

8 February 2006

Mr Neil Bryon
Presiding Commissioner
Heritage Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Byron

PRODUCTIVITY COMMISSION DRAFT REPORT – CONSERVATION OF AUSTRALIA’S HISTORIC HERITAGE PLACES

The City of Port Phillip provided an initial submission to the inquiry into historic places on 27 July 2005. The following is a submission on behalf of the City of Port Phillip to the Draft Report on Conservation of Australia’s Historic Heritage Places.

The City of Port Phillip has a vast wealth of historic heritage places within its municipal boundary, including heritage areas, individual places, trees, and aboriginal places. Port Phillip Council is committed to the protection and conservation of these places and recognises that together they make the environment a high quality liveable area. Council is also committed to a fair and equitable process for heritage listing for all concerned.

Port Phillip Council agrees that the approach of the Productivity Commission is well founded in terms of evaluating the effectiveness of current systems and identifying issues of incentives for conservation. Council does not agree, however, with the final recommendations.

Port Phillip Council supports some findings within the Draft Report including retention of the three tier legislative framework (Finding 7.1) and that the absence of Statements of Significance can impair decision making about a property (5.3). These findings reflect the existing system as it operates in Victoria and at the City of Port Phillip.

Heritage in the Port Phillip Planning Scheme

The Port Phillip Planning Scheme is made up of a number of zones and overlay controls that together provide direction for land use planning in the City of Port Phillip. The Heritage Overlay is a part of this large spectrum of planning controls.

The Schedule to the Residential 1 zone, Clause 32.01, of the Port Phillip Planning Scheme requires that, in addition to the normal land use requirements of that zone, a planning permit is required to construct or extend one dwelling on any lot less than 500m². Most residential properties in the City of Port Phillip have a lot size of less

than 500m². The Heritage Overlay (HO), Clause 43.01, also requires a planning permit for works to a property. Given that a planning permit is often required under the zoning provisions, the controls of the HO often do not have major implications on a planning permit.

The Port Phillip Heritage Review 2000 is a heritage study for the whole of the City of Port Phillip. The Heritage Review is included as an Incorporated Document within the Port Phillip Planning Scheme, meaning that it is a statutory document (*Finding 5.2 and 5.5*). The Heritage Review includes a thematic history for the City of Port Phillip as well as a Statement of Significance for every heritage area as well as a Statement of Significance for over 2000 individual properties. Including a heritage study, and therefore Statements of Significance, in the planning scheme is an option available to all Councils throughout Victoria.

Clause 22.04 of the Port Phillip Planning Scheme clearly outlines Council's policy on the application of the heritage overlay. Supporting guidelines are also available via Council's webpage at <http://www.portphillip.vic.gov.au/heritage.html> (*Finding 5.1*). Scope exists to further improve the management of heritage conservation, including the production of further guidelines, subject to funding.

Clause 22.04 provides clear policy, or guidance, on the circumstances in which Council would support buildings and works to a property, including demolition. This policy is implemented consistently through the use of a full time Heritage Advisor (*Finding 5.1 and 5.5*) as well as through encouragement of pre-purchase and pre-application meetings. The policy direction is applied equally to any place, whether it is a building within a heritage area or is an individual listing (*Finding 5.3*). The heritage advisor service is a full time role within Council, having been extended from a half a day role over the past 7 years. The role of the advisor is also to allow discretion as appropriate.

If a property is not located within a HO, then the heritage policy does not apply (*Finding 5.4*). Instead, other policies apply, such as the Residential Policy at Clause 22.01 or the Port Phillip Planning Scheme or Urban Design for New Residential Development at Clause 22.05. These policies may require that the subject building consider its context – be in heritage or neighbourhood character. At Clause 22.01, for instance, it is policy to “*Require new development to respect and not detract from the scale, form and setbacks of nearby heritage places in the Heritage Overlay.*”

The management of heritage conservation is constantly being reviewed and evaluated (*Finding 5.6*). To ensure no undue delay is incurred for simple heritage applications, such as a new fence or the painting of a house, Council's fast track planner will assess the application within 5 working days of receipt of the application.

In most instances the HO does not apply to the interior of a place, only the exterior. In addition, the HO does not apply to the use of a property, only buildings and works on a property. Adaptive reuse is also strongly encouraged by Council, as outlined in the initial submission by the City of Port Phillip. Port Phillip Council also encourages the integration of ESD initiatives within the HO.

Council considers that many resources and forms of assistance are provided to owners of heritage places both within areas and individual places. The advice provided to owners is consistent and available prior to an application being made. This allows for adequate negotiation of what is likely to be permitted and ensures minimal issues during the planning process. The provision of policy through the planning scheme means that the process is transparent, equitable to all and effective.

Identification and listing process at Port Phillip Council.

