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Heritage Inquiry  
Productivity Commission  
PO Box 80  
Belconnen ACT 2616

Dear Commissioners

**Submission Productivity Commission Draft Report Conservation of Australia's Historic Heritage Places**

Please accept this letter as Fremantle Ports' submission on the Productivity Commission Draft Report on the Conservation of Australia's Historic Heritage Places.

The submission seeks to provide specific comment on working ports, such as the Port of Fremantle and heritage, as well as more general comments on opportunities for improving heritage at all levels of Government.

As an island nation Australia's reliance on ports is, critical. Ports need to be able to respond quickly and adapt to change in the shipping industry, often on a daily basis.

Acting with minimal constraint is essential to the functions of a working port. The positive effects of working ports extends beyond their boundary and can be seen throughout Australia.

The Port of Fremantle alone in 2004/2005 had \$18.1 billion value of trade pass through the port, generating employment and providing goods to communities throughout Western Australia and parts of Australia. The social advantage of having well planned and functioning ports cannot be underestimated.

Ports are however one part of the transport logistics chain. Integrated with the maritime transport network, well planned channels are required for ships to access ports, within the port boundary operations need to be efficient and integrated with land side road and rail facilities, that in turn integrate with destinations throughout metropolitan and rural areas of Australia.

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Nationally the Federal Government has recognised the need to have a well planned logistics chain. Through its Auslink program it has assisted ports and other transport sectors to improve their integration. In 2005 the Auslink program assisted the Port of Fremantle to construct improved road and rail links into the port. At the National level there is a clear understanding of the importance of working ports to the nation.

Given the central role of working ports in Australia, it is suggested that they should be exempt from heritage requirements at all levels of Government. The rationale for this is further demonstrated in this paper.

The submission's key points are summarised below, whilst recommendations are included in the conclusion.

#### Summary of points

- Heritage assessment processes at each level of Government need to be expanded to take a more sustainable approach and include social, environmental and economic factors.
- At each level of Government the referral, assessment and reporting process needs to be transparent and open with a focus on place owner's consent being required before listings proceed.
- Compensation for place owners requires examination. Where there is a loss of development or use rights, or economic activity, there needs to be appropriate compensation.
- The heritage processes at each level of Government should be reviewed to reduce process duplication..
- The use of Heritage Agreements and Plans be pursued with a view to owners, both private and public having more delegated authority.
- The heritage assessment process at all levels of Government needs to be more definitive.
- The level of professionalism and experience within the heritage decision making bodies needs improvement with a view to making better decisions.
- Federal tax incentives need examination to create an advantage for State Government agencies that are owners of listed places.
- That the funding of grants from State and Federal Government be increased and State Government agencies be allowed access.

#### **Sustainability**

There is serious concern that in the heritage process there is inadequate recognition of wider factors, namely economic, social and environmental costs.

Heritage assessment, at all levels of Government is based on a Single Bottom Line approach. At each of these levels, the only time factors other than heritage may be considered in the decision making process is where a proposal is taken from officers and is given to elected Councillors or Ministers for determination.

The Single Bottom Line approach by the heritage profession is out of date and impractical. Nationally, and internationally, a sustainable approach is being taken to decision making by both private and public sectors. The reason for this is the clear understanding that making a decision based on a single factor alone will not lead to the optimal, long term outcome. However in the face of this logical paradigm shift the heritage profession persists in its Single Bottom Line approach.

Unless environment, social and economic factors are considered in the heritage assessment process, there is the risk of creating sub optimal outcomes.

Many international exponents of sustainability, such as John Elkington, in particular in his text *Cannibals with Forks*, clearly identify that the new paradigm is to broaden all decision making out to include a variety of factors, generally within the social, economic and environment spheres. Experts such as Elkington detail that failure to take this approach will simply not lead to the best outcomes.

In Western Australia the State Government has recognised this and has developed a State Sustainability Strategy. Fremantle Ports is taking a sustainable approach to its role and functions. A policy has been developed by the organisation which has changed the way decisions are made, from minor to major proposals.

This approach has allowed Fremantle Ports to successfully operate and expand within a highly urbanised environment in Fremantle.

If more current assessment techniques were adopted by the heritage profession, embracing environment, social and economic factors, potentially there may be a shift in the way heritage is viewed and subsequent outcomes. Such an approach would allow for the value of a working port, such as the Port of Fremantle, to be appropriately understood and considered.

## **Process**

There are concerns in regards to the lack of transparency in the heritage processes at each of the three levels of Government.

