

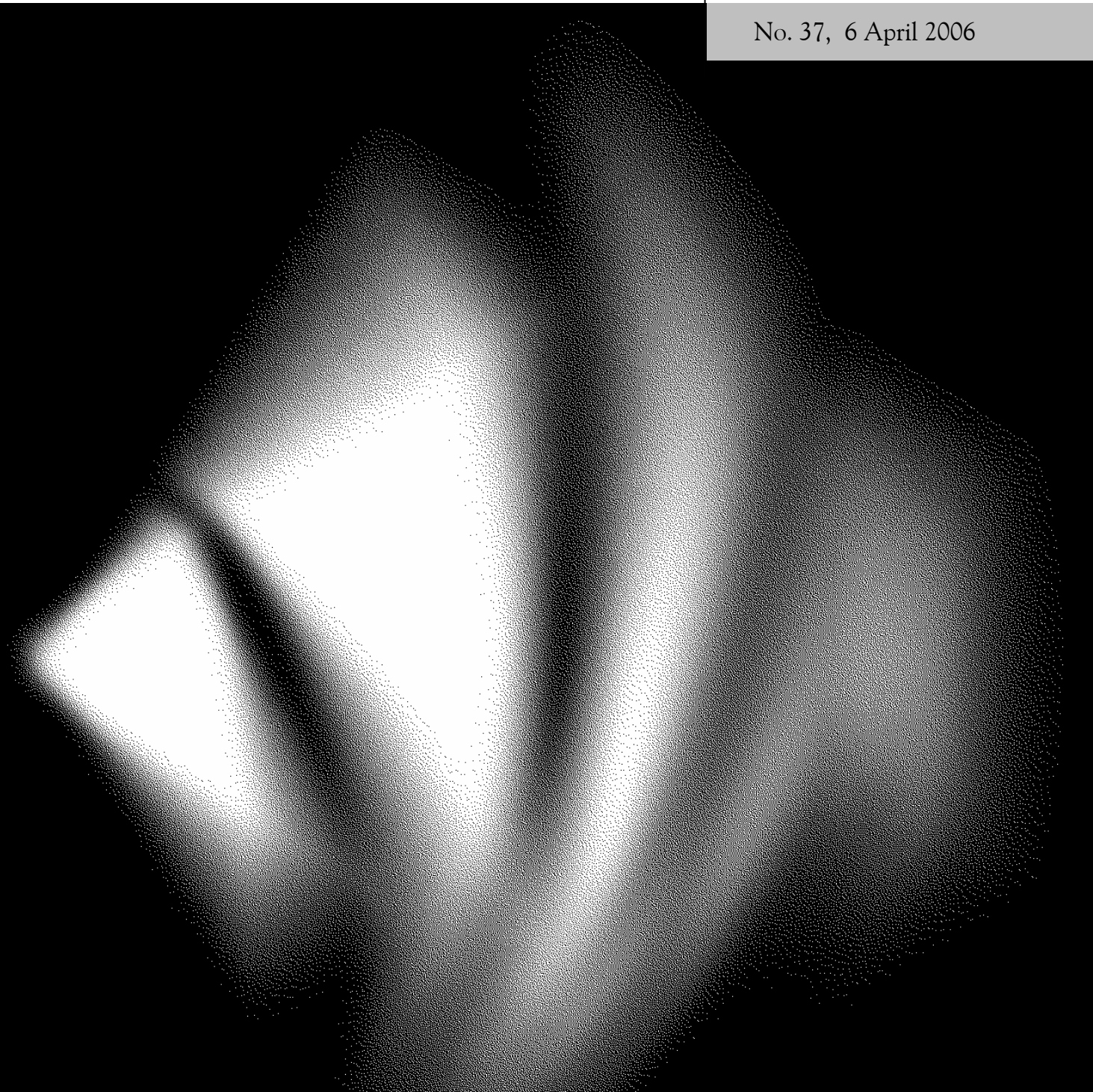


Australian Government
Productivity Commission

Conservation of Australia's Historic Heritage Places

Productivity
Commission
Inquiry Report

No. 37, 6 April 2006



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The Productivity Commission, an independent agency, is the Australian Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

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6 April 2006

The Honourable Peter Costello MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

In accordance with Section 11 of the *Productivity Commission Act 1998*, we have pleasure in submitting to you the Commission's report on the *Conservation of Australia's Historic Heritage Places*.

Yours sincerely

Neil Byron
Presiding Commissioner

Tony Hinton
Commissioner

Terms of reference

I, PETER COSTELLO, Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, hereby request that the Productivity Commission undertake an inquiry into the policy framework and incentives for the conservation of Australia's historic built heritage places and report within 12 months of receipt of this reference. The Commission is to hold hearings for the purpose of the inquiry.

Background

With the commencement of amendments to the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* on January 1 2004, which provide greater protection of our national heritage values, it is timely to review the current pressures and issues associated with historic heritage conservation. Although there has been significant research into the policy framework and incentives for the conservation of our natural heritage, there has been less work undertaken on historic heritage places and their social and economic value in the context of Australia's overall natural, indigenous and historic heritage. The conservation of our built historic heritage is important. Places of historic significance reflect the diversity of our communities. They provide a sense of identity and a connection to our past and to our nation. There is a need for research to underpin how best to manage the conservation and use of our historic heritage places.

Scope of the Inquiry

The Commission is to examine:

1. the main pressures on the conservation of historic heritage places,
2. the economic, social and environmental benefits and costs of the conservation of historic heritage places in Australia,
3. the current relative roles and contributions to the conservation of historic heritage places of the Commonwealth and the state and territory governments, heritage owners (private, corporate and government), community groups and any other relevant stakeholders,
4. the positive and/or negative impacts of regulatory, taxation and institutional arrangements on the conservation of historic heritage places, and other impediments and incentives that affect outcomes,

5. emerging technological, economic, demographic, environmental and social trends that offer potential new approaches to the conservation of historic heritage places, and

6. possible policy and programme approaches for managing the conservation of Australia's historic heritage places and competing objectives and interests.

The Government will consider the Commission's recommendations, and its response will be announced as soon as possible after the receipt of the Commission's report.

PETER COSTELLO

Date 6 April 2005

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Abbreviations and explanations

Abbreviations

ACNT	Australian Council of National Trusts
AHC	Australian Heritage Council
CFMEU	Construction, Forestry, Mining and Energy Union
CHCANZ	Chairs of the Heritage Councils of Australia and New Zealand
CMP	Conservation Management Plan
COAG	Council of Australian Governments
DDA	Disability Discrimination Act (Cwth)
DEH	Department of Environment and Heritage (Cwth)
DSE	Department of Sustainability and Environment (Vic)
EPHC	Environment Protection and Heritage Council
HCWA	Heritage Council Western Australia
HIS	Heritage Impact Statement
IAC	Industries Assistance Commission
IC	Industry Commission
ICOMOS	International Council on Monuments and Sites
LEP	Local Environment Plan
OECD	Organisation for Economic Cooperation and Development
ORR	Office of Regulation Review
PC	Productivity Commission
RAIA	Royal Australian Institute of Architects
RNE	Register of the National Estate

UNESCO United Nations Educational, Scientific and Cultural Organization

Explanations

Billion The convention used for a billion is a thousand million (10⁹).

Findings *Findings in the body of the report are paragraphs highlighted using italics, as this is.*

Recommendations ***Recommendations in the body of the report are highlighted using bold italics, as this is.***

OVERVIEW

Key points

- Historic heritage places provide important cultural benefits to the wider community, in addition to the use and enjoyment they provide to their owners and users.
 - To enhance the provision of these benefits, governments at all levels own and manage heritage sites. They also identify, list and provide strong regulatory protection for non-government (privately-owned) heritage places.
- Governments are the custodians of the vast majority of the most significant or ‘iconic’ heritage places. They also own a very large number of less significant places.
 - Information about the nature and condition of these, and the cost of their conservation, is inadequate. Arrangements for their conservation are often deficient.
 - There is significant scope for governments to improve how they identify and fund the conservation of government-owned places.
- For privately-owned places, the existing arrangements are often ineffective, inefficient and unfair. The system is not well structured to ensure that interventions only occur where there is likely to be a net community benefit.
 - Relying primarily on regulation to protect listed heritage places has resulted in insufficient account being taken of the costs of conserving heritage places when selecting places for listing and insufficient incentives for their active conservation.
 - While the regulations impose few, if any, added costs for many owners, for others, there are significant costs that would not otherwise be incurred, especially for the conservation of redundant structures and where there would otherwise be valuable development options.
 - The most appropriate time to consider the added costs of conservation and to assess net community benefit would be after the assessment of heritage significance and before regulatory control is applied.
- The Commission considers that negotiated conservation agreements should be used for obtaining extra private conservation where the existing systems would impose unreasonable costs on private owners. This should be achieved by providing owners with an additional right to appeal statutory listing which occurs during their period of ownership on the grounds of unreasonable costs.

Overview

Historic heritage places are important, providing a sense of identity and a connection to our past and to our nation. For the purposes of this inquiry, they include: built structures, such as houses, factories, commercial buildings, places of worship, cemeteries, monuments and built infrastructure such as roads, railways and bridges; physically created places and landscapes, such as gardens, stock routes and mining sites; and other places of historic significance, such as archaeological sites and the landing place of Captain Cook at Botany Bay. (The conservation of natural heritage, indigenous heritage, moveable heritage and intangible heritage that is not an integral part of a heritage place is not under reference.)

Heritage and its importance

The benefits of historic heritage places include the nature and extent of the cultural values they provide to different individuals and groups in the community. These are in addition to the use and enjoyment benefits provided to their owners. Some historic heritage places have significance only locally, or for a particular group, while for other places the scope of their significance is more general and extends to a State or Territory. For a few, the significance may extend nationally and, for a very few, their cultural significance may be recognised internationally.

The cultural significance of historic heritage places can change over time as community values evolve. Nonetheless, the cultural values provided by an individual place depend on properly maintaining the features of the property that provide them. In addition to normal maintenance, such conservation includes preservation, restoration, reconstruction, adaptation and interpretation. Conservation does not require the place to be preserved in its original condition or use — only that any adaptation and development for contemporary use and enjoyment retain its key heritage features.

Costs of heritage

For many historic heritage places, contemporary use and enjoyment, and ongoing adaptation and development by the owners (government and non-government (private)) are compatible with and provide sufficient incentives for the continued

conservation of their cultural values. However, for some places conservation of their heritage significance necessarily involves costs to individuals and the community. These costs include:

- the costs of the heritage regulatory systems;
- the added costs above normal repairs and maintenance for conservation of the heritage features;
- costs of the compromises to contemporary use and enjoyment to retain them; and
- the opportunity cost of forgone development opportunities otherwise permitted for the property.

Where the places are government-owned, governments, as representatives of their communities, can directly consider such costs and weigh them against the cultural benefits conservation of the places provides to their communities. Where places are privately-owned, the owners have limited ability to capture the wider community benefits of conservation.

Role for governments

In addition to governments' role as owners of historic heritage places, the existence of wider community benefits provides the basis for a case for their involvement in the conservation of privately-owned historic heritage places. That is, while private owners can be expected to voluntarily undertake conservation activities which provide a net benefit to themselves, they may not undertake other conservation activities which would provide a net benefit to the wider community.

However, the existence of wider community benefits — and the possibility that private owners may not conserve some places — does not, of itself, establish a role for government. For government intervention to be warranted, the extra benefits to the community need to be greater than the added costs of that intervention.

There is already extensive government involvement in the conservation of historic heritage places. In light of the rationale for such involvement, the Commission's task is to review the existing involvement and assess how well it ensures that historic heritage conservation is undertaken that results in net benefits to Australian communities.

Current government involvement

The current government involvement in the conservation of historic heritage places reflects the 1997 Council of Australian Governments' agreed policy framework for different levels of government as specified in the Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment. The resulting three-tier system distinguishes between nationally significant, State significant and locally significant places. In keeping with the principle of subsidiarity,¹ responsibility for the formal identification and conservation at each level is allocated to the Australian, State and Territory, and local governments, respectively. The three-tier structure allows each tier of government to develop statutory protection and corresponding financial support measures proportionate to the significance of the historic heritage being conserved. The Commission endorses this approach to government involvement.

The Australian Government has established two new statutory lists:

- the National Heritage List, which comprises places identified with national significance, with values or characteristics that have special meaning for all Australians; and
- the Commonwealth Heritage List, which comprises places of heritage significance located on Commonwealth land, including places owned and managed by the Australian Government.

All States and Territories have separate statutory lists (or registers) on which are included places of State-level and Territory significance. They have a similar set of institutions and mechanisms for identifying and protecting significant places. These include:

- criteria and procedures to identify places for inclusion on the register;
- controls over development of listed places, including obligations on owners to conserve heritage aspects and to submit proposed changes for approval;
- a heritage council to manage the register, advise government and oversee the review of heritage aspects of applications for changes to listed properties; and
- funding programs to assist with the conservation of listed properties.

Unlike the Australian Government, State and Territory governments do not have separate lists for government-owned properties. The exception is New South Wales, which under section 170 of its Heritage Act, requires government agencies to

¹ This principle suggests that responsibility for a function should be assigned to the lowest level of government that is able to exercise it effectively, and thus as close as possible to consumers to allow them choice as to the services they receive.

identify, conserve and manage heritage assets owned, occupied or managed by the agency. Some of the places so identified are included on the State Heritage Register. Other States rely upon procedures for inclusion on the State Register and in local planning schemes for the identification and listing of government-owned properties.

Local government involvement in heritage conservation varies greatly, reflecting not only the differences in State approaches to historic heritage conservation, but also its importance to the local community. All States, with the exception of Tasmania, now have provisions or requirements for their local governments to establish a register of locally significant places. Most also require their local governments to conduct heritage inventories to identify prospective local listings. Further, all States require their local governments to consider heritage matters when exercising the planning powers delegated to them. Some councils have various programs (such as grants, loans and rate rebates) to assist private conservation of heritage places.

The identification and protection of heritage places of local significance is achieved through amendments to local planning schemes. There is provision to list designated areas as having heritage significance, as well as individual properties. The process is controlled by State legislation or by Ministerial oversight.

While there are many common elements, there are also fundamental differences between the ways planning controls and heritage regulatory controls are applied at the local level. Planning uses zonal controls applying *common* restrictions on all properties within a designated area. Heritage controls, by contrast, apply added restrictions selectively to individual properties, irrespective of zone.

Heritage controls provide local government with considerable planning discretion. The controls are costly to administer as a result of requirements such as development approvals for all works on heritage listed properties and for heritage impact statements to accompany development applications. Typically, these costs are borne by applicants.

Listing

The number of heritage places included on statutory lists is in table 1. As indicated, the majority of places are listed for local significance, thousands are listed for State significance and, to date, only a few have been listed for their national significance. The majority are privately-owned residences and commercial buildings whose heritage features are well maintained by their owners.

Table 1 **Historic heritage places on statutory lists, at 30 June 2005**
Number

Jurisdiction	World and national heritage lists	Government-owned heritage lists	State and Territory heritage registers	Local government lists
Commonwealth	16	292 ^a	..	..
New South Wales	..	6 522 ^b	1 500	26 000
Victoria	..	nsi	1 992	100 000 ^c
Queensland	..	nsi	1 440	na
Western Australia	..	nsi	1 113	16 807 ^f
South Australia	..	nsi ^d	2 195 ^e	4 500
Tasmania	..	nsi	5 326	.. ^g
Northern Territory	..	nsi	175	..
ACT	..	nsi	247	..
Totals	16	6 814	13 986	>147 000

^a Commonwealth Heritage List. ^b Government-owned and managed places in NSW, s170 Register. ^c Estimated number of properties covered by individual and area Heritage Overlay controls. ^d Included in State figure. ^e About 27 per cent are residential homes. ^f Includes non-government lists. About 36 per cent are residential homes, 77 per cent are 20th Century places and 7 per cent are also listed on the State Register. ^g Included in State figure.

na Not available. .. Nil. nsi Not separately listed.

Source: NSW Heritage Office (sub. 157, p. 60 and sub. DR384, p. 4); CHCANZ (sub. 139, p. 10); WA Heritage Council; correspondence with State and Territory Heritage Offices.

Identification and assessment of heritage value

While the identification of heritage value can be relatively subjective, governments have adopted procedures to reduce the degree of subjectivity. These involve open nomination procedures at the Australian Government level and for most States and Territories. All require professional assessments of significance against specified criteria. The criteria used are similar and have been derived from the Burra Charter developed by Australia ICOMOS (International Council on Monuments and Sites). The Charter outlines 'best practice' guidelines for heritage professionals to use for assessing heritage significance and the conservation of historic heritage places.

At the local government level, identification is typically undertaken on the basis of heritage surveys, or by reference to existing lists, such as the Register of the National Estate and National Trusts' lists. Often places are listed, or provisionally listed, with little if any statement of their individual significance. Comprehensive assessments of heritage significance are then not undertaken until a development application is received and the statement of significance is required as part of the assessment of the impact of the proposed development on the heritage attributes of the place. The cost of its preparation then becomes part of the development

application. This deferral of proper heritage assessments adds to uncertainty and can lead to unnecessary contention.

Government-owned places

Governments are the custodians of the vast majority of iconic (highly significant) places for Australian communities. Appropriate management of government-owned heritage assets can therefore ensure that some of the most valuable examples of Australian historic heritage are conserved for, and enjoyed by, current and future generations. Governments also own a very large number of less significant places.

There is considerable scope for governments to improve information about their responsibilities and achievements in historic heritage conservation. Many public sector organisations have inadequate information about the nature and condition of the historic heritage places under their stewardship. As a consequence, long-term strategic planning and prioritisation of conservation tasks may not be undertaken effectively and accountability can be unclear. Funding information, in particular, is often fragmentary and split between agencies, or between levels of government. This makes it difficult for the community to assess the effectiveness of public conservation expenditure against observed outcomes.

The operational responsibility for most government-owned heritage places rests with public service organisations that do not have heritage conservation as a core responsibility — for example, defence, police, justice, education, post, telecommunications and roads. In such circumstances, public sector managers face similar incentives for the conservation of historic heritage places as their private sector counterparts. For example, where responsibility for heritage conservation has been allocated to the agency without recognition of the added costs that it can involve, the funding of conservation can be at the expense of funding the delivery of core government services. To avoid such conflicts, the Commission considers that the assigned heritage responsibilities should be identified and recognised as community service obligations, be funded separately and require appropriate reporting responsibilities.

Privately-owned places

Statutory listing involves applying added regulatory controls over private owners' use and enjoyment of their property. While there is scope in the legislation for governments to consider the cost consequences of this at the time of listing (and a few do), owners have no right to insist that this is done. Appeals are limited to issues of heritage significance and due process — namely, that specified procedures for notification and gazettal have been followed. As a result, many of the appeals on

these grounds are a proxy for owner concerns with the cost consequences of statutory listing. Any cost consequences of listing are typically seen as part of the subsequent heritage management issue and primarily the responsibility of owners. Governments have a range of programs and measures to assist the owners with maintaining the heritage fabric of their properties, in part, to reflect the additional cost listing imposes. However, the funding provided has been very limited. The lists of statutory-protected properties are growing, but a significant proportion of them are poorly maintained — in 2003, Heritage Victoria estimated that some 20 per cent of places on the Victorian Register were in poor or very poor condition — with many losing or having lost their heritage significance. The situation in other States is likely to be worse.

Many participants considered that a major focus of the inquiry should have been on funding and, in particular, sought a major increase in Australian Government funding to assist with private conservation for all levels of government. A cultural heritage trust akin to the Natural Heritage Trust was sought by some. Some also sought greater powers for local governments to compel owners to undertake needed conservation and for greater use of those powers by State and Territory governments.

Selected participants' views about the current system are in box 1.

In addition, in September 2005, the Commission surveyed all local governments across Australia on their involvement in historic heritage conservation. Almost three-quarters responded and a selection of their comments on the current system is in box 2. From the survey it was evident that there was considerable variability among councils in their involvement in heritage conservation. On average, some 10 per cent of locally significant heritage places are council owned. Also, around one-half of local councils provide some form of assistance to property owners and the most commonly provided assistance is free heritage advice.

Problems with current involvement

The Commission considers that the problems with the current government involvement in the conservation of privately-owned historic heritage places are deep seated. Increased government funding assistance within the current framework would increase private conservation activity. However, when the cost of providing the funding is considered, it is unclear that there would be a net benefit to the Australian community overall. This is because the current government involvement is not well-structured to intervene selectively only where there is likely to be a net benefit for their community. To satisfy this criterion requires that the added costs of

Box 1 Selected views of participants on the current system**Environment Protection and Heritage Council:**

... On the basis of partial evidence offered at the local level, it is possible that the continuation of current trends could lead to the loss by 2024 of 10-15% of the heritage places that are extant in 2004. (National Incentives Taskforce 2004, p. 2)

In an environment with limited resources, regulation may appear attractive because it appears relatively 'cost free'. Governments can simply 'require someone to do something'. That may be the reason that regulation has traditionally been the predominant conservation tool in some countries, including Australia. However, an effective heritage system is founded on a balance of 'sticks and carrots'. The lack of a meaningful level of 'carrots' undermines support from property owners for the system, makes regulation more difficult, and misses opportunities for garnering private investment. (National Incentives Taskforce 2004, p. 3)

Dr Richard Bramley:

... at the State, Territory and local level there is a strong 'disconnect' between those who decide on what heritage assets should be protected by listing, and those who bear the cost of protecting these values when listed. This disconnect is exacerbated by the lack of 'statements of significance', particularly at the local level, and the fact that despite the considerable heterogeneity in their cultural value all properties tend to be treated the same once listed, at whatever level. (sub. DR217 p. 1)

Shire of York:

Demolition by dereliction is the greatest threat to the long term retention of the built heritage as bureaucratic conditions are imposed for conservation, construction and maintenance costs escalate, artisans and trade skills diminish for restoration works, original materials becomes scarce & financial support is reduced or becomes inappropriate due to convoluted application and reporting processes.

Is it appropriate to place a cost burden on a local government for the restoration or preservation of a building/structure which has no functional use, which may be impeding development or which is replicated in an adjoining town? Should there be quantification of heritage & functionality values and associated costs? (sub. 57, p. 3)

Gordon Grimwade and Associates:

Heritage cannot be adequately protected by mere legislation. The more diverse the legislation that is in place, the more opportunities exist to challenge it, the more chance there is of confusion and the higher the cost of administration. Incentives and education would have more positive outcomes, and are probably comparable with administering the negative approach in the current compliance regimes. (sub. 174, p. 6)

Goulburn Mulwaree Council:

... there is no question that the emphasis on legislative or regulatory controls to conserve heritage buildings has not been matched by the incentives and education components of its approach to heritage conservation. ... The system is antiquated with its focus on property restrictions ranging from roof pitch, window styles, paint and colour requirements. The system of statutory controls consumes by far the greatest amount of resources for the organisation. In addition it is a blanket style control in which all properties within the Heritage Conservation Area, regardless of heritage value, are affected by the controls and individual heritage buildings receive little recognition and are not supported by clear statements of significance. (sub. DR301, p. 2)

Box 2 **Selected comments from local government survey**

The following is a selection of comments made by 10 different Councils about how the current system is operating.

The current system is too inflexible

- The current planning legislation ... actually acts as an impediment to achieving good heritage outcomes because the ... process inhibits flexibility and open negotiation.
- Requirement for permits increases delays in building works — this isn't compensated for enough by Council funding. (We need a better 'fast-track' permit system for heritage applications).
- Requirements for [management plans for state-listed properties] are onerous and over-prescribed. This means owners and Councils avoid carrying out these plans due to exorbitant costs.

Inadequate incentives are provided for ongoing maintenance

- ... there is a need for more heritage incentive schemes and assistance for heritage conservation ... This will become even more important in the future with economic pressures for more residential development, greater residential densities and the increasing price of land.
- If a building is considered to be historically significant enough to be placed on a register for the benefit of the community, then there should be some corresponding financial assistance available to assist with its preservation.

Listing is seen as a negative by many owners

- Property owners see listing as a negative outcome for property ownership and resale value. Insufficient funds are provided to assist private owners (and government departments/councils). Heritage is a community value but conservation is primarily funded by owners.
- Heritage protection at local government level is always controversial because the Council must try to balance the community's wish to preserve heritage buildings, with the owners' rights and wishes to redevelop ... This has caused the Council to accede to owners' requests to delete some places from the [local list] whenever the owners request. Many Councillors sympathise with the owners' rights to capitalise on the full value of their land, which is seen to be jeopardised or reduced if the place has any level of heritage rating.

Negotiations can resolve differences

- We have had very good results by negotiating with developers to get results.
- Prior to a lodgement of a development application many discussions are held with applicants and Council's preliminary views/concerns are made known. This often results in an application being revised so they are generally acceptable from a heritage viewpoint.
- Council resolved to make private property listing voluntary.

Source: Productivity Commission Survey.

conservation must be considered as well as the benefits, *before* a place is listed. In addition to the administrative costs to governments, for private owners these involve added ‘red-tape’ costs of compliance with listing, extra operational and maintenance costs, and the costs of forgone development opportunities.

It is arguable that, paradoxically, the statutory protection provided by listing operates most successfully in providing net community benefits in the very situations where it is least needed. For many private owners, the current use and enjoyment of their property are consistent with, indeed require, maintaining its heritage attributes. Listing imposes few, if any, added costs and the statutory recognition of its heritage status adds to use and enjoyment. Indeed, for some, there is the benefit of the added security that their conservation efforts will provide a legacy for the next generation. In these circumstances, the wider cultural benefits of the place are provided to their community with little added costs, apart from the extra administrative cost involved with government identification, assessment and listing.

However, for other private owners, the regulatory controls of statutory listing impose significant costs that would not otherwise be incurred. It is in these cases that problems arise, including hostility and resistance to listing, some reluctance to undertake the necessary conservation, sometimes leading to demolition by neglect, and the generation of a high level of enforcement cost. As a result, heritage listing in this segment is often ineffective and inefficient as the vast majority of government and private conservation effort is expended to enforce a relatively small number of involuntary listings — not always the most important or significant, and often those for which the net community benefit is uncertain. In addition, this is inequitable as a way of funding the extra heritage benefits as the added costs are borne by the owner for wider community benefit.

The Commission considers the problems are most pronounced at the local government level where assessments are the least rigorous, resources are limited and private ownership is most prevalent. The effective efforts of some individual councils is acknowledged. However, overall, applying proscriptive regulation for heritage conservation without adequately considering the costs it imposes militates against the objective of communities obtaining affordable, comprehensive and representative portfolios of historic heritage places, actively conserved, well-managed and secure for the future.

A better system: Negotiated conservation agreements

The Commission considers that the most appropriate time to consider the added costs of conservation and assess net community benefit would be after the

assessment of heritage significance and before regulatory control is applied. In the draft of this report released for public comment, the Commission proposed that this be achieved by requiring all listing to be on the basis of negotiated conservation agreements and that properties remain listed only while the agreement was in force. The level of government funding provided for heritage conservation would determine the extent to which governments facilitated extra private conservation in addition to the conservation of government-owned places.

In particular, negotiated conservation agreements are seen as a cost-effective way of ensuring the ongoing conservation of otherwise-redundant structures (such as unused woolsheds, churches, etc in the countryside, and industrial plant in cities). Proscriptive regulation is ineffective in such circumstances and some significant heritage items are currently disappearing through ‘demolition by neglect’. Negotiating heritage conservation agreements was also seen as requiring clear-sighted decisions about heritage benefits and costs to be made up-front, especially when listing and associated regulation impose high opportunity costs, by foreclosing future development options. Listing in such circumstances has been adversarial and contested, and subsequent ongoing conservation has been problematic.

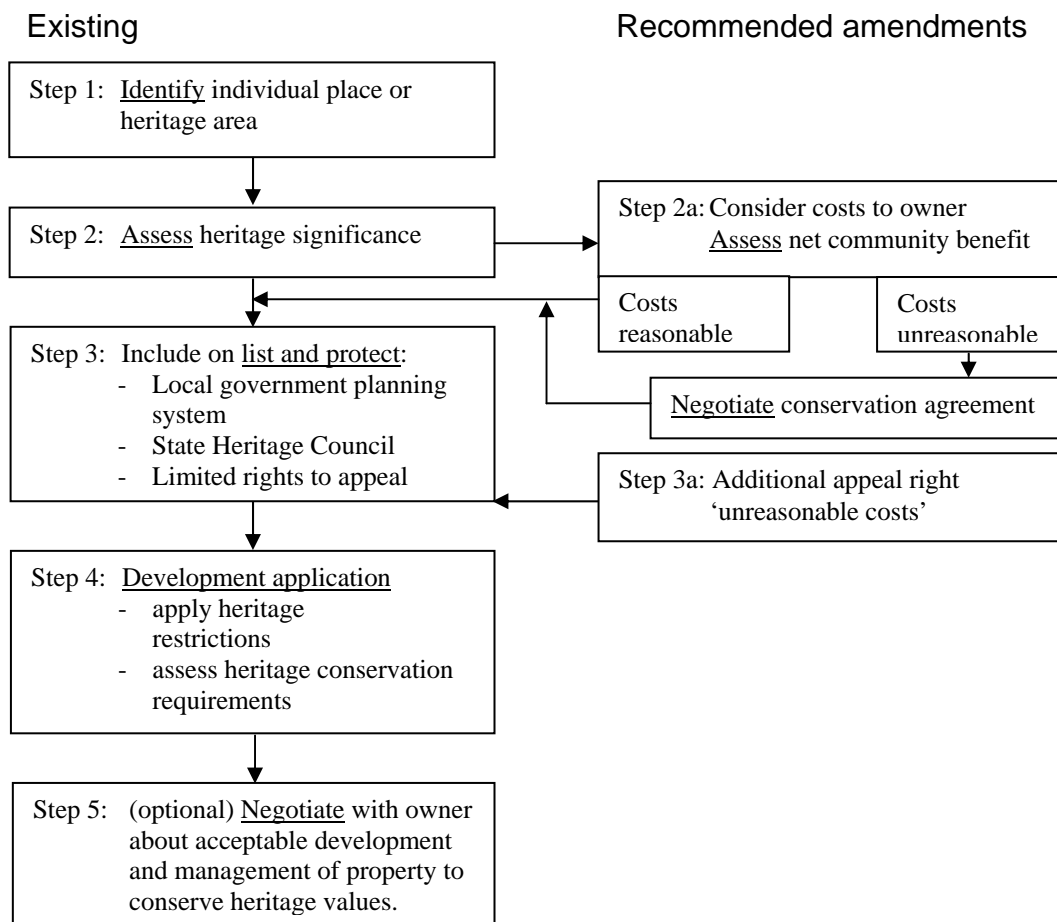
A number of overseas jurisdictions (e.g., British Columbia, Ontario and widely in the United States) successfully use negotiated agreements as the basis for heritage conservation. Responses to the Commission’s Draft Report indicated that there is widespread agreement as to the Commission’s analysis of the problems with the present arrangements. However, although some participants supported the Commission’s draft proposal, submissions on the Draft Report, public hearings and discussions with heritage officials revealed many had concerns, if negotiated conservation agreements were to be the basis of all listings.

While acknowledging their ability to facilitate better conservation outcomes, heritage officials considered that the overwhelming majority of private owners were satisfied with the existing arrangements. Thus, they contended that introducing negotiated agreements for them would add unnecessary cost. Further, because of the volume, the draft proposal would be difficult and expensive to implement, especially at the local government level and to a lesser extent at the State and Territory level. Consequently, the Commission considers that the use of negotiated conservation agreements should be targeted to where the existing system imposes unreasonable costs on private owners.

A better system: 'Unreasonable costs' appeal

The Commission considers that the objectives sought for improving heritage conservation could be achieved by introducing 'unreasonable costs' as an additional ground for owners to appeal a listing. A schematic outline of the current system of statutory listing and recommended amendments to it are in figure 1.

Figure 1 Schematic outline of statutory listing and approval systems



In terms of figure 1, step 3, there would be one extra ground for appeal against listing. The existing arrangements (with other improvements) would continue where the listing body considered that the cost imposed on the owner, by listing, was reasonable. Where the costs imposed by listing were likely to be regarded as unreasonable by the owner, the heritage body would, under the Commission's recommendation, have an incentive to open negotiations with the owner to ascertain the nature and extent of conservation costs and to determine whether they were justifiable in terms of the additional cultural benefits they would provide for their community. If it concluded the extra benefits were sufficient in relation to the costs,

then the listing body could seek to conclude a mutually beneficial conservation agreement with the owner.

Where the heritage body adds a property to the statutory list on the basis that the costs were assessed as reasonable, the owner would have the right to appeal on the basis of unreasonable costs being imposed. If such costs were found to be unreasonable, any subsequent listing would only occur if a conservation agreement could be successfully negotiated (or the government acquired the property).

The right to appeal listing on ‘unreasonable costs’ grounds would not apply to government-owned property. Listing and associated heritage cost issues would be part and parcel of normal government-to-government negotiation on heritage matters.

Existing appellate bodies, such as the Land and Environment Court in New South Wales and Victorian Civil and Administrative Tribunal, could be used to hear appeals against listing on the basis of ‘unreasonable costs’. Introduction of such appeals would be facilitated by the inclusion of a non-exclusive indicative list of examples in amending legislation. For example, ‘unreasonable’ would not include normal maintenance, but would, *prima facie*, include forgone development opportunities in relation to use and enjoyment otherwise permitted for the property, and unjustifiable hardship imposed on the owner by additional maintenance, repair or restoration costs to provide the extra heritage conservation. It could be expected that initially there would be a number of appeals, while owners and listing authorities test the new ground for appeal and precedents are established. However, it would also be expected that appeals that occur currently on the basis of a lack of heritage significance (to avoid statutory listing) would not proceed.

Introducing ‘unreasonable costs’ retrospectively

Introducing ‘unreasonable costs’ as a basis for private-owner appeals against new listings is clear cut. However, there is the issue of what changes, if any, should be made for the treatment of places already listed. For owners who already acquired listed properties (and for future acquisitions of listed properties), the Commission considers it appropriate to regard the existing arrangements as reasonable. It can be assumed that the purchase was made in full knowledge of the heritage constraints that applied to the property and that this would have been reflected in the price paid. Development applications would be handled in the normal manner.

For owners who have had their property listed after purchase, the Commission considers it appropriate that they be given the right to appeal that listing on ‘unreasonable costs’ grounds. If the costs were found reasonable, the listing with

associated restrictions would continue to apply. If the costs were found unreasonable, the heritage restrictions would no longer apply and the property would be removed from the statutory list. To access the right, the owner would need to notify the relevant government and give them a reasonable time to reconsider the listing, possibly negotiate an agreement with the owner that may offset any ‘unreasonable costs’, or contest the appeal.

Implementing the Commission’s recommendation of a right for private owners to appeal listing on the basis of ‘unreasonable costs’ could raise resourcing issues for local governments that have many places listed against the wishes of their owners. There is scope for State governments to facilitate its introduction by assisting local governments with extra resources.

The Commission considers it important that government intervention to achieve extra conservation of privately-owned historic heritage places should be targeted to where the intervention is likely to result in net benefits for their community. Such targeting would involve considering the added costs of conservation and assessment of net community benefit after assessment of heritage significance and before regulatory controls are applied through statutory listing. To encourage such considerations, private owners should be given the right to appeal listing on the grounds of ‘unreasonable costs’. Providing private owners with such an appeal right would encourage listing bodies to negotiate conservation agreements where listing would otherwise impose unreasonable costs for private owners. This would result in the sharing of those added costs with the community where the listing agency considered them justified by the community benefits of the extra heritage conservation.

Recommendations

The following lists the recommendations in chapter order:

3 Overview of historic heritage conservation in Australia

RECOMMENDATION 3.1

All levels of government should put in place measures for collecting, maintaining and disseminating relevant data series on the conservation of Australia’s historic heritage places.

7 Assessing governments’ involvement — conservation of privately-owned heritage places

RECOMMENDATION 7.1

The Australian Government should remove all historic heritage places from the Register of National Estate and transfer the information to a national heritage database. The database would need to be regularly updated and maintained, including the deletion of inappropriate entries.

RECOMMENDATION 7.2

State and Territory governments should remove any references to the Register of the National Estate from their planning and heritage legislation and regulations, after ensuring that any places that meet the criteria have been recorded on the appropriate (State or local) heritage registers.

RECOMMENDATION 7.3

Those State and Territory governments that have specific legislation governing the operations of the National Trust should repeal such legislation.

8 Management of government-owned heritage places

RECOMMENDATION 8.1

The Australian, State and Territory governments should ensure that their agencies are issued with heritage asset management guidelines as part of an integrated asset management framework. Such guidelines could also be adapted for use by local governments.

RECOMMENDATION 8.2

The Australian Government should implement reporting systems that require, as appropriate: the assigned heritage responsibilities to non-heritage agencies to be recognised as community service obligations and be funded separately; and that the heritage-related expenditures and achievements associated with the conservation activities for historic heritage places to be reported publicly.

RECOMMENDATION 8.3

State, Territory and local governments should:

- *produce adequate conservation management plans for all government-owned statutory-listed properties;*
- *appropriately recognise assigned heritage responsibilities to non-heritage agencies as community service obligations and fund them separately; and*
- *implement reporting systems that require government agencies and local governments with responsibility for historic heritage places to document and publicly report on the heritage-related expenditures and achievements associated with their conservation.*

9 Getting incentives right for privately-owned heritage places

RECOMMENDATION 9.1

Australian, State and Territory governments should enable non-government owners to appeal the statutory listing of their property on the additional basis that it imposes ‘unreasonable costs’. This appeal should be available for non-government owners of all newly listed properties. In addition, it should also be available for those owners of properties that were acquired before the property was statutorily listed.

The following factors establish a prima facie case of unreasonable costs:

- *the zoning of the land permits higher value land use than that allowed under heritage restrictions; or*

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- *maintenance, repair or restoration costs required to continue a property's heritage significance impose an unjustifiable hardship on the owner.*

10 Implementing change for privately-owned places

RECOMMENDATION 10.1

In relation to State, Territory and local listing, State and Territory governments should:

- *mandate that statements of significance be prepared at the time that a statutory listing decision is being considered and that these statements should be prepared by the listing authority;*
- *require that listing authorities directly notify owners of any intention to add their place to the statutory list;*
- *require that listing authorities make available a preliminary statement of significance to the owner and the public prior to public consultation;*
- *require that listing authorities follow timely public consultation procedures following a decision to consider a place for statutory listing;*
- *require that listing authorities, when proceeding with a listing, provide a comprehensive final statement of significance to the owner of the property and make it publicly available;*
- *implement an additional appeal grounds in relation to listing, based on unreasonable costs; and*
- *ensure that listing authorities have the authority to negotiate and enter into heritage conservation agreements.*

11 Improving the operation and management of heritage zones

RECOMMENDATION 11.1

State governments should ensure that all local planning instruments include the following information for each heritage zone or area:

- *statement of significance applying to the whole area;*
- *outline of what type of use and development is permitted;*
- *outline of what type of use and development is prohibited; and*
- *development standards (or codes) that trigger automatic approval upon proposed developments meeting them.*

RECOMMENDATION 11.2

Upon adoption of recommendation 11.1, State and Territory governments should remove the requirement for a Heritage Impact Statement for properties not individually listed within a heritage zone.

RECOMMENDATION 11.3

State governments should ensure that State planning policies do not contain local heritage exceptions which could be used to undermine the objectives of the State planning policy.

RECOMMENDATION 11.4

State Heritage Acts should not contain powers to proclaim heritage zones or areas. Heritage zones and areas should only be imposed under the State's planning laws and regulations.

RECOMMENDATION 11.5

State and Territory governments should modify their planning legislation and regulations to remove any requirement to take heritage considerations into account in relation to any individual property not already listed as locally significant, other than those requirements relating to heritage zones.

1 Introduction

This chapter introduces the Commission’s review of the existing policy and regulatory framework, and incentives provided by governments, for the conservation of Australia’s historic heritage places. It provides a background to government involvement in the conservation of historic heritage places and outlines the scope of the inquiry. It also outlines the Commission’s approach to, and conduct of, the inquiry, and reactions to the Commission’s Draft Report.

The Australian Government, with the support of the State and Territory governments, has asked the Commission to review the existing policy and regulatory framework and incentives provided by governments for the conservation of Australia’s historic heritage places.

As stated in the background to the terms of reference for this inquiry:

The conservation of our built historic heritage is important. Places of historic significance reflect the diversity of our communities. They provide a sense of identity and a connection to our past and to our nation.

This importance is recognised in the community. There is extensive involvement of individuals, corporations and community groups. In addition, governments at all levels play a significant role in identifying, protecting, interpreting and presenting historic heritage places. Governments also provide incentives for the conservation of historic heritage places in private ownership.

1.1 Background

Private sector involvement in the conservation of historic heritage places is extensive and pre-dates formal government involvement.

Origins of community and government involvement

Widespread organised community involvement in the conservation of Australia’s historic heritage places dates from the formation of the National Trust of Australia

in Sydney in 1945¹. The Trust was formed in response to the destruction of old colonial buildings for site redevelopment along Macquarie Street and the clearing of bush for suburban development on the North Shore (sub. 40, p. 45). The subsequent formation of National Trusts in other States — in four cases backed by State legislation — led to the formation of the Australian Council of National Trusts in 1965. As the leading ‘not-for-profit’ heritage organisations, the Trusts have been strong advocates of statutory protection for heritage places and have also assembled a large volunteer workforce. They have expended considerable resources on identifying, owning, managing, interpreting and presenting historic heritage places. Their roles have changed considerably since they were first formed. In part, this has been in response to government involvement in heritage conservation. Many are currently re-examining their role in light of the pressures currently facing the conservation of historic heritage places and the recent changes to government involvement.

Formal Australian Government involvement in the conservation of historic heritage places dates from the mid-1970s when, following the Hope Committee of Inquiry into the National Estate (CoI 1974), the Australian Heritage Commission was formed (in 1976) to identify and list, in the newly established Register of the National Estate (RNE), important natural, indigenous and historic places throughout Australia. This listing recognised their heritage importance, but made no distinction as to the level or scale of significance. Reflecting, in part, the Constitutional division of powers, there were no legal restrictions imposed by the Australian Government on private owners in the way they managed, maintained or disposed of listed properties. However, restrictions were imposed on the actions of Australian Government Ministers. They could not make any decisions that would threaten or endanger the heritage values of any place or item listed on the RNE. Financial assistance for conservation was made available occasionally to some places listed on the Register. This approach to historic heritage conservation at the national level prevailed until the current three-tier framework was introduced in 2004.

State and Territory government involvement in the conservation of historic heritage places also dates from the mid-1970s, with the passage of separate legislation to identify and protect significant heritage places and the environment; commencing with Victoria and quickly progressing to New South Wales and South Australia. Arguably, it was political activism in the 1960s and 1970s — in the form of ‘green bans’ and the like, stopping bulldozers from demolishing old buildings in major cities — that finally led to governments adopting more formal arrangements, with mechanisms for the identification, protection and conservation of historic heritage

¹ For information on the early history of heritage protection, see the Professional Historians’ Association (NSW) submission (sub. DR306, pp. 10–12).

places. In establishing their individual statutory Heritage Registers, the States and Territories drew on the Australian Heritage Commission's listing of places in the RNE and on lists compiled by the National Trusts.

Australia ICOMOS — the Australian chapter of the International Council on Monuments and Sites — has also been important to the development of government involvement in the conservation of historic heritage places in Australia. In particular, it has developed and subsequently refined the Burra Charter, which sets out 'best practice' principles for cultural heritage professionals to use in the assessment of heritage values and of their conservation. The Charter forms the basis for criteria used for formal listing by governments in Australia and overseas. It is designed to assist 'case-by-case' enunciation of heritage values, and (deliberately and explicitly) takes no account of either the number and quality of like properties already listed or of the cost of conservation, when assessing whether a particular place is significant.

Recent changes

The policy framework for historic heritage conservation has undergone significant changes over recent years. On 7 November 1997, the Council of Australian Governments agreed in principle to the Heads of Agreement on Commonwealth and States Roles and Responsibilities for the Environment. The Agreement was subsequently signed by all heads of governments and the President of the Australian Local Government Association. It provides for the Australian Government to have primary responsibility for environmental matters of national and world significance, and for the State and Territory governments to have primary responsibility for matters of State and local significance. With the exception of Tasmania, the States have since variously assigned to local governments matters of local environmental significance.

The Australian Government's implementation of key aspects of the 1997 Agreement was formalised with passage of the *Environment Protection and Biodiversity Conservation Act 1999*. After further consultation and legislative debate, historic heritage was formally included under that Act in 2003. The amending and accompanying legislation — *Australian Heritage Council Act 2003* and the *Australian Heritage Council (Consequential and Transitional Provisions) Act 2003* — replaced the statutorily-independent Australian Heritage Commission with an advisory Australian Heritage Council and established two new heritage registers: the National Heritage List, which lists natural, indigenous and historic places of 'outstanding' national and world heritage significance; and the Commonwealth Heritage List, which lists Australian Government owned or controlled places of 'significant' heritage importance. Statutory recognition of the

Government's pre-existing RNE was continued. The RNE currently lists over 13 000 sites, of which some 75 per cent are historic places (Australian Heritage Council, sub. 118, p. 7). Those places include sites of national, State and local significance.

State, Territory and local government involvement in historic heritage conservation has also evolved to reflect this new national framework. An outline of the resulting three-tier system and the contribution of the private sector is provided in chapter 3, while more detailed information on the State and Territory, and local government systems (including the latter's interaction with local planning schemes) is provided in chapters 4 and 5, respectively.

Despite general acceptance of the new three-tier system, participants raised many implementation and operational issues regarding the various government systems.

1.2 Scope of the inquiry

The Terms of Reference initially refer to 'historic *built* heritage places', but subsequently refer simply to 'historic heritage places'. They also refer to the amendments to the *Environment Protection and Biodiversity Conservation Act 1999*, which commenced operation in January 2004. As indicated above, those amendments relate to the placing of 'historic' heritage at the Australian Government level under the same legislative umbrella as natural and indigenous heritage. Separate legislation applies for movable cultural objects (*Protection of Movable Cultural Heritage Act 1986*) and shipwrecks (*Historic Shipwrecks Act 1976*).

It was clear from initial discussions with governments and a range of other interested parties, and from subsequent submissions, that this inquiry should not be limited to built heritage, rather it should encompass all historic heritage places. Accordingly, this inquiry focuses on the system for the conservation of historic heritage places and therefore covers:

- buildings and structures (such as bridges, cemeteries, churches, factories, houses, monuments and roads);
- physically-created places demonstrating ways of life, customs, land use or designs that are no longer practised (such as gardens and stock routes);
- physically-created landscapes with evidence related to particular activities (such as fishing areas, mining sites and sawpits); and

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- other places of historic significance (such as archaeological sites, Captain Cook's landing place at Botany Bay and the Leichhardt tree in Taroom).²

Also, some places may embody more than one type of heritage, such as historic huts in national parks.

Not under reference is the conservation of: natural heritage (e.g., the Great Barrier Reef); indigenous heritage (i.e., places of significance to Aboriginal peoples and Torres Strait Islanders); moveable cultural heritage (such as artefacts, paintings, sound and movie recordings, aircraft and steam engines); and intangible heritage that does not form an integral part of a place (e.g., folk history).

The conservation of historic heritage has many parallels with the conservation of natural heritage. Also, legislatively and operationally there are many links between the conservation of historic, natural and indigenous heritage. Participants, including the Australian Heritage Council (sub. 118, p. 3) and the Australian Council of National Trusts (sub. 40, p. 31), while acknowledging the scope of this inquiry, expressed the view that conservation of historic heritage places generally should not be viewed in isolation from heritage conservation more generally. The Commission considers there is merit in having a national framework for the conservation of historic heritage places that is compatible with the framework for natural heritage.

Australia has many historic heritage places. They range from internationally recognised places, such as the World Heritage listed Royal Exhibition Building and surrounding Carlton Gardens in Melbourne, to less well known houses, hotels and other places of business. Some heritage places are important to the history of local communities (e.g., Old Government House in Bathurst), while others have State or national significance. Certain groups in the community, such as architects and engineers, also have particular views on what constitute historic heritage worthy of conservation.

As defined by the Chairs of the Heritage Councils of Australia and New Zealand, conservation for the purposes of this inquiry means:

... all the processes of looking after a heritage place so as to retain its cultural significance. It includes preservation, maintenance, restoration, reconstruction, adaptation and interpretation. These terms have specific heritage definitions, as described in the *Australia ICOMOS charter for the conservation of places of cultural significance, 1999 (Burra Charter)*. (sub. 139, p. 4)

Conservation does not require a place to be preserved in its original condition or use. Rather, it is the retention of its cultural significance that is important.

² For some, it may be a plaque naming a mountain, or a collection of mountains (for example, 'Mount Kosciuszko' or the 'Glasshouse Mountains').

A further definitional matter is the distinction between heritage zones and heritage lists. Essentially, zones comprise contiguous conservation areas of adjoining properties, while places (incorporated in heritage lists) comprise physically distinct individual places.

It is also recognised that there are three distinct stages of heritage conservation, namely:

- *recognition* — involving identification and listing (which also introduces regulatory controls);
- *management* — including the application of regulatory controls and, where warranted, the provision of incentives; and
- *celebration* — covering promotion, display and use of a historic heritage place.

In reviewing the existing policy framework and incentives for conserving historic heritage places, the Commission has not sought to examine the merits of conserving particular places, except where this has provided insight into how the existing arrangements operate or could be changed to deliver better conservation outcomes.

1.3 The Commission's approach

In accordance with the Terms of Reference and the broad policy guidelines set out in the *Productivity Commission Act 1998*, the Commission's overriding concern in assessing the existing policy framework and incentives for the conservation of Australia's historic heritage places is the wellbeing of the community as a whole, rather than just the interests of any particular group or industry. In undertaking its analysis and formulating its advice, the Commission uses processes that are open and public. Discussions with interested parties, submissions from participants, open public hearings and distributing a Draft Report for comment are important parts of that process.

The terms of reference also require the Commission to examine a number of matters, including:

- the main pressures on the conservation of historic heritage places;
- the economic, social and environmental benefits and costs of the conservation of historic heritage places;
- the current roles and contributions of governments, owners, community groups and other stakeholders;
- the impacts of regulatory, taxation and institutional arrangements, and of other impediments and incentives that affect conservation outcomes;

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- emerging technological, economic, demographic, environmental and social trends that offer potential new approaches to the conservation of historic heritage places; and
 - possible policy and program approaches for managing the conservation of historic heritage places and competing objectives and interests.

Chapter 2 discusses the value of heritage and reviews the current pressures and emerging trends in historic heritage conservation. The issues of estimating specific dollar values of historic heritage and the rationale for government involvement in its conservation are discussed in chapter 6.

The Commission's assessment of the strengths and weaknesses of the existing arrangements for the conservation of historic heritage places is given in chapter 7.

In formulating its recommendations, the Commission has sought to build on the many strengths of the existing arrangements. It has not been necessary to start afresh. The Commission's recommendations for improving the management of government-owned historic heritage places are given in chapter 8, while its recommendations for improving the incentives for privately-owned heritage conservation are given in chapter 9. The appropriate mechanisms for implementing these latter recommendations, along with implementation, funding and assistance issues for each level of government, are discussed in chapter 10. Chapter 11 considers specific issues relating to improving the operation and management of heritage zones (also known as heritage areas, precincts or overlays).

1.4 Conduct of the inquiry

The Commission advertised the commencement of the inquiry in the national press and invited public submissions. To help those preparing submissions, an issues paper, exploring some areas where the Commission sought input, was released in May 2005. A website (<http://www.pc.gov.au/inquiry/heritage/index.html>) was also established, on which inquiry-related circulars, submissions received and transcripts of the initial round of public hearings were placed.

The Commission commenced informal discussions with interested parties soon after the inquiry was announced. All capital cities, except Darwin, were visited, as well as a range of cities, towns and historic places in rural and regional Australia. The Commission spoke to about 90 organisations and individuals, representing a range of interests, including: Australian, State and Territory government departments and agencies; local governments and local government associations; National Trusts; museums; historical societies; professional organisations with an interest in heritage

and its conservation; tourism organisations; and property owners and representatives of property owners.

The Commission received 192 submissions prior to release of the Draft Report and a further 224 submissions in response to its findings and recommendations in the Draft Report (i.e., 416 submissions in total). During July and August 2005, public hearings were held in all capital cities (Darwin hearings were conducted via video link). A second round of public hearings, to discuss the findings and recommendations in the Draft Report, was held during January and February 2006 in most capital cities (Perth hearings were held via video link). Lists of visits undertaken, submissions received and those who appeared at the public hearings are provided in appendix A.

In September–October 2005, the Commission undertook a survey of all local councils to better understand their role in the conservation of historic heritage places. Details of the survey and its results are given in appendix B.

Appendix C provides the methodology for, and results of, a hedonic pricing study of two local government areas (i.e., Ku-ring-gai and Parramatta), which was undertaken by the Commission to better understand the effect of heritage listing on property values.

Appendix D provides details of State and Territory planning regulations and of the heritage listing assessment processes undertaken by local governments.

Examples of heritage conservation agreements, negotiated both overseas and in Australia, are in appendix E, while examples of government asset management guidelines are in appendix F.

1.5 Response to the Draft Report

The Commission's key recommendation in the Draft Report was that, for non-government-owned (private) property assessed as being a place with significant historic heritage, statutory listing should be only with the agreement of the owner on the basis of a negotiated conservation agreement (NCA) and that the listing would remain while the agreement was in force.

