



7 February 2006

Heritage Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

Dear Commissioners,

re: **Conservation of Australia's Historic Heritage Places**
Productivity Commission Draft Report, December 2005
Response by the Uniting Church in Australia

As a submitter to the Inquiry into Heritage Buildings, the Uniting Church in Australia (UCA), with assistance from Roz Hansen of Hansen Partnership, offers the following comments in respect to the Productivity Commission's draft report on the Conservation of Australia's Historic Heritage Places, December 2005. Please note that a correction is required on page 122 of the draft report where it should state the submitter as the Uniting Church in Australia.

1. General Comments

It is evident from these chapters in the draft report that the Productivity Commission has a sound appreciation of the legislative and other regulatory frameworks which seek to protect and conserve places of historic heritage significance at the national, state and local levels. These chapters also highlight several of the key issues impacting on the use, development and conservation of these places as well as variations in the way places are assessed, the very limited nature of financial incentives currently available to owners to undertake maintenance and conservation works, as well as the majority of places being places listed for local significance in municipal planning schemes and the like.

Although it is acknowledged in the PCA draft report that historic heritage places generate potential benefits (tangible and intangible), the report fails to address the problems of specific owner groups, such as the congregations of the Uniting Church in Australia which has many hundreds of churches of heritage significance. The draft report has focused primarily on the process of listing a place for heritage protection and the recommendations of the report reflect this approach with a strong emphasis on 'conservation agreements'. Whilst the UCA congregations acknowledge that listing of buildings is an issue, the majority of its problems within the current regulatory framework are experienced at the local municipal level rather than at the state level.

At the State level in Victoria there is an ability to negotiate the area of interest for conservation protection, to include permit exemption provisions for future buildings and works and to seek funding for conservation works (though very limited in available funds and highly sought after by owners). Generally the listing process at the State and Territories level does not offer adequate negotiation between the parties nor support in terms of technical assistance or funding for conservation works.

Where the most problems relating to historic heritage places occur for the congregations of the UCA is at the municipal level and, particularly when church properties are included in heritage precincts comprising many buildings regardless of their conservation grading or lack of grading altogether.

The draft report recommendations therefore attempt to address issues relating to individual listed buildings at the national and state/ territories levels noting these buildings across Australia are estimated in June 2005 (refer to table 3.3 in draft report) to total approx. 23,000 historic heritage places with more than 150,000+ other places in local government lists.

Hence where there are the greatest problems being experienced by the UCA in terms of listing of heritage places, use and development applications for these places and the need for financial support for conservation works, the draft report recommends these matters remain in local government planning schemes, that is, the status quo with its incumbent problems remains.

In the opinion of the UCA the draft report has failed dismally to deliver practical solutions at the municipal level of government intervention in conservation being the level where by far the majority of UCA heritage places are affected by heritage overlays.

2. Cost Benefit Analyses

Although Chapter 6 of the draft report goes into considerable detail about the various approaches as to how to 'calculate' the costs and benefits of conserving heritage places, it is evident that no one solution or approach will suit all situations. Some heritage places are likely to never actually generate a benefit(s) which exceed the costs of conserving that place. It is submitted that many congregation church buildings of the UCA fall within this category, particularly those in rural and regional Australia and, in areas where the community is ageing and the socio-economic profile is low income. It is the opinion of the UCA the traditional cost benefit analysis, the socially-optimal analysis and other models for government intervention discussed in the report are of limited application to the majority of heritage properties owned by the UCA.

For 'not-for-profit' property owners of heritage places and owners of building types which have very limited economic value or adaptive re-use opportunities the major issue is not that they don't want to protect and conserve a heritage place but they cannot afford to do so! The draft report fails to address this fundamental and urgent issue for these owners.

The congregations of the UCA are struggling to find the money to undertake on-going maintenance, OHS and building regulation compliance and basic conservation works. This is exacerbated by other socio demographic changes occurring within Australian society resulting in a substantial surplus of heritage churches owned by the UCA with limited 'value'.