A third party, with no obligation or connection to a place may anonymously refer a place, in either private or public or private ownership, to one, or more levels of Government with a recommendation that a place be heritage listed. This can initiate a heritage assessment process with the landowner placed in an unexpected position, with no accountability from the referrer.

Comparative to the Western Australian Environmental Protection Authority process, where there is a high level of transparency in regards to referrals, assessments, and decision making, the heritage process at each level of Government is lacking in rigour. In addition to anonymous referrals, places can be listed against an owners wishes, with no opportunity for negotiation, other than the obligatory invitation to an owner to make a submission.

At the conclusion of the heritage assessment process, at each level of Government the final decision is generally made public. However the reasons for certain decisions, particularly pertinent where an owner has objected to a listing, are not required to be made public. In the

case of the Western Australian Heritage Council the reports prepared by officers to the Heritage Councillors are generally not made available.

An example of the failure of this process is the proposed national listing of the Inner Harbour of the Port of Fremantle, which was referred to the Australian Heritage Council, without the owner, Fremantle Ports', knowledge. This referral led to the initiation of an assessment process without the consent or knowledge of the landowner.

An open and transparent process is required which meaningfully involves the landowner from the beginning to the point where listings, at all levels of Government, do not occur without the views of the landowner as well as economic and social impacts being given appropriate prominence.

### **Duplication - Three Levels of Government**

There is the ability for a place to be listed by each of the three levels of Government, each with its own referring and development assessment process. This would simply duplicate functions, create three sets of approvals to be required by a proponent, and would lead to three sets of approvals or refusals being issued. Aside from the bureaucracy of preparing, lodging and negotiating three separate development applications, this raises the question of what would occur if there was inconsistency between conditions of approval, or worse case scenario, one level of Government approving a proposal whilst another refusing it.

With multiple listings there would be a direct affect on the proponent's time and resources to prepare submissions, follow up, negotiate and ultimately clear conditions of approval with three different levels of Government. In this scenario dealing with Federal Government officers would encounter the additional problem of overcoming distance between the assessing officer, applicant and the place.

As an example a portion of the Inner Harbour of the Port of Fremantle is listed on the Local Government's Municipal Heritage Inventory, the Heritage Council of WA's Interim Register of Heritage Places, and is being considered by the Australian Heritage Council. In a scenario where an operational berth within the listed area was to have maintenance work undertaken, a basic and core task in a working port, the advice from each agency is that such work would require development proposals to be referred to them before any work could commence, without exception. It may be that the time and resources to obtain the approvals in this scenario may exceed the value of the work itself.

For a working port this situation is completely untenable. Working ports need to be able to respond quickly to changing shipping needs, often on a daily basis. The affects of not being able to act quickly, unencumbered, have flow on effects beyond the port boundary to those involved in the import and export of goods and the communities that rely on these goods.

### **Heritage Agreements and Plans**

The Productivity Commission report makes reference to the use of agreements, linked to heritage plans, between owners and Government as a means of expediting approval processes, and minimising need for referrals. Whilst the intent of this is supported, the ability of this to occur within the existing legislative framework requires further examination.

It is understood that Local and State Government within Western Australia cannot delegate approval powers to either Government agencies or private bodies. The Productivity Commission report alludes to the delegation being possible at the national level.

If a place is listed nationally, it would be likely that it is also listed locally and possibly at the State level, which in Western Australia, would still require development applications to be lodged with both lower levels of Government, not making any real time savings.

An example of how agreements and plans have not assisted has been in the recent case where Fremantle Ports has dedicated resources and borne the cost of engaging a consultant to prepare a conservation plan for the Interim Listed West End of Victoria Quay. At the end of the process the State Heritage Council indicated they do not adopt conservation plans, and were not legally able to enter into an agreement with the owner that would delegate approval powers. If conservation is to be encouraged and landowners are to become proactive, this situation requires change.

### **Heritage Assessments**

Heritage assessments at all levels of Government are based on a high degree of subjectivity. Despite best efforts through documents such as the Burra Charter, the ability to be objective in assessing heritage places and development proposals is usually based on the assessing officers experience and documentation they may be aware of. In Western Australia heritage is a relatively new function of Local and State Government. The newness of the profession means that assessment functions often rest with inexperienced officers. Coupled with the subjective nature of heritage, this can lead to poor decisions being made.

The heritage assessment process, at all levels of Government focuses only on heritage criteria. Social, environmental and economic factors are explicitly excluded. As indicated this Single Bottom Line approach is outdated and impractical. Decision making processes on complex development proposal cannot be made on the basis of any single criteria. Failure to do so will only lead to inferior decision making, possibly with unworkable consequences.

