

SUBMISSION BY THE CHAIRPERSON, HERITAGE COUNCIL OF WESTERN AUSTRALIA TO THE PRODUCTIVITY COMMISSION INQUIRY INTO HISTORIC HERITAGE CONSERVATION IN AUSTRALIA

JULY 2005

Disclaimer

Any views expressed in this submission are those of the Heritage Council of Western Australia and do not necessarily represent the views or policies of the Western Australian Government.

PART 1: WHAT IS THE RATIONALE FOR GOVERNMENT INTERVENTION?

1. Market failure

Productivity Commission question: Are market failures present in historic heritage conservation?

In our view yes, market failure is present in historic heritage conservation. The main reasons as we see it are the short-term investment horizon of many development decisions (whereas heritage conservation aims to build a legacy for future generations); and a lack of recognition of the part that amenity or environmental quality plays in sustaining the economy of a city or town. Rationalist decisions made on the basis of floor space maximisation, carparking provisions and short-term profit margins, are not necessarily enough to maximise value in the longer term.

This trend has been manifested in its most obvious form in central Perth, once a beautiful business district that has been stripped of most its historic buildings in the last 40 years.

This has arguably been a significant contributor to the decline of the city's residential population, loss of retail and entertainment business to the suburbs, and limitations in Perth's ability to market itself as a business and tourist destination.

On a smaller scale, comparable effects can be observed in many of WA's country towns and metropolitan main streets.



St Georges Terrace 50 years ago (cnr Barrack Street)



The same place in 2005

2. Benefits and costs of conservation of historic heritage

PC question: What are the benefits of historic heritage conservation to the community and to individual property owners?

The Heritage Council outlined the benefits of heritage conservation in a publication *Heritage-based Tourism, Social and Economic Development* (2002), a copy of which is attached. The Council noted that “heritage, economic development, tourism and the social cohesion of communities are inseparably linked...Heritage provides vital ‘glue’ that helps hold these elements together, and yet its familiarity is often taken for granted”.

The principle benefits were summarised under the following headings:

- Heritage and township identity promote tourism;
- Heritage conservation attracts people and investment by enhancing the amenity or ‘livability’ of towns and cities;
- Heritage conservation provides incremental development that lasts, not ‘quick fixes’;
- Heritage conservation creates proportionately more jobs than new construction, and provides better local expenditure-retention;
- Heritage conservation aids economic diversification, and is sometimes one of the few assets that a small town possesses to support diversification;
- Heritage conservation promotes more efficient and sustainable use of public buildings, and building-construction practices (ie. conservation reduces waste of resources).

Some of these benefits are illustrated in the publication by succinct case studies of heritage conservation in action in Australia’s regional towns (copy enclosed).

PC question: What are the benefits of government involvement in the conservation of heritage places, and to whom do they accrue?

Once it accepted that heritage conservation is a public good, government involvement becomes essential to ensure that heritage places are conserved in a balanced way for the whole community, rather than being left entirely to chance.

A system *without* government involvement in heritage conservation has been tested in WA (prior to the enactment of the Heritage Act in 1991), and the result was indiscriminate demolition of historic buildings without regard to community opinion.

Government involvement provides:

- mechanisms for overcoming market failure (eg. by regulation and positive tools such as financial incentives);
- leadership and strategic projects (eg. Heritage Tourism strategies, Revolving Funds and the Historic Pubs program); and
- a framework of common standards that help to promote public confidence within the property market and within the broader community (eg common assessment criteria and authoritative listings).

In addition, we believe that benefits also accrue to property owners in the same way that they accrue from town planning and environmental-protection controls.

These controls help sustain the quality of the urban environment, and thereby create economic value that is shared by all property owners.

Unfortunately, little comparative study has been undertaken of the market performance of heritage listed *versus* unlisted properties in WA. The City of Subiaco undertook a study of sales evidence over a 15 year period 1987-2002, within the local district. The study concluded that heritage listed properties appreciated at a slightly higher rate than non-listed properties over that period.