The UCA agrees that the statutory listing of a heritage place *'does not provide a property owner with any additional incentive to preserve heritage values or ensure the on-going conservation of the place.'* (page 162) The draft report acknowledges that heritage listed churches, for example, often have no current realistic use and yet still accrue the costs of maintenance etc. In such instances the heritage listing can generate a significant burden for the owner of the property because it limits the degree of change which may occur externally and even internally to the church to create a viable end use. These limitations are being experienced more so at the municipal level under planning scheme controls.

In effect, the lack of adequate and effective financial support at all government levels for these properties (be it through grants, low interest loans or other fiscal incentives) means that an increasing number of owners are leaving properties to further deteriorate through no choice of their own. This outcome is counterproductive to the conservation cause.

Despite recognition in the draft report of the overall lack of adequate funding assistance to owners, the report itself does not explore fiscal options for overcoming this acute deficiency. The draft report accepts the case put by the UCA and others that there is presently grossly inadequate funding provided by governments for such works and, that much of the money which is available through programs such as the Victorian Heritage Program is going to managers of public land.

It is apparent in the draft report that the issue of who should provide funding assistance is reduced to a discussion about whether government should be the primary source of funds to owners in need. In this regard clearly the implementation of policies e.g. policies on conservation of heritage places, provision of community facilities and services etc, will generate a cost to government. This expenditure will invariably be met via taxes or, in the case of local government, by municipal rates. The central issue is whether or not conservation of heritage places is regarded by government as of such importance as to warrant allocating adequate funds for conservation works of heritage places regardless of ownership.

Hence the draft report needs to establish the nature and extent of governments' commitment to conservation of heritage places at the outset. If governments do not see conservation of these places as worthy of adequate funding arrangements to assist owners, and particularly private owners such as not for profit organisations (e.g. UCA), then this situation will significantly impact on the recommendations of the PCA. The underlying message that the UCA is gleaned

from the draft report is that governments, especially at the Federal and States and Territories levels, are currently giving 'lip service' to conservation of the built environment and deflecting much of this responsibility to local councils through planning scheme controls being a system which offers no financial assistance to owners of these places.

More particularly, the discussion about government involvement is premised on the belief that the benefits of government participation in historic heritage conservation of privately owned places should exceed the costs of government involvement. Such costs include the raising of funds to subsidise heritage conservation works and, costs to property owners in complying with a myriad of regulations etc.

Whilst the UCA endorses the need for effective policy mechanisms which embrace rigor, transparency and accountability, the UCA does not accept the premise that is repeated throughout the draft report that governments' role in heritage conservation needs to also be assessed against the costs of intervention. Invariably government will need to intervene regardless of the costs of intervention to ensure that conservation of heritage places occurs. Just as the case for demolition of a heritage place should not be predicated on an owner's inability to fund conservation works, government should not argue its lack of intervention and assistance to owners based on cost alone.

For example, many of Australia's national parks and wilderness areas do not generate an income which, in any way, does or is likely to ever cover the costs of managing and maintaining these natural heritage areas and, yet governments intervene in the protection and conservation for the net community/public benefit. The UCA argues that built form heritage (regardless of ownership) should be treated in a similar manner in that the costs of intervention are part of the costs borne by governments for the public good.

Furthermore, the UCA is of the opinion that given it is the community at large who enjoys the benefits of having heritage places protected and conserved, and it is the community that elects government as the creator and enforcer of policy and regulations, as well as the collector of taxes and rates, then government has a very important role in both the protection and conservation of these places.

It is submitted by the UCA that it is the role of government at all levels to take responsibility of the future protection and conservation of our heritage places and such responsibility is not confined to heritage listing of properties and regulatory use and development controls alone. Governments cannot rely upon either the property owner or the community, alone or together, to protect and conserve such places. For the system to operate effectively and responsibly it requires government involvement, assistance and support.

3. Options for Financial Assistance to Owners

There is an underlying reluctance by the PCA to pursue more effective, innovative and beneficial means of providing property owners of heritage places with adequate financial assistance to undertake the necessary maintenance and conservation works which are required to retain the building in good, safe and usable condition.

There is also an assertion that financial incentives from government to owners may lead to individuals *'understating their willingness to undertake the conservation in order to receive government subsidy' and that 'under these circumstances, the government is effectively paying for work which would have been undertaken anyway.'* (page 120) In the case of the UCA such works are often not undertaken simply because the funds are not available within the congregation, assuming that a congregation for that church building still exists or is of a size that can fund these works. Instead the congregations of the UCA do not have the financial capacity to fund these works and hence has no choice but to close the church down to avoid prosecution under the various building and OH&S regulations.

