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MUDP 05/0068

Date: 17/2/06

Dr Neil Byron
Commissioner
Inquiry into Conservation of Australia's Historic Heritage Places
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Dr Byron

The South Australian Government has reviewed the Draft Report of the Productivity Commission Inquiry into the conservation of historic heritage and reiterates its position in relation to this matter as outlined in its submission to the Inquiry dated August 2005.

It is the South Australian Government's view that the State and Local heritage management regimes need fine tuning through greater focus and a more proactive approach rather than radical change. The South Australian Government has recently sought to achieve this by the recent proclamation of the *Heritage (Heritage Directions) Amendment Act 2005* and the introduction to Parliament of amendments to the *Development Act 1993* (the Act which provides the statutory basis for the recognition and management of places of local heritage significance).

In particular, the South Australian Government rejects the Draft Report's key recommendation, which reads as follows.

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.

Specific comments about other issues raised by the Draft Report's recommendations together with the South Australian Government's preferred initiatives are provided as an attachment to this letter.

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In our opinion, the proposed model for heritage conservation outlined in the Draft Report would lead to:

- A heritage register that lacks almost any certainty about what is protected, both for the wider community and for developers, and hence the potential for ongoing, endless political controversy about individual places.
- A very much smaller register, especially at the local level, as there is an unrealistic expectation that local councils will be able to put more funds towards heritage conservation.
- An imbalanced and arbitrary representation of heritage themes or types.

The South Australian Government believes that heritage conservation will become increasingly important in the years ahead and, as such, is a matter for Government investment and intervention, as well as for private investment.

It is vital that the potential of historic heritage to create positive community identity is maximized and that its contribution to the economic, social and environmental wellbeing of Australian citizens is realised. The South Australian Government is of the opinion that the Draft Recommendations will not bring about positive change in the conservation of our historic heritage. We are, however, willing to work with the Federal Government in the future on ways to achieve this change.

Yours sincerely,

Paul Holloway

Leader of the Government in the Legislative Council

Minister for Industry and Trade

Minister for Mineral Resources Development

Minister for Urban Development and Planning

JOHN HILL

MINISTER FOR ENVIRONMENT AND CONSERVATION

KEY 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.

In essence, the recommendation is proposing voluntary listing. This will serve private interest at the expense of inter-generational equity and community benefit. The South Australian Government does not support this recommendation.

Chapter 3 Overview of historic heritage conservation in Australia

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.

The South Australian Government supports this recommendation.

Chapter 7 Assessing governments' involvement 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.

The South Australian Government supports this recommendation.

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.

The South Australian Government supports this recommendation. This recommendation has no impact in South Australia.

DRAFT RECOMMENDATION 7.3

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

The South Australian Government does not support this recommendation. The South Australian Government is of the opinion that this action will not resolve the ongoing confusion about the roles and responsibilities of the National Trust.

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 associated with their conservation.

The South Australian Government does not support this recommendation. It will not produce comparable assessment data due to differing levels of resources, variations in accounting systems, and varying interpretations as to what constitutes a heritage-related cost.

DRAFT RECOMMENDATION 7.5

State, Territory and local governments 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.***

The South Australian Government supports the first part of this recommendation. The South Australian Government does not support the second part of this recommendation for the reasons given in relation to Draft recommendation 7.4.

Chapter 8 Getting incentives right

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 South Australian Government does not support this recommendation, as it results essentially in a voluntary listing process that has been demonstrated not to work effectively.

Chapter 9 Conservation agreements for privately-owned heritage places 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 stated 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.

The South Australian Government does not support this recommendation.

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 remain on the list only while an agreement is in force.

The South Australian Government does not support this recommendation.

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.

The South Australian Government does not support this recommendation.

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.

The South Australian Government does not support this recommendation.

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.

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The South Australian Government does not support this recommendation.

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.

The South Australian Government does not support this recommendation.

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.

The South Australian Government does not support this recommendation. It should be noted that this recommendation appears to recommend that the provisions in the Development Act for mandatory referral of applications affecting the context of a state heritage place should be removed.

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.

The South Australian Government does not support this recommendation, although it has only minimal impact in South Australia. The only situation in which SA legislation differs from this recommendation is in the identification/assessment of potential State Heritage Areas. In all other respects, the issues mentioned already come under the Development Act.