A similar study of three other local government areas (Perth, Stirling and Vincent) is underway at present and the results are expected in the second half of 2005.

PC question: What are the benefits to tourism from heritage conservation, and what impact does heritage tourism have on the conservation of heritage places?

Response:

The Heritage Council of WA has led the establishment of a Heritage Tourism Strategy for WA. We foresee specific benefits to the tourism industry in Western Australia from Heritage Tourism, including improved long-term product diversity catering to a growth area in the international tourism market (ie cultural tourism), and improved profitability due to this being a 'high-yield' form of tourist visitation.

The Heritage Council commissioned in 2004 an *Assessment of the Economic Value of Heritage Tourism in Three Western Australian Locations*.

Albany, Fremantle and New Norcia were selected for assessment in a study to determine the economic value of heritage tourism within Western Australia, and the methodology applied was the same as that developed for a previous project by the Cooperative Research Centre for Sustainable Tourism to determine direct tourism expenditure in two West Australian national parks. The national park project was commissioned jointly by the Department of Conservation and Land Management and Tourism WA.

The finding was that a significant level of direct tourist expenditure was *attributable to the historic heritage attraction of the location*, as summarised in the following table:

	Albany	Fremantle	New Norcia
Average expenditure per person/per day	\$69	\$125	--
Overnight visitors (average last 4 years)	376,425	107,650	c. 60,000
Average length of stay (nights)	5.1	2.8	2
Total Direct Visitor Expenditure per year	\$133.4 million	\$37.7 million	\$2.1 million
Attribution factor (%)	62.83%	73.01%	75%
Attribution of Visitor Expenditure per year (Historic heritage component)	\$81.2 million	\$27.5 million	\$1.6 million

The report emphasises that these figures are conservative. In the case of Fremantle the findings relate only to visitors who stayed overnight in Fremantle, and excluded visitors whose accommodation was elsewhere in metropolitan area but considered Fremantle an important travel destination.

The above study is the first of its kind to be conducted in WA for historic heritage.

PART 2: HOW DOES THE CURRENT POLICY FRAMEWORK OPERATE? (INCLUDING REGULATION, SUASIVE MEASURES AND ECONOMIC INSTRUMENTS)

1. Current strengths and weaknesses & relationship to market failures

PC question: What are the strengths and weakness of the current policy framework?

PC question: How well do existing government regulations or activities address specific market failures identified above?

Government involvement in historic heritage came comparatively late in WA, with the *Heritage of Western Australia Act* enacted in 1991. Governments can attest to a number of successes over the past 14 years, including establishment of the State Register and its associated development referrals function; giving heritage a profile within local government; and slowing the rate of demolition of heritage places.

However weaknesses remain, both in terms of strategies and results:

i. WA's stock of heritage places continues to diminish

- In the 13 years 1992-2005, 20 places in the State Register were demolished;
- A much larger (but unquantified) number of local heritage places were demolished over the same period. For instance in the Town of Cottesloe alone, 24 places in the local heritage inventory were demolished in the seven years between 1995 and 2002 (24 of 370 places, a rate of loss of nearly 1% per annum).

ii. Government investment in positive policy tools is limited

Government involvement in heritage conservation at all levels relies heavily on regulation, rather than on strategies to positively assist and promote conservation activity [as documented in *Making Heritage Happen* (2004)].

iii. Heritage conservation is not recognised adequately as a central planning consideration, causing heritage to often be in a 'reactive' or defensive position.

This problem has three main dimensions to it:

- town planning schemes are often framed in ways that are incompatible with conservation goals (eg. areas with a high concentration of heritage places being overlaid with high plot ratios);
- heritage conservation is often given 'lip service' in planning decision-making, while in practice being given little weight;
- Heritage Registers and Local Heritage Lists are less than comprehensive.

PC question: Does the policy framework displace private sector involvement that would otherwise occur and if so to what extent?

PC question: Does government involvement in heritage conservation displace private sector involvement which would otherwise occur? If so, to what extent?

