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Heritage Inquiry  
Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616

**15 February 2006**

**Re: Submission to draft report on Productivity Commission Inquiry into Conservation of Australia's Heritage Places**

The National Trust of Australia (Victoria) has contributed to the preparation and submission, and is wholly supportive of, the Australian Council of National Trusts analysis of the draft report on behalf of the whole Trust movement. I believe that the credentials of the National Trust of Australia (Victoria) are well known to the Commission.

The National Trust of Australia (Victoria) submits the following additional comments and examples relating primarily to the key recommendation made in the draft report.

In the Trust's experience the key draft recommendation 8.1, the requirement for a negotiated conservation agreement as a pre requisite to the granting of heritage listing, is fraught with problems.

The National Trust of Australia (Victoria) has had statutory provision for 25 years under the Victoria Heritage Act 1995 to negotiate and manage such agreements. Our practical experience of such agreements offers insight into the problems and ongoing costs inherent in such a proposal.

Examples from our files added as an appendix to this letter illustrate the extent of staff resources expended to maintain such agreements and give some indication as to what would be involved in the wider introduction of a negotiated scheme. (*Appendix 1*)

We have also included examples that illustrate the negative impact on heritage buildings and resultant loss to the economic and social fabric of areas, when a system is too heavily reliant on agreement with the property owner. These examples are included as they illustrate what can happen when the two parties to an agreement considering a proposed listing disagree, something not explored in the draft report. The examples we quote are comparable with the proposed system. Once negotiations over listing failed; there was unwillingness by Council to apply a listing using existing powers or processes. The end result has been demolition by neglect, the loss of the wider economically valuable and socially significant built fabric which makes up many of our significant urban areas, largely in the name of pecuniary gain by a very limited number of individual owners. The 'perceived' financial loss often argued as a counter to listing is in fact; a) only visible on paper when property owners compare the unrealised 'development' potential of their site following subdivision, rather than the actual value of the building (which most often is unchanged by listing), and b) often countered by enhanced value, as a site ultimately becomes 'a desirable place to live' following the imposition of heritage overlays and controls.

What is always missing is consideration of the wider 'value' to the community seen, for example, in the inward investment to 'attractive' cities and towns, tourism to places that have unique qualities and the immeasurable feel good factor gained from living in an area that retains and enhances its heritage credentials. These are all seen when we ensure that our towns and cities retain their character and develop and disseminate their unique selling points, rather than allowing them to become so many bland and boring vistas of subdivided apartments and high density dwellings. This represents where the 'market' will invariably push if deregulated, 'the lowest common denominator', but the most profitable development on a given piece of town or city land. Our file examples are from several named City Council areas and refer to the outcomes for named properties. (*Appendix 2*)

Voluntary agreements are far from straightforward and often fall short of offering satisfactory outcomes for heritage. They are invariably time consuming and expensive to manage. These upfront and hidden costs are not acknowledged in the draft report, we assume largely due to a lack of domestic experience of such agreements.

A number of negotiated legal agreements and covenants have been entered into by the Trust with property owners. Often these are at sites the Trust has purchased as a last resort to save them from demolition and then sold on to the private sector. These agreements have proven over the years to be time consuming, expensive and problematic to maintain and enforce. There have also been examples of costly legal argument often over many months and in one case years, over matters of interpretation. This is particularly the case when a building owner wishes to develop, or when the building is subsequently sold on. The proposal that agreements would be renegotiated with new owners would add further to the burden and expense. In our experience it is at times of changed ownership that there is most threat to our heritage and therefore most need for protection.