The main purpose of this recommendation was to encourage governments, especially some local governments, to consider explicitly the cost consequences of their decision to apply proscriptive regulation to protect the heritage values of a place, at the same time as they are considering recognition of them and the benefits they contribute to their community, and only then formally include the place on

their statutory list. In particular, NCAs were also seen as a cost-effective way of ensuring the on-going conservation of redundant structures (such as woolsheds and churches in the countryside, and industrial plant in cities). Proscriptive regulation tends to be ineffective in such circumstances and some significant heritage items are currently disappearing through ‘demolition by neglect’.

There was a very strong reaction to the Draft Report. Responses covered the following matters.

- Much of the debate centred on the Commission’s key recommendation, with participants’ views being very polarised, either for or against it.
- There was significant misinterpretation and misunderstanding by many heritage industry participants of the intent of this and other associated recommendations. For instance, many incorrectly believed that the Commission was advocating the removal of all regulatory controls, thus leaving heritage to the ‘vagaries’ of the market, and that NCAs would have to be renegotiated at each change of ownership.
- Key Australian/State government and Heritage Council stakeholders argued strongly against what they saw as a ‘voluntary listing system’ which would ‘dismantle 30 years of heritage policy evolution’. Accordingly, they dismissed the NCA-based proposal as being unworkable and akin to ‘throwing the baby out with the bathwater’. This reaction was due mainly to the belief that all places identified as having ‘heritage significance’ should be protected irrespective of cost considerations and, therefore, that identification and listing of heritage significant properties should remain totally separate from management and incentive considerations. However, they had no objection to NCAs being applied after listing (where heritage officials could negotiate from a position of strength).
- Many heritage industry participants were also critical of the Commission not paying sufficient attention to what they saw as the main problem, the lack of government funding.
- In stark contrast, many private property owners, some local councils and a range of other interested parties saw considerable benefit in achieving a better balance between public and private provision of heritage services, and in cost sharing arrangements.
- Given the Draft Report’s emphasis on solving problems at the ‘local significance’ level, a large number of new responses were received from local government entities. Most emphasised resource constraints in implementing the proposed system and that it would result in a significant loss of built heritage.
- In addition, some participants considered the Draft Report focussed overly on built heritage and were critical of the absence of discussion about the

implications of the recommendations for other historic heritage places, such as archaeological sites and cultural landscapes.

While there were polarised views on the key recommendation, there was widespread support for a number of the other draft findings and recommendations, particularly in the areas of rectifying data inadequacies, the lack of adequate statements of heritage significance, and the implementation of conservation/management plans and reporting systems at the Australian and State/Territory government levels.

2 Historic heritage value, pressures and emerging trends

This chapter discusses the value of historic heritage places and the benefits from their conservation. It also reviews the pressures on, and emerging trends associated with, the conservation of Australia’s historic heritage places. Pressures on the conservation of historic heritage arise mainly from changes in the private benefits and costs of conservation, which can be triggered by, for instance, population shifts, technological change and rising maintenance costs. Emerging trends relate mainly to the wider application of adaptive re-use, the continued growth of cultural heritage tourism and the greater use of new information and communication technologies.

2.1 The value of historic heritage

Historic heritage places may generate benefits in the way they are utilised (e.g., as a home, a place of business or, as in the case of public buildings, such as courthouses, in the provision of a community service). Beyond this use-value, there is also the potential for historic heritage places to generate cultural benefits. The Burra Charter, developed by Australia ICOMOS (International Council on Monuments and Sites), relates the heritage value of a place with the ‘cultural significance’ of a site (Marquis-Kyle and Walker 2004). According to the Charter, these cultural values are important because:

Places of cultural significance enrich people’s lives, often providing a deep and inspirational sense of connection to community and landscape, to the past and to lived experiences. They are historical records that are important as tangible expressions of Australian identity and experience. Places of cultural significance reflect the diversity of our communities, telling us about who we are and the past that has formed us and the Australian landscape. They are irreplaceable and precious. (Australia ICOMOS, sub. 122, p. 6)

The definition of ‘cultural significance’ can be highly subjective and dependent on community values and expectations. According to the Town of Vincent:

It could be strongly argued that the identification of heritage places is subjective and that formalising a place on a heritage list does not in itself objectify the assessment.

Whilst assessment criteria for identifying places of cultural heritage significance are relatively standard across Australia, the degrees of cultural significance and identifying thresholds needs to be better understood at all three levels of government. (sub. 43, p. 3)

Similarly, Australia ICOMOS noted that the concept of significance may vary across the country:

With regard to the term ‘significant’, this has a long history of use in Australia, dating back to at least the 1970s. ‘Significant’ is a synonym with value, and is shorthand for cultural or heritage significance. In general contexts, significance merely denotes some level of heritage value. In statutory contexts, it can mean that a certain level of value has been identified. (sub. 122, p. 100)

Heritage has been defined as ‘... an expression or representation of the cultural identity of a society in a particular period’ (Koboldt 1997, p. 68). Throsby viewed historic heritage as contributing to a community’s ‘cultural capital’ which:

... we might define ... specifically in the context of immovable heritage, as the capital value that can be attributed to a building, a collection of buildings, a monument, or more generally a place, which is additional to the value of the land and buildings purely as physical entities or structures, and which embodies the community’s valuation of the asset in terms of its social, historical or cultural dimension. (Throsby 1997, p. 15)

While the identification of heritage can be inherently subjective, classification of the degree of ‘cultural significance’ introduces an additional degree of subjectivity. In order to qualify for world heritage listing under the *UNESCO Convention for the Protection of World Cultural and Natural Heritage*, a historic heritage place must be of ‘outstanding universal value from the point of view of history, art or science’. At the other end of the spectrum, local governments may list places ‘... of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value’. (Hobart City Council, sub. 70, p. 2).

Cultural values may be shared between different groups in society at no added cost. For instance, a place considered to be culturally significant to a local community, may also be regarded to have heritage value to a region, a State/Territory or even nationally. Definitions of ‘place’ and ‘heritage value’ are provided in box 2.1.

Benefits of historic heritage conservation

The conservation of Australia’s historic heritage places can generate a number of benefits (box 2.2). These range from commercial benefits (such as those provided by tourism) to more intangible community benefits (including a sense of history, belonging and community, educational and research values, and spiritual values). Conservation activities are also to benefit future generations.

Box 2.1 Defining historic heritage places

The Burra Charter defines 'place' as:

... site, area, land, landscape, building or other work, group of buildings or other works, and may include components, contents, spaces and views.

Place as used in the Charter has a broad scope: it is geographically defined and includes its natural and cultural features. Place can be used to refer to small things, such as a milestone, and large areas, such as a cultural landscape. A memorial, a tree, the site of an historical event, an urban area or town, an industrial plant, an archaeological site, a stone arrangement, a road or travel route, a site with spiritual and religious connections — all of these can fit under this term. (Marquis-Kyle and Walker 2004, p. 11)

The Burra Charter defines 'heritage value' in terms of the 'cultural significance' of a place:

Cultural significance means aesthetic, historic, scientific, social or spiritual value for past, present or future generations.

Cultural significance is embodied in the place itself, its fabric, setting, use, associations, meanings, records, related places and related objects.

Places may have a range of values for different individuals or groups.

Australian conservation practice and heritage legislation is based on the concept of cultural significance; ie. that the values (significance) of a place can be described and that retaining significance is the primary objective of conservation of the place. Some acts use slightly different terms — such as 'heritage significance' or 'cultural heritage value', but the concept is the same as cultural significance. (Marquis-Kyle and Walker 2004, p. 11)

The Australian Government, in its *Environment and Heritage Legislation Amendment Act (No. 1) 2003*, observed that the:

... heritage value of a place includes the place's natural and cultural environment having aesthetic, historic, scientific, or social significance, or other significance, for current and future generations of Australians. (s. 47)

By maintaining the existing stock of historic heritage places, conservation activities enhance a community's cultural capital. In this regard, Throsby said:

... cultural capital can be seen, like the physical capital in which it is contained, to be subject to decay if neglected. Existing cultural capital can have its asset value enhanced by investment in its maintenance or improvement; new cultural capital can be created by new investment. If these interpretations are accepted, the social decision problem in regard to this type of cultural capital might be seen within the framework of social benefit-cost analysis, and approached by ranking projects according to their social rate of return. (1997, p. 15)

The role of historic heritage places in contributing to cultural capital was also identified by the Hay Shire Council:

... historic heritage buildings contribute to the cultural and social identity and development of the town and the region. They have a vital role in educating school children in the history of this area and rural and remote Australia generally. They make

an important contribution to the local economy through their attraction and appeal to tourists.

The presence of historic heritage places in Hay is a contributing factor in efforts to build a stronger and more diversified local economy, reducing the reliance on the farming sector which is facing enormous challenges and uncertainty. (sub. 5, p. 2)

Box 2.2 Potential benefits of heritage conservation

Owner benefits

- Aesthetic benefits.
- Financial benefits.

Community benefits

- The role of the historic heritage place in defining the cultural identity of a community.
- Contribution to the preservation of community heritage.
- Contribution to historic streetscape, neighbourhoods etc.
- Educational benefits.
- Spillover benefits from tourism.
- *Option values* — the value to community members of having the option to visit the historic heritage place in the future.
- *Bequest values* — the value associated with the knowledge that the heritage asset can be endowed to future generations.
- *Existence values* — the benefits gained from knowing that the historic heritage place has been conserved, irrespective of whether the community member enjoying the benefit actually visits it.

Source: Derived from submissions.

Similarly, the City of Ryde Council identified the importance of having tangible links to a community's past:

The retention of heritage buildings provides a physical demonstration of the community's past and provides for an understanding of the past to be gained through interpretation of its history. This is important for future generations. (sub. 27, p. 3)

In the case of government-owned heritage properties, the provision of broadly-based cultural benefits for the community from the conservation of historic heritage places may be considered as part of the benefits provided by government ownership.

For privately-owned heritage properties, some of these benefits may flow directly to the owner and therefore provide important incentives for heritage conservation. Other benefits may accrue more generally in the community. Some of these

community benefits result from the use of the site by others, for example in tourism, or as part of education and establishing cultural identity. Other benefits accrue irrespective of use. These ‘non-use’ values include social capital, option, bequest and existence values. They are explained briefly below.

It has been argued that the existence of these broadly-based community benefits may necessitate government involvement in heritage conservation. The argument is that, if left solely to private initiative, ‘too little’ heritage conservation would occur, as individuals and businesses fail to adequately consider wider community benefits when deciding how much heritage conservation to undertake. The rationale for government involvement is considered in chapter 6.

A key issue, then, is to what extent is the private sector able to reap (or ‘internalise’) the benefits of heritage conservation. In situations where sufficient benefits are able to be captured to make heritage conservation viable from a private perspective, the rationale for government involvement is greatly reduced, if not removed altogether.

There are various ways in which the private sector might capture the benefits of historic heritage conservation. For example, the Australian Council of National Trusts (ACNT) argued that:

... those who use the place as commercial premises receive no special treatment from government: the heritage appeal of the offices or accommodation may allow higher charges to be applied or may provide access to a niche market — but sometimes it is possible that the restrictions on modifications to such premises can have the opposite effect. Nevertheless, there are numerous examples where heritage conservation has resulted in high occupancy and value, within the existing taxation and regulatory systems.

Private owners of heritage places who use the property as a private residence comprise the bulk of heritage places on local heritage lists. Whether inclusion on a heritage list adds or detracts from their commercial value is a much-debated issue and worthy of detailed consideration, as is the further question — what additional or increased costs are borne by the private owner through the process of conserving the historic values of the place? (sub. 40, pp. 37–8)

Dr Lynne Armitage and Janine Lyons (sub. 182) provide a summary of the results of empirical studies on heritage-listed property values, while the debate is revisited in section 6.5. Also, the Commission undertook a hedonic pricing study of two local government areas, Ku-ring-gai and Parramatta, as part of its assessment of the possible effects of heritage listing on property values. The results of that study are in appendix C.

Tourism is an example of a use benefit arising from historic heritage places, which may be captured by the owner of a property and/or by members of the local

community. Heritage tourism is discussed further in section 2.3 as an emerging trend.

Among the community benefits is the potential for historic heritage places to enhance the social capital of local communities by providing a tangible link to the past and reinforcing the sense of community identity. This enhanced sense of identity may, in turn, contribute to social cohesion within the community.

The ACNT regarded historic heritage as a ‘fundamentally important element of the nation’s social capital’, stating:

Heritage, by its very nature, provides a common thread of understanding and identity that is so critical to the operation of the nation. Whether it is in the armed forces, education, farming, the environment or business, matters such as ‘who we are’, ‘what we stand for’, and ‘where we came from’ are part of our shared memory, and form a key part of the collective value system that Australians apply when seeking a solution to a new challenge.

The national character is a creature of our history and our heritage. It is dynamic, constantly evolving as new experiences and diverse cultures add to our past understandings. (sub. 40, p. 8)

Historic heritage places may also have an option value attached to them. That is, their continued existence provides members of the community with the knowledge that they have the option to visit, if they want to, at some time in the future. There is also the value these places have as a bequest to future generations. Krutilla (1967) identified the concept of ‘existence’ value in relation to rare species and unique natural environments. Members of the community may also simply gain from knowing these places exist, irrespective of whether they actually visit them or intend to do so in the future (Portney 1994, p. 5).

The Allen Consulting Group conducted a survey to establish which heritage-related benefits were considered the most important. It is interesting to note from the results (table 2.1) that direct use values ranked less highly than indirect benefits. Indeed:

... the most interesting result relates to the degree to which people do not see the economic value associated with heritage-related tourism. In particular, only 16.6 per cent of the community strongly agrees with the statement ‘Looking after heritage is important in creating jobs and boosting the economy’. (Chairs of the Heritage Councils of Australia and New Zealand, sub. 187, p. 25)

This finding is consistent with the submissions of some other participants to this inquiry (such as the Urban Development Institute of Australia (Western Australian Division) (sub. 83)) who questioned whether all historic heritage places represented viable tourist destinations.

It is also interesting to note that, while the survey indicated strong support for the ability of historic heritage places to generate benefits, when it came to revealing their preferences through their actions, only around 10 per cent had volunteered for historic heritage conservation activities or made a financial contribution to historic heritage conservation in the previous twelve months (Chairs of the Heritage Councils of Australia and New Zealand, sub. 187, p. 23).

Table 2.1 Perceptions of heritage-related benefits^a
Per cent of respondents

<i>Benefit</i>	<i>Statement</i>	<i>'Strongly agree' and 'agree'</i>	<i>'Strongly disagree' and 'disagree'</i>	<i>Neither 'agree' nor 'disagree'</i>
Direct use value	Looking after heritage is important in creating jobs and boosting the economy	56.1	11.0	32.9
Indirect use value	My life is richer for having the opportunity to visit or see heritage	78.7	4.6	16.8
Option value	It is important to protect heritage places even though I may never visit them	93.4	1.5	5.0
Existence value	Heritage is part of Australia's identity.	92.3	5.3	2.3
	The historic houses in my area are an important part of the area's character and identity.	80.2	5.2	14.5
Other non-use values	It is important to educate children about heritage.	96.9	0.3	2.8

^a Based on an on-line survey of 2024 adult Australians.

Source: CHCANZ (sub. 187, p. 24).

The Commission undertook a hedonic pricing study of two local government areas, Ku-ring-gai and Parramatta, as part of an assessment of the possible effects of heritage listing on property values. The results of that study are in appendix C.

2.2 Pressures on historic heritage places

All built structures (whether government, commercial, community or residential) naturally deteriorate and therefore require regular maintenance. Many buildings also

become subject to redevelopment proposals for a variety of reasons, including changes to need or preferences.

The vast majority of historic heritage places have been maintained by their owners, presumably because they perceive that the benefits of doing so exceed the costs. However, if these benefits decline or the costs increase, then the private benefit–cost calculus changes.

Private benefits and costs of conservation can be affected by a number of pervasive pressures, including population shifts, technologies becoming redundant, demand declining for the services offered by the historic heritage place, the opportunity cost of renovation or redevelopment increasing, and the increasing cost of maintenance.

Demographic and technological pressures

Many of the most significant pressures contributing to the deterioration or loss of historic heritage places owe their origins to Australia’s changing demographic patterns. For instance, population increases in our capital cities (especially Sydney and Melbourne) have led to plans for urban infill and increased density, which in turn have put pressure on heritage assets.

Also, Australia’s rural population has declined steadily over the last century, which while simultaneously reducing the capacity to pay for historic heritage conservation within those regions, has led variously to the abandonment of redundant rural buildings and to changes in rural landscapes. The population trend is predicted to continue, although there will be some growth in regional centres, such as Dubbo, Wagga, Mildura and Geraldton, due to the so-called ‘sponge cities’ effect (see, for example, PC 1999).

Urban redevelopment and infill

In urban areas, most historic heritage properties are located close to the centre of major cities and some stand on very valuable blocks of land. Accordingly, the opportunity cost pressures on these places for renovation and redevelopment keeps rising. The City of Sydney (sub. 143, p. 2) acknowledged the extent of these pressures in Sydney. However, not all capital cities have experienced such pressures. For instance, the Hobart City Council (sub. 70) indicated that lower economic growth in Hobart has meant that the principal development pressures being experienced there were unsympathetic alterations, rather than pressure for demolition and redevelopment.

Also, as the populations of urban areas continue to rise, governments have sought to limit the negative externalities of urban sprawl through policies directed at urban infill. This was claimed to be affecting the heritage character of older suburbs. For instance, Carroll and Kitson (sub. DR276) claimed that the main pressures on the conservation of historic heritage places in the Ku-ring-gai Shire in Sydney were the Government's urban consolidation policies and its associated blocking of the gazettal of Urban Conservation Areas. Zeny Edwards also commented:

In certain areas, the older established homes are progressively being demolished or renovated and replaced with family homes or multi-unit developments that are larger in proportion to the land they are built upon, due to private developer and government pressure to substantially increase the levels of local housing density. (sub. 11, p. 5)

The City of Newcastle (sub. 78) considered that urban consolidation was an emerging threat particularly to local heritage precincts and buildings on large curtilages. The Australian Garden History Society (sub. 45) expressed concern about the impact urban consolidation was having on historic heritage gardens and the settings of many heritage places.

A slightly different experience was noted by the City of Port Phillip (sub. DR240). They indicated that, under the Inner Regional Housing Agreement, this inner suburban area of Melbourne had the capacity to cater for the required number of new dwellings in the area (90 000) on existing strategic sites — without impacting on any heritage places — to the year 2030.

Countering the above impacts of demographic change on the inner areas of Australia's cities has been their increasing 'gentrification', which has benefited investment in heritage places. In this regard, the Victorian Government observed:

The demographic changes that have occurred in the inner areas of Australia's cities have introduced a level of affluence, which in turn has created a positive environment for private heritage conservation. ... the new residents often have an interest in the past and a desire to care for what they see as their heritage. (sub. 184, p. 33)

Public building redundancy

Over recent decades, many public buildings and infrastructure — such as railways, churches, banks, post offices, schools — have become redundant due to the loss of client population, asset rationalisation, mergers and technological change. The NSW Heritage Office commented:

Over the last 30 years there have been major changes in the delivery of government services within the community. This has resulted in the redundancy of many government properties from their original use, particularly in rural areas of Australia, including NSW. (sub. 157, p. 72)

Many redundant public properties have either been demolished, sold (or leased) to private owners or undergone adaptive reuse. There have been many examples of adaptive reuse of these assets which have successfully maintained their heritage values, particularly old post offices in urban areas (e.g., the GPO in Martin Place, Sydney). But adaptive reuse in rural areas with declining populations has been seen as being more problematic.

Abandonment of rural structures and loss of rural landscapes

The aggregation of rural properties — reflecting economies of scale made possible by new technologies — has not only led to changes in enterprise mix, but also to the abandonment of many old and redundant farm structures, such as shearing sheds and homesteads.

At the same time, changing lifestyles (such as the increased number of hobby farmers) and shifts in rural land use patterns have contributed to the loss of cultural landscapes in rural areas, including homesteads and farmlands. Similarly, the expansion of towns and cities into rural areas has impacted on designed gardens and landscapes, early settlements, disused cemeteries and defunct industrial complexes.

In many places, public infrastructure, like old timber bridges of historic significance, have become unsafe, redundant or too expensive to maintain.

Cost of conservation pressures

Many participants considered that one of the most significant pressures on the conservation of historic heritage places was the high and increasing cost of maintaining these properties. This pressure was particularly evident for private individuals and was said to be exacerbated by the inability of many (mainly older) private individuals to fund such work, as well as the inadequacy of public funding for this purpose.

Rising maintenance costs

A number of participants pointed to cost pressures arising from a reduced supply, particularly in rural areas, of skilled trades people to undertake authentic heritage work. In this regard, the NSW Heritage Office said:

... there is a declining skill base in relation to practical building conservation and a shortage of skilled tradespeople to deliver current demands. This arises because the majority of listed heritage places predate 1950, when the impact of large-scale industrialisation of the building industry exerted significant changes in the materials

and construction techniques. Traditional trade and craft skills from this time began to decline as the impact of new construction technologies established themselves as the predominant typology. (sub. 157, p. 73)

The Construction, Forestry, Mining and Energy Union (Construction and General Division) (sub. 24, p. 2) considered that a chronic shortage of skilled workers would inevitably restrict the ability of public and private owners of heritage properties to conserve their assets. It noted that the trade skills required for heritage conservation were more specialised than those required for mainstream building work, but that the opportunities and incentives to undertake the necessary training were decreasing. However, Richard Falkinger (trans., p. 478), Architect for the Roman Catholic Trust Corporation, said that the Trust had, to date, experienced no difficulty in obtaining appropriate trades persons for major conservation works.

The small size of the Australian heritage market was also seen as contributing to the difficulty in maintaining a critical mass of specific heritage trades and skills.

Exacerbating these labour supply cost pressures was the ageing of the volunteer workforce. Many heritage industry participants indicated that the cost saving provided by the volunteer network was critical to the conservation (particularly to the interpretation and presentation) of historic heritage properties. However, the National Trusts and other ‘not-for-profit’ participants provided information to suggest that the age structure of the volunteer workforce was increasing and the number of volunteers declining.

Declining public sector budgets for historic heritage conservation

Heritage conservation is only one of many activities competing for public funds. Even so, many participants claimed that, over recent years, there had been a relative decline in public sector budgets for the conservation of historic heritage places, with much of the remaining funds being swallowed by administration of the system. For instance, many pointed to the recent reduction in the amount of Australian Government funding for historic heritage conservation at the State and local levels, following implementation of the new national heritage regime — it was noted that the announced funding of \$52.6 million for the ‘Distinctly Australian’ program over the next four years will virtually all be consumed, at the national level, in administration of the new system. A number of participants noted, in that context, that the Australian Government has committed a further \$1 billion to the Natural Heritage Trust for five years from 2002-03, but very little for historic heritage.

With limited budgets and increasing responsibilities, government participants pointed to the pressure on both line departments and local councils to concentrate

on core activities at the expense of conserving their heritage properties. This problem was said to be more acute in rural areas. For instance, the Hay City Council stated:

The depressed farming sector, as a consequence of the protracted drought, ... means that Council is under extreme financial pressure simply to maintain its core services at the most basic of levels. (sub. 5, p. 1)

There are likely to be increasing calls for public funds for the conservation of historic heritage places under pressure — particularly for urban redevelopment in cities and from redundancy/abandonment in rural Australia — but all tiers of government face many other priorities for the disbursement of taxpayers' funds.

2.3 Emerging trends in historic heritage conservation

Over the years, historic heritage conservation has had to adapt to emerging technological, economic, demographic, environmental and social trends. The Australian Department of Environment and Heritage (DEH) (sub. 154) noted that rising incomes, advances in knowledge and education, and shifts in social attitudes could be expected to lead to changes in the way the Australian community views historic heritage. It said:

It is likely that such changes will allow for new approaches to the conservation of historic heritage. For example, with demographic shifts to inner-city suburbs in Sydney and Melbourne in the last decade there has been a 'gentrification' of many historic heritage areas with much new private investment in the restoration and maintenance of heritage assets. (sub. 154, p. 26)

Also, the ACNT (sub. DR237, p. 13) identified as an important emerging trend, the changes taking place in planning and land use regulation, and the impacts they may have on considerations of public/private property rights and responsibilities:

... increased land use and planning regulation for environmental and amenity considerations incorporate heritage protection, and the changing focus of urban planning to broad-scale impacts and approaches, similarly incorporate heritage considerations, rather than isolating them.

Other participants generally pointed to adaptive reuse, heritage tourism and virtual recording as the three main growth areas in the conservation of historic heritage.

Adaptive reuse

Most participants considered adaptive reuse — that is, finding innovative ways to change the use of heritage places without impacting too heavily on their heritage

values — as an important means of ensuring the retention and future conservation of historic heritage places. However, some saw adaptive reuse as merely sacrificing heritage values (for example, changes to churches and community centres).

DEH (sub. 154) suggested that the most successful built heritage adaptive re-use projects were those that best respected and retained the building's heritage significance and added a contemporary layer that provided value for the future. It observed that adaptive use of heritage buildings had a major role to play in the sustainable development of Australian communities, particularly in terms of landscape enhancement, identity and amenity for the community. In this regard, the Department noted that one of the main environmental benefits of reusing heritage buildings was the retention of the original building's 'embodied energy' — that is, the energy conserved by not demolishing it and re-building.

Commercial success stories from appropriate and innovative adaptive reuse projects have been numerous, particularly with old government, commercial and industrial facilities. However, the prospects for adaptive reuse of some 'privately-owned and for public use' historic heritage places, such as churches and certain National Trust properties, have been constrained by their clients' desire for no change to their original use. For instance, the Uniting Church of Australia (sub. 76, p. 6) indicated that, despite changing social and demographic trends leading to increasing facility redundancy, it had experienced vigorous community opposition to the concept of adaptive reuse of its churches, halls and other buildings for non-religious activities, as well as to internal works needed to reflect the changing way of worship by its congregation.

The City of Sydney (sub. 143) highlighted other constraints limiting the re-usability of some heritage buildings, namely difficulties in:

- adapting heritage premises to meet contemporary living and working standards, including the desire by developers to provide for car parking and additional amenities; and
- upgrading heritage buildings to meet Building Code of Australia and Equitable Access requirements.

While most participants saw adaptive reuse as a positive way forward for heritage conservation, they also pointed to the very high costs, and thus competitiveness issues, associated with the adaptive reuse of heritage buildings. For instance, the Tourism Council of Tasmania (sub. 149, p. 2) said that the upkeep using traditional building materials and methods, as against modern materials and methods, imposed a considerable cost burden that impacted on the heritage building's operational competitiveness. In a similar vein, the Royal Historical Society of Victoria (sub. 79, p. 2) noted that heritage restrictions often worked against successful adaptive reuse

by preventing making historical buildings health and safety compliant, such as through the inclusion of fire doors, hand rails, wheelchair access or other adaptations.

Heritage tourism

A number of submissions to this inquiry have noted the potential for historic heritage conservation to increase tourism to a region. For example, the City of Perth identified the importance of heritage in promoting tourism:

- studies have shown that a high proportion of foreign tourists cite historic significance as an important factor in choosing a destination;
- according to the World Tourism Organisation, cultural tourism accounts for 37 per cent of world travel and this is growing at the rate of 15 per cent a year;
- in Western Australia, the cultural industry sector contributes \$983 million a year to the State's economy;
- research has shown an increase in demand for quality interpretation of the natural, social and heritage features of places visited; and
- retaining inner city cultural heritage and interpreting it will continue to strengthen Perth's growing tourism and cultural life. (sub. 67, p. 9)

Where historic heritage is conserved for tourism purposes, other private benefits can arise. For example, hotels, shops and restaurants may be established in historic precincts to cater for tourists. This development of tourist infrastructure may, in turn, return additional benefits to heritage conservation by increasing visitor numbers.

However, the tourism market is highly competitive and not all historic heritage places are viable for commercial tourism. The Urban Development Institute of Australia (Western Australian Division) noted that:

In regards to opportunities for tourism development to provide an offset to the economic constraints of development, the property industry is of the view that tourism options are not generally a sound economic investment (very few provide a substantial economic return) and that the number of heritage sites that are suitable or in an appropriate location for tourism is very limited. (sub. 83, p. 3)

As noted earlier in section 2.1, tourism can provide a tangible benefit from conserving historic heritage places. However, there were differing views on the appropriate mix and the extent to which heritage tourism can continue to cover the costs of conservation.

Some regional and local economies have become increasingly dependent on tourism. Australia ICOMOS (sub. 122) argued that cultural tourism (which

encompasses visitations to historic heritage places) was one of the fastest growing sectors of the tourism industry. It pointed to the positive impact historic heritage conservation has had on tourism in many places around Australia — including the City of Fremantle, Tasmania’s historic towns and convict sites, The Rocks in Sydney, Victoria’s central goldfields, the Queensland mining heritage trail and the old mining town of Burra in South Australia.

The City of Ballarat (sub. 100) commented that historic heritage plays a significant role in the economic well-being of Ballarat. It noted that substantial tourism benefits have arisen from the past preservation of its built form from the nineteenth and early twentieth centuries. The Council estimated that heritage-based identity contributed to attracting over 2 million visitors to Ballarat each year, with a total visitor expenditure of over \$300 million (sub. 100, p. 1).

Similarly, the Tourism Council of Tasmania (sub. 149, p. 1) confirmed that Tasmania’s built heritage was a key tourist attraction and that, with the right application (that is, providing appealing and attractive experiences), it could make an even larger contribution.

At the same time, some participants noted that heritage tourism often suffers from having too many of the same heritage offerings in the one place, such as B&Bs and ‘static museum’ properties, resulting in their revenue streams being insufficient to pay for the upkeep of those properties. For instance, the Tourism Council of Tasmania, while noting that successful heritage tourism was about getting the level and mix right, commented:

... in some instances now Tasmania needs, in order to keep its tourists coming, more high standard accommodation, more modern attractions and not more heritage buildings preserved. The market is almost saturated with heritage buildings.

... The need to keep ... the best of them alive and providing an attractive and appealing experience for visitors, is demonstrated by observing the fate of some of the National Trust properties not having the appeal of some years ago and not being able to be maintained.

These buildings need a commercial application to be maintained as living examples. ... They must be changed from static furniture displays — they must provide an experience. (sub. 149, p. 2; trans., p. 546)

Graham Brooks and Associates observed that those places where conservation had not been effective in retaining the depth, integrity and spread of their historic imagery were not as successful as tourism destinations:

... the built environment conservation industry holds the keys to a major portion (at least half) of the world’s tourism assets. If these assets are not protected and sustained through proactive heritage conservation and good tourism management, the tourism

industry will suffer, as tourists move to other destinations that have not been ruined or excessively exploited. (sub. 72, p. 12)

However, both Australia ICOMOS (sub. 122, p. 65) and Graham Brooks and Associates (sub. 72, pp. 12–3) observed that the benefits from the generation of economic activity in heritage-based communities (through investment, revenue capture, employment, small business opportunities and the like), were somewhat offset by the negative impacts from the increased use of historic heritage places — such as congestion, the leakage of locally-generated revenue, fluctuating demands on local infrastructure and resources, the displacement of local services, and physical impacts and degradation on the properties and landscapes.

Virtual recording

A number of participants pointed to both the short and long term benefits of using digital technologies to record the details and history of heritage properties, rather than actually heritage listing them. For instance, John Boyd (sub. DR196, p. 4) argued that the cost of virtual recording would be a lot less than the costs flowing from listing. Also, virtual recording would not be subject to damage or loss by bushfire, white ants, rust or general deterioration.

Advances in information technology have led to a growth in virtual (digital) recording as another means of conserving our past for future generations, and particularly for those marginal places which do not quite meet the threshold tests. For instance, the Mechanics' Institute of Victoria (sub. 89, pp. 1–2) indicated that, despite losing about 550 of its historic buildings in Victoria, the Institute had developed the 'Big-Mech Database', which contains core material on all known Institute buildings, as well as ownership, management, architectural and historical material. Currently, this database comprises some 5000 pages of information and 3000 images of buildings and building plans.

In a similar vein, Engineering Heritage Victoria (trans., pp. 570–2) was of the opinion that new digital technology offered a number of openings for historic heritage promotion, education and conservation. First, it noted that this technology afforded the opportunity to record, for future generations, what it refers to as the 'byways of heritage' — that is, the plans, the construction techniques, photographs and, particularly, the oral histories of the people that were involved in those projects. Second, it indicated that podcasting (that is, the publication of audio files on the internet) offered new opportunities for the storage and dissemination of heritage information. And third, for the travelling public, it pointed to the prospects for 'virtual heritage' where, for instance, readily available GPS and audio

technology could be combined to ensure that the value of heritage and heritage sites was not diminished because no-one knew where they were or what they meant.

Gary Green also noted that new emergent technologies — such as DigiCult, Augmented Reality and Holographic 3D Projections — have the capacity to change the way we look at heritage. He commented:

Virtual Heritage Preservation can provide high-resolution 3D reconstructions and guided tours (VRML flythroughs) of heritage sites. At present, most heritage sites are not open to the public, so this technology provides additional advantages over a physical listing. (sub. DR199, p. 6)

In summary, new virtual recording technologies provide a number of marketing opportunities to increase the value and/or reduce the costs of conservation. However, while it may, at times, be a useful adjunct, virtual reality is not likely to be an acceptable substitute for the physical conservation of virtually all historic heritage places.

3 Overview of historic heritage conservation in Australia

This chapter provides a brief overview of the systems for historic heritage conservation operating currently in Australia. It initially reviews the activities of the non-government sector and then describes the three-tier government system in place. The available information on the scope and extent of historic heritage conservation undertaken in Australia is brought together and deficiencies in available data are noted. More detailed information on the operations of the government sector is provided in chapters 4 and 5.

3.1 Non-government sector

The private sector is heavily involved in heritage conservation. While the major iconic historic places tend to be government owned, many listed places are in the hands of the private sector (especially those of local significance). The latter includes both individuals and organisations, such as the National Trusts, churches, banks and other commercial and community entities. Statutory listing formally identifies the historic heritage significance of individual places. It also encourages their conservation and seeks to protect the identified heritage value by imposing obligations on private owners to conserve the heritage values and to seek approval before any changes are made that might affect those heritage values. The vast majority of private conservation is done without any government assistance.

Table 3.1 provides information on the public and private ownership splits of places on statutory lists of the Australian, State and Territory governments. It shows that the majority of these statutory-listed places are under private ownership.

In addition to these statutory heritage lists, a wide range of private organisations throughout Australia also keep their own lists of significant heritage places. For instance, in New South Wales (and other jurisdictions have similar listings) these include:

- *National Trust of Australia (NSW) Register*, which contains about 12 000 items;

- *Royal Australian Institute of Architects (NSW Chapter) Register of 20th Century Buildings of Significance*, which has about 3370 items;
- *Professional Historians Association (NSW) Register of Historic Places and Objects*, which contains 15 items; and
- *Art Deco Society of NSW Building Register*, which has about 6000 items (sub. 157, p. 61).

These lists are primarily intended to inform people and governments of the existence of historic built heritage places.

Table 3.1 **Statutory-listed historic heritage places in public and private ownership^a, at 30 June 2005**

<i>Jurisdiction</i>	<i>Public ownership</i>		<i>Private ownership</i>	
	No.	%	No.	%
Commonwealth	304	99	4	1
New South Wales	912	61	588	39
Victoria	631	32	1 361	68
Queensland	445	31	995	69
Western Australia	593	53	520	47
South Australia	725	33	1 470	67
Tasmania	403	8	4 923 ^b	92
Northern Territory	78	45	97	55
ACT	na	na	na	na

^a Includes places on World, National and Commonwealth Heritage Lists, and State/Territory Heritage Registers. ^b Many of these would be on local lists, not the State Register, if Tasmania had the same system as elsewhere.

na Not available.

Sources: Submissions; correspondence with State and Territory Heritage Offices.

‘Not-for-profit’ organisations

The most significant ‘not-for-profit’ private sector organisations involved in heritage conservation are the National Trusts, which own and manage heritage places in all States and Territories. Each State and Territory Trust is an independent entity, but shares a common set of principles concerning the value to the community of its heritage — broadly defined — and a commitment to advocating for the retention and accessibility of that heritage.

The National Trusts have considerable experience in the conservation and stewardship of heritage places. Nationally, they have 72 200 members and 7400

volunteers. As shown in table 3.2, they are presently responsible for 249 historic heritage places, of which 168 are opened regularly to the public. Around two-thirds of the places are owned by the Trusts, with the rest managed by them on behalf of governments at all levels.

Table 3.2 Historic heritage places owned and/or managed by the National Trusts, at 30 June 2005

<i>National Trusts</i>	<i>Historic heritage places owned and managed by National Trusts</i>	<i>Historic heritage places owned by National Trusts</i>	<i>National Trust heritage places open to the public</i>
New South Wales	33	25	20
Victoria	40	32	25
Queensland	15	14	9
Western Australia	44	20	44
South Australia	86	62	51
Tasmania	14	7	8
Northern Territory	17	8	11
ACT	..	..	..
Totals	249	168	168

.. Nil

Source: Submissions.

The National Trusts receive some financial support from the Australian Government's Grant-in-Aid to National Trusts program, which is administered by the Department of Environment and Heritage (DEH). Under this program, each State and Territory National Trust receives annual funding of \$77 000, while the Australian Council of National Trusts (ACNT) receives approximately \$225 000 to fund advocacy and conservation work. This money is generally spent on heritage priorities, including identification, community engagement and the implementation of best practice standards. For the smaller Trusts, the funding is critical to their survival. State and Territory governments also generally support their National Trusts.

This government expenditure supplements funding received from membership and property visitation fees, fundraising, sponsorship, bequests and donations.

The Trusts are 'eligible gift recipients' and thus, subject to certain conditions, donors can claim tax deductions. Certain other types of private sector organisations which own heritage properties (such as churches) are also recognised by the Australian Tax Office as having charitable status.

There are many smaller heritage trusts or organisations that have been established to manage individual heritage places around Australia. Examples include trusts for specific places, like Heipen House in the Adelaide Hills, Woolmers Estate in Tasmania and Manning Clark House in the ACT.

Participants identified a number of problems being experienced currently by the private ‘not-for-profit’ sector of the heritage industry, including:

- resource constraints, exacerbated by the ageing of the volunteer workforce, who undertake most of the interpretation and listing work, as well as keep the doors open to the public;
- the financial viability of the National Trusts, particularly the smaller ones (for example, the National Trust of Tasmania is currently in the hands of an administrator); and
- there are many historic heritage places, particularly in areas with declining populations which, despite their significance for local communities, are either surplus to requirements, redundant, no longer fit for purpose, or too expensive to maintain (such as bank branches in rural towns, churches, timber bridges and community halls, as well as government-owned assets, such as courthouses, schools, railway stations and post offices). As noted in section 2.2 above, the task of conserving all these seems huge, when compared with the financial and human resources available.

The ‘Burra Charter’

The *Australia ICOMOS Charter for Places of Cultural Significance* — otherwise known as the Burra Charter — is regarded as the standard for heritage conservation management in the private sector and has been widely recognised and adopted overseas.

The Charter’s main aim is to set a ‘best practice’ standard for those who provide advice in relation to, make decisions about, or undertake works on, places of cultural significance, including owners, managers and custodians (see box 3.1 for further details).

Most private organisations use the Burra Charter as a template for their assessments of whether or not a property warrants being listed on their non-statutory registers. For instance, the Royal Australian Institute of Architects (RAIA) (sub. 68, p. 17) indicated that its adoption of the Burra Charter as a guiding document in heritage conservation was important to the achievement of its heritage management goals. A good example of its use by the RAIA is in the criteria it has adopted for developing its *Register of Significant Australian 20th Century Architecture* (box 3.2).

Box 3.1 The 'Burra Charter'

The Burra Charter provides guidance for the conservation and management of places of cultural significance. It advocates a cautious approach to change — that is, do as much as necessary to care for the place and to make it usable, but otherwise change it as little as possible so that its cultural significance is retained.

In the Charter, 'cultural significance' is defined to mean 'aesthetic, historic, scientific, social or spiritual value for past, present or future generations', and can be embodied in 'the place itself, its fabric, setting, use, associations, meanings, records, related places and related objects'. It recognises that places may have a range of values for different individuals or groups.

The Burra Charter process (a sequence of investigations, decisions and actions) has three basic steps — 'understand significance', 'develop policy' and 'manage in accord with policy' — which encompass the following detail:

- identify the place and its associations;
- gather and record information about the place sufficient to understand significance;
- assess significance;
- prepare a statement of significance;
- identify obligations arising from significance;
- gather information about other factors affecting the future of the place (including the owner/manager's needs and resources, external factors and its physical condition);
- identify and develop policy options and test their impact on significance;
- prepare a statement of policy;
- develop and implement strategies to manage the place in accordance with policy; and
- monitor and review the place's condition.

Source: Australia ICOMOS (2005).

Similar use of the guiding principles in the Burra Charter is made by the various National Trusts.

3.2 Government sector

As indicated in chapter 1, a three-tier system has recently been formalised for government involvement in the conservation of historic heritage places in Australia. The system for the identification and conservation of historic heritage places distinguishes between nationally significant, State significant and locally significant

places. In keeping with the principle of subsidiarity,¹ these different levels of significance correspond to the responsibilities of the Australian Government, State and Territory governments, and local governments, respectively.

Box 3.2 Royal Australian Institute of Architects' criteria for assessing 20th Century architecture

The accepted criteria to be used in the assessment of 20th Century works include:

1. Outstanding national importance in demonstrating the principal characteristics of a particular class or period of design.
2. Outstanding national importance in exhibiting particular aesthetic characteristics.
3. Outstanding national importance in establishing a high degree of creative achievement.
4. Having outstanding monumental and symbolic importance to the development of architecture and the history of architecture.
5. Having a special association with the life or works of an architect of outstanding importance in our history.
6. Outstanding national importance in demonstrating a high degree of technical achievement of a particular period.

Source: RAIA (sub. 68, p. 13).

Australian, State and Territory government systems

The Australian, State and Territory governments operate broadly similar heritage regimes. They all have legislation which specifically deals with the conservation of historic heritage places. These statutes are generally separate from legislation dealing with natural and indigenous heritage conservation. Some jurisdictions also have separate legislation governing movable heritage and shipwrecks. The legislation is typically broader than the historic heritage places that are under reference in this inquiry (see chapter 1).

In all jurisdictions, heritage legislation essentially establishes a very similar set of mechanisms and institutions for meeting the objective of identifying and conserving historic heritage, including:

¹ This principle suggests that responsibility for a function should be assigned to the lowest level of government that is able to exercise it effectively and thus, as close as possible to consumers, to allow them choice as to the services they receive.

-
- *a statutory register of historic heritage places*, including criteria and procedures for identifying places for inclusion on the register;
 - *the establishment of a Heritage Council* (generally under each jurisdiction's Heritage Act, although some have separate legislation), to manage the register, advise government and oversee the review of the heritage aspects of development applications for changes to listed properties;
 - *for State jurisdictions, controls over the development of listed places* (including obligations on owners to conserve heritage aspects and requirements to submit proposed changes for approval). The States and Territories exercise considerable regulatory control over the conservation of historic heritage places, through the linking of heritage and general State/Territory planning control laws and regulations;
 - *heritage guidelines* for use by heritage practitioners;
 - *provision of advisory assistance* for local councils; and
 - *funding programs* to assist with the conservation of both public and private properties.

Fuller descriptions of the legislative and institutional frameworks for Australian, State and Territory government involvement in historic heritage conservation are provided in chapter 4.

Registers and listings

Australian, State and Territory government systems for heritage identification and registration were developed out of systems devised by the private sector, in particular the various State and Territory National Trusts. These organisations had developed criteria (based on the Burra Charter) to identify places with heritage significance and had, over time, produced lists of places which they considered to be of heritage significance. When governments began legislating in the area of heritage conservation in the 1990s, they broadly adopted the National Trusts' criteria and used their heritage place lists (along with the Register of the National Estate (RNE)) as the basis for the initial State and Territory heritage lists.

As shown in table 3.3, the vast majority of statutory-listed historic heritage places are of local significance.

There appears to be widespread public confusion about the phrase 'heritage-listed' and its implications. Formally, within the new national framework it should refer only to places contained in statutory lists as national, State or local significance. But the RNE lingers, although overlapping with statutory listings, as well as listings by

National Trusts, the RAIAs and others. The consequences of a statutory listing are substantive, albeit highly variable in terms of the nature and extent of controls over changes to the place, while the implications of non-statutory listing are usually minor.

Table 3.3 **Historic heritage places on statutory lists/registers, at 30 June 2005**

<i>Jurisdiction</i>	<i>World and national heritage lists</i>	<i>Government-owned heritage lists</i>	<i>State and Territory heritage registers</i>	<i>Local government lists</i>
Commonwealth	16	292 ^a	..	..
New South Wales	..	6 522 ^b	1 500	26 000
Victoria	..	nsi	1 992	100 000 ^c
Queensland	..	nsi	1 440	na
Western Australia	..	nsi	1 113	16 807 ^f
South Australia	..	nsi ^d	2 195 ^e	4 500
Tasmania	..	nsi	5 326	.. ^g
Northern Territory	..	nsi	175	..
ACT	..	nsi	247	..
Totals	16	6 814	13 988	>147 000

^a Commonwealth Heritage List. ^b Government-owned and managed places on the NSW s. 170 Register
^c Estimated number of properties covered by individual and area Heritage Overlay controls. ^d Included in State figure. ^e About 27 per cent are residential homes. ^f Includes non-government lists. About 36 per cent are residential homes, 77 per cent are 20th Century places and 7 per cent are also listed on the State Register.
^g Included in State figure.

na Not available. .. Nil. nsi Not separately listed.

Sources: NSW Heritage Office (sub. 157 p. 60 and sub. DR384, p. 4); CHCANZ (sub. 139, p. 10); WA Heritage Council; correspondence with State and Territory Heritage Offices.

Government expenditure on heritage conservation

Until recently, the Australian Government had provided some direct and indirect assistance (under a number of programs) for the conservation of Australia's historic heritage places. In particular, properties listed on the RNE were eligible for conservation funds. Since the establishment of the new national system, these programs have been withdrawn and Australian Government funding is now applied mainly to world and national heritage listed properties and to the Government's owned and controlled heritage properties. However, where heritage is not a core business activity, this latter expenditure is generally part of the aggregate expenditure of the various government departments and agencies (for example,

there are 27 Australian Government departments and agencies with non-core heritage responsibilities, while in New South Wales there are some 85 such agencies).

As shown in table 3.4, in excess of \$46 million of assistance was provided in 2004-05 by the Australian, State and Territory governments for the specific purpose of historic heritage conservation. However, the information is very sketchy and does not include all government expenditure on, or assistance for, the conservation of Australia's historic heritage places.

Table 3.4 Australian, State and Territory government expenditure on, and assistance for, historic heritage conservation, 2004-05
\$ million

<i>Government</i>	<i>Expenditure on conservation of government-owned property</i>	<i>Direct assistance for private conservation</i>	<i>Other private assistance^a</i>	<i>Total expenditure and private assistance</i>
Australian	2.50 ^b	14.50 ^c	0.80	17.80
New South Wales	2.55 ^d	1.70	0.70	4.95
Victoria	1.70	1.02	0.57	3.29
Queensland	na	0.12	..	>0.12
Western Australia	8.50	5.36 ^e	0.37	14.23
South Australia	1.50	0.30	0.44	2.24
Tasmania	2.02 ^f	0.30	..	2.32
Northern Territory	1.00	0.35	0.10	1.45
ACT	na	0.10	..	>0.10
Totals	>19.75	>23.45	>2.98	>46.50

^a Principally assistance for heritage advisory services. ^b The figure is DEH assistance to the Department of Defence for the conservation of its heritage properties. It does not include spending by other Departments on their historic heritage places. ^c Includes expenditure on the National Heritage Initiative and one-off assistance to individual places. ^d Maintenance expenditure only by the Historic Houses Trust. ^e The WA figure includes \$1 million for the Heritage Grants Program, \$1 million for Lotteries Commission's grants scheme, \$0.06 million for concessional loans scheme, a \$1.45 million grant to the National Trust of WA and a one-off grant of \$1.85 million for conservation works on St George's Cathedral. ^f Figure includes annual funding of \$2 million for conservation works on the Port Arthur Historic Site.

na Not available. .. Nil.

Sources: Heritage agency and Council Annual Reports (various); Australian Government and State/Territory Budget Papers (various); submissions; correspondence with State and Territory Heritage Offices.

Local governments

Local government involvement in historic heritage conservation varies greatly, primarily reflecting the differences in State approaches, but also because of the

different approaches by some local governments. As indicated above, all States, with the exception of Tasmania,² have provisions or requirements for their local governments to establish separate registers of locally significant places, and most also require them to conduct heritage inventories to generate local registers. All local governments are required to consider heritage matters, among other things, when exercising their planning/land use controls.

Some local governments have programs (such as grants, loans and rate rebates) to assist private conservation of heritage places.

More detailed information on local government involvement in heritage conservation and the relationship with the planning system is provided in chapter 5 and appendix D.

To improve its understanding of the involvement of local government in historic heritage, the Commission undertook a survey of local governments during September and October 2005. Almost three-quarters of local councils responded to the Commission's survey questionnaire.

Table 3.5 Local government listed places, by State; survey responses

State	Councils with a heritage list	Individual places	Heritage areas ^a	Council owned places ^b	
				Average	Maximum
	% respondents	No.	No.	% listed places	% listed places
NSW	93	25 847	512	8.8	71
Vic	97	19 183	497	9.3	83
Qld	42	9 852	191	19.9	100
WAC ^c	84	8 178	391	12.7	100
SA	52	7 489	92	7.9	33
Tas	86	5 804	87	5.6	29
Totals	75	76 353	1 770	10.4	100

^a Includes historic conservation zones, heritage precincts, streetscapes and special areas. ^b Includes parks and monuments. ^c May include places in Municipal Heritage Inventories.

Source: Productivity Commission Survey of Local Governments 2005.

As shown in table 3.5, some 75 per cent of the responding councils have a statutory list, which collectively list over 76 000 individual places and 1770 heritage areas, of which around 10 per cent were council-owned. However, it is worthwhile noting here that the survey data cannot be reconciled with that provided (mainly by State

² The Tasmanian Government, which is currently reviewing arrangements, has one central list encompassing both State and locally significant places. Also, the Tasmanian Heritage Council has the right to veto all approvals for works on all listed historic heritage places.

agencies) in table 3.3. Apart from the survey response being less than complete, part of the reason may also be that the survey did not collect data on the number of places within Heritage Areas that are not listed individually.

The survey also indicated that, on average, around 50 per cent of responding councils provided assistance (ranging from 15 per cent of councils in Queensland to over 80 per cent in New South Wales). The main forms of assistance provided were free heritage advice and grants.

Further details about the survey and its results are provided in chapter 5 and appendix B.

Availability of information on listing, expenditure and condition

Analysis of the types and extent of government involvement in historic heritage places is made more difficult by the lack of readily available and reliable data. There are either large gaps in the coverage or the data come with much qualification. This applies not only for basic listing and expenditure information, but also for other aggregates, such as the financial value of the heritage estate and the value of works undertaken on heritage properties.

For instance, in New South Wales, while the Chairs of Heritage Councils of Australia and New Zealand (sub. 187, p. 32) reported New South Wales expenditure (including agency operating budgets) and assistance in 2004-05 as \$29.5 million, the NSW Heritage Office (sub. 157) identified expenditure totalling \$34.3 million on historic heritage conservation in that State:

- *NSW Heritage Incentives Program* — \$2.4 million (which mainly goes to rural and regional areas);
- *Historic Asset Maintenance Program* — \$2 million;
- *Historic Houses Trust* — \$18.2 million;
- *Sydney Harbour Foreshore Authority* — \$4 million;
- *Local Government Heritage Incentive Program* — \$12 000 per Council per annum (maximum) for relevant approved projects, totalling about \$0.3 million;
- *Centenary Stonework Program* — \$4.5 million, plus contributory funding by occupying agencies of \$2 million; and
- *occasional one-off grants* — \$0.9 million.

The NSW Heritage Office figure does not include: the operating budget for the NSW Heritage Office; funding for, and money spent by, State and Territory

government agencies for the conservation of their owned and/or managed properties; and local government expenditure on listing and heritage-related approvals. Local government incentive funds used for conservation purposes (including revenue forgone from rate rebates) are also not included.

There is also little information on the condition and integrity of Australia's historic heritage places. There are, however, some partial indicators. A 2001 survey of places in the RNE indicated that:

- 6 per cent were in poor condition;
- 9 per cent had low integrity (that is, the intactness of the original fabric that gives heritage value was low); and
- 6 per cent were vacant. (EPHC 2004, p. 1)

The survey indicated that 54 historic places had been removed, because of destruction or loss of heritage values, during the five-year reporting period. However, the RNE lists only a small proportion of historic heritage places. Most are recognised at the local government level. Based on local government data, the Environment Protection and Heritage Council (EPHC) estimates that the continuation of current trends would result in the loss of up to 15 per cent of the current stock of historic heritage places within the next two decades (EPHC 2004, p. 2).

In 2003, Heritage Victoria conducted a State of the Historic Environment project, which recorded the condition of places listed on the Victorian Heritage Register. On the basis of a 40 per cent response rate, the project found that around 20 per cent of places were in poor or very poor condition. At the same time, information submitted indicated that over \$113 million had been spent on heritage places in the recent past. (Victorian Government, sub. 184, pp. 26–7).

Another survey, conducted in 2001, indicated that 13 per cent of heritage places in Western Australia were 'at risk' (either in poor condition or in fair condition and vacant) (EPHC 2004, p. 2).