No, not in our view.

Clearly, the private sector cannot act as an independent arbiter in determining 'what is heritage and what should be kept?', any more than it can arbitrate other forms of land-use conflict that involve public goods.

Government financial incentives have been shown to act as a catalyst for *additional conservation activity than would otherwise occur* (it does not simply displace private spending).

Clearly the majority of WA's private heritage places are in private ownership, and there is no suggestion of a widespread 'acquire it to protect it' strategy being employed.

2. Roles and responsibilities for historic heritage conservation

Australian government

PC questions:

To what extent has the new heritage system reduced unnecessary duplication in heritage laws and processes between governments?

Has the new national system reduced the level of community confusion over heritage laws and processes?

Has it provided the overarching national policy framework which was sought by the Australian Government?

Are the roles and responsibilities of each level of government clear, appropriate and mutually supportive?

Have the recent legislative changes by the Australian Government improved the administration of national lists and the overall conservation of historic heritage places?

Response:

The answer to the above questions is 'no, or very little', for these reasons:

1. The creation of a new listing 'hierarchy' with the Commonwealth focussed on places of national significance, has been compromised by the retention of the old 'Register of the National Estate'. This has perpetuated confusion over duplicated Commonwealth and State lists.
2. Between 1997 and 1999, much work was undertaken on the *National Heritage Places Strategy* after the Council of Australian Governments (COAG) gave in-principle endorsement to it as part of the reform of government environmental activities. Among other things, the strategy aimed to (a) clarify the roles and responsibilities of the Commonwealth and the States in managing places of heritage significance; and (b) identify criteria, standards and guidelines for heritage protection of heritage by each level of government.

In practice, this has not led to tangible results other than amendment of the EPBC Act to encompass historic heritage. No national policy framework of substance exists at the Commonwealth level.

3. The Commonwealth has shown limited interest in supporting the activities of state heritage agencies, or coordinating programs with them. Examples include:
 - the failure of the Commonwealth's Tax Incentives Scheme in the 1990s;
 - the replacement of the jointly-administered National Estate Grants Program with a Canberra-administered Cultural Heritage Projects Program in the late 1990s (at a reduced level of overall funding);
 - inaction over the extension of tax deductibility to donations in respect of historic heritage (to give parity with the natural environment); and
 - the creation of a separate Commonwealth works approval regime in the EPBC Act against State and Territory advice.

State/Territory government

PC questions:

Does legislation in each State/Territory, and its implementation (for example, monitoring and enforcement), provide for efficient heritage conservation outcomes and, if not, why not?

Do all States and Territories manage heritage places within an explicit strategic framework? How can existing strategic frameworks be improved? How important are well developed frameworks for facilitating historic heritage conservation?

Are there major differences in legislation, and its implementation, between States/Territories and, if so, do these differences affect historic heritage conservation?

Response:

Western Australia is unlike the other states and territories in having heritage legislation that is outdated, reflecting its drafting origins in the 1970s. The legislation has been extensively reviewed, and new bills have been drafted. However no replacement legislation has been enacted to date.

Western Australia does not have an explicit State heritage strategy at this stage, as for instance does Victoria. A heritage-related State Planning Policy has been drafted and will be considered by the planning authorities later in 2005.

Local government

PC questions:

To what extent do local governments provide clear guidance about the rights and responsibilities of owners of heritage-listed properties?

How do local government regulations designed to protect historic heritage places relate to more general planning regulations?

Response:

Local Government involvement in heritage in WA is fragmented, with significant differences in approach from Council to Council.

Standard heritage provisions for local town planning schemes are enshrined in the Model Scheme Text promulgated by the State Planning Commission. However, the manner in which such provisions are administered varies widely, and in effect is subject to swings in Council policy. For example, some councils adopt a strong proactive approach to heritage protection, while others see heritage as an issue of minor importance, and effectively manage heritage protection on a *laissez faire* or ad-hoc basis. Heritage Lists provided for the local schemes are sometimes empty, or are subsumed to 'owner objection' considerations.

