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Your reference
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Heritage Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Commissioners

Response to the Productivity Commission's draft report: *Conservation of Australia's Historic Heritage Places.*

The Queensland Heritage Council (QHC) has considered the Productivity Commission's December 2005 draft report, and expresses its considerable disappointment at both the Commission's key recommendations, and also at the shallow and selective interpretation of the data on which its conclusions appear to be based.

The Queensland Heritage Council had anticipated the Productivity Commission's rigorous and detailed analysis of the issues currently bearing on heritage management in Australia in line with the published scope of the inquiry. However, it is the Queensland Heritage Council's view that the Commission's Terms of Reference items 4 – 6 have been addressed in only the most superficial way. Most of the resulting recommendations add little to the effective conservation of Australia's heritage places, while some recommendations actually undermine the existing protection provided by statutory listings, and the resulting regulatory controls that flow from them.

The QHC endorses the Commission's view that effective identification, assessment and management of Australia's important historic heritage places cannot be achieved solely by regulation. QHC welcomes the Commission's acknowledgement that heritage is valued by the broader community, and that the private sector alone, responding to market forces, can not adequately ensure the protection of heritage places. QHC also applauds the recognition of the need for incentives for private owners

However, while the Commission appears to have satisfied itself that some form of intervention by governments is justified given this existence of market failure, the solution contained in the Commission's Key Recommendation 8.1 reflects a view that is either naïve in the extreme, or, less charitably, one pre-determined to regard reduced statutory regulation generally as a desirable end in itself. The Queensland Heritage Council offers the following responses to the Commission's recommendations:

Draft Recommendation 3.1

All levels of government should put in place measures for collecting, maintaining and disseminating relevant data series on the conservation of Australia's historic heritage places.

This recommendation proposes that all levels of government record the number, quality and composition of listed places; the nature, source and types of expenditure on historic heritage conservation; and the effectiveness and cost-effectiveness of those expenditures. This would create a considerable increase in the expenditure of managing heritage places for all levels of government. Whilst the notion of improving data collection and reporting is supported, this needs to be managed within the resource base of the responsible agency, particularly in the case of local governments.

Draft Recommendation 7.1

The Australian Government should phase out the Register of the National Estate for historic heritage purposes, beginning with the closure of the Register to any new nominations.

In view of the creation of a 'new' National List, the closure of the 'old' Register of the National Estate (RNE) to new nominations is accepted. It should be noted that the information gathered for the RNE is a valuable resource which could be utilised by government agencies as an information tool.

Draft Recommendation 7.2

State and Territory governments should remove any reference to the Register of the National Estate from their planning and heritage legislation and regulations.

In view of the creation of a 'new' National list, this recommendation is accepted subject to the qualifications stated above.

Draft Recommendation 7.3

Those State Governments that have specific legislation governing the operations of the National Trust should repeal such legislation.

Queensland Heritage Council does not support this recommendation as it can find nothing in the draft report that would justify the proposal. This recommendation appears to sit in isolation within the draft report, and lacks any supporting argument or research that might cause the Commission's view to be considered seriously.

Draft Recommendation 7.4

The Australian Government should implement reporting systems that require government agencies with responsibility for historic heritage places to document and publicly report on the heritage related costs associate with their conservation.

There are constitutional obstacles to the Australian Government imposing such a requirement on State or local heritage managers, however there is no objection to the Commonwealth Government implementing this concept for its own agencies.

Draft Recommendation 7.5

State, Territory and local government should produce adequate conservation management plans for all government-owned statutory-listed properties; and implement reporting systems that require government agencies and local governments with responsibility for historic heritage places to document and publicly report on the heritage-related costs associated with their conservation.

There is no objection to the Commonwealth Government implementing this concept for its agencies. As with 7.4, the resource burden falling on other levels of government would be substantial.

Draft Recommendation 8.1

Privately-owned properties should be included on a National, State, Territory, or local government statutory heritage list only after a negotiated conservation agreement has been entered into and should remain listed only while an agreement is in force.

The Queensland Heritage Council is strenuously opposed to this recommendation.

Recommendation 8.1 would result in a considerable increase in the cost of managing heritage places of all levels of significance and at all levels of government. Requiring governments to fund voluntary conservation agreements with private owners could see a significant decrease in the number of protected places, and result in the removal of heritage places from statutory registers.

The initial cost of conservation agreements could become a source of continual expenditure with each change of ownership potentially requiring a new agreement. Conversely, if a new owner does not wish to enter into a conservation agreement the initial expenditure is effectively wasted.

The cultural heritage significance of a place is not altered by the fact that an owner may not wish to enter into a conservation agreement. However, under the Commission's proposal a place of significance cannot be protected if the owner is unwilling to enter into an agreement with a government agency.

The Queensland Heritage Council considers it to be a very naïve assumption that voluntary heritage protection can work in the reality of a free enterprise property market where the actions of property developers and development work by owners need to be balanced against community expectations.

