

Urban & Regional Planning Solutions

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Ms Jill Irvine
Heritage Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Ms Irvine

REVIEW OF THE PRODUCTIVITY COMMISSIONS DRAFT REPORT INTO THE CONSERVATION OF AUSTRALIA'S HISTORIC HERITAGE PLACES

Thank you for providing an opportunity to comment on the Productivity Commission's Draft Report into the Conservation of Australia's Historic Heritage Places.

Urban & Regional Planning Solutions is a Planning Consultancy that has a strong commitment to Heritage Conservation. We have assisted in the preparation of a number of Plan Amendment Reports that list Local Heritage Places and create Historic (Conservation) Zones and Policy Areas within the Development Plans of Councils such as the City of Burnside, the City of Charles Sturt and Light Regional Council. We have also recently completed work for Planning SA and the City of Onkaparinga on Neighbourhood Character Studies.

The Productivity Commission's Draft Report into the Conservation of Australia's Historic Heritage Places is very well written and explores many of the issues relating to heritage conservation in great detail. However, many of the recommendations of the Draft Report appear to be an extreme and inappropriate reaction to the issues of concern raised in the report.

Our submission to the Draft Report considers five main topic areas as follows: 1.

Planning Policy and Practice

The Productivity Commission report states that:

"Urban planning laws and by-laws are designed to internalise what are usually localised externalities. That is, where *the effects are largely confined to neighbours*. For example, *the opportunity cost* to one *party* of not being allowed to build a certain development may be broadly offset by the fact that their amenity will not be diminished by *an adjacent development by a neighbour*. While such reciprocity is unlikely to be exact, *there is a rough symmetry of costs and benefits*, which may explain the broad acceptance of those rules and the absence of compensation."

However, where individual properties are heritage-listed, any associated development restrictions will impact on the owner (and on the property's capital value). Any benefits, however, will accrue to the general community. Another consideration which reduces the validity of comparing general planning laws with heritage regulations is that, in many cases, changes to

planning laws financially benefit landowners. Invariably, changes to zoning restrictions, in response to pressure for urban development, are to the material advantage of landowners (for example, rezoning to medium or high density housing) and the issue of compensation is not relevant."

The heritage management system in South Australia is the result of an iterative process over many years and the community now generally accepts that heritage conservation is managed as part of the broader planning system. The Commission's suggestion that heritage listing is somehow different to other forms of planning control is considered to be unreasonable. On the contrary, it is considered that the core function of planning is to create development policy for the benefit of the wider community or the 'greater public good'. In this context, it is considered that planning policy that seeks to preserve heritage places is no different to planning policy that establishes a hierarchy of commercial centres or limits the height of residential development in particular locations.

The introduction of planning policy that some believe has a negative financial impact on individual land owners occurs regularly. For example, the City of Burnside introduced new planning policies to its Development Plan in 2003 which increased the minimum allotment size in many of its suburbs, thereby reducing the redevelopment potential in some locations where the density of development was considered to have a negative impact upon the desirable character of these areas. Another example is the introduction by the South Australian Government in 2001 of new planning policies across South Australia to preserve "Significant Trees" on both public and private land as desirable features within the landscape.

If the Productivity Commission's assertion that the owners of heritage places should be financially compensated for perceived or actual financial impacts upon their properties is defensible, should it not follow that individuals who stand to gain financially through the introduction of new planning policy should reimburse the wider community? It is considered that such an approach would be 'equitable', however, it is considered that it would also unreasonably stifle the function of the market in providing development identified as being desirable through considered strategic planning.

2. Voluntary Listing of Heritage Places

The Productivity Commission report states that:

"To improve incentives for historic heritage conservation, privately-owned properties should be statutorily listed only after a conservation agreement has been negotiated with the owner. The agreements would cover the management and funding of the additional heritage benefits. This would:

- *bring greater integrity and rigour to the statutory listing process by aligning the decision to conserve additional heritage for the relevant community with the decision on funding the added costs of its conservation;*
- *provide the flexibility necessary to take into account the evolving nature of heritage values; and*
- *build on the practices already employed in some jurisdictions."*

A number of local Councils in South Australia have adopted the approach of voluntary listing of heritage places within the Development Plan (the primary planning tool for local government in South Australia). In the City of Burnside, for example, rather than listing more than 300+ local heritage places within the Development Plan, only 50 places received such protection on the basis of owner agreement. In the meantime, a number of buildings clearly worthy of heritage listing have been demolished, raising considerable alarm within the wider community (eg. Fernilee Lodge on Greenhill Road, Burnside).

It is also understood that the voluntary approach to heritage listing within the City of Adelaide has resulted in undesirable and inequitable scenarios such as one half of pair of semidetached dwellings being listed as a Local Heritage Place and the other half not on the basis of owner objection.

It may be argued that the de-listing of many existing heritage properties would not necessarily result in their demolition, given their inherent value. It is also understood that paying individual land owners to heritage list their properties may also act as a significant incentive for conservation. However, the Productivity Commission's approach to voluntary listing of heritage places may come at the significant cost of the loss of a number of heritage places that clearly satisfy the criteria for such protection. The risk of losing a number of buildings of heritage significance and the associated detrimental impact upon the valued character of an area is considered to be unacceptable when balanced against the perceived gains.

3. Funding for Heritage Conservation

The Productivity Commission is clearly of the view that:

"Current methods of identifying historic heritage places for statutory listing focus on the benefits expected to accrue to the community. Typically, there is little, if any, consideration of the costs imposed either on the owner or the community more generally."

It appears that many of the Productivity Commission's Draft Recommendations are based on the premise that property owners who enter into conservation agreements will be financially compensated for the associated impact (additional ongoing maintenance, opportunity cost in terms of development potential, etc). What is unclear is how this cost will be determined equitably? A more significant shortcoming of the Productivity Commission's draft report is the lack of consideration given to how the funds intended to be provided by the community for heritage conservation are going to be generated? This issue is considered to be a major concern for Local Government.