An attempt is being made to achieve a more common approach, through a joint State-Local Government Heritage Working Party. The Findings have been made available to the Productivity Commission.

Should governments (at any level) be required to compensate for their actions which infringe on the property rights of private owners?

Response:

Compensation for the effect of heritage listing is explicitly ruled out in the *Heritage of Western Australia Act*, and in the *Town Planning and Development Act*. To our knowledge, 'compensation' for heritage listing is not practiced anywhere in Australia or the rest of the Western world, except for some partial schemes in two Canadian provinces.

Many property owners will argue that all government actions must be tested against the criterion of the short-term impact on their individual property. This view holds that any action that causes a short-term restriction of value should be disallowed, or alternatively the action must give rise to 'compensation'.

However, it has rightly been observed that ‘Government could hardly go on if to some extent values incident to property could not be diminished without paying for every such change in the general law’ (*Pennsylvania Coal Co. v. Mahon*, cited in *Smart States, Better Communities*, 1996, page. 329).

In any event, as already argued in this submission, the benefits of heritage protection accrue to property owners in the same way that they accrue from town planning and environmental-protection controls. These controls help sustain the quality of the urban environment, and thereby create economic value that is shared by all property owners. In that context, compensation is not appropriate.

3. The listing process

PC question: Do current heritage lists adequately recognise degrees of cultural significance and are the factors that determine these degrees of cultural significance appropriate?

Response: By and large, yes, the assessment methodology is long-established in Australia and works reasonably well. Most local lists enshrine a grading system, and the local-state-national hierarchy provides a model that is able to marry the degree of significance to the appropriate listing arena.

PC question: Should the potential costs of conservation be included in listing criteria to better target scarce government resources?

Response: No, listing decisions should always be made on the basis of heritage significance alone.

Decisions about *development options*, or *planning the allocation of scarce resources*, are separate, and need to be made on a fully-informed basis.

4. Economic instruments

PC question: Are government incentives for private participation in historic heritage conservation comparable to those offered for participation in other forms of heritage conservation? If not, what does this imply for the level of private sector participation in historic heritage conservation?

Response:

No, Government investment in nature conservation in Australia massively outweighs investment in historic heritage conservation. More information on this subject is provided in *Making Heritage Happen* (2004).

PC question: How effective and efficient have grant programs, tax deductions and concession programs been (past and current) in conserving heritage places?

Response:

Section 4 of *Making Heritage Happen* (2004) analyses this question in some detail. That report concludes among other things “without a strong commitment by government, an incentive scheme will tend to be a ‘token’ program that raises public expectations only to disappoint them”.

For example the Commonwealth Tax Incentives for Heritage Conservation Scheme was launched in 1994 after nearly a decade of lobbying and negotiation. The states had recommended that any cap on the amount of tax rebates allowed under the scheme be at least \$28 million per annum; instead the Commonwealth set the cap at \$2 million.

Many of the State-based heritage grant schemes are oversubscribed by ratios of between 7:1 and 12:1. Local Government grant or subsidy schemes generally involve very small amounts of money (often less than \$10,000 per year).

PC questions:

Have the criteria and priorities for funding been transparent and consistent, and what improvements could be made?

Can aspects of the funding/assistance processes be improved (for example, prioritisation, transparency, and scope for more innovative approaches)?

Response:

There may be opportunities for delivery improvements, particularly in making incentive schemes responsive to client needs rather than being arranged for bureaucratic convenience (eg annual grant applications with very long assessment periods).

However, that issue is insignificant when compared with the more fundamental issue: *almost all grant and incentive schemes in Australia are too small to be effective.*

PC question: Are funding incentives the only ways in which governments can encourage greater private involvement in historic heritage conservations? How effective are these policies at increasing private conservation activities? What are the costs and benefits of each of these policies?

Response:

A variety of positive tools is available for Governments to employ, financial incentives being only one. These are detailed at length in *Making Heritage Happen* (2004).