urban development, are to the material advantage of landowners (for example, rezoning to medium or high density housing) and the issue of compensation is not relevant".

13. The heritage management system in South Australia is the result of an iterative process over many years and the community now generally accepts that heritage conservation is managed as part of the broader planning system. The Commission's suggestion that heritage listing is somehow different to other forms of planning control is considered to be unreasonable. On the contrary, it is considered that the core function of planning is to create development policy for the benefit of the wider community or the 'greater public good'. In this context, it is considered that planning policy that seeks to preserve heritage places is no different to planning policy that establishes a hierarchy of commercial centres or limits the height of residential development in particular locations.
14. The introduction of planning policy that some believe has a negative financial impact on individual land owners occurs regularly. The City of Burnside introduced new planning policies to its Development Plan in 2003, which increased the minimum allotment size in many of its suburbs, thereby reducing the redevelopment potential in some locations where the density of development was considered to have a negative impact upon the desirable character of these areas. Another example is the introduction by the South Australian Government in 2000 of new planning policies across South Australia to preserve "Significant Trees" on both public and private land as desirable features within the landscape.
15. If the Productivity Commission's assertion that the owners of heritage places should be financially compensated for perceived or actual financial impacts upon their properties, in the interests of being equitable, should it not follow that individuals who stand to gain financially through the introduction of new planning policy should reimburse the wider community? It is considered that such an 'equitable' approach to planning policy would dramatically impact upon desirable growth as identified through considered strategic planning).

Voluntary Listing of Heritage Places

16. The Productivity Commission report states that:

"To improve incentives for historic heritage conservation, privately-owned properties should be statutorily listed only after a conservation agreement has been negotiated with the owner. The agreements would cover the management and funding of the additional heritage benefits. This would:

- *bring greater integrity and rigour to the statutory listing process by aligning the decision to conserve additional heritage for the relevant community with the decision on funding the added costs of its conservation;*

- *provide the flexibility necessary to take into account the evolving nature of heritage values; and*
- *build on the practices already employed in some jurisdictions".*

17. A number of local Councils in South Australia have adopted the approach of voluntary listing of heritage places within the Development Plan, including the City of Burnside more than 10 years ago. Rather than listing some 300+ local heritage places within the Development Plan, only 50 places received such protection on the basis of owner agreement. In the meantime, a number of buildings clearly worthy of heritage listing have been demolished, raising considerable alarm within the wider community (e.g. Fernilee Lodge).
18. It is also understood that the voluntary approach to heritage listing within the City of Adelaide has resulted in undesirable and inequitable scenarios such as one half of a pair of semi-detached dwellings being listed as a Local Heritage Place and the other half not on the basis of owner objection.
19. It may be argued that the de-listing of many existing heritage properties would not necessarily result in their demolition, given their inherent value. It is also understood that paying individual landowners to heritage list their properties may also act as a significant incentive for conservation. However, the Productivity Commission's approach to voluntary listing of heritage places may come at the significant cost of the loss of a number of heritage places that clearly satisfy the criteria for such protection. The risk of losing a number of buildings of heritage significance and the associated detrimental impact upon the valued character of an area is considered to be unacceptable when balanced against the perceived gains.

Funding for Heritage Conservation

20. The Productivity Commission is clearly of the view that:

"Current methods of identifying historic heritage places for statutory listing focus on the benefits expected to accrue to the community. Typically, there is little, if any, consideration of the costs imposed either on the owner or the community more generally".

21. It appears that many of the Productivity Commission's Draft Recommendations are based on the premise that property owners who enter into conservation agreements will be financially compensated for the associated impact (additional ongoing maintenance, opportunity cost in terms of development potential, etc). What is unclear is how this cost will be determined equitably? A more significant shortcoming of the Productivity Commission's draft report is considered to be the lack of consideration given to how the funds provided by the community for heritage conservation are going to be generated? This issue is considered to be a major concern for any Local Government body, including the City of Burnside.
22. Draft Recommendation 9.6 suggests that, where someone has bought a property with the understanding that it is heritage listed, they need only lodge a Development Application to annul the existing heritage listing. If a new heritage agreement over such a property is unable to be negotiated, the owner could expect to have their Development Application approved. While it is understood that the proposed community payment to the individual land owner for the heritage listing of the property will act as an incentive to conserve the property, such an approach to the application of planning policy where the power to exercise flexibility rests primarily with the land owner is considered to be entirely inappropriate.

23. Draft Recommendation 8.1 that suggests that if a new purchaser buys a heritage listed property where a Conservation Agreement is in force, the new owner can simply decide to end the Agreement, thus enabling the building to be demolished. Again, it is considered granting the new owner the ability to alter carefully considered planning policy in the form of heritage listing on a whim is totally inappropriate, regardless of the potential financial incentives to retain the building.
24. As with all planning policy, carefully considered controls should not be removed simply because a particular owner might not wish them to apply.