We would question the implied premise that mandatory controls and statutory listing is inherently bad. It forms the cornerstone of many international listing systems with wide public acceptance in the countries concerned. It would not be difficult to argue given examples from the United Kingdom for example, that the imposition of heritage controls ensures that areas retain their uniqueness and attraction. However, the popularly held misconception in Australia that listing means you cannot touch or alter your property is wrong. In the UK adaptive reuse of heritage sites is a common activity and is often grant aided. Buildings can often be altered and changed and heritage value and character retained. The commissioning of a study or analysis of innovative approaches to reusing buildings both within Australia and internationally would greatly stimulate debate among heritage professionals, planners, architects and developers about just what was possible. In our experience reuse is often a more satisfactory and cost effective option than demolition and rebuild.

Studies of the economic value, and international context of heritage control and the economic impact of adaptive reuse and conservation would be desirable in assisting the Government to quantify the value heritage provides to the economy. However, we would like to have seen the issue of the absence of research funds for other thematic heritage studies addressed in the report. The commissioning of such reports give us confidence that we act based on actual evidence. There is now no Federal funding for typological studies by National Trusts and other heritage bodies, which once produced qualitative studies of for example; inter-war housing, cemeteries, timber bridges, factories, engineering places etc. The economic and heritage value of these studies is self evidently an investment, and the benefit for future planning is evident in continued support for them by some state agencies e.g. Vic Roads funded study of timber bridges. So much more understanding of our heritage could be achieved with some core funding of the sector. The requirement for a study of the international use and experience of voluntary conservation agreements in the heritage sector would seem to be one thematic study required from the current draft report.

The National Trust's Landscape committee has also raised the issue of the physically created landscape and the important rural heritage that this represents. In the overview the report states that it has interpreted heritage places as including "physically created places demonstrating ways of life, customs, land use or designs that are no longer practised (such as gardens or stock routes)." Apart from some confusion about whether it can be claimed that gardens "are no longer practised" this surely implies that historic field boundaries and subdivisions, distribution patterns of farm houses related to early agriculture, and other elements of Australia's rural past are included. However, there is almost no reference to any of these later in the report, though it diverges into various protection mechanisms such as Trust for Nature covenants and Bush Heritage land purchases which are applicable to remnant natural vegetation, rather than 'physically created landscapes'. It therefore appears to ignore one of the major categories specified in the World Heritage legislation, that of 'organically evolved landscapes' defined as those that have been produced by human interaction "by association with and in response to its natural environment". In other words, Australia's rural, or farmland, landscapes.

The National Trust of Australia (Victoria) acknowledges the considerable effort undertaken by the Commission to prepare the draft report on '*Conservation of Australia's Historic Heritage Places*'. We also relay to the Commission the importance the heritage sector has placed on this Government review. We hope that all involved accept that we are all here only as custodians of our shared heritage. Each heritage site or building forms a piece of a heritage jigsaw that helps us to understand where a country and a people have come from, and where they are going. What government is now in a position to do is to help shape the heritage picture for the future so that coming generations can better understand this generation's motivations and priorities and the circumstances in which they developed and this current generation can be at ease with its built surroundings, enhancing and modernising for today's needs, but not seeking to sweep away everything in the name of progress and short-term financial greed. Heritage can be as valuable a resource as part of a well-managed economy as we care to make it.

The Trust hopes that the final report can enhance our custodianship of Australia's rich heritage and make us proud of what we have achieved in such a short period of history. Without general public acceptance of the principal of protection of heritage places as something worthwhile, and Government willingness to acknowledge that it is worth funding, we are left contemplating what the future condition of our heritage will be when it comes time to hand over to the next generation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Hare', with a stylized, flowing script.

**Stephen Hare**  
**Chief Executive Officer**

## **Appendix 1 to National Trust of Australia (Victoria) letter;**

### **‘Submission to draft report on Productivity Commission Inquiry into Conservation of Australia’s Heritage Places.’**

#### **Examples of Agreements between the National Trust (Victoria) and property owners**

##### **1 “Ellerslie”, Bacchus Marsh**

A huge effort went into this agreement - the owners were the first private landowners in Victoria to take out a covenant with the National Trust.

