

24 February 2006

Mr Neil Bryon
Presiding Commissioner
Heritage Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Bryon

**SUBMISSION TO THE PRODUCTIVITY COMMISSION'S DRAFT REPORT ON THE
INQUIRY INTO THE CONSERVATION OF AUSTRALIA'S HISTORIC HERITAGE
PLACES (DECEMBER 2005)**

The City of Melbourne has a successful record of heritage management, in partnership with property owners and the community at large. Thirty years of planning controls has conserved a heritage which contributes Melbourne's vitality as a place to live, visit, do business and invest.

While much of the research and findings contained in the Commission's draft report dated December 2005 is sound, there seems to be a disconnect between the discussion and the resultant recommendations. It is considered that the draft proposals for a Conservation Agreement to be a prerequisite for heritage listing could undermine the existing successful heritage protection arrangements. The current process has been tested and refined over many years and is now accepted practice, which in fact gives certainty to private property owners.

The Inquiry is an opportunity to build on the substantial strengths of the current system, a key strength being the existing legislative and administrative framework. Reform should take the form of providing incentives and assistance to owners and engendering greater community involvement, understanding and support for heritage. Consideration should be given to providing or expanding incentive programs such as via tax rebates, grants, education and promotion programs, investment in trades training, interpretation of and access to public heritage places and public access to information about significance and the impacts of heritage listing. A response to the recommendations made in the draft report is attached. If you have any queries please contact Lisa Rogers on 9658 8404.

Yours sincerely

John Noonan

Group Manager, Sustainable Regulatory Services

Telephone 9658 8400

Facsimile 9658 9891

E-mail johnoo@melbourne.vic.gov.au

CoM reference # 3636371

SUBMISSION TO THE PRODUCTIVITY COMMISSION'S DRAFT REPORT ON THE INQUIRY INTO THE CONSERVATION OF AUSTRALIA'S HISTORIC HERITAGE PLACES (DECEMBER 2005)

Draft Recommendation/Finding	City of Melbourne Comment
<p>Draft Finding 7.8 – At the local government level, the management of heritage conservation of local planning schemes is not working well, primarily because of:</p> <ul style="list-style-type: none"> • the imposition of unclear and uncertain restrictions on property owners • the failure to prepare a statement of significance for each place listed on a local list • inconsistent use and interpretation of heritage controls; • the application of heritage controls to places that have little, if any, heritage significance in order to achieve other planning objectives. 	<p>Not supported.</p> <ul style="list-style-type: none"> • Listing of heritage places by the City of Melbourne is an open, public and consultative process which enables the owner of private property to fully express their views and have appeal rights when Council is considering listing and at each point in subsequent decision making about change to heritage places. • This longstanding system which establishes what is significant (through listing), how it is significant (through statements of significance and the grading system of relative importance) and the management (through established and accepted heritage policy written into legislation) has an established precedent. • The City of Melbourne has identified the significance of its heritage places. Many individual places have statements of significance and statements are in preparation for heritage precincts/areas. The relative level of significance is also published. Melbourne's heritage listed buildings are graded in level of importance (A-D) and streetscapes graded (1-3). When considering changes to heritage places, there is clear heritage policy to guide acceptable development according to the level of importance. • Property owners receive assistance via grants and loans and expert heritage advice to negotiate solutions, particularly in the pre-application process, to achieve sensitive development outcomes. • Heritage listing often adds value to heritage places, particularly in intact suburbs such as East Melbourne and Parkville. It would only take a few owners disagreeing with conservation controls to compromise the current level of integrity in these areas and potentially reduce the values of other properties in the suburb.

<p>Draft Key Recommendation 8.1 - Negotiated conservation agreement made prior to private property heritage listing. Listing only in force during life of agreement.</p>	<p>Not supported.</p> <ul style="list-style-type: none"> • The best conservation outcomes are achieved where owners value and voluntarily maintain their heritage asset. However, a “Conservation Agreement” by an owner should not be a prerequisite of “Listing” of the heritage place. There is no evidence of the negative impact ascribed to heritage listing by the Commission to justify this. • Environmental and planning law has, for over 50 years in Victoria, imposed some constraint on the private property rights of owners. Heritage controls have applied in the City of Melbourne for over 30 years. Heritage control is a form of zoning and should not be administered separately from the planning system. • The conservation agreement proposal is both unnecessary and expensive to implement and would undermine the objective integrity of the heritage controls themselves. While there is a clear and commonly accepted criteria for the listing of heritage places which creates a level playing field, the imposition of agreements would create inequities • The Commission appears to have misunderstood the purpose and function of heritage areas or precincts v. individual heritage listings. Listing is based upon significance and assessment against published criteria, whether individual or collective. To make an arbitrary distinction between places and precincts in the use of conservation agreements is misconceived and would be unworkable.
<p>Draft Recommendation 3.1 – All levels of government should collect and disseminate data on the conservation of Australia’s heritage.</p>	<p>Supported.</p> <ul style="list-style-type: none"> • The City of Melbourne has established an online database of well over 6000 heritage places which identifies each individual heritage place and provides significance assessment information. The consistency of data collection approaches across Australia could be best directed by the Commonwealth through further promotion and resourcing of the Australian Heritage Places Inventory. The online heritage inventory software utilised by the NSW Heritage Office and disseminated free to all NSW local councils provides a one stop public research resource.