Clearly government at all levels need to determine a set of criteria which ensures that those most in need of funding are assisted in fulfilling their obligations as owners in terms of basic maintenance and repairs as a minimal contribution to protecting this nation's heritage regardless of the level of significance. Any additional conservation works undertaken is a bonus and should be actively encouraged and assisted, again based on agreed and workable criteria.

The draft report does not even pursue a range of funding options whereby the wider community contributes in a socially responsible manner or the option of tax incentives to owners prepared to undertake conservation works. Whilst the

concept of a conservation agreement alludes to the possibility of funding assistance as part of the 'incentive package' the draft report fails to answer basic questions such as

- who would pay for these fiscal incentives?
- are they a once 'up-front' amount or on-going amount tied to specific conservation works?,
- who would administer the agreements if funding was part of the package?

These are fundamental issues tied to the concept of conservation agreements and even then these agreements are only be recommended for national and states and territories heritage listings and not for listings at the municipal level.

Furthermore it would appear that the option of tax incentives is simply not on the PCA agenda noting that the program that was established by the Federal Government in the 1990s was a bureaucratic nightmare for potential applicants with criteria which excluded many owners from applying for such incentives. The amount of red tape involved in that tax incentive scheme, combined with concerns about accountability and transparency, should not dismiss the overarching benefits of the scheme if it generates positive outcomes for conserving our heritage.

A specific concern raised by the Commissioners at the first round of public hearings for this Inquiry related to a situation where an owner gains a tax benefit in terms of undertaking conservation works and then sells the property shortly after and makes a personal gain from the tax incentive scheme. The UCA is of the opinion that this situation can be addressed through such devices as agreements between recipients of the tax incentive and government whereby within a specified time (e.g. 5 years) if the property is sold then the recipient is to reimburse the government all or part of that tax benefit with a depreciation percentage factored into the final amount. Clearly the details of such agreements warrant more detailed discussion but this concern expressed by the Commissioners should not discard this type of financial incentive to owners alongside the operation of other fiscal assistance programs operated by government.

Government needs to re-visit options such as grants, low interest loans and tax incentives alongside other options and perhaps offer a suite of financial assistance programs for different owners, types of properties or specific owner circumstances. For example, the UCA has the capacity through its State property trusts to provide a transparent and accountable process for tax deductible donations, gifts etc for conservation works. It is these types of fiscal options that the PCA should explore further as part of government commitment to conservation.

In the opinion of the UCA the issue of funding options are totally inadequately addressed in the draft report and this is indeed very disappointing. For many owners such as the UCA the most urgent issues are funding to undertake necessary maintenance, repair and conservation works to its portfolio of heritage places. The Inquiry has failed to date in creatively addressing this issue and instead, has focussed too much on the process of listing.

4. Negotiated Conservation Agreements

Chapter 6 concludes its analysis by supporting a cost benefit approach based on negotiation between the owner and government. In effect the remaining chapters of the draft report rely so heavily on the negotiated agreement process as the panacea to conservation issues that the PCA could be accused of being naïve and out of touch with the issues which are most pressing for owners of heritage places.

The UCA as a not-for-profit organisation supports the concept of a property not being listed for heritage protection if the owner is not prepared to accept a conservation agreement. For the UCA there is substantial cost involved in current listing processes applied at the national, state and local levels of government coupled with the on going costs of maintaining and conserving these places once listed for protection.

Because the UCA believes in 'living places' whereby the church itself is not as important as the spirit and meaning of worshipping God the opportunity to not list a property if the owner's consent is not forthcoming is most appealing to the UCA Property Boards in each state and territory. However the reality is that this approach would, in the opinion of the

UCA, arouse considerable public outrage and opposition within the wider Australian community, especially from agencies committed to conserving our cultural heritage and from even within some of the UCA congregations. Again, the fundamental issue for the UCA is the costs associated with being an owner of a heritage place and these costs commence with the listing process and continue with the on going ownership of these places.