As an example several years ago Fremantle Ports sought to remove a structure from within the middle of a port operational area. If it had not been removed there would have been severe consequences on the functions of the port, which is the only dedicated container port in Western Australia. In this instance the inability of the State Heritage Council to account for wider issues meant that the decision making process was made at State Government Ministerial level. This allowed for a full range of social, economic and environmental factors, as well as heritage to be considered.

Culturally within the heritage profession there appears a reluctance to question past practices or consider new or innovate approaches. Possibly the youth of this profession has led to reinforcing past practices, including a tendency to seek to save everything with an inability to discern.

There appears to be a lack of understanding of the needs of a working port, and the wider roles they fill. This has the potential to be a major hindrance to the efficiency of working ports.

## **Port Security**

Security at working ports has dramatically increased over the last few years. The critical nature of working ports makes the threat of terrorism to ports a serious concern. Specific legislation has been developed to ensure security is maintained and constantly reviewed.

For the Port of Fremantle this means being able to respond quickly to security concerns and being able to rapidly make improvements.

Any heritage listing together with the time required to obtain external approvals, as well as the potential conflict between port security and heritage objectives, is of high concern that has the potential to severely impact on the working port.

## **Economic**

Working ports throughout Australia make enormous contributions to Australian society. The economic benefits that working ports bring allows for other wider social and environmental objectives to be achieved.

As an indicator of the economic value of the Port of Fremantle, in 2004/2005 the value of trade through the port, including imports and exports, was \$18.1 billion. The Inner Harbour component of this was \$12 billion.

Fremantle Ports handled 88 per cent by value of the State's seaborne imports and 28 per cent by value of seaborne exports.

A 1998 study by the Bureau of Transport and Regional Economics found that every ship visiting the Port of Fremantle created 3.3 full time jobs.

With this economic generation other objectives can be achieved throughout Australian communities. To take an indirect example, remote, rural communities that may otherwise be disadvantaged have access to all manner of essential imported goods from basic household appliances through to automobiles and farm machinery.

Unfortunately the heritage process, at all levels of Government, unsustainably ignores the economic factors, and the wider benefits they bring.

Consistently the heritage industry cites cases where buildings have been forcibly retained, sometimes against an owners wishes, indicating the building has tourism potential. This is a simplistic argument that ignores the opportunity cost; what has been foregone. The alternative uses of the building generally do not appear with any rigor. It may be that the wider community may have lost an opportunity for something better. Similarly heritage arguments refer to increases in residential property values where heritage listings have been involved. Again a simplistic argument in cases where there has been no recognition of the opportunity cost, or that nationally there have been general property value increases regardless of listings.

As the owner of many older buildings Fremantle Ports appreciates the very real additional cost listing imposes. Administratively there is time in preparing, assessing and then sending development applications to the Heritage Council of WA, with follow up discussions and

often lengthy negotiations. Fremantle Ports estimates that it spends at a minimum well over 300 hours per annum in these administrative functions alone, in addition to the cost of seeking expertise from consultants, and its personnel's time taken to physically maintain the buildings to imposed heritage standards.

Often assessing bodies fail to understand the economic needs of a working port. For example the Passenger Terminal Building located alongside a berth in the Inner Harbour of the Port of Fremantle required several roller doors to be installed at ground level, facing the wharf. The reason for this was to make the 1960s constructed Passenger Terminal building meet 2006 passenger and navy shipping needs. The proposal was refused, and diminished the ability of the building to operate in its original function and has led to complaints about functionality.

There are many other instances where seemingly minor applications take weeks or more to have a decision made. For a working port this level of responsiveness is unacceptable and creates a direct economic imposition. The shipping industry is such that if there are any delays a ship may simply skip a port. Given the economic and social value of the Port of Fremantle these types of delays should not occur.

### **Compensation**

Existing heritage processes allow for places to be listed, with no recognition of loss of development, use or economic activity, current or potential.

To promote confidence in the heritage process, which would potentially lead to greater acceptance of heritage matters, compensation is a critical element in the event that development rights/use or other potential is affected.

Place owners require assurance that if a listing occurs, at any level of Government, that they will be adequately compensated.

Currently an assessing agency, at any level of Government may list places with no consideration of wider factors. At the local level there is evidence of large scale listings of significant land holdings of both private and public bodies. Introducing compensation may serve dual purposes of making landowners more comfortable with the process, and also as a check and balance in the heritage process to ensure that any listing does not occur without appropriate consideration.

### **Grants/Assistance**

The availability of financial grants from State and Federal Governments is often given as a reason for owners to proactively seek heritage listing. Within Western Australia the Heritage Council of WA has advised that Fremantle Ports is not eligible for any assistance. It is understood that this is also the case with Federal grants, though requires further confirmation.