Draft Recommendation 9.1

The Australian Government should implement processes whereby any additions of non-government owned properties to the National List occur only after a conservation agreement with the owner has been entered into, and that the property remain on the list only while an agreement is in force. Consistent with its state preference of relying on agreements for the management of world and nationally significant historic heritage places, the Australian Government may wish to make this a statutory requirement under the Environment Protection and Biodiversity Conservation Act.

Disagree. Refer to comments regarding Recommendation 8.1 above.

Draft Recommendation 9.2

State and Territory Governments should modify heritage legislation to ensure that any additions of non-government owned properties to their statutory heritage conservation lists occur only after a conservation agreement with the owner has been entered into, and that the property remains on the list only while an agreement is in force.

Disagree. Refer to comments regarding Recommendation 8.1 above.

Draft Recommendation 9.3

State Governments should require their local governments to add non-government owned properties to a local heritage conservation list only after a conservation agreement with the owner has been entered into and remains in force.

Disagree. Refer to comments regarding Recommendation 8.1 above.

Draft Recommendation 9.4

State Governments should put in place systems for their local governments to request compulsory acquisition in cases where this becomes the only way to ensure cost-effective conservation of places of local significance.

If intended as an alternative to heritage listing, this recommendation is opposed on the grounds that it would result in virtually no places being protected. It would be preferable to actively encourage the adaptive re-use of registered places. Please refer to comments regarding Recommendation 8.1 above.

Draft Recommendation 9.5

Private owners of already listed properties, where the listing occurred after purchase of that property, should be able to apply for a negotiated conservation agreement and for listing to continue only if an agreement is reached.

Not supported. This would result in a significant loss of protected places and diminish the likelihood of new places being successfully recognised and protected by statutory entry in a register or list. Please refer to comments regarding Recommendation 8.1 above.

Draft Recommendation 9.6

Private owners of already listed properties, where the listing occurred prior to the purchase of that property, would remain covered by the existing 'package' of restrictions and concessions (if any). These arrangements would be reassessed at the time of any substantive development application

when negotiations for a new conservation agreement would occur and listing would continue only if an agreement is reached.

Not supported. All states and territories currently have an opportunity to manage the development of proposed work that can affect cultural heritage significance of places entered in statutory registers or lists. Such “reassessments” proposed by the Commission could result in time and money expended on earlier conservation agreements being wasted if a current owner decides not to proceed with a new conservation agreement.

That the Productivity Commission should seriously suggest such a profligate treatment of taxpayers’ funds must be a cause of considerable concern for the Commonwealth Treasurer.

Draft Recommendation 9.7

State and Territory Governments should modify their planning legislation and regulations to remove any requirement to take heritage considerations into account in relation to any individual property other than those requirements relating to zoned heritage areas.

There appears to be no sound logic for this recommendation. Why should iconic, individual heritage properties not be offered the same protection as ‘zoned heritage areas’? The recommended approach is also problematic in that it does not deal with the potentially substantial impact of development adjoining heritage places. The Commission’s discussion reflects a severely inadequate understanding of current heritage management practices, as well as an ignorance of broader planning issues.

The Queensland Heritage Council’s view is that it is essential to bring historic heritage further into the general planning mainstream so that it is dealt with in a transparent and predictable fashion – in much the same way that Commonwealth, State and local governments routinely regulate any number of other planning issues.

Draft Recommendation 9.8

State and Territory Governments should remove the identification and management of heritage zones, precincts or similar areas from their heritage conservation legislation and regulations, leaving these matters to local government planning schemes.

It is agreed that Local Government planning schemes do provide an effective mechanism for places of local cultural significance, but less so for places of state significance. It also needs to be recognised that local government planning schemes should be able to deal with broad heritage areas (eg. by way of heritage/character/conservation zones) and individual sites (eg. by way of a Schedule, list or register).

Conclusion

The Queensland Heritage Council strongly urges the Productivity Commission to reconsider its recommendations and the information on which they are based. The existing mechanisms for the identification and management of heritage places are not perfect, but they are based on key, internationally recognised principles.

Australia's Burra Charter is at the forefront of those acknowledged best practice principles, and State and Territory heritage management systems have evolved over three decades to reflect these standards. The Commission would be well served to refresh its understanding of these core principles, and to critically analyse the range of policy responses that will improve effective heritage protection and represent the best use of public funds.

The absence of any substantial discussion by the Commission of the comparative levels of funding available to the management of historic heritage compared with, for example, the natural environment, is notable and puzzling.

Heritage practitioners and those charged with the care and management of heritage places are not indifferent to the needs of private owners, nor are they averse to a critical examination of listing and management practices. What is disappointing is that the Commission's inquiry appears to have ignored much of the material readily available to it, and has produced a key recommendation - unsupported, illogical and inaccurately clad as an "incentive" - that represents a retrograde step for heritage management in this country.

Yours sincerely

David Eades
Chair, Queensland Heritage Council