Alterations and Additions

25. The Productivity Commission's report acknowledges that in the vast majority of cases (96%), development applications relating to heritage listed properties are approved. Less than 4% of such Applications are refused. These figures suggest that the listing of heritage places does not necessarily hinder appropriate development outcomes. It is acknowledged that some of these development outcomes can take longer in the design/assessment processes given the design challenges. However, with the assistance of design advice from Council Planners and Heritage Advisors at the pre-Application stage and during the assessment process, it is considered that heritage listing helps to achieve improved design outcomes that have longer-term financial benefits to the owners in terms of resale value.
26. The Productivity Commission has recognised some of the more positive effects of heritage listing in preventing the gradual destruction of heritage buildings through inappropriate alterations and additions. It may be argued that the de-listing of many existing heritage properties would not necessarily result in their total demolition, given their inherent value. However, there is strong evidence to suggest that there would be a diminution of the heritage value of these properties over time through unsympathetic alterations, additions and new development within these properties.

Historic (Conservation) Zones

27. The Productivity Commission's Draft Report states that:

"Provisions exist in a number of jurisdictions, and under both heritage and planning legislation, for groups of properties or specific areas to be designated as having heritage values even if individual properties would not, on their own, warrant listing (chapter 4).

For individual properties, the proposed arrangements would require an agreement to be entered into before listing. Such a process of identification and negotiation is unlikely to be practical for a much wider area or precinct involving a large number of diverse properties, which have heritage value as a group rather than individually. In addition, restrictions on the action of property owners typically applies equally to all properties within the area, and are typically focused on streetscape and developments that are compatible with the heritage appearance of the area rather than the conservation of heritage features within individual buildings. As such, they are much closer in design and impact to general land use zoning arrangements than to the system of heritage listing of individual properties. Such arrangements, if undertaken by local governments, would be subject to the normal review, public participation and appeals processes of zoning decisions. It would also be subject to the normal procedural and political checks and balances that operate at the local government level.

To avoid duplication and ensure a degree of accountability, the identification and management of heritage conservation areas or zones would operate under the relevant

planning legislation (and thus be the responsibility of local governments), rather than through heritage legislation, which would focus on the identification of individual properties that warrant a conservation agreement and subsequent listing. Where an area had State, or even National, significance, its identification could be the subject of negotiation between the State, or Australian, government and the relevant local authority, with the local authority being answerable to its constituency for any agreement entered into and any decision made".

28. The City of Burnside has recently introduced five new Policy Areas within the Historic (Conservation) Zone relating to Tusmore, Toorak Gardens (North), Toorak Gardens (Fergusson Square), Glenunga Park and Kensington Gardens (The Terraces). It is considered that the position of the Productivity Commission in relation to the identification of Historic (Conservation) Zones as identified above supports the established position of the City of Burnside in creating Historic (Conservation) Zones and associated Policy Areas.

Summary

29. After reviewing the Productivity Commission report, it is considered that the City of Burnside fundamentally opposed to the key Draft Recommendation (8.1) of the Productivity Commission that "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", as well as Draft Recommendations 9.3, 9.4, 9.5 and 9.6 on the basis that:
- The Commission's suggestion that heritage listing is somehow different to other forms of planning control is considered to be unreasonable, given that Council believes one of the core functions of Planning to be the creation of development policy for the greater public good.
 - It is not considered appropriate to financially compensate the owners of heritage places for perceived or actual financial impacts upon their properties, in the same way that individuals who stand to gain financially through the introduction of new planning policy should not have to reimburse the wider community.
 - The voluntary listing of heritage places in South Australia in the past has seen a limited number of heritage listings occur and, at the same time, a number of buildings clearly worthy of heritage listing have been demolished. The voluntary listing approach may see the continued loss of a number of heritage places that clearly satisfy the criteria for such protection, and such a risk is considered to be unacceptable for the perceived gains.
 - It is unclear how the cost of retaining particular heritage places will be determined equitably.
 - There is a lack of consideration given to how the funds provided by the community for heritage conservation are going to be generated.
 - Providing individual land owners with the power to alter carefully considered planning policy in the form of heritage listing is totally inappropriate, regardless of the potential financial incentives to retain such buildings.
 - The current heritage planning system does not necessarily hinder appropriate development outcomes; rather it often improves design outcomes that have longer-term financial benefits to the owners in terms of resale value.

The de-listing of many existing heritage properties may result in a diminution of the heritage value of these properties over time through unsympathetic alterations, additions and new development.

30. However general support is given to the Productivity Commission's position that "... the identification and management of heritage conservation areas or zones would operate under the relevant planning legislation (and thus be the responsibility of Local Governments), rather than through heritage legislation...".