

C I T Y O F



WHITEHORSE

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Heritage Inquiry
Productivity Commission
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Dear Sir or Madam

Thank for you the opportunity to submit comments on behalf of Whitehorse Council Planning Officers in relation to the *Productivity Commission Draft Report on the Conservation of Australia's Historic Heritage Places*.

The document has been reviewed and the following comments are made:

- Draft finding 5.2 discusses the absence of a statutory requirement for local government to prepare a statement of significance. The Commission refers to the Victoria Planning Provisions (VPPs) and notes that there is no space for inclusion of such a statement in the schedule to the heritage overlay. Council officers submit that the VPPs and the statutory mechanisms of the *Planning and Environment Act 1987* ensure that no place could be included in the heritage overlay via a planning scheme amendment without a statement of significance.

Under Section 12(2)(a) of the *Planning and Environment Act 1987 (P&E Act)*, Direction No-11 ensures that a comprehensive strategic evaluation of a planning scheme amendment is undertaken. It is a requirement that in preparing an amendment a planning authority must evaluate why the amendment is required. In the case of amending the planning scheme to include a place in the heritage overlay, a planning authority could not successfully prove that the amendment is required if evidence from a statement of significance is not available. Whitehorse City Council has prepared statements of significance for all places protected under its schedule to the heritage overlay and these are listed as reference documents under the Whitehorse Planning Scheme. They are consistently referred to when assessing a planning application.

- Page 87 of the Commission's report states that *'the removal of trees on non-heritage places does not require approval whereas on heritage places approval is needed'*. This statement is largely incorrect because permission for tree removal is often not needed under a heritage overlay.

Clause 43.01-1 of the heritage overlay states that *'a permit is required to remove, destroy, prune or lop a tree if the schedule to this overlay identifies the heritage place as one where tree controls apply'*. The Whitehorse Planning Scheme currently lists 181 places or precincts in the schedule to the heritage overlay and only seven places include tree controls, the majority of which are only for a single specified tree or hedge, including one tree that was nominated by the owner.

On the other hand, there are a number of circumstances where a permit is required to remove a tree on a property that is not heritage-listed. The VPPs include a number of overlays which

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trigger the need for a permit for tree removal. These include the Significant Landscape Overlay and the Vegetation Protection Overlay.

- Page 99 refers to a Victorian Civil and Administrative Tribunal decision in *Bhatia v Whitehorse CC [2001] VCAT 2354*, stating that permission was refused for a satellite dish due to its impacts on nearby heritage places. This is incorrect. Neither the property in question nor the surrounding area is covered by the heritage overlay or identified in any other way as historically significant.

One of the grounds of refusal was *'the proposed dish would have an adverse effect on the amenity of the area.'* This amenity was not defined in any way by heritage. The decision does refer to the *'Principles for the design, siting, construction and operation of telecommunications facilities'* and sets out for completeness all the principles including the first principle which is *'On, or in the vicinity of a heritage place, a telecommunications facility should be sited and designed with external colours, finishes and scald sympathetic to those of the heritage place. A heritage place is a place listed in the schedule to the Heritage Overlay In the planning scheme.'* However, this principle is only relevant where a telecommunications facility is in the vicinity of a heritage place and in *Bhatia v Whitehorse CC*, the satellite dish in question was not. Consideration by the Tribunal was confined to other, relevant principles. It is suggested that the Commission remove reference of this decision from its final report.

- Page 204, paragraph 2 of the report acknowledges that heritage areas may also include a number of individually listed properties and recommends that heritage precincts remain under local government legislation. Council officers are unclear whether a voluntary negotiated agreement would be required for an individual property that is also included in a heritage area. The report should fully explain how this relationship would work.
- Despite clear evidence outlined in the report that heritage listing frequently increases or has no effect on property values, Draft Finding 6.1 is worded to suggest that the majority of evidence is weighted towards the negative.

A report commissioned in 1995 by the Australian Heritage Commission, *'Economic Effects of Heritage Listing'*, considered that the location, general amenity, level of ethnicity and crime are possibly greater influences on property value than heritage. Equally, the very nature of planning control can affect property values. The Panel for Amendment L47 of the Stonnington Planning Scheme noted that it *"is a common and, in principle, accepted consequence of changes in planning controls (eg: even a change in a Council's non-statutory residential code can have quite substantial effects on some property's values, depending on the specific characteristics of the property)."* Therefore Council officers hold the opinion that the Commission's report overstates the negative effect of heritage listing on property values. Notwithstanding, property value cannot not be a deciding factor when heritage listing. It is a long established planning principle that property value is not a relevant planning matter and cannot be taken into account when deciding an application, principally because it is an imprecise science with scope for differing opinions.

Finally, Council officers wish to voice their strong opposition to the concept of voluntary negotiated agreements. The resources required to implement agreements for the 150 individually listed properties in Whitehorse are unreasonable and unrealistic. Further, good conservation outcomes will be determined by a council's capacity and ability to negotiate a conservation agreement and an owner's willingness to negotiate or financial ability to afford legal assistance to avoid an agreement. This situation will lead to inequities and lost heritage. Council sees its approach to consultation as a form of negotiation. When new heritage listings are proposed all owners and occupiers of affected properties are notified by mail and other media sources and invited to comment on the proposed heritage listings. Statements of significance and listings may be altered or removed as a direct result of community consultation, prior to proceeding with a formal amendment process that includes an exhibition period and public hearings with an independent panel. Council's own process and that of the P&E Act, allow for widespread consultation and review, which is in effect one of the aims of the suggested negotiated agreements.

It is appreciated that the Commission has needed to draft its recommendations from a broad Australia-wide perspective, however it is felt that it is important to correct factual mistakes and it is hoped the Commission endeavours to correct them prior to the final report.

Yours sincerely

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