Efforts to save Ellerslie commenced in 1984 because the local council wanted to put a road through the property. The Trust classified the property on 5 July 1984. The first time the word "covenant" was used was on 16 October 1984 when the Conservation manager asked if the owners' solicitors had considered a covenant order under the Historic Buildings Act 1981 S. 41 (6) (b). After that, there were;

Three memos/conversations re the covenant, the compilation of a submission to a Historic Buildings Council hearing (the owners nominated the property to the HBC), a memo from our legal advisor to the Trust Chair re covenant powers, two media interviews with the Trust re these matters, discussions with the owner, a covenant was drafted by the owners' solicitors by 17 December 1984, legal advisors approved the covenant draft on 17 January 1985, memo written for Trust Council meeting in February 1985, Council approved it on 4 February 1985 subject to clarification of some issues, Chairman dictated some amendments, letter to the owners approving covenant on 11 February 1985, the owners wrote to the Trust on 21 Jan 1985 seeking comments on application to HBC to restore and renovate the property, Trust requested further information from the owner, Dr Miles Lewis, honorary adviser to the Trust, reported on the proposed work, Trust wrote to the Minister for Planning & Environment seeking approval for covenant, more letters, memos and articles re local council's intention to compulsorily acquire the property, letter from Trust to local council 3 April 1985, letter from to Heritage Unit raising concerns 22 April 1985, Heritage Unit referred matter to legal adviser, memo regarding concerns, Trust's letter to Minister Planning & Environment, Minister announced notice of covenant to be published in Gazette, Trust paid for notices in Govt Gazette and local newspaper (unspecified cost), another Trust letter to the Minister complaining about the delay, discussions with the owners re a Trust plaque, covenant approved in letter from Minister on 6 Jan 06 (the covenant was gazetted on 18 Sep 05), Trust's letter to local council re rescinding earlier decisions, issue re-emerged in May 1989, Trust objected to proposed amendment to planning scheme in July 1990, panel agreed with Trust and owners to refuse construction of road.

##### **2 “Woodbine”, Port Fairy**

The Trust bought this property in 1976/77, restored it over several years and then rented it out. The Trust sold the property to private owners with a covenant in January 1990 and had dialogue and disagreement with the new owners regarding works and the conditions of the covenant. Again considerable resources went in the agreement over several years;

There are many letters from that time, including those to the Minister, who approved the covenant in July 1990. the Trust paid for ads in the Port Fairy Gazette and Govt Gazette, a number of letters requesting approval for proposed works, an extension approved to an extension of the settlement, the Trust contributed \$675 to the repair of the roofing, several letters from the Trust expressing concerns about works and the requirement to have an archaeological survey done. On 6 January 1990 the owners wrote to the Trust claiming that they were under no legal obligation under the covenant to have an archaeological survey carried out at their cost. The Trust responded on 17 Jan 1992 that the survey was part of the conservation analysis of the property, the contents of which they were aware. The owner

wrote back on 27 Jan 92 repeating that they had no obligation to do the survey as there was no specific reference to the survey in any of the sale docs etc and that work on the laundry would proceed without it. Legal advice was sought and concluded that whilst there were deficiencies with the process the Trust was correct in its stance.

The Trust wrote to the owners on 12 Feb 92 saying that legal advice indicated that the requirement in the covenant that they obtain permission from the Trust carried with it the necessary implication that permission may be refused or may be granted subject to conditions. So work commenced without satisfying the necessary conditions would prevent them from being in breach of the covenant. Fortunately an archaeologist advised the Trust that the excavations for the works were unlikely to disturb any significant remains and the owners were released from the condition. The owners were strongly advised to approach the Trust first if they were contemplating any further works. The Trust could and will enforce the terms of the covenant regardless of any permits from the HBC or other parties the letter concluded. The property was sold in 1998. On 18 May 2001 new owners were written to referring to the covenant and strongly suggesting that they withdraw their application to Heritage Victoria re a building to be added to the new barn. Long negotiations ensued between the three parties, with a final acceptable solution being arrived at. The Trust was only so closely involved because of the provisions of the Covenant.

