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Submission on Productivity Commission Issues Paper May 2005

Conservation of Australia's Historic Heritage Places

This submission is made on behalf of the Environmental Defenders Office (SA) Inc. The EDO is a member of the Australian Network of Environmental Defenders Offices Inc., however this submission is a "local" submission and limited to our experience as observers of and participants in heritage protection in South Australia.

1. The inquiry

1.1 Rationale for government involvement

Government involvement is vital to the protection of historic heritage places because it establishes the legislative framework and policies for heritage conservation and enforces the protection of heritage through penalties and restoration orders. Governments identify the built heritage in response to community wishes.

In many cases governments are the owners of historic heritage places and thus are obliged to protect and maintain those places.

Governments are responsible for educating the public in the importance of heritage as part of our national, State and local identity. As part of the educational responsibility, the public must be given easy access to information about the cultural heritage and proposed changes which might be considered, the public must be able to participate in open meetings and forums about the future of our heritage and have the right of appeal in cases involving heritage.

1.2 Policy Framework

In addition to the World Heritage Register and National and Commonwealth Registers, the SA Government established a State Heritage Register under the *SA Heritage Act* 1978 and its successor Acts in 1993 and 2005 on which places that meet criteria for State Heritage may be listed (s.16). State Heritage Areas may also be listed. The Act provides that places entered on the Register by the State Heritage Authority (now State Heritage Council) must be maintained by the owner, and penalties are prescribed in the Act and enforced by the Minister.

Local heritage places (of significance to a community but not necessarily to the State) are protected under the *Development Act 1993*. Under that Act the council for a relevant area may submit to the Minister a development plan recommending that places of local heritage significance be listed. Approval of the list rests with the Minister, but the local council enforces protection of the places listed.

Recently the SA Government passed a Bill to consolidate all heritage lists into the State Heritage Register. The Register will contain an inventory of local heritage places in addition to places and areas of State Heritage significance. The Minister responsible for all will be the Minister for Environment and Heritage.

1.3 Current pressures

Pressure to demolish or alter heritage buildings has always come from governments, developers or individuals who wish to maximise the value of property by increasing the unit occupation of the land. In the 1980s office development posed the biggest threat in Australia's CBDs; currently medium- to high-density apartment buildings are proposed to replace older residential or commercial properties. In older suburbs properties are often large enough so that one building may be replaced by two or three, increasing the value of the property. In frame areas of the CBD smaller commercial buildings are being replaced by high-rise apartment buildings. Sometimes heritage buildings are affected. For example, at Hindmarsh Square in Adelaide a heritage-listed Federation style former YWCA building of considerable character will have a glass building erected over it as part of a new apartment complex.

Recently about 400 owners in North Adelaide who objected to their properties being listed as local heritage were successful in keeping their buildings off the register. We believe listing must apply to all buildings of heritage significance, whether or not the owner objects. That is, listing of local heritage must be compulsory as it is for State heritage.

The policy framework could be improved if governments were required to protect heritage-listed buildings absolutely. Currently, the Minister has the discretion to disregard heritage principles with respect to 'major projects' under s.46 of the *SA Development Act 1993*. Such discretionary provisions must be eliminated if heritage buildings are to be protected as the Act intends.

1.4 Degrees of cultural significance

The criteria for State and local heritage listing in SA are quite comprehensive, but the listing process remains somewhat subjective. Heritage committees are often influenced by 'experts' who have certain cultural biases; for example, an historian who claims a building does not have historic value, or an architect who claims a building is not architecturally significant. In addition, the concept of heritage is somewhat fluid. The first heritage registers listed mainly the icons in a State, and gradually governments, through public persuasion, accepted places of lesser architectural merit but of significant historical value as equally meritorious. The boundaries of heritage significance continue to expand. Often councils have been slow to accept community recommendations for the listing of new categories of places. In these cases it is not the

lists themselves but the determining authorities that have failed to recognise degrees of cultural significance.

1.5 Comprehensive heritage survey

The crucial question with respect to a national survey is how the findings would be used. If the Commonwealth Government has no intention of funding the restoration of heritage buildings which have deteriorated or the value of which has been destroyed, then it could only pressure the State and local governments to fund the restoration of those properties. Possibly State and local governments, as well as relevant NGOs, could supply much of the information required for a comprehensive survey.