<p>Draft Recommendation 7.1 – Phase out the Register of the National Estate (RNE)</p> <p>Draft Recommendation 7.2 – Remove any Reference to the RNE from heritage legislation.</p>	<p>Supported.</p> <ul style="list-style-type: none"> • Many places listed on the Register of the National Estate are protected via statutory listing at the State or local level. Where places are listed on the Register of the National Estate but no other statutory list, the Commonwealth should refer nominations for assessment to the appropriate level of government (state or local). This should be a Commonwealth project managed by the Australian Heritage Commission as part of the process of phasing out the Register. It should be recognised that the Register of the National Estate, as a long running and national list, has significant community support.
<p>Draft Recommendation 7.3 – State governments should repeal legislation (where relevant) governing the operations of the Trust.</p>	<ul style="list-style-type: none"> • There is no specific enabling legislation for the Trust in Victoria. However, the City of Melbourne supports the work of the National Trust as the key Australian community heritage organisation. The Trust, as noted by the Commission, is currently reviewing its activities and governance nationally. The work of heritage conservation volunteers should be recognized and celebrated.
<p>Draft Recommendation 7.4 - Government agencies should report on heritage related costs of conservation.</p>	<p>Supported</p> <ul style="list-style-type: none"> • Government should lead by example in heritage conservation. In NSW, state government departments have specific responsibilities under the Heritage Act 1977 (NSW). Section 170 requires government agencies to report on the identification, management and conservation of assets which have heritage significance. The Commonwealth State of the Environment Reporting provides an existing mechanism for reporting on the condition of our cultural heritage. In terms of the costs of maintaining public heritage buildings, costs may depend on whether there is a maintenance backlog that must be recovered (and the costs of specialist trades to repair traditional fabric). Once a heritage building is restored, the cost of maintenance should be similar to any other building. The costs of conservation should not be included in listing criteria.

<p>Recommendation 7.5 - All levels of government should prepare conservation management plans for government owned statutory listed places.</p>	<ul style="list-style-type: none"> The City of Melbourne regularly prepares Conservation Management Plans for heritage precincts such as parks and gardens. A Conservation Management Plan is one management tool to assist the conservation of an identified place and enables customised and site specific controls through an agreed plan. They are a useful risk management tool for owner's to have a strategic document to guide the conservation and development of heritage places. It may not be necessary to produce conservation management plans for all items, this should be dictated by the significance of the place and complexity of the issues.
<p>Draft Recommendation 9.1 – Negotiated conservation agreement made prior to private property heritage listing on the National Heritage List. Listing only in force during life of agreement.</p> <p>Draft Recommendation 9.2 - Negotiated conservation agreement made prior to private property heritage listing on State level heritage lists. Listing only in force during life of agreement.</p> <p>Draft Recommendation 9.3 – State governments should require local government to negotiate conservation agreements prior to private property heritage listing. Listing only in force during life of agreement.</p>	<p>Not supported.</p> <ul style="list-style-type: none"> See response to 8.1

<p>Draft Recommendation 9.4 – State governments should enable local government to compulsorily acquire private property where only cost effective way to conserve.</p>	<ul style="list-style-type: none"> • The Commonwealth government should investigate a range of assistance via a grants program to support heritage conservation which may include property acquisition.
<p>Draft Recommendation 9.5 - Negotiated conservation agreement made prior to heritage listing of private property. Listing only in force during life of agreement.</p>	<p>Not supported. Refer earlier discussion on 8.1</p>
<p>Draft Recommendation 9.6 – Where private property already listed and subsequently sold, agreement runs with land but may be renegotiated at the time of any substantive development application.</p>	<p>Not supported.</p> <ul style="list-style-type: none"> • Linking a proposed management tool (via a conservation agreement) with heritage listing reverses the long standing international heritage conservation standard of separating the identification of heritage (listing) from management decisions. The intended result could be far fewer listings and a loss of our irreplaceable heritage. Further undermining this successful standard is the suggestion that such an agreement would not run with the land but may be renegotiated with each subsequent owner (point of sale being the most difficult time to negotiate such an agreement) and at any time there was ‘substantive development’.
<p>Draft Recommendation 9.7 - Remove legislated ability to take heritage considerations into account in relation to individual property excepting where relate to heritage areas/precincts. Draft Recommendation 9.8 - State governments should not list heritage areas or precincts on State registers. To province of local government.</p>	<p>Not supported.</p> <ul style="list-style-type: none"> • The State government has an important role in protecting State significant heritage including listing State significant heritage on the State Heritage Register. This is a clear and structured management and the participation of all levels of government ensures that all interests are served. The Commonwealth government should take a leadership role in Australian cultural heritage management. Local government will always need the support of State governments to achieve consistent and good decision making across municipal boundaries.