### **3 111 Park Road, Cheltenham**

This is a late Victorian house on a large block in an outer suburb, which the Trust purchased to prevent demolition in the 1970s. The Trust sold the house in October 1990. The covenant was general and simply required works approval from the National Trust.

The owner had been told verbally that only the exterior of the house mattered. The owner, a builder, proposed Neo-Classical work at the back but only sought approval just before works were to start. There was no process and no real guidelines provided.

### **4 “Barwon Bank”, Geelong**

This is an important Regency style 1850s stone house near Geelong. By the 1960s it was in a serious state of disrepair and the Trust bought it in order to save it from complete collapse. Sufficient funds however could not be found, and it was eventually sold on to a sympathetic owner, who undertook and completed agreed conservation and restoration works before title was handed over in 1993. Any further changes were to be ‘approved by the Trust’ according to the attached agreement. In the later 1990s the owner decided to convert the house into a reception centre, and proposed the addition of a large glass conservatory. Materials were purchased, and permits sought from Heritage Victoria, and it was only their notification that alerted us to the proposal. In the face of agreement from Heritage Victoria, despite our concerns, the Trust finally also agreed to the works. This highlights the fact that agreements are difficult to enforce, and indeed in this case if the place had not been listed by Heritage Victoria, works could have occurred without the Trust ever being aware.

### **5 “Medlow”, Surrey Hills**

This is a large late-Victorian house with an extensive and notable garden from the early 20<sup>th</sup> Century. It was in a serious state of disrepair, and the garden in danger of being lost through subdivision when the Trust bought the property in the early 1980s. Funding for restoration was difficult to procure, so the property was leased in the early 1990s to a sympathetic owner with the condition that they undertake significant repair and restoration over a 10 year period. After about 8 years, only the most basic work had been undertaken. It was then decided to sell the property with a Covenant attached requiring adherence to a properly detailed Conservation Management Plan. The drafting of the plan however was made a condition of the sale, and while the owners are certainly sympathetic, enforcing the conditions has been difficult to achieve. To date the CMP has still not been completed, and there has been no inspection of any works to assess their historical appropriateness.

## **Appendix 2: Examples from Local Melbourne City Councils**

**Illustration of the heritage impact caused by a failure to protect heritage through listing, by authorities faced with strong owner objections to the listing process.**

### **City of Malvern / City of Stonnington**

The former City of Malvern, incorporated into the City of Stonnington in 1996, was a predominately upper middle class middle-ring suburb developed with mansion estates in the Victorian era, and was, until the mid 1990s, mainly characterised by large houses on large blocks from the 1900s to the 1930s. There are a couple of notable estates developed in the Edwardian or the interwar period that were protected as areas, and these are so highly valued for their heritage qualities that they have become extremely sought after, tightly held, and property values have skyrocketed.

Conversely, the City of Malvern was reluctant to list individual houses that were identified and noted for their architectural merit, due to pressure from property owners who generally did not like the notion that they would not be able to do with their properties exactly as they liked. The City of Stonnington has, for similar reasons, also been reluctant to add many individual places. Since the mid-1990s, there has been a great deal of redevelopment, replacing older houses with newer, larger houses (often in Victorian Revival style!) or smaller lots with larger houses, and some multi-unit developments.

Many individual houses were identified in the City of Malvern Heritage Study of 1992. The study's recommendations were never carried through, and within a few years many houses were already demolished.

While no particular incentives were offered by Council to the owners of the properties, opposition to listing was strong and focused on the 'restrictions' imposed. Many were also on the basis of decrease in value, particularly from owners who could see the prices paid by developers for houses on large blocks for apartment development.

