

Friday, 26 August 2005

Heritage Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

HERITAGE LEGISLATION REFORM

On behalf of the WA Division of the Property Council of Australia, I write to provide input to your Heritage Inquiry from property owners' perspectives and to identify potential reforms to the regulation of heritage protection in Western Australia.

We are confining our comments to concerns with Western Australian regulation, as a national submission will be provided by the Property Council that provides a more comprehensive overview of the policy position of our organisation for heritage regulation around Australia.

The Property Council of Australia

The Property Council of Australia is the peak industry body representing property owners, developers, managers and agents, as well as service providers to the industry, in Australia.

Our members are active in property investment, development, ownership, management and servicing the commercial property sector and, to a lesser extent, the residential property sector.

Whilst agreeing with the aims of heritage conservation, the Property Council of Australia is firmly committed to policies that ensure that heritage legislation provides certainty for property owners and is fully funded by the community that seeks heritage protection.

Principle of compensation

The question of "who should pay" is fundamental when it comes to heritage conservation.

As an underlying principle, before any property can be adjudged as having heritage values which warrant its listing, then some "public benefit" must have been identified.

Against this, a heritage listing will impact on the value of a property, and it is not fair or reasonable that the burden of this cost for providing a community benefit should fall on the owner.

If the community seeks to preserve heritage, the community should be prepared to fund the cost of that protection.

The "conventional wisdom" on this issue is that some properties will gain in value and some will decline. If there is some mechanism to be put in place for compensating an owner, there likewise should be a betterment tax or similar system in place to extract any benefit the owner might gain. This has then been used as an excuse to do nothing.

This **is not** a correct perception, and we note the following.

A heritage listing typically imposes a number of limitations on the potential use of a place, whether this be via restrictions on the development capacity, an expectation of maintenance, or on the type of use to which the place can be put. This must inevitably result in a reduction of value.

There are some suggestions that a "heritage" listing on a place can add to its appeal or value. *This perception is simply not correct.* This added value derives specifically from the character of the place, and in most instances the fact of listing the place on a register does nothing to change this.

In fact, a heritage listing on a well kept, well maintained place may well enhance the value of the neighbouring properties (in that it will ensure that the ambience of the neighbourhood is maintained - and thus contribute to the value of other places), but the listing itself will do nothing to add to the value of the property receiving the "privilege".

At best, a heritage listing will "maintain" value in a heritage area, by ensuring that the heritage values of that area are maintained. Again, the value here derives from the existing nature of the properties, not from any listing process.

There are a number of mechanisms in place which recoup any potential "betterment" values - through capital gains taxes, land taxes, income taxes (where higher rents are achieved) etc.

On the other hand, there are limited mechanisms whereby heritage property owners can receive reimbursement for providing what is in essence a "public good". Where such mechanisms do exist, they are typically limited in scope and availability.

We would re-emphasise - where a property is "in demand" because of its heritage values, its value has little or nothing to do with whether or not the property is "listed".

In other words, while there is little real "upside" from a listing, there is a definite downside.

The Property Council of Australia is of the view that any heritage legislation should include genuine incentives and compensation for owners of properties that are listed.

There are a number of "compensation options" that could be considered. These could include more taxation concessions, tradeable development rights (possibly transferable between states), planning offsets (again possibly able to be transferred to another site).

One of the benefits of such an approach is that it would impose some discipline on the identification and listing of properties. At present, with all the cost falling on the owner, there is no cost discipline imposed on those making the listings.

This would also impose some limitation on the listing process, or at least lead to the establishment of some conservation priorities.

Commitment to funding

A commitment to properly fund an adequate scheme of incentives is critical. If the community places value on retaining our heritage, then the community should be prepared to pay - not expect selected individuals to foot the bill.

The legislation should either provide compensation for owners affected by a heritage listing, or the Government should establish a heritage fund to acquire property requiring protection. Properties can then be on-sold subject to appropriate restrictions to protect heritage values to an owner aware of their obligations.

In Western Australia, there is provision for land tax relief under section 36 of the Heritage Act - however this is made available where there is a Heritage Agreement in place, which operates to limit the scope of land tax relief for land owners' whose properties' values are adversely affected by a heritage listing. Only a limited number of Heritage Agreements are in effect.