The UCA agrees with the draft report on page 162 when it states that listing a heritage place does not provide the owner with any additional incentive to preserve the heritage values of that place or ensure on-going conservation of that place. However at least at the State level there may be funds available for such works and, possibly at the national level, although the new funding scheme for the National Heritage List is very limited in the scope of works able to be funded under this new scheme with places on the National List having priority. For the UCA the national fund offers little if any potential for funding for maintenance and conservation works for the vast majority of its properties as they are not of national significance. Most are actually of local significance and remain protected under municipal planning schemes.

The elements of an effective conservation agreement system as outlined in Box 9.1 of the draft report include matters that are already addressed by some of the state heritage bodies in the listing process. In particular if there are to be conservation agreements as part of the listing process then Elements 1, 2, 5 and 6 of this example have merit. However any controls on use (either listing allowed or prohibited uses) is not supported given that as much flexibility as possible is required on the 'use' issue to maximise the potential market value of the heritage place. Limiting the use of a heritage place is counter productive to maximising the potential for future use as a means to retaining the place rather than it becoming derelict and a candidate for demolition.

It needs to be stated that many of the congregations of the UCA do not have the capacity to negotiate with government and or the wider community in the terms of a conservation agreement. Negotiated outcomes can be time consuming, complex and riddled with legalese and other contractual language which, for many members of a congregation, is daunting and difficult to understand. It is anticipated therefore that the cost and time involved in preparing appropriate conservation agreements will add considerable cost and time for the congregations of the UCA.

Although the negotiated conservation agreement process is already occurring in some parts of Australia but it is not happening where the majority of heritage places are protected, that is under municipal planning schemes. Hence this recommendation of the PCA has very limited benefit and again generates costs which, for not for profit organisations like the UCA, are considerable. The PCA really needs to turn its attention to ways of assisting property owners at the local level of significance in conjunction with practical options for funding assistance for these owners.

5. Compulsory acquisition

The draft report recommends that State governments should put in place systems for their local governments to request compulsory acquisition in cases where this action becomes the only way to ensure the cost effective conservation of places of local significance. Whilst this option may have UCA support when the heritage church is no longer attracting a congregation which warrants retention of the church and where the property is surplus to the needs of the UCA this approach is not likely to be supported where the congregation is viable and the church is well utilised.

6. OH&S, access and building regulations etc

The draft report provides little, if any, assistance or advice on the issues of compliance with OH&S, access, building regulations etc for heritage places which are protected under municipal planning schemes. For the congregations of the UCA this is an important on-going and extremely costly area of concern which the PCA has failed to provide practical advice as part of this inquiry. Given that the draft report relies solely upon the conservation agreement approach via negotiations between the owner and the national or state government agency (whom may also involve the wider community in this process) the majority of UCA properties with existing or proposed heritage protection will continue to face current regulatory problems at the municipal level of government.

7. Conclusion

The UCA does not believe the *'conservation agreements as the principal means of conserving heritage values on private property involves a significant shift in the focus of conservation activity, at the State and particularly at the local level'* (page 206). On the contrary, the UCA emphasizes that the draft report has failed to address many of the issues which the UCA highlighted in its submission to the PCA in July 2005. These issues relate to funding maintenance and conservation works for its heritage properties, the costs associated with current listing processes at the State and local government levels, the onerous and inflexible controls and provisions placed on UCA properties within municipal planning scheme heritage areas/precincts and heritage overlays especially in terms of use and development applications and the overall lack of funding assistance at all levels of government available to not for profit agencies such as the UCA to maintain, repair and conserve its heritage places.

In summary the UCA concludes that the draft report has failed to provide recommendations which will address its congregations' issues in a positive, practical and creative manner and ignored the problems of capacity within congregations to administer these recommendations. This is indeed a disappointing outcome for what is a much needed inquiry into the processes, regulations and incentives needed to protect and conserve our nation's heritage so that we pass on a living heritage to future generations.

The UCA looks forward to the opportunity to articulate its response to the draft report at the PCA public hearing on 15 February 2006.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'John Preston', with a stylized flourish at the end.

John Preston

Manager and Property Officer, Synod of Victoria and Tasmania
For and on behalf of the Uniting Church in Australia