
**Submission of Alan Anderson to the Productivity Commission Inquiry
into the Conservation of Historic Heritage Places**

18 October 2005

Dear members of the Inquiry

This my personal submission to the Inquiry.

I regret that I have no time to prepare a formal submission. I am conscious, in any case, that the time for initial submissions has elapsed. However, I attach the unedited draft text of an article published in edited form on the Comment page of the Sydney Morning Herald on 17 October 2005.

The article advocates the abolition of the current heritage listing process. It does not address transitional issues, which would clearly necessitate a phase during which current listings were preserved as the relevant heritage bodies were given an opportunity to negotiate voluntary heritage preservation solutions with property owners.

I appreciate that the Inquiry is unlikely to recommend so radical an overhaul of our existing system. Nonetheless, I hope that its report and recommendations will address the very real problems posed by a system in which the agencies which determine listing are not accountable for the cost of their listing decisions, which cost is passed on to property owners without reasonable compensation.

I would also emphasise that the submissions which the Inquiry receives will no doubt include a disproportionately heavy representation from those involved in the heritage lobby. The Inquiry should also have regard for the many Australians to whom heritage is not a pressing issue, and whose silence on the matter makes its own point.

In my view, the heritage lobby shows scant regard for the wishes of the many Australians who do not share its aesthetic or historical interests. If the outcome of deregulation would be less Carlton terraces and more modern apartments or "MacMansions", perhaps this is a reflection of the different priorities and tastes held by much of the population. To override those preferences by legislative fiat seems, to me, quite unjustifiable.

Kind regards

Alan Anderson

Post-communism, Australia's activist fringe has associated itself with a grab-bag of trendy issues, many of them ideologically inconsistent. One example is heritage preservation, a profoundly conservative impulse, which is turning parts of our major cities into museums of architectural banality.

Governments at all levels maintain lists of heritage places, using the power of the state to prevent development. Frequently, listing imposes restrictions on private owners of land, who receive little or no compensation. This causes several problems.

First, there is a question of principle. Is it correct for owners to have their property rights expropriated without compensation, through an arbitrary and capricious system? Certainty is a cornerstone of the law, yet owners can never predict what will next make the list.

Second, there is an incentive to over-list. The NSW State Heritage Register lists dozens of picturesque sewerage structures. For instance, the Croydon Sewer Vent is "a reinforced concrete vent stack built in 1922" with "neo classical console brackets at the top of the shaft" and "a larger scale base than that of the Wentworth Road shaft". Now future generations can marvel at our ancestors' management of faecal material.

This over-listing is all the more offensive when it occurs on private land. Failure to list a historical structure can lead to community protest. An inappropriate listing affects only one person: the owner. Regardless of the opportunity cost, the owner has only one vote.

This injustice infects community attitudes. It is easy to support listing something that "it would be nice to save", when the entire cost is borne by the poor soul who owns it. Heritage becomes theft. It also leads to economically inefficient land usage, driving up accommodation prices.

Third, owners have an incentive to act pre-emptively. Every historical structure is a potential liability. Accordingly, it makes sense to conceal or destroy the structure before those pesky heritage people list it. The system perversely discourages private preservation.

Fourth, heritage lists invite corruption. Local councils exercise dictatorial planning controls, using heritage as an excuse to impede development – except by developers who have thrown a few shillings into the appropriate councillors' re-election fund, or "helped them out" with some home renovations. State parties also receive a suspiciously disproportionate amount of funding from property developers.

There is no doubt that some of our historical heritage should be preserved. Yet if heritage is a public good, justifying an override of private property rights, then surely the cost burden should be borne by the public.

An alternative approach would be to replace the listing of privately owned heritage places with state and federal funding for heritage bodies to preserve heritage. Their powers would be limited to three methods: purchasing land from private owners; negotiating registrable voluntary agreements with owners to protect heritage in return for compensation; and running public campaigns to raise voluntary donations to protect specific places. In extraordinary cases, compulsory acquisition could be permitted with ministerial approval, but only in return for compensation "on just terms".

Such a system would solve the problems outlined above. Private property rights would be respected. The tendency to over-list would be controlled by the need to act within budget. The

size of the budget would be determined politically; thus the cost society is prepared to pay for heritage preservation would be transparently assessed.

Instead of being a potential liability, historical structures would be a potential asset, leading owners to protect and publicise them instead of destroying them pre-emptively.

Meanwhile, by outlawing other forms of governmental heritage preservation, the scope for corruption would be reduced. With taxpayer money being spent, public scrutiny of heritage preservation would be greatly enhanced.

Of course, there would be objections from trendy inner-city types. For instance, inhabitants of a row of Paddington terraces might say that the preservation of their entire street would be unlikely to attract funding. But if such local "character" is really of value, residents could negotiate voluntary agreements amongst themselves to preserve relevant features, thus enhancing their property values. By permitting such voluntary agreements to be registered as property rights with the Land Titles Office, such agreements could be made enforceable on subsequent owners.

Our current model of heritage preservation, based upon government regulation and the legalised theft of property rights, imposes vast hidden costs through lost development opportunities. It is time for Australia to adopt a model based on voluntarism and respect for property rights, under which the cost of heritage preservation is transparently determined and borne by the community, and our cities are liberated from the shackles of the state.