It is considered that at Port Phillip Council the system of listing is fair, transparent and equitable. Community consultation is a significant part of the heritage assessment process. It is necessary to understand that there is a high degree of community consultation and process involved with preparing and implementing a heritage study into a planning scheme. The system is thorough and provides many opportunities for the community to provide concerns and feedback. It is due to this rigorous process, called the Planning Scheme Amendment process, that the significance of a place cannot be debated at the planning application stage.

As an example, in 2004 Council commissioned an independent heritage consultant to undertake a heritage review of East St Kilda. The East St Kilda Heritage Study was initially undertaken following community pressure for heritage controls in East St Kilda to prevent inappropriate development. A rigorous and thorough assessment was undertaken of the area, which found that some areas were not appropriate for the application of heritage controls (*Finding 7.6*).

Thorough assessment was made of these applications to an independent Panel as appointed by the Minister for Planning. At the conclusion of the hearing it was determined that the study had applied adequate rigour and that these places were significant. The real issue regarded demolition and redevelopment rights. At adoption of this study one property owner was concerned that they would not be able to continue to use their property for liturgical purposes. Council required that the heritage advisor, in consultation with the owner, prepare preliminary siting guidelines for any future modification of this site, to enable continued use of the site. If this had instead been left to a voluntary agreement (notwithstanding it is within an area) the perceptions of heritage listing were such that the outcome would be unlikely to have resulted in the retention of this significant building.

Council adopted the study with the knowledge that the controls were to be implemented for the reasons of heritage and not to achieve any other planning objective (*Finding 7.8*).

Council acknowledges that the Statements of Significance for some heritage areas are inadequate due to the area's size. For example, on Heritage Overlay area (HO3) covers three large suburbs, including South Melbourne, Albert Park and Middle Park. This Statement of Significance relates to why that whole area is significant. The Statement inadequately describes the qualities of each separate suburb and places within them. Council is aware that this large area should be broken down into smaller areas, to allow for more detail as to why parts of each suburb are significant.

Proposed conservation agreements

Council is strongly opposed to the recommendations for compulsory conservation agreements for privately-owned heritage places.

The Port Phillip Heritage Overlay currently consists of 22 Heritage Areas, 119 places on the Victorian Heritage Register, and 227 individually listed places. Some of these individual places include the Esplanade Hotel (The Espy) on the Esplanade in St Kilda and the National Theatre on Barkly Street, St Kilda. Both of these places are iconic within the City of Port Phillip and their loss would be detrimental to a much larger region than simply Port Phillip.

The Esplanade Hotel is a striking example of where the proposed system would clearly have failed an iconic, socially important building. The hotel underwent a particularly complex and involved planning dispute, involving the height of new proposed buildings to the rear and the conservation of the hotel itself. In this instance the Espy was subject to a Heritage Overlay and the owners were therefore required to consider the impacts of demolition. If no overlay had been in force and a voluntary conservation agreement had instead been required, it is unlikely that the satisfactory outcomes for this place could have been achieved.

It is considered that the proposed Conservation Agreements will undermine the existing Amendment process that allows for the fair and equitable listing of heritage places within the municipality.

The concerns that Council has in regard to the proposed conservation agreements being imposed at listing include:

- The process of community consultation, broader than just the property owner, is lost;
- The typical on-going maintenance of a property is not a relevant consideration in terms of implementing an agreement, as this is the responsibility of every property owner. The cost of conservation can therefore be subjective in regard to future works.
- There is no good time to undertake an agreement. Vendors would not wish an agreement to be put in place at the point of sale and a new owner would often be loath to enter into an agreement if it were not necessary to do so.
- An agreement at listing stage would result in very few listings and many inequities in the amount of compensation, or incentive, provided. If incentives or compensation were to be imposed, it would be much more appropriate to enter an agreement at a development stage (after listing), where the real costs are known and the incentives can be fairly set.
- While some members of the community will claim that heritage results in a decrease to property, in Port Phillip has actually experienced an increased in value of properties where a Heritage Overlay applies. For instance, in South Melbourne the value of house prices increased by 78.3% over 5 years to 2004.
- Many owners who would normally undertake conservation works will instead begin to demand compensation. Council does not have the resources to negotiate compensation with over 200 property owners, nor does it have the resources to compulsorily acquire these properties. Conversely, would property owners be required to pay for an increase in value to their property due to the heritage nature of that place?

- The massive costs to government of individual compensation agreements would make it extremely difficult for councils to pursue any further heritage overlay protection, or even to maintain existing protections. This would almost certainly have far more devastating effects on the preservation of heritage in this city than any number of cases of owners allowing their properties to run down due to lack of compensation.

