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Heritage Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

By Email: heritage@pc.gov.au

Dear Sir / Madam,

PRODUCTIVITY COMMISSION HERITAGE INQUIRY : SUBMISSION

Thank you for the opportunity of submitting a Submission to the Productivity Commission concerning the Conservation of Australia's Historic Heritage Places.

By way of background I write as a town planning and urban design consultant with over 25 years experience in planning for heritage conservation, both in terms of individual heritage places and the conservation of heritage areas. This experience has been gained through work for the City of Sydney Council in the mid 1970's, work for the New South Wales State Planning Office during 1979/1980, and over the past 22 years as a planning consultant operating primarily in South Australia.

Since establishing my own town planning consultancy in 1994, our firm has completed many statutory planning documents dealing with historic conservation and the designation of historic buildings and areas, often in collaboration with specialist heritage consultants. Through this experience we have been involved in State Government Heritage Committees and Review Teams charged with the responsibility of developing appropriate planning policy for heritage places and areas. We have also undertaken a wide range of community consultation programs dealing with heritage matters, as well as dealing with many local Councils as part of the implementation process.

Although I am aware that organisations such as the Planning Institute of Australia, various Councils and State Governments are preparing submissions to the Productivity Commission, I feel that the recommendations of the Commission are of such concern that an individual submission has been warranted.

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The Commission's Key Recommendation

The key recommendation of the Commission is that privately-owned properties should only be included on statutory heritage lists with the approval of the private owner and following the entering into of a negotiated Conservation Agreement.

This key recommendation is reinforced by other similar recommendations arguing the same general principle (eg, Draft Recommendations 8.1, 9.1, 9.2, 9.3, 9.5 and 9.6).

The philosophy of "voluntary listing" of heritage places has come up from time to time throughout Australia when discussing heritage protection policy. However, all Government's have agreed that the only realistic method of achieving heritage protection of places of historic value is through a rigid evaluation process (with extensive opportunities for owner input and representation) leading to statutory enforcement.

A system of statutory enforcement exists in South Australia and has been operating successfully for many years. In fact it has been operating most successfully in Councils where mandatory listing (with appropriate review steps) has been instigated.

There have been some Councils in South Australia that have opted for a voluntary listing approach. In some cases the approach adopted simply rests with a particular body of elected representatives at a particular point in time, with a new elected body of the same Council subsequently changing the approach (ie, from voluntary to mandatory or vice versa).

In my experience, wherever a Council has opted for a voluntary listing approach, significant anomalies and inequities result. This is most notable in the debacle of heritage listing that has taken place within the City of Adelaide over the past decade or so. As a result of several voluntary listing approaches, we have the ridiculous situation where one half of a semi-detached dwelling is listed as a Local Heritage Place and the other half is not, purely because the owner of one indicated to Council that they did not want to be listed. Similarly, we have situations where individual attached terrace houses within a long group of terraces are not listed, with the remaining ones listed, again due to owner responses.

It is important to comment on the fact that, overall, the wider community recognises the importance of heritage conservation and accepts that a certain number of buildings (and some areas) should be protected from demolition. This wider community benefit is well acknowledged, including by the Productivity Commission.

However, the Commission argues that the community benefit comes at the economic cost to the individual property owner, and that this is inequitable and should not occur. If this was the case then many aspects of town planning and land use control would be in a similar boat. That is, when a Council (ie, the community) decides that one area should be redeveloped for higher density development and that another area should be protected from such redevelopment by zoning, for example, to low density residential, private development rights are affected. In one case an owner of a house is unable to develop more than one house, in which case his/her existing dwelling will inevitably be retained (particularly if it is a new dwelling). In another case the owner of a single dwelling might have their land rezoned to allow residential flats or townhouses to be constructed. In both cases the community is saying that one area is appropriate for low density housing and another for high density housing, with variable economic impacts.

As we do not have a system in Australia of compensating landowners for changes to land use zoning, or for obtaining community financial gain back from zoning changes that lead to higher land values (ie, betterment taxes), there are always some winners and some losers with respect to land use zoning.

In my view heritage planning and heritage policy is no different to other land use zoning policy. Furthermore, I have not read within the Productivity Commission's Report any argument that suggests that heritage planning **is** different.

The logical conclusion of the Commission's argument is that, if a Council was to contemplate rezoning an area or property to a use that (arguably) resulted in a lower land value, this could only be achieved if an agreement was entered into with the owner to do so!