2. Assessing the policy framework

2.1 Impact of market failures

We have no information on the impact of market failures on the conservation of historic heritage places, or whether heritage buildings are affected any more than modern ones.

2.2. Benefits for the community

Cohesive older neighbourhoods provide enjoyment for those who appreciate architectural detail while walking through such areas. Indeed, commercial tourist guides have often profited from taking groups of people through older neighbourhoods to explain their architectural and historic significance. Naturally, the owners of such buildings would profit from conservation grants in a more tangible way, but the entire community can take pride in historic architectural townscapes created by craftsmen with skills that may now be lost.

2.3 Government involvement

We do not have sufficient information with which to assess whether government involvement displaces private sector involvement. Nor do we know the costs of government involvement in heritage conservation or whether they have changed.

2.5 Australians and visitors benefit from government involvement in the conservation of heritage places through the aesthetic pleasure and/or historic awareness that they give. There are obvious benefits to the tourism industry from the establishment of museums in historic places and from the maintenance of iconic buildings.

2.6 Heritage places must be well maintained to be of benefit to tourist operators. Visitors would not want to attend places that are dirty or in poor repair.

2.7 The tourist industry would naturally lobby governments to conserve historic places from which they benefit.

2.8 It is our understanding that governments and funding bodies do not use sophisticated benefit-cost analysis in allocating funds for conservation, but the SA Department of Environment and Heritage and councils would be the best sources of information regarding their criteria for allocating funds. We believe that conservation grants should be means tested, especially when the total value of grants is relatively small.

- 2.9 We are unable to recommend a program for quantifying the benefits and costs of heritage conservation to aid decision making.

3. Current responsibilities for historic heritage conservation

3.1 Private sector

- 3.1.1 Several surveys have been conducted by consultants of the SA Heritage Branch on heritage places in South Australia. It is likely the Branch would be able to provide information on the proportion of historic heritage places owned by the private sector. As local heritage lists were created in the 1990s, the percentage of buildings owned by the private sector would have increased.
- 3.1.2 Residential buildings with an owner-occupier would be most likely to be well maintained, provided the owner can afford it, because of the owner's close involvement and personal integrity associated with the building. Commercial buildings owned or leased by a large company occupying most of the building would also be likely to be well maintained. On the other hand, where the owner is more concerned about profiting from the resale of a building, then careful restoration of a heritage building is unlikely, and the owner would probably object to the costs of restoration. Vacant buildings are the most likely to deteriorate.
- 3.1.3 We are not informed about private sector contributions to heritage conservation.
- 3.1.4 Owners of commercial heritage buildings in Adelaide often complain about the high costs of conservation and believe the community should meet those costs. Gone are the days of well-maintained signature buildings which presented a corporate image to the public. The difficulties of adapting office buildings to the needs of modern technology without compromising heritage values has also been a reason given by developers for seeking to demolish buildings.
- 3.1.5 We are not sufficiently informed to respond to questions concerning shortages of skilled tradespeople, availability of finance or insurance or technological trends. We believe young people are being trained through special programs in the skills required for heritage conservation, but we do not know whether the training is adequate for the needs of the community.
- 3.1.6 In the 1980s a commercial building boom in the CBD in Adelaide resulted in the loss of several small hotels and other medium-size buildings that would now be protected as heritage buildings. These were replaced by high-rise modernist structures of a character completely different from the traditional character of Adelaide. If they did not replace historic buildings, they were built alongside them, dwarfing the older buildings and creating a lopsided townscape. From the late 1990s the development investment has gone into high-rise residential buildings, often with the same consequences. Heritage buildings are losing their setting. For example, the oldest church in Adelaide, Holy Trinity Church in North Terrace, now sits alongside a 14-storey glass and steel apartment building, and the heritage-listed Bertram House in Grenfell Street is dwarfed by the Chesser Building.

For some time it was Adelaide City Council's policy to triple the city's residential population. Developers were encouraged to invest in apartment buildings on a large scale. In some cases the buildings have had a deleterious impact on adjacent historic buildings, eg, on the shop frontages in East Terrace south of North Terrace, and in others they have changed the character of important streetscapes, such as Hindmarsh Square in Adelaide. Some wide streets in the western sector of the city would be most appropriate for the erection of high-rise apartment buildings, although at present these would not be prime locations.

