

Submission To The Productivity Commission Inquiry Into the Conservation of Australia's Historic Heritage Places

19th August 2005

INTRODUCTION

Whilst the author is currently the Chief Executive Officer of the National Trust of Australia (WA), a position held since August 1990, this presentation does not necessarily reflect the views of the National Trust and must neither be attributed to or interpreted as such. It does however, reflect the opinion of someone with over twenty years experience in the heritage industry.

Overview

If one wanted a brief description of the status of the historic heritage environment within Western Australia (or perhaps Australia in general), the phrase "confusion, controversy and conflict" may be applicable. I would suggest the market, including the community and the heritage industry itself is confused on a number of fronts which in turn generates controversy, conflict and unfortunately waste.

It is however, not my intent to articulate the activities of the past, but rather to identify some of the current key issues, pressures, barriers and challenges for the conservation and interpretation of the historic heritage environment. As well, I will suggest some flexible forward pathways which I believe eliminates the confusion and significantly reduces the related controversies and conflicts. Many of these may in fact be similar to what is already in place in the natural heritage environment.

In order to make this submission user-friendly, I will briefly summarize the issues, however, these are not in any particular order of priority.

Issues

- Language

As in any industry, there is a particular language that evolves over time. Those in the industry inherit such from previous generations and sometimes take for granted the meanings of such terms which may have altered due to the lack of understanding and adherence to the original definition. Such terminology may not be understood by those outside the market and requires continuous education on its meaning and interpretation.

Several terms, phrases and definitions are in urgent need of standardization for use both within the industry and in the market generally.

These include the following (in no particular order of priority) “heritage, significance, threshold, heritage values (historic, aesthetic, scientific and social), conservation, conservation plan, interpretation, cultural heritage,” etc.

Whilst this may appear to be trivial, the confusion generated from jargon and an inconsistent definition and use of that jargon is extremely high.

- **Values vs. Place**

Heritage by definition (Trust WA) is something that is inherited from the past and something that is valued enough to leave for future generations.

There are two key words in this definition.

The first is “something”. It is a generic word that goes beyond buildings. Heritage can refer to myths, folklore, objects, buildings places, etc. Far too many people associate heritage with old buildings which is fine except, they automatically exclude other aspects of heritage. “Something” can in fact be anything with heritage values.

The second is “value”. Conserving heritage is first about the identification and assessment of the values of something (social, historic, scientific or aesthetic). Furthermore in some countries and cultures it includes spiritual values as well. Legislation throughout Australia, focuses on values, however, it is relatively common to either overlook or ignore the values when assessing a heritage place/object/site. In particular it is almost certain social or aesthetic values are not identified or assessed properly. It is essential the market understands this issue and that all values are equally assessed when determining heritage significance.

- **Assessments**

Following on from the issues of values, the entire process of identification and assessment is in an urgent need of review and upgrade. The processes appear to be done without much objectivity, and without transparent, measurable, or defensible outcomes.

Whilst the initial assessments of heritage values are primarily done by professionals with expertise or experience in historic or scientific (architectural) values, there is little to no evidence that appropriate similar expertise in social or aesthetic values are available. Consequently the absence of such can lead to controversy and conflict which is not necessarily defensible. This is especially true when any or all values can be considered for Registration.

The problem becomes more critical if such assessments are sent on to decision-makers such as State or Federal Heritage Councils who themselves have little or no expertise in these areas. If such bodies reject the expert advice they do receive from their staff or appointed consultants, their rejection should be transparent, measurable and defensible on heritage grounds.

If the rejection is on heritage grounds, the social and/or aesthetic values must be properly assessed as well as the other values. If the rejection is on other than heritage grounds, reasons must be given which conforms to actual State or Federal Legislation. However, this itself presents a dilemma as the factors for assessment and Registration must be articulated before the process not after and included in such legislation.

It is imperative to note that an overwhelming number of assessments are incomplete, and inaccurate due in part to the absence of social or aesthetic evaluations and the corresponding decisions to recommend or not "Registration" which offers some form of legal protections is therefore flawed. This is because all the values are not independently assessed and the process is far too subjective.

What is worse is because of the lack of expertise, especially in these two areas, specific measurable criteria and objectivity in the assessment process, many places get rejected using the terrible excuse "it didn't meet the threshold"! This lack of objectivity reduces the validity of the process and could be easily challenged.