GENERAL COMMENTS

The South Australian Government has the following general comments about the Draft Recommendations.

Government effort

- In an era when small government is promoted as desirable, the draft Recommendations will require a considerable increase in the State heritage and local council bureaucracies to negotiate and administer the proposed heritage agreement regime.
- Many local councils are already hard pressed to resource the day-to-day community demands on them, let alone to manage heritage issues effectively, and would greatly resent the additional workload resulting from the draft Recommendations.

Uncertainty

- Voluntary listing creates uncertainty, inequity and confusion, because properties of equal heritage value may or may not be heritage listed depending purely on the attitude of the current owner.
- Voluntary listing is a political liability. The practice of voluntary listing has already been demonstrated in South Australia to leave councillors and State MPs with limited (and costly) options in the face of community outrage when an owner refuses listing of what is clearly a significant heritage place.
- There would be no security for tax payer-funded conservation of properties listed by negotiated agreement if a new owner could subsequently reject any form of heritage listing.
- Heritage management is tightly integrated into South Australia's planning system and benefits from the balanced approach to the inter-dependent aspects of heritage conservation within the broader planning framework. It does not suffer from duplicated heritage-related assessments or jurisdictional conflicts noted as evident elsewhere in Australia. Severance of heritage management from effective planning would not benefit applicants, the community or the development industry due to the uncertainty that would prevail under such a system.

Conservation outcomes

- The Draft Report is premised on a view that heritage listing leads to owners being required to conserve their properties. This is not the case in South Australia, although the recent amendments to the Heritage Act allow for 'reasonable care' to be insisted upon, in instances where owners neglect their properties deliberately.
- Heritage listing by negotiated agreement would have a negative impact on the ability of lists to properly represent the historical development of an area.

Incentives

- A number of the submissions comment on the gross imbalance of importance given at the Federal level to natural heritage as compared with built heritage. The Draft Report should seek to redress this with greater leadership by the Federal Government to model greater commitment at the levels of State Government and local councils (the principle of subsidiarity notwithstanding).

The SA Government is already taking such a role through its Heritage Directions strategy, which has increased funding substantially to help councils identify, assess and protect their heritage and to expand the network of local heritage advisers providing on the spot conservation and development advice.

- The Report ignores a wealth of published material prepared over the past decade dealing with financial incentives. It also places the isolation of heritage-related costs ahead of several key principles of cultural capital, such as: the balanced consideration of *both* use and non-use values, intergenerational equity, the principle of precaution (the danger of irreversible loss) and recognition of the theme of interdependence (in which no one part of any system exists independently, a feature of the SA planning regime)
- In dealing with owners who have purchased properties already heritage-listed, the outline of negotiated agreements fails to observe that any disbenefits to the property by way of the heritage listing would have been factored into the purchase price as a 'discount' to the purchaser. Allowing the return of that property to an unlisted status could present not only a windfall gain to that owner but also a disbenefit to the community interest in that property.

The South Australian Government believes that what is needed nationally to improve the present situation is a suite of initiatives including the following.

1. Providing adequate support for local councils to get their first heritage lists in place. At present 42% of South Australian councils have local heritage lists.
2. Clarifying the blurring of local heritage with amenity and character issues by using area-based desired future character statements to specify what contributes to the existing character. This will take considerable heat out of the heritage debate by reducing the desire to use heritage listing as a de facto planning/amenity protection tool.
3. Consider the level of future heritage grant and incentive schemes which support and acknowledge the large amount of self-funded conservation work that occurs by owners.

4. Acknowledging the tension between development and conservation. The South Australian approach, which has served the State well, is to make listing dependent on a place meeting one or more of the Heritage Act criteria, but leaving the listing authority with discretion - it 'may' (not 'must') list if it judges a place to meet the criteria.

There is also a statutory mechanism, which allows the responsible Minister to direct the removal of a provisional Register entry (not a confirmed one) if its confirmation is judged to be contrary to the 'public interest'. That provision has been used rarely but is an appropriate way of leaving heritage judgements with the listing body while allowing the Government an opportunity to take non-heritage issues (eg a major highway planned to traverse a proposed heritage place) into account.