The EPHC also noted that there had been no comprehensive survey of places whose heritage value has been destroyed, either as a result of neglect or through modification or demolition.

The Commission has been unable to derive an accurate assessment of the mix and condition of listed historic heritage places, and of trends in condition/quality. Nor have we been able to establish the overall expenditure on the conservation of historic heritage places by governments or by the private sector, in any jurisdiction, nor any reasonable breakdown of expenditure by type of heritage asset, whether it

was for publicly or privately owned heritage places, or whether expenditures were for identification/research, repairs/maintenance or presentation/celebration. Therefore, the Commission is unable to make any recommendations about the adequacy or efficiency of current levels of expenditure.

In pursuing such data, it will be necessary for the Australian and State governments to provide clear guidelines to their heritage agencies and local government on what to collect and how to account for it (e.g., information on relevant accounting practices for the separate reporting of ‘additional’ heritage-related costs).

Given its importance to Australian society and to improve government accountability and enhance policy-making, there is a need for all governments to address the current gaps in data coverage — as well as its reliability and comparability — in the historic heritage conservation area.

Finding 3.1

Little reliable statistical information is available on the conservation of Australia’s historic heritage — the number, quality and composition of listed places; the nature, source and types of expenditures on historic heritage conservation; or the effectiveness and cost-effectiveness of those expenditures.

Recommendation 3.1

All levels of government should put in place measures for collecting, maintaining and disseminating relevant data series on the conservation of Australia’s historic heritage places.

4 Australian, State and Territory governments' heritage systems

The current system for heritage conservation has three tiers, with specific roles for the Australian, State, Territory and local governments. The difference between Australian, State and Territory heritage relates to the significance and scope of a place's heritage value. The criteria for the identification of heritage values are relatively consistent between the various levels of government. Australian, State and Territory governments all require their agencies to conserve the heritage values of assets they own. However, such requirements are not separately funded, and this can cause problems where conservation does not form part of the core business of the responsible agency. The Australian, State and Territory heritage systems rely largely upon legislative controls to conserve listed heritage places. These controls limit the development and use of the place in order to conserve its heritage values. Negotiation and bilateral agreements could be central to the system of conservation for heritage places but are not widely used at any government level.

In the current three-tier system for the identification and conservation of Australia's historic heritage, specific responsibilities rest with the Australian, State, Territory, and local governments. This chapter deals with the heritage legislation at the Australian, State and Territory government levels. Chapter 5 looks in more detail at local government responsibilities and practices to conserve historic heritage of local significance.

A consistent theme throughout the Australian, State and Territory heritage legislation is the criteria against which heritage is assessed (box 4.1). This consistency is a result of the Burra Charter and the now repealed *Australian Heritage Commission Act 1975* (Cwth), which influenced many of the State and Territory Heritage Acts.

While the criteria are very similar, the difference between the Australian and State or Territory levels is in the thresholds and scale of significance. That is, the Australian Government's National Heritage criteria require that a place have 'outstanding' significance to *all* Australians. In contrast, State and Territory criteria require that a place has significance to the whole of the relevant State or Territory.

Box 4.1 Common heritage assessment criteria

- The place demonstrates importance in the course, or pattern, of the jurisdiction's natural or cultural history.
- The place has uncommon, rare or endangered aspects of the jurisdiction's natural or cultural history.
- The place has potential to yield information that will contribute to an understanding of the jurisdiction's natural or cultural history.
- The place has significant heritage value because of the place's importance in demonstrating the principal characteristics of:
 - a class of the jurisdiction's natural or cultural places; or
 - a class of the jurisdiction's natural or cultural environments.
- The place has importance in exhibiting particular aesthetic characteristics valued by a community or cultural group.
- The place demonstrates a high degree of creative or technical achievement at a particular period.
- The place has strong or special association with a particular community or cultural group for social, cultural or spiritual reasons.
- The place has a special association with the life or works of a person, or group of persons, of importance in the jurisdiction's natural or cultural history.

Source: Australian, State and Territory Heritage Acts.

4.1 Australian Government heritage legislation

Almost 30 years after the Australian Government first provided legislative recognition of historic heritage places, the protection and conservation of historic places is now placed within the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The EPBC Act (s. 528) defines 'heritage value' as:

... the place's natural and cultural environment having aesthetic, historic or social significance, or other significance, for current and future generations of Australians.

The amendments established two Australian Government lists — the National Heritage List and the Commonwealth Heritage List.

The National Heritage List comprises places of national significance, with values or characteristics that have special meaning for all Australians. The list can include overseas places (if agreed to by the other country). This list gives effect to the 1997

COAG three-tier decision for the Australian Government to protect places of national and international significance.

The Commonwealth Heritage List comprises places of heritage significance located on Commonwealth land, including places owned and managed by the Australian Government. Government ownership enables these places to be directly protected and managed. Places could also be located overseas, so long as they are on Commonwealth owned or leased land. The Commonwealth List is the only list where the Australian Government has constitutional power to directly conserve and manage the listed places.

Role of the Australian Heritage Council

The Australian Heritage Council (AHC) was established by the *Australian Heritage Council Act 2003* and replaced the Australian Heritage Commission. Its main roles are: the assessment of places nominated for the National and Commonwealth Heritage Lists; advising the Minister on specific matters relating to heritage; promoting the identification and conservation of heritage; and keeping the Register of the National Estate (RNE). The AHC is also a member of the COAG Heritage Chairs and Officials forum.

The Council comprises one Chairman and six other members. They are appointed by the Minister. Two members must have expertise in the area of natural heritage, two in historic heritage and two in indigenous heritage.

The Council still maintains the Register of the National Estate

Historically, the RNE was the only Australian Government heritage list. The RNE is a national inventory of natural and cultural heritage places. Because the RNE predates the three-tier system for heritage conservation, it includes places which have significance at the national, State and local levels. Following the EPBC Act amendments, the role of the RNE has become largely informational and as a record of heritage places (CHCANZ, sub. 139, p. 9). There are around 13 000 places listed on the RNE.

The public is still able to nominate places for inclusion on the RNE. The AHC is still able to assess and enter the items on the RNE if they meet the criteria — the criteria are virtually identical to the National Heritage criteria and the Commonwealth Heritage criteria (see box 4.1), although without the threshold requirement. Contradictory to the three-tier principle, the AHC also places unsuccessful applicants to the National Heritage List onto the RNE (AHC, sub. 118, p. 12).

The RNE does not place any direct legal constraints or controls over the actions of State or local governments, or private owners. However, many States require that places listed on the RNE be included in the relevant local planning scheme, and hence, are subject to heritage controls at the local level (chapter 5).

National Heritage List

The first step for adding a place onto the National Heritage List involves the AHC assessing and advising the Minister of a place's National Heritage values. Following this, the Minister makes the final decision whether to include a place on the list.

Criteria

To be entered onto the National Heritage List, a place must meet at least *one* of the National Heritage criteria. These criteria are similar to those outlined in box 4.1.

An important part of the assessment is the 'significance test'. That is, the place must be assessed as having *outstanding* heritage value to the Australian community as a whole. The test for significance is a comparative test with other similar places. This allows the AHC to determine whether a place has 'more' or 'less' significance than similar places, or whether the place is unique within Australia.¹

Nomination and assessment of places

Any person may nominate a place to be included on the National List. There have been 97 public nominations since January 2004 (DEH, sub. 154, p. 18). In addition to public nominations, State, Territory and local governments, the Australian Government Minister and the AHC can nominate a place for the list. The public is able to comment on a proposed listing. The Minister makes the final decision on listing, but must consult with all relevant Ministers prior to making the decision to list a property.

DEH considers that greater use could be made of 'well argued nominations from State and Territory governments'. Such a process, DEH argues, would be a highly effective method to promote the National Heritage List and 'would be consistent with the spirit of the COAG [three-tier] decision' (sub. 154, p. 18).

¹ The thresholds for the Commonwealth Heritage List and the Register of the National Estate are different to those used for the National Heritage List — places that may be of significance to only local or state-level communities can be included.

For all nominations,² the Minister must request the AHC to conduct an assessment, which is carried out against the National Heritage criteria. When requesting an assessment, a brief description of the nomination must be published on the Internet. If the Minister decides to reject the nomination after the assessment, the person nominating must be advised in writing and provided with reasons. In its assessment, the AHC must not consider any factor that does not relate to the question of whether the place meets the criteria.

For every place the AHC assesses, the Council seeks to identify each owner and occupier and advise such persons of its assessment, and give them time to comment. All received comments are then provided to the Minister.

In addition to public nomination, the AHC is able to assess any place against the National Heritage criteria and its assessment is provided to the Minister (s. 324GA). The Minister may also request the Council to assess a place.

Emergency listing is possible where a place within Australia has, or may have, one or more National heritage values, and any of those values are under threat. Following listing, the procedures outlined above need to be followed, prior to the Ministerial decision to list a place permanently.

The Minister decides whether to list

The Minister makes the final decision on the entry of places onto the List, after receiving advice from the AHC regarding a place's National Heritage values. When the Minister receives an assessment from the AHC, and is satisfied that the place meets one or more of the criteria, the place can be included on the List — with a corresponding statement of its National Heritage values (s. 324J). The decision to list must be published in the Government Gazette. There is no statutory requirement for the Minister to take into account the costs imposed by listing, or that adding a place to the National Heritage List would result in a net community benefit.

The decision to list may involve 'considerable negotiation' with the owners of the proposed place and also shared responsibility where the owner is a State, Territory or local government (DEH, sub. 154, p. 13). In practice, negotiations can be protracted (e.g., with Tasmania regarding Port Arthur). The Heritage Council of Victoria commented:

The Draft Report appears to overemphasise the current role of the Commonwealth Government in the conservation of historic heritage places that are not in its ownership.

² Except for a nomination considered vexatious, frivolous or not made in good faith, or where additional information is requested but not provided.

The effectiveness of the limited number of conservation agreements prepared for places on the National Heritage List has also been overstated in the opinion of the Heritage Council. (sub. DR242, p. 12)

Removal of places from the List

A place, or part thereof, can be removed from the List, if the Minister is of the opinion that the place no longer contributes to any of the National Heritage criteria, or for defence and security reasons. Removal can only occur after the Minister has received advice from the AHC. Such removal must be done in writing and published in the Gazette.

Australian Government control over listed places

Entry onto the National Heritage List imposes a series of Australian Government controls over the place. The national heritage values of places on the National List are recorded under the EPBC Act as a matter of 'National Environmental Significance' and can trigger the Ministerial approval process. This process is triggered by actions that have, or might have, significant impacts on the National Heritage values of listed places. The Minister decides whether a proposal meets this test.

Once a development proposal triggers assessment under the EPBC Act, an environmental assessment must be carried out. The purpose of such an assessment is to provide information for the decision on whether to approve, approve with conditions, or reject the proposal. These assessments can be conducted in one of five ways, decided by the Minister:

- preliminary documentation;
- public environment report (PER);
- environmental impact statement (EIS);
- public inquiry; or
- an accredited assessment process.

Assessment under the first three requires the party proposing action to prepare and publish draft assessment documentation in accordance with published guidelines. Second, there must be a public consultation period. Third, the assessment document is finalised, taking into account public comments. Fourth, DEH prepares an assessment report for the Minister.

Assessment by accredited process occurs when processes under other legislation (either State, Territory or Commonwealth) are accredited by the Minister. Accreditation occurs in addition to other bilateral agreements and declarations that already exist for other forms of assessment.

Bilateral and Conservation agreements

The EPBC Act provides for the use of bilateral and conservation agreements as these can ensure effective conservation outcomes. Bilateral agreements are made with respect to State Government owned places and conservation agreements relate to non-government owned places. The Australian Government's use of 'conservation by agreement' has been limited — of the 24 heritage places listed on the National Heritage List,³ only one is subject to a voluntary agreement (albeit yet to be finalised) and this property is State government owned.

However, most places listed are owned by State governments. Bilateral agreements for these places are essentially Australian Government accreditation of State processes. These processes are contained within an agreed bilateral management plan for the heritage place. Bilateral agreements may specify that certain actions do not require approval under the EPBC Act, so long as each adheres to the bilaterally accredited management plan (s. 46). There is currently one bilateral agreement in the process of being finalised — the Draft Bilateral Agreement for the Sydney Opera House.⁴ DEH commented that the listing process:

... shares responsibility between the different levels of government. For instance, a state may retain significant responsibilities (both statutory and financial) for World Heritage and National Heritage listed places where they are in state ownership. Therefore, there is usually considerable negotiation with a state government before a place is entered in the World Heritage List or National Heritage List. (sub. 154, p. 13)

However, some participants (including Heritage Council of Victoria) have criticised the approach of the Australian Government to bilateral agreements. The Australian Council of National Trusts noted:

... there have been no conservation [or bilateral] agreements negotiated concerning any one of the 23 places now listed ... from the perspective of [State and Territory] governments, the Commonwealth has not yet brought sufficient funds to the table to warrant the making of an agreement. (sub. DR237, p. 44)

For National Heritage places that are owned by State Governments, the successful completion of a bilateral agreement would, most likely, not be the determining

³ As at April 2006.

⁴ <http://www.deh.gov.au/epbc/publications/draft-sydney-Opera-house-bilateral.html>.

factor in the successful conservation of the place — as government owned ‘iconic’ places are not typically under threat.

Conservation agreements can be entered into by the Australian Government and private owners. The Australian Government can not enter into a conservation agreement unless it is satisfied that the agreement will result in a net benefit to the conservation of the place’s heritage values and is not inconsistent with the National Heritage management principles (s. 305). Bilateral agreements must also include and follow the heritage management principles (s. 51A) — box 4.2. The EPBC Act allows Regulations to be made outlining considerations that must be taken into account when assessing whether the agreement results in a net benefit. The Act imposes penalties for failing to adhere to an agreement.

Box 4.2 National Heritage management principles

- The objective in managing National Heritage places is to identify, protect, conserve, present and transmit, to all generations, their National Heritage values.
- The management of National Heritage places should use the best available knowledge, skills and standards for those places, and include ongoing technical and community input to decisions and actions that may have a significant impact on their National Heritage values.
- The management of National Heritage places should respect all heritage values and seek to integrate, where appropriate, any Commonwealth, state, territory and local government responsibilities for those places.
- The management of National Heritage places should ensure that their use and presentation is consistent with the conservation of their National Heritage values.
- The management of National Heritage places should make timely and appropriate provision for community involvement, especially by people who:
 - have a particular interest in, or associations with, the place, and
 - may be affected by the management of the place.
- The management of National Heritage places should provide for regular monitoring, review and reporting on the conservation of National Heritage values.

Source: DEH (Heritage Fact Sheet 15).

To date, only four places on the National Heritage List are non-government owned, and no conservation agreements have been entered into — the EPBC Act requires that an up-to-date list of conservation agreements is available to the public (s. 310). In order to guarantee the effective conservation of nationally significant heritage places, all non-government owned places listed on the National Heritage List should be subject to a negotiated conservation agreement.

If a person bound by a conservation agreement engages or proposes to engage in conduct that constitutes a contravention of the agreement, another person bound by the agreement or the Minister may apply to the Federal Court for an injunction (s. 476).

Commonwealth Heritage List

A place can only be included on the Commonwealth Heritage List⁵ where it meets one or more Commonwealth Heritage criteria, and is *entirely* within a Commonwealth area (or if outside Australia on Commonwealth owned or leased land). The majority of the requirements and processes for entry and assessment are identical to those outlined above for the National Heritage List (box 4.1).

The difference between the National and Commonwealth criteria is one of degree of significance and scope. First, the National criteria refer to ‘outstanding’ value whereas Commonwealth refers to ‘significant’. Second, the National criteria require that a place has outstanding value to the Australian community as a whole, whereas the Commonwealth list can contain heritage items that have only State, Territory or local significance.

As the owner, the Australian Government can impose a more stringent and direct protective conservation regime for Commonwealth Heritage places, than in relation to places on the National Heritage List.

The Commonwealth Heritage List requires that Australian Government agencies prepare management plans and heritage strategies and minimise adverse effects on the heritage values of listed places.

The primary mechanism for the conservation of Commonwealth Heritage places is the management plan. The management plan must follow the Commonwealth Heritage management principles, which are identical to the management principles outlined in box 4.2. An agency may ask the Minister to endorse the plan. Endorsement can only happen if the plan provides for the conservation of the heritage values of the place concerned (s. 341ZD). Agencies with endorsed plans do not need to seek advice from the Minister over proposed actions that are covered in that plan. In the absence of an endorsed plan, all Australian Government agencies must seek the Minister’s advice prior to undertaking actions likely to have an impact on an item’s heritage values. Prior to the Minister advising the agencies, the AHC must advise the Minister of its opinion of the impact of the proposal.

⁵ The sections in the EPBC Act for the Commonwealth Heritage List are ss. 341C–341R.

Heritage responsibilities for Australian Government agencies

Australian Government ownership or control of a property that has, or may have, heritage values (either National or Commonwealth) triggers processes that the Australian Government agency must adhere to. These processes are:

- the agency must assist the Minister and the AHC in the identification, assessment and monitoring of those values (ss. 324Z and 341Z);
- the agency must assist the Minister to produce a management plan; and
- if the agency sells or leases a property on either list, it must ensure, where practicable, that there is a covenant in place to protect the relevant values. Otherwise, the Minister must attempt to enter into a conservation agreement with the buyer or lessee (ss. 324ZA and 341ZE).

Australian Government agencies are prohibited from taking an action that has, will have, or is likely to have an adverse impact on the place's heritage values (either National or Commonwealth). This is subject to two exemptions: that there is no feasible and prudent alternative to taking the action; and all measures that can reasonably be taken to mitigate the impact of the action on those values are taken. This is quite a stringent requirement as the exemptions have been interpreted very narrowly by the Courts.⁶

Repair orders

The Australian Government is also able to apply for repair orders for places on the National and Commonwealth heritage lists. This power enables the Minister to take any action necessary to repair, mitigate, or prevent damage to a place's heritage values. The costs of any works can be recovered from the owner of the relevant National or Commonwealth heritage-listed place (ss. 499 and 500).

Repair orders bring the Australian Government into line with the States and Territories who all have similar powers (see below).

Offences and penalties

The EPBC Act contains numerous offences and provides for substantial penalties for actions affecting both National and Commonwealth Heritage places. The main

⁶ See *Yates Security Services v Keating* (1990) 25 FLR 1. The previous Australian Heritage Commission Act contained the same restrictions.

offence relating to heritage is in relation to taking actions that may affect a place's heritage value without approval. This offence carries a maximum penalty of seven years imprisonment and/or a fine of up to \$550 000 for individuals, or \$5.5 million for companies.

It is also an offence to breach a condition of an approval. It carries a maximum penalty of two years imprisonment and/or a fine up to \$110 000 for individuals, or \$1.1 million for corporations.

Financial support

The Australian Government provides financial support for historic heritage through direct assistance schemes, ad hoc grants, and the establishment of Australian Government heritage agencies.

A direct assistance scheme called the 'National Heritage Investment Initiative' is budgeted to provide \$10.5 million between 2005-06 and 2008-09. The aim of the Initiative is to provide financial incentives for the restoration and conservation of places of important historical heritage to Australia. Priority will be given to places included in the National Heritage List.

In addition to this direct funding scheme, the Australian Government has committed to several ad hoc conservation and restoration programs. This includes the restoration of St Mary's Cathedral and the Church of St Mary's Star of the Sea. It also includes the restoration of several lesser known sites. In total, the amount of ad hoc funding is around \$14.2 million between 2005-06 and 2008-09.

The Australian Government provides around \$24 million annually for the running of the Heritage Division in DEH, as well as around \$29 million annually for the Sydney Harbour Federation Trust. It also provides \$800 000 per year as grants-in-aid to the National Trusts.

Views on the Australian Government heritage system

Most participants support the three-tier system, and hence the focus of the Australian Government on historic heritage places of national significance and places it owns. The Chairs of Heritage Councils of Australia and New Zealand stated:

The reality is that at a national level, if you talk about policy framework, the policy framework through national, state and territory is really quite a sophisticated framework in its own way. It actually sets levels of significance in the way in which properties are to be managed. (trans., p. 857)

Nonetheless, there is some concern that the Australian Government has used the three-tier approach to remove funding it had previously supplied to States, Territories and local governments and demonstrates a 'lack of leadership'. Australia ICOMOS commented that:

There are perceptions that since the passing of the new legislation, the Australian Government has turned its attention inward, focussing all its energies on the National Heritage List and reducing its influence in setting national standards for heritage conservation and in encouraging community involvement in heritage conservation. There appears to be little or no research, no policy or program development, little engagement in public heritage issues and limited fostering of networks such as the National Cultural Heritage Forum, which has not met under the current Commonwealth Minister for the Environment and Heritage. (sub. 122, p. 20)

Bishop Ian George, former Anglican Arch-Bishop of Adelaide, submitted that:

... the Commonwealth government should not withdraw from concern for the funding of heritage, at a wide range of levels. It's clear from the report that an increasing number of Australians have significant care for the built and natural heritage of this country. As the Commonwealth acquires ever-increasing tax surpluses a significant percentage of those funds, I submit, should be used to preserve our heritage, either by the Commonwealth directly or by funding of state, territory and local government heritage programs. (DR trans., p. 258)

The ACT Heritage Council said that there appears to be no consistent distribution of funding, even for its own heritage places. The Council argued that funding seemed to be based on political considerations:

All I can say is that the Commonwealth, in particular, has not been consistent in providing funding for even its own heritage obligations in relation to Commonwealth heritage places, and that the allocations which have been made in recent years have often been made on purely political bases, not on the basis of established heritage need or distribution, equitably, of those funds. There have been a number of one-off grant programs in the last couple of years which have been a bit dicey. (DR trans., pp. 552-553)

The ACT Heritage Council also noted that, from its position, heritage conservation does not receive the same level of assistance from the Australian Government as natural heritage:

Well, the ACT government can expend and does expend to the limits of its capacity, but it sees - well, sitting in my seat, I see substantial support going to things like ALPS processes, for example, in a natural environment, some of which is cultural, but most of it is natural, but I see no parallel support for the historic environment coming from the Commonwealth coffers. (DR trans., p. 553)

The Heritage Council of Victoria told the Commission that Commonwealth funding is needed at all levels of government, especially in order to adequately conserve projects that require large sums of money (including education):

Without funding from the Commonwealth, the delivery of large-scale heritage projects is often beyond the capacity of State or local Government. The Australian Government needs to take a national perspective in relation to heritage funding, which includes places at all levels of significance. Governments at all levels have a role in funding publications and education programs to dispel myths and misinformation that contribute to market failure. (sub. DR242, p. 14)

Australia ICOMOS (sub. 122, p. 82) also argued that the Australian Government's focus was too narrow, that no over-arching strategy had emerged and that the Australian Government had not yet encouraged a consistent approach between all States and Territories. The National Cultural Heritage Forum (sub. 126, p. 3) argued that an integrated national heritage policy was required to address the disparity between statutory arrangements in the various jurisdictions and should specifically include minimum standards and practice benchmarks.

In saying that, however, the 2001 EPBC Act amendments have resulted in greater protection for nationally-iconic heritage places than was possible under the previous RNE system. The new Australian Government system, which has the potential to focus on 'conservation by agreement', should result in greater conservation outcomes than 'conservation by force'. Indeed, rigorous selection of places, on a priority bases, and a focus on negotiated outcomes could be seen as examples of national leadership by the Australian Government, and a model which State, Territory and local governments could adopt. However, the extent of the Australian Government's use of negotiated agreements is not yet fully implemented.

4.2 State and Territory heritage legislation

All State and Territory governments have legislation which specifically deals with the conservation of historic heritage places (table 4.1). These statutes are separate from legislation dealing with natural and indigenous heritage conservation, and some have separate legislation governing movable heritage and shipwrecks.

Most jurisdictions, in their Local Government and/or Planning Acts, include a requirement for local councils to take account of heritage values in their planning decisions. Local council discretion over planning and heritage is often guided by State government controls. These provisions are looked at in more detail in chapter 5.

Table 4.1 Principle heritage legislation

<i>State</i>	<i>Natural</i>	<i>Indigenous</i>	<i>Historic heritage</i>	<i>Movable</i>	<i>Shipwrecks</i>	<i>Heritage Council</i>	<i>State/Territory National Trust</i>
Cwth	Environment Protection and Biodiversity Conservation Act 1999	Environment Protection and Biodiversity Conservation Act 1999	Environment Protection and Biodiversity Conservation Act 1999	Protection of Movable Cultural Heritage Act 1986	Historic Shipwrecks Act 1976	Australian Heritage Council Act 2003	na
NSW	National Parks and Wildlife Act 1974	Heritage Act 1977	Heritage Act 1977 Historic Houses Act 1971	Heritage Act 1977	Heritage Act 1977	Heritage Act 1977	National Trust of Australia (NSW) Act 1990
Vic	National Parks Act 1975 Parks Victoria Act 1998	Archaeological and Aboriginal Relics Preservation Act 1972	Heritage Act 1995	Heritage Act 1995	Heritage Act 1995	Heritage Act 1995	na
Qld	Nature Conservation Act 1992	Aboriginal Cultural Heritage Act 2003;	Queensland Heritage Act 1992	Queensland Heritage Act 1992	Queensland Heritage Act 1992	Queensland Heritage Act 1992	National Trust of Queensland Act 1963
WA	Conservation and Land Management Act 1984	Heritage of Western Australia Act 1990	Heritage of Western Australia Act 1990	Heritage of Western Australia Act 1990	Maritime Archaeology Act 1973	Heritage of Western Australia Act 1990	National Trust of Australia (WA) Act 1964

(continued next page)

Table 4.1 (continued)

<i>State</i>	<i>Natural</i>	<i>Indigenous</i>	<i>Historic heritage</i>	<i>Movable</i>	<i>Shipwrecks</i>	<i>Heritage Council</i>	<i>State/Territory National Trust</i>
SA	Native Vegetation Act 1991	The Aboriginal Heritage Act 1988	Heritage Act 1993	Heritage Act 1993	Historic Shipwrecks Act 1981	Heritage Act 1993	National Trust of South Australia Act 1953
Tas	Nature Conservation Act 2002	Aboriginal Relics Act 1975	Historic Cultural Heritage Act 1995	Historic Cultural Heritage Act 1995	Historic Cultural Heritage Act 1995	Historic Cultural Heritage Act 1995	National Trust of Australia (Tasmania) Act 1975
NT	Territory Parks and Wildlife Conservation Act	Northern Territory Aboriginal Sacred Sites Act 1989	Heritage Conservation Act 1991	Heritage Conservation Act 1991	Heritage Conservation Act 1991	Heritage Conservation Act 1991	National Trust (Northern Territory) Act 1976
ACT	Nature Conservation Act 1980	Heritage Act 2004	Heritage Act 2004	Heritage Act 2004	Heritage Act 2004	Heritage Act 2004	na

Only Victoria and the ACT do not have legislation establishing and covering the activities and structure of the State and Territory National Trusts.

Heritage legislation, in all jurisdictions, establishes a similar set of institutions and mechanisms for meeting the objective of identifying and conserving State-significant historic heritage. These are:

- a register of historic heritage places (including criteria and procedures for identifying places for inclusion on the register);
- controls over the development of listed places (including obligations on owners to conserve heritage aspects and requirements to submit proposed changes for approval);
- the establishment of a Heritage Council (to manage the register, advise government and oversee the review of the heritage aspects of applications for changes to listed properties); and
- funding programs to assist conservation, by providing incentives to private owners of listed places, sometimes general and sometimes for specific works.

The States' and Territories' Heritage Acts have similar objectives (box 4.3). These objectives typically include the establishment of Heritage Councils and the introduction and maintenance of a register of State-significant heritage places. The objectives of the Acts also include the control over development of places listed in the register and the ability to enter into agreements with owners of listed properties. Some States also include specific reference to shipwrecks in their heritage legislation (table 4.1). The Northern Territory Act (s. 3) contains one general statement of objectives:

Box 4.3 Objectives of State heritage acts

- to provide for the establishment of the State Heritage Council;
- to provide for the maintenance of a register of places of significance to the State's cultural heritage;
- to regulate development of registered places;
- to provide for heritage agreements to encourage the conservation of registered places;
- provide for protection of shipwrecks and excavations; and
- provide appropriate powers of protection and enforcement.

The principal object of the Act is to provide a system for the identification, assessment, recording, conservation and protection of places and objects of prehistoric,

protohistoric, historic, social, aesthetic or scientific value, including geological structures, fossils, archaeological sites, ruins, buildings, gardens, landscapes, coastlines and plant and animal communities or ecosystems of the Territory.

In addition to the usual items included in its objectives, the Western Australian legislation also includes reference to facilitation of development which is harmonious with the cultural heritage of an area and to promote public awareness of historic heritage.

Definition of heritage

The various statutes define historic heritage slightly differently, but contain similar core elements. These elements include aesthetic, archaeological, architectural, technological, historical or social significance. Queensland and Western Australia also make specific reference to significance for past, present or future generations. The New South Wales Heritage Act distinguishes between State and local significance. An item can be both of State and local significance, and local significance may or may not also be State significance. A place may be on a State Register and a local heritage list for different reasons.⁷

For example, section 4A of the NSW Heritage Act states that:

“State heritage significance”, in relation to a place, building, work, relic, moveable object or precinct, means significance to the State in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item.

“Local heritage significance”, in relation to a place, building, work, relic, moveable object or precinct, means significance to an area in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item.

The Victorian Heritage Act states that ‘cultural heritage significance’ means aesthetic, archaeological, architectural, cultural, historical, scientific or social significance (s. 3, Heritage Act 1995).

Similarly, in Queensland heritage significance includes ‘its aesthetic, architectural, historical, scientific, social or technological significance to the present generation or past or future generations’ (s. 4, Queensland Heritage Act 1992).

⁷ For example, the Royal Exhibition Building in Melbourne is on World, National, State and local heritage lists, but for different reasons — its significance is different at each scale but exceptional at all scales.

Heritage Councils and Offices

The State and Territory statutes establish State Heritage Councils. These Councils typically either advise the relevant Minister on heritage issues — specifically the need to list certain places — or have the power themselves to enter places on the State Register. These Councils are made up 8–15 members with differing expertise. For example, members may be architectural experts, historical experts or development experts. Some States also allow Councils to make the heritage criteria rather than place such criteria in the legislation — for example, the New South Wales and Victorian Heritage Acts allow Councils to publish criteria based on specified indicators contained in the Act.

In addition to the Heritage Council, most States also provide for a secretariat body whose role is to assist and advise the Council⁸ — typically called the Heritage Office. While the role of these bodies differs between jurisdictions, they include administering the State Register and funding schemes, dealing with minor matters, and producing publications on heritage matters. In Victoria, the Executive Director of Heritage Victoria has primary responsibility for the administration of its Heritage Act — including determinations of permits and consents — and is also a member of the Heritage Council.

4.3 Registers of State significant heritage places

One of the fundamental aims of the heritage statutes is to provide for the establishment and maintenance of a register for the State's significant heritage places. These registers are the primary mechanism through which places with State-significant heritage values are to be identified, protected and conserved — similar to that described above for the National Heritage List.

Some States have a two-step process for entry onto the Heritage Register. That is, assessment by the Heritage Council and then listing by the Minister. The direct power of the Minister can also vary from the decision to list, or a power of veto. Other jurisdictions place sole responsibility in the Heritage Council to assess and list (see below).

The following outlines the criteria for entry onto the registers; the procedures for listing a place; whether areas can be listed in addition to individual places; and State controls over listed places. The incentives and financial support provided by States to listed properties are also examined.

⁸ In Queensland, Western Australia and South Australia this body is included in the Council itself.

Criteria for entry onto registers

Each State and Territory Heritage Act contains specific criteria for entry onto the relevant heritage register — or enables the relevant Heritage Council to develop and publish criteria. The criteria are broadly similar to the criteria listed in box 4.1. The Heritage Acts require that for a place to be listed it must meet, in the opinion of the relevant Heritage Council, one or more of the stated criteria. In South Australia, the courts have confirmed that a property can be listed even if it only meets one of the requirements (see *Protopapas Pty Ltd v State Heritage Authority* (1994) EDLR 274).

While the majority of criteria are similar across jurisdictions, some significant differences remain. For example, Victoria includes an additional criterion allowing the Heritage Council to consider any other matter which it thinks relevant to the determination of cultural heritage significance (s. 8(2) of *Heritage Act 1995* (Vic)). New South Wales and Queensland include a specific reference that a place can not be excluded on the ground that places with similar characteristics have already been entered in the register (s. 23 of the *Queensland Heritage Act 1992* (Qld) and NSW State Heritage Criteria).

Listing procedures

Most States and Territories (except New South Wales and Tasmania) allow any person or body to nominate an item to be listed. In New South Wales, listings can be initiated by the relevant Minister, Heritage Council, owner of the property or local governments. In Tasmania, only the Heritage Council can initiate the registration process — although advocates can lobby the Council.

Once the process is initiated, each jurisdiction has processes which vary from straight-forward to complex. In Victoria, Queensland and Tasmania it is the Heritage Council which decides upon listing places in the register. In New South Wales only the Minister, upon advice from the Heritage Council, may list places. The Minister also makes the decision to list in Western Australia. In South Australia the Minister may object to a listing on the basis that a listing is contrary to the public interest.

All States allow for a period of consultations and submissions after the initial decision by the Heritage Council that a place meets the heritage criteria. The Heritage Council must generally advertise and advise the owner and occupiers in writing of its intention to list a property. New South Wales, Victoria, Queensland and South Australia provide for hearings into the issue of listing.

Appealing the decision to list

Following the final decision on listing, most Heritage Acts allow for property owners and occupiers to appeal the decision made at first instance. These are either administrative appeals, judicial reviews (by a court or administrative appeals tribunal) or both. Western Australia does not allow appeals on the issue of listing a place on the register.

Administrative appeals (i.e., appeals to another bureaucratic body or the Minister) occur in New South Wales and Victoria. New South Wales provides for a Ministerial review and the establishment of a Commission of Inquiry. A similar process exists in Victoria.

Queensland and South Australia allow judicial appeals on the issue of the ‘cultural heritage significance’ of the place. This can have the affect of usurping the criteria listed in the statutes and allows the judiciary to determine its own definition of cultural heritage significance (McLeod 2005, p. 7102). In Tasmania, appeals against registration can only be made on the basis that the place does not satisfy any of the required criteria. The Northern Territory does not allow appeals on the merits of the decision to list. The ACT Heritage Act provides for merit reviews by the ACT Administrative Appeals Tribunal.

Notification requirements

All State and Territory Heritage Acts require that notification be given in a general manner through newspaper or gazettal. However, the extent of specific notice to property owners and occupiers differs across jurisdictions.

Queensland, South Australia, Tasmania and the Northern Territory all require that the Heritage Council must give notice to the owner (and occupier) of the decision to list. Queensland requires that reasons be provided, as well as owners’ rights of appeal. South Australia also requires that reasons be provided. Failure to give notice may result in invalidating the listing of the property.

New South Wales, Victoria, Western Australia and the ACT, while also requiring specific notice to be given to owners, only require that the Heritage Council does so as far as is practicable (or must use best endeavours). Both New South Wales and Victoria specifically do not allow appeals over failure to give proper notice. Appeals would be unlikely to succeed in Western Australia and the ACT due to the use of best endeavours requirement.

Can heritage areas be listed?

Heritage conservation of State-significant places typically focuses on individual places or properties. For example, the Victorian and Queensland Heritage Acts do not contain any specific provisions for the conservation of heritage areas.⁹ McLeod comments that in New South Wales:

The term “precinct” is used through out the Heritage Act and appears in the definition of “environmental heritage”. It is defined in s 4 to mean “an area, or part of an area, or any other part of the State”. It is not equivalent to the “heritage area” concept which forms part of heritage legislation in some other jurisdictions. (2005, p. 7130–1)

Some jurisdictions do allow for the preservation of historic precincts at the State level. Western Australia allows a precinct to be listed on the register, notwithstanding that each place within that precinct does not have such significance. The Tasmanian legislation also allows it to recognise heritage areas. Once declared, no work can be carried out in the area without permission from the Heritage Council. McLeod (2005, p. 7275–6) notes that this is problematic as it ‘confers effective planning authority’ on the Heritage Council and this conflicts with the policy of delegating planning to local authorities.

4.4 State controls over places listed on State Registers

All jurisdictions enforce controls over places that are listed on their heritage registers. These controls range from emergency stop orders to development controls (to a varying degree). Most jurisdictions also include provisions for appeals against decisions made by the Heritage Council.

Emergency controls over non-listed places

The traditional power of heritage legislation has been the ability to stop demolition of historic places and buildings (this flows from the experiences in the 1970s). For example, under the New South Wales Heritage Act, the Minister can issue an Interim Heritage Order (IHO) over a place of local or State significance when it appears that the place is under potential or real threat. Once an IHO is made, the property faces the same restrictions as if it was listed on the State Heritage Register. There is no right of appeal over the issuing on an IHO. Victoria, Queensland, Western Australia, South Australia, Tasmania and Northern Territory have similar

⁹ Heritage precincts can be conserved through the planning schemes and local significance conservation. See chapter 5.

provisions. In South Australia the issuing of an emergency protection order must be confirmed by the Environment, Resources and Development Court within four days. During the interim protection period, the relevant State Heritage Council must assess the heritage significance of the place and either enter it on the register or remove the interim order after a set period.

Development controls

All Heritage Acts contain some sort of control over the use and development of the land and buildings on properties listed on the State register. These controls also apply for places which have interim or emergency listings. There is no need to seek the owner's approval prior to imposing the controls.

The main consequence of heritage development controls is that they apply for activities which generally would not attract the need for development approval under the jurisdiction's planning and development laws (see appendix C for a detailed discussion of these laws). Another important difference is that it is usually the Heritage Council or Office that is the development authority (rather than the local government) for heritage places — or at a minimum, the development authority must seek the advice of the Heritage Council. That is, owners must seek permission from the Heritage Council for development on listed properties. For example, in Tasmania, all planning decisions over places listed on the State Heritage Register are made by the Tasmanian Heritage Council as well as local councils — this is directly at odds with the idea of an integrated planning system.

The Heritage Acts generally require the owner to gain approval for activities that results in:

- demolition of the building;
- damage to any part of the place, precinct or land;
- any development to the land on which the listed building or item is located, or which is located within a precinct;
- alterations to the building or place;
- the display of any notice or advertisement (signage) on the place, building or land; and
- removal or alteration of any tree or vegetation on the land, place or precinct.

The level of control over development varies across jurisdictions. For example, the New South Wales Heritage Act compels the Heritage Council to refuse any application to demolish the whole of a listed building unless it is dangerous or will be relocated to other land. The approval of development applications generally

depends on how the application would affect the heritage significance of the place. The level of legislative guidance on the factors to be considered also varies between jurisdiction. For example, the Victorian legislation compels the Executive Director to consider an application's effect on the heritage significance of the place as well as the effect on the reasonable and economic use of the place if the application is refused. The Queensland Act allows for the demolition of heritage places where there is no 'prudent or feasible alternative' (s. 36(8)). Western Australia has similar provisions. However, in Western Australia, the Heritage Council only provides advice, it does not make a decision. The final decision rests with Ministers, public authorities and local councils (see s. 78 of the Heritage Act, which provides that the Council must be asked advice prior to the making of a development decision).

In Tasmania a person must not carry out any works or development in relation to a registered place or a place within a heritage area which may affect the historic cultural heritage significance of the place unless the works are approved by the Heritage Council of Tasmania. This includes any physical intervention be it exterior or interior, demolition, subdivision, and construction of hoardings or signs.

FINDING 4.1

The listing of properties on a State or Territory Heritage Register results in the relevant Heritage Council becoming the de facto planning authority. This differs significantly from the approach to non-heritage places where the local council is generally the planning authority. This can result in the need for dual approvals for any proposed development.

Legislated exceptions from development approval

Some Heritage Acts (e.g., Queensland) contain legislated exemptions from the requirement to obtain development approval for certain types of works. Other Acts (e.g., Victoria and Tasmania) allow the Heritage Council to grant exemptions administratively (either individually or for a type of work). The Queensland Heritage Act allows the making of regulations to exempt certain actions. For example, the Queensland Heritage Regulation 1992 (Reg. No. 254 of 1992) excludes the following:

- emergency work;
- maintenance work;
- minor repair work;
- work that involves the replacement of small objects that;
 - will cause no detriment to the heritage significance;

-
- is not of significant scale; and
 - is reversible.

New South Wales and South Australia do not contain statutory exemption from the need to seek development approval for places listed on their State Heritage Register.

Maintenance and repair orders

In response to ‘demolition by neglect’, most Heritage Acts include a power for the responsible Minister, or the Heritage Council, to order an owner to conduct maintenance or repair on the listed property. For example, the New South Wales Heritage Act provides for the setting by regulation of minimum standards of maintenance and repair, and creates an offence of not maintaining a listed property up to those standards (standards are listed in Part 3 of the Heritage Regulation 1999).

The New South Wales Act also allows the Heritage Council to issue an order to an owner to remedy its failure to maintain the property (s. 120). If a person fails to follow the order, the Heritage Council may carry out the works and recover its costs. The same powers exist in Victoria.

Queensland, Western Australia, South Australia, Tasmania, and Northern Territory have power to order restoration. That is, if a person is convicted of non-approved development under the Heritage Act, he/she can be ordered to make good, to the satisfaction of the Minister, any damage done by their action. The Minister can also undertake the activity and recover costs from the owner.

Non-development orders

Both New South Wales and Victoria have power to impose non-development orders on properties whose owners fail to obey a maintenance order or which have been convicted of engaging in prohibited activities. Such orders can stop development for up to 10 years.

In Queensland, Western Australia, South Australia, and Tasmania a person contravening an order under the Heritage Act can also face non-development orders. These last for 10 years, except in Tasmania where it lasts for five years. Note that in these jurisdictions such orders cannot come from failure to maintain. The Northern Territory legislation does not contain such powers.

Certificate of immunity

In Queensland, South Australia and Tasmania, it is possible for an owner of a property to request that the Heritage Council issue a certificate of immunity. Such a certificate means that a place cannot be placed on the State Heritage Register within five years from the date of issue. If a statement is not issued, the Heritage Council has to provide the owner with reasons.

In New South Wales and Victoria, it is possible to ask for a certificate stating that a property is not subject to heritage controls or on the Heritage Register. However, such a certificate does not provide immunity for a future period.

Appeals against approval of works and orders

Jurisdictions differ as to what decisions are appealable. There are also different appeal mechanisms for approval of works and the making of orders.

Where the heritage administration is conducted by a body under the Council (such as the Heritage Office), generally any decision of that body is appealable to the Heritage Council of the jurisdiction. For example, in Victoria decisions made by the Executive Director are appealable to the Heritage Council — of which the Executive Director is an ex officio member.

In every jurisdiction, except the Northern Territory, the owners (or other people with appealable interests) have a right of appeal to the relevant Administrative Tribunal or Land Court. This can be different than the appeals mechanism provided for decisions relating to actual listing (see above). These appeals generally revolve around whether the decision to permit or prohibit proposed works would damage the heritage values of the property.

Penalties

In New South Wales the maximum penalty is a fine of 10 000 penalty units¹⁰ or six months imprisonment. Victoria has a maximum fine of 3000 penalty units. In Queensland, the maximum penalty is 17 000 penalty units. In Western Australia, failure to comply with a stop order attracts a penalty of \$10 000, plus \$1000 per day the works continue, and the possibility of up to two years imprisonment. In Tasmania, the maximum penalty for a corporation is \$1 million and \$500 000 for individuals.

¹⁰ Penalty units are currently \$110.

4.5 State and Territory government-owned heritage buildings

Unlike the Australian Government, State and Territory governments do not maintain a separate all-inclusive heritage list for government-owned properties. Government-owned heritage buildings that have State significance can be entered in the relevant State Heritage Registers. Buildings which are of local significance can be placed within the relevant local planning scheme (chapter 5). Some jurisdictions do have a separate requirement for government agencies to identify and conserve historic places that they own, operate, or manage.

New South Wales has the closest to an all-encompassing register of State owned heritage places, akin to the Commonwealth Heritage List. Section 170 of the Heritage Act 1977 requires agencies to identify, conserve and manage heritage assets owned, occupied or managed by that agency. Section 170 requires government agencies to keep a register of heritage items, which is called a Heritage and Conservation Register or more commonly, a s. 170 Register. State significant items identified in a s. 170 register are considered for listing on the State Heritage Register. Over 780 State significant government-owned items are listed on the State Heritage Register. All s. 170 Registers are searchable using the NSW online Heritage Inventory.

The NSW Heritage Office has published the *State Agency Heritage Guide* (NSW Heritage Office 2005). This guide outlines the State-owned heritage management principles (box 4.4). The aim of the principles is to ensure that the State Government is a model owner and conservator of historic heritage.

While Victoria and Western Australia do not have separate government-owned registers, both governments provide specific guidance to State agencies for the management and conservation of place listed either in the State Register or local planning schemes.

In Victoria it is the Department of Sustainability and Environment (DSE), rather than Heritage Victoria, that directly and indirectly manages many historic places in Victoria (but obviously not those still in use such as schools, hospitals and railway stations). The Department's management of historic places on public land is based on the Burra Charter. DSE relies upon the State Register and local planning schemes to identify and protect government properties. The State Heritage Register contains 631 public-owned places. The Heritage Act allows for the acquisition of heritage places:

The philosophy supporting [this] policy is that government acquisition is not desirable if the private sector is managing the place adequately and protecting its values. The

Victorian Government will only consider the acquisition of historic heritage places if it is essential to its survival. (sub. 184, p. 23)

Box 4.4 State-owned heritage management principles

1. *Heritage asset management strategy*
 - Each agency is required to have a strategy that implements the principles and guidelines outlined in this document.
2. *Identification of heritage assets*
3. *Lead by example*
 - The public sector should set the standard for the community in the management of heritage assets.
4. *Conservation outcomes*
 - State agencies should aim to conserve assets for operational purposes or to adaptively re-use assets in preference to alteration or demolition.
5. *Appropriate uses*
 - Heritage assets should, where feasible, continue to be maintained in their operational role.
6. *Maintenance of heritage assets*
 - Heritage assets are to be managed with the objective of preventing deterioration and avoiding the need for expensive ‘catch-up’ repairs.
7. *Transfer of ownership*
 - The transfer of ownership needs to be planned and executed so as to conserve the item’s significance.
8. *Management of redundant assets*
 - The management of heritage assets no longer in use should be planned and executed so as to conserve the item’s heritage significance.
9. *Monitor performance and condition*
10. *Reporting*
11. *Promotion*
 - State agencies should take every opportunity to celebrate and promote their heritage estate with the community.

Source: NSW Heritage Office (2005).

DSE has responsibility for approximately 150 redundant court houses, with equal numbers of other public buildings such as railway stations, police residences and school buildings. The Cultural Sites Network is being developed to help determine:

-
- places which may be over-represented and prioritise those for focusing funding and resources; and
 - where acquisitions may be appropriate to retrieve places which are inadequately represented.

The Network uses a thematic rather than an architectural approach as the basis for selecting sites. Using the Australian Heritage Commission's Principal Australian Historic Themes as a foundation, the following themes have been identified:

- Protection of Special Environments.
- Exploration and Survey.
- Exploitation of Natural Resources.
- Primary and Secondary Production.
- Tourism and Recreation.
- Communications.
- Migration.
- Settlements, Towns and Cities.
- Government Services and Institutions.
- Commemoration.

The Heritage Council of Western Australian (HCWA) has published guidance on government policy regarding the disposal of heritage assets (either through sale, lease or demolition). The WA Government is the largest owner of listed historic heritage in the State. Notification of a proposed disposal should be supplied to the Heritage Council a minimum of four months prior to placement of the property on the market, or prior to a proposed demolition.

Buildings and structures will generally need to be considered as part of this process if they:

- are 60 years old or more;
- are already listed on an existing heritage list such as a Municipal Inventory, or
- display other evidence of potential significance.

Where the HCWA concludes that the place requires special protection, a Conservation Plan and/or a Heritage Agreement is prepared.

The commitment to identify, conserve and manage publicly-owned historic heritage places varies considerably across State and Territory governments.

4.6 State incentives for owners of listed properties

The Heritage Acts provide for incentives to offset (at least partly) the costs imposed on owners of listed properties. The schemes focus primarily on agreements between the Heritage Councils and the owners. Such schemes grant the owner access to various forms of financial assistance (including tax rebates).

Heritage agreements/covenants

Heritage agreements (covenants in Victoria and Northern Territory) are agreements between the Heritage Council (or Minister) and the owner of a listed property. The various statutes allow a variety of elements to be included in such agreements, but generally they include the following:

- the conservation of the item;
- assistance for its conservation, in the form of financial, technical, professional or other advice;
- a valuation review (for land tax purposes);
- restrictions on the use of the land;
- requirements to carry out work, to a specified minimum standard;
- availability for public use; and
- charges for admission.

Typically, such agreements are attached to the title of the property and therefore also apply to future purchases. Generally, such agreements are enforceable through the Courts or Tribunals.¹¹

However, while Queensland allows heritage agreements, the Act does not contain any financial assistance to be provided as incentive for owners to enter into such

¹¹ Curiously, in New South Wales there is only provision for the Minister to seek an injunction in Court for breaches, not the property owner.

agreements — other than re-valuation of the land for land tax purposes (McLeod 2005, p. 7188).

In Western Australia, heritage agreements are available for properties that contribute to the overall sense of historic heritage significance, even though the individual property is not on the State Register.

Heritage agreements, however, are not the primary process through which jurisdictions impose heritage controls. For example, in New South Wales there are only three heritage agreements out of the 1498 places on the State Register. Similarly, the Northern Territory only has two heritage agreements out of 160 listed places.

Financial assistance for historic heritage places

All State and Territory governments provide financial assistance for the conservation and restoration of historic heritage places. Typically, explicit grant programs apply to private or not-for-profit owners of listed historic heritage places. The amount of direct annual funding ranges from \$100 000 in the ACT, to \$4.3 million in Western Australia (table 3.4).

Government agencies that own heritage places are the other main recipient of expenditure on heritage conservation. The aggregate level of expenditure provided to government-owned historic heritage places is difficult to calculate since departments and agencies are generally required to fund maintenance out of their own budget. However, some ‘iconic’ buildings can be clearly identified. For example, in 2005-06, the NSW Government has budgeted to spend around \$26 million on maintenance and capital grants for the Sydney Opera House. No jurisdiction has a budgetary requirement to separately identify the maintenance and capital expenditure on its own heritage places. This makes the identification of maintenance for heritage assets problematic. For example, the NSW Attorney-General will spend \$7.8 million in 2005-06 on maintenance for the Supreme Court, and District and Local Courts. However, it is not possible to establish how much will be spent on heritage-listed courts, or the additional cost of maintaining heritage values in Courts (whether listed or not) compared to normal routine maintenance.

The distinction between expenditure on privately and publicly owned places has been reduced in Victoria through the Victorian Heritage Program (VHP). Announced in the 2002-03 State Budget, the VHP was allocated \$8 million over two years. Grants are available to public and private owners of heritage places and not-for-profit community organisations which are supported by their relevant local

government agency. To be eligible, private owners must show how their project is of community benefit.

FINDING 4.3

The level of assistance provided to non-government owners of historic heritage places varies considerably across State and Territory governments. The level of expenditure on government-owned heritage places is difficult to calculate since no jurisdiction requires explicit budgetary recognition of such expenditure.

4.7 Views on the States' and Territories' heritage systems

Not surprisingly, the comments from many participants focused on the role of the States and Territories in the conservation of heritage places. While most participants supported the need for State and Territory controls over places with State-significant heritage values, several concerns were raised, including:

- the system for protection contains too many 'sticks' and not enough 'carrots';
- an unsystematic listing process;
- a lack of coordination between the Heritage Offices and Planning Departments; and
- governments fail to adequately conserve their own heritage.

Too many 'sticks', not enough 'carrots'

Many participants generally expressed the view that, if the community wants to conserve heritage places, and thereby place obligations and restrictions on owners to achieve this, then the community (through the various levels of government) should be prepared to compensate for the additional cost or loss of value from heritage listing — either through government assistance, or through private conservation agreements. Participants wondered why private owners should be penalised for a good which has much of its value captured in benefits to the wider public. Ivan McDonald Architects, in observing the imbalance between the 'sticks' and 'carrots' applied to historic heritage conservation, said:

I find owners of heritage places generally accept the concept of heritage conservation and the need for a regulatory and legislative regime to control conservation outcomes, ie. having the 'stick'. I even find people generally accept the 'stick' being wielded on them by way of compliance with heritage controls, even if they are inconvenienced or disadvantaged by more bureaucracy, more cost and more constraints on their private property rights. They accept this on the basis that there is a broad community benefit.

[However] ... I find owners of heritage places generally do not accept that they should have to bear the cost or be financially disadvantaged by achieving such community benefit. This is because there are effectively no ‘carrots’. (sub. 30, p. 1)

State and Territory governments rely on the use of legislative control rather than negotiating outcomes with owners of heritage properties, and rarely use the private conservation agreement powers in their Heritage Acts.