If the panel doing the rejection is not considered expert and the result is not defensible, the result is confusion, controversy and potentially conflict.

- **Threshold**

The concept of "threshold" suggests different layers of heritage. Those places of highest significance are deemed as having world heritage values. Local heritage values are ranked the lowest.

In principle, I have little difficulty with the concept, however the process is fundamentally flawed in its current form throughout most States and Territories. This flaw is again related to the basic ignorance and acceptance that all values have to be professionally assessed prior to any decision. It is ironic that world heritage places in Western Australia aren't even on the State Heritage Register as different criteria are applied.

There is another current practice for ranking zones of significance within an individual place. This again is dangerous as subjective and non-uniform criteria are applied.

Unless criteria, standards or benchmarks for different levels are carefully articulated and thresholds are objectively determined the controversy and

conflict will continue and in fact accelerate. There is no market certainty as there are no rules or guidelines to measure such.

The industry must develop quality standards and benchmarks which then at least provide reasons and certainty at a point in time of the heritage values of a place, object or site and at which level its significance is to be acknowledged at a particular threshold. This would also allow a place/object/site etc, to be reconsidered over time as values will change and the measurement of threshold may as well.

It will also ensure the concept of threshold is addressed as any assessment and ranking can be measurable, transparent and defensible. If a place does not meet the threshold for a particular level, the reasons will be known. At the very least, the market will have the capacity to have knowledge, awareness, and understand of both the process and the product. To date, this is not possible.

All such standards must be developed by those with the appropriate knowledge, skills experience and expertise.

For example, James Kerr's "A Conservation Plan" and ICOMOS's: "The Burra Charter" are two documents often quoted as benchmarks or standards. In reality these are two excellent frameworks by which decision-makers can establish standards. They themselves are not standards and it is incorrect to suggest they are.

They do, however, provide decision-makers and regulators clear processes and pathways on which to create acceptable quality standards.

Due to the fact that many within the heritage industry are "self taught", in reality, there is little written guidance for best practice in the industry for assessments and planning (conservation and interpretation). Consequently the interpretation of any standards is inconsistent and creates many wasteful situations. There has not been much investment into the process and instead the focus is often product driven. If the heritage product looks nice and conforms to individual subjective concerns the results appear to be acceptable. Whether the product is considered, best practice, is another thing. This statement may be considered too harsh as there is excellent work in actual conservation work. It is intended to focus on processes for the assessment and planning aspects.

In my opinion the primary role of State Heritage Councils is to inform the "decision makers" of the heritage values of a place/object/site. The recommendations to conserve the place should be public and entirely based on heritage values. Unfortunately the composition of such bodies is often political and not necessarily totally professional or with appropriate experience from a heritage perspective and therefore the outcomes are certainly not defensible on heritage grounds.

It is interesting to note most other professional organisations requiring an expert body (eg Doctors, Architects etc) demand a high level of such expertise. Why is it the heritage industry does not! It is little wonder the recommendations to put something on a Register is often confusing and political rather than straightforward. Without such being transparent, measurable and defensible, the market lacks certainty and creditability.

The Minister or other decision making bodies can then utilize other market forces including representatives from other bodies to assist in any decision to place something on a Register which ensures permanent protection for the heritage values. I accept the ultimate right of a decision-maker to do so as there are ongoing financial and other issues, however, one process should be separate from the other.

This same process is recommended for all tiers of Government:

- that the heritage values of a place/site/object be assessed by those with heritage expertise
- that recommendation is public and the decision-makers reasons for accepting, modifying or rejecting such be also transparent and defensible. At the moment, it appears that such transparency and defensibility is not available in any State/Territory or Commonwealth Government. Whilst the Minister's decision may be, the advice coming forward should always be.

The concept of defensibility may be alien to some, however, it is included to mean that if heritage legislation is in place and if the decision makers refuse to protect the place from irreversible loss of those heritage values the decision can be appealed on heritage grounds. Without such, there is little to no public accountability and it is impossible to understand how any legislation can work in the current framework.

- **Registers**

In this section, there are a number of issues such as:

- a. What should be kept?
- b. Why?
- c. Whose responsibility?
- d. How?