- 3.1.7 Churches have resisted heritage listing in Adelaide because they feared they would not be permitted to alter the interior when modernisation of the liturgy called for changes. They were reassured on that point, but they also resisted because they feared a devaluation of their assets during an uncertain time when the number of parishioners was declining.

Universities which have increased their student numbers considerably in the past decade have faced difficulties providing accommodation and expanding their educational facilities when heritage buildings are involved. On the other hand, primary schools have experienced a decrease in population. When schools are deemed nonviable, State governments have found it difficult to sell heritage buildings.

- 3.1.8 Non-government organisations have contributed to the conservation of historic places by:
- Organising to prevent demolition of historic places
 - Nominating places for listing on a heritage register
 - Recommending policies for extended protection of historic places, such as historic zones and local heritage
 - Participating in public reviews of legislation and policies
 - Public education of heritage issues through media coverage
 - Ownership and maintenance of heritage buildings (more than 100 in SA) by the National Trust (SA).
- 3.1.9 It is essential that NGOs are involved in heritage conservation as watchdogs on the State and local governments to ensure legislation is properly implemented. Their work depends upon the enthusiasm of volunteer workers, for the most part, and their drive often diminishes with time, which unfortunately is a major weakness of NGOs.
- 3.1.10 Priorities for NGOs involved in heritage conservation are often set by government policy papers, such as this one, and by the urgency of the imminent demolition of a building which the NGO would wish to save. These organisations usually have an executive or management committee which assesses their performance.
- 3.1.11 Impediments to activities of volunteer organisations include lack of availability of volunteers who are employed or studying, as well as the ageing of the volunteer community without their replacement by younger volunteers. The volunteer spirit and community involvement appears not to be pronounced among people in their 40s and younger as they focus on their living standards, and this is the major impediment to

the continuation of some NGOs, particularly those which are dependent on membership fees and have no access to public funding.

3.1.12 We cannot assess whether the activities of other organisations could be improved or expanded.

3.2 Public Sector

3.2.1 The new heritage system has clarified the role of the Commonwealth Government with respect to heritage protection. The public has often misunderstood the function of the Register of the National Estate and sometimes expected more Commonwealth Government intervention than the Government was able to give. In other respects, the roles of State and local governments have remained the same, albeit somewhat clearer as a result of the national policy framework.

3.2.2 The roles of State and local government continue to overlap. There has been confusion in the South Australian legislation because the *SA Heritage Act 1993* provided only for State heritage under the Department of Environment and Heritage, while local heritage was vaguely contained within the *Development Act 1993*, making local heritage a planning issue. The State government recently passed a Bill which will bring all heritage lists within one register.

3.2.3 The Heritage Council could be involved in advising on funding for maintenance of National and Commonwealth heritage places, in addition to its roles listed in the issues paper.

3.2.4 The *SA Heritage (Heritage Directions) Amendment Act 2005* would appear to provide for better heritage conservation outcomes, particularly with regard to local heritage, but not enough time has passed adequately to assess its merits. Local heritage protection has been too open to subjective judgments and lobbying of councillors in the past. The effectiveness of heritage legislation depends upon the will of governments to implement it properly.

3.2.5 We are not aware of ways in which the Australian Government legislation would affect State and Territory outcomes for heritage conservation.

3.2.6 South Australia manages its heritage places within a strategic framework, and we trust the Council will consult the public and conduct its meetings in public as provided in the Act.

3.2.7 We are not adequately informed about major differences in legislation between States and Territories.

3.2.8 The recent legislative changes by the Australian Government have improved the administration of national lists because the Commonwealth Government now has the power to maintain the national heritage and to enforce sanctions for unapproved actions, whereas the RNE was only a list of prestige places which could not be protected by the Commonwealth. We have no evidence that the changes has improved the overall conservation of historic heritage places.