Unsystematic listing system

While accepting the essential role for State and Territory statutory listing, many participants observed that the identification and listing process for historic heritage places has been unsystematic, non-selective and did not take into account the cost of conservation. With the cost of conservation placed on owners, it was argued that there was little incentive for States and Territories to be selective and thus, the incentive was to list ‘too much’ — that is, all heritage items were eligible for listing, irrespective of the number already conserved or of the relative heritage value of individual places. In respect of privately-owned property, Ivan McDonald Architects observed that identification and listing was often contentious and, at times, highly adversarial and legalistic. They argued:

Ideally, heritage registers at all thresholds of significance should adequately (but not overly) represent a diverse range of places in a balanced, rational and methodologically-rigorous manner. ... One of the particular difficulties in achieving this ideal is the reliance, on the part of listing agencies, on receipt of nominations, often by someone other than the property owner. This is a reactive rather than proactive response and usually creates great angst for the property owner. (sub. 30, p. 4)

In regard to the historic heritage environment within Western Australia, Tom Perrigo (sub. 162, p. 1), CEO of the National Trust of WA, said the phrase that best described the current system was ‘confusion, controversy and conflict’. He noted there was confusion over the terms used — such as, ‘heritage significance’, ‘threshold’ and ‘heritage value’ — and that while the legislation focused on ‘values’, this was often overlooked with the practical focus being on ‘place’. Tom Perrigo concluded that:

... the entire process of identification and assessment is in urgent need of review and upgrade. The processes appear to be done without much objectivity, and without transparent, measurable, or defensible outcomes. (sub. 162, p. 2)

The Save Braidwood (NSW) group (sub. 113, p. 6) was of the opinion that as more heritage was listed, it became less rare, less valuable and more expensive to retain. In this regard, Graham Brooks and Associates (sub. 72, p. 6) agreed that there was inadequate comparison undertaken to ascertain the rarity or representativeness of

heritage items. He considered this was largely due to the lack of comprehensive information available about the entire heritage resources of a State, or of the nation as a whole.

Coordination between State bodies is a problem

The statutory recognition of State or Territory-wide heritage values results in the Heritage Office having either full, or part, control over the development and use of that property. Without such recognition, this role would largely fall to the local government level. This results in multiple approvals from both local governments and the State Heritage Office. At the extreme, heritage recognition transfers planning decisions from the local government to the Heritage Office (for example, Tasmania).

A number of participants were critical of the amount of duplication and overlap of heritage laws and processes between the three tiers of government. In particular, they argued that the uncertainty created by the interaction of heritage and local planning schemes resulted in wasted resources (in administration and expensive appeals processes) that could otherwise be directed towards the conservation of historic heritage places. For instance, Associate Professor Renate Howe (sub. 106) pointed to the need to improve the coordination between State Heritage Councils and other State planning bodies. Also the Shire of York said:

There is a need to consolidate legislation within and between the three spheres of government rather than the duplication and multiplication which currently exists. (sub. 57, p. 6)

Governments are poor conservers of heritage

A few participants suggested that governments were often poor managers of their own historic heritage places. For instance, while noting that State management was not the best, the Convict Trail Project said:

It appears the problems are related to the culture within the organisations where heritage is not the chief function of the organisation. (sub. 13, p. 6)

The Australian Council of National Trusts (sub. 40, p. 34) agreed that it was rare for government agencies and departments responsible for places of heritage value, where heritage was not a part of their core business, to be funded to care properly for them. Further, in regard to the care of de-commissioned government-owned heritage buildings, the Mechanics Institute of Victoria considered governments were conspicuously poor managers of such places and suggested that:

For both NGO and government owned/managed historic heritage places, the Commonwealth, State and local governments should adopt the same policy as for aged care — keep them in their houses as long as possible with assistance payments to the carers if necessary. (sub. 89, p. 6)

The Australian Council of National Trusts submitted that while State governments require their agencies to actively conserve their own heritage places, governments do not provide adequate funds for agencies to perform this ‘non-core’ function:

Governments must also exercise leadership in heritage conservation to the community. Government heritage agencies play a dual role in heritage conservation: the agency sets the rules for the community (including government agencies), and those agencies/departments that are responsible for heritage places should then abide by those rules: ie, they should be exemplary in their management of heritage places in their care.

However, because ‘heritage’ is core business for only a selected group of agencies, it is rare indeed for other agencies/departments, responsible for places of heritage value but not as part of their core business, to be funded to care properly for them.

For example, no extra funding has been allocated to those Commonwealth agencies that have heritage properties in their care, to assist them to meet the extra responsibilities imposed on them through the Commonwealth heritage listing process. (sub. 40, p. 32)

At the broad level, the system for heritage identification and conservation at the Australian or State and Territory levels are quite similar — two-stage listing system (the assessment and listing decision are separate) and the imposition of statutory controls once listed. However, there is a fundamental difference. The Australian Government proposes to use ‘conservation by agreement’ — mutually satisfactory heritage conservation agreements — although none have been made with non-government owners as yet. At the State and Territory government level, the use of such agreements varies from sporadic to negligible. There is little doubt among participants that focusing on ‘conservation by agreement’ would result in more beneficial conservation outcomes, provided there is a rigorous process for prioritising how limited funds should be spent.

5 Planning controls and heritage conservation at the local level

The vast majority of historic heritage places are identified and protected at the local government level. Hence, it is important that the incentives are correctly aligned at the local level in order to promote effective heritage conservation. The identification and conservation of heritage places at the local level is achieved through local planning schemes. However, there remain fundamental differences as to development and land-use decisions for non-heritage and heritage places. These differences stem from statutory inconsistencies, not just a failure of local councils to explain, or property owners to understand, the heritage system. The statutory inconsistencies add to the uncertainty of heritage controls and erode the effectiveness of heritage protection at the local level.

As outlined in chapter 3, it is at the local level where the vast majority of historic heritage places are statutorily recognised.¹ The Heritage Chairs of Australia and New Zealand noted that:

Local government in Australia is currently responsible for identifying and protecting the majority of places of local heritage significance, except for Tasmania where only some areas of local government maintain schedules of heritage places. (sub. 139, p. 6)

The planning and heritage systems, while containing many common elements, are fundamentally different in their application at the local level (although there are a few significant differences between States, noted below). The main difference is that zoning controls apply restrictions broadly to buildings within a designated area, whereas heritage controls typically apply to individual buildings, irrespective of zone. Further, the assessment of development proposals differs between heritage places and non-heritage places and results in a greater red-tape burden being placed on owners of heritage properties. In addition, the amount of local government discretion is much higher for controls over heritage properties (or places affecting

¹ The ACT and the Northern Territory do not have local councils and their processes are therefore not discussed in this chapter. All their heritage conservation processes are undertaken at the Territory Government level (chapter 4).

heritage properties) than for planning decisions over properties where heritage is not an issue.

This chapter focuses on the broad State-wide planning policies as they apply to heritage conservation issues. They include legislated requirements under the planning acts, mandated State-consistent planning schemes and guidance by State planning or heritage bodies. While there are many common characteristics across the States, significant differences also exist.

5.1 Local government planning controls

All jurisdictions have State-wide planning statutes. These statutes set out the framework under which local governments determine development and planning applications — typically known as local planning schemes.² The statutes typically also provide for State and regional plans, in addition to local plans.

State plans typically deal with issues of a State-wide importance, and are made by the relevant State Government. Some jurisdictions make it compulsory for local plans to be consistent with State-wide provisions outlined in State plans (for example, Victorian Planning Provisions). In practice, State plans generally mandate that they be followed in local planning schemes.

Regional plans deal with issues that go beyond the local area and are also produced by the relevant State Government. These plans often apply to large areas but they can relate to small sites that have regional significance — for example, South East Queensland Regional Plan and NSW REP No. 4 – Homebush Bay.

Local planning schemes, prepared by local councils, guide planning decisions for a local government area. Through zoning and development controls, they allow councils to supervise the ways in which land is used and the commercial and social character of the local area. In addition, councils can use development control plans to add more detail to local planning schemes. Development control plans (or codes contained in the local schemes) provide specific, more comprehensive guidelines for types of development. The level of State control over local schemes varies considerably between jurisdictions (see appendix D).

² *Environmental Planning and Assessment Act 1979* (NSW); *Planning and Environment Act 1987* (Vic); *Integrated Planning Act 1997* (Qld); *Town Planning and Development Act 1928* (WA); *Development Act 1993* (SA); *Land Use Planning and Approvals Act 1993* (Tas).

Zoning restrictions

Zoning is the primary mechanism through which land use and development are controlled in local planning schemes. A zone is a planning provision that prescribes the primary character of land use (such as residential, industrial or rural) and indicates the type of use and development which may be appropriate (or prohibited).

Victoria and Tasmania also place a further layer of more detailed controls on top of zoning types, called overlays.³ Overlays relate to the environment, heritage, built form, and land and site management issues. In some cases, uses or developments which would be permissible under the zoning of the land, may not be allowed under the additional overlay requirements. Conversely, in some cases a use (e.g., a restaurant) may be permitted in a heritage listed place, to make it commercially viable to ensure its ongoing conservation — even if such a use would be otherwise prohibited by the zoning on the area (see, for example, City of Glen Eira (sub. DR273) and City of Ballarat (sub. 100)).

The controls over zones are generally divided into three sections. These sections cover uses which are allowed and do not require a permit; uses which are discretionary and do require a permit; and uses which are prohibited. Planning schemes usually present this in tables outlining allowed, discretionary, or prohibited developments in any particular zone. For example, in Victoria, development permit requirements are set out following the table of uses in a planning scheme. These clauses set out whether a development application is required to construct a building or carry out works. There are also schedules for each zone that set out additional controls that apply only in that scheme, such as setbacks, heights, minimum lot sizes, minimum subdivision, etc.

Changes in zone types and permitted uses within zones usually change land values. The impact of such value changes are accepted and borne by property owners, although invariably owners have access to an appeals mechanism as the influences on property values can be substantial. Such changes apply to all land within the zone's area and generally increase land values by allowing 'highest and best economic' use of sites, even if it detracts from some residents' perception of quality of life.

³ The Victorian system of heritage overlays does not distinguish between an overlay applying to one property, and an overlay applying to an area. However, the assessment of development applications does differ between single overlays and area overlays (see below).

Assessment of development applications

Local planning schemes typically outline developments which are prohibited, deemed permitted if they meet predetermined standards (code assessment), or allowed on a discretionary basis (merit assessment) — see table 5.1.

Table 5.1 **Dominant form of development assessment**
Code or merit assessment

<i>State</i>	<i>Type of assessment^a</i>
New South Wales	Code assessment
Victoria	Guided merit assessment ^b
Queensland	Code assessment
Western Australia	Merit assessment
Southern Australia	Code assessment
Tasmania	Merit assessment

^a Code assessment also allows for merit assessment. Merit assessment does not allow for code assessment.

^b Victorian Planning Provisions provide for design criteria that must be met for each zone. However, there is no automatic approval when the criteria are met.

Code assessment results in development applications being approved so long as the development meets specified minimum standards, which are typically contained either within State planning policies, or within the local schemes themselves. For example, New South Wales allows for local councils to publish detailed development controls plan which outline minimum standards. Queensland local planning schemes contain assessment codes that may address a specific type of development (e.g., reconfiguring a lot), a type of use (e.g., home business) or may relate to an identified zone or overlay. Code assessment removes local government discretion over development approval. That is, so long as the proposed development meets the set standards, the local council can not prevent development. Given that such standards are typically determined at the State level, this provides de facto planning control to State authorities.

For development applications which require discretionary approval by the relevant local authority, each State's planning laws outline the considerations that must be taken into account. These considerations are generally broad statements of principles. The statements include references to the amenity and character of the area, orderly development and economic effects, and reference to environmental impacts, including the conservation of the built environment (for more detail see appendix D). Even though it is at the State level where the considerations are set, it is ultimately the local council that determines whether to allow or prohibit development.

5.2 Local government heritage-listing processes

The mechanisms through which local governments identify and assess places that have local heritage significance are controlled by State legislation or Ministerial oversight. As a result, the level of local government discretion for heritage listing can vary greatly between States. The obligations summarised below flow from State government requirements, be it from legislation, regulations or binding Ministerial directions.

In all States, the regulatory aspects of heritage conservation at the local level are exercised through local planning schemes. The addition, or removal, of places from heritage controls is done through the relevant State's mechanisms for amending local planning schemes. Typically, this is accomplished by the local council initiating an amendment, seeking public comment, and once approved by the local council, the State Department, Commission or Minister is required to formally approve the amendments.

It is therefore the local council which initiates formal heritage identification, leading to statutory protection, at the local level. However, before a council proposes to amend a planning scheme, it usually undertakes a heritage study or refers to existing lists/studies (such as the RNE, or National Trust lists). The following outlines the State statutory requirements for local councils to conserve local heritage, and any State directions on how to assess heritage significance.

State control of the heritage processes in local councils typically comes through mandating local heritage lists (through the relevant Planning Acts), and/or through the use of State-wide consistent provisions in local planning schemes (e.g., heritage overlays and heritage conservation zones). Because of this linkage, to understand the workings and implications of the local heritage system an understanding of the planning systems under which they operate is required. Detailed discussion of each State's planning systems, as they relate to heritage, is contained in appendix D.

Even where there are binding State requirements, the commitment to adhere to the requirements can greatly vary between different local governments (that is, the practical implementation of those directions can vary). For example, around 42 per cent of Queensland and 86 per cent of Tasmanian local councils have heritage lists, even though there is no State requirement to do so (appendix B). Significant variation between local government areas could be an indication that State government guidance is lacking. However, even where there is such guidance, local councils still vary in their 'willingness' to identify and assess heritage significance. For example, with respect to the Victorian heritage system, which does provide a high level of State guidance as to the local government heritage framework, the Heritage Council of Victoria advised that:

The lack of consistency of heritage conservation advice and decision making has been identified as one of the weaknesses of the current policy framework. While the same criteria are used in assessing heritage places, these are not always consistently applied. The approach to heritage also varies widely from council to council, depending on available resources and local community attitudes. (sub. 178, p. 2)

An alternative view is that the variations between local councils is not a ‘problem’ that needs to be addressed, but simply an accurate democratic reflection of the interests of the community in each local government area — that is, an application of the principle of subsidiarity. A greater problem exists where there is inconsistency in heritage outcomes *within* a local council.

Publicly-owned heritage places

Local government-owned heritage places typically comprise the bulk of publicly-owned places in a State. For example, the Victorian Government noted that the local councils operate the majority of publicly-owned historic heritage places in Victoria (sub. 184, p. 23). The process for the identification and protection of publicly-owned heritage places at the local level, is the same as for privately-owned places — that is, listing on the relevant local planning scheme. The protection of local government-owned properties varies between States (as does local heritage protection generally) and also intra-State (that is, between councils). The Victorian Government noted:

A limited number of councils are actively trading on their heritage portfolio, and are managing places so the heritage significance is available to the public in an ongoing way ... Unfortunately a significant number of councils, particularly those in more remote areas of the State, struggle to support the heritage places in their care due to a smaller rate base from which to leverage funds. (sub. 184, p. 24)

Similarly, the NSW Local Government Association commented that local government:

... owns a significant proportion of the large number of historic heritage places under Local Government listings including buildings, bridges, monuments, parks and streetscapes. In many places publicly owned heritage places are ageing resulting in increased burden on maintenance costs for Local Government and associated resource implications. (sub. 179, p. 2)

Also, many State-owned properties that are not of State significance are of local significance. For example, a courthouse, railway station, bridge or major roads. However, due to all States requiring local planning schemes to be signed-off by the State Government, such protection is ultimately dependent on the State Government.

Unlike at the Australian, State and Territory levels (chapter 4), there is no requirement for local governments to identify their own historic heritage, apart from their own willingness to do so.

The assessment of local heritage significance

The assessment of local heritage significance is typically done through heritage studies — undertaken by heritage consultants and/or historians (appendix B). These heritage studies generally use the Burra Charter as the guide for assessing the significance of places. In addition, some States mandate the process with which local heritage studies must or should comply. This is typically achieved through ‘guides’ produced by each State’s Heritage Office which generally replicate the requirements set out for assessing places of State significance.

State guidance for assessing local significance

New South Wales, Victoria and Western Australia publish local government heritage guidelines.⁴ While all three documents outline in detail what heritage significance is, the scope of local government responsibilities, and the relevant legislative processes, only the NSW guidelines provide detailed advice on how to prepare a heritage significance assessment (section 8.6 of the NSW guidelines). The NSW guidelines provide an eight-step process for determining heritage significance. These are:

1. summarise what is known about the item;
2. describe the previous and current uses of the item, its associations with individuals or groups, and its meaning for those people;
3. assess the significance using the NSW heritage assessment criteria (box 5.1);
4. check whether a sound analysis of the item’s heritage significance is possible;
5. determine the item’s level of significance;
6. prepare a succinct statement of heritage significance;
7. get feedback; and
8. write up all the information gained.

⁴ New South Wales Heritage Office (2002); Victorian Department of Planning and Housing (1991); and Heritage Council of Western Australia (1991).

Box 5.1 **Assessing local significance in New South Wales**

There are seven criteria for assessing local significance. These criteria relate to the seven criteria used in the assessment of places of State significance. The difference is scale or the geographical spread of people to whom the place is significant.

1. An item is important in the course, or pattern, of the local area's cultural or natural history.
2. An item has strong or special association with the life or works of a person, or group of persons, of importance in the cultural or natural history of the local area.
3. An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in the local area.
4. An item has strong or special association with a particular community or cultural group in the local area for social, cultural or spiritual reasons.
5. An item has potential to yield information that will contribute to an understanding of the area's cultural or natural history.
6. An item possesses uncommon, rare or endangered aspects of the area's cultural or natural history.
7. An item is important in demonstrating the principal characteristics of a class of the area's:
 - (a) cultural or natural places; or
 - (b) cultural or natural environments.

Source: NSW Heritage Office (2002), section 8.6.

In addition to outlining the seven criteria for assessing local significance, the NSW Heritage Office provides commentary on the application of the criteria. The Heritage Office notes that where a place has incidental or unsubstantiated connections with a criterion, or where it has been altered so as to remove the alleged historically important feature, it should not be assessed as historically significant. For example, a place may be considered significant because an important historical figure was said to have lived there. However, further research may reveal insufficient evidence of that fact, or that the period of habitation was too brief to be relevant to the life and work of the historical figure.

The criteria also encourage the use of comparative analysis, that is, comparing the alleged significant place with other places which meet the same criteria, or have the same significance. However, the Heritage Office guidelines state that a place is not to be excluded on the ground that items with similar characteristics have already been entered on a statutory list.

The Heritage Office warns that care should be taken not to confuse heritage significance with amenity or utility. Items are excluded if they are valued only for their amenity (service convenience or character of the neighbourhood); and/or the community seeks their retention only in preference to a proposed alternative. For example, a community may seek the retention of an older building in preference to its replacement with a more intensive development of a site. In such cases, there must be evidence that the item is separately valued in accordance with one of the criteria to have any validity as a significant heritage item.

The guidelines also includes guidance for each criterion regarding what features indicate the place meets the criterion (inclusion), or fails to meet it (exclusion). Table 5.3, at the end of the chapter, outlines the guidelines for inclusion and exclusion for each of the criteria listed in box 5.1.

The NSW guidelines suggest that different criteria may make different contributions to the overall heritage significance of the place. In some cases it may be useful to specify the relative contribution of each of the criteria to the place’s heritage significance. To facilitate this, the guidelines provide for a grading system (box 5.2). A place would only need to have a “moderate” rating on any *one* of the seven criteria to achieve local listing, after which its legal status is identical to one which was rated “exceptional” on say, five or six criteria. This yes/no binary choice to heritage is incompatible with prioritisation across similar sites.

Box 5.2 Grading the significance of each criteria		
Rating	Justification	Status
<i>Exceptional</i>	Rare or outstanding item of local significance. High degree of intactness. Item can be interpreted relatively easily.	Fulfils criteria for local listing.
<i>High</i>	High degree of original fabric. Demonstrates a key element of the item’s significance. Alterations do not detract from significance.	Fulfils criteria for local listing.
<i>Moderate</i>	Altered or modified elements. Elements with little heritage value, but which contribute to the overall significance of the item.	Fulfils criteria for local listing.
<i>Little</i>	Alterations detract from significance. Difficult to interpret.	Does not fulfil criteria for local listing
<i>Intrusive</i>	Damaging to the item’s heritage significance.	Does not fulfil criteria for local listing

Source: NSW Heritage Office (2002), section 8.6.

The NSW guidelines do not discuss the feasibility of ongoing conservation or the costs imposed on property owners from heritage controls and there are no specific recommendations that costs are to be taken into account when deciding whether to list.

The Final Report of the Queensland Heritage Advisory Committee (Queensland Environmental Protection Agency 2005, p. 10) recommended that Queensland adopt a similar document to the NSW Heritage Office's Heritage Guide. This Guide clearly outlines the responsibilities of local governments and includes detailed information on how to meet these responsibilities.

Not all jurisdictions provide guidance

While the NSW Heritage Office provides detailed guidance on how to identify places that have local significance, not all jurisdictions provide such detailed guidance. For example, the Victorian *Local Government Heritage Guidelines* do not provide guidance on how to undertake heritage assessments, nor do they provide the criteria against which significance is assessed. The guidelines do provide and explain the Burra Charter and provide a model brief for engaging heritage consultants to undertake heritage studies. A 2004 review of rural Victorian heritage studies recommended that:

The Standard brief appears to be performing well in setting the basis for satisfactory heritage studies, but it should provide further guidance on:

- the extent of work that can be expected;
- what is expected of the community consultation process;
- how the AHC criteria are to be addressed;
- an approach to prioritising documentation in Stage 2; and
- a standard approach to the structuring of local policies required for heritage precincts. (Wright 2004, p. 7)

In Western Australia — where the WA Heritage Council provides local government guidelines — the Western Australia Local Government Association identified a lack of 'detailed guidance within a State planning policy framework' for local council involvement in heritage (sub. 73, p. 4). The Association continues:

There is no statement of planning policy which sets out the principles for the protection of the State's cultural heritage. [Such a statement] is considered essential as the State has been almost silent on policy guidance to Local Government on its expectations of local level heritage management. (sub. 73, p. 4)

In Queensland, the lack of formal State guidance for the application of local government heritage responsibilities under the *Integrated Planning Act 1997* is also

seen as a problem. The Final Report of the Cultural Heritage Advisory Committee recommended that:

... a State Planning Policy (Cultural Heritage) be developed to inform State and local Government of the cultural heritage outcomes required to be achieved through (a) local government planning schemes and (b) development assessment decisions. (Queensland Environmental Protection Agency 2005, p. 8)

Amanda Jean, a heritage advisor, commented that:

Without agreement about a national formula or criteria used for assessment of local heritage significance conflicts can occur and can include the following:

- Lack of understanding of what constitutes 'heritage & significant values'.
- Lack of understanding of the difference between local history as understood by local historical societies and local heritage significance which references best practice industry standards.
- Lack of understanding between fondness of place and planning controls over social value and/or intangible values.
- Confusion over heritage objectives and aesthetic appeal.
- The assessment of visual impact appears arbitrary and subjective and its reference to various types of heritage significance/values is tenuous.
- Lack of understanding of the difference between heritage and amenity.
- Lack of understanding of the difference between neighbourhood character and heritage character.
- Differing opinions between metropolitan experts versus the local in rural areas. (sub. 120, pp. 3–4)

However, a lack of specific State-wide guidance may not always have a significantly negative effect. This is due to the reliance on the Burra Charter for the identification of cultural significance by heritage professionals, and the fact that the published government criteria are based on the Burra Charter processes (chapter 3). Nonetheless, problems still arise regarding the differing approaches of local governments:

While some local councils operate innovative programs and actively conserve local heritage, others suffer from inadequate access to skilled heritage professionals, poor local perceptions of heritage and limited resources ... In order to address this issue, the Heritage Council [of Victoria] is finalising development guidelines for local government and has commissioned a review of the Heritage Overlay System. (Heritage Council of Victoria, sub. 178, p. 4)

FINDING 5.1

There is a high level of discretion for decision making on heritage matters at the local government level, derived in part from limited State government guidance. This has resulted in inconsistent outcomes within many local governments.

Statement of historical significance

Most jurisdictions recommend a statement of significance should be prepared for places listed under local planning schemes — either through official guidance material or reliance on Burra principles. Article six of the Burra Charter states:

The conservation policy appropriate to a place must first be determined by an understanding of its cultural significance.

Australia ICOMOS, in the explanatory note to article six, noted:

An understanding of the cultural significance of a place is essential to its proper conservation. This should be achieved by means of a thorough investigation resulting in a report embodying a *statement of cultural significance*. The formal adoption of a statement of significance is an essential prerequisite to the preparation of a conservation policy. [emphasis added] (Victorian Department of Planning and Housing 1991, appendix B)

Flowing on from this advice, the NSW Heritage Office in its *Local Government Heritage Guidelines* commented that the:

... main aim in assessing significance is to produce a succinct statement of significance, which summarises an item's heritage values. The statement is the basis for policies and management structures that will affect the item's future. It is important to get it right. (NSW Heritage Office 2002, section 8.6)

The Victorian Planning Provisions state that the documentation for each place should include a statement of significance which establishes the importance of the place. However, the heritage overlay schedule (table 5.4) does not contain any space for the inclusion of such a statement.

Despite such guidelines, no State has a corresponding legislative requirement for a statement of significance to be entered into a planning scheme — although many heritage studies contain statements, and can be used as reference documents. Some local councils argued that a place would never be listed without a statement of significance. For example, Manly Council submitted:

Professional heritage staff would never recommend an item for listing without a Statement of Significance although the quality of the SoS's in our current listings (based upon the 1986 study) are of varying degrees of detail. (sub. DR310, p. 5)

However, even though it may be ‘best practice’ to include a statement of significance, there are no legislative consequences for not having one, or having an inadequate statement. As a result, in many local government areas, places are identified and ‘protected’ without an accompanying statement, or with an inadequate statement, of what values are to be protected (for more detail, see chapter 10). Indeed, Manly Council supported the introduction of statutory requirements to include a statement of significance for each property, even though it does so already (sub. DR310, p. 5).

The statement of significance is akin, in planning terms, to the objectives of the relevant zone. That is, the statement identifies the elements of the place that conservation is trying to maintain. Therefore, any proposed developments should be assessed against their impacts on the values as identified in the statement of significance. A lack of such a statement gives rise to several problems in the planning system (see below). In the absence of a comprehensive and adequate statement of significance, there seems to be no rigorous basis for a place to be subject to local heritage controls.

FINDING 5.2

While statements of significance are recommended in State guidance material, no State requires in statute its local governments to provide an explicit statement of significance for each property in their local heritage lists. The absence of such statements seriously impairs subsequent decision-making about listed places.

Amending local planning schemes — appeal and notification requirements

The imposition of regulatory controls at the local level with the objective of conserving heritage places involves amending local planning schemes. There are only two ways to appeal listing during the amending of a planning scheme. First, the owner can appeal to the decision-maker — typically the local council and/or the State Minister and second, some States provide for appeals to independent planning boards.

For example, in New South Wales, property owners have a right to provide submissions to local councils which must be taken into account in their decision-making and a right to a public hearing at the local council. After this process, property owners can only lobby the Minister — who must approve every amendment to local planning schemes.

This can be compared to the Victorian system where there is scope for public Panel Hearings over proposed amendments. The composition of the Panel typically

includes town planners, but may also include lawyers, economists and heritage experts or other professionals where relevant (McLeod 2005, p. 2-71). The Panel can make any recommendation it sees fit, although the local council does not have to follow the recommendations.

The only scope for judicial appeal, in all jurisdictions, is that the local council did not follow the correct procedures when amending the local planning scheme. There is no scope for judicial review of the heritage merits of places proposed to be included in local planning schemes.

FINDING 5.3

There is no scope for independent merit review of a local government's decision to designate a place as having heritage significance in its local planning scheme.

While most States have a requirement to publicise proposed amendments (usually through newspaper advertisements and exhibition at council offices), there is generally no requirement to inform individual property owners that an amendment to the planning scheme would have an effect. In the heritage context, this means that there is no requirement to specifically inform owners that their properties are proposed to be listed.

However, South Australia requires that property owners be informed in writing of any proposed heritage designation in local planning schemes (s. 25(12) of the Development Act). In Victoria, local councils may have to give notice of the proposed amendments to owners and occupiers of land materially affected by the proposals, although there is no need to do so if it is impractical for the local council to inform all the owners individually (see s. 19 of the PEA).

FINDING 5.4

State governments, except South Australia, do not require local governments to notify owners of properties that their property is proposed to be heritage listed in local planning schemes.

5.3 How does heritage listing affect planning laws?

The official identification of locally significant heritage values impacts on the planning process at two points: the imposition of planning controls; and the assessment of development applications.

Where the zone restrictions on use and development are consistent with heritage restrictions, problems typically do not arise. Problems do arise where heritage

restrictions lead to different requirements, or different assessment procedures, for development applications.

How does heritage listing affect the need for development approval?

Most jurisdictions have established exemptions from the need to seek development approval (appendix D). However, where a property is heritage listed, or falls within a heritage conservation zone, the requirements for development approval are governed by heritage conservation provisions, not the general provisions of the current zoning of the land.

There are few problems for property owners where the exemptions from development approval are the same between the current zoning of the land and those for heritage places. However, this is rarely the case. There are usually differences between the need for approval for heritage and non-heritage places when development approval is sought for heritage places (or places within a heritage conservation area). The following discussion focuses either on statutory exemptions, or exemptions contained in State-wide consistent planning provisions. Where such guidance does not direct a local council to apply different exemptions to heritage and non-heritage places, it is up to the individual local council to decide upon the need for consistency.

Development approval for heritage places ...

In all jurisdictions, the general rule is that approval is needed for developments on heritage listed places which would (or are likely to) materially affect the heritage significance of the place.

In both New South Wales and Victoria, approval is needed for developments on heritage listed places that involve the demolition, moving or alteration of a heritage item or building or place within a heritage conservation zone. Alteration includes changes (structural or non-structural) to the exterior of the building or structural changes to the interior. The erection of a building (including signage), or the subdividing of land, on which a heritage item is placed, or that is within a heritage conservation zone also requires development approval (NSW Model LEP, p. 45; Clause 43.01 of Victorian Planning Provisions).

New South Wales does not provide any statutory exemptions to the need for approval.⁵ In Victoria, development approval is not required for repairs or routine maintenance which do not change the appearance of a heritage place (cl. 43.01-2).

In both Western Australia and South Australia, heritage places require approval for all types of development. In South Australia the Development Act states that in relation to a local heritage place, development approval is needed where the demolition, removal, conversion, alteration of, or addition to, the place, or any other work (not including painting) could materially affect the heritage value of the place (s. 4). In Western Australia, the exemptions for development approval under the Model Text Scheme do not apply to heritage places, or places within a heritage area (Pt. 8.2).

In practice, more than half the responding councils in New South Wales, Victoria, Western Australia and Tasmania indicated that all works on listed places require prior approval (table 5.2). This applies to locally and State-listed places. Some councils indicated that prior approval only needed to be obtained for work which would impact on identified heritage characteristics. Other councils indicated that maintenance, painting and minor renovations did not require approval or that only demolition or moving a listed building required approval.

Table 5.2 Obtaining development approval^a
Per cent of responding councils

<i>State</i>	<i>Development approval required for ALL works on listed places</i>	<i>Development approval required for only those works affecting identified heritage values</i>	<i>Other^b</i>
New South Wales	57.7	18.5	24.6
Victoria	53.2	24.2	22.6
Queensland	38.1	17.5	12.4
Western Australia	60.5	8.1	14.0
South Australia	48.4	17.2	21.9
Tasmania	81.8	9.1	9.1

^a Applies to state and/or locally listed places. Some councils indicated that modification to items on the Register of the National Estate also required approval. ^b Typically, councils that nominated this category indicated that maintenance, painting and minor renovations did not require approval or that only demolition or changes to the façade required approval.

Source: Appendix B.

⁵ Although it does provide that, subject to the discretion of the local council, approval is not needed for minor works, maintenance, or works that do not affect the heritage significance. However, such discretion cannot be used unless the council has considered a Heritage Impact Statement and a Conservation Management Plan.

... compared with non-heritage places

The central difference in most jurisdictions between development approval for heritage and non-heritage development is the explicit legislative, or State-wide exemption from approval for certain developments on non-heritage places. The types of activities on non-heritage places exempted from development approval varies between jurisdictions. In Queensland and South Australia approval may be needed for all types of development and development has the same definition for both heritage and non-heritage places.

In New South Wales, for any given zone, the relevant local planning scheme must state what type of developments are allowed without the need for approval — known as exempt development. Typically, ‘exempt development’ status does not apply for places identified as a heritage item in a LEP.

In Victoria, the following types of works do not require development approval for non-heritage places, but approval is needed for heritage places: building a fence; erecting signage; internal alterations that do not increase size of the dwelling; works done for fire protection; and demolition of a building. In addition, the removal of trees on non-heritage places does not require approval whereas on heritage places approval is needed.

In Western Australia, the Model Text Scheme states that approval is not needed for the erection of a single house on a lot (including extensions and swimming pools), demolition or removal of a building or structure, works that affect the interior but do not materially affect the external appearance, and certain advertisements. However, if these works occur on a heritage place, approval is needed.

There is a fundamental difference in the approach to heritage and non-heritage development. Local planning schemes outline what development and uses are permitted, what are prohibited and what are subject to discretionary local council approval. This does not occur for properties that are subject to heritage controls. All development or use changes on heritage-listed properties are subject to the discretionary approval of local councils. Hence, there is greater uncertainty as to the permissibility (and greater cost) of development for heritage places.

How does heritage listing affect the assessment of development approval?

The recognition of heritage significance in a local planning scheme results in approval being needed for more types of development. It also results in additional processes that are not required for development on non-heritage places, including

the need to supply additional information (such as Heritage Impact Statements and Conservation Management Plans) with the development application.

The assessment of development applications for heritage places has two further complications:

- lack of objectives against which heritage developments are assessed; and
- code assessment, or assessment against pre-determined standards, is not available.

On average, a small proportion of heritage applications are rejected primarily on heritage grounds (see appendix B). The average is highest in South Australia where 4 per cent of applications were rejected. However, the impact in some local government areas was considerably greater than this. In Western Australia and South Australia, at least one council reported that all their development applications on listed places were rejected.

Appeals by an owner against an adverse decision can also be significant. In Victoria, one-third of council decisions were appealed. In all States, except for Tasmania, at least one council reported that all of its rejected development applications were appealed. One council reported that a dispute over a development application for a historic building ended when the building was destroyed by arson.

Heritage considerations, including preparation of a Heritage Impact Statement, are also taken into account for properties in the vicinity of heritage places (see, for example, the NSW Model Heritage LEP provisions).

The need for a heritage impact statement

In all jurisdictions that contain local heritage conservation provisions in their local planning schemes, the consideration of heritage developments involve the preparation of a Heritage Impact Statement (HIS), and sometimes an additional Conservation Management Plan (CMP) — the HIS may also include a conservation plan.

For example, in New South Wales, the Model Heritage LEP Provisions state that a HIS and a CMP must be considered by a local council prior to assessing a development application for modification of a heritage place (NSW Heritage Office 2000, p. 7). The Newcastle City Council noted that:

The total number of Development Applications processed by [Newcastle] Council involving heritage issues was 198 for the 2004-05 financial year. The total number of Development Applications accompanied by a Heritage Impact Statement was 120. (sub. 78, p. 9)

A HIS is a document outlining the heritage significance of a place, and analysing how the proposed development affects such significance. For example, the Fremantle City Council described a HIS as:⁶

Having established the significance of a place, including identification of the elements of the place and its context that represent this significance ... a heritage impact statement should be prepared that evaluates the likely impact of the proposed development (works) on the significance of the place and its visual, social and historical context.

The NSW Heritage Office advises local councils that a HIS means:

... a document consisting of a statement demonstrating the heritage significance of a heritage item or heritage conservation area, or of a building, work, archaeological site, tree or place within a heritage conservation area, an assessment of the impact that proposed development will have on that significance and proposals for measures to minimise that impact. (2000, pp. 3–4)

The minimum amount of information which is to be contained in a HIS includes:

- the heritage significance of the item as part of the environmental heritage of the relevant local government area;
- the impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or horticultural features;
- the measures proposed to conserve the heritage significance of the item and its setting;
- whether any archaeological site or potential archaeological site would be adversely affected by the proposed development; and
- the extent to which the carrying out of the proposed development would affect the form of any historic subdivision.

The costs incurred by property owners in the preparation of a HIS or CMP (or both) vary substantially depending on the type of building, the level and type of significance, and the proposed development. Australia ICOMOS noted that:

Such costs can vary greatly but might start at a few thousand dollars and for large and complex sites can involve costs of the order of \$100,000 or more. The median range would probably be \$10,000 to \$50,000 but we are unaware of any collated data on such costs, and there are many variables which make generalisation difficult. (sub. 122, p. 60)

⁶ http://www.freofocus.com/council/resource/DBH13_Policy.pdf.

Focusing primarily on residential developments in Western Sydney, George Wilkie (an architect) commented:

... every time you apply in local government to intervene into a heritage item, there is generally a requirement to produce an heritage impact statement. This heritage impact statement is a fairly expensive item and probably costs somewhere in excess of \$3000 for most applications. (trans., p. 1011)

In principle, a HIS is similar to the information that a developer would typically be required to show for non-heritage merit assessment. That is, for non-heritage merit assessments, local councils generally require developers to produce a document stating how the proposed developments meets the objectives of the zone, the planning principles, and other relevant elements such as amenity or character — the burden on developers of these requirements led to the general trend towards code assessment (see below). Such a trend has not been replicated for heritage developments, reflecting that each heritage property has some unique features.

Lack of objectives for assessing heritage developments

There are some important differences between merit assessments of heritage and non-heritage developments. First, the objectives against which non-heritage developments are assessed are known and clearly enunciated prior to the development process, whereas heritage developments are assessed against the vaguer notion that the development must not ‘impact on the heritage significance of the place’. Assessing development on the basis of its likely effect on a place’s ‘heritage significance’ would not be unnecessarily problematic were the heritage significance of the place to be undisputed, clear and meaningful. However, this is not always the case for places of local heritage significance (particularly where there is no statement of significance).

The Western Australian Planning Commission stated that ideally:

Assessing the cultural significance of a place should be done as independently, objectively and rigorously as possible (as appropriate to the nature of the decision to be made) so that the decision maker has the best possible information prior to making a decision. The core component of the heritage conservation process should be a statement of the cultural significance of the place. The degree of cultural significance leads to no specific outcome until an integrated assessment is made through the planning system. (sub. 98, p. 4)

The importance of a thorough statement of significance flows from the Burra Charter. Professor Bill Logan from Deakin University stated:

The Burra Charter says that the most important thing you have to do is work out the significance of a place. In the process the statement of significance is the end of the first stage. It’s terribly important. Everything flows from that ... What the Burra

Charter says is that what you do in that local level is to determine what are the significant elements or key values, and that's what you try to protect. So it may be the general height of streetscapes or whatever. You try to protect that but other things can change. By operating through that Burra Charter process you can actually get an integrated system. (trans., p. 320)

Yet despite these views, no Australian State requires at the local level a statutory listing of a place's heritage significance (see section 5.2). The level of detail in, or referred to by, local planning schemes regarding individual heritage places typically only involves the listing of the address of the property. Victorian local schemes provide the greatest level of detail (see table 5.4), but a statement of significance is still not required.

When statements of significance are available, they are generally available in the heritage study or studies which gave rise to the inclusion of the property (or properties, precinct or area) onto the local planning scheme's heritage register. In addition to these statements, a different statement may be prepared by another heritage professional in the HIS accompanying the development application. When this occurs, it is possible to have two conflicting statements of significance, with no clear priority between them. This gives rise to the possibility of having two different views on whether the proposed development would affect the property's heritage significance. It is this issue which is central to the case in the majority of judicial appeals on heritage development decisions.

No code assessment for heritage developments

Adding to the subjective nature of heritage development approval, in jurisdictions where objective code assessment is the dominant form of approval (New South Wales, Queensland and South Australia), code assessment is not available to heritage places, or places within a heritage conservation zone. In addition, the guided merit assessment process in Victoria is not available for places with a heritage overlay.

Where heritage development rules do exist at the local level, they do so at the initiative of the local council, and differ significantly from the notion of complying development or code assessment. For example, the Heritage Development Control Plans in the Parramatta City Council and the Leichhardt Municipal Council in New South Wales, provide broad guidance on the types of development allowed in heritage conservation areas. However, in spite of this, complying development

status,⁷ which is the most common form of development, does not apply to heritage items or land within a heritage conservation zone.⁸

Even where the planning system notionally provides for code assessment of heritage development, in practice such codes lack the detail required to be true code assessment. For example, Division 4 of the Townsville City Plan 2005 states that places on or adjacent to heritage-listed properties, must be assessed against the Heritage Code. The ‘code’ against which heritage developments are to be assessed essentially states that development is allowed where it would not detract from the heritage significance. The Code also indicates that developments should adhere to the Burra Charter. In practice, the level of detail contained in the heritage code varies significantly from the ‘code assessments’ for other development (see Schedule 2 of the Plan). As such, it does not appear to be a true code assessment, that is, an objective assessment against pre-determined specifications.

This is not surprising given that each individual heritage place has unique features demonstrating heritage values. In such situations, the scope for code assessment is limited and would be costly. In saying that, however, the costs of heritage development applications could be reduced by introducing more objectivity and transparency into the assessment process, as well as having a clear statutory statement of significance for each place listed.

In jurisdictions where code assessment does not occur, there is a push towards introducing more objectivity in the assessment of non-heritage development proposals. This is typically done through the requirement that each zone has a table of allowed uses, prohibited uses, and discretionary uses. Some jurisdictions, for example Victoria, have State-wide consistent allowed, prohibited and discretionary uses and developments for each zone. However, even though Victorian planning schemes have heritage overlay tables, the citations justifying the overlay still lack a clear statutory statement of significance (see table 5.4 below), nor does Victoria provide State guidance on what uses or developments are allowed or prohibited.

Development assessment in heritage conservation areas

Heritage conservation areas and individual heritage listings generally impose the same requirements on a property regarding the need for development applications, or HISs. All jurisdictions allow for heritage conservation areas to be declared. For

⁷ Developments that are automatically approved so long as they comply with pre-determined standards.

⁸ An example of this can be seen in Part 3 of the *Parramatta Local Environmental Plan 2001*.

example, in New South Wales, a heritage conservation ‘area’ is defined as an area identified on the local government area map and includes all buildings, works, relics, trees and places situated on or within the land (NSW Heritage Office 2000, p. 76); Victoria allows heritage overlays to be applied to areas as well as individual sites or buildings; and in South Australia the Adelaide City Council has declared the North Adelaide heritage conservation area. The Victorian Government, in response to the Draft Report, disagreed that development in heritage areas (overlay areas) is treated different than individual heritage places:

The development approval provisions for all places covered by a Heritage Overlay are the same, regardless if they are an individual place or larger precincts or areas. (sub. DR413, p. 6)

While some aspects of the development process are the same between areas and individual places (e.g., the need for development approval), the application and interpretation of development controls differs markedly between the two, even in Victoria (see, for example, the numerous Victorian legal cases below).

The aim of heritage areas is to ensure that those elements (including buildings, fences, gardens and trees) that make a contribution to the heritage of an area can be retained and where new development occurs in such areas the development is complementary to those buildings or features. This aim is generally consistent among jurisdictions.

As such, the controls do not necessarily prevent development. Rather they are intended to ensure any new development respects those elements which make a contribution to that heritage area. It is not intended to prevent medium density development or urban infill. That said, heritage controls may, to some extent limit redevelopment opportunities, particularly where there is a group of intact or largely intact buildings in a streetscape, but it would be incorrect to rely on them as a density control (*Lorial PL v Glen Eira CC* [2003] VCAT 961; *Maldeve Pty Ltd v Hobsons Bay City Council* [2004] VCAT 1638). In summary, the effect heritage areas have on development is:

Whilst the land is located within a heritage overlay area, this is not a factor that would preclude the land from redevelopment, rather, it is a factor to be taken into account in the preparation of an appropriate design response. (*Sliwa v Ballarat CC & Ors* [2002] VCAT 1125)

The assessment of development in heritage areas focus on the contribution the place makes to the heritage character of the area, and hence, whether demolition or development would have an adverse impact on the *heritage significance of the conservation area*. The analysis typically involves a ranking process, beginning with an assessment of the importance of the individual property to the character of the *whole* area. For example, in New South Wales:

While a restored federation dwelling on the site could make a positive contribution to the conservation area, I have not been persuaded that the building is so important in this regard that its restoration is essential. It certainly does not have a strong visual presence in the streetscape ... Had the building been a listed heritage item and were it not in such a dilapidated condition with much of its architectural detailing missing and if the two houses were dominant in the streetscape, or if they had an important historic relationship, a different conclusion may have been possible. (*Horizon Project Solutions Pty Ltd v Hornsby Shire Council* [2002] Unreported NSW LEC, 13 March 2002, para. 20–1)

And in *Wholohan Charlesworth & Associates Pty Ltd v Ashfield Municipal Council*:

On balance then, I rely on this detailed heritage assessment, which confirms the earlier investigations that this building has low significance and would be of minimal loss if demolished, for replacement by a suitable building. ([2000] Unreported NSW LEC 31 October 2002, p. 10)

Similarly, in *Maldeve Pty Ltd v Hobsons Bay City Council* [2004] VCAT 1638, at para. 61, the Tribunal comments that demolition should be allowed due to the building not being ‘remarkable or significant in its own right; rather, it makes a low contribution to the significance of the [heritage] precinct as a whole’.⁹

In assessing proposed developments in heritage conservation areas, the focus is generally on streetscape, amenity and character issues. For example, In *Horizon Project Solutions*, the NSW Land and Environment Court stated:

In relation to streetscape and the impact of the proposal on the conservation area ... I do not believe that the proposed buildings will have any impacts so as to make them unacceptable in terms of the established character of the area. (para. 31)

Also in *Charteris v Leichhardt Council*:

It is concluded that the existing house No 5 Punch Street clearly contributes to the character of the conservation area in this locality. In the absence of a proposed new building which would, in some manner, retain that characteristic relationship, what is proposed is seen as unacceptable. In any case it appears that there is an option to reuse the existing building to create the type of accommodation desired by the applicant while retaining the existing building envelope. (para. 33)

Individual heritage listing and heritage areas impose the same red-tape burden on property owners. That is, development applications are needed for more activities than otherwise would be and there are additional information requirements. However, while it may appear that the controls placed upon individual heritage

⁹ See also *Lonie v Brisbane City Council* [1998] QPELR 209; *Michel v Brisbane City Council* [1999] QPELR 374.

places and heritage areas or precincts are the same, there are important differences. The assessment criteria in a heritage area is an assessment against the character and streetscape of the area (with the character and streetscape being the identified heritage values). This allows greater scope for demolition and redevelopment of non-listed properties, so long as it does not offend the general heritage character.

In essence, the assessment undertaken for development and use within a heritage conservation area is the same as that undertaken for any residential zone — that is, character, amenity and streetscape.

FINDING 5.5

Heritage conservation areas impose less stringent restrictions on the ability to modify, demolish or redevelop properties than do heritage controls on an individually-listed property.

5.4 Significant inconsistencies between the planning and heritage systems

Inconsistencies between different local councils' views on the use of heritage controls is not necessarily a problem where they reflect the different views of the local communities — the principle of subsidiarity requires that local heritage conservation reflects the willingness to conserve of that community.

However, inconsistency between the heritage system and the planning system *within* local councils does pose problems. Such inconsistency can occur from State control over the planning system and a lack of State guidance over the local heritage system. In order to ensure consistency within local councils, the level of State guidance needs to be the same for both the planning and heritage systems.

The interaction between the general planning system (applying to non-heritage places) and the system for heritage conservation within the planning system results in inconsistencies due to: local heritage conservation increasingly becoming the last avenue for local government discretion over development approval; and the imposition of heritage controls on non-heritage-listed places.

Local heritage conservation allows local government discretion over development

As discussed above, the increasing use of State governments' mandated code assessment and assessment against pre-determined development standards (such as

Australian Building Codes) has removed discretion from local councils with respect to some development decisions. However, such a trend has not been mirrored under local heritage systems. Heritage is one of the few areas in planning where local councils still retain significant levels of discretion as to the approval of developments. The most obvious example of this is the inapplicability of code assessment for heritage developments in States which allow code assessment for non-heritage developments. Even in other States, there appears to be no State-consistent development standards or guidelines applying to heritage places or heritage conservation zones.

Another example is the NSW State Environment Planning Policy (SEPP) No. 53 which aims to provide for multi-dwelling houses to facilitate urban infill. Essentially, this State policy overrides the local provisions adopted by relevant local councils with respect to limiting multi-dwelling development. However, SEPP No. 53 has several caveats regarding its application where it may affect places of local heritage significance. This has the effect of making heritage protection the only avenue left for local council autonomy over the issue of allowing multi-dwelling development. Not surprisingly, the practical effect has been to magnify the incentive for using heritage conservation as the justification for circumventing State-imposed rules that permit developments to which the local council is opposed.¹⁰

The Victorian Planning Provisions contain guidance on the design, amenity, landscape and site layout for developments involving single (cl. 54) and dual (cl. 55) dwelling developments and residential subdivision (cl. 56), but not in-depth State-wide development requirements. This guidance removes the scope, to some degree, for local council discretion over the approval of residential developments. Such procedures do not apply for places which are subject to a heritage overlay. Even though the State-consistent structure of the heritage schedule (table 5.3) provides some clarity to the controls imposed over heritage places, there appears to be little State-consistent guidance as to the types of developments allowed at locally listed heritage places.

Imposition of heritage controls over non-heritage places

The imposition of heritage controls over non-heritage places comes about through two mechanisms: the use of general heritage controls; and restrictions imposed on places in the vicinity of a heritage place.

¹⁰ This is shown in *Rahmani v Ku-ring-gai Council* [2004] NSWLEC 595 where the Ku-ring-gai local council was allowed to reject a development allowed under State planning policies because of its effect on surrounding heritage places.

The use of general heritage controls

Most State planning legislation has a general objective of conserving built heritage, in addition to specific provisions for the protection of places recognised as containing heritage significance (such as heritage overlays or schedules).

This has led to heritage significance, and hence heritage controls, being recognised for properties which had not previously been subject to heritage controls — that is, properties not covered by an individual listing, or within a conservation area. Typically, this issue arises on appeals against the issuing or denying of development applications. The willingness of planning Courts (or Tribunals) to examine a place's heritage significance when it is not subject to heritage controls greatly varies between States. For example, the Land and Environment Court (LEC) in New South Wales often assesses a place's heritage significance on appeal — although it is inconsistent on this view — whereas in Victoria, the Tribunal has held that heritage is not relevant where a heritage overlay does not apply.

In New South Wales, there have been several cases where the LEC has assessed heritage significance of a place even though there was no statutory recognition through the relevant local planning scheme.¹¹ In these cases, heritage was used as a reason for denying either demolition or development applications, and again on appeal heritage was a pertinent issue, even though prior to the proposed development the properties were not listed in heritage schedules. In *Hall v Gosford City Council* [2001] NSWLEC (Unreported, 21 December 2001) the Court took heritage into account even though the relevant property was not listed in the local planning scheme. The court held that:

Nonetheless, there was some dispute about the historic significance of the site in terms of its social significance, and the heritage significance of the boatshed and by way of comment, from the evidence to the Court, I am satisfied that the site does have local social historic significance, albeit that the previous cottage and the remaining boatshed have not been identified as heritage items in the relevant planning instrument. (para. 21)

However, the approach by the NSW LEC has been far from consistent. In *Wu v Kuring-gai Municipal Council* [1999] NSWLEC (Unreported, 24 June 1999) the court refused to accept that it should 'suggest or require' that properties be listed on

¹¹ For example, *David Hooker v Hawkesbury City Council* [1995] NSWLEC 174; *Lewis v Cowra Shire Council* [2000] NSWLEC (Unreported, 5 May 2000); *Fong v Ryde City Council* [2001] NSWLEC (Unreported, 1 February 2001); *Hall v Gosford City Council* [2001] NSWLEC (Unreported, 21 December 2001).

planning schemes. The Court also stated that National Trust recognition has no operation under planning considerations. Commissioner Brown stated:

... I am not convinced that it is the role of the Court to suggest or require that certain properties be listed as Heritage Item in the Council's planning control ... I must assume that the Council [in making the planning scheme] did not consider that the property was worthy of inclusion ... for this reason, I do not consider it appropriate for the Council to now argue its significance. (pp. 5–6)

On the influence of National Trust listing, Commissioner Brown commented:

In terms of the classification by the National Trust, I was not convinced that the classification should be given weight as suggested by the Council. It is general in nature and while providing relevant comments on the history of the area, it could not be seen as a planning tool, in the way that a Heritage Item or Conservation Area [within a planning scheme] is seen ... While it could not be said that it has no relevance, it should not be preferred to, or given greater weight than the more detailed assessment required by Council when listing specific items or area within their planning controls. (p. 6)

Similarly, in *Hughes v Ku-ring-gai Council* [2000] NSWLEC (Unreported, 7 June 2001) the Court allowed the demolition of a dwelling that was not listed individually within the planning scheme, nor within a Heritage Conservation Area, but was within a National Trust conservation area. The court held that demolition could not be refused on planning grounds and that demolition could occur provided that a photographic record of the interior and exterior was prepared.

The Victorian approach appears to rest much more heavily on whether the relevant piece of land is subject to a heritage overlay. Various Victorian Civil and Administrative Tribunal (VCAT) cases seem to place much more weight on the presence of a heritage overlay (or actual proposed inclusion or removal of overlay) than on heritage studies, National Trust and other non-planning scheme indicators of heritage significance. In *Miach v Stonnington CC & Ors* [2003] VCAT 818, VCAT held that submissions arguing for the retention of the place because it has heritage significance were of no weight given that at the time of the development, heritage controls did not apply.¹²

¹² Other cases include *Lamba v Boroondara* [2000] VCAT 639, refusal for demolition was not accepted on heritage grounds due to no heritage overlay applying to the property. In *Andrews v Bayside CC* [2005] VCAT 758, the Tribunal held that demolition would not adversely affect heritage significance of a place because the Council was proposing to remove the existing heritage overlay, even though Council was arguing against demolition on heritage grounds. In *Elson & John v Cunningham* [2002] VCAT 474, the Tribunal gave far more weight to the planning provisions and heritage overlays rather than various conservation and heritage reports when making a decision over a heritage listed property.