Draft Recommendation 9.6 suggests that, where someone has bought a property with the understanding that it is heritage listed, they need only lodge a Development Application to annul the existing heritage listing. If a new heritage agreement over such a property is unable to be negotiated, the owner could expect to have their Development Application approved.

While it is understood that the proposed community payment to the individual land owner for the heritage listing of the property will act as an incentive to conserve the property, such an approach to the application of planning policy where the power to exercise flexibility rests primarily with the land owner is considered to be entirely inappropriate.

Draft Recommendation 8.1 suggests that if a new purchaser buys a heritage listed property where an Conservation Agreement is in force, the new owner can simply decide to end the Agreement, thus enabling the building to be demolished. Again, it is considered that providing the new owner with the ability to vary carefully considered planning policy in the form of heritage listing 'on a whim' is totally inappropriate, regardless of the potential financial incentives to retain the building.

As with all planning policy, carefully considered controls should not be removed simply because a particular owner might not wish them to apply.

4. Alterations and Additions

The Productivity Commission's report acknowledges that in the vast majority of cases (96%), development applications relating to heritage listed properties are approved. Less than 4% of such Applications are refused. These figures suggest that the listing of heritage places does not necessarily hinder appropriate development outcomes. It is acknowledged that some of these development outcomes can take longer in the design/assessment processes given the design challenges. However, with the assistance of design advice from Council Planners and Heritage Advisors at the pre-Application stage and during the assessment process, it is considered that heritage listing helps to achieve improved design outcomes that have longer-term financial benefits to the owners in terms of resale value.

The Productivity Commission has recognised some of the more positive effects of heritage listing in preventing the gradual destruction of heritage buildings through inappropriate alterations and additions. It may be argued that the de-listing of many existing heritage properties would not necessarily result in their total demolition, given their inherent value. However, there is strong evidence to suggest that there would be a diminution of the heritage value of these properties over time through unsympathetic alterations, additions and new development within these properties.

5. Historic (Conservation) Zones

The Productivity Commission's Draft Report states that:

"Provisions exist in a number of jurisdictions, and under both heritage and planning legislation, for groups of properties or specific areas to be designated as having heritage values even if individual properties would not, on their own, warrant listing (chapter 4)."

"For individual properties, the proposed arrangements would require an agreement to be entered into before listing. Such a process of identification and negotiation is unlikely to be practical for a much wider area or precinct involving a large number of diverse properties, which have heritage value as a group rather than individually. In addition, restrictions on the action of property owners typically applies equally to all properties within the area, and are typically focused on streetscape and developments that are compatible with the heritage appearance of the area rather than the conservation of heritage features within individual buildings. As such, they are much closer in design and impact to general land use zoning arrangements than to the system of heritage listing of individual properties. Such arrangements, if undertaken by

local governments, would be subject to the normal review, public *participation and appeals* processes of zoning decisions. It would also be subject to the normal procedural and political checks and balances that operate at the local government level.

To avoid *duplication and ensure a degree of accountability*, the identification and management of *heritage conservation areas or zones* would operate under the *relevant planning legislation* (and thus be the responsibility of local governments), rather than through heritage legislation, which *would focus on the identification of individual properties that warrant a conservation agreement and subsequent listing*. Where an area *had State, or even National, significance*, its *identification could be the subject of negotiation between the State, or Australian, government and the relevant local authority*, with the local *authority being answerable to its constituency for any agreement entered into and any decision made*."

The views of the Productivity Commission in relation to the identification of Historic (Conservation) Zones as identified above are supported by Urban & Regional Planning Solutions.

SUMMARY

Urban & Regional Planning Solutions is fundamentally opposed to the key Draft Recommendation (8.1) of the Productivity Commission that "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", as well as Draft Recommendations 9.3, 9.4, 9.5 and 9.6 on the basis that:

- The Commission's suggestion that heritage listing is somehow different to other forms of planning control is considered to be unreasonable, given that Council believes one of the core functions of planning is the creation of development policy for the greater public good.
- It is not considered appropriate to financially compensate the owners of heritage places for perceived or actual financial impacts upon their properties, in the same way that individuals who stand to gain financially through the introduction of new planning policy should not have to reimburse the wider community.
- The voluntary listing of heritage places in South Australia in the past has seen a limited number of heritage listings occur and, at the same time, a number of buildings clearly worthy of heritage listing have been demolished. The voluntary listing approach may see the continued loss of a number of heritage places that clearly satisfy the criteria for such protection, and such a risk is considered to be unacceptable for the perceived gains.
- It is unclear how the cost of retaining particular heritage places will be determined equitably.
- There is a lack of consideration given to how the funds intended to be provided by the community for heritage conservation are going to be generated.

- Providing individual land owners with the power to vary carefully considered planning policy in the form of heritage listing is totally inappropriate, regardless of the potential financial incentives to retain such buildings.
- The current heritage planning system does not necessarily hinder appropriate development outcomes, rather it often improves design outcomes that have longerterm financial benefits to the owners in terms of resale value.
- The de-listing of many existing heritage properties may result in a diminution of the heritage value of these properties over time through unsympathetic alterations, additions and new development.

Urban & Regional Planning Solutions supports the Productivity Commission's position that "... the identification and management of heritage conservation areas or zones would operate under the relevant planning legislation (and thus be the responsibility of local governments), *rather than* through *heritage* legislation...".

Please contact us on 8333 3335 should you wish to discuss any aspect of this submission.
Thanks again for the opportunity to comment on the Draft Report.

Yours sincerely

Director
Urban & Regional Planning Solutions