By 1995, the following 15 houses were demolished:

*14 Barnard Road*  
*4 Belmont Ave.*  
*16 Chasterfield Ave.*  
*2 Denham Place*  
*329 Glenferrie Road*  
*335 Glenferrie Rd*  
*395 Glenferrie Rd.*  
*1078 Malvern Rd.*  
*4 Mayfield Ave.*  
*15 Myamyn St.*  
*712 Toorak Rd.*  
*13 Whernside Ave.*

Other followed, among the most important were:

*14 Glen Rd, Toorak*

A most notable Spanish Mission Style house that was classified by the Trust.

*Nirvana 408 Waverley Rd, Malvern East*

An impressive Edwardian bungalow style house with notable garden.

*Green Gables 627 Waverley Rd, Malvern East*  
An impressive and intact Bungalow-style house.

Since 1995, a further eight have been demolished, making a total of 23.

*Moonambell 1050 Malvern Rd.*  
An delightful Bungalow style house, it was purchased by Lauriston Girls' School and demolished.

*Glenburn 7 - 11 Elm Rd, Glen Iris.*  
A notable late Victorian / Edwardian design, and the earliest in the area. It was purchased by the Malvern Council from the Road Construction Authority and then sold to MECWA (Malvern Elderly Citizens Welfare Association) on condition that they retain the house. The house was left vacant and became derelict until it mysteriously caught on fire in 1999 and was damaged beyond repair.

*Ranmour, 395 Glenferrie Rd, Toorak*  
A notable Frank Lloyd Wright influenced design.

*2 Hopetoun Rd, Toorak*  
A notable Arts and Crafts style house

*38 Hopetoun Rd. Toorak*  
A large and impressive Old English style house.

*Lydhurst 64 Hopetoun Rd, Toorak*  
A sophisticated Bungalow house with Georgian Revival influences

*108 Kooyong Rd, Armadale*  
A state-level importance Arts and Crafts house.

*333 Wattletree Rd, Malvern .*  
Not identified in the study, but assessed as significant at a later date by Stonnington. The council wanted to protect it but the owner objected to the 'restriction' so he fought it and council backed down after a panel report questioned its significance. The owner at the time said that he intended living in the house, and had no intentions of selling, moving or letting a developer take it. After listing did not occur, the owner then sold it to a developer who then applied for demolition. Council again attempted to list the place, but was denied by higher levels of government, and it was demolished.

*22 Stonnington Place, Toorak*  
An interesting Desbrow- Annear style Georgian Revival house. Not protected due to owners protests to Council and still standing, but proposed for demolition.

### ***City of Brighton / City of Bayside***

This is another upper middle class 'middle-ring' suburb characterised until recently by larger Victorian, Edwardian and early 20<sup>th</sup> Century houses on larger lots, interspersed with houses and apartments from the 1950s and 1960s.

The former City of Brighton resisted heritage listing of all but the most impressive Victorian era mansions in the 1980s. Through the 1990s more and more larger, older houses, especially on large blocks, were being replaced by new large houses, or unit developments, changing the character of many areas substantially. Many notable places were lost in this time.

It was not until 1999 that the successor City of Bayside undertook a comprehensive heritage study that identified more than 150 individually significant houses ranging from the Victorian era to important

modernist houses of the 1950s and 60s. Vocal resident opposition delayed implementation of the heritage listing, but the importance of the places identified was so obviously high, and the pressures of demolition on a great number so strong, that the State Government stepped in to provide interim protection. Following further failure of the Council to implement the recommendations, the State Government finally over-rode Council, and approved the heritage amendment to the planning scheme in 2004. The composition of Council has since changed into one more heritage minded, and no ‘midnight demolitions’ have occurred.

This is again an example where some owners were simply not interested in accepting ‘restrictions’ on their properties, and were concerned that their land values would be affected. Many would not have been interested in an ‘agreement’ at all, and others would have agreed only on the basis of millions of dollars in ‘compensation’. An agreement-based system would simply result in far fewer places being listed, and large amounts of Council funding being required to save even just a few significant places.