The Tasmanian Supreme Court in *Robt Nettlefold Pty Ltd v Hobart City Council* [2001] TASSC 120 took the opposite view, stating that heritage schedules to planning schemes were not exclusive lists of heritage buildings. Crawford J commented that the ‘preparation of a list ... merely facilitates the achievement’ of conserving built heritage ‘rather than specifying an exclusive manner of achieving it’ (para. 13). Similarly, Slicer J concluded that since the power to impose heritage restrictions was ‘not confined to a listed building’, the Council could take into account a non-listed property’s heritage significance in assessing any proposed development (para. 67).

It would appear logical that heritage controls should only be applied to places that have been statutorily recognised — that is, are on a local heritage list. To do otherwise increases the uncertainty surrounding use and development of *all* properties. While the problem may not be currently widespread, it is anticipated that these problems would only magnify as more twentieth century buildings are ‘deemed’ to be heritage.

Further, the ability of Courts to ‘impose’ statutory controls over non-heritage places appears to undermine the role of local councils, under the principle of subsidiarity, as representatives of the local community’s willingness to conserve heritage places. Where the relevant local council has decided that a place should not be listed, even though it may have some heritage values, it would appear questionable practice to allow heritage proponents to undermine that decision through judicial appeals (see, for example, Cross 1999).

Places in the vicinity of a heritage item

It is possible for places that do not contain any heritage significance to have heritage controls placed on them. All jurisdictions provide that councils must take into account the effect a development near a heritage item could have on any heritage significance prior to approving the development — for example, the NSW Model Heritage LEP Provisions, summarised in box. 5.3.

Other examples include:

- in New South Wales, development has been refused because the bulk, form, scale and design of the proposed building would have an adverse impact on the visual amenity of the surrounding locality and streetscape, including the impacts on a heritage-listed property (*Architectus Sydney Pty Limited v Randwick City Council* [2004] NSWLEC 450);

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- in Tasmania, signage development was refused due to adverse impacts on nearby heritage items (*AAA Self Storage Pty Ltd v Hobart City Council* [2004] TASRMPAT 223).

Box 5.3 NSW Model Heritage LEP Provisions

Development in the vicinity of a heritage item

1. Before granting consent to development in the vicinity of a heritage item, the consent authority must assess the impact of the proposed development on the heritage significance of the heritage item and of any heritage conservation area within which it is situated.
2. This clause extends to development:
 - (a) that may have an impact on the setting of a heritage item, for example, by affecting a significant view to or from the item or by overshadowing, or
 - (a) that may undermine or otherwise cause physical damage to a heritage item, or
 - (a) that will otherwise have any adverse impact on the heritage significance of a heritage item or of any heritage conservation area within which it is situated.
3. The consent authority may refuse to grant any such consent unless it has considered a heritage impact statement that will help it assess the impact of the proposed development on the heritage significance, visual curtilage and setting of the heritage item.
4. The heritage impact statement should include details of the size, shape and scale of, setbacks for, and the materials to be used in, any proposed buildings or works and details of any modification that would reduce the impact of the proposed development on the heritage significance of the heritage item.

Source: NSW Heritage Office (2000).

In most jurisdictions, the extra requirements imposed on places located in the vicinity of heritage items (or conservation areas) only apply to the consideration of development applications. That is, it does not impose a development application for activities that are not required by the zoning of the land. In this sense, the assessment of places in the vicinity of heritage items is similar to an amenity and neighbourhood character assessment. That is, the development must be in keeping with the existing amenity and streetscape of the neighbourhood.

In saying that, however, as shown in box 5.3, New South Wales does require the preparation of a HIS for proposed developments on land in the vicinity of heritage items or conservation areas. This results in increasing the compliance costs faced by some landowners compared to those who do not live near a heritage item. In this regard, it places more onerous requirements than would normal amenity and streetscape analysis.

Heritage controls can be applied to properties that have not been individually listed or are not located within a heritage conservation zone. Typically, the owner is informed only upon seeking development approval.

The uncertain effect of local heritage

In addition to the inconsistencies in the application of heritage controls, there also appears to be significant uncertainty as to the effect of local heritage controls. Some participants claim that this uncertainty arises from property owners not adequately seeking the information and being ‘ignorant’ of the requirements. The Victorian Government argued that:

... information asymmetry exists through the imbalances of information and understanding about heritage places within the community. The public’s understanding of the value of historic heritage conservation is not comprehensive. Due to the perpetuation of myths, it is common for heritage place owners and potential owners to overstate the impact of regulations that flow from listing. (sub. 184, p. 33)

While many property owners may not fully understand the effect heritage listing has on their property, this is not caused by owners’ unwillingness, but rather it flows from unclear statutory rules. That is, the statutory controls dictating what activities owners can not undertake, do not clearly state what can and can not be done. The only guidance is that owners can not adversely affect their property’s heritage values. Combine this rule with the failure of every State to require a statement of significance at the local level, and it is not surprising owners are unsure of the controls imposed or their implications. In addition to the lack of statutory guidance, the use of heritage advisors with differing opinions of significance, and differing application of heritage controls, exacerbates the uncertainty faced by property owners. The Australian Council of National Trusts stated that ideally the system should ensure there is:

... no reason for any property owner to claim ignorance of the rules — which should be enforced without fear or favour. Unfortunately, many regimes are vague and allow for undue influence by parties without appropriate governance arrangements. (sub. 40, p. 100)

Without legislative amendments requiring that, at a minimum, a statement of significance must be included in the listing process, the uncertainty of property owners and developers is likely to remain, irrespective of government education campaigns.

FINDING 5.7

Many property owners do not fully understand the effect heritage listing has on their property until they submit a development application. This is not simply a reflection of a lack of awareness by owners of the implications of listing. Rather it flows more from unclear statutory requirements and inconsistent administrative actions. More specifically, it is a direct result of the failure of all State Heritage Acts to require specifically a statement of significance for heritage listing at the local level.

5.5 Concluding remarks

Local government planning and land use systems are the primary mechanisms through which locally-significant historic heritage places are conserved. However, while heritage processes are embedded within planning and land-use systems, there remain fundamental differences in the approach between properties which are heritage-listed and those which are not. These differences contribute to the undermining of the effectiveness of heritage protection at the local level and have led to the following problems:

- inconsistent heritage outcomes within local governments;
- more onerous development requirements for heritage properties, including a greater red tape burden;
- imposition of heritage controls over properties that are not listed in local planning schemes; and
- unclear and uncertain restrictions imposed on heritage properties.

In addition to the problems identified above, the nature of heritage conservation at the local level is typically more controversial than at the Australian or State government level. These places do not have the ‘iconic’ status of national or State significant places, and as a result, many owners may doubt that their property has heritage values or heritage values which warrant the restrictions and costs being imposed on them. In these situations, heritage conservation without the agreement of the owner, irrespective of how well the heritage and planning systems operate, would create problems. Changes to the system of local heritage protection that only address the problems listed above and do not address the problems caused by mandatory listing, may fail to provide long-term solutions.

In saying that, however, it is important to note that there is wide variation among local councils as to their approach to local heritage conservation. Many councils do

an admirable job even where State guidance or support is lacking. Many local councils informed the Commission after the release of the Draft Report that their heritage processes and guidance were more than adequate — the majority of councils arguing this were from Victoria. However, there is clear evidence that many local councils do not approach heritage conservation in the same manner. It is these councils which would benefit from rigorous, clear and concise State-consistent heritage guidance.

Table 5.3 NSW Heritage Office Local Heritage Guidelines

Guidance for meeting heritage criteria

<i>Criteria</i>	<i>Guidelines for inclusion</i>	<i>Guidelines for exclusion</i>
An item is important in the course, or pattern, of the local area's cultural history	<ul style="list-style-type: none"> • shows evidence of a significant human activity • is associated with a significant activity or historical phase • maintains or shows the continuity of a historical process or activity 	<ul style="list-style-type: none"> • has incidental or unsubstantiated connections with historically important activities or processes • provides evidence of activities that are of dubious historical importance • has been so altered that it no longer provides evidence of a particular association
An item has strong or special associate with the life or works of a person, or groups, of importance to the cultural history of the local area	<ul style="list-style-type: none"> • shows evidence of a significant human occupation • is associated with a significance event, person, or group of persons 	<ul style="list-style-type: none"> • has incidental or unsubstantiated connections with historically important people or events • provides evidence of people or events of dubious historical importance • has been so altered that it can no longer provide evidence of a particular association
An item demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in the local area	<ul style="list-style-type: none"> • shows or is associated with, creative or technical innovation or achievement • is the inspiration for a creative or technical innovation or achievement • is aesthetically distinctive • has landmark qualities • exemplifies a particular taste, style or technology 	<ul style="list-style-type: none"> • is not a major work by an important designer or artist • has lost its design or technical integrity • its positive visual or sensory appeal or landmark and scenic qualities have been more than temporarily degraded • has only a loose association with a creative or technical achievement
An item has strong or special association with a particular community or cultural group in the local area	<ul style="list-style-type: none"> • is important for its association with an identifiable group • is important to a community's sense of place 	<ul style="list-style-type: none"> • is only important to the community for amenity reasons • is retained only in preference to a proposed alternative

(Continued next page)

Table 5.3 (continued)

<i>Criteria</i>	<i>Guidelines for inclusion</i>	<i>Guidelines for exclusion</i>
An item has potential to yield information that will contribute to an understanding of the local area's cultural history	<ul style="list-style-type: none"> • has the potential to yield new or further substantial scientific and/or archaeological information • is an important benchmark or reference site • provides evidence of past human cultures that is unavailable elsewhere 	<ul style="list-style-type: none"> • has little archaeological or research potential • only contains information that is readily available from other resources or archaeological sites • the knowledge gained would be irrelevant to research on science, human history or culture
An item possesses uncommon, rare or endangered aspects of the local area's cultural history	<ul style="list-style-type: none"> • provides evidence of a defunct custom, way of life or process • demonstrates a process, custom or other human activity that is in danger of being lost • shows unusually accurate evidence of a significant human activity • is the only example of its type • demonstrates designs or techniques of exceptional interest • shows rare evidence of a significant human activity important to a community 	<ul style="list-style-type: none"> • is not rare • is numerous but under threat
An item is important in demonstrating the principal characteristics of the local area's: cultural places or cultural environments	<ul style="list-style-type: none"> • is a fine example of its type • has the principal characteristics of an important class or group of items • has attributes of a particular way of life, philosophy, custom, significant process, design, technique or activity • is a significant variation to a class of items • is part of a group which collectively illustrates a representative type • is outstanding because of its setting, size or condition • is outstanding because of its integrity or the esteem in which its held 	<ul style="list-style-type: none"> • is a poor example of its type • does not include or has lost the range of characteristics of a type • does not represent well the characteristics that make up a significant variation of a type

Source: NSW Heritage Office 2002, *Local Government Heritage Guidelines*, section 8.6.

Table 5.4 **Example Victorian Heritage Overlay Schedule**

VPP Practice Notes

<i>Map Ref.</i>	<i>Heritage Place</i>	<i>Internal alteration controls apply?</i>	<i>Tree controls apply?</i>	<i>Are there outbuildings or fences which are not exempt under clause 43.01-4?</i>	<i>Included in the Victorian Heritage Register under the Heritage Act?</i>	<i>Prohibited uses may be permitted?</i>	<i>Name of Incorporated Plan under clause 43.01-2.</i>	<i>Aboriginal Heritage place?</i>
HO1	<i>House</i> 1 Albert St, Belmont	no	no	no	no	no	n/a	No
HO2	<i>Athol House</i> 57 Albert St, Belmont	—	—	—	yes Ref Ho H456	yes	n/a	No
HO3	<i>Jones Foundry</i> 4 Williams St, Breakwater	no	no	no	no	yes	n/a	No
HO4	<i>Moreton Bay Fig Tree</i> 26 Bryant St, Ceres. The heritage place is the Moreton Bay Fig Tree and land beneath and beyond the canopy edge of tree for five metres.	no	yes	no	no	no	n/a	no
HO5	<i>Former Court House</i> 36 Major St, Highton	yes	no	no	no	yes	n/a	no
HO6	<i>House</i> 13 Albert St, Geelong	no	no	yes front fence	no	no	n/a	no

Source: Victorian Planning Provisions, Practice Notes, p. 60.



6 Analytical framework

This chapter provides an analytical framework for examining the costs and benefits of historic heritage conservation, and the appropriate role for governments in this conservation. Costs associated with the conservation of historic heritage places include: the costs to governments of administering heritage conservation systems; and costs to owners of explicit conservation and maintenance expenditure, opportunity costs arising from a decision to preserve the historic fabric of the place by not making structural changes or adapting it to an alternative use, and additional compliance costs associated with the statutory listing of a place. All those costs can be substantial.

Benefits of historic heritage conservation can accrue to the owner as well as to the more general community. While government intervention may occur on the basis of expected community benefits, the costs of such intervention (on either the owner or the wider community) have typically not been adequately evaluated when considering the type and extent of this involvement. It is therefore imperative that the systems include mechanisms for assessing net community benefit arising from heritage conservation before properties are included on statutory lists — systems that weigh both all the benefits and all the costs.

Ownership of a historic heritage place confers a number of potential benefits (chapter 2). These may be tangible (e.g., commercial use values) or intangible (such as enjoyment of its aesthetic appeal). Both these type of benefits may be reflected in the place's resale value. In many cases, perhaps most, these benefits provide adequate incentives to owners to undertake appropriate conservation activities. Benefits associated with historic heritage conservation also have the potential to extend to the wider community. Historic heritage places may contribute to a community's cultural identity by providing it with a tangible link to its past. Typically, such community-based benefits of historic heritage conservation will not be amenable to easy quantification because of their intangible nature.

It has been argued that these wider community benefits justify government involvement in historic heritage conservation. Where private benefits from conservation are too low to provide adequate conservation incentives, there may be

a role for government to either provide these incentives or to undertake the conservation itself. However, the effectiveness of government intervention will depend not only on the community-based benefits generated. It will also depend on the costs of such intervention and the availability of well-targeted policy instruments.

6.1 Private conservation activities

Although the most iconic historic places are generally publicly owned, in numerical terms most historic places are privately-owned. In addition to their heritage value, these places generally provide benefits to their owners as they are utilised in everyday activities. Historic homes, shops and hotels which are used for their original purpose are obvious examples ('working heritage places').

These use-values provide important incentives for owners to undertake conservation. Owners may also conserve historic places for their aesthetic appeal as this also enhances their use-value. Conservation may also be undertaken as a means of generating financial benefits. For example, tourist operators may help to conserve historic heritage places that are attractive for tourists to visit. Historic buildings may also be conserved because they have a distinctive character which can provide commercial or re-sale benefits. Individuals may preserve the historic character of their homes in the expectation that their neighbours will do the same and, in the process, create mutual gains. In all these cases, the interests of the owners or managers of heritage places coincide, to some extent, with those of the other beneficiaries of heritage conservation.

Businesses may also conserve heritage places as part of their social and environmental corporate responsibility. They may provide funds for heritage conservation as part of sponsorship arrangements, or undertake heritage conservation projects.

As the Department of the Environment and Heritage stated:

Much of Australia's historic heritage stock is owned and conserved by private individuals and firms. It can be assumed that individuals will behave in a way that maximizes their wellbeing and firms will act to maximize their profits. Holding this assumption as given, we can say that private individuals and firms will conserve historic heritage where they can capture the benefits from that conservation. For example, a private individual may conserve the historic heritage aspects of a site if there is an associated income perhaps from charging for access to the site, or because the private individual gains some personal utility from conserving the historic heritage values of the site due to a preference to live in a historic heritage house.

Many historic heritage assets have use values other than those directly associated with the heritage aspects of the asset. Where these are complementary to the heritage values, it is possible that private individuals and firms will conserve historic heritage while acting to maintain these non-heritage use values of the asset. (sub. 154, p. 51)

There are also a number of volunteer organisations involved in heritage conservation, such as the National Trusts. These organisations undertake heritage repair, maintenance and preservation work, either directly through members' voluntary work or through the funding of such activity. Voluntary community action may be motivated by the desire to pass on the benefits of historic heritage places to other members of the community and, in doing so, strengthen a sense of community spirit. These community activities, initiated by the private sector, are more likely to occur where social benefits are confined to a local community that can directly benefit from those conservation activities.

6.2 When should governments become involved in historic heritage conservation?

A central issue for this inquiry is the extent to which governments should participate in the conservation of historic heritage places and the principles which should guide that intervention. Government intervention can be warranted in the presence of market failure (that is, where the private benefits or costs of an activity do not fully reflect the social benefits or costs):

Where the private marginal costs and benefits differ from the social marginal costs and benefits the market is said to fail. For example, a property owner may decide to demolish a heritage property to build a new property because the private benefits of demolishing the property outweigh the private opportunity cost of the heritage loss. However, where the social benefits of the heritage building are such that the socially optimum outcome is for the building not to be demolished the market has failed. (Department of the Environment and Heritage, sub. 154, p. 51)

Australia ICOMOS argued that there was clear evidence of market failure in historic heritage conservation:

The reality is abundantly evident in Australia's capital cities. In the absence of effective historic heritage regulation in the mid-twentieth century, vast swathes of inner-city areas in Sydney and Melbourne were deprived of their rich stock of historic buildings, so as to make way for large-scale commercial developments that were themselves made possible through advances in building technology. Underlying land values, reflected in the 'developable potential' soared as the market did not value the existing historic building stock for its role as a 'public good'. (sub. 122, p. 9)

As government involvement should address the specific causes of any market failure, it is important to identify the impediments to an efficient market outcome when reviewing government policy (ORR 1998, COAG 2004). With respect to the conservation of historic heritage places, in order to assess what form of government action may be justified, market failures in the conservation of these places must be carefully identified and assessed.

While acknowledging the crucial role of the private sector in historic heritage conservation, the Chairs of the Heritage Councils of Australia and New Zealand also identified circumstances under which government intervention could be justified:

For the most part, the community voluntarily supports the conservation and maintenance of heritage places because they receive a range of benefits/value ... from such places. For example, many property owners see it as being in their financial interest to conserve their property's heritage characteristics.

However, the nature of some of these benefits mean that sometimes the market will not provide a socially optimal level of protection for historic heritage places. Such a 'market failure' exists when there is a divergence between the marginal social costs and benefits and the private costs and benefits of investing in conservation. In the presence of this divergence, there is a *prima facie* case for government intervention (i.e. to correct the market failure). (sub. 187, p. 4)

There are several areas of potential market failure which have been identified as requiring government intervention to solve. Arguably, the most significant are externalities, although it has also been argued that governments may be required to intervene:

- in response to public good characteristics of some historic heritage places;
- to redress problems associated with possible information asymmetries; and,
- to increase the welfare of future generations.

(see, for example, Department of the Environment and Heritage, sub. 154, pp. 51–5; Chairs of the Heritage Councils of Australia and New Zealand, sub. 187, pp. 5–8; the Australian Council of National Trusts, trans., pp. 379–80)

Externalities

As representatives of the community's interests, governments are in a position to consider the broader social benefits of heritage conservation which may not be taken into account by private decision makers. Thus, governments may undertake (or facilitate) conservation which, while socially valuable, would not be considered worthwhile from the point of view of a private property holder. Similarly, they may

be able to consider community benefits when deciding how best to manage their own historic heritage assets. A benefit which accrues to members of the community, other than those responsible for generating it, is known as a positive externality (box 6.1).

Box 6.1 Externalities

Externalities arise when the actions of an individual or firm affect the welfare of others and where those actions are not taken into account, in market transactions or in negotiations between the parties. These ‘spillover’ effects may be positive or negative. If they have a positive effect, it may be in society’s interest to encourage more. If the impact is negative, social welfare may be improved by a reduction in the harmful activity.

Provided transactions costs are not prohibitively high, an assignment of private property rights over the externality may lead to a market-based solution. For example, neighbours can negotiate, local communities can form ‘clubs’, firms can integrate. Where very large numbers of people are affected by externalities, private solutions may not be feasible. The high costs of negotiating solutions and the problem of ‘free-riding’ (that is, some people not paying their share) are two possible reasons.

Without an ability to enter into a bargain, or trade over the positive externality (which may result from an inability to enforce private property rights over the externality or from high transactions costs which preclude negotiations between the relevant parties) there will be no mechanism to ensure that those benefiting from the externality are able to encourage a socially-optimal level of the external benefit. Box 6.2 sets out the problem for the conservation of historic heritage places in a simple diagrammatic framework.

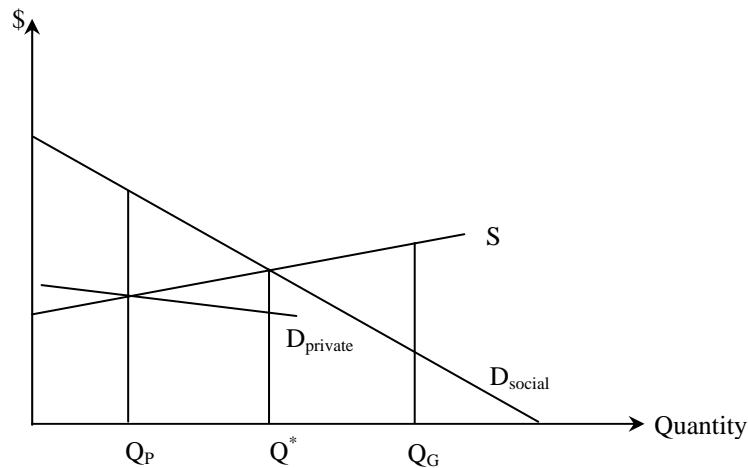
It is important to note that, while the existence of community-based benefits may provide a rationale for government involvement, it does not establish the case for such involvement. That is, the presence of market failure as a result of community-based benefits is a necessary, but not a sufficient, condition for government intervention. To establish whether intervention is warranted it is necessary to consider the costs and effectiveness of such intervention:

Decisions on preserving [cultural heritage] are continually taken by governments and public administrations. Preservation implies maintaining the stock and hindering its dilapidation and worsening. Keeping up the stock creates opportunity cost as the resources involved (labour and material inputs, and in the case of historic monuments especially the sites) could be used for alternative purposes. Current funds are needed to repair and safeguard the objects. In order to take these decisions rationally an evaluation of the value of cultural heritage (compared with relevant alternatives) is required. (Frey 1997, p. 31)

Box 6.2 Socially-optimal provision of historic heritage places

Demand and supply for historic heritage are stylised in figure 6.1. The value of benefits and costs are measured on the vertical axis. An index of historic heritage is measured on the horizontal axis. It is possible for the amount of heritage to increase if, for example, the heritage value of a dilapidated building is restored.

Figure 6.1



The supply curve (S) indicates the incremental costs of providing historic heritage. These costs include the opportunity costs of not allowing a historic heritage place to be used for an alternative use, as well as costs associated with maintaining the historic fabric of the property. Its upward slope reflects the fact that increased conservation activities increases the alternative use value of historic heritage places. Additional amounts of historic heritage can only be provided at increasing marginal cost.

Social welfare maximisation requires that historic heritage is supplied to the point where the additional costs of supplying it equal the additional benefits (inclusive of any social benefits) that it produces. Private conservators of historic heritage places, however, will base their decision on whether (and how much) to conserve on the private benefits of such conservation. This is indicated by the private marginal valuation schedule $D_{private}$. The D_{social} curve represents the aggregate willingness to pay (or the demand) for the benefits of historic heritage places — it sums the community valuation of these benefits and adds these to the private benefits. Its downward slope reflects the general preference of individuals to value something less at the margin as it becomes *relatively* more abundant. Although marginal benefits decline, total benefits (measured by the area under the demand curve) may still be very large.

Differences between the two demand curves measure the social benefits of conservation. As the marginal value of benefits falls as consumption increases, an socially efficient equilibrium exists that balances marginal costs and marginal benefits (Q^*) and involves a level of conservation greater than the private optimum (Q_P).

Other potential grounds for government involvement

Public goods

Public goods have similar features to externalities. A public good is non-excludable (those who do not pay for it cannot be prevented from using it) and non-rivalrous (consumption of the good by one person does not reduce consumption by another). The first of these characteristics, non-excludability, may lead to underprovision since suppliers who cannot recover the cost of provision are unlikely to provide it (or to provide it at socially optimal levels):

Public goods result in market failure because of the free-rider problem, where a consumer can enjoy a good that they have not contributed to. The market fails because the free-rider values the good but the private owner has no way of capturing this value and so will under supply the good compared to the social optimum. (Department of the Environment and Heritage, sub. 154, p. 52)

Public good characteristics may be particularly relevant for existence and bequest values¹ (chapter 2) associated with historic heritage conservation.

There are however some non-use values of historic heritage that have public good characteristics. For example, existence value is both non-excludable and non-rival. In which case it is not possible to stop free-riders resulting in an outcome below that which is socially optimal. (Department of the Environment and Heritage, sub. 154, p. 53)

Existence and bequest values are likely to be of greatest relevance for iconic historic heritage places, and can be captured for the community through government ownership of the property. For less iconic properties, particularly those which represent a category of heritage which is not unique, the existence and bequest values are probably less significant. For example, as a member of a local community, an individual may derive benefits from the conservation of a sandstone bank. However, the knowledge that this is one of many bank buildings conserved around the country would tend to diminish the existence and bequest values attached to that particular bank.

Information asymmetries

As stated by the Chairs of the Heritage Councils of Australia and New Zealand:

¹ Recall that existence values arise because people have the option of visiting a historic heritage place (whether or not they actually do so). Bequest benefits arise from the knowledge that a historic heritage place can be passed on to future generations.

Information asymmetries occur when one party in the market, usually the buyer, does not have sufficient information about the good they are considering purchasing, or the actions of the seller, to make a decision in their best interest. (sub. 187, p. 5)

It has been argued that information asymmetries may be problematic in the market for historic heritage conservation:

There are a number of characteristics of heritage goods that increase the risk of information-related market failure. In particular:

- heritage is a difficult attribute to define in any absolute way (and is often related to tastes and values), and as such can also be difficult to identify and value within a good, such as a house. For instance, a purchaser of a house may be informed that the house does or does not have heritage value, but it may be relatively difficult to assess this claim; and
- heritage places tend to be large, one-off or low frequency investments where the purchaser cannot necessarily rely on previous experience to determine the quality of the good. (Chairs of the Heritage Councils of Australia and New Zealand, sub. 187, p. 6)

In circumstances where a seller has more information about the quality of a good, adverse selection can occur. This type of market failure arises when buyers are aware that quality differences may exist but are uncertain which sellers are offering high quality products and which are offering low quality products. As a consequence, the likelihood of receiving a low quality item is factored into the market price. As the price declines, high quality sellers may leave the market, perpetuating a cycle of declining quality and prices until only poor quality remains and, potentially, the market ceases to function (Akerlof 1970). The Chairs of the Heritage Councils of Australia and New Zealand (sub. 187, p. 6) considered that the market for historic heritage places may be susceptible to such adverse selection.

However, the potential for market failure only arises where markets are unable to develop mechanisms for signalling quality. Warranties, guarantees and independent pre-purchase quality assessments are all mechanisms by which the buyer can receive information about product quality. Hence, it is not clear that asymmetric information would lead to significant market failure in the market for historic heritage places. Potential buyers can have the heritage values of a place evaluated by a heritage expert in exactly the same way as its structural soundness or energy efficiency. Organisations such as the National Trusts and the Royal Australian Institute of Architects maintain lists which provide information on the heritage values of some places.

While it is true that heritage attributes have more subjective elements to them than structural integrity or energy efficiency, it is also the case that there are objectively verifiable aspects of heritage (such as date of construction, history of occupancy,

and architectural style). An informed potential buyer can assess the value of two competing heritage places in exactly the same way as other attributes might be assessed between two competing properties (for example, whether a second bathroom or a double garage is more important to that buyer). The success of real estate markets lies in their ability to encourage potential buyers to reveal their valuations. Throughout the sale process, the seller has important incentives to reveal the valuable characteristics of the property; the potential buyer has equally strong incentives to verify these characteristics.

It may be that, as a result of this process, the potential buyer (or seller) reaches a different conclusion about heritage values than a heritage expert would have. However, this is not necessarily indicative of market failure. It may simply reflect the inherent subjectivity of defining heritage values.

Information asymmetries can be reduced by greater dissemination of information. Non-government organisations, such as the National Trusts, play an important role in this. Listing, when undertaken in a rigorous way, can reduce buyers' information gathering costs. However, when it is associated with use-restrictions (as it is with statutory listings) and a potential reduction in property value, the listing can prove counter-productive as sellers disguise or destroy heritage values to prevent listing or expend resources to remove the property from the list. Under these circumstances, the decline in property values, and consequent reduction in incentives to conserve, can be viewed as a government, rather than market, failure.

Markets fail to adequately consider the interests of future generations

According to the Chairs of the Heritage Councils of Australia and New Zealand:

An important aspect of historic heritage (in common with other types of heritage) is that intergenerational externalities are present (i.e. the actions of current generations result in spillover impacts on future generations). While the degree to which future benefits and costs should be discounted is controversial, a fundamental premise of heritage conservation is that heritage should be preserved for future benefit. If we accept that this includes future generations, then intergenerational externalities must be considered in choosing appropriate policy action. (sub. 187, p. 6)

Similarly, the ACT Heritage Council noted:

... the principles of intergenerational equity (heritage being for the current and future generations) would be lost in an unregulated market focussed on short-term returns. (sub. 147, p. 1)

Australia ICOMOS also questioned the ability of markets to pass on cultural value to future generations:

Historic cultural heritage is typically characterised in both statute and practice as value for future generations as well as for the present community. However, its concurrent role as potentially developable real estate does not necessarily accommodate this inter-generational perspective. Property owners, whether private or corporate, are ultimately investors who can take a myopic view and, in many cases, do not consider, let alone seek to retain, what may be of value to future generations, in an unregulated context. (sub. 122, p. 9)

The Australian Council of National Trusts noted:

If one supports the concept that in effect the conservation of heritage is the recognition that we all have a shared responsibility to take forward what we value today into the future, what we're really espousing and adopting is a principle of inter-generational equity ... when one is focusing on the values or the disadvantages of a heritage regime being placed over the heritage we have today, we are in a sense making a decision not just for our own generation but for future generations. (trans., p. 379)

In the event that the preferences of future generations coincide with the preferences of current generations, this argument can be viewed as an extension of the externalities argument outlined above. The benefits from the listing would not only be those accruing to the current generation, but also to all future generations.

However, it is much more difficult to sustain the argument that governments should intervene to anticipate the preferences of future generations. Governments may be no more successful in divining future preferences than markets. Indeed, they may face less incentives to cater for future preferences. Markets encourage owners to invest in attributes which may be considered valuable to future purchasers and users of a place, whether the purchasers and users are in the current generation or the next.

A useful reminder of the role that markets play in catering for the needs of future generations (albeit, at a less than optimal level) is the fact that the overwhelming majority of historic heritage places existed prior to explicit government involvement in historic heritage conservation and were therefore conserved through private initiative.

Where this source of market failure is identified it is also important to recognise that there are opportunity costs involved in conserving for future generations in the same way that there are opportunity costs involved in decisions to conserve for current generations. A decision to conserve a place, rather than put it to alternative uses, not only has immediate costs in terms of the forgone development opportunity but may

also prevent a development which would be considered heritage by future generations.²

The Tasmanian Government identified the costs and benefits involved in securing historic heritage places for future generations. It also noted that community attitudes towards heritage can evolve:

Our heritage today is a reflection of the fact that previous generations have valued it enough to ensure it is maintained. This legacy and examples of more contemporary heritage add to the mixture of heritage places, and places an onus in turn to protect it for future generations. This introduces a notion of cross-generational benefits and costs that also need to be recognised. Community and government priorities may also change over generations, resulting in different emphases on the kind of conservation, the priorities in heritage and the amount of funds allocated to such conservation. Infrastructure and administration costs are not necessarily small and have an impact on individual owners and local government in particular. (sub. 136, p. 13)

Similarly, the Department of the Environment and Heritage identified the potential for community attitudes towards heritage to change:

... with rising incomes, advances in knowledge and education and shifts in social attitudes it can be expected that there will be changes in the way in which the Australian community views historic heritage. It is likely that such changes will allow for new approaches to the conservation of historic heritage. (sub. 154, p. 51)

Establishing the case for government involvement

The case for government involvement must be based on a rigorous assessment of the relevant benefits and costs, including social benefits and the costs imposed on private owners by government intervention. Establishing that there is a divergence between social and private benefits in historic heritage conservation does not, of itself, establish the case for government involvement:

The mere fact that market failures are present in the historic heritage market is not justification enough for government intervention. Markets operate all the time in the presence of failures, buyers often have more information than sellers and most transactions have consequences for third parties, and yet governments do not intervene. This is because government intervention is not without cost. Intervention to correct the shortfall in the provision of historic heritage can only be justified where the benefits of intervention outweigh the costs. (Department of the Environment and Heritage, sub. 154, p. 53)

² For example, Bennelong Point, the site of the Sydney Opera House, was also the site of Fort Macquarie and later the site of a tram depot. Had the site been conserved on the basis of its historic use, the Opera House (which is soon to be nominated for inclusion on the World Heritage List) may not have been built on that site.

That is, it first has to be established that government involvement increases the social value of heritage conservation above that which would otherwise occur. In particular, government-initiated conservation activities only represent a social benefit to the extent that they would not have been voluntarily undertaken by the private sector. Similarly, financial assistance paid to individuals and businesses to undertake heritage conservation is not part of the benefit of government involvement if the conservation would have occurred anyway. It is simply a transfer from taxpayers.

Second, once the benefits of government participation are identified, it needs to be established that these benefits exceed the costs of government involvement. Among these costs are those associated with raising the funds used to subsidise heritage conservation and the costs to property owners arising from use restrictions or limits to structural modification placed on heritage buildings.

In cases where heritage conservation is not judged to be privately viable, government involvement may be justified either through financial assistance to make the project viable, or if the private benefits are small, by direct public conservation activities. Ideally, provision of financial assistance should also be sufficiently well targeted to ensure that commercially viable conservation projects are not recipients.

For example, community-based solutions may be found, with or without government involvement. The Victorian Government provided an example of a heritage building which, because of community pressure, was not demolished. The local community is currently raising funds for its preservation, to which the Victorian Government will also contribute:

The enthusiasm residents feel for significant places within their communities is most clearly demonstrated when places come under threat of demolition. A recent example that demonstrates this is the House of the Gentle Bunyip in Clifton Hill, which was saved from demolition by a strong community campaign over a number of years. The perseverance of the community demonstrated their aspiration to preserve local character and resulted in the retention of the house, which contributes to the social capital of the area. This example provides clear evidence of the social benefits that can be attained through heritage conservation. (sub. 184, p. 8)

However, the conclusion that the overall level of historic heritage conservation, resulting from private decisions, is less than the level which would maximise net benefits to society does not, of itself, imply that government involvement is warranted. Governments should become involved only if the benefits (both tangible and intangible) exceed the costs of that intervention. Since public assistance should be directed towards projects which are not commercially viable, and would not otherwise be undertaken by the private sector, the case for government involvement

will normally be based on consideration of the more intangible benefits of heritage conservation.

6.3 Assessing government policies

As discussed above, the socially optimal outcome is to ensure that conservation of historic heritage places occurs up to the point at which the extra benefits (inclusive of all community benefits) from such conservation equal the additional costs of their provision.

In those cases where existing government policy constrains private conservation effort, the efficient response of government may be to simply remove the policy distortion. Where private costs and benefits are affected by a lack of information or high costs of information, there may be a possible role for government in improving the dissemination of information (for example, in the provision of planning advice).

Where the problem is caused by a divergence between social and private benefits, policy intervention is more problematic. Government attempts to increase provision of an underprovided good may have unintended consequences for the incentives of those private decision-makers undertaking that provision. For example, financial incentives provided to the private sector may lead to individuals understating their willingness to undertake the conservation in order to receive a government subsidy. Under these circumstances, the government is effectively paying for work which would have been undertaken anyway.

Governments may intervene in a number of ways:

- identifying historic heritage places;
- articulating the heritage values of places so-identified;
- protecting these heritage values by placing use-restrictions on identified places (for example, preventing certain types of modifications to the property);
- provision of financial incentives; and
- management of their own historic heritage places.

Box 6.3 outlines some of the efficiency considerations in designing optimal policy interventions.

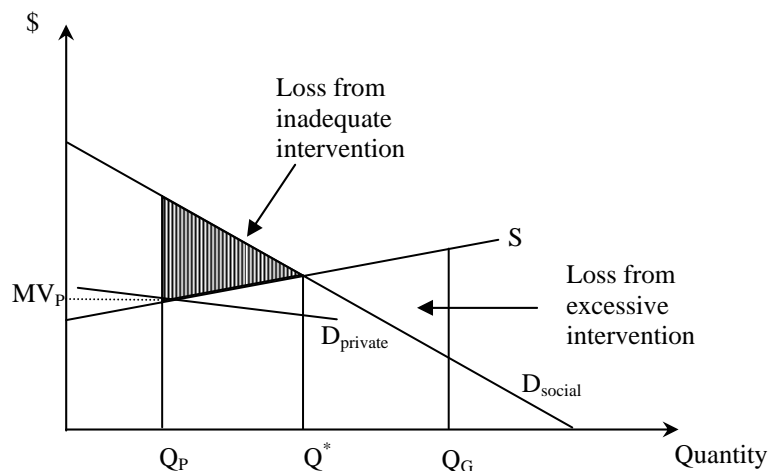
Financial incentives

Governments at all levels provide financial incentives for the conservation of

Box 6.3 Optimal policy intervention

In the stylised situation depicted in figure 6.2, private owners (considering only the private benefits and costs) will conserve up to Q_p . Further conservation activities, while desirable from the viewpoint of society as a whole, will not be undertaken because owners lack the incentives to do so. Provided the costs of government intervention are sufficiently low, there may be a role for governments to increase conservation activities.

Figure 6.2



Policy intervention which increased conservation undertaken from Q_p to Q^* would produce a net social benefit (equal to the shaded triangle). This could be brought about through:

- a subsidy (the efficient level of which is equal to the difference between marginal private benefits and marginal social benefits at Q^*);
- conservation activities directly undertaken by the government; or,
- regulations requiring private owners to undertake conservation activities.

Each of these policies has a cost. Subsidies and publicly funded conservation require expenditure of taxpayer funds which could be put to an alternative use. To be optimally implemented, these policies also require full knowledge of all relevant costs and benefits.

Financial incentives

Efficiency considerations suggest financial subsidies should only be paid to those places which would not be optimally conserved in the absence of consideration of their social value. In terms of figure 6.2, all places which have a private marginal valuation greater than that associated with Q_p (MV_p) have sufficient private benefits to ensure their ongoing conservation. It is only for conservation levels greater than Q_p , that the

(Continued next page)

Box 6.3 (continued)

divergence between social and private benefits leads to an inefficiently low level of conservation.

Regulation

Coercive regulation, intended to increase private conservation activities, may diminish private property rights. Not only does this represent a potential income transfer from an individual owner, it may undermine incentives for future private conservation undertakings. Where the costs of conservation are high in comparison to the benefits, a net social loss may arise. This outcome is more likely where costs are not fully accounted for. Under such an outcome, social welfare may be lower than it would have been in the absence of government intervention.

In terms of figure 6.2, governments would attempt to coerce private owners to undertake conservation activity up to Q^* . For some owners, specifically those with marginal benefits in excess of MV_p , the imposition of a coercive regulation of this type would not represent an undue burden because the private benefits of conservation exceed the costs.³ For owners with a lower marginal valuation, however, such a policy would represent an impost because they are required to undertake conservation for which the net benefits to them are negative.

Aside from the equity considerations arising from owners being coerced into providing benefits for others, the efficacy of such a policy requires the government to know the optimal level of conservation. This, in turn, requires rigorous assessment of all costs and benefits. In figure 6.2, if the government overestimates the optimal level of conservation, for example to Q_G , this will produce a net social cost (represented by the unshaded triangle between Q^* and Q_G and bounded by the social demand and the supply curve).

historic heritage places. Grants are the most common form of assistance. Grants are intended to offset direct conservation expenses and will typically be awarded in amounts less than the total cost of the conservation work. Governments also provide financial assistance through rate rebates, land tax revaluations and concessional finance. Advisory services may also be offered free of charge.

Governments may also jointly offer financial assistance. For example, the Melbourne Heritage Restoration Fund was established as a non-profit joint venture between the Victorian State Government and the City of Melbourne. This fund offers free conservation advice to owners, low interest rate loans for restoration or reconstruction works, grants for conservation work (offered as a

³ Although it could be argued that the introduction of such a policy might decrease the attractiveness of owning heritage places and thereby lower private rates of return. The issue of dynamic efficiency is discussed below.

proportion of the work undertaken) and grants to assist in the development of conservation management plans (City of Melbourne, sub. 18, p. 1).

Financial incentives may be difficult to target since it may not be possible to distinguish between those private owners who require incentives to undertake conservation and those who do not. There may also be equity and political considerations which suggest that any government assistance for historic heritage conservation should be made more generally available.

An income tax rebate for historic heritage conservation works was available from 1994 to 1999. According to Environment Protection and Heritage Council (2004, p. 7), it was abolished partly because of a National Commission of Audit finding that tax rebates were less ‘transparent’ and ‘accountable’ than direct financial assistance.

Regulation

Having identified historic heritage places worthy of conservation, based on their perceived benefit to the community, governments may restrict the use of those places as a means of ensuring the preservation of their historic value. The Chairs of the Heritage Councils of Australia and New Zealand identified the nature of regulation in historic heritage conservation:

... regulatory policy instruments use laws or other government ‘rules’ to influence the way that people behave. Regulation essentially involves ‘control of behaviour by directive means, imposed by an authority asserting the state’s role when private behaviour may not be in the public interest’. Regulatory instruments differ in their approach to other instruments in setting a requirement of action, and establishing negative consequences to not complying with this requirement (i.e. rather than purely setting an incentive for action, as with spending instruments). (sub. 187, p. 10)

Where such restrictions are imposed on privately-owned historic heritage places, the potential for encroachment of private property rights clearly arises (box 6.3). In the words of one participant:

... there is a question of principle. Is it correct for owners to have their property rights expropriated without compensation, through an arbitrary and capricious system? Certainty is a cornerstone of the law, yet owners can never predict what will next make the list ... This injustice infects community attitudes. It is easy to support listing something that ‘it would be nice to save’, when the entire cost is borne by the poor soul who owns it. Heritage becomes theft. (Alan Anderson, sub. 185, p. 2)

The issue is not simply one of equity. If those who receive the benefits of regulations on property use — and make the decisions on which properties should be regulated — do not also bear the costs, insufficient consideration of these costs is

likely to occur. Consequently, government intervention (especially regulation) to ensure a socially optimal level of conservation needs to fully reflect not only all the benefits, but also all the costs, involved.

In short, where incentives are not appropriately aligned, there is a commensurate reduction in the likelihood that a socially-optimal level of regulation will occur. Where the recipients of the costs and benefits differ in this way, it is important to have in place a rigorous process for assessing the costs and benefits of limiting private property rights.

Throsby (1997, p. 20) distinguished between ‘hard’ and ‘soft’ regulation in heritage conservation. ‘Hard’ regulation by government ‘comprises enforceable directives requiring certain behaviour’.⁴ Essentially, this kind of regulation involves legal restrictions on use and disposal of listed historic heritage places.

‘Soft’ regulation are policies designed to encourage socially optimal policies on the part of owners. Voluntary covenants on a property fall into this category. These agreements can be very specific and therefore able to allow for variations in local conditions. However, the transactions costs can be high when governments undertake negotiations with large number of property owners with a diverse range of historic heritage places. These transactions costs can be reduced by a clear articulation of the heritage values of the place and the use of standardised agreements. As noted below, negotiated outcomes have the advantage of encouraging both parties to a bargain to reveal information about their costs and benefits.

Regulation may not be able to encourage positive outcomes

There are also limits to the ability of governments to ensure that conservation is carried out. Regulations are typically implemented in a reactive fashion. That is, they are intended to prevent the destruction of the historic fabric of a place through substantial modification or demolition. While local government planning rules can prevent owners from converting a historic heritage place to an alternative use, governments typically have limited, or no, power to prevent ‘benign neglect’ under which insufficient resources are devoted to the maintenance of the property. For example, the City of Sydney acknowledged that governments may have limited ability to prevent the occurrence of this type of neglect:

... the other pressures that face the city in conserving historic places, the impact is largely seen by demolition by neglect due to a lack of maintenance of historic

⁴ In terms of general public policy, ‘hard’ regulation is often referred to as ‘command and control’ regulation (see chapter 7).

properties. The city faces pressure from owners who are letting buildings deteriorate and arguing that they need to have a development on site, which will then fund the restoration. This often leads to a subdivision of properties and inappropriate developments being placed beside historic items ... The curtilage consequently is lost in the process. Inappropriate developments can often be placed against significant heritage items. Their context and significance is diminished ... The city is really not in a situation to be able to deal with either the demolition-by-neglect process or, now, the potential loss of curtilage in a very easy manner ... (trans., pp. 1043–4)

Over time, insufficient maintenance may lead to irreparable damage to the historic fabric that gives the place its heritage significance. In general, there are significant practical limitations to governments conserving through regulation:

Overall, the prospects for successful regulation of the available stock of cultural heritage objects are not too good. But while ineffective rules are stubbornly maintained or nonchalantly broken, unique objects disappear daily. (Hutter 1997, p. 8)

Indeed, coercive regulation may also lead to perverse outcomes where owners destroy the heritage value of a place to prevent its listing and subsequent coverage by regulation. Richard Epstein, Professor of Law at the University of Chicago, noted some of the potential perverse effects of endangered species protection policy in the United States:

With respect to the current system of habitat designation, one important point is that loss of habitat *prior to* designation carries with it no adverse legal consequences. The anticipation effects in this market are therefore enormous. If there is any sense that private land will be subject to controls, then the best strategy for the owner is to destroy the habitat before it becomes protected: ‘shoot, shovel and shut up’ becomes the war cry. It may not work in all cases. Sometimes the habitat is too valuable to the owner; sometimes it is connected with the property rights of other individuals ... Absent strong ownership rights, the unmistakable incentive remains in all cases: destroy habitat now in order to preserve freedom of action later. (1996, p. 45) [emphasis in original]

Epstein further argued that, instead of quarantining designated habitats from alternative uses, negotiated solutions between governments and land owners could enable the owner to continue to derive benefits from land ownership while also ensuring the desired conservation outcomes:

Yet all that is lost because there is no negotiation to be had since the government is still in designation mode. Instead the critical variable is one which has the private owners ... lobbying government to make sure that designation does not take place, or at least does not take place quickly. So designation systems have two substantial costs: one is destruction before designation, and the other is the use of the political process to deny, delay or deflect the designations that might come. (1996, p. 46)

By limiting owners' property rights, coercive regulation can undermine longer-term conservation incentives for owners (who are typically best placed to undertake the conservation):

... When people can decide how to use their own property and can be confident of gaining returns from investment in their property, they have a greatly increased incentive and capacity to discover more effective uses of assets, indeed, to discover new assets. Decision-making is put in the hands of those most likely to be knowledgeable about the asset and with a direct incentive to extend and use that knowledge.

The more uncertain property rights are, either in their extent or security, the less incentive there is to invest in finding better uses for resources, particularly over the long term. Insecure ownership effectively raises time discount rates. (Hartley 1997, p. 450)

While there can be partial compensation for the loss of property rights implied by 'hard regulation' (such as grants for maintenance or rates rebates and concessions), the present value of these may be small when compared to the potential for capital losses in property values arising from the regulation (the issue of the impact of regulation on property prices is discussed below).

Negotiation to solve market failure

Coase (1960) recognised that regulation was not the only means of correcting market failure associated with externalities. Where transactions costs are small compared to the potential gains from reaching agreement, an allocation of property rights could result in a socially-optimal outcome as the parties affected by the externality negotiate a mutually-acceptable outcome.

Transactions costs are the costs involved in negotiating and enforcing agreements between the parties. These costs will typically be lower when there are fewer parties to the negotiation and where agreements can be designed to minimise the impact of opportunistic behaviour by any party. In contrast to regulation, incentives can be negotiated into the agreement to encourage the parties to contribute to a mutually successful outcome. This, in turn, can reduce the monitoring and enforcement costs associated with regulation.

The allocation of property rights to enable the affected parties to negotiate over outcomes has been successfully applied to the allocation of water rights; rights to pollute; access to common property resources such as fish stocks; and protection of endangered species.

In the case of historic heritage, where property rights traditionally rest with the owner, governments could represent the community interest in negotiating

conservation outcomes with private owners. Mutually-acceptable outcomes would be achieved whenever the community benefits of conservation exceed the costs (inclusive of any negotiation costs). If the beneficial externality from historic heritage conservation is small compared to the benefit accruing to the owner, only minimal, or no, incentives may have to be offered to ensure an optimal outcome. In cases where the public benefit is large, and the benefit to the owner is comparatively small, more substantial inducements may have to be offered.

If the valuation of the community benefits, as expressed through the government's willingness to pay for conservation, is less than the net conservation costs to the owner, no agreement will take place. Thus, the agreement process embodies a benefit–cost test. A successful negotiation will also ensure that the conservation activities are undertaken by the party capable of undertaking them at the lowest cost. Given that most historic heritage places are privately-owned and used, this will typically be the owner.

Government ownership of historic heritage places

Governments can lead by example through the management of their own historic heritage places. In most cases, examples of iconic heritage, whose primary values are the cultural benefits they endow on the community, are in public ownership (and likely to remain so). In other cases, the public sector manages historic heritage places for which the heritage value can be secondary to a functional use (historic courthouses, schools and town halls are examples) (Australia ICOMOS, sub. 122, p. 12).

In addition to conserving iconic places with extensive community benefits, governments may also have an appropriate role in conserving places with little private use-value. Examples include historic bridges, industrial sites and sewage sites. However, conservation of these types of heritage assets will still entail costs which need to be considered when deciding whether to retain the asset in public ownership (chapter 8).

6.4 Measuring the benefits of historic heritage conservation

The case for government intervention rests primarily on the desire to ensure that the community benefits associated with historic heritage places are provided at a socially optimal level. As discussed in chapter 2, these benefits may arise from the use of the place (for example, in the provision of a public service, as a basis for tourism or as an educational resource) or they may arise for more intangible

reasons, not associated with the use of the place (such as existence values or the ability to pass it on to future generations). The intangible nature of these benefits can make their measurement problematic:

... nonuse values ... are difficult to measure because the commodities being valued are not traded in markets, nor are individual actions affected by the particular nonuse values. Thus, even if some people have preferences that imply nonuse values, it is difficult to put a price tag on something that is never traded and does not affect individual actions in the normal manner. (Diamond and Hausman 1993, pp. 3–4)

This implies that a rigorous process of eliciting community valuations may be necessary to ensure that a socially desirable level of conservation is achieved and the level of government involvement is appropriate. Koboldt cautioned against accepting claims about the benefits of historic heritage conservation at face value:

... the external benefits commonly ascribed to the existence and use of cultural heritage have to be analysed very carefully and suspiciously, as the arguments more often than not are intended to justify public funding and are, therefore, results of rent-seeking behaviour rather than serious analysis. (1997, p. 57)

Issues in the measurement of benefits associated with historic heritage places

A number of participants in this inquiry have suggested that the Commission derive an estimate of the total value of historic heritage places. For example, the Australian Council of National Trusts (ACNT) presented the view that:

... the Commission would fail in its duty if it did not undertake an evaluation of the value Australians place on the preservation of their heritage (or at least recommend that such an evaluation be undertaken). The ACNT believes that such an evaluation will show the value is well above the direct valuation witnessed by such measures as income from visitations to heritage places. (sub. 40, p. 101)

Aside from the question marks over the accuracy of such data in representing community valuations (see below), there are also very serious concerns about the relevance of such a construct for policy making.

Invariably, attempts to measure community valuations of heritage, focus on attitudes towards iconic historic heritage places, such as the Royal Exhibition Building in Melbourne. However, the value and significance placed on these iconic items by the community is such that their continued conservation is normally beyond doubt. It is at the margin, where the benefits of places proposed for heritage designation will typically be finely balanced against the costs of conservation, that policy potentially has the greatest impact (the issue of public funding of iconic historic heritage places is discussed in chapter 8). If marginal cases are assessed in a

way that ensures the benefits (including all community-based benefits) exceed the costs, then a policy intervention which is necessary to ensure conservation should produce a net benefit.

Clearly, not all historic heritage places will have the same heritage value. Some places will be highly significant (and in some cases, be regarded having 'outstanding' heritage value (Australia ICOMOS, sub. 122, p. 100)). Others will be regarded as less significant. Some places will have primary significance to a certain group within the community, while others will have more general appeal.

