

February 23 2006

File ref 010/820

The Presiding Commissioner
Heritage Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

Dear Sir

Conservation of Australia's Historic Heritage Places – Submission on behalf of the Mornington Peninsula Shire Council.

Thank you for the opportunity to make submission to the Productivity Commission Draft Report - Conservation of Australia's Historic Heritage Places. The Commission report makes a significant contribution to the debate surrounding the most effective, efficient and equitable means of ensuring the conservation of heritage values.

Council is also aware of comprehensive submissions prepared by expert heritage authorities and peak organisations, particularly Heritage Victoria and the Australian Local Government Association (DR 254) , as well as local heritage groups which operate on the Mornington Peninsula such as the Nepean Historical Society (DR 221). In this context, it is considered appropriate, without repeating the detail of these submissions, to indicate support for their general lines of argument. These arguments may be summarised as follows:

The implied costs of heritage control are exaggerated due to assumptions regarding property/ development rights.

The Commission's report emphasises one economic argument i.e. that the lack of a pricing mechanism results in "over provision" of heritage services, which are funded by the private owners of heritage places. This imposes substantial (opportunity) costs on these owners, primarily through the loss of development potential. Therefore, either the supply of heritage services should be voluntary i.e. on the basis of a voluntary conservation agreement or a compensation payment mechanism is required.

However, the contrary argument is that property rights (in Australia) provide for exclusive occupancy but do not extinguish all public interest rights over land – the Crown retains residual rights to control the future use and development of land through planning legislation etc. Compensation is justified if land is taken e.g. through compulsory acquisition, but not for regulation of future use and development.

This is of course a very simplified account but highlights that if the Commission considers payment is justified due to the "erosion" of property rights then it is necessary

to fully specify the extent and limits of these rights. The Commission may consider that heritage controls limit the maximum economic use of land. However, in this sense heritage conservation, which is substantially based on the expectation of future values, is likely to be at odds with the short term maximisation of economic return

Heritage controls should not be considered in isolation from the costs and benefits of the planning system as a whole.

Heritage protection controls are only one form of planning controls which limit land use and development. Other examples include rural subdivision provisions, landscape protection provisions, native vegetation protection controls and neighbourhood character provisions.

In each case land owners could (and do) argue that they provide public benefits which are uncompensated. The beneficiaries of these planning controls often include the owners of heritage listed properties. In this context it is arguable whether the Commission can effectively review the operation and equity of one part of the planning system in isolation from the whole, including the perennial issues of compensation and betterment.

The current process of heritage listing is reasonably rigorous, and is open to public scrutiny and independent assessment.

The process of heritage listing, through the Planning Scheme Heritage Overlay provisions, is considered to be reasonably rigorous, and is usually based on expert investigation and interpretation of heritage significance. The listing of a place in the planning scheme is subject to the planning scheme amendment process where again an independent tribunal (a Planning Panel) provides an assessment based on the full range of planning objectives under the Planning and Environment Act, including whether proposed controls provide for the fair, orderly, economic and sustainable use and development of land. The Panel report is then considered by both the local authority and the Minister before listing is either approved or abandoned.

In the experience of the Mornington Peninsula Shire it is only those properties with a reasonably high level of heritage significance that are listed, hence of the more than 1000 properties identified as having heritage significance in heritage studies for the Shire, less than half are included in the heritage overlay.

Heritage listing per se does not impose an unreasonable cost on land owners.

Equally, The evidence of property values suggests that heritage listing per se has no negative impact on the value of property relative to other unlisted properties in the same area. In the experience of the Mornington Peninsula listing through the planning scheme essentially triggers detailed assessment and negotiation at the time an owner has some concrete development proposal rather than an hypothetical and often unrealistic idea of the highest and best use.

This process produces a resolution of the competing interests and is effectively governed, if agreement cannot be reached, by an independent tribunal i.e. the Victorian Civil and Administrative Tribunal.

Council would submit that listing in itself is not an onerous imposition and that the assessment process has been able to produce a resolution. However, even if the Commission considers heritage controls unduly impact on particular owners the compensation should be assessed only on the actual impact i.e. rather than on the hypothetical loss.

This approach is considered to be consistent with Section 8.3 of the Commission's report, but would also require complementary consideration of betterment charges. For example, if heritage controls are deemed to cause loss of economic potential in re-development areas, then the benefits to properties of being within a re-development area, with access to the publicly funded infrastructure etc, also needs to be assessed.

The alternative system recommended by the Commission, based on voluntary conservation agreements, has not been demonstrated and is considered unlikely to achieve reasonable heritage conservation objectives.

In this context, the key recommendation (8.1) of the Commission report, that no new properties should be listed unless there is a voluntary conservation agreement between the land owner and government, is not supported.

Equally the recommendation (9.7) that existing listings should be reviewed at the time of any "substantive development application" and that listing should only continue if an agreement is reached is also opposed.

In the experience of the Mornington Peninsula Shire landowners, even those with a very positive attitude towards conservation issues, are unlikely to voluntarily support "encumbrances", such as conservation agreements on their property. Legal and real estate valuation advice to owners is almost always opposed to such provisions, although it is unclear whether this is based on empirical evidence or market perception.

It is considered that adoption of these recommendations would essentially result in the disintegration of the existing heritage protection system without any certainty of the effectiveness of an alternative system.

It is considered that there is a useful role for voluntary agreements in the allocation of funds and grants for the maintenance of heritage properties but that they will not provide an adequate mechanism for protection. The proposal to require the review of such agreements within a relatively short time frame or on submission of a "substantive development proposal" would further undermine the value of the agreement.

While the current system may be imperfect, it has achieved substantial heritage protection outcomes, and therefore the details of any replacement system, including the arrangements for funding of the system, would need to be fully established and demonstrated to achieve better heritage outcomes before it is implemented.

Conclusion

The above comments highlight support for the current system.

In the experience of the Mornington Peninsula Shire, most owners of heritage listed residential properties own them through choice and maintain them as their private homes.

The Shire provides support through a rate rebate program and minor grants for heritage conservation, however most owners accept the costs of maintenance as the price paid for their enjoyment of the heritage character, as outlined on pages 182 and 183 of the commission report.

However, it is considered appropriate to ensure that the level of protection reflects the level of heritage significance and that reasonable use of a heritage property should be an important principle in the assessment of applications. These factors are applied in current assessment processes but can be made more explicit.

If you have any queries or require further information in relation to this submission please contact me on 59 50 1964 or cowlaw@mornpen.vic.gov.au.

Yours faithfully

Allan Cowley

Senior Strategic Planner