Principle of the evolution of built form

We must acknowledge that building design has evolved in the past 175 years since WA was first colonized. Yesterday's buildings may not suit today's needs. Therefore the heritage regulation must allow for adaptive reuse of heritage assets.

Feedback from industry participants is that unless clear guidelines are established to allow for the recycling of heritage assets, many will remain under-utilised or at worse be destroyed. It may be that there is some sort of rating scale for heritage significance is needed to open more opportunities for adaptive redevelopment solutions.

It is important that we identify the best features of a heritage assets and seek to preserve these, rather than adopting a blanket approach that requires all heritage assets to be maintained in an original condition.

A focus of heritage authorities should be to consider how heritage assets can be adapted and re-used to make them more viable and productive in today's world.

Heritage as final consideration

Under our current system, heritage concern gets given a deciding say as to whether or not some development applications proceed. The Heritage Council currently provides 'advice' that binds local governments.

This gives it an effective final say on the protection on any existing building or physical feature, eg a tree, whether or not it is on the register at the time a development application is lodged.

Careful evaluation of the role of the Heritage Council in Western Australia is required. It could be argued that this body is not necessarily equipped with the processes to consider broader (non-heritage) considerations, hence it should not be given a final say over competing community objectives (eg economic development, environmental initiatives, disability access etc).

Potential for planning delays

There are many current features of the planning processes in Western Australia that are contributing to the frustration of, and delays in, the development of properties in WA. Industry practitioners are reporting delays of 5 years in securing planning approvals - which is excessive where investors are putting their capital at risk. The result is that there is an incentive to reallocate capital to other forms of investment - causing a loss of investment in commercial property in WA - depriving Western Australians of jobs, tax revenue for community needs and social facilities, e.g. restaurants, shops, and accommodation.

We are concerned that heritage processes are adding to planning delays, which will occur if they are not properly integrated with normal planning processes

Currently, heritage assessments of places on the interim register are taking place after a development application is granted. When an application is granted, the Heritage Council will then conduct its assessment. By this stage the developer has already invested considerable funds and time - ie. the developer must go through the costly process of achieving a development application before the Heritage Council will act, a situation that results from a lack of funding.

It should be fundamental to the planning process that, once a development approval has been obtained, heritage issues should not halt the progress of the development.

This can lead to 6 month delays and uncertainty for development proponents. This needs to be reformed so that WA property owners can secure a certain regulatory environment.

All properties or portions of properties listed on the Heritage Council's Register should have been the subject of a heritage assessment.

Heritage laws should ensure that heritage concerns are brought before the decision making body, but they should not force changes after the approval - provided, of course, that the development is in keeping with the development application.

Resourcing of Heritage Council in Western Australia

There have been concerns that the Heritage Council is unable to make timely assessments of heritage values for places brought before it for evaluation. It may be worthwhile conducting an independent review of the resourcing of the Heritage Council.

Political influence and heritage protection

The WA State Labor Government supported the heritage listing of a barbeque area illegally built behind Parliament House in protest at industrial relations reforms in 1997. The Heritage Council listed this site to give it heritage protection. It is questioned whether this was achieved as a result of political pressure applied to the Heritage Council and whether or not the site genuinely met established heritage listing criteria.

Uncertainty in heritage listing criteria

There appear to be a number of heritage listings that are highly subjective. Attached is an analysis of the then proposed listing of the Harold Boas Gardens (prepared by in the City of Perth) on the state register. It raises numerous questions about the validity of the grounds upon which places are proposed for listing. It is still under assessment.

Status of local government inventory listings

Section 45 of the Heritage Act provides for local governments to compile and maintain an inventory of buildings within its district which in its opinion are, or may become, of cultural heritage significance.

The inclusion of properties on these inventories does not, by itself, have any impact on the use of a property. However, other planning instruments can give the inclusion of properties on these lists additional significance (e.g. can impose restrictions on development).

Confusion over the status of properties affected by local government inventory listings needs to be removed, because it causes considerable community concern and does not assist the standing of heritage protection in WA.

Concluding comments

We have been alerted by our members to potential concerns with the proposed heritage reforms. The Government has not provided this information. Accordingly, much of these comments relate to information provided that is second hand. However, given the currency of the information, we must rely on it as the best available information.

We trust that these comments assist in your deliberations.

Mr Geoff Cooper

DEPUTY EXECUTIVE DIRECTOR