Community attitudes are subject to change

In a physical sense, the stock of historic heritage places cannot be added to. By definition, these are places whose importance derives from their association with events in the past. With the passage of time, however, some places which were previously not regarded as of heritage value may be viewed by the community as having cultural importance. The reverse might also be true. Places which were once thought to be culturally significant could have their status altered with a change in community attitudes. According to the National Trust (NSW):

Listing cannot be comprehensive at any given point in time and ... our perceptions of value will alter over time. During the early years of the 20th century the Georgian Society in the UK deplored anything Victorian in design. That Society is now the Architectural History Society and no longer holds such prejudices. The National Trust is also regretting some decisions it made not to list in the early 1960s items whose loss is now deeply regretted such as the Regent Theatre in Sydney which was considered 'too recent' to list at that time. Time gives us a perspective that nothing else is able to do. Buildings of the 1960s however are in that transition time of being very recent to someone in their 70s but ancient history to someone in their 20s or 30s. (sub. 180, p. 2)

For policy purposes marginal valuations are important

When analysing 'heritage value' it is important to distinguish between the total value of all historic heritage places and the marginal value of listing one more place. As with any other 'good', the marginal value of heritage declines as more and more of it becomes available (box 6.1).

The total valuation of the existing stock of historic heritage places provides little, if any, relevant information about marginal places which might be added to the stock. The Sydney Opera House, for example, has outstanding cultural value. There would be close to total (if not complete) unanimity in the Australian community about its iconic status and the need for its preservation. However, a decision to list the Sydney Opera House does not usefully inform the decision as to whether or not to

list, for example, a suburban house whose potential significance derives from the fame of a person who once lived there or the architect who designed it (and, perhaps, many other houses).

The nature of the benefits is also likely to differ between types of historic heritage places. While iconic heritage items might fairly be said to have substantial existence and bequest values, the same would be more difficult to argue for lesser known historic places.

A number of factors determine the cultural value of historic heritage places. Historic heritage places which are scarce, or represent a category of heritage which has largely vanished, are more likely to be highly prized by the community. Scarcity value can also increase the return to private ownership.

It might also be argued that there is a ‘network externality’ present by which, up to a point, the identification of more historic heritage places raises the profile, and hence the community valuation, of the existing stock. In the words of the Chairs of the Heritage Councils of Australia and New Zealand:

The consumption of heritage is often a ‘shared experience’ so that, as more individuals ‘use’ heritage places the greater is the collective benefit of these places and their contribution to the common heritage value in a community. As a result, the proliferation of heritage knowledge and experience leads to common heritage value, social identity and cultural continuity. (sub. 187, p. 3)

A thematic approach to listing might create synergies between historic heritage places and have the effect of further raising the profile of these places. Of course, adding places which are not regarded by the community as having historic merit could have the opposite effect.

Complexities of historic heritage benefits suggests that the policy framework needs to be flexible

The complexities involved in assessing the benefits associated with historic heritage places strongly suggest that a ‘one size fits all’ approach by government would lack sufficient flexibility. The Chairs of the Heritage Councils of Australia and New Zealand, noting the inherent heterogeneity of heritage values, commented on the characteristics of appropriate policy intervention:

In thinking about the broader range of policy instruments to employ there is a temptation to embrace more market focused instruments, as has happened in the field of natural heritage protection. While less coercive, and hence likely to engender greater community support (an important goal given the public perceptions associated with listing), the scope for such a shift is more limited than in the natural heritage context. This is because:

-
- the level of homogeneity associated with heritage assets is often considerably lower than the homogeneity associated with the natural environment assets, and so there is not sufficient commonality to create a market of like assets; and
 - it is often difficult to specify the heritage outputs. For example, while the concepts of ‘condition’ and ‘integrity’ are used to classify heritage outcomes, there appears to be considerable potential for variation in interpretation.

As a result of these limitations, market-based policy instruments should not be seen as a default solution to the market failures associated with heritage places. Rather, market-based instruments should be seen as complementary tools in a broader suite of policy instruments. (sub. 187, p. 12)

However, the Commission believes that the existence of such heterogeneity, and the problems associated with measuring heritage values, are precisely the reasons why market-based solutions **should** be sought. Broadly speaking, market-based solutions are mechanisms by which the true costs and benefits to those involved in an activity are elicited.

Where governments intervene to restrict private property rights there may be no explicit mechanism for assessing the costs imposed on owners or for identifying the community benefits that governments are seeking to maximise. As discussed in above, it can often be a simple allocation of property rights which establishes the possibility of negotiating a mutually advantageous outcome. The identification of the costs and benefits to all parties (and consequently the extent of any mutual gains) is fundamental to any negotiated outcome.

In chapter 9, the Commission outlines a policy framework that encourages governments to be more explicit in weighing the added costs faced by owners with the expected extra community benefits when listing privately-owned places. Such a framework would also overcome the problems associated with community objections to coercive regulation (identified above by the Chairs of the Heritage Councils of Australia and New Zealand) and the difficulties arising from owners disguising or destroying heritage values in order to prevent listing.

6.5 Measurements of heritage value

There are a number of methods of quantifying the benefits of conserving historic heritage places. Observed differences in property prices may reflect heritage value to owners (‘hedonic pricing’). Choice modelling and contingent valuation methods can be used to estimate the value that the community places on historic heritage places.

Does listing increase property value?

The issue of whether heritage listing increases or decreases property values is a contentious one. A number of participants argued that listing will generally increase a property's value as potential purchasers are made aware of its heritage attributes.

The Chairs of the Heritage Councils of Australia and New Zealand (sub. 187, p. 16) quoted a study indicating that real estate agents did not believe that listing had a significant impact on property values and heritage attributes would generally be regarded as a positive attribute in selling a property. Both the National Trust of New South Wales (DR trans., p. 7) and Gary Vines (sub. DR198, p. 13) found evidence of heritage-listed properties being advertised for sale. The National Trust of New South Wales also quoted evidence from real estate agents that 'heritage' or 'historic' values could be positive for a marketing campaign.

Vinita Deodhar submitted that, based on evidence from the Ku-ring-gai Local Government Area:

On average, listed houses were found to have a 12% premium over unlisted houses after controlling for variations in property and location attributes. A statistically significant positive relationship was found to exist between heritage/cultural value and sale prices. (sub. 22, p. 1)

Summarising previous empirical studies, Dr Lynne Armitage and Janine Lyons concluded that the evidence did not indicate a strong relationship between listing and property values, although where neighbourhood amenity was likely to be preserved through the listing of a heritage precinct, there was greater likelihood of a positive relationship:

The effect appears generally marginal for residential property when taken as a whole — although the evidence indicates a tendency for the direction of value movement to be positive as opposed to negative — particularly where entire precincts are involved — though significant upside or downside value movements may be associated with individual cases. It may be surmised that there is a stabilisation effect occurring where heritage controls are being introduced within districts/neighbourhoods/precincts.

The effect of certainty may account for the positive influence on the property market's expectation of statutory intervention: owners are accorded greater protection particularly from future development; there is the expectation of increased consistency and greater certainty with the character of the area legally protected. With development and redevelopment tightly controlled, it may be more difficult for governments to neglect heritage listed precincts in residential areas with regards to the provision of services and infrastructure. (sub. 182, p. 11)

Statutory lists are, however, more than a 'signpost'. As discussed below, in addition to providing information, they also impose restrictions on use of the property. The restrictions may reduce the attractiveness of the property to future buyers.

Development controls associated with listing may reduce property prices

Other participants, however, argued that, since listing brings with it restrictions on the use of a place and its potential for redevelopment, inclusion on a statutory list may actually reduce value. Robert Clark noted the potential for heritage listing to restrict future development potential:

A major problem exists where an earlier building is listed as a heritage item in the midst of an area that has become zoned for higher density. The heritage item represents the low density of a much earlier, perhaps the first, phase of development and is by virtue of a heritage listing denied any chance of obtaining an equitable outcome in terms of the development potential of the site. (sub. 55, p. 1)

John Boyd (sub. 8, p. 2) obtained a property valuation which suggested that the value of his place could be reduced by around \$120 000 (or about 17 per cent of its current market value) if it was included on the local government list or the State heritage list. One owner of a heritage listed property commented that costs associated with listing provided a diminished incentive for ongoing conservation:

As soon as a modest property is heritage listed it loses sale value because few people are prepared to accept the financial burden for caring for something that, in effect, is really not totally their own (ie. they are regulated as to what they can do). I see the benefits in having regulations but there has to be some tradeoff or benefit to the owner also to keep the property in appropriate condition. (Margrit Stocker, sub. 3, p. 3)

Similarly, Saman Rahmani provided a valuation which indicated his property could be expected to decline in value by \$170 000 (or 22 per cent of the current value) (DR214, p. 3). The Commission received submissions from other participants who were concerned about the impact of listing on the value of their homes (Lou Parke sub. DR285; Noel McIntosh, sub. DR383; Nicholas Braithwaite, sub. DR402).

The Urban Development Institute of Australia, Western Australian Division (UDIA) expressed the view that listing generally had a negative impact on long-term property values:

... in regards to the impact of heritage listing on property values industry is of the view that the direct impact of listing is limited over the short term however it generally has a negative impact on value over the lifecycle of an asset, due to restoration and maintenance issues:

- Short-term impact – generally none
- Medium-term – maybe negative
- Long-term – negative

Heritage listing does, however, have a negative economic impact on the development potential of a site which has direct cost implications due to additional time, resources

and requirements necessary to obtain development approvals for heritage properties. (sub. 83, p. 2)

The UDIA acknowledged the benefits that could arise from the ownership of a historic heritage place:

In regards to additional marketing opportunities that might arise from the development of heritage properties it is evident that there is a sector of the market which appreciates and is attracted to the type of property which might be heritage listed, at whatever level. (sub. 83, p. 2)

Ultimately, whether listing has a negative impact on a property owner may depend on the flexibility of the planning process:

If a heritage listed property is allowed to be redeveloped in a sympathetic manner, the impact of the listing may indeed be positive, however the answer to this question lies in the ability of the property owner to realise these benefits through the heritage approval process. (sub. 83, p. 3)

After conducting a review of studies on heritage values, Dr Lynne Armitage and Janine Irons concluded that:

A property's development/redevelopment potential ... is frequently reduced or removed altogether as a result of heritage control. This has an impact on the price which the property can be sold for after the listing has been established, or when the possibility of such control is perceived ('blight'). Whilst this negative impact is borne by the current owner at the time of listing, it will remain with the property whilst it is relatively constrained compared to property in a similar use and location. (sub. 182, p. 13)

These participants also submitted that the evidence suggested that a negative impact arising from development controls is, on average, more likely to be associated with non-residential property. Similarly, the Chairs of the Heritage Councils of Australia and New Zealand noted the potential for development controls to impose significant opportunity costs on owners of commercial heritage property:

... if a planning scheme allows construction of a 40 level modern building on the site of the same heritage office building then there will be a distinct one-off financial benefit for the owner in building a new building in place of the heritage building. (sub. 187, p. 17)

Other participants noted that the impact of listing on property prices might be difficult to determine. For example, while noting rises in property values in some of the city's heritage precincts, the City of Perth submitted:

... it has been acknowledged that the City of Perth does not fully understand what the impact of listing has on property values. This includes

- isolated heritage places and places within precincts

-
- whether heritage is more sustainable than conventional places
 - what has been the impact of capital expenditure in heritage areas on the prices of heritage properties.

The City of Perth has initiated this research to determine if the perceptions by property owners of heritage owners that they are economically disadvantaged is true. (sub. 67, p. 7)

The Commission has undertaken its own study of the impact of heritage listing on property prices in two Sydney suburbs (appendix C). That study concluded that heritage listing had not had a significant impact (either positive or negative) on property prices.

Studies of the impact of listing on general property values need to be interpreted cautiously when extrapolating the results to determine the impact on individual properties. Studies which focus on residential areas, where neighbourhood amenity is valued and development pressures are low, may find evidence of a positive impact of listing on market values. The City of Stonnington distinguished between the impact of an individual property listing and the listing of a group of properties within a heritage precinct or area:

Heritage overlay controls over historic streetscapes (in which the value of the heritage place derives from the cumulative significance of a group of early dwellings) can provide financial rewards to owners. The Gascoigne Estate in East Malvern for example, has enjoyed disproportionately high growth in property values in recent years. It was the first Urban Conservation Area in the former City of Malvern and has subsequently achieved sale prices which outstrip those of similar suburbs nearby which have been allowed to evolve in response to market forces. Heritage Victoria has spent some time and effort tracking property values in areas of this type and has produced an authoritative paper confirming that this is the case more generally. The Heritage Victoria paper contradicts the frequently-heard assertion that heritage overlay controls exert downward pressures on property values.

... The available evidence suggests that some buildings of individual significance (as opposed to those under a broader precinct control) may be less likely to benefit financially from heritage controls. There are suggestions that some property values can suffer where development or subdivisional opportunities are blocked by heritage controls. (sub. 81, p. 4)

The Ballarat City Council also identified the greater prospect for an increase in property values when a heritage area is listed:

All other aspects of the real estate market being equal, it has been found that individual land owners can benefit financially from heritage conservation as a result of increased property values, particularly where a high percentage of the built form in a particular area has been conserved. Land owners in such an area can benefit from increased land value created by the incremental upgrade of heritage places in their locality. There are perhaps less obvious financial benefits where a heritage place is more isolated from

other heritage places, unless the land owner has benefited through use of the building using its heritage value as a market edge (eg restaurant, hotel, night club, theatre or conference centre). (sub. 100, p. 4)

In studies of average price movements it may also be difficult to distinguish between the impact of listing, per se, and the effects of the existing heritage attributes. A Walter Burley Griffin designed property might be listed because of the significance of the architect. The value of properties designed by Burley Griffin might also increase at a faster rate than the market average. In this case, the decision to list is correlated with an increase in market value, but did not cause it. It was the intrinsic value of the property which resulted in its listing and also caused an increase in its market value. The Western Australian Division of the Property Council of Australia commented:

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. (sub. 165, p. 2) [emphasis in original]

With the potential for listing restrictions to impact differentially on individual owners, studies of average price movements may disguise some of the negative impacts on individual properties:

Whilst the literature tends to demonstrate the problems of identifying the precise impact of listing, this is due in part to the relatively limited impact it has on the value of most property — that with development potential being the notable exception. Overall movements in the property market are a response to changes in market fundamentals such as supply and demand for property or changes in the macro-economic environment. Such indicators will almost certainly have more effect on the market values of property in general than any restrictions imposed by listing. What listing does is to affect relative values and this means some owners are affected more than their neighbours. The problem is to measure this at a property specific level. Individual property valuations may be able to assess this but it is very problematic at the aggregate scale, except when public cost or benefit is being measured. (Dr Lynne Armitage and Janine Irons, sub. 182, p. 13)

How listing impacts on property values will depend on the extent to which development controls associated with listing impose opportunity costs and offset

any potential benefits of being accorded official heritage status. It is therefore necessary to distinguish between the certification role of listing, and its possible role in preserving future neighbourhood amenity, and any development and/or use restrictions. It may be the case that, where neighbourhood amenity is valued, heritage listing ensures the continued preservation of the neighbourhood's character and so enhances value. However, in cases where development pressures are important, the private costs of listing may outweigh the benefits.

FINDING 6.1

While under some circumstances (particularly where neighbourhood amenity is to be preserved) heritage listing can have a positive impact on property values, the constraints on development potential associated with listing can have a significant negative impact on the prices of individual properties (or parts of a heritage conservation area). The potential for owner's detriment to arise from development controls can differ significantly between properties.

Measuring community benefits

Contingent valuation

Contingent valuation methods ask respondents to state how much they would be willing to pay for conservation. This valuation includes use values, non-use values and any option or existence values. However, there may only be a negligible, if not zero, probability that the people interviewed will have to pay the amount they bid, which may lead to inflated valuations.

Contingent valuation may also produce inconsistent community valuations of the benefits of undertaking conservation. Diamond and Hausman (1994, p. 46) discuss the 'embedding effect' where individuals' valuation of, for example, removing pollution from an individual lake is greater than that associated with removing pollution from a group of lakes (in which the initial individual lake is included).

The theoretical and practical limitations of techniques for valuing non-market environmental benefits have meant that the political process is often relied upon to infer the community's demand for historic heritage conservation, at least at a very broad level. However, that a majority may favour certain policies does not necessarily imply that the benefits of that policy exceed the costs, particularly if it is the minority that is being required to pay. In other words, majority voting does not necessarily elicit relative willingness to pay.

Choice modelling

Choice modelling involves offering individuals a number of hypothetical options and gauging their responses. In addition to being offered choices, the individuals are also informed of the consequences of their choices. For example, choosing to conserve more historic heritage places could involve higher taxes. Box 6.4 outlines the choice modelling methodology used by the Allen Consulting Group in preparing estimates of historic heritage values for the Chairs of the Heritage Councils of Australia and New Zealand.

The choice modelling exercise, undertaken by the Allen Consulting Group, produced a number of willingness to pay estimates which are summarised in table 6.1. As part of this exercise, respondents were reminded that the choices they made could involve a (hypothetical) financial cost to themselves.

Table 6.1 Willingness to pay estimates

<i>Attribute</i>	<i>Annual price per person</i>	<i>Units</i>
Places protected	\$5.53	per 1000 additional heritage places protected
Condition of places	\$1.35	per 1 per cent increase in proportion of places in good condition
Age mix of places	-\$0.20	per 1 per cent increase in the proportion of places that are over 100 years of age
Accessibility of places	\$3.60	per 1 per cent increase in the proportion of places that are publicly accessible
Development control	\$39.50	Change from 'demolition permitted' to 'substantial modifications permitted but no demolition'
	\$53.07	Change from 'demolition permitted' to 'minor modifications permitted only'
	\$2.38	Change from 'demolition permitted' to 'no modifications permitted'

^a Based on an on-line survey of 2024 adult Australians.

Source: Chairs of the Heritage Councils of Australia and New Zealand, sub. 187, p. 27.

As highlighted by the submission of the Chairs of the Heritage Councils of Australia and New Zealand, a number of interesting points emerge from these willingness to pay estimates. The willingness to pay estimates indicate that, while respondents are supportive of development controls that prevent demolition, they are less supportive of restrictions which prevent owners from making any modifications to their property. There is a negative marginal valuation associated

Box 6.4 **Choice modelling**

Choice modelling involves eliciting a respondent's stated preference in a hypothetical setting. Used commonly in the natural resources field, and by consumer product companies when developing new goods and services, survey respondents are presented with several different sets of two or more resource use options and asked to indicate which option they prefer in each of these 'choice sets'. One of the resource use options usually corresponds to the do-nothing option and is held constant over all sets of choices. The levels of the attributes characterising the different options varies according to an 'experimental design'. In many valuation applications, one attribute always involves a monetary payment and there would typically be two or more attributes. By observing and modelling how people change their preferred option in response to the changes in the levels of the attributes, it is possible to determine how they trade-off between the attributes. In other words, it is possible to infer people's willingness to pay some amount of an attribute in order to achieve more of another.

The Allen Consulting Group survey presented respondents with a series of choice sets in which they were asked to indicate their preferred option. The attributes related to:

- the number of heritage places protected from loss (Places Protected) — one aspect of managing our heritage is to protect important places from being lost. Listing places on an official heritage register is one way of helping this to happen. But it does not guarantee against loss;
- condition and integrity of places (Condition) — this refers to the structural and physical soundness of a place and whether the place has been preserved in a way that is faithful to the original features of the place. Places in poor condition may become an 'eyesore' and a public safety hazard. Similarly, places that have been poorly restored and managed may not maintain their heritage character;
- the age mix of places (Age Mix) — this attribute is a measure of the proportion of listed places that come from different historical periods;
- public accessibility (Accessibility) — this refers to whether or not the public is able to visit a historic place and get a hands-on experience at the place (e.g., photography, guided tours, workshops, open days, etc). Accessibility is more than just being able to view a place. It includes the opportunity to get a deeper appreciation of the place's value and meaning;
- development controls (Development Control) — this attribute refers to the level of controls on development in and around heritage places (including buildings, gardens, monuments, etc). Some form of control is necessary to protect heritage places, but the level of control could vary depending on the heritage outcomes being sought; and
- the respondent's additional levy payment each year (Cost) — the amount of money that the respondent would be required to contribute each year via a levy to achieve the outcomes specified by a particular option.

Source: Chairs of the Heritage Council of Australia and New Zealand, sub. 187, p. 22.

with an increase in the proportion of listed properties over 100 years of age. In terms of the policy framework, this may be indicative of a tendency over the past two decades to overlist this type of property.

The Allen Consulting Group uses these willingness to pay estimates to value a hypothetical policy scenario in which an additional 8000 places are added to heritage lists around the country; there is an improvement in the quality of existing heritage places; improved accessibility; a reduction in the proportion of places over 100 years of age and an increase in development controls imposed on owners. The aggregate value of this hypothetical scenario, based on the willingness to pay estimates provided, would be \$1.4 billion. It is important to note that this estimate does not include the costs involved in achieving the policy changes (sub. 187, p. 29). An evaluation of policy changes of this type would need to consider the costs involved, particularly those imposed on private owners.

This ‘broad sweep’ approach to historic heritage conservation at the national level may be of limited relevance in the current policy framework which embodies the principle of subsidiarity and delegates decision-making to the relevant level of government. When deciding whether to expand their heritage lists, governments, at all levels, assess historic heritage places on a case-by-case basis. Under these circumstances, it is difficult to interpret the willingness to pay valuation (of \$5.53) placed on an additional 1000 heritage places. Does it apply to 19th or 20th century heritage? To residential or non-residential property? To publicly or privately-owned places? For example, the aggregate willingness to pay estimate for the Australian community is of little relevance to a council determining whether, or not, to conserve one of its historic buildings and forgo redevelopment of the site with a new structure better suited to the contemporary delivery of council services. As noted by the Chairs of the Heritage Councils of Australia and New Zealand (among others), heritage is a heterogeneous concept and the community valuation placed on it could be expected to vary with the nature of the place.

6.6 The costs of conserving historic heritage places

This inquiry has received a number of submissions detailing the higher maintenance costs associated with historic heritage places. Some of this is unavoidable — these costs arise because of the nature of the place (for example, it is older and hence may require more maintenance than a more recent building, or use more expensive materials and methods). Any owner of an old building — whether heritage listed or not — anticipates this. However, there is a very different class of costs that arises because of policy decisions (such as a listing process) which impose additional unanticipated burdens on owners (for example, requirements to do additional or

more expensive works, and the administrative burden of undertaking more paperwork, more frequently and at greater expense than if the place was not listed). The UDIA identified the regulatory burden, and associated higher costs, imposed on property developers as a result of statutory listing:

... developers do factor approval delays into their feasibility of the development of a heritage site. This can, in turn be factored into purchase of site and would then directly impact on the property's value. According to UDIA members they would usually expect additional approval delays of 2 to 3 months if developing a heritage listed property. If delays go beyond this timeframe it can have serious impacts on the economic outcomes of a development project.

Additional costs also arise in the cost of extensive works that are required to renovate degraded and derelict heritage properties to the standards required by heritage agencies and to make them suitable for public use. It was commented by a UDIA member that it would often be cheaper to rebuild a heritage listed building to its original plan than to renovate it to the standard required. (sub. 83, p. 3)

Similarly, Christine Stewart, provided evidence that, in addition to restoration costs, costs of complying with heritage regulations could be substantial:

If one is to take on a heritage building and comply with all the provisions, one needs very deep pockets indeed. We had a grant of \$165,000 which was one of the most generous in Australia and the most generous in NSW but this was only a fraction of the final cost of well over \$1m. One of the things that adds immeasurably to the cost, is that so many conversations have to be had by the restorers to work out what is best to do — when 5 men are involved in a conversation that is a large expense for the owners. We found the most unreasonable demand of all concerned the archaeology. Even to obtain an archaeologist's report, which told us nothing at all, as it was based on the history that I myself had written, cost us \$2,500 for one page and a lot of padding. It said, reading between the padding, that nothing could be found until we had dug into the ground. (sub. 25, p. 2)

In addition to these explicit maintenance and conservation costs, there are implicit opportunity costs associated with retaining a place in its current use or form instead of modifying it for an alternative use:

In contrast to the possible benefits from using the cultural heritage, the costs can be defined more easily: in economic terms, it is the opportunity cost that must be attributed to the preservation and the use of those objects that are seen as belonging to the cultural heritage. This opportunity cost clearly does not comprise only outlays (for example for the preservation of a historic site). When determining opportunity cost, one also has to take into account benefits foregone from alternative uses of the territory covered by the historic site ... The opportunity cost ... must comprise the price or the rent for the area if it had been bought or rented from somebody whose next best alternative would have been to build a large supermarket or tennis courts. (Koboldt 1997, p. 57)

In some cases, particularly in urban areas, the opportunity cost, or the highest value alternative use, may be the value of the place if it was to be converted to an office block or high or medium-density housing. In cases where a historic heritage place has no alternative use in its current form (for example, industrial sites in an urban area) the cost of retaining its historic fabric can be particularly high.

The costs associated with owning a listed place, have been acknowledged by all levels of government (e.g., Tasmanian Government, sub. 136, p. 13; City of Ryde Council, sub. 27, p. 2; City of Newcastle, sub. 78, p. 5). The City of Sydney commented:

Heritage planning controls that are prepared by local government (and at times by state government) may restrict development as it relates to heritage items and therefore may restrict:

- The size or extent of extensions;
- Potential for demolition and the construction of new buildings;
- The size and scale of new buildings.

In individual cases, this may limit the value of properties that are designated as heritage. (sub. 143, p. 3)

The City of Ballarat submitted that the costs of owning a heritage listed property include:

- Applying for a planning permit (including application fees, engagement of an architect or building design practitioner, engagement of an expert heritage adviser etc.).
- Possible holding costs in some cases associated with delays caused by applying for a planning permit under the Heritage Overlay where otherwise no permit would have been required.
- Additional longer term maintenance costs associated with retention of timber materials and the like which are perceived as not being as durable as more modern building materials (eg brick, Harditex, Colorbond and concrete blockwork). (sub. 100, p. 10)

Over time, growth in urban populations tends to increase the cost of retaining historic heritage places. Losses in capital value associated with a designated heritage status can impact on the owner's ability to provide resources for maintenance. According to the City of Casey:

Casey is one of the fastest growing municipalities of Australia ... the rate of growth in the municipality is bringing significant changes in the land value. This places pressure on the land owners (of heritage properties) to take advantage of these values and thus heritage protection and maintenance are seen as the impost on the property. Heritage controls in the absence of financial incentives have negative economic impact on some of the places resulting in neglect and disrepair of the assets. Council often has to stretch

its resources, a lot, to bring in timely advice to avoid any loss of its heritage values/assets. (sub. 177, p. 1)

Opportunity costs also arise when a place is conserved so that current community members can visit it (the option value) or so it can be passed on to future generations (the bequest value) (chapter 2). Where option or bequest values are used to justify the continued conservation of a historic heritage place, these costs should also be acknowledged. In most cases, these opportunity costs will be faced by the property owner.

Similarly, where the benefits of conservation are said to include an existence value (where members of the community gain from the knowledge that the historic heritage place exists, irrespective of whether they intend to visit it), these benefits should be considered against the relevant opportunity costs. While some members of the community gain from the continued existence of the place, others may have gained from the alternative use to which the place could have been put. For example, where a historic heritage place is demolished and replaced by high density housing, some members of the community may gain from the knowledge that employment was created in the construction of the new development and that additional housing has been constructed (Portney 1994, p. 13).

6.7 Relating benefits to costs

The bulk of historic heritage places are not national icons such as the Royal Exhibition Building, the Sydney Opera House or Port Arthur. Thousands of historic heritage places, listed as locally significant, are homes or businesses which may be bought and sold as any other property. Market valuations will reflect not only the use value of the property, but also some intangible benefits which derive from its cultural value. In some cases, heritage status may increase the market value of the property. In other cases, recognition of historic heritage value might bring with it development controls which could limit its use value and depress its market price.

There are also historic heritage places which will not have a meaningful market valuation. These are the iconic examples of historic heritage, such as old Parliament House in Canberra, which either derive their value almost entirely from cultural benefits accruing to the general community and will never be sold, or are places which have always been (and presumably always will be) in public ownership.

However, irrespective of whether a relevant market valuation for a historic heritage place exists, it will not normally provide a complete valuation. Some of the potential benefits arising from the existence of historic heritage places (discussed above) can accrue to people who are not involved in the market transaction.

Intangible benefits — such as the value to a community in having a link to its past or the aesthetic appeal of heritage places — may be difficult, if not impossible, to quantify. The inability to accurately measure such benefits makes their inclusion in a benefit–cost analysis problematic. In marginal cases, where measurable costs and benefits are finely balanced, intangible benefits — even when they cannot be accurately measured — may usefully inform decision-making. However, where intangible benefits are the major (or sole) criterion for conservation, measurement issues become crucial. Under certain circumstances, approximate measures may be attached to the intangible benefits. For example, members of the community may be surveyed to obtain estimates of valuations placed on historic heritage places. Costs incurred in travelling to visit a historic heritage place may also be used as a minimum estimate of the value that visitors attach to that place.

Under current listing arrangements, governments list places on the basis of historic significance. Some proponents of heritage conservation argue that the costs of heritage listing are small and the current system assumes they are negligible when it fails to explicitly acknowledge them. However, governments, households, businesses and community organisations such as the National Trusts are well aware of the significant costs of conserving historic heritage places.

FINDING 6.2

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.

6.8 Who should pay for the conservation of historic heritage places?

The question of ‘who should pay’ is not simply one of equity. As noted in the previous section, where the burden is placed for undertaking conservation activities can have a significant impact on the effectiveness of government policy. For example, a poorly targeted financial incentives scheme may simply transfer community resources to undertake conservation activities that the owners were prepared to undertake anyway. Similarly, a ‘hard’ regulation that potentially limits private property rights can lead to benign neglect, strategic demolition or, at best, grudging minimal compliance.

Are property owners compensated for the effects of other land-use restrictions?

Several participants have noted that the rights of property owners are often regulated through urban planning laws and zoning changes. For example, the Chairman of the Australian Council of National Trusts commented:

Understanding what the impact of a heritage listing and an imposed heritage management regime is on an owner of a heritage place, calls one to really look into the nature of property law in Australia. This is one of the greatest misconceptions in our legal system. There is a belief on the part of the lay community that property is a bundle of rights which are fettered when government seeks to impose the laws which say, "Look, you may or may not deal with your property as you would wish."

In reality, property has never been other than a bag of controls from which one has some entitlements to deal with property ... The fact that one is putting a constraint — if that is indeed the consequences of a heritage listing — on ownership of property to protect the heritage values in it, ought not be seen as anything different from the evolutionary process of ensuring that we have clean air or we don't pollute the streets or cause an issue of health and safety. Philosophically it is the same and is entirely consistent with the evolution of property laws over the centuries. (trans., pp. 378–9)

However, the Commission considers there are significant differences between a regulation which constrains activities which are harmful to others and regulation which coerces an individual to provide benefits for others (possibly at cost to themselves). While regulations are commonly used to prevent or reduce negative externalities, they are seldom, if ever, used to require the provision of positive externalities because of high monitoring costs and the difficulties of enforcing positive behaviour. Incentive measures, linked to the provision of the beneficial externality, are far more effective and appropriate for this purpose. As noted above, most participants (such as the Australian Council of National Trusts, the Department of the Environment and Heritage and the Chairs of the Heritage Councils of Australia and New Zealand) have identified positive externalities in historic heritage conservation.

In discussing natural conservation policies in New Zealand, one commentator distinguished between a duty not to harm and a responsibility to provide benefits:

... Mention of compensation has drawn particularly hot fire from [some]. Why, they ask, should land owners be compensated for not destroying habitat when there has never been any suggestion that there should be compensation for not polluting air and water. The answer is that air and water have always been in public ownership whereas much land is privately owned. There are rights and expectations that can't simply be trampled on because they're inconvenient ...

Even more problematic, from the regulatory standpoint, is the issue of effectiveness. Without an army of inspectors, councils have no way of knowing what is going on

down the back of the farm. The reality is that the land owner is the only effective guardian of any natural values requiring protection and if he's off-side he won't be doing much good. There are more ways of wrecking a forest than chopping it down ...

A blanket ban on anything that might affect a special habitat isn't the friendliest starting point. Neither is inaccurate information. Finding out what land owners want in exchange for permanent protection might reveal some quite modest demands: help with fencing, pest control and rates. There may be some trade-offs that are available — protection of habitat in return for development rights elsewhere.

But there will be cases where land owners have brought land with an expectation of development and insist that they should be able to proceed. In these cases councils are confronted with a choice: to regulate or negotiate. It's a judgment that is legally theirs to make, but negotiation has to be the first best strategy in all cases. Lack of it runs the real risk of wholesale destruction by land owners trying to beat the new rules coming into force. (quoted in Hartley 1997, pp. 272–3)

Australia ICOMOS noted that restrictions on land-use were generally accepted by the Australian community:

Property regulations are a fundamental part of landuse and planning systems in Australia. It has been recognised for decades and is now generally accepted in the community that land development and changes to real estate cannot proceed without limit or control. Australian society does not allow unregulated development; whether it be the location of an oil refinery or alterations to a domestic dwelling, the system of development control in all Australian jurisdictions seeks to adopt an informed and balanced view to community amenity, the rights of affected parties and the public interest. Good decision-making regarding historic heritage places falls comfortably within this milieu. In some cases, such as urban 'conservation areas', the act of regulation to retain and conserve historic houses in a streetscape can even serve to increase the land value, not only for a particular property but also for its neighbours. (sub. 122, p. 10)

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. Almost 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. While some have argued that recognition of heritage status can improve the resale value of a property, as discussed in section 6.5, the evidence suggests this is generally only the case where the property is part of a heritage precinct or area and where development restrictions are unlikely to impose a significant cost.

Further, as discussed above, where a beneficial activity is to be encouraged, financial incentives will typically be more effective than proscriptive regulation.

Negotiated outcomes form the basis for identifying costs and benefits

In summary, an analytical framework to examine the role of governments in the conservation of historic heritage places has been set out in this chapter. Benefits accruing to private owners of historic heritage places provide important incentives for conservation activity. However, there is also the potential for benefits to accrue to the wider community. It is these community benefits that may provide the rationale for government intervention in historic heritage conservation.

However, these benefits, of themselves, do not justify a role for government. Any role for government needs to be assessed against the costs of intervention and the effectiveness of the policy instrument. Policies which encourage property owner cooperation, and which recognise the costs imposed on owners, are more likely to be effective than those ‘command and control’ regulations which attempt to coerce optimal behaviour.

This is particularly the case when the optimal level of conservation is not known by the government. Under these circumstances, negotiations between owners and government provide a firm basis for identifying the costs and benefits associated with government intervention in historic heritage conservation and reduce the likelihood of inappropriate government involvement.

The next chapter will apply the principles outlined in this chapter and examine the strengths and weaknesses of the current policy framework for historic heritage conservation.

7 Assessing governments' involvement – conservation of privately-owned heritage

This chapter provides an assessment of government involvement in the conservation of privately-owned historic heritage places. Overall, although the framework for heritage conservation has been improved in recent years with the adoption of a three-tier system for government intervention, significant deficiencies remain. Many participants expressed concerns about the current arrangements.

Governments, particularly at the State, Territory and local level, rely on proscriptive regulation to conserve historic heritage places. Inadequate consideration is given to the costs regulation can impose on owners to provide the wider community benefits that statutory listing seeks to protect. As a consequence, there are poor incentives to ensure that only places which provide a net community benefit are listed. In addition, inadequate conservation is occurring in some circumstances. The interaction of the planning system with heritage regulation can further exacerbate the costs imposed and limit transparency and accountability in the decision-making process.

This chapter draws on the analysis presented in the preceding chapters, the description of planning regulation in appendix D and evidence provided by participants, to present an overall assessment of government intervention to conserve privately-owned historic heritage. Some guidelines for government intervention are first outlined to provide a framework for assessing how effective current government policies have been in achieving heritage conservation goals. The relative strengths and weaknesses of current government involvement are then discussed, with a particular focus on identifying potential areas for improvement.

7.1 Guidelines for government intervention

As discussed in chapter 6, the first step in assessing the need for government involvement is to establish if there are problems of a nature that warrant

government intervention and, if so, whether intervention would produce a better outcome than inaction. The conclusion that the private sector has not undertaken as much heritage conservation as society as a whole desires, does not, of itself, justify government involvement. Government intervention to correct any shortfall should only be undertaken where the benefits of the intervention outweigh the costs and thereby result in a net benefit to the community.

The existing system for heritage conservation has been driven mainly by a perception that owners, if unregulated, would conserve too little historic heritage and that cooperative action by interested individuals and organisations, such as the National Trusts, would also be insufficient. In response to this concern, all Australian jurisdictions have now implemented heritage specific regulation, and some other policy actions, to protect places with officially recognised heritage values. However, several factors complicate the decision on whether, and how, governments should actually intervene.

First, as evident from information provided during the course of the inquiry, a large portion of heritage conservation is undertaken by individuals and communities operating in the market without resort to direct government involvement. For example, individuals and not-for-profit organisations, such as the National Trusts, purchase and manage heritage properties. Governments need to ensure that any action they might take does not constrain or undermine these private sector conservation efforts.

Second, heritage places are not homogenous — they vary in their level of significance to the community, authenticity, rarity and form. As a result, the benefits of retaining heritage values vary, as do the costs of providing them, for example, in terms of the impact on the value of a property. In many cases, property owners have normal commercial and private incentives to conserve the heritage values embodied in their property, but in some cases they do not. As private incentives vary on a case-by-case basis, so will the need for, and most appropriate type of, government intervention.

Third, the pressures on heritage places are equally diverse and can vary depending on location (chapter 2). For example, the main pressures on heritage places in growing urban areas may be demolition and redevelopment, whereas in declining rural areas, neglect or lack of identification are more likely to pose a threat to preservation. As the risks to heritage places are diverse, it may not be possible to simply target one or two specific causes or rely on a single policy instrument, such as regulation.

These characteristics of heritage mean that, even where there may be a shortfall between the level of heritage conservation that occurs voluntarily and the optimal

level, the costs of government intervention may outweigh the benefits in some cases. This suggests that any government action should be based on careful analysis of the problem and the expected benefits and costs of addressing it. Ideally, the most appropriate time for such an assessment to occur would be after heritage significance has been assessed and before any regulatory control is applied.

In summary, while the nature of the cultural values provided by some heritage places may provide a rationale for government intervention, the method and extent of intervention will depend, in part, on the material nature of this problem for different places and the relative cost effectiveness of various policy options. The following criteria provide a basis for comparing and evaluating the suitability of different policy options for promoting heritage objectives.

Effectiveness

A policy intervention is effective if it achieves heritage conservation goals. In order to judge effectiveness, it is important to assess the contribution that a policy instrument makes to meeting heritage objectives, beyond what would have occurred without it (put simply, does a policy instrument work?). At issue, for this inquiry, is whether government intervention through statutory listing and regulatory controls has effectively added to heritage conservation beyond the existing mechanisms available to individuals and communities (such as voluntary conservation and National Trusts) to address the market failure identified in chapter 6.

That said, some policy instruments will be more effective than others. An instrument that is well-targeted to addressing the underlying causes of market failure is likely to be more effective than one which is indirect. For instance, instruments that focus on particular risk factors, such as redevelopment, are unlikely to be effective in conserving those heritage places suffering from neglect. Equally, policy instruments that are used to achieve multiple objectives such as heritage conservation and town planning are likely to be less effective than dedicated and transparent instruments.

Statutory listing of historic heritage places is one means to preserve historic heritage — not an objective per se. The outcome that society seeks is a comprehensive and representative portfolio of places to be kept for posterity in good condition, well-managed and secure. Does the current system, with its reliance on regulation, deliver this? Or might modified policies and practices give better results?

Efficiency

Efficiency is fundamentally about ensuring individuals and groups in society achieve their goals at lowest possible cost. An activity is efficient if the benefits it provides exceed its costs (including all benefits and costs associated with social and environmental externalities) and there is no other use of the resources that would yield a higher value or net benefit for the community. Hence, a regulatory intervention is efficient if it effectively addresses a significant market failure to deliver a higher net benefit than the available alternative mechanisms.

Efficiency, at a practical level, means that policy action should be taken when it represents the most effective way of addressing an identified problem and minimises unnecessary compliance and other costs imposed on the community. For instance, imposing land-use restrictions on subdividable land is likely to impose significant costs on property owners and limit future use and enjoyment of the land, which would need to be justified by the heritage benefits generated and compared to alternative options. Similarly, if governments are providing assistance to property owners to provide heritage conservation, it is efficient to provide more assistance to those property owners providing higher benefits to the community. In these cases, policy options that can adapt to variations in costs and benefits across different places would be more efficient compared to uniform options.

Equity

Equity, in terms of the distribution of costs and benefits of heritage policy, will be perceived differently by different stakeholders. However, policy options that are broadly considered to be equitable by those directly affected, and the community more generally, will encourage greater acceptance and compliance. Hence, perceived equity is an important consideration for evaluating policy options.

To enable decisions about the equity implications of different policy options, an important step is to evaluate the distribution of costs and benefits across affected parties. Perceptions of equity are particularly important for heritage conservation, as much of the costs of conservation are borne directly by property owners, while others in the community enjoy some of the benefits. Under these circumstances, perceptions of whether those bearing the costs have sufficient rights, including a recognition of private property rights, is essential to secure cooperation from property owners.

Good governance

Good governance requires a transparent and accountable institutional framework for managing and coordinating heritage policy instruments. In particular, decision making procedures should be transparent, non-discriminatory, contain an appeals process and minimise compliance costs. This type of ‘openness’ facilitates better decision making, encourages stakeholder confidence and acceptance of regulatory decisions, and garners support from the wider community.

Government decision making can be enhanced through the availability of accurate and timely information. Producing clear information on government expenditures on historic heritage conservation and the benefits that expenditure generates for the community, enables governments, parliaments and the general community to prioritise competing objectives and accurately assess performance against targets. For example, in a report to English Heritage, the Economics for the Environment Consultancy argued:

The conservation and enhancement of cultural heritage is typically viewed as a desirable undertaking. Preservation and study of cultural heritage contributes to overall social wellbeing through understanding and appreciation of the past and its legacy. Agencies and organisations tasked with protecting heritage from threats such as urbanisation, population growth, pollution, weather and climate, and even use by the general public, must compete for resources with other socially desirable goals. Given that resources are limited, priorities must be set among competing concerns both within and between sectors. (2005, p. 1)

7.2 How well are the existing arrangements working?

While there has been significant progress with the introduction of the three-tier legislative framework, in many instances other areas of heritage regulation, and particularly its application at the local government level, do not appear to be an effective, efficient or equitable means of achieving heritage conservation objectives — in fact, in some cases it seems to have been counterproductive.

Overall policy framework

The three-tier framework established under the 1997 COAG Agreement, where each level of government retains primary responsibility for the related scale of heritage (national, State or local), has gone a considerable way to clarifying responsibilities and delineating the respective roles of the Australian, State, Territory and local governments. This framework allows a differentiated approach to government intervention in the conservation of heritage places that reflects the varying nature and scope of additional community benefits provided by heritage,

and could easily be amended to account for the costs of conservation. However, there remains some potential for ambiguity and duplication, especially in relation to places that are represented on more than one list. There may be scope to more clearly define which jurisdiction has responsibility in these cases, or improve coordination for these listings.

Nevertheless, the Commission has not been presented with evidence to suggest that this is a significant issue or one that could not be resolved through cooperation and agreement under the existing intergovernmental agreement. In addition, some participants raised concerns about conserving places with multiple layers of heritage value, such as places with historic, natural and indigenous heritage characteristics. It appears that this issue could be similarly resolved through cooperation and coordination across governments and heritage agencies.

Separation of responsibilities under the three-tier framework is based on the principle of subsidiarity, which reflects the view that a function should be carried out by the lowest level of government able to exercise it effectively, and that each level of government is best placed to decide what places should be conserved for its community. It follows that, the power to list a heritage place should be aligned with the responsibility for ensuring its subsequent conservation and management is satisfactory, including providing resources for conservation where warranted. Linking government powers with the responsibility for outcomes (and any mutually agreed assistance) would impose a financial discipline on governments to make sound conservation decisions on behalf of the community they represent.

Many participants recommended that the Australian Government should have primary responsibility for funding heritage conservation. However, this would be inconsistent with the rationale underlying the three-tier legislative framework and the responsibilities and accountabilities built into that framework. Moreover, separating statutory responsibility for heritage conservation from the source of funding would reduce accountability for conservation outcomes.

As a general principle, that part of the community that benefits from retaining a heritage place should bear the costs of its conservation. For example, where the New South Wales community is the primary beneficiary from the conservation of a State significant place, then that community, through the State Government, should be responsible for meeting relevant conservation costs. This suggests that there should be an alignment between the decision to list a historic heritage place (with potential restrictions on its use) and responsibility for its conservation, including providing supplementary resources where warranted.

The three-tier legislative framework is an appropriate model for government involvement in heritage conservation. It delineates the responsibility of each level of government for historic heritage conservation and aligns the scale of heritage significance with the appropriate level of government decision making.

Register of the National Estate (RNE)

The RNE has been retained under the new three-tier legislative framework, even though it does not specifically form part of the new arrangements and in some ways is incompatible with them. A range of views have been expressed by interested parties about the future role of the RNE. The Australian Heritage Council considers that it represents a useful catalogue of places which jurisdictions could draw upon in compiling their own historic heritage lists (sub. 118, p. 12). Since 2004, it has been putting places on the RNE which have been nominated for the National List but have not met the threshold of ‘outstanding heritage value to the nation’. In this way, the Council has signalled to the owners and to State, Territory and local authorities its view that these properties possess significant heritage values, but at a lower threshold.

However, the RNE is causing some confusion in the wider community, with some other interested parties unsure of its role.

The creation of a new listing ‘hierarchy’ with the Commonwealth focussed on places of national significance, has been compromised by the retention of the old ‘Register of the National Estate’. This has perpetuated confusion over duplicated Commonwealth and State lists. (Heritage Council of Western Australia, sub. 59, p. 6)

Many members of the public expect that inclusion on the RNE provides some form of statutory protection. While the RNE does not have any such regulatory status at the national level (aside from ministerial obligations under the EPBC Act), it does have some implications at the State and local level through reference to the Register in some State legislation, and the occasional practice of referring to it in heritage-related judicial processes.

As agreement has been reached among the jurisdictions in Australia on the sharing of responsibilities for the identification, listing and protection of historic heritage places, there is now little policy reason for the retention of the RNE for historic heritage places. Each jurisdiction maintains a list or register of properties for which it has legislative or agreed responsibility, and the continuation of a list or register

with no such status and with overlapping coverage can only add to confusion and uncertainty.

Many inquiry participants supported the removal of historic heritage places from the RNE with the retention of information in some form of database (for example, Chairs of the Heritage Councils of Australia and New Zealand sub. DR271, p. 26). Those that were opposed to any change emphasised the importance of the information contained in the RNE. For example, the Australian Council of National Trusts noted that the RNE remains the most complete source of data about heritage places in Australia (sub. DR237, p. 48). However, this important information can be retained by transferring it to a publicly available database. If the Australian Heritage Council wants to retain information about places determined to be unsuitable for the National Heritage List, it should be on that public database, not by adding to the RNE.

In order to solidify the new three-tier arrangements and remove any ambiguity:

- the Australian Government should remove all historic heritage places from the RNE and place the information in a national heritage database; and
- State and Territory governments should remove all references to the RNE from their planning and heritage legislation.

Although there are no statutory implications of retaining references to the RNE in legislation once historic heritage places are removed from the RNE, their removal would provide clarity.

The RNE would then contain only natural and indigenous heritage items and places. As and when mechanisms are developed to record such natural and indigenous places, those included on the RNE would migrate to those new comprehensive lists, after which time the RNE could be discontinued.

RECOMMENDATION 7.1

The Australian Government should remove all historic heritage places from the Register of National Estate and transfer the information to a national heritage database. The database would need to be regularly updated and maintained, including the deletion of inappropriate listings.

RECOMMENDATION 7.2

State and Territory Governments should remove any references to the Register of the National Estate from their planning and heritage legislation and regulations, after ensuring that any places that meet the criteria have been recorded on the appropriate (State or local) heritage registers.

Relationship between governments and community organisations

As noted earlier (chapter 1), the National Trusts have played a major part in the conservation of historic heritage places in Australia. However, the traditional role of such not-for-profit organisations in listing, protection and conservation of heritage places has largely been overtaken by various government bodies. Notwithstanding this development, in many States, the National Trust still retains statutory status. This creates confusion as to the role of the Trust, particularly in relation to the Heritage Council that each State and Territory has established. In addition, statutory status **may** diminish their effectiveness as an independent advocate for heritage conservation, and reduce their capacity as membership-based community organisations, to pursue their own objectives.

As a principle of good governance, governments in Australia now consider that entities should only be created and retained under statute where there are compelling reasons to do so — for example, where a government entity requires legislative functions and powers to achieve government objectives (Machinery of Government Taskforce 2001). The National Trusts neither form part of government nor require legislative powers to fulfil their role. This is demonstrated by the fact that the National Trust in Victoria has been operating as a private company limited by guarantee for 50 years. National Trusts in other states do not appear to be sufficiently different from the Victorian Trust, or other non-government organisations (NGO) such as Red Cross, to warrant specific legislation.

Legislative status is typically reserved for government bodies established to achieve government objectives for the entire community. Although NGOs can play an important role in delivering on those government objectives, a ‘contract for service’ model, rather than statutory status, is the most appropriate mechanism to maintain transparency and accountability. Although a limited number of NGOs were established under statute in the past, criticisms of this model, and statutory arrangements more generally, include:

- lack of accountability for performance to government;
- lack of transparency and financial reporting obligations; and
- unclear or conflicting objectives.

It is in this context that the Western Australian Government has approved the repeal of the *National Trust of Australia (WA) Act 1964* and for the Trust to be established as a private company. The decision followed a report from the WA Auditor General, which found the Trust’s financial management procedures did not meet government reporting requirements (Office of the Auditor General 2001). A subsequent independent review found that the Minister for Heritage did not have

necessary accountability and oversight of the Trust's operations for the Trust to remain under statute and the umbrella of the Western Australian Government. The Trust advised that if such accountability measures were introduced, it would directly impinge on its education and advocacy roles and would make the Trust ineligible for grants from several bodies (Logan 2005).

The Australian Council of National Trusts argued that the presence of statutory based Trusts internationally, such as in those in the United Kingdom, supported the retention of statutory status in Australia (DR237, p. 54). However, the National Trust in England and Wales retains its legislation as it has statutory rights on the future of National Trust properties, which are rights that do not apply in Australia.

Further, unlike the Trusts in Australia, which are independent NGOs, many of the Trusts in other jurisdictions are part of government. For example, the Historic Places Trust in New Zealand plays an equivalent role to Heritage Councils in Australia. The Historic Places Trust has functions and responsibilities under the *Historic Places Act 1993* and the *Resource Management Act 1991* to identify, list, protect and provide conservation grants to historic heritage places. Although the Trust was originally an NGO, the New Zealand Government enacted legislation for the Trust to become a crown entity in 2004, in order to enhance the Trust's governance arrangements and subject it to government accountability and reporting responsibilities (Tizard 2004).

The Australian Council of National Trusts also argued that Trusts should retain their legislative basis because, as part of government they are able to access a range of benefits, such as government insurance arrangements (sub. DR237, p. 54). However, there is little justification for the Trust to be classified as a government agency and receive benefits while retaining NGO status, especially when other NGOs cannot avail themselves of the same arrangements. In any event, the Trusts may be able pursue cost savings and benefits through other means, such as government programs for NGOs or community insurance programs.

FINDING 7.2

There are no compelling reasons to retain the statutory status of the National Trusts, given the nature and extent of direct government involvement in historic heritage conservation. Statutory status for the National Trusts lacks accountability and is inconsistent with best-practice government structures. It also erodes the independence for a non-government organisation.

RECOMMENDATION 7.3

Those State and Territory Governments that have specific legislation governing the operations of the National Trust should repeal such legislation.

A number of participants expressed the view that because of their membership interests, not-for-profit organisations, and in particular National Trusts, could be the most efficient vehicle for the delivery of government funding for heritage conservation. If this were to occur, regulatory governance would require them to develop appropriate transparency and auditing frameworks to be accountable for such government expenditure.

That said, the Commission is cognisant that the role and structure of the National Trusts are currently being reviewed by the Minter Ellison Consulting Group. The outcome of this review will inform the direction and future of the National Trusts.

Regulation as the main instrument to preserve heritage places

Governments generally rely on regulation to list places identified as having heritage significance and impose regulatory controls to protect their heritage values. This is particularly the case at the State and Territory level (and the subsequent frameworks established for local governments). Throsby explained the appeal of regulatory instruments:

The reasons why hard regulation has been so popular as a tool in heritage policy-making have to do with its direct mode of operation and the apparent certainty of its effects. (1997, p. 21)

Despite the *prima facie* appeal of regulation as a simple and direct mechanism to preserve heritage places, over time, the fundamental criticism of the heritage conservation system has been the over-reliance on regulation to achieve conservation objectives. For example, in *Making Heritage Happen*, the Environment Protection and Heritage Council argued that the traditional singular focus on regulation had failed to encourage appropriate heritage conservation (box 7.1). A number of inquiry participants supported this view. Gordon Grimwade and Associates argued:

Heritage cannot be adequately protected by mere legislation. The more diverse the legislation that is in place, the more opportunities exist to challenge it, the more chance there is of confusion and the higher the cost of administration. Incentives and education would have more positive outcomes, and are probably comparable with administering the negative approach of the current compliance regimes. (sub. 174, p. 6)

The ACT Heritage Council expressed similar views:

When the methods of doing this [protecting heritage places] rely solely on restrictive regulation, ‘heritage’ is seen as an impediment to the free operation of the market and the maximising of returns. Heritage is seen as costly, and efforts are put into avoiding heritage identification or control. Governments have tried in many ways to diffuse this oppositional approach by negotiating rather than regulating, and by implementing

various financial support schemes. However, these have been fragmentary and have not kept pace with the rate of regulatory development, and as a result have not had much impact on the property owner's and developer's negative views of heritage control. (sub. 147, p. 11)

Box 7.1 Comments from 'Making Heritage Happen' on the reliance on regulation

In an environment with limited resources, regulation may appear attractive because it appears relatively 'cost free'. Governments can simply 'require someone to do something'. That may be the reason that regulation has traditionally been the predominant conservation tool in some countries, including Australia. (p. 3)

It is estimated that on current trends a substantial part of Australia's remaining historic heritage will be lost through demolition and neglect between now and 2024 (perhaps as much as 10-15%). (p. 2)

Australia's public investment in incentives for historic heritage compares unfavourably with that of a number of western countries, particularly in North America & Western Europe. (p. 39)

An effective heritage system is founded on a balance of 'sticks and carrots'. The lack of a meaningful level of 'carrots' undermines support from property owners for the system, makes regulation more difficult, and misses opportunities for garnering private investment. (p. 3)

Source: Environment Protection and Heritage Council (2004), Making Heritage Happen.