- 3.2.9 We recommend that the term ‘significant’ be used in the criteria for both categories of historic heritage places administered by the Australian Heritage Council.
- 3.2.10 We do not believe that the costs of conservation should be included in listing criteria because such a procedure could affect whether or not a building is listed. A heritage building must be assessed on whether it meets the criteria for listing, not whether the costs of conservation are too high.
- 3.2.11 Priorities are determined by Heritage Councils or Authorities, which should occur after public consultation.
- 3.2.12 The aim of the World Heritage Convention is to conserve the world’s cultural and natural sites of outstanding universal value for the enjoyment of present and future generations of human beings. It assumes a notion of a shared responsibility for the cultural and natural heritage by the world community as a whole. Cultural heritage includes monuments, buildings groups of buildings, archaeological elements, cave dwellings and other human creations (Article 1). The World Heritage List is published internationally and places inscribed on it bring prestige, funding and increased tourism to the nation.
- 3.2.13 The criteria for State heritage listing in South Australia are contained in s.16 of the *SA Heritage Act 1993*, as follows:
16. A place is of heritage value if it satisfies one or more of the following criteria:
- (a) it demonstrates important aspects of the evolution or pattern of the State's history; or
 - or
 - (b) it has rare, uncommon or endangered qualities that are of cultural significance; or
 - (c) it may yield information that will contribute to an understanding of the State's history, including its natural history; or
 - (d) it is an outstanding representative of a particular class of places of cultural significance; or
 - (e) it demonstrates a high degree of creative, aesthetic or technical accomplishment or is an outstanding representative of particular construction techniques or design characteristics; or
 - (f) it has strong cultural or spiritual associations for the community or a group within it; or
 - (g) it has a special association with the life or work of a person or organisation or an event of historical importance.
- 3.2.14 Of course, the protection of any building listed on a register depends upon the will of the government to enforce the proper implementation of the legislation. There are many examples in South Australia in which the State Government permitted development that resulted in the gutting of heritage buildings, with little but the facades remaining. The former State Bank Centre in Currie Street, which replaced most of the former Commonwealth Bank building, and the REMM-Myer project in North Terrace are examples of this. After the building boom of the 1980s, however, the State Government has had greater regard to provisions of the Act.

- 3.2.15 The State Heritage Council would be responsible for recommending policies regarding prioritisation. This new body has not yet had time to recommend such policies. We believe the allocation of grants should be means tested because many owners of heritage buildings can afford to maintain those buildings.
- 3.2.16 The Act provides opportunity for public input in the listing process, but because a new Council has just been appointed in South Australia, we cannot assess its review and reporting processes.
- 3.2.17 The differences between States and Territories regarding breadth of coverage, etc., was greater in the 1980s and early 1990s than they are now. We cannot comment upon differences in conservation outcomes.
- 3.2.18 Until now local heritage lists were submitted in a Development Plan to the State Minister for approval, under the *Development Act 1993*. The local council determined whether it wished to submit a list, and if so, whether a thorough heritage survey was undertaken. The previous State Government discouraged local heritage (conservation) zones, intended to protect townscapes or groups of buildings, in favour of listing of individual buildings. Councillors have been influenced by lobbying by building owners and developers, resulting in certain buildings not being listed which would meet the criteria. Councils have also sought removal of buildings from lists, such as Fernlee Lodge in Greenhill Road, Burnside, when a developer sought to redevelop a large site. In the City of Adelaide, entry on the local heritage register has been voluntary, and buildings of considerable historic heritage significance to the City have been lost as a result. It is hoped that the provisions of the Heritage (Heritage Directions) Amendment Act 2005, which include compulsory heritage surveys in all council districts, will improve the conservation of local heritage places.
- 3.2.19 The SA *Development Act 1993* failed to describe adequately the criteria and processes for introducing local heritage. The Act defined a local heritage place as ‘a place that is designated as a place of local heritage value by a Development Plan’, and as part of the definition of development, included ‘in relation to a local heritage place-the demolition, removal, conversion, alteration of, or addition to, the place, or any other work (not including painting but including, in the case of a tree, any tree-damaging activity) that could materially affect the heritage value of the place’. The criteria were as follows:
- 23(4). A Development Plan may designate a place as a place of local heritage value if-
- (a) it displays historical, economic or social themes that are of importance to the local area; or
 - (b) it represents customs or ways of life that are characteristic of the local area; or
 - (c) it has played an important part in the lives of local residents; or
 - (d) it displays aesthetic merit, design characteristics or construction techniques of significance to the local area; or
 - (e) it is associated with a notable local personality or event; or
 - (f) it is a notable landmark in the area...
- To compare these criteria with those for State heritage listing, see paragraph 3.2.13 above.