Within the interim heritage listed area of the Port of Fremantle, in examining the cost of maintaining just two of the shipping berths to heritage standards, it has required expenditure of \$300,000 over the last two financial years (A Berth \$100,000 2005/06, B Berth \$200,000 2004/06). This is just one example of Fremantle Ports funding maintenance of its heritage places. To be equitable grants should be available to Fremantle Ports, and be applied to this kind of maintenance.

## **Authentic Heritage - Working Port**

It is a generally accepted heritage principal that the highest and best use is that which is authentic. For the Port of Fremantle, and other ports, this is being able to function as a working port.

This means being able to continually respond and change to handle the new generation of ships to continue this core function. There is concern that listings will be detrimental and adversely impact the maintenance of port operations, and thereby what is authentic.

## **Inconsistency with Port Authorities Act**

The State Government of Western Australia introduced the Port Authorities Act for the principal reason of allowing ports within Western Australia to be the approval instrumentality for port works. The reason for this was to reflect the needs of the port, that is to be able to quickly respond to trade needs, recognising also the specialised knowledge required to design, assess and approve port works.

There is concern that actual and potential heritage listings introduces inconsistency with the intent of the Port Authorities Act, by making heritage agencies, and not Fremantle Ports, the responsible authority for approving port works.

## **International Reputation**

Listing any working port could be negatively perceived by the international shipping community, potentially impacting on trade. This has the potential to limit investment in infrastructure, with negative flow on effects to the local and wider economies.

There are many ports throughout Asia, Africa and Europe which are of significance, however are appropriately not listed. The rationale for this is quite simple. Other nations recognise that sea ports are critical elements of their economy, from which social and other benefits are derived. It is recognised that the placement of any impediment on their sea ports has the potential for significant negative impacts on their continued operation and their economics.

It is our view that the ability of the Port of Fremantle to participate effectively as part of the national and international network of sea ports may be seriously compromised if it is seen to be a heritage rather than a working port.

## **Recommendations**

The following recommendations are made to the Productivity Commission:

### **Port Exemption**

In recognition of the critical role of working ports, all ports in Australia should be exempt from heritage requirements at all levels of Government

### **Sustainability**

That the heritage assessment processes at each level of Government be examined with a view to expanding the assessment criteria to include social, environmental and economic factors.



## **Process**

That at each level of Government that

- the practice of anonymous referrals be replaced with a requirement for any person making a referral to be identified and be required to justify their proposal.
- the reporting system, including report preparations, and decision making be made transparent by making all reports, recommendations, and reasons for decisions public.
- the owner of a place be required to give consent before a proposed listing can proceed.

## **Duplication - Three Levels of Government**

- That listing by each level of Government require the owners consent.
- That if a place is listed by more than one level of Government, that the development assessment and approval function be only required by one authority.

## **Compensation**

- Compensation for place owners be further examined with a view to each level of Government assisting where a place owner encounters a loss of development or use rights, or economic activity.

## **Heritage Agreements and Plans**

- That within the context of heritage agreements and plans, that further investigations be taken to identify if legislative change is required to allow each level of Government to delegate approval powers to private and public bodies once plans are agreed. The concept of having plans is supported providing these plans once agreed are not subject to change by heritage authorities.

## **Heritage Assessments**

- That the heritage assessment process, at all levels of Government be further examined aiming to develop more definitive criteria to reduce the level of subjectivity within the decision making process.

## **Grants/Assistance**

- That change occurs to allow State Government organisations including Fremantle Ports to be eligible for financial heritage grants from State and Federal Government.

Fremantle Ports firmly believes that working ports are critical to Australia and should be exempt from heritage requirements at all levels of Government. If heritage listings are to continue to be imposed on working ports, the following changes would be considered fundamental:

- Each level of Government considering economic, social, environmental and heritage factors in making heritage decisions.
- No multiple listings of a single place by more than one tier of government.
- No listings occurring without the place owners consent and meaningful negotiation.
- Once a conservation plan or heritage plan is completed, all approval powers, consistent with the plan, being transferred to the port

Thankyou for the opportunity to comment on the draft report. I trust these comments assist to explain Fremantle Ports' position and the needs of a working port. In that regard these are issues we would have appreciated being considered and discussed at a Hearing and we note with concern that no hearing is proposed in Western Australia. Nevertheless, if you would like to discuss this further please contact either myself on 08 9430 3300, or Port Planner on 08 9430 3390.

Yours sincerely

**Chief Executive Officer**