

**Submission to the Productivity Commission  
Re: Draft Report on  
the Conservation of Historic Heritage Places**

***Prepared by Benjamin Gray***

I would like first of all to thank the commissioners for their detailed Draft Report outlining their reasoning and recommendations, with which I agree on most matters.

My submission concerns itself with that section of the inquiry which generated the most controversy in South Australia: that regarding the voluntary listing of heritage places. I realise that the commissioners attempted to clarify at the Adelaide public hearing how the voluntary listing system would work, and I draw on the transcripts of that meeting in my submission.

I note the objections which have been raised by experts and other interested parties to other aspects of the Draft Report. While I myself do not feel qualified to address these other points, I trust that the commissioners will attend to those with expert knowledge of these matters.

**The ‘three lists’**

In responding to the submission at the Adelaide public meeting by Mr Molesworth, Chairman of the Australian Council of National Trusts, Dr Byron described three potential types of heritage listing, asking which would be superior. He said:

*Do you want a list of 2000 places that have been assessed as being possibly of interest? Do you have a list of 1000 places that have been rigorously assessed by professionals and have passed the significance test? Or do you want another list of places which are not only significant, but have a commitment to good management? We're suggesting that that third list is actually a far more useful and valuable list to have than the second. It avoids the problem of places that are listed and then continue to deteriorate before our very eyes.<sup>1</sup>*

I cannot fault the idea that the most advantageous type of list is one that incorporates a negotiated agreement regarding the protection and management of the site. There can be no doubt that such an agreement will result in better outcomes for heritage sites around Australia.

However, the agreement process outlined in the Draft Report does not appear to deal with the issue of protecting a site in the absence of heritage listing or a negotiated agreement. Most submissions to this inquiry have dealt with the initial listing process, and the problems arising where an owner refuses to negotiate an agreement in the first instance. I wish to raise the problem of what happens when an agreement is nearing its end.

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<sup>1</sup> Page 36 of the Transcript of the Adelaide Public Hearing

For example: what happens if a developer purchases a heritage-listed site nine years into a ten-year negotiated agreement, and then refuses to renegotiate an agreement on its continued protection and management? Once the agreement lapses, it appears that the site would now be available for development. The result, of course, would be the demolition of more heritage-listed buildings to make way for new subdivisions and other new developments.

In my eyes, what is needed is a more sophisticated ‘three-tier’ system of listing, incorporating *interim protection*; acknowledgement of *significant heritage importance*; and, finally, a *negotiated agreement* – as has already been proposed.

The final report from the Productivity Commission needs to offer not only a process to optimise outcomes where an agreement can be reached, but also a process to protect sites where agreement *cannot* be reached.

I outline below how such a process might work.

### **(1) *Interim Listing***

Any site nominated for heritage protection should be protected by an interim listing whilst a review is carried out, preventing demolition or radical alterations which might destroy its heritage protection value. I would suggest a maximum timeframe of around twelve months for such a review to be carried out by the relevant specialists. If the site is judged to meet the criteria for ‘Significant Heritage Listing’, it would then move to that second tier of listing. If a site does not meet the criteria, removal of such protection should be immediate.

Nomination for heritage protection could come variously from a local council or government historic review of an area, property owners, or local community groups.

### **(2) *Significant Heritage Listing***

Once a site has been assessed as significant, it should be protected from demolition in the first instance, with development restrictions only to apply to changes that would damage or reduce the heritage character of the site. These restrictions should be tailored to the specific site and reviewed every five to ten years.

If a site is listed as a significant heritage site, negotiations should automatically begin to reach an agreed heritage and conservation plan for the site, as suggested and outlined in the current Draft Report.

This second step in the heritage protection process would offer a number of benefits, including:

- Protecting a building from demolition should an existing agreement lapse or be contested by a future owner, or should an agreement not be reached in the first instance;
- Maximising owners’ control over their homes, by limiting development restrictions to those necessary to protect the heritage value of the house;
- Providing local councils and governments with a further viable option for the protection of heritage sites (the financial cost of compulsory acquisition,

suggested in the Draft Report, would necessarily limit this option to only the most significant of sites which might attract national funding);

- Protecting the site for future intervention and restoration.

This final benefit – protecting the site for future intervention – is to my mind the most important. One disadvantage of the current system is that heritage sites may disintegrate before our eyes. However, it is always possible restore a heritage building that has fallen into disrepair because of an inability to negotiate an agreement. When such a building is demolished it is lost forever.

### **(3) *Negotiated Agreement***

I believe that the negotiated heritage protection and listing agreement process outlined in the Draft Report has considerable merit. However, as indicated above, further consideration is needed regarding the protection of heritage sites when such an agreement cannot be reached.

### **Final Comments**

While it may be outside the scope of the inquiry, I was not able to find any reference in the Draft Report to what might happen if an application to develop a heritage site were made. In particular, if a site were not subject to a current agreement, it seems that development might be permitted. Whilst I remain opposed to any destructive development based purely on economic grounds, I also have concerns regarding how other developments might be considered.

As has been outlined in the Draft Reports and several of the responses, protecting our heritage has many social, environmental and economic benefits for our communities.

However, our communities are living, evolving places, not historic museums. Arguably, heritage protection can too often act as a straitjacket, preventing progress in the guise of protecting our history. While I do not necessarily support this view, I believe that the current Draft Report leaves itself open to this criticism.

As much as we should protect our heritage, the legacy of our common past, it is also important to build a legacy for the future. While this will likely remain a contentious interface, I believe that the final report should include a process for developing a heritage site. This process should include a review of the heritage value of the site, and development should only be able to be approved by agreement of both the local community and council, and the heritage listing authority. Naturally, such development should only be allowed to take place after it has been fully approved under the relevant process.

Many thanks for this opportunity to comment on this critical issue for our communities.

Ben Gray