In addition, administrative concerns include:

- What constitutes a heritage area? Is it simply more than one building on a street or does it need to include a few streets? In rural areas could it include a homestead where there is a main house and many outbuildings, or does it have to be an entire location?
- There is no clear understanding of the tenure of the agreements;
- Town planners are not trained to negotiate conservation agreements. The use of lawyers, or a new field of experts, is likely to be required and each agreement could prove to be an onerous, lengthy and expensive task. This money could be better spent on providing different incentives for conservation.
- Who would be expected to enforce the agreements and what triggers will there be to allow Council's to remember each individual agreement? An agreement placed on property files or embedded as a covenant on a property is much less transparent than the existing Heritage Overlay which is an upfront control, based on a rigorous and fair amendment system.
- Emergency provisions would be required if contravention of agreement occurred.

When considering the planning scheme as a total document, it is questioned why heritage should be singled out as requiring conservation agreements. If the same logic was applied to height restrictions, for example, property owners may wish to claim compensation for the loss of development rights beyond a certain height. Port Phillip Council considers that the recommendation for conservation agreements would undermine an adequately working system.

The current system works adequately at the City of Port Phillip, although it could be further improved. The proposed conservation agreements would undermine the system as it stands today and would result in the objective of conservation.

Pressures on conservation

Many opportunities exist within the City of Port Phillip for development of large residential, commercial, industrial and retail sites. Despite this, development is recognised as the largest pressure on conservation.

Many property owners realise that the value of their property has risen dramatically over the past five years and some are eager to capitalise on this wealth. But to whose benefit is new development? It places increased strain on the municipality's infrastructure, as well as changing the character of that area.

The Inner Regional Housing Agreement has researched the capacity of the inner region to accommodate 90,000 new dwellings:

<http://www.dpi.vic.gov.au/DSE/nrenpl.nsf/LinkView/2339CE5CF4580269CA25702600127BB29458C0838D243E594A256DEA002C59CC>.

This report has found that within the Inner Region, future dwellings can be adequately catered for on existing strategic sites **without impacting on any heritage places**. While property owners may wish to speculate on the possible income from developing their property, it is not strategically necessary for them to do so as Port Phillip can adequately accommodate the required number of dwellings to the year 2030 within the current framework. Many implications result from the development of a site; heritage is only one cause of concern.

The Inner Melbourne Action Plan also highlights the need to preserve, adapt and celebrate the unique heritage in the inner region.

<http://www.portphillip.vic.gov.au/melbourne2030.html>

Government owned places

A number of government owned buildings are located within the City of Port Phillip. Many, if not most, of these places are subject to a Conservation Management Plan which ensures that Council adequately maintains and cares for those places (*Finding 7.4*).

Council leads by example in the restoration of and conservation of its many properties throughout the municipality. For example:-

- The South Melbourne Town Hall has recently been restored, involving the cleaning of the exterior of the building, restoring it to an original finish, and the completion of turrets that were a part of the original design. This work was undertaken as a result of Council funding as well as external grants.
- A rotunda in the Alma Park and the Catani Gardens Rock Wall were part of a 2005 application bid for funding works, to be jointly funded by the City of Port Phillip. All of these places have conservation management plans.

Council is supportive of the three tier legislative framework, although is mindful that places of State significance, such as Emerald Hill Estate, are better served through state level protection.

Alternative Suggestions

It is considered that the Recommendations of the draft report are inappropriate. It is considered that the findings should be addressed in a way that embraces the current system, allows for further negotiation at the development stage, and encourage reasonable incentives.

Council acknowledges that a flexible, informed, site-specific negotiation with owners is required. This should occur pre-application, as is the current situation, rather than pre-listing. Negotiation at the pre-listing stage could lead to unacceptable demands from the owner of the site or an outcome that would not achieve the objectives of heritage conservation.

The Heritage Advisor role of Council should continue to be encouraged to ensure consistent advice and application of the heritage policy and overlay. The Heritage Advisor should continue in their role as the key negotiator for Council regarding development works.

Heritage Studies should continue to apply rigour and encourage debate from the community. The amendment process as it stands in Victoria is adequately fair and equitable and ensures all property owners are involved in any heritage listing from the start.

Increased incentives are required at the local level, but could include the discretion to waive planning fees where alterations are going to enhance the heritage fabric, or the establishment of a revolving fund to assist restoration works on heritage properties. It would be important to ensure listing is established before funding is provided to any property for conservation works to ensure that the funded works are not then demolished in the coming years.

Conclusion

The Port Phillip Council submits that the proposed Recommendations of the Productivity Commission Draft Report to the Conservation of Australia's Historic Heritage Places should be abandoned.

The Port Phillip Council has a great commitment to its heritage and believes its heritage is integral to the character and amenity of the municipality.

We look forward to presenting further on this submission at the public hearing. If you have any queries, please contact Nicola Stephens on 03 9209 6535.

Yours sincerely,

Geoff Oulton
Executive Director City Development