- 3.2.20 The City of Adelaide has declined to compensate owners for loss of value of their property due to heritage listing. It established a scheme of Transferrable Floor Area in 1987 whereby owners of heritage properties could sell unused plot ratio if their building were located in a precinct with a height limit higher than their building. Developers could then purchase the 'unused' height limit to gain bonus floor space for a new building in the same precinct. This scheme was common to most States but failed when the Adelaide City Council raised its height limits and the scheme was extended to local heritage buildings in 1992, swamping the market.

The question of compensation for infringement on property rights has been a concern since 1978, when the first *SA Heritage Act* was debated in Parliament. We do not believe owners should be compensated by the public because the owners can gain from a heritage building, particularly owners of residential buildings. Those who lose development potential by having to retain their buildings are affected in the same way as any they might be by any change in planning or zoning rules. State and local governments have provided grants for the maintenance of heritage buildings.

- 3.2.21 Local councils often produce leaflets for owners of heritage buildings which contain advice about their rights and responsibilities and the assistance available to them. In addition, the State Department of Environment and Heritage has made such information available to the public on request.
- 3.2.22 Principles designed to protect historic heritage places are contained in the Development Plan for local councils that have recommended heritage registers for approval by the Minister. They are part of the new Heritage (Heritage Directions) Amendment Act of South Australia and are available on the websites of the State Department of Heritage and Environment and some local councils.
- 3.2.23 We do not know the criteria used by NGOs to form lists of historic heritage places. These lists have no legal means of protecting buildings but influence governments in the framing of public lists. The 'A' classified buildings of the National Trust of SA were the first to be considered by the SA Heritage Committee in 1979 for entry on the SA Register of Heritage Items.

Yes, there has been greater scope for adaptive reuse for publicly owned heritage places than for those in private ownership. Publicly owned buildings have generally been better maintained, and may be reused for a range of functions from offices to museums, without the need for the owner to profit from the adaptation. Publicly used buildings in private ownership, such as banks and churches, have been readapted to modern use by private owners, but far too often the private sector has preferred to sell rather than readapt unless they are given substantial grants to do so. SA has some fine examples of recycled buildings in the private sector, eg, buildings in Rundle Street owned by Mancorp property investors and the former Lands Titles building, now a hotel.

Governments in South Australia have approved the partial demolition of several heritage-listed buildings. Such actions are less likely to take place in today's economic climate, but the State Government, through its major development powers

(s.46 of the *Development Act*), has approved shocking development plans adjacent to and even above heritage buildings.

- 3.2.24 We are not sufficiently informed to respond to the questions about management plans or Australian heritage places located overseas.
- 3.2.25 See 3.2.23 above. There have been mixed outcomes in South Australia.
- 3.2.26 Compensation and funding have been the major concerns of owners of heritage-listed properties since the mid-1970s. Funding has never been adequate to impact greatly on private conservation; grants have been too few in number and insufficient to cover the demand for maintenance grants. On the other hand, many owners of heritage buildings in residential areas can afford to maintain their own homes. Heritage grants should be means tested.
- 3.2.27 We are not familiar with international funding of heritage conservation. Two sources which might be helpful in this regard are:
Richard Harrison (ed.), *Manual of Heritage Management*. Melbourne: Butterworth-Heinemann. 1994, and
Gregory Ashworth and Peter Howard, *European heritage planning and management*. Exeter: Intellect Books, 1999.
- 3.2.28 Grant programs, tax deductions and concession programs have not been very effective in South Australia. Tax deductions have not been introduced, and rate rebates are appreciated but not necessarily used for maintenance of heritage buildings. Grants have helped in some cases, but the State Government discontinued its grant program in 1989 and only recently resumed it. The Adelaide City Council claimed to have the best grant scheme among local governments in the country, but it was always inadequate given the maintenance needs of heritage places. The criteria for the grants have been clear and made available to owners of heritage buildings.
- 3.2.29 The SA Heritage Branch of the Department of Environment and Heritage or the National Trust (SA Branch) might be the best sources of information regarding partnerships between the private and public sectors for conserving historic heritage places in South Australia.

This submission was prepared on behalf of the Environmental Defenders Office (SA) Inc. by:
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