Most Councils in South Australia have undertaken heritage studies leading to the identification of local heritage places and/or heritage areas within their Development Plans. The system is working well and most of the listings are in place through the statutory process. This statutory process allows an owner to object to the listing of their property at two important points. One of these objections is heard by the local Council, and the other by a State Government independent "Committee" specially formed to hear such objections. This process ensures an independent and fair assessment.

Does Listing Result in Reduced Property Values?

As far as I'm aware there is no conclusive evidence that heritage listing reduces property values per se. The only way that this could be evaluated is where a property is listed in an area where the zoning does not allow for more intensive development than currently exists. For example, if an area contains detached houses of heritage value, and the zoning only allows detached dwellings at low densities, it is most unlikely for a heritage listing to reduce the property values. In fact, in my experience the opposite can occur, as the community generally does value these heritage areas. Clearly, if a property is heritage listed in an area where the zoning allows much greater density of development than exists, property values could be negatively affected. That is, the owner may not be able to realise the same increase in property value as an owner of a non-listed property in the same Zone. However, this is just part of the land use zoning process, where some benefit and some may not benefit from land use zoning controls.

What Happens When Voluntary Listing of Heritage Places is Promoted?

In my experience property owners are loathe to agree to list their properties under a voluntary listing regime simply because they do not wish to have any land use control that **may** affect their property value. The **fear** of a loss (or no gain) in property values is enough to put people off a voluntary listing approach, even if it could be logically argued that they are not financially worse off and that various heritage incentive grants are available.

My concern, therefore, is that, under the Recommendations of the Productivity Commission, very few properties will be listed because very few owners will be prepared to enter into a negotiated Conservation Agreement.

Although there has been debate about the pros and cons of voluntary listing, the Productivity Commission's Heritage Inquiry is the first time that a more "authoritative" inquiry has suggested such a retrograde approach. The approach undermines over 30 years of policy development and heritage protection that has resulted in many buildings and areas being protected. At the

same time there has been little opposition to these processes, and in contemporary Australia the benefits of heritage protection are seen by the community as outweighing any concerns of private property owners.

State Government Policy Trends

The thought of undoing all of this work and placing these buildings and areas under threat of demolition is preposterous. Apart from flying in the face of community expectations, it also goes against the latest Government thinking and policy development in this area. For example, the South Australian Government not only supports the protection of local heritage places and areas, but is currently developing policies aimed at protecting areas of valued neighbourhood character. This will involve developing criteria for assessment of such areas and developing planning policy in zonings that aim to protect the valued elements of this character. Such an approach may again impact on property values at the expense of wider community values, but this is just part of the general town planning approach.

Draft Recommendation 9.6

Draft Recommendation 9.6 suggests that, where someone has bought a property knowing that it is heritage listed, they only need to lodge a Development Application to in effect annul the listing and then refuse to reach an agreement, following which the building would be delisted and they could expect to have their Development Application for redevelopment approved! This is absurd.

Draft Recommendation 8.1

Draft Recommendation 8.1 (and others) suggest that buildings would be protected only while an agreement is in force. If a new purchaser buys a listed building where an Agreement is in force, it suggests that the new owner can simply decide to end the Agreement, thus enabling the building to be demolished. This makes a mockery of heritage listing and creates a totally uncertain result for the community. Why should heritage protection (which is one part of broader planning controls) be treated so differently to the rest of planning and land use zoning?

Draft Recommendation 9.8

South Australian Government legislation provides for the creation of State Heritage Areas. It is considered most inappropriate for Local Government to take over responsibility for planning decisions in such areas given their state significance. The existing system is working well, with high quality heritage advice being provided for development within these State areas. Local Councils do not (and cannot be expected to) have the resources/expertise and the existing system should be continued.

Other Recommendations

I support several of the other Recommendations made by the Commission, including draft Recommendations 3.1, 7.2, 7.3, 7.4, 7.5, 9.4 and 9.7.

Conclusion

I remain fundamentally opposed to the key recommendation of the Productivity Commission, as outlined in this Submission, and wish to give a verbal presentation to the public hearing in Adelaide.

Once again thank you for the opportunity of making this Submission and I look forward to the favourable consideration of it.

Yours sincerely,
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PETER JENSEN