In contrast, some inquiry participants argued that more proscriptive regulation and onerous enforcement provisions, rather than less, would improve heritage outcomes. For example, the Local Government Association of New South Wales argued that local governments should be granted additional powers to force property owners to maintain and repair heritage properties (sub. 179, p. 3).

Regulation should target the underlying problem it is trying to alleviate, and not just treat symptoms of the problem. The current regimes tend to regulate listing and planning approval as an end in itself, rather than as a means to promote heritage conservation of benefit to the community. As highlighted by the Goulburn Mulwaree Council:

The system is antiquated with its focus on property restrictions ranging from roof pitch, window styles, paint and colour requirements. The system of statutory controls consumes by far the greatest amount of resources for the organisation. In addition it is a blanket style control in which all properties within the Heritage Conservation Area, regardless of heritage value, are affected by the controls and individual heritage buildings receive little recognition and are not supported by clear statements of significance. (sub. DR301, p. 2)

Increasing statutory powers in these circumstances would not address the underlying problem — that many private owners of historic heritage places are expected to bear the cost of maintaining heritage values for the benefit of the community. Without a corresponding change in the incentive to conserve heritage places, the Commission is not convinced that additional ‘heavy handed’ restrictions would necessarily improve conservation outcomes.

The current arrangements for heritage conservation are based on proscriptive regulation. This type of regulation has three main characteristics: it attempts to change behaviour of individuals by detailing how regulated entities should act; it relies on government monitoring to detect non-compliance; and it imposes punitive sanctions, such as fines, if the regulations are not complied with (ORR 1998 p. E14). In general, regulation based on these ‘command and control’ instruments is most suitable for addressing standardised, well-defined and stable problems. Clearly, the conservation of heritage places does not display these characteristics — the benefits and costs of conservation vary markedly across individual properties and for different public, commercial and residential owners.

Further, prescriptive regulation tends to be more effective in prohibiting certain behaviours, rather than encouraging positive actions. This is particularly true of heritage regulation, which often focuses narrowly on controlling development as opposed to improving overall heritage outcomes. This is unlikely to encourage owners to take the active and pre-emptive steps necessary to ensure conservation in the longer term.

Ultimately, this type of ‘hard’ regulation is a crude tool. Regulation is redundant where owners voluntarily conserve because they have normal private and commercial incentives to do so, and effective only in controlling active demolition or modification where the owner sees that as more valuable than retention. Where regulation imposes high costs and reduces the private value to a property owner, the incentive to conserve heritage values is further reduced. The prospective private loss creates an incentive to circumvent the regulations (after taking into account the risks of being caught and penalised) or to destroy the heritage value of the property before regulation is applied (see box 7.2). Where this is the case, policy options that give property owners an incentive to recognise and protect heritage values may deliver better outcomes than regulation that merely prohibits certain actions, such as development and neglect.

FINDING 7.3

At the State, Territory and local government levels, there is an over-reliance on proscriptive regulation to achieve heritage conservation objectives. In many cases, this has led to poor outcomes, through for example, inappropriate listing imposing

unwarranted costs (such as denial of redevelopment opportunity where otherwise permitted) and possibly perverse effects (such as destruction to avoid maintenance costs). In addition, proscriptive regulation fails to address abandonment of heritage assets or passive 'demolition by neglect'.

Box 7.2 Regulatory controls and adverse conservation outcomes

In discussing whether an owner of a heritage place has an obligation or 'duty of care' to conserve heritage values, the Chairman of the Australian Council of National Trusts, noted:

If that duty of care today is a draconian control — the reason I say it's with us today is another conversation I had at a meeting of the Pastoralists Association of Western Darling. I went to their annual meeting three weeks ago, and at lunch was the whole cluster of graziers, representing about 15 properties. What they were saying to a newcomer in their midst was, "Whatever you do, if you happen to find an Aboriginal relic, bury it and don't tell anyone". (trans., p. 396)

The Australian Heritage Institute noted that land-use restrictions can encourage perverse conservation outcomes:

The problem with demolition by neglect is sometimes it's benign and sometimes it's actually supervised neglect. By that I mean that the building is deliberately allowed to run down and then the costs of refurbishment are used as the basis for the development application. (trans., p. 1039)

The Municipal Association of Victoria expressed similar views:

There are examples of weaknesses in this model where the heritage building has placed too many constraints on the commercial operation. Wilful neglect of a heritage building in order to overcome responsibilities to maintain the building to a reasonable state has occurred previously — a possible example being Pentridge Prison in Victoria where a termite infestation went untreated until a wall collapsed. (sub. 66, p. 4)

The Professional Historians' Association provided an example where the threat of heritage listing lead to the pre-emptive destruction of a place:

The Sheoaks was a house set on almost one hectare of land overlooking the picturesque Pittwater in Sydney. ... The NSW Planning Minister authorised an Interim Heritage Order for 12 months to allow its heritage potential to be properly assessed. ... The house was burned to the ground overnight, destroying the heritage fabric and causing a significant immediate environmental danger to neighbouring properties due to asbestos contamination. (sub. DR306, p. 40)

Alan Anderson argued:

... owners have an incentive to act pre-emptively. Every historical structure is a potential liability. Accordingly, it makes sense to conceal or destroy the structure before those pesky heritage people list it. The system perversely discourages private preservation. (sub. 185, p. 2)

Identification and listing process

Governments have come relatively late to intervening in historic heritage conservation. In so doing, the foundation of official lists (with associated government regulation) were often lists developed by the National Trusts. Typically, a government heritage agency would adopt the National Trust list of heritage buildings as the core of its list, adding to it over the subsequent years. In addition, governments typically adopted the heritage professionals' criteria for identifying heritage places (criteria based on the Burra Charter). This history has influenced the composition (representativeness) of the lists and encouraged an unconstrained growth over time.

The introduction of statutory registers changed 'listing' from an 'information or inventory' tool providing public recognition for places of heritage significance, to a system of registration coupled with regulatory controls. The coupling of 'informational content' and 'action content' means that listing is no longer a neutral catalogue. The traditional listing process, based on the Burra Charter, provides best-practice principles for identifying heritage significance and conservation; it was not set up as an objective means of deciding which heritage places were best to conserve and at what cost. In other words, the heritage assessment process was designed to assess significance, not whether the community benefit provided by a heritage place justifies the added costs imposed by regulation. This suggests a need for more than just a single-stage decision making process, one which is expanded to include:

- the preparation of a statement of significance based on the Burra Charter; **and**
- an assessment of the wider benefits and costs of imposing statutory controls on a place assessed as significant.

The benefits of heritage conservation are not rigorously assessed

The benefits of imposing statutory protection on a particular place are not always well assessed, primarily because the process for assessment is inevitably subjective:

- the criteria for listing are 'open-ended' and subjective (there is some scope for confusing community nostalgia or amenity for heritage value);
- heritage professionals undertaking an assessment may have (legitimate) differences in professional opinion, which in turn may diverge significantly from the valuation of the wider community; and
- the threshold for listing, and hence regulating, a heritage place is set relatively low in that it only need meet one criterion, and at a moderate level of significance, to be listed (see chapter 5).

Comparative assessment or gradation of the significance of a heritage place appears to be rigorous at the national level, prevalent at the State level, but often limited or absent at the local level. Under the current assessment process, the benefits arising from heritage conservation are often assumed to be standard across individual properties. For instance, no account is taken of the additional benefits of conserving a rare or particularly representative example of a style or era. Similarly, whether many examples of a certain type of heritage asset have already been listed is not considered. Indeed, some jurisdictions specifically state that what is already listed and protected cannot be taken into account when a new place is considered for listing (Queensland Heritage Act 1992, s. 23(2); Heritage of Western Australia Act 1990, s. 47(2)).

Further, statutory lists are still regarded as a ‘cataloguing tool’ and are rarely systematically reviewed to assess whether those places listed best meet heritage conservation objectives. The consequence is that certain types of heritage places may be well represented, even over represented, while other classes of heritage places may be poorly represented on heritage lists. This is best exemplified by the predilection towards protecting places with high aesthetic appeal (such as sandstone buildings), as opposed to those with less aesthetic appeal, but perhaps equal heritage value (such as miners’ cottages).

Many governments are committed to a rigorous and transparent assessment process and the preparation of statements of significance (see for example, City of Port Phillip, sub. DR240; Mosman Municipal Council, sub. DR324; Town of Vincent sub. DR305). However, this is far from universal.

Australia ICOMOS noted that places are sometimes listed without a statement of significance:

... I can speak with some knowledge of Tasmania, where there are a lot of places listed without a statement of significance or with one that is done in a particularly cursory manner. The upshot of that for the owner is that when they make an application to change the place, the team at Heritage Tasmania understandably rushes around to do a proper assessment and then says, “Well, no, we can’t approve this because it is inconsistent with the values we’ve just identified”. (DR trans., p. 611)

Tom Perrigo argued that even when statements of significance are prepared they often lack rigour:

... the entire process of identification and assessment is in urgent need of review and upgrade. The processes appear to be done without much objectivity, and without transparent, measurable, or defensible outcomes. (sub. 162, p. 2)

Similarly, the Tasmanian Government said:

The subjectivity and complexity of the heritage listing system across the States and Territories creates confusion and is a disincentive for owners to either purchase and conserve heritage listed sites or buildings, or move to have them listed. (sub. 136, p. 11)

Indeed, it appears that the issues of subjectivity and rigour in heritage assessment are not confined to Australia and are a feature in other jurisdictions. Michael Houser, architectural historian and National and State Register Program Director for the State of Washington, voiced the opinion that the heritage assessment process merely required “creative writing”:

Assuming a property has the necessary physical integrity, any property whose nomination is written well enough” he said “can make it onto the register; all it requires is little more than, ‘This property is a great example of a representative type’. (quoted in Schuster 2002, p. 10)

Especially at the local government level, there can be minimal guidance and rigour in the assessment process. As there is no statutory obligation to include a statement of heritage significance when listing, there are cases where a statement of significance is not prepared and examples of ‘drive-by’ listing or superficial assessment — for example, the statement is limited to ‘the place is of municipal significance’. Often heritage values are only assessed when an application for development is forthcoming. Despite this, standardised restrictions automatically apply to the property on listing, which may not relate well to the specific heritage values of a place. This creates considerable uncertainty and cost for some property owners, and threatens the integrity and credibility of the whole listing process at the local level.

Costs are not considered when decisions on protection are made

The most deficient aspect of the current listing process is that there is no connection between the assessment of beneficial heritage attributes for listing and the responsibility for (and cost of) managing a heritage place to conserve those attributes. The conservation of a property’s heritage values does involve costs. In many cases these are costs that would be incurred in the normal course of ownership and occupation of a property and are not a result of any obligations placed on owners because of heritage listing. In some cases, however, heritage protection will impose costs that would not otherwise be incurred by the owner, including:

- the additional administrative costs associated with complying with heritage regulation; and

-
- higher maintenance or restoration costs associated with maintaining the property's heritage integrity (that would not otherwise be undertaken).

There are also costs associated with forgone opportunities (where listing restricts the ability to put property to its most efficient use) including:

- limitations on the ability to modify or adapt the property to modern living expectations or modern business use (or high costs to make such changes); and
- limitation on the ability to develop the site on which the heritage property is located (in areas where this would otherwise be allowed).

These costs are real and significant for some property owners (box 7.3). At the extreme, the heritage place may be of a nature where no realistic current use is available, imposing maintenance costs on owners while precluding such use that would balance the costs involved (e.g., churches with declining congregations and redundant infrastructure such as some lighthouses, timber bridges and old gasworks).

Under the current regulatory process, there is no requirement to take into account any costs that may be imposed on owners as a result of listing. While some governments have provision to do so, and a few governments do, most regard such costs as a subsequent management issue for owners. This implicitly assumes that the identified community benefits would always outweigh the added conservation costs. This is unlikely to be true in all circumstances, and where it is, raises a second question of whether it is efficient and equitable to impose such costs on owners. Clearly, where the costs are small it may not be unreasonable. However, if such costs are large and provide few, if any, private benefits to the owner, imposing them is unlikely to result in effective conservation outcomes.

Willingness of private owners to bear costs vary

The willingness and ability of private owners to bear conservation costs varies greatly, reflecting the wide range of properties involved and the nature of their heritage characteristics. In many cases, owners value the heritage characteristics of their property and willingly bear the cost of maintaining and restoring their heritage characteristics and features. Indeed, some would do so whether obligations were placed on them through heritage listing or not. In such cases, the heritage characteristics of the property are considered an asset rather than a burden, with listing imposing few unwelcome obligations other than the expense (sometimes non-trivial) of the administrative requirements associated with compliance.

Box 7.3 Cost of heritage listing

Don Brew highlighted the additional maintenance costs of conserving a heritage property:

... I just went through in replacing a slate roof and doing some joinery work, I think I spent something like \$70,000 to \$80,000. In a straightforward house that would have been maybe 30 or 40. So there is about a \$40,000 differential. You could almost say twice the cost just to maintain the house faithful to its original structure. (DR trans., p. 130)

The Property Owners Association of Victoria discussed the impact of listing in Stonnington:

In Stonnington, these heritage orders have seriously devalued the properties compared to previous real valuations by over 25% on average. The foremost valuer Herron Todd – an international firm – has ... measured the devaluations specifically for 300 properties in Malvern, and in many cases, the losses exceeded \$100,000 in 1998 dollars. After the mortgage, all their assets – gone. (sub. 134, p. 5)

A number of inquiry participants provided an independent valuation of the impact of listing on the value of their property. For example, Saman Rahmani:

I purchased this house in good faith in October 1998 with no indication of any potential heritage listing. This house was and is the perfect candidate for demolishing and rebuilding. I would never have purchased this house if there was the slightest hint that it would have heritage significance ... I have since obtained an official valuation for my property. It clearly indicates that if it becomes listed as a heritage item its value will drop by \$170,000. (sub. DR214, pp. 1,3)

Diana Anderson:

My Mother and Father worked very hard to buy the land and build the property which was completed in the early 50's. Dad has since died and Mum lives there alone. ... We had some independent Real Estate Agents value the property with and without the Heritage listing on it, and they estimate that Mum will lose approximately \$500,000 when she sells it, because of the heritage listing. (sub. DR202, p. 2)

David Miller, speaking about the Victor Harbour RSL Clubrooms:

We have had appraisals by two separate land agents in the local town; they have said that the value of the property with the heritage listing in place, as you see it now, is in the vicinity of \$500,000. If we didn't have the heritage listing on there, given that it's on the main boulevard right in front of the seashore, they start talking 1.2, 1.3, 1.4, 1.5 million dollars. (DR trans., p. 316)

John and Janet Boyd:

... we engaged the services of a fully qualified property surveyor at a cost of \$700. His valuation put the value without heritage listing at \$720,000, and with heritage listing at \$600,000, a reduction of \$120,000. (sub. DR373, p. 1)

But this is not always the case. Depending on the nature of the property and its location, obligations imposed as a result of heritage listing can represent a significant burden for the owner. It is in these cases where problems arise, including hostility and resistance to listing; a reluctance to undertake the necessary

maintenance, sometimes leading to demolition by neglect; and generating a high level of enforcement cost. In fact, it appears that the vast majority of government and private conservation effort is expended to enforce a relatively small number of involuntary listings, not always for the most important and significant sites. Under such circumstances, it is difficult to see the heritage characteristics of the place being actively conserved in a way that would be necessary, or that the community would desire. Indeed, the protection provided by listing may serve to do little other than slow down the rate of loss, rather than positively conserving heritage characteristics into the future.

Impact on property owners and the community

As currently structured, the costs imposed on owners are not considered at the time that a property is assessed and added to a statutory list, nor is the process of listing linked to the provision of assistance. That is, regulation of privately-owned heritage properties usually occurs without any right to assistance. Obligations and costs are nonetheless imposed on owners as a result of inclusion on a statutory list.

Potential inefficiency consequences of this process are that:

- so long as the parties benefiting from an increase in heritage conservation do not have to pay, they are likely to continue to press for further conservation effort until there are few benefits to be had. In other words, without the constraint imposed by having to pay the costs of heritage conservation, there may be continuing demands for ever greater provision of heritage, which would, at some point, impose a net social loss; and
- regulation of privately-owned heritage properties essentially asserts public ownership of heritage characteristics, with the owner then expected to manage the property. If there is an expectation that permission to modify or ‘upgrade’ a heritage property will not be granted, then the only way private owners have to retain ‘ownership’ and control of their property is to allow it to degrade or to modify or demolish before regulations (via listing) are imposed.

FINDING 7.4

The current listing processes do not provide a mechanism for rigorously identifying the costs and benefits of conserving a place. Typically, the assessment process does not prioritise places according to heritage significance or conservation need, and little or no account is taken of the added costs of conservation when the decision is made to list a place and impose regulatory controls. As a consequence:

- *some in the community have an incentive continually to seek more listings as they do not bear the costs of conservation; and*

-
- *property owners can suffer an erosion of property rights and loss of value. As a result, they are unlikely to be as active in conserving heritage values and may, in some cases, have an incentive to degrade or destroy the heritage place.*

Assistance for conservation

Assistance for the conservation of historic heritage places is provided by all levels of government in Australia. Chapter 3 and appendix B discuss current government programs. Grants are the most common form of assistance. Assistance is also provided through loans (including the use of revolving funds) provided by both State and local governments; concessional planning and zoning arrangements (including transferable development rights); and advisory services and technical assistance. State governments have negotiated heritage agreements with private owners on a range of issues relating to conservation, financial advice and assistance, restrictions on use, and maintenance requirements.

Despite these programs, the costs of conservation are borne overwhelmingly by the owners of heritage place, whether voluntarily or not. The Uniting Church in Australia, for one, noted that there was:

... growing community expectation that all heritage places should be retained and conserved by their respective owners for the greater public good, but without the wider community assisting in paying for these works. (sub. 76, p. i)

Adelaide Arcade argued that current incentives programs are insufficient and poorly targeted:

... the levels of the financial incentives have been erratic and minimal and therefore of no consequence in the decision making process of owners as to whether to commit funds to a project. (sub. 34, p. 2)

The Goulburn Mulwaree Council expressed a similar view:

... there is no question that the emphasis on legislative or regulatory controls to conserve heritage buildings has not been matched by the incentives and education components of its approach to heritage conservation. This is in part due to the lack of funding provided by higher levels of government and the restrictions placed on local government to raising revenue. (sub. DR301, p. 2)

A number of participants argued that even where grant programs are available, funding is largely directed towards government-owned properties or community-based projects, rather than identifying projects that would provide the greatest net benefit to the community (Uniting Church in Australia, sub. 76, p. iii).

For some, as illustrated by John Boyd in discussing the potential listing of his property, the assistance available would not offset the added costs of listing:

The loss in value of our home would be around \$120,000. We are both pensioners and our home is the main asset we have to pay for any necessary moves and changes in lifestyle as we grow older. ... The slight reduction in council rates and the \$1000 offered every four years by council for maintenance, upkeep and improvements would be negligible compensation for our loss in property value. (trans., p. 943)

Ultimately, lack of targeted assistance has an adverse impact both on owners and on heritage places. The Environment Protection and Heritage Council commented:

Financial incentive programs remain very small at all levels of government, helping to fuel disenchantment or opposition amongst many property owners, of whom a growing number is affected by heritage regulation. This shortfall undermines the effectiveness of listing and regulation, adds to the growing pressure on the nation's stock of historic heritage places, and is reflected in the widespread loss of places through neglect and demolition. (2004, p. 1)

It appears that the current assistance available to owners of listed properties for heritage conservation is ad hoc, highly variable by jurisdiction, and in many cases falls well short of the additional costs of obligations imposed on owners as a result of listing. The absence of adequate assistance has a range of detrimental impacts on property owners and can result in the neglect or demolition of heritage properties.

While virtually all inquiry participants argued that there was a greater need for some form of assistance to encourage heritage conservation, a key point of divergence emerged on what the nature and extent of the assistance should be. Some favoured non-financial assistance, such as advisory services, while others advocated direct compensation to property owners for the imposition of heritage controls.

Diverse views were presented on the matters of property rights and compensation (see box 7.4). At one end, were those property owners who dispute that governments have any rights to impose controls on their freehold land without compensation. At the other end are those who argue that property owners have a 'duty of care' to conserve heritage values and, moreover, that governments have wide ranging powers to promote community objectives without compensation, and that these powers should be used for heritage conservation.

Whether or not (or under what circumstances) governments can force private owners to provide heritage conservation services without providing assistance is a moot point. The more pertinent issue, in the Commission's view, is whether a particular form of intervention (and the associated allocation of costs), on balance, is likely to have desirable or undesirable incentive, efficiency and equity consequences. In other words, given the problem at hand, what is likely to work best? At present governments appear to have the power to take or diminish private property rights via regulation without paying compensation, but this does not automatically imply that this is a desirable course of action. There may be smarter,

more effective, efficient and equitable ways to achieve the desired heritage conservation outcomes. At the same time, government intervention cannot be ruled out simply because it may affect property rights.

Box 7.4 Participant views on property rights and compensation

The Australian Council of National Trusts stated that:

It should be noted that it is a myth that landowners have a common law right to do with their land as they wish. All land in Australia, with the exception of land subject to native title rights and interest, is held 'of the Crown'. In other words, all land titles in Australia ... are issued by the Crown (State and Territory governments), and the Crown guarantees the security of title and the priority of interests in the land through the Torrens Title system.

The Crown also retains power to impose restrictions on the ways in which the land/the property can be used or developed. Historically, these restrictions arose to protect public health and safety, and then increasingly to provide for public amenity. These restrictions have become more complex over time, and now cover, as well as heritage protection, ecological and sustainable development matters, and no doubt in the future will be expanded to cover other as yet unforeseen issues. (sub. 40, pp. 26–7)

Along similar lines, the National Trust of Australia (Victoria) see a problem in:

The general lack of understanding of the Crown's ... right to impose restrictions on land and property use or development for the wider public good, including the right to impose planning and heritage controls. (sub. 148, p. 5)

The Conservation Council of South Australia expressed an even stronger view:

Heritage listing must not be voluntary or depend upon funding for conservation. If a place is identified as a heritage place by a professional organization or committee, then the building must be listed in a register. If the value of a building is reduced as a result of heritage listing, the owner should not expect compensation for the loss of value. (sub. 84, p. 2)

In contrast, the Property Owners' Association of Victoria expressed a view that:

State and Federal Governments should ensure that where Conservation, Heritage or similar Orders of Restrictions on land usage are placed on privately owned property, adequate compensation must be paid to the registered owner in the same way as with other compulsory acquisitions and reservations. (sub. 134, p. 4)

Ivan McDonald Architects submitted:

At every level of government there is heritage regulation and control which politicians seem very happy to implement yet at no level of government is there sufficient or effective compensation or assistance for real costs incurred by the owners of heritage places for their conservation. (sub. 30, p. 3)

John Boyd argued:

In a nutshell, it seems to us that if Australia is really serious about preserving its heritage it is essential that it lay down rules and guidelines for adequate consultation with the public, and for the honest and fair compensation to those who are affected. Efforts to preserve our heritage may well be politically correct for the cultural elite, but without adequate financial and other compensation [for] people affected [it is] ... simply immoral. (trans., p. 946)

The existing approach to heritage conservation, which has owners bearing the cost of conserving heritage properties with only minimal or variable assistance, has not been effective in all cases, and particularly where heritage values are under threat. Regulation has been considered successful where it imposes low costs and owners have normal commercial incentives to conserve heritage values. However, regulation has not been effective where it imposes high costs on property owners. The major problem in making owners bear these costs is that it necessitates compulsion. Yet prescriptive regulation is unlikely to promote a focus on heritage outcomes or the cooperation from owners necessary to achieve those outcomes. Nor is making a subset of owners bear the costs of providing services that benefit the rest of society particularly fair.

FINDING 7.5

The assistance available to private owners of heritage properties is poorly targeted, and, in some cases, falls well short of the additional costs imposed on owners as a result of listing. In these circumstances, property owners will have little incentive to conserve actively heritage values.

Local government involvement in heritage conservation and interaction with the planning system

The exercise of local government powers for heritage conservation is perhaps the most controversial aspect of the current system. Local government heritage controls evoked a wide range of views from inquiry participants — at one end of the spectrum, there are concerns that the system could be misused to impose regulatory controls on places that do not have significant heritage values, while at the other end, there are concerns about a lack of listings and exercise of heritage regulation in some local government areas.

Problems at the local level are exacerbated by a number of specific features of local government:

- a lack of resources for heritage conservation, especially in rural areas;
- the widely variable heritage policies across local government areas — some councils take an active approach to developing a heritage list, while others do not have a single place on their list;
- the majority of locally significant heritage places are in private ownership, and in many cases, are residential dwellings and workplaces in daily usage;
- the benefits of heritage designation for places of local heritage significance are often finely balanced against the costs of conservation;

-
- heritage regulation is complicated by the manner of its integration with the planning system and, in particular, with the development approval process; and
 - local governments often apply a heritage regime that was primarily devised to prevent the demolition of individual iconic places, to precincts or areas of lesser heritage significance.

The interaction between heritage regulation and the planning system is a major source of uncertainty and dispute. While local government heritage and planning systems differ significantly across States, especially with respect to the level of delegation and guidance provided to local governments, most local governments have broad-ranging regulatory powers for heritage conservation.

The main problems identified in chapter 5 were:

- to reduce the administrative costs of regulation, many local governments rely on the development approval process as a ‘gate keeping’ mechanism for heritage conservation, whereby registration and enforcement is only pursued after a development application is lodged. This shifts the entire cost, risk and uncertainty of heritage listing to property owners by imposing restrictions after investment decisions have been made;
- local governments have broad discretion and controls over properties listed in a heritage register or deemed to have heritage significance under the general planning provisions, which can create both internal pressure within councils and external pressure from residents to misuse heritage controls for other planning purposes; and
- when seeking development approval, owners of historic heritage places can face substantial compliance costs to meet additional requirements for heritage approval (such as heritage impact statements).

This situation is not unique to Australia. According to research conducted for English Heritage, an important reason for poor conservation outcomes at the local government level (although the principles have broader applicability) is a failure to understand what the conservation task is:

The overwhelming impression ... is of a conservation service that is often stretched, under-resourced and operating without many of the necessary ‘building blocks’ that would ensure an effective, efficient and balanced service. Too many authorities hold inadequate information about the extent, character and condition of the historic resource to be managed. This is likely to lead to a failure on the part of authorities to match resources with the scale of the challenge they face. Staffing levels are often modest in relation to the size of the resource to be managed and the workloads faced. Whilst it is clear that the majority of conservation specialists would claim to be covering a very wide range of activities, development control tasks invariably predominate at the expense of other important work. Consequently much of what might

be regarded as essential best practice, such as buildings at risk work, conservation area appraisals, enforcement and other proactive tasks, inevitably receives comparatively low priority in many authorities. (Grover 2003, p. vii)

As a result of these features, the current treatment of heritage conservation under local government planning schemes lacks consistency and integrity, and is unlikely to facilitate regulatory decisions that result in the greatest net benefit for the community. It is therefore likely that greater transparency, rigour and accountability would improve both planning and heritage outcomes.

FINDING 7.6

At the local government level, the handling of locally-significant heritage places, as part of local planning schemes is not working well, primarily because of:

- *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; and*
- *the application of heritage controls to places that have little, if any, heritage significance in order to achieve other planning objectives.*

In summary, legislation initially introduced to identify and control the demolition and modification of undeniably important heritage places has since been heavily relied upon to achieve on-going heritage conservation goals. This approach is unlikely to be the most effective way to conserve heritage in all cases, or to secure a valuable portfolio of heritage assets over the longer term. A greater transparency about the benefit–cost trade-off involved in providing heritage outcomes is required. This would facilitate better policy choices, through the explicit recognition of the costs of conservation and more effective prioritisation of community conservation goals.

The heavy emphasis placed on regulation results in circumstances where the private benefits of conservation are less than the costs. As a result, property owners have insufficient incentive to conserve heritage places and may, in some circumstances, have strong incentives to destroy heritage values to avoid regulation. If the conservation of heritage places can be made more compatible with the interests of property owners, then more conservation will occur voluntarily, and in a way that supports the long-term preservation of heritage values.

Given the shortcomings of the current system, there is significant scope for improvement in a number of areas. Subsequent chapters will explore ways in which the existing heritage system can be improved. In particular, they will make

recommendations on how to more closely align the incentives of property owners with governments' and community heritage conservation objectives.

8 Management of public historic heritage places

The leadership role of governments — as representatives of community interests — and the role that public heritage assets play in everyday community activities, mean that community expectations are often an important consideration in public heritage management decisions. However, government departments and agencies, as owners of historic heritage places, also face many of the same costs and incentives as private owners of historic heritage places.

The ability of the community to assess the success of the public sector in meeting its heritage management commitments depends on the availability of transparent information. Governments, at all levels, should improve information on their expenditures and achievements in historic heritage conservation. Where heritage responsibilities have been assigned to agencies, these responsibilities need to be explicitly identified and accounted for. More rigorous information on the public heritage conservation task, particularly in relation to the costs of conservation, will better enable public sector asset managers to prioritise and allocate scarce conservation resources.

Governments own and manage a variety of historic heritage places. These range from highly-significant, or iconic, places with a strong connection to national history, such as Old Parliament House, to locally-significant places which are used everyday in the provision of community services (such as town halls and post offices). Many historic parks, gardens, trees, roads, bridges and archaeological sites are also under government stewardship. Sustainable management of government-owned heritage assets can, therefore, ensure that some of the most valuable examples of Australian historic heritage are preserved for, and enjoyed by, current and future generations.

While the conservation of publicly-owned historic heritage places, particularly higher profile buildings and those with a functional use, is generally adequately resourced, there are instances of community historic heritage assets not being well-maintained by governments. A number of submissions to this inquiry have

expressed concern about the condition of some publicly-owned historic heritage places. For example, the ACT Heritage Council observed that:

Maintenance problems are not limited to private properties, but is also seen in government owned properties, especially where the property no longer has a fully active use by government. Cotter Pumping Station was out of use and suffered from lack of maintenance until the current drought has led to its proposed recommissioning and repair. (sub. 147, p. 13)

The Australian Council of National Trusts observed that most of the sites on its Endangered Places List were in public ownership. Of the 154 places listed, 70 were owned by governments at the time of nomination. Another 31 places, comprising heritage precincts and streetscapes, included a mixture of government and privately owned buildings. The remaining 53 places on the list were privately owned (pers. comm., ACNT 4 April 2006).

Governments themselves have acknowledged that not all heritage assets under their stewardship (particularly those assets which are ill-suited or surplus to current requirements) have been well maintained and that information on public conservation activities is not always readily available:

The Victorian Government acknowledges that governments at Commonwealth, State and local level have a mixed record on the care and maintenance of heritage places in their ownership or management and that there is little available data on the associated costs. (sub. DR413, p. 9)

Greater provision of information about public historic heritage conservation tasks, and the resources required to meet them, will increase government accountability for public heritage conservation and provide greater guidance for public sector asset managers in the allocation of scarce conservation resources.

8.1 Government-owned properties of heritage significance

As chapter 3 indicated (table 3.1), the proportion of publicly-owned historic heritage places on statutory lists varies by jurisdiction. Historic heritage places listed by the Australian Government are predominately in public ownership. Across the States and Territories, the pattern of public ownership varies. In New South Wales and Western Australia, more than half the places on the State list are in public ownership. The figure is slightly lower in the Northern Territory. In Victoria, South Australia and Queensland, around one-third of places entered onto the State list are in public ownership. In Tasmania, only 8 per cent of the State Heritage List is publicly-owned — however, the State List also includes places of local significance.

There is a diverse pattern of public ownership at the local government level. The Commission's Survey of Local Governments revealed that while, in some local government areas, all of the listed places were owned by the council, other local government lists contained no council-owned places. Typically, however, the majority of places listed by local governments are privately-owned. On average, across all responding councils, 10 per cent of listed places were owned by local governments (appendix B).

Publicly-owned heritage assets reflect the traditional roles of the public sector. For example, Australian Government-owned historic heritage places are a reflection of the broad range of its national policy responsibilities (box 8.1):

The Commonwealth Heritage List comprises natural, Indigenous and historic heritage places on Commonwealth lands and marine areas or areas outside Australia but owned or leased by the Australian Government, and identified by the Minister for the Environment and Heritage as having Commonwealth Heritage values.

The list was established in 2004 following amendments to the EPBC Act. There are currently over 300 places on the list. These include places connected to defence, communications, customs and other government activities that also reflect Australia's development as a nation. Australian Government-owned places include telegraph stations, defence sites, migration centres, customs houses, lighthouses, national institutions such as parliament and High Court buildings, memorials, islands and marine areas. (Department of the Environment and Heritage, sub. 154, pp. 34–5)

Similarly, local government-owned historic heritage places reflect councils' traditional role as civic service providers. The Hobart City Council highlighted the diverse heritage management responsibilities of local governments:

Local councils have an important role as owners and managers of heritage property. These assets range from ornate town halls to grandstands ... from transport depots to aqueducts. Councils have the opportunity to lead by example in their approach to property management.

The Hobart City Council is directly responsible for many significant heritage properties, including the Town Hall (1864-67), the Lady Franklin Museum (1842), the City Hall (1915), three nineteenth century defence batteries, various parks and recreational areas, monuments and a number of other places. The new Hobart Council Centre is itself located within an Art Deco landmark, the former Hydro-Electric Commission building (1937-38). (sub. 70, p. 11)

Public historic heritage places may be sold to the private sector and adaptively reused or demolished for an alternative use. According to Susan Balderstone, a former government heritage architect, the extent of historic buildings which are, or have been, in public ownership is greater than that suggested by official heritage lists:

Box 8.1 Australian Government agencies with historic heritage responsibilities

Department of Defence
Department of Transport & Regional Services
Sydney Harbour Federation Trust*
Australian Maritime Services Authority
Australia Post
Department of Finance and Administration
National Capital Authority
Defence Housing Authority
Australian National University
CSIRO
Department of the Prime Minister & Cabinet
Office of the Governor-General
Great Barrier Reef Marine Park Authority
Australian Customs Service
Australian Antarctic Division
Department of Education, Science & Training
Parks Australia
Attorney-General's Department
The Treasury
Department of Veterans' Affairs
High Court of Australia
National Gallery of Australia
Australian Broadcasting Corporation
Department of Communications, Information Technology & the Arts
Department of Immigration, Multicultural & Indigenous Affairs
National Library of Australia
Bureau of Meteorology

* *The Sydney Harbour Federation Trust is the only agency on this list for which conservation of historic heritage places is a primary function.*

Source: Department of the Environment and Heritage (sub. 154, p. 54).

In terms of figures of historic government buildings throughout Australia, it's hard to come up with a final sort of definitive figure, but in Victoria up until the 1970s, more than 4000 schools had been constructed, up to 500 courthouses, 12 prisons, about the same number of mental health institutions and approximately 900 police stations, the early ones including lock-up stables and powder magazines. Of these, maybe 20 per cent have been demolished and 60 per cent are in other uses. Not all of those are included on heritage registers. The number of government buildings on the heritage register in Victoria represents about 5 per cent of the total number built. I can't give you a figure for how many would be included on local government registers in

Victoria, but there are around a hundred thousand places on local government registers in Victoria in total. (trans., p. 443)

Governments may also list places which are owned by other levels of government:

Of the 1,995 sites listed on the Victorian Heritage Register (VHR), 631 are recorded as being in 'public' ownership, with the remaining 1,364 places listed under 'private' ownership. ... Of the 631 publicly owned places, the VHR lists 178 sites as owned by local government, 444 by the State and nine by the Commonwealth. (Victorian Government, sub. 184, p. 23)

Some council-owned places may be highly significant and warrant inclusion on the National or State list. Councils may also list locally significant places which are owned by the Australian or State Government.¹ This has implications for resource transfers between governments and how responsibility for the conservation of the public places is shared.

8.2 Benefits and costs of publicly-owned historic heritage places

Benefits of public ownership

Governments may retain ownership of historic buildings to ensure that important heritage values are conserved for the benefit of the community (chapter 6). Good examples of public conservation can also provide guidance to private owners of historic heritage places. As with private owners, governments may also derive direct ownership benefits.

Community benefits of public ownership

Places which have been traditionally used in the provision of civic services may have particularly strong historic heritage values. In most towns and cities, public buildings played a central role in the community's development and, therefore, in establishing its historic identity (Susan Balderstone, sub. 99, p. 2). Locally significant public places, such as town halls, post offices, railway stations, parks and cemeteries are often among the oldest sites in a town or city and, in many cases, have retained their traditional function. As such, these places have often been a

¹ For example, the Sydney Opera House, which is managed by the NSW State Government, is listed by the City of Sydney and the NSW and Australian Governments, and has been nominated for the World Heritage List. According to the NSW Heritage Office (sub. 157, p. 49), 399 State-government owned heritage places are entered on to Local or Regional Environmental Plans.

focal point of historic events and may continue to embody important cultural values which uniquely define that community. These buildings may also contribute to improved quality of life through the continued provision of community services, as an educational resource and in the ongoing celebration of community heritage.

Governments can lead by example

Governments can also provide leadership as exemplars of conservation practice. Well-implemented and sympathetic conservation programs provide guidance to other owners of heritage places. The benefits of public conservation in guiding private conservation efforts are well-recognised internationally. For example, English Heritage noted the potential leadership role of local authorities, although, in the Commission's view, the principles apply equally to other levels of government:

It is essential to local authorities' credibility as stewards of the wider historic environment that they set a good example in the management of their own heritage assets. This means demonstrably achieving the standards they expect of others.

The benefits of good governance in managing local authority heritage assets and the repercussions of failure adequately to utilise or maintain them, especially historic buildings of long-standing civic importance (such as town halls, assembly rooms and swimming baths) should not be underestimated.

Local authorities have a responsibility 'to maintain and strengthen their commitment to stewardship of the historic environment and to reflect it in their policies and their allocation of resources' and 'to deal with their own buildings in ways which will provide examples of good practice to other owners'. The latter is a responsibility shared by the public sector as a whole, including central government and publicly funded organisations such as English Heritage itself.

... Credibility in action to secure the future of heritage assets in private ownership depends on responsible stewardship of council-owned assets. The best way to encourage others is by demonstrating that good management of local authority heritage property is cost-effective and delivers quality. Also, the success and imaginative re-use of a heritage asset, resulting in its retention and continued utilisation will usually generate good publicity, and thus increased credibility, for the authority concerned. (2003, p. 13)

Similarly, community groups have called on governments to undertake a leadership role (ACNT, sub. 40, p. 32) and this role has been acknowledged by some Australian governments (e.g., NSW Government (sub. 157, p. 88); Hobart City Council (sub. 70, p. 11)).

In addition to the demonstration effect of high-quality conservation of government buildings, there may be tangible benefits to the private sector through government sponsored employment and training of skilled heritage tradespeople. For example,

the NSW Government commented on training associated with its stonework conservation program:

Through apprenticeship training, the Government's Centenary Stonework Program initiative and intervention in the industry has directly produced approximately 50 heritage experienced stonemasons for the wider stone industry. It has also trained at least ten conservation architects in detailed stone conservation assessment, documentation and supervision, half of whom now work in the private sector. (sub. 157, p. 55)

However, in order to count this training as a net community benefit (as opposed to a transfer between public and private employers) it would first have to be established that this training would not have been undertaken by the private sector. The costs of this training would also need to be compared to the community benefits.

Governments can also benefit from ownership

In addition to the more intangible community benefits, agencies may derive ownership benefits. The Department of Defence, which manages an extensive property portfolio — including a significant proportion on the Commonwealth Heritage List — commented on benefits in the management of its heritage portfolio:

Defence has determined that the direct economic benefits of historic heritage conservation are limited. However, some indirect benefits have been explored. These arise from potential savings through the adaptive re-use of heritage buildings (on the basis that the building is in good working order and is configured in a largely compatible manner to the identified re-use), in comparison to the costs of demolition and new building construction. This provides a means of protecting the heritage resource controlled by Defence in a manner more economically sustainable in the long term. In addition, if the building has been well maintained there is also the potential for greater financial return on that asset at the time of disposal. (sub. 52, p. 10)

The NSW Government also identified potential ownership benefits in guidelines for asset management issued to its agencies (GMAC 2001a, p. 15).

Government ownership costs

As with private ownership, public owners of an historic heritage place incur additional costs (compared with ownership of a non-heritage place). These costs are incurred in physically maintaining the heritage values of the asset, in complying with heritage legislation/regulations, in promoting the conservation roles of governments and in retaining the place in its current use, instead of best alternative use. The costs may depend on the heritage significance of the item as governments

allocate resources to ensure that the most significant cultural values are protected. According to the NSW Government:

It is important that agencies recognise heritage property as an ‘asset’ not merely the source of maintenance liabilities. However, heritage property may require detailed attention, frequent maintenance, specialist advice, specialist tradespeople, and therefore budgeting based on special heritage requirements. Assets of high cultural significance may require a very high standard of maintenance at all times. Others may be maintained to general commercial standards, whilst others that are not presently in use should be maintained to prevent deterioration, discourage vandals and ensure public safety. (GAMC 2001a, p. 18)

When determining the true cost of heritage conservation, the costs of retaining an asset in public ownership need to be further separated into those costs associated with preserving its heritage values and those associated with the ‘normal’ upkeep and ownership of a place as a government asset used in the provision of public services. Specifically, heritage costs relate to additional maintenance and use costs which would not be incurred in the ownership of a non-heritage place providing the same amenities.

Maintenance and restoration costs

Maintenance and restoration costs can be substantial, particularly where it is necessary to employ techniques no longer in common use. The Municipal Association of Victoria commented on the additional costs associated with heritage maintenance:

Without doubt, the main pressure on conserving historic heritage places is the limited funding and incentives to protect such places. With respect to historic public buildings and infrastructure for which local government is responsible, Councils are required to allocate additional funds for conservation because of the special maintenance such assets may require. (sub. 66, p. 1)

Delays in implementing required conservation works will also increase costs. The NSW Government funds restoration of stone façades through the Minister of Public Works’ Centenary Stonework Program:

This Treasury-funded program began in 1991 and supports the Department of Commerce’s responsibility to maintain the significant stone façades of more than 600 historic stone public buildings in Sydney, the greater metropolitan area and regional areas of NSW. It was considered that the Program would need to operate for 20 years to carry out essential catch-up maintenance on many buildings that had received little or no maintenance in the century or more since their construction.

... Approx \$84 million has been expended over the last 14 years for stone conservation, including the purchase of stone.

... The recurring annual budget for the Program has been \$4.5 million pa over the last 14 years. The program of catch-up maintenance cannot be completed within the initially envisaged 20-year period and, depending on levels of funding available, may need to continue indefinitely. (NSW Government, sub. 157, pp. 54–5)

Sourcing materials compatible with the historic fabric of the place to be conserved may also prove costly and require considerable strategic planning on the part of government agencies. The NSW Government's submission continued:

The Government's strategic purchase of high quality 'yellow block' sandstone from several development sites in Pyrmont and The Rocks has secured valuable matching stone from original sources for repairs and replacement works. Stone from other regional sources is also stockpiled for relevant projects. This stockpile contains approx 7,400 cubic meters of stone. However, the first grade 'yellow block' stone (1,800 cubic metres quantity) has a shelf life which is possibly limited to 5–6 years before its case hardening qualities are lost. Fresh supplies are constantly being sought. (sub. 157, pp. 54–5)

Identification of maintenance and restoration costs is necessary to ensure that the required conservation resources are identified and allocated.

Adaptation costs

Since government-owned buildings are generally open to the public, additional costs may be also incurred in ensuring that heritage buildings are adapted to ensure accessibility and to comply with public safety and occupational health and safety requirements:

A related issue is the degree of intervention to adapt and upgrade heritage buildings for public use and the costs associated with it. There are significant liability issues along with BCA [Building Code of Australia] and disability access requirements. (Newcastle City Council, sub. 78, p. 1)

High costs relating to building usage, including disability access, fire rating and compliance with building legislation and standards, and the overlay of modern standards on heritage buildings, such as for IT, temperature control, customer service areas and open plan spaces and toilet facilities, are all significant costs associated with heritage conservation. (Tasmanian Government, sub. 136, p. 21)

Defence has not found any direct environmental costs or impacts involved in the conservation of historic heritage. However, there is the potential for the retention of a historic heritage asset coming into direct conflict with the need to decontaminate an area within a Defence property or the removal of hazardous materials such as asbestos. There can also be energy and water efficiency costs involved in the retention of historic buildings that have not been upgraded. (Department of Defence, sub. 52, p. 14)

In practice, according to the City of Sydney, adjusting to modern use requirements may compromise the historic fabric of a historic heritage place:

The indiscriminate application of Australian Standards related to Accessibility (enforced under the Commonwealth Disability Discrimination Act) to heritage places can in some case result in major loss of heritage significance to achieve marginal gains in accessibility or amenity. Appropriate performance-based solutions can currently be over-ruled under the provisions of the Commonwealth Act without any reference to heritage considerations. (sub. 143, p. 8)

Knowledge of the costs of adapting an asset to an alternative use, while retaining the heritage features that give rise to its significance, is necessary to evaluate alternative uses for that asset.

Celebration and education costs

In order to promote their roles in heritage conservation, governments may incur costs in educating the community and in celebrating community heritage. For example, Old Parliament House considered that conservation:

... is only the first physical step in successful and sustainable heritage management. Interpretation and promotion of those conserved values is the next essential step. Effective interpretation reveals the significance of the values to the community. Interpretation may take the form of face to face and self guided tours, exhibitions, theatrical productions, multimedia installations, education programs for all ages and even websites ... Without successful interpretation, public heritage places such as [Old Parliament House] run the risk of being misunderstood, devalued and ultimately at risk of compromise. (sub. 124, p. 3)

In addition to providing information on the public heritage values being conserved, information programs can also highlight an agency's success in undertaking conservation.

Compliance costs

Government departments and agencies can also face compliance costs associated with legislative and/or regulatory burdens of owning a historic heritage place. The Department of Defence identified substantial costs associated with meeting its regulatory obligations. These costs relate to identifying what historic assets are included in the Defence portfolio and putting in place appropriate management strategies:

The Department of Defence (Defence) owns, controls and manages almost 34 million ha within 340 sites. This includes nearly 25,000 built assets. The current financial commitment for heritage management tasks is in the vicinity of \$2.5 million per annum, not including full or part time salaries of staff with heritage management responsibilities. This amount does also not include the work detailed in the Defence

Comprehensive Maintenance Contractors (CMC) and Garrison Support Service (GSS) contracts with industry.

Of this portfolio, 124 sites are currently listed on the CHL [Commonwealth Heritage List]. This is anticipated to generate a cost of approximately \$10 million over the next 5 years to comply with the heritage requirements of the EPBC Act. There are also 78 sites listed on the RNE [Register of the National Estate] and 65 'Indicative' places listed on the RNE which require management and further assessment. If management plans are required for these sites (for management as transferred CHL sites or for the management of identified Commonwealth heritage values while un-listed) this would generate an additional cost of approximately \$10 million. The majority of the listed sites are significant for their historic heritage value or include features with historic heritage value as part of a natural and/or Indigenous heritage place.

The heritage value identification process could cost in the vicinity of \$1 million, with more detailed heritage assessment and additions to Defence's Heritage Register in accordance with the EPBC Act requiring an additional significant sum which cannot be quantified at this time. Should any of these assets be identified as having Commonwealth heritage values and require plans of management, this would generate a further significant financial cost which also cannot be quantified at this time.

There are economic requirements for the implementation of compliance documentation for the management of identified historic buildings in accordance with S.341ZC and S.341V. Defence has not yet determined the cost of meeting these requirements.

Additional costs are also required for the review of each Heritage Management Plan every 5 years. (sub. 52, pp. 1–2)

The regulatory obligations imposed by listing can involve costs for other levels of government and meeting these additional requirements can compete with core service delivery objectives. The Shire of York identified the potential for cost-shifting:

The built heritage is facing increasing challenges for priority in funding regimes in an era of cost shifting, changing demands and expectations, functional use, greater accountability, social services, ageing population, transport needs and other local, regional, State and Commonwealth requirements.

Conservation orders, building management plans and other edicts imposed by governments on their agencies without due or any consultation and minimal, if any, shared or supportive funding arrangements are seen as another level of interference or imposition on an already overburdened entity.

Is it appropriate to place a cost burden on a local government for the restoration of a building/structure which has no functional use, which may be impeding development or which is replicated in an adjoining town? Should there be quantification of heritage and functionality values and associated costs? (sub. 57, p. 2)

The Newcastle City Council noted the:

... shifting of responsibility for minor matters of State significance to councils. Take the example of Newcastle, where there are a total of 32 items on the State Heritage Register with a further 81 listed as State items under the Council's Local Environmental Plan. There has been no funding given to Council to assist it in managing these matters. (sub. 78, p. 2)

Similarly, the Association of Australian Ports and Marine Authorities Incorporated argued that nomination to a heritage list imposes an additional regulatory burden on port operators:

Ports already have rigorous environmental management plans and comply with national and State environmental regulations. Implementation of environmental plans and responses already involves time and resources. The need to meet statutory requirements and regulations often delays implementation of port requirements and often creates undesirable cost burdens, especially when there is no nationally agreed policy approach.

Nomination of a port, or part of a port, to the National Heritage List would result in yet another level of regulatory requirements for the port. The need to comply with heritage listing requirements will inevitably result in delays to, and could even prevent, ongoing maintenance work required for port operational areas such as berths, hard stand areas around berths, the development of covered storage areas, rail and road access points, the development of more capital intensive loading and unloading equipment, sea walls and breakwaters, mooring dolphins, vessel berthing pockets and channels into the port area. All of these facilities require constant maintenance and significant upgrading when productivity increases are necessary, and when trade requirements increase. (sub. DR296, p. 2)

In undertaking strategic asset management, governments and their agencies routinely prioritise the types of conservation tasks undertaken and consequently the costs they face. The Hobart City Council commented on its practice of undertaking physical conservation works ahead of other heritage conservation programs:

Priority is given to actual physical works, though heritage studies, conservation plans, educational projects etc are also considered if these are related to heritage-listed places and are likely to assist future conservation works. Priority is also given to work where there is a public or community benefit. (sub. 70, p. 9)

However, unlike other heritage-related costs, which may be incurred by governments in the management of community heritage assets, compliance costs are a consequence of listing and, as in the case of private owners (chapter 7), should be explicitly considered when the decision to list is made.

8.3 Managing public historic heritage places

As noted in chapter 4, governments may require their departments and agencies to have regard for heritage considerations in asset management decisions. Under the *Environment Protection and Biodiversity Act 1999* (EPBC Act), Australian Government agencies have a requirement to protect the heritage values of historic places they control. Some State and Territory governments have placed a similar obligation on their agencies. For example, NSW Government asset management guidelines state:

Organizations that have control of heritage assets also have a second service obligation. While they use assets in delivering their primary service, they are also responsible for the stewardship of the assets and protection of their significance for future generations ... The management of heritage assets should be viewed as an essential part of the management of the assets, rather than another problem and cost impost. Sustainable management of heritage values should be treated by an agency as part of its core business. (GAMC 2003, p. 13)

In order for governments and their agencies to be judged on their stewardship of public heritage assets, rigorous reporting and accountability frameworks are required. In the absence of such frameworks members of the community will be unable to make judgments on whether scarce taxpayer funds are allocated to their most appropriate use. Moreover, the existence of such frameworks would enable public asset managers to make informed decisions on the most appropriate allocation of spending priorities.

Management decisions are not based on heritage alone

Decisions relating to the use and disposal of a heritage asset will typically not be based on heritage considerations alone. The majority of public heritage places are functional government assets which are also used in the provision of community services. Decisions relating to their utilisation will be based on a number of considerations, not least of which is the impact on core service delivery. Best practice asset management guidelines suggest that while heritage considerations should not be overlooked, they should be considered in the context of the agency's operational objectives.

However, without reliable information about the costs and the benefits of retaining an asset in its current use, an informed assessment of alternative management strategies will not be possible. For some assets, it may be necessary to factor-in likely community reactions. The NSW Heritage Office outlined some of the problems facing public sector asset managers:

Like most other States and Territories, NSW has undergone change in the delivery in many of its services over the last 20 years, resulting in a number of government assets

becoming surplus to needs. Some heritage assets remain very much in use, such as the public housing stock in Sydney's Millers Point, the Harbour Bridge, Cataract Dam or Windsor Road. Some places such as local post offices, banks and railway stations are able to be easily adaptively reused, sustaining their heritage values into the future. Others are more problematic. For example, the large number of timber bridges that scatter NSW are now in need of repair and face challenges such as the availability of suitable repair timber, difficulties of upgrading for new traffic requirements and the costs associated with their upkeep. These timber bridges, which are particular to NSW, are an example of a type of heritage item that requires a strategic and long-term approach. They are expensive to manage for the State or local government agency with responsibility for them, but for local communities these timber bridges can be an important part of the historic landscape ...