- (a) In response to "what should be kept", the simple answer is as much as possible. In any heritage policy, one of the fundamental key points is that all things have heritage values. Recognizing and accepting this principle means that prior to any changes, heritage values must be given due consideration as part of the normal due diligence for consideration of change. It is accepted there are different levels of values which will have different management considerations. It is also accepted that not all things should be saved and that change is positive.

This suggests that heritage values should be part of every planning decision at all tiers of government.

(b) The response to “why “ is such that it is imperative to understand values change and to demolish or destroy the heritage values of a place/object/site` today for personal gain may in fact create a net loss for the community of tomorrow. If such was done within a heritage precinct, a net loss to individuals could also result.

(c) The responsibility for heritage must be shared by society as a whole including owners, taxpayers and decision-makers in all tiers of government, corporations, and the community. Everyone has a duty of care responsibility for conserving heritage.

There is an age old phrase that one can delegate responsibility but not accountability. Depending on the level of significance different tiers of government and the community will be both responsible and accountable.

Each generation must accept that it will be held accountable for what it passes on to the next generation.

(d) There is little to no doubt that owners of heritage places are generally “capital restrained”, however, this does not give them rights to irreversibly destroy the heritage values of places/sites/objects under their custodianship. At the same time adequate support to conserve both the tangible and intangible values of heritage assets should be available.

Individual owners of heritage places/sites/objects generally do not have access to global or national conservation monies. Whilst the normal market forces suggest they can borrow money, often the outcomes could result in major intangible (non-cash) benefits to themselves and the community rather than a return on such capital to themselves.

This suggests the question regarding policy intervention. I believe there should be such on two major conditions: These are:

- (i) There must be a net (tangible or intangible) benefit
- (ii) Any investment must be targeted and graded according to ensure that any real commitment to conserve Australia’s heritage will be rewarded accordingly. This suggests those who voluntarily conserve heritage through tools like voluntary conservation covenants, or heritage agreements, be rewarded accordingly. (see appendix one – legal advice for conservation covenants regarding the built environment)

It is strongly recommended the use of voluntary incentives be appropriately developed and using what already exists in the natural heritage market. An analysis and adoption of such tools be considered for all built heritage as well.

Such incentives could well be linked to levels of significance such as owners who have responsibility for world or national significance should be eligible for resources from the responsible and accountable tiers of Government accountable for such conservation.

- **Policy**

It has never quite been understood by the author why there is a reluctance to invest adequate resources into the development of heritage policies – in particular at a State Government level. This also includes research and evaluation. This lack of investment is clearly one of the main reasons for market confusion.

Heritage policy documents are unfortunately mostly written during election years (or just prior) and usually are about winning the populist vote rather than conserving heritage.

In Western Australia at the time of this presentation, there is no State Government Heritage Policy. There has never been any holistic policy in WA and in particular the absolute refusal to accept the principle of natural heritage clearly reinforces the myopic and territorial processes to keep heritage in “silos”. There is in direct contrast to Federal legislation, although far from perfect. There is also no “national policy”.

There is an urgent need to develop a major heritage policy (built, natural, indigenous) at the senior level of Government so that it is adopted by all Departments and by all tiers of government. Normally such policies are developed at the senior level of Premier and Cabinet and once adopted by Cabinet, passed to Departments and Agencies. COAG could easily accept such responsibility and through Commonwealth and State/Territory agreements, there could be a national policy with similar state/territory policies.

One can only guess as to why such has never been developed, however, it suggests mass confusion at government level and failure in education for responsible individuals and of course various political and territorial issues.

Another fundamental flaw is the absence of separation between the policy and regulation.

I will focus more on Regulators in the next section, however it is imperative to recognize that generally State Heritage Councils and staff within such act as policy advisors to State Heritage, whilst at the same

time trying to provide the Minister with independent heritage advice on Registration.

This has clearly failed and is almost a direct conflict of interest.

State Heritage Councils should be composed of expertise and the processes of assessment and if required, regulation, must be transparent and completely independent of political processes. This is not to say Ministers or decision-makers should not utilize the services of an expert body, but they must not directly or indirectly compromise this independence.

All Ministers have advisors and should a Minister feel the need for additional advice on heritage matters, there are a number of processes that can be implemented.

However, there is no doubt the independence of those responsible for heritage assessments and in many cases regulation are compromised by the current situation.

- **Regulation**

Currently the absence of policy and the refusal and reluctance to accept the role of an independent (non-political) Regulator is mystifying. There are clearly examples of such in areas such as environment and planning.

It makes sense, rather than to create a new Regulator, that an existing one be strengthened to ensure that processes are adhered to which enable all the heritage values to be conserved and interpreted at the agreed threshold value.

It also makes sense to the author that once the heritage significance be approved, that all proposed changes or development be addressed through an existing approval body rather than a separate body. I believe the current practice of allowing the Heritage Councils, who determine heritage values, to be the primary organisation to approve, even by recommendation, all new developments potentially compromises the integrity of that body.

However, I acknowledge these bodies will require expert heritage advice within their own organisations.

What in effect this could do is to support the concept of a whole of government heritage policy. Regardless what department or agency is responsible for development, the government will be accountable for implementing and following an approved policy.

With an independent Regulator ensuring the decisions are correctly implemented on a separate expert body determining significance, the processes will be integrated with all works.

Finally regulation should be backed by legislation which should be based on policy. This appears not to have happened in the heritage industry.

- **Other**

Under the general category, I thought it is essential to mention several issues which may not be considered important to some but are important to me. These include partnerships, balancing government financial investment and the essential components of research and evaluation.

Firstly, it is interesting to follow the development of the heritage industry in Australia. It is clear from such that roles and responsibilities change over time and more often than not, are circular. For example the need for community advocacy prior to any federal or state heritage legislation is now equally important.

What is clear is the need for strategic partnerships between all tiers of government and between all tiers of government and the community.

Identification, assessment, conservation, interpretation, management of place/objects/site, registration etc, cannot and should not be the total responsibility of one section.

It is imperative to discuss, agreed, and delegate with appropriate resources, responsibilities and accountabilities roles and tasks to each.. This is not hard, however, the lack of leadership, policy and current levels of market confusion are major barriers to such needed change. There is an urgent need to develop long-term strategic partnerships and this should be done sooner than later.

There has previously been some discussion on targeted investment and an opportunity to utilize tools already developed for the natural environment for the heritage environment. However, there are a number of statements that I would like to make.

Firstly the current huge imbalances between monies being utilized for identification and assessments and actual conservation and interpretation needs to be addressed.

Many heritage officials who control expenditure seem to have little problem in funding studies, surveys, reports etc., however, when funding for actual conservation or interpretation is requested the response is quite negative.

This suggests they have little to no expertise experience or understanding of management of the built environment. As one National Trust member once said "our properties are like sandcastles, they keep falling down". They do require continuous maintenance and capital works.

The Trust is fully aware that major changes are required for managing its heritage portfolio, but also expects much more investment from all tiers of government for capital works.

With the new Federal legislation, there is the potential that any government money will now be internally transferred to departments or agencies with heritage places and that any new money will also go to such for maintenance.

There is no doubt the current economic investment into built heritage has to increase. What is required is a round table discussion on how such should be distributed back to the community in a similar way it has been done in the natural environment.

The third issue related to the urgent need to recognize the importance and invest in research and evaluation.

As in any solid corporate organisation, a percentage of investment is set aside for research and evaluation. The key drivers are to increase effectiveness and efficiencies.

Yet in the heritage industry, it appears little has been done and whilst I applaud many of those bodies such as State Heritage Councils doing such work, the approach is fragmented and inefficient.

I would suggest such be addressed by the same section associated with the development of policy. This could be done very effectively with all tiers of government and the community. More importantly, it could become one of the most important tools to argue for increased investment as all the various social, economic and environmental outcomes could be addressed. It would also provide an excellent opportunity to identify and measure both the tangible and intangible benefits in regions throughout the country. This in itself could lead to more targeted investment.

- **Summary**

The heritage industry has many leaders but no leadership!

There are the traditional territorial boundaries between the tiers of government, the continuous traditional suspicions between the tiers of government themselves and with the community, especially the major not-for-profits associated with body advocacy and management and the economic concerns of increasing any investment without measurable outcomes.

In Australia, it is customary to expect Governments to lead but they cannot, unless there is a clear mandate with strong policies, appropriate legislation and transparent, defensible and open communication.

I congratulate the Productivity Commission and the Commonwealth Government for their wonderful initiative and I hope their report provides the framework for both leadership, change, and most importantly, a process for conserving and interpreting Australia's built heritage.