There are also a number of major State government sites around NSW that are undergoing change. Former hospitals are a current example. In the community's mind these places are public places and often play a very important role in the local community. The public has campaigned hard for such places to retain some vestige of public use, sometimes causing the issue of public land use and heritage conservation to become entangled (e.g., the Quarantine Station in Sydney or the Rozelle Hospital site). (sub. 157, pp. 51–2)

Since funding for the conservation and management of an historic heritage asset normally occurs out of the agency's core budget, and it is not common practice for the heritage-related costs to be separately identified, it may be difficult for managers to separate heritage-related issues from other management considerations.

Asset management choices

In deciding how best to utilise a heritage asset, public sector managers face four choices:

- Retain the asset in its traditional use;
- Adaptively reuse the asset;
- Preserve the asset 'in stasis' (as a non-functioning asset); or
- Dispose of the asset.

Retention in traditional use

If practicable, the best strategy is to retain a functional asset in its traditional use. This generally ensures that funding for its conservation can be obtained as part of the agency or department's operating budget and also that the place's historic links to the community are continued. According to the NSW Government:

The best way to effectively manage a heritage asset is to maintain a viable and living use for it. Many State-owned heritage assets such as schools, courthouses and fire stations remain in full and active use. As a general rule, this ensures their maintenance and conservation. However, it is important that heritage values are not jeopardised by short-term decisions by owners, occupiers or users, for example through inappropriate development, use, maintenance or refurbishment. (GMAC 2001a, p. 15)

As the roles of governments in the community change, retention in traditional use will not always be feasible. While government agencies may attempt to incorporate heritage considerations in asset management decisions, the deciding factor may be other operational constraints. Specifically, while it may be desirable to retain the asset in its traditional use, that may no longer be an appropriate use of government resources. Post offices, railway stations and town halls, in localities no longer requiring the services these buildings once provided, have been converted to alternative uses or allowed to fall into disuse. In other cases, however, governments have decided that community benefits in retaining a heritage asset in its traditional use outweigh any operational losses. In these cases, governments have decided to continue to fund the heritage services provided by the asset.

According to the Newcastle City Council, while the costs of maintaining some heritage assets under its control are significant, the benefits to the community from existing use of local community assets are judged to be sufficient to warrant retention in public ownership (Newcastle City Council, sub. 78, p. 1).

Where an asset is retained in public ownership for the community benefits it provides, it is important that the community understands the rationale for retention in public ownership and the associated costs. This will encourage greater accountability for decisions made on behalf of the community and promote community support for the ongoing funding of the asset.

Adaptive reuse

As an alternative to retention in its traditional use, an asset which is surplus to service requirements can be adapted to an alternative use. While the focus should be on obtaining the highest financial return for the government, heritage values should not be compromised (GMAC 2001a, p. 15). The Department of Defence noted that adaptive reuse was often the best means of ensuring the ongoing viability of an asset:

Maintaining buildings as-is can be costly for Defence in terms of sustainability principles, including energy and water efficiency, buildings not meeting OH&S requirements and the financial commitment associated with the maintenance of aging buildings. Outdated and obsolete buildings need to be carefully considered in the context of Defence's evolving capability requirements. The pursuit of adaptive re-use

opportunities is Defence's first preference for the preservation of historic heritage buildings. (sub. 52, p. 12)

The Victorian Government also stated a preference for adaptive reuse as a means of ensuring sustainable conservation:

The Victorian Government recognises the need for all historic heritage places to be economically sustainable, and appropriate adaptive reuse is a primary mechanism for achieving this goal. As well as providing for the conservation of historic fabric, adaptive reuse has significant social and environmental benefits. (sub DR413, p. 14) [emphasis in original]

The ACT Heritage Council, noted that adaptive reuse was normally an appropriate option for government buildings, although this might occur after a transfer of ownership:

The scope for adaptive re-use is determined by the nature of the significance of the place and its reflection in the physical form of the place, rather than by its ownership. In the public sector for example, Customs Houses have been adapted as casinos, visitor centres, museums, and offices, wharves as residential apartments and retail outlets, and parliament houses as museums and art galleries. In the private sector warehouses and factories have been adapted as apartments, offices and retail outlets, and country emporiums as supermarkets and retail arcades.

In many cases, public assets are disposed of to private ownership, and adaptation follows. Post offices are an example. (sub. 147, p. 12)

However, the Southern Midlands Council in Tasmania argued that the scope for adaptive reuse may be more limited in the public sector than in the private sector because a public sector manager may feel constrained to retain an asset in its traditional use:

... there is probably less scope for adaptive reuse of publicly owned heritage places, as government heritage administrators are more obligated to adhere to standard heritage practice which often requires presentation of heritage places under a theme similar to its traditional use. This can constrain adaptive reuse, but act as a proponent to cultural continuity — a passive yet important conservation practice. (sub. 71, p. 15)

The City of Sydney contended that some examples of adaptive reuse in the public sector had compromised heritage values:

- Australia Post has closed a very large number of landmark post offices nationwide in the last fifteen years. This has resulted in the loss of the use for which the buildings were designed, demolition or, in some cases, inappropriate adaptive re-use of the buildings. It has also eroded the institutional hierarchy of public buildings. Post offices – traditionally amongst the most prominent public buildings in Australian towns and cities – have been relegated to inconspicuous locations in nondescript commercial buildings ...

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- NSW State Rail Authority has disposed of or demolished heritage listed places, despite their obligation to protect such places under Section 170 of the NSW Heritage Act;
 - Re-structuring in the NSW Courts System has resulted in the closure of the heritage-listed Redfern Courthouse. A new use compatible with the building's heritage significance is not immediately obvious. This very prominent public building may remain vacant for the foreseeable future. (sub. 143, pp. 7–8)

As the nature of government service provision changes, adaptive reuse will become an increasingly important option for public sector asset managers.

Retention 'in stasis'

Conserving a place *in stasis* as a non-functioning heritage asset (essentially 'mothballing' it) is the most problematic conservation choice. An asset which is perceived to have no functional use may have difficulty attracting funding from an agency's central budget for even the most basic maintenance and community support for that minimal level of funding. Buildings which are not used are more likely to be poorly maintained and to be the target of deliberate damage by vandals and non-use can place even buildings in 'fair condition' 'at risk' (EPHC 2004, p. 2). In commenting on its 'Buildings at Risk' Register, English Heritage noted:

Most of the buildings and structures are in poor to very bad condition, but a few in fair condition are also included, usually because they have become functionally redundant, making their future uncertain. (2006, p. 1)

The problem is well recognised at all levels of government. The Newcastle City Council identified 'demolition-by-neglect' in public buildings which were surplus to requirements as:

An emerging issue for State and local government agencies alike, with a rise in the number of redundant assets in portfolios. The number of demolition applications being submitted for derelict public buildings is on the rise.

... The issue affects private and public owners alike. Newcastle Council owns a number of items which are currently the subject of community concern over perceived neglect. Council must weigh up the priorities in terms of whether it undertakes capital works to crumbling assets, apports funds to manage roads, or provides new services for its rate payers, such as libraries and sporting fields. These issues are ultimately guided by community priorities and while not reducing Council's responsibilities to sound heritage management, they indicate the dilemma Council faces with regard to competing spending priorities.

This issue also faces many owners of private properties, as well as state agencies who have difficulty in finding suitable adaptive re use options and/or finding funding sources to maintain buildings. This in turn leads to a propensity to demolish heritage items. (sub. 78, pp. 1, 3)

Moreover, as the Department of Defence observed, the policy of mothballing assets still involves substantial costs to maintain the place's historic fabric intact:

Another key heritage management principle to retain buildings that have fallen out of use is to retain them in stasis or 'mothball' them with minimal maintenance until a viable adaptive re-use can be found for them. While retention of buildings in stasis is a practical and viable heritage management option, it can involve a considerable financial burden for the Defence estate. The maintenance of redundant buildings still requires ongoing funding and while this funding may seem minimal for individual buildings, it can be a significant requirement for sites where multiple buildings need to be retained. This is then multiplied in the context of the whole Defence estate. The maintenance of buildings in this way diverts Defence funds from maintaining other heritage buildings which are utilised and have an operational function. Sites that are retained by Defence also have costs associated with their upgrade and fitout for user requirements. (sub. 52, p. 13)

Retention of an historic heritage asset in traditional use is not costless. It may also be more difficult to ensure that historic heritage values are protected if a place does not have a functional use.

Asset disposal

Where continued ownership is viewed as too costly, ownership or management can be transferred to the private sector or to somewhere else in the public sector. This could be achieved by selling the asset, transferring the title or by leasing the asset.

In order to maximise financial return, disposal by freehold is preferred. However, leasehold may be appropriate if heritage considerations are relevant (GAMC 2001b, p. 21). While market rents could be negotiated as part of the lease agreement, discounts could also be offered if the lessee has entered into a maintenance or restoration contract. However, in order to achieve the greatest value for the taxpayer, the total value of such arrangements should be equal to current market value. In order to maximise the disposal value, an assessment should be made of the likely uses of the property after disposal. The proposed use should be the 'highest and best' use, including allowance for any heritage considerations (GAMC 2001b, p. 20). Governments have developed frameworks to enable agencies to better determine whether a proposed use is consistent with 'value maximisation' (NSW Treasury 1999).

The Commission considers that the objective of a heritage asset disposal should be to obtain the highest value for the taxpayer consistent with the protection of rigorously identified heritage values. This principle is well-accepted internationally. According to English Heritage:

The aim on disposal should be to obtain the best return for the taxpayer that is consistent with government policies for the protection of heritage assets; this may well limit the realisation of potential development values. In relation to heritage assets, it will normally mean seeking the ‘optimum viable use that is compatible with [the asset’s] fabric, interior and setting’, which ‘may not be the most profitable use if that would entail more destructive alterations than other viable uses’.

Of course, not all costs and values can be reduced to monetary terms; but this does not mean they cannot be taken into consideration. The value attached to local buildings by the local community, for example, is of crucial importance. Local authorities need to take into account the non-financial and wider regeneration benefits that may result from disposal, including environmental, cultural and long-term economic benefits. (2003, p. 33)

Where an asset is being sold or leased at a discount, it is important, for financial transparency, that the conditions of the transfer are well-documented and accessible by the community. Similarly, buyers or lessees should be made aware of their heritage responsibilities and the obligations that entering the agreement places on them. The NSW Heritage Office commented:

In all cases where public heritage assets are proposed for retention or disposal, a good heritage outcome is dependent on the importance of these places being recognised early on by government and the factoring in of conservation outcomes from the outset. Like any major development, if the heritage issues are not integrated from the outset the development potential of the site is likely to be overestimated and the tension begins. Successful examples include the former Prince Henry Hospital site in southern Sydney, developed by the NSW Government’s own development corporation Landcom, which has used the site’s heritage values as the catalyst for its regeneration. Although not yet completed, the project has already won a series of awards relating to urban planning, design and conservation. (sub. 157, p. 52)

The UK Government has issued best-practice asset disposal guidelines in an attempt to reduce friction between the purchaser and the selling agency while ensuring that heritage values are appropriately protected. The key features of these guidelines are:

- The use of planning briefs that are shaped by extensive public consultation.
- Public consultation and participation in the planning process, for example through open days and community planning exercises.
- The use of conservation plans which examine the significance of the site in terms of their history, architecture, archaeology, designed landscape and natural environment.
- Planning disposals to ensure that a future for the site has been secured before the building is vacated.
- An holistic approach to sites, particularly those is cases where [the heritage assets] stand in a designed landscape. In the past the sale of such sites in a piecemeal manner has proven highly damaging to the setting of historic buildings.

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- The use of planning agreements to ensure that heritage assets are secured and repaired to an agreed standard before completion of any enabling development.
 - Adopting innovative methods of sale, particularly joint ventures between the [government agency] and a selected private partner which allow development value to be shared by both parties. (Holborow and Taylor 2001, p. 4)

Disposal of an asset which is surplus to use, and for which appropriate funding cannot be found, is preferable to allowing the asset to fall into disuse and possibly disrepair. However, the disposal of the asset should be undertaken transparently to ensure that community interests are represented.

FINDING 8.1

It is important that public heritage buildings have a viable use. While retention in traditional use may maintain important historic links to the community, where this is not possible a suitable alternative use should be found. If a functional use for a public heritage asset cannot be found, then disposal (with appropriate safeguards to protect cultural values) may be preferable to retaining it as a non-functioning asset with the associated risk of poor maintenance and dereliction.

8.4 Relationships between governments

The COAG agreement of 1997 on Commonwealth and State roles and responsibilities for the environment was intended to clarify the roles and responsibilities of governments in managing public historic heritage places (COAG 1997; Heritage Council of Western Australia, sub. 59, p. 6; Australian Heritage Council, sub. 118, p. 4). The agreement embodied the principle of subsidiarity ‘where responsibility for heritage management/regulation is devolved to the lowest practical level of government’ (Australia ICOMOS, sub. 122, p. 41). In chapter 7, the Commission endorsed subsidiarity as a foundation principle for an effective national framework.

Under this principle, management responsibilities for some publicly-owned heritage places are clear. The Australian Government would accept responsibility for places which it owns and which it has identified as being of national significance. Similar responsibilities would be assumed for State Government-owned places of State significance and council-owned places included on local lists. The delineation of responsibilities is less clear for buildings which are owned by one government but listed by another. A number of participants, in particular local governments, called for a greater alignment between the decision to list a place and responsibility for its conservation. The Adelaide City Council submitted that

... the State Heritage Branch financial contribution to heritage management is significantly less than Adelaide City Council's contribution. For the past 2 years, the State Heritage Branch budget for heritage grants has been \$250,000 for buildings and \$50,000 for cemeteries. In previous years it has been significantly less. This funds conservation projects for State-listed properties throughout the entire State. When compared to the Adelaide City Council \$1 million budget for the Adelaide city area the imbalance of funding becomes obvious.

About 30% of applications funded through Council's heritage incentives scheme are for State-listed properties. There are very few examples where the State Heritage Branch has contributed to these projects. The parity of funding availability needs to be addressed at State and Federal level to ensure each government sector is contributing in accordance with the number of heritage properties under its jurisdiction. (sub. 115, p. 3)

Where there is a difference between the listing government and the government which owns the place, the same fundamental disconnect exists between responsibility for identification and responsibility for conservation that the Commission examined in chapter 7 in relation to the listing of places in private ownership. The Commission agrees with the Southern Midlands Council on the principles which should guide relationships between governments in the national framework:

The principles which guide this involvement should be:

- Appropriate analysis of the costs of conservation and an understanding of the return on this investment, both immediately and the wider flow-on.
- The appropriate tier of government bearing the financial shortfall of the above analysis where it can be justified that the significance of the place warrants public expenditure to maintain its heritage value.
- Where ownership or significance of a place can be categorised into more than one level of government, partnerships between government levels need to be developed and maintained. (sub. 71, p. 3)

These principles are consistent with the agreement reached by COAG in establishing the National Heritage Framework. The Australian Government agreed to abide by State planning and environment laws for Australian Government owned places of State significance. There was also commitment to bilateral agreements which would recognise existing management arrangements for State Government owned properties. Among the principles agreed to were:

- All State statutory authorities, government business enterprises, privatised organisations, departments and agencies will be subject to State planning and environment laws. The Australian Government also agreed that all government enterprises operating on a commercial basis and some Australian Government

agencies and departments would be subject to State planning and environmental laws.²

- Where cooperation is required, bilateral agreements between the Commonwealth and the States to establish goals and objectives; roles and responsibilities; and, funding and delivery frameworks.
- Where funding is provided directly to local governments, it should occur in a transparent manner (COAG 1997, pp. 10, 13 and 14).

Bilateral conservation agreements between governments (chapter 4) provide a mechanism for ensuring there is a greater alignment between the decision to list a place and the availability of resources for its conservation. As the Department of the Environment and Heritage submitted, reducing cost-shifting would lead to improved cooperation between governments:

It is important that the financial responsibilities of each jurisdiction are clearly identified and that there is no cost shifting between jurisdictions. This cooperation would form the basis of a **national strategic framework for historic heritage places**, best developed through the Environment Protection and Heritage Council, and would fulfil the intention of the Council of Australian Governments' (COAG) decision made in 1997. (sub. 154, p. 30) [emphasis in original]

The Commission agrees that more explicit recognition of the costs imposed by a listing government would improve the operation of the national framework by increasing the degree of cooperation between governments. It would also encourage greater rigour in listing decisions. The 1997 COAG agreement endorsed bilateral agreements as a means of streamlining the management of State Government-owned assets of national significance and committed the Australian Government to ensuring that mechanisms were in place to negotiate and implement bilateral agreements.

Information sharing between governments

There is considerable scope for information sharing between governments. The NSW Government has developed support mechanisms (heritage advisory training and regional seminars) and electronic information sharing networks for local government (NSW Government, sub. 175, pp. 34–5).

² Some Australian Government agencies (specially those dealing with telecommunications, aviation airspace management including aircraft noise and engine emissions, and on-ground airport maintenance) would be exempt. Australian Government departments, agencies and statutory authorities either may choose to comply with State planning and environmental laws or, after a feasibility study, could be required to comply with the State laws (COAG 1997, p. 13).

Another approach is the Historic Environment Local Management (HELM) model, used by English Heritage. HELM is a website database which includes information on historic heritage management provided by English Heritage and by local councils themselves. Among the information provided by local councils are guidance on building management and restoration techniques. Web-based solutions such as these would appear to require relatively few resources to network local governments and enable them to exchange information.

Local governments, which share a common history, have also entered into cooperative agreements to promote regional heritage. Examples include ‘Explorer Country’ in New South Wales and the Victorian Goldfields.

More transparent information could be provided where conservation funding is shared between governments and their agencies. An example is the program for conserving timber bridges in New South Wales, responsibility for which is shared between the NSW Heritage Office, the NSW Roads and Traffic Authority and local councils (NSW Government, sub. 157, p. 52). Accountability for public conservation resources would be improved, and a clearer picture of the overall conservation effort would emerge, if expenditure on items which is shared between agencies is collated by a single agency and made accessible to the community. Greater transparency would also be consistent with guidelines agreed to by all governments in establishing the National Heritage Framework. The 1997 COAG agreement states that ‘the contribution of funding sources will be properly and fully recognised’ (COAG 1997, p. 14).

8.5 Principles which should guide public heritage asset management

Asset management guidelines are intended to allow owners to reach an informed decision about whether an asset should retain its current ownership structure and/or function. In the view of the Commission, best practice asset management guidelines should be based on three fundamental principles:

- *Know what you have* and what condition it is in.
- *Know the costs* of retention in public ownership.
- *Have a management strategy* (consistent with the core objectives of the organisation) for conserving the heritage values of the place in public ownership.

Know what you have

The necessary first step in identifying the asset management task is to establish what heritage assets the organisation has and what condition they are in. Decisions on whether to retain an asset and on how best to prioritise conservation tasks will depend on a sound understanding of the current condition and composition of the agency's asset portfolio. According to the Department of the Environment and Heritage:

Incomplete information about the number, significance and condition of heritage sites also presents a key challenge for governments. Without good information on historic heritage sites and the values they provide to society, it is difficult for governments to devise the most suitable policies and programmes for prioritising heritage conservation. (sub. 154, p. 24)

In recognition of the importance of identification and assessment in heritage asset management, governments have attempted to improve information gathering by their agencies. For example, the Australian Government has required agencies with places included on the Commonwealth Heritage List to 'develop heritage strategies and inventories to assist in identifying potential heritage places under their control' (sub. 154, p. 19).

The NSW Government requires its agencies to complete a register of historic assets of State or local significance (section 170 register).³ Under section 170 of the NSW Heritage Act 1977 (section 170 (4) (a)) a government instrumentality must include on its Heritage and Conservation (section 170) register all items of environmental heritage currently listed on:

- an environmental planning instrument (e.g. LEP) under the Environmental and Planning Act 1979;
- any item subject to an interim heritage order; and
- any item listed on the State Heritage Register.

A government instrumentality shall also list those items on its section 170 register which **could** be listed on a statutory list or subject to an interim heritage order. According to the NSW Heritage Office, this requirement is intended to encourage section 170 listing for items which are likely to be found of State or local significance but which have not yet been included on a statutory list (pers. comm. 29 March 2006). A management plan is required for items entered on to a section 170 register, consistent with NSW Government asset management guidelines. However, while it may ensure the preservation of heritage values yet to be identified by a listing authority, it imposes additional compliance costs on

³ Asset registers for government agencies are discussed in section 8.5 below.

government agencies and may therefore divert resources from the conservation of places which have been identified as of local or State significance.⁴

However, up to this point, compliance has not been complete:⁵

In NSW, approximately 85 State agencies require s170 registers. Approximately half have some sort of register, varying from minimal to best practice demonstration. To date, approximately 45 State agencies have submitted s.170 registers as drafts or for endorsement (of which 15 have been submitted electronically and are therefore included on the Heritage Office's State Heritage Inventory (SHI) database). (NSW Government, sub. 157, p. 48)

A lack of information on public heritage assets is evident among some local governments. More than 7 per cent of councils which responded to the Commission's Survey of Local Governments did not know, or could only provide a rough estimate, of the number of Council-owned properties on their own local list (local environmental plan or equivalent).

Failure to understand what assets have heritage values which require conservation will lead to an inadequate allocation of conservation resources. Moreover, delays in identifying the required resources, and consequently greater potential for deterioration in the historic fabric of heritage assets, will result in a greater conservation requirement and ultimately, therefore, higher costs.

Know what it costs

Retention of an asset in government ownership is justified where the benefits to the community, broadly defined to include the cultural values which would not otherwise be conserved, exceed the costs. While benefits of public ownership will typically not be open to quantification,⁶ it is important to separately identify heritage-related costs. Providing a more rigorous system for accounting for the costs of public heritage conservation will enable a more efficient allocation of scarce public conservation resources to their most valued use and improve transparency and accountability of public conservation decisions. It will also better inform

⁴ For example, the section 170 register of Sydney Water includes not only items included on statutory lists, but also items listed on the Register of the National Estate; on the National Trust of Australia Register and the Royal Australian Institute of Architects register (Sydney Water 2006).

⁵ The requirements were introduced in 2004 and agencies have until 2009 to comply (NSW Heritage Office, sub. 157, p. 48)

⁶ For that reason, accounting standards which state that the heritage assets should not be included on the agency's balance sheet are appropriate (Barton 1999).

governments when deciding on how much funding, in aggregate, should be allocated to the public conservation task.

Better knowledge of maintenance costs will enable governments to more effectively prioritise conservation tasks and plan the longer-term management of heritage assets.

Rarely will funds be available to allow all identified tasks to be carried out at one time. It is therefore critical to carefully assign priorities and to identify the most cost-effective solutions. Planning for heritage assets will certainly span five to ten years, and because of the nature of heritage assets may extend to longer periods of fifty years or more. It is important to make allowance for the higher than usual costs that could be incurred for the maintenance of heritage assets. (GAMC 2001a, p. 20)

Costs which are not identified are likely to remain unacknowledged by governments and therefore unfunded. The National Commission of Audit (1996) identified deficiencies in managing public infrastructure. It concluded:

The neglect of infrastructure maintenance will be more obvious under accrual accounting, where government entities will be required to recognise the cost of using capital assets and their maintenance ... The Government should pursue appropriate use of an accrual based accounting framework (reporting, accounting and budgeting) for asset management, which will assist proper use of assets. The measurement of infrastructure performance, particularly in the area of maintenance, needs to be improved. (1996, section 8.1)

Similar concerns about deficiencies in the maintenance of public infrastructure led to the US Government requiring its agencies to report on deferred maintenance (FASAB 1996, p. 8).

Community Service Obligations

Typically, heritage management costs are funded from an agency's general budget. Thus, heritage conservation must compete with the other funding demands placed on government departments and agencies. This has led some to voice concern that there may be underspending on conservation of publicly-owned historic heritage places. For instance, the Australian Council of National Trusts (sub. 40, p. 34) noted that it was rare for government agencies and departments responsible for places of heritage value, where heritage was not a part of their core function, to be funded to care properly for them.

In many ways, the requirement of government agencies to maintain the heritage characteristics of historic heritage properties under their control can be viewed as a form of community service obligation (CSO). The requirement of government agencies to provide 'uneconomic' services to some of their customers (the

Universal Service Obligation in telecommunications is one example) has been a long-term feature of government in Australia, but recently, moves have been made to improve both the reporting and delivery of those services. Essential features of this which could also be relevant to government agencies conserving historic heritage properties include:

- the clear identification and specification of the obligation involved;
- transparent accounting of the cost of meeting those obligations;
- a transition towards direct funding of the CSO; and
- a greater use of contracts between relevant portfolio departments and government business enterprises or private providers (IC 1997, pp. 2–5).

International best practice suggests that these CSOs should be explicitly acknowledged. The US Government has issued reporting requirements to its agencies responsible for community ('stewardship') resources — such as historic heritage places and public lands — which require these agencies to provide 'supplemental information' on the costs associated with them meeting their obligations to the community. Key features of these guidelines are provided in box 8.2.

A leading Australian expert on public sector accounting has argued that historic heritage places can be regarded as 'trust assets' and accounted for separately from government operating assets. Classification of historic heritage places as:

... trust assets is appropriate given the role they are required to fulfil in the preservation of the nation's culture, heritage and environment. It can be argued these assets belong to the nation as a whole rather than the government. They are the people's assets, managed and controlled by government on behalf of its citizens. The government is expected to maintain, protect and preserve these assets for the benefit of future generations and not allow them to be degraded.

... The trusteeship approach to accounting for heritage assets in the public domain accords with the role these facilities are to perform. The government holds them in trust for present and future generations and has a responsibility to protect and preserve them. The costs of protecting and maintaining them should be borne by each generation as they enjoy the benefits from them. As trust assets, public heritage assets should not be included in the government's own statement of assets and liabilities. They should not be regarded as part of its own financial position and be available to meet its financial commitments. In trust accounting, the trustee is obliged to keep trust assets separate from its own assets and to report on them separately. In the case of national parks, museums, art galleries, libraries and so on, the heritage classified items should be kept separate from the organization's operating assets — its equipment, vehicles, buildings (unless they too are classified) and be reported on separately. (Barton 1999, pp. 230–1)

Box 8.2 US Government – Guidelines for the reporting on the management of heritage assets

Stewardship resources involve substantial investment by the Federal Government for the benefit of the Nation. When made, they are treated as expenses in the financial statements. These expenses, however, are intended to provide long-term benefits to the public. Therefore, ... information on these resources [should] be reported to highlight their long-term-benefit nature and to demonstrate accountability over them.

... The measurement of the benefits received for the dollars invested and the evaluation of program performance could appear with other stewardship information as part of the financial statements, or in other financial reports, for example in a report on program performance.

.... A key feature of the stewardship objective requires that Federal reporting provide information that helps users determine (1) whether the Government's financial condition improved or deteriorated over the period and (2) whether future budgetary resources will likely be sufficient to sustain public services and meet obligations as they come due ... Information on 'stewardship responsibilities' will aid in these determinations. It will provide an essential perspective on the Government's commitment to discretionary and mandatory programs.

... The costs of acquiring, constructing, improving, reconstructing, or renovating heritage assets shall be considered an expense in the period when determining the net cost of operations ... The cost shall include all costs incurred to bring the heritage asset to its current condition and location.

... Not all heritage assets are used solely for heritage purposes — some serve two purposes by providing reminders of our heritage and by being used in day-to-day operations unrelated to the assets themselves. The cost of renovating, improving, or reconstructing operating components of heritage assets shall be included in general [property, plant and equipment] expenditure. The renovation, improvement, or reconstruction costs to facilitate Government operations (for example, installation of communication wiring or redesign of office space) would be capitalized and depreciated over its expected useful life ...

Costs of renovating or reconstructing the heritage asset that cannot be associated directly with operations shall be considered heritage asset costs and included as expense in calculating net costs.

Source: Financial Accounting Standards Advisory Board [US] (1996).

Many of the benefits of managing public historic heritage places through a trust could be obtained if reporting standards, such as those introduced by the US Government, were adopted. That is, where all information relating to an agency's 'stewardship requirement' (or CSO) is separately reported as 'supplemental information'. Separate reporting:

... has the same result as treating heritage facilities as trust assets. Much of the information reported will be descriptive, non-financial information explaining the mission and responsibility of the managing entity; the nature of and details about the assets held (for example, areas of national parks and their special attributes; the size, architectural and cultural significance of a building); measures of performance such as numbers of visitors and levels of visitor satisfaction; the physical condition of the asset

and what major restoration work may be required; and so on. Financial reporting should be designed to facilitate management of the facility in achieving its objectives as efficiently as possible and, second, to the accountability of management to government as the broad policy maker and to the public as the funding source for its performance and compliance of expenditures with grant conditions. A statement of income and expenditure should comply with the entity's charter of operations. It should show all grant moneys and other revenues received for the period; and expenditures on operations, maintenance and restoration work, and new acquisitions. However, it would not include depreciation charges. It would measure the financial costs of operating and maintaining the facility and the amount of funding required. A statement of financial position would include all financial assets and liabilities so as to report on the solvency of the entity but would not include the heritage facilities as assets. (Barton 1999, p. 233)

A number of participants commented on the Commission's draft recommendations to improve agency reporting on heritage-related costs. For example, the Ku-ring-gai Council argued that '[c]reating a separate reporting system for additional 'heritage-related' costs is likely to be difficult to manage and accurate reporting may be difficult' (sub. DR351, p. 2).

However, the Commission has received submissions from a number of public and private sector owners who have been able to identify heritage-related costs. In some circumstances (i.e., where the costs are substantial and, in the case of public sector owners, significantly impact on core service provision) owners have strong incentives to establish the nature and extent of heritage-related costs. Similarly, it is in the interests of government agencies which are committed to achieving good conservation outcomes, within the constraints imposed by operational requirements, to inform themselves of these costs.

Improved reporting on the community service obligations inherent in public management of heritage assets could be undertaken straightforwardly by all governments. Glazer and Jaenicke (1991) and Carnegie and Wolnizer (1996) provide examples of the information required to undertake supplemental reporting for museums and their collections. The Australian National Audit Office (1998) has undertaken a similar exercise for the Great Barrier Reef Management Authority. In none of these cases was it necessary to provide a valuation of the heritage assets held by the agency in order to establish the costs involved in meeting its CSO.

FINDING 8.2

Separate reporting on governments' community service obligations in public heritage asset management would improve accountability and thereby facilitate better conservation outcomes.

Have a management strategy

The New South Wales Government noted that development of a heritage management strategy was best practice:

The Heritage Office has recently issued the *State Agency Heritage Guide: management of heritage assets by NSW Government Agencies ...* The Guidelines establish strategies for managing State-owned properties, conservation standards and timelines ... for State agencies to meet these obligations. This is a further step in the implementation of the NSW Government leading by example and demonstrating best conservation practice in managing its own assets. (sub. 157, p. 50)

Management plans are a fundamental tool of heritage management. They not only set out the heritage values of the place to be conserved, which is a basic requirement understanding whether the place should be conserved, but also provide strategies for the conservation of the place and the resources which should be utilised to ensure that conservation.

The Southern Midlands Council emphasised the need for flexibility in management plans:

Management plans, particularly for government-managed heritage properties, are documents which must be regularly maintained and reviewed. Changing personnel, public needs/expectations, political climate and financial situations significantly effect the way in which heritage management is undertaken. Whilst this may not greatly change the actual practice of conservation, it can severely effect the sites and conservation programs managed. Bottom-line, management plans do efficiently meet the objectives of heritage principles at the time they are developed, however, if they are not regularly revised their effectiveness is compromised. (sub. 71, p. 16)

An effective heritage management strategy will attempt to make provision for conservation resources into the future and poorly maintained public heritage places may be indicative of an absence of an effective management strategy. Advocacy groups, such as the National Trusts, have an important role to play in this process. By informing the public of assets whose heritage values are endangered, the National Trusts' Endangered Places Program may increase the pressure on governments to be accountable to the community for heritage outcomes. A similar role is played by the 'Buildings at Risk Register'. According to English Heritage the Register is an important management tool:

The *Register* is not an end in itself. It is intended to keep attention focused on neglected historic buildings and monuments. It is a working tool that enables us to define the scale of the problem and establish the extent to which these important buildings are at risk. This information helps us to establish the resources necessary to bring these buildings back into good repair and, where appropriate, beneficial use, and to prioritise action by English Heritage, local authorities, building preservation trusts, funding

bodies, and everyone who can play a part in securing the future of these outstanding and irreplaceable parts of our heritage.

We work closely with local planning authorities, who are the primary custodians of the historic environment in their areas. Many local authorities also maintain and use buildings at risk lists of their own, and follow best practice by monitoring the condition of all their historic buildings ... They strive to foresee problems likely to arise, taking action to prevent vulnerable buildings sliding into decay, as well as to address those which are at risk. (2006, p. 1)

In circumstances where asset management strategies have not been adopted, the options available to government for successful conservation are reduced, particularly where the asset is surplus to current operational requirements. Redundant government assets have been allowed to deteriorate to such a point that the return to the taxpayer from disposal, and the prospect of successful conservation of heritage values, are considerably diminished. The Australian Council of National Trusts noted that many places identified in its Endangered Places Program were there because of government neglect:

Of the 180 places that have been listed as endangered since 1998, most remain threatened. Many of these are redundant government-owned places, a number of them large scale, such as hospital precincts and industrial sites. [National] Trusts have worked with communities throughout Australia to influence government policy to ensure the management of the disposal of places, such as these, takes account of the broader public interests beyond simple commercial considerations, and that conservation of heritage values is protected into the future.

Some notable successes have been achieved, including the return to the community of significant places such as Port Nepean and Point Cook, but many others languish in neglect and uncertainty. (sub. 40, p. 53)

The cost of repairing a heritage place increases significantly as the state of disrepair increases. Governments which are held accountable for heritage outcomes therefore have an incentive to ensure that maintenance occurs as soon as possible. Ultimately a policy of 'triaging' assets which have fallen into a parlous state of repair, or allowing assets to deteriorate to the point at which their cultural value is severely compromised, will be more expensive both in financial terms and in terms of lost heritage values. The credibility of the department, agency or local council as a manager of heritage assets will also be seriously undermined.

There is also the prospect for inconsistency in heritage policy, and consequently a reduction in government credibility, when an heritage asset is not conserved to an acceptable standard when in public ownership but, when transferred to private ownership, higher standards of maintenance and conservation are expected. A number of participants commented on this point. For example, Ivan McDonald, a heritage architect, noted:

I also have a particular issue with what I see as a hypocritical approach by many levels of government in their treatment of their own buildings particularly and that is the trend we have seen in recent times of the disposal of public buildings. I often am giving advice to clients who are in a private capacity buying disposed government buildings and they often feel particularly disgruntled at one arm of government having run down a building to a point where they no longer consider it an asset and want to dispose of it and, at the same time, another arm of government comes along and wants to impose stringent heritage outcomes on that same owner. (trans., p. 18)

The New South Wales Government has provided its agencies with asset management guidelines as part of its Total Assessment Management framework (appendix F). The Commission endorses this as a necessary first step in ensuring that agencies adopt best practice asset management. NSW Government agencies are required to identify, conserve and manage heritage assets owned occupied or managed by that agency. The Victorian and Western Australian Governments also provide specific guidance to State agencies for the management and conservation of places listed either in the State register or local planning schemes.

RECOMMENDATION 8.1

The Australian, State and Territory governments should ensure that their agencies are issued with heritage asset management guidelines as part of an integrated asset management framework. Such guidelines could also be adapted for use by local governments.

While issuing guidelines is a necessary first-step in ensuring that agencies adopt best-practice heritage asset management, governments should be aware that mandating reporting requirements and management plans is unlikely to lead to full compliance, particularly if reporting assets implies future obligations for the agency. Monitoring compliance with mandatory requirements is also likely to incur costs for the government heritage agency which is responsible for monitoring compliance. In New South Wales, all government agencies are required to manage their assets, including their heritage assets, in line with the Total Asset Management strategy of the NSW Treasury (appendix F). Agencies were required to implement heritage asset management strategies by 31 January 2006 (NSW Heritage Office 2005). However, compliance has not been complete and only 15 out of 85 NSW Government agencies with heritage asset management responsibilities under the *2004 State Heritage Guide* have complied (NSW Heritage Office, sub. 157, p. 25).

Other States also require publicly-owned historic heritage places, which have been identified on a statutory list, to be managed in accordance with asset management guidelines. For example, in Victoria government owned assets, including heritage assets must be managed in accordance with the ‘Government Heritage Charter’ within asset management guidelines issued by the Department of Infrastructure.

Governments who are concerned with best-practice compliance among their agencies might consider providing financial assistance to help meet the cost of meeting regulatory obligations or assistance in implementing guidelines. For example, in New South Wales:

The Heritage Office is developing a State agency support structure modelled on the local government support network, that is: dedicated officers to provide ‘on tap’ phone advice for each key agency, an e-group network for State agencies involved in heritage management, and the provision of training for managers and those responsible for the s.170 registers. (NSW Heritage Office, sub. 157, p. 51)

Australian Government agencies

The *Environment Protection and Biodiversity Act 1999* (EPBC Act) imposes management requirements on places listed on the Commonwealth Heritage List. According to the Department of the Environment and Heritage:

Under the EPBC Act, the responsibilities of Australian Government agencies with places in the Commonwealth Heritage List are identified. These agencies must develop heritage strategies and inventories to assist in identifying potential heritage places under their ownership or control, and they must also make management plans for their Commonwealth Heritage listed places within the period of time stated in the agency’s heritage strategy. This framework ensures that the Australian Government manages its heritage places to the best practice standards for heritage conservation. (sub. 154, p. 19)

The Department of Defence identified its specific obligations under the EPBC Act as:

- Prepare a Heritage Strategy that outlines how Defence will meet its obligations under the EPBC Act;
- Identification and assessment of the heritage values of the 25,000 assets and 34 million hectares of land in Defence control;
- Heritage Management Plans (HMPs) for all Commonwealth Heritage List (CHL) listed sites and sites determined through the identification process as having Commonwealth heritage value;
- Policy documentation and supporting tools in order to comply with EPBC requirements and the supporting guidelines to ensure widespread implementation and compliance;
- Implementation of heritage management requirements in accordance with the EPBC Act and HMPs; and
- Ongoing management and administration of compliance documentation and heritage maintenance requirements including review of every HMP within 5 years of its completion. (sub. 52, p. 1)

The Australian Government requires its agencies to develop conservation management plans, formally outlining how the identified heritage values of properties on the Commonwealth Heritage List are to be conserved over time. It also requires them to provide adequate safeguards for the retention of those heritage values if the property is sold.

The requirements of the Commonwealth Heritage List place much stronger obligations (and corresponding costs) on Australian Government agencies than if their historic heritage places had to conform with the requirements of the State or Local heritage register on which they are listed.

FINDING 8.3

The current arrangements for, (i) agreed management plans and (ii) heritage protection on the sale of property, provide a sound basis for the conservation of Australian Government-owned heritage properties. However, identifying the assigned heritage responsibilities to non-heritage agencies as community service obligations with separate funding for the added expenditure of conservation would improve accountability and provide incentives for government agencies better to conserve their listed heritage places.

RECOMMENDATION 8.2

The Australian Government should implement reporting systems that require, as appropriate: the assigned heritage responsibilities to non-heritage agencies to be recognised as community service obligations and be funded separately; and that the heritage-related expenditures and achievements associated with the conservation activities for historic heritage places be reported publicly.

State and Territory Governments

State and Territory governments have varying requirements for their government-owned properties, affecting both their management and disposal. Some jurisdictions have conservation management plans for their government-owned properties. For example, in New South Wales some agencies prepare management plans for heritage assets of high significance. These plans include specific conservation policies to retain the heritage value of a particular item, especially where there is an expectation that alterations will be made to that place (NSW Heritage Office 2004). Unlike the Australian Government, however, conservation management plans at the State level are often voluntary, restricted to places with a high public profile, and vary considerably in depth and content.

In most jurisdictions, State government agencies are obliged to maintain government-owned places listed on a State Heritage Register. This obligation holds regardless of whether a heritage asset is used to deliver government services or not. The Victorian Heritage Council found that:

The State government continues to directly manage a range of heritage places, and uses some of them for government administrative purposes.

It is also not unusual for government property managers to find themselves owning and managing places which are not of any particular use to their core business, however through dint of public pressure they are obliged to continue to keep them in use and available to be presented in some manner for their heritage significance. (2003, pp. 19–20)

Some jurisdictions provide specific funding for the additional costs associated with maintaining heritage places. For example, from 2004-05 the Northern Territory Government has provided \$1 million per annum for the repair and maintenance of government-owned heritage places (Scrymgour 2005). Government agencies in Victoria can participate in the Victorian Heritage Program, which provides grants to public and private owners for conservation works. However, for the most part, government agencies meet at least some (if not all) of the additional costs of conserving heritage places through normal capital and operating budgets. This means that heritage conservation must compete with other agency funding priorities.

The NSW Heritage Office commented:

Despite there being a strong framework for the management of NSW Government heritage assets, there are still challenges in meeting government's aims. Agencies that have conservation of heritage places within their charter have the necessary budgets, skills and expertise to meet this aim. But within agencies whose charter is to deliver other essential services, the heritage conservation of less-used, or orphan, assets must compete with service delivery.

The nature of the heritage assets owned by infrastructure service provision agencies means that they are often not valued beyond their core service, despite the public holding them in high esteem. But, given that it is often the publicly provided infrastructure that has shaped the physical environment, it is inevitable that it is of heritage value. (sub. 157, p. 51)

The Australian Council of National Trusts also noted the tendency for heritage expenditure to be considered as part of an agency's overall budget. As a result of the need for heritage to compete with other agency responsibilities, there was usually underfunding of heritage conservation:

For example, no extra funding has been allocated to those Commonwealth agencies that have heritage properties in their care, to assist them to meet the extra responsibilities imposed on them through the Commonwealth heritage listing process. Similarly in

NSW, no agency is funded for the care of historic heritage places specifically to enable them to comply with the s.170 Register process, except the Historic Houses Trust, yet many other agencies are also responsible for the care of heritage places.

Local government in particular, as a consequence of the progressive transferring of responsibilities from Commonwealth and State/Territory governments to local government, is struggling to be able to provide adequate funding and the kinds of strategic planning and other kinds of support necessary to enable community groups and individuals to care for local heritage places. (sub. 40, pp. 34–5)

For cases where there is no management plan and no explicit funding for conservation activities, there is minimal transparency and accountability for the management of heritage assets. Heritage conservation must compete with the core business of the agency, providing a choice of diverting resources away from their core business (such as health and education) or neglecting the heritage values of a place. The result is that the real costs and potential benefits of heritage conservation are hidden from political decision makers and the general community.

FINDING 8.4

State, Territory and local governments do not have a systematic framework for the management of, and expenditure on, the conservation of government-owned heritage places. Management of government-owned places could be improved through: the introduction of conservation management plans; the recognition of the assigned heritage responsibilities to non-heritage agencies as community service obligations with separate funding; and transparent reporting of expenditure on conservation.

RECOMMENDATION 8.3

State, Territory and local governments should:

- ***produce adequate conservation management plans for all government-owned statutory-listed properties;***
- ***appropriately recognise assigned heritage responsibilities to non-heritage agencies as community service obligations and fund them separately; and***
- ***implement reporting systems that require government agencies and local governments with responsibility for historic heritage places to document and publicly report on the heritage-related expenditures and achievements associated with their conservation.***

A number of State and local governments supported this recommendation, noting that its adoption was likely to improve management practices. However, concern was also expressed about the possible cost of implementing this recommendation and difficulties associated with identifying heritage-related costs. Recognition of the

community service obligations associated with listing their own properties would also introduce more rigour into the listing process.

8.6 Alternative models of public asset management

A number of public sector agencies have entered into arrangements with non-government organisations. These arrangements can ensure that conservation occurs on a sustainable basis (Municipal Association of Victoria, sub. 66, p. 5). For some governments, retaining ownership but having the property managed by a National Trust, which can draw on a wealth of experience and a motivated workforce, can be a viable alternative:

The South Australian Government owns 306 (13.9 per cent) of the items on the State Heritage Register of which approximately 66 per cent are in valued use. At present, 42 government-owned places are managed by the National Trust of South Australia through a service agreement, for which the Trust will receive \$200,000 per annum over five years. (sub. 164, p. 9)

The Victorian Government also acknowledged the important role played by the National Trusts in the management of publicly-owned assets:

The National Trust of Australia (Victoria) is the largest community-based heritage organisation in the State. As well as advocating for heritage conservation on behalf of the community, the National Trust manages 40 historic heritage places ... It also acts as the Committee of Management for eight Crown land properties, including Old Melbourne Gaol and Tasma Terrace, for which it receives \$233,000 annually from the Victorian Government. (sub. 184, p. 25)

Private sector management, in accordance with an asset management plan, may also ensure cost-effective conservation. For example, Hill End in New South Wales, one of the earliest historic conservation areas, is under the control of the NSW National Parks and Wildlife Service. Properties in the area, which were largely derelict when the Service received responsibility for the area in 1967, have been restored and maintained by residents who lease the properties for 20 years and are charged only nominal rents. The Service has a management plan in place and acts as a 'local council' to the area, ensuring that basic infrastructure such as sewerage and roads have been provided. With the encouragement of the Service, Hill End has become a popular retreat for artists.

Several participants have expressed concern that private managers of a public asset might compromise historic heritage values (e.g., Friends of the Quarantine Station and North Head Sanctuary Foundation, sub. 144, p. 5). The National Trust of NSW (sub. 180, p. 1) also argued that, where management responsibilities are shared, failure to clearly delineate responsibilities can reduce expenditure on maintenance.

These concerns highlight the need to ensure that management occurs through a management plan that articulates the historic values to be conserved, identifies the costs involved and clearly assigns responsibility.

9 Getting incentives right for privately-owned heritage places

There is widespread support for the objective of heritage conservation. However, the current mechanisms are too focused on requiring private owners to supply, at their cost, community-demanded heritage services. Such a system creates perverse incentives for some owners of heritage properties. A more effective, efficient and equitable system would be achieved through promoting willing conservation volunteers rather than conscripts. For many property owners the costs from heritage listing are not unreasonable or unacceptable, but a rebalancing of responsibilities is needed for those owners who face unreasonable costs.

The Commission recommends the adoption of an additional ground for appeal against listing for non-government property owners, namely unreasonable costs. Prima facie, unreasonable costs include forgone development opportunities, substantial reduction in market value due to listing and maintenance costs that cause an unjustifiable financial hardship. For these properties, governments would need to negotiate a conservation agreement, if they wish to heritage list the properties.

The rationale for government intervention in heritage conservation rests on the view that owners, acting in their own interests, would conserve too little historic heritage. This was examined in chapter 6 and the Commission concluded that there is a prima facie case for government intervention in historic heritage conservation.

Governments have intervened by introducing regulatory regimes based on the identification of places with heritage characteristics and the subsequent provision of statutory protection through their inclusion on lists of protected places. This protection places a range of obligations on owners, essentially requiring them to undertake no action which would threaten those characteristics unless approved by the relevant authority.

At present, the decision to heritage list a property, and thereby impose statutory restrictions on its use and development, is on the sole basis of its heritage values. While provisions exist to consider any resultant costs imposed on the owner (and occupier), owners have no rights to insist that this is done. Typically cost

considerations are irrelevant for the decision to list. As a consequence, the current heritage system, while involving some support from governments in some circumstances, essentially requires property owners to provide, without payment, community-demanded heritage conservation services.

As outlined in chapter 7, this approach entrenches divergences between the incentives faced by owners and the community, and introduces incentives to list and conserve historic heritage places where the benefits are less than the costs of conservation. It also provides an incentive for listing agencies to continue to press for further conservation effort until there are few more benefits to be had — irrespective of the costs involved. Without the discipline imposed by having to pay the costs of heritage conservation, there may be over-provision of the heritage public good, or of particular types of heritage places, resulting in a net cost to the community as a whole, rather than a net benefit.

In some ways this can be seen as governments ‘over correcting’ for the perceived under-conservation of heritage places that would occur in an unregulated situation.

The disconnect between the incentives facing heritage property owners and those of the listing agencies (as representatives of the wider community) has created a reservoir of hostility for some towards heritage conservation and its administration — hostility on the part of the very people society is expecting to actively conserve those heritage places. While financial and other forms of assistance are available to owners, they are modest and not systematically related to the costs imposed by listing and therefore, do not act as a discipline on the range and level of heritage places protected.

This is a growing problem as the number of listed places has increased considerably, particularly at the local level, and as listed heritage places are increasingly privately-owned properties in daily use. In addition, listing has progressively moved beyond the protection of recognised and accepted iconic buildings to cover a much wider range of places of interest to those knowledgeable in the field, but less well understood by the wider community. Here, the need to make a judgment on the benefits and costs for the wider community becomes much more important, particularly if the cost imposed on owners is significant.

9.1 A better balance between public and private responsibilities is needed

The views of participants adversely affected by heritage listing were not primarily against the need to recognise and protect historic heritage places — that is, the

heritage conservation objective. Rather, the arguments focused on the effects of the current statutory system of heritage protection — that is, the mechanisms used to achieve the objective. Participants disagreed with the heritage assessment of their property, or complained about the costs imposed by listing, or both. For example, one owner told the Commission that he felt ‘honoured’ that his house was proposed for heritage listing, but the costs and restrictions imposed by the statutory system did not make heritage listing attractive (DR trans., p. 145).

The distinction between the heritage conservation objective and the mechanisms for achieving that objective is important to better understand and address the problems in the current heritage system.

Many participants, from both the private sector and in government, recognised the need for a better balance between the roles and responsibilities of private owners and the community. For example, the Tasmanian Government commented that:

There needs to be a better balance between the essential statutory and regulatory approaches and more active engagement with the public and owners in particular to inform, educate and support them in a practical sense. ...

Unless owners are well-informed, educated and supported, through both practical and financial assistance, it is likely that the risk of damage to, or loss of, heritage will continue, as listing alone does very little to protect or conserve heritage. (sub. 136, pp. 14–5)

Better balance was often described as the implementation of mechanisms that engage owners of heritage places as willing volunteers, rather than as reluctant conscripts. The Commission believes that a system which encourages owners of heritage places to volunteer for listing would more effectively achieve the heritage objective compared to a system of compulsory listing. A system based on compulsion may create perverse incentives for owners to conceal, damage or degrade heritage properties. This sentiment was supported by the Australian Council of National Trusts (sub. DR237, p. 83). The New South Wales Heritage Office commented that:

Obviously, we’d think that a place that you list with the owners being happy with that concept is a much better outcome. (trans., p. 880)

Another key question — in addition to the arguments that a system that promotes willing volunteers would better achieve the heritage conservation objectives — is whether it is reasonable (fair or ethical) for the wider community to seek a benefit for itself and then expect one particular (very small) group within that society to carry the primary burden of the cost of providing that benefit.

Councillor Green from Rockdale Council in New South Wales submitted that:

It is fundamentally inequitable ... to expect individuals to shoulder the burden alone for the benefit of the community alone. There is no question that most of our genuine heritage items must be preserved. Yet if heritage is a community good which justifies an override of private property rights, then surely the cost should be borne by the community. (sub. DR199, p. 1)

Similarly, Peter Jensen, a town planning consultant from South Australia said:

... I support your push to get greater equity in the system through the wider community contributing to heritage conservation. I acknowledge that the one big weakness – you've mentioned others, and I'm sure there are others – is the lack of community contribution to heritage conservation at the individual level. (DR trans., p. 349)

The current system of heritage listing needs to be rebalanced so as to ensure that the full effects of listing (including both private and social costs and benefits) are taken into account by decision makers. A system that places the cost of conserving places (for the benefit of the community) primarily onto individual property owners does not result in effective, efficient or equitable conservation outcomes:

- there is little incentive for the owner to be positively engaged in conservation, unless they individually place a high value on such characteristics;
- the relationship is inherently adversarial, with a constant incentive for the owner to seek to avoid or overcome such obligations; and
- at the same time, because the rest of community is essentially obtaining their desired heritage values for 'free', the demand for such conservation is essentially unconstrained.

This does not mean that the current system has become unworkable. In many cases, if not most, the costs imposed on owners are minor and the divergence between private and community willingness to conserve is not significant. However, where the cost is high, the current system does not cope well — other than by becoming increasingly arbitrary, adversarial and authoritarian in the face of owner discontent and resistance.

When this occurs, owners have few options as the system frequently fails by considering only one side of the equation — the heritage characteristics of the property in question. In saying that, however, some State Heritage Offices consider

economic hardship, or reasonable use of the place, when deciding to list (see, for example, NSW Heritage Office). Such processes are not typically replicated at the local government level.

9.2 Changing the balance

Achieving a better balance will not be an easy task, particularly if it involves significant change to the way the current heritage protection regime operates, and if it involves a significant shift in the balance of funding for conservation — from the private to the public sector.

There are two essential elements for getting a better balance of incentives, both for those choosing which heritage places should be protected and conserved, and for those responsible for undertaking that conservation. These elements are:

- allocating the costs appropriately — the beneficiary pays principle — so that there is an incentive to actively conserve, rather than resist the process of listing and protection; and
- including the costs as well as benefits in the process of deciding which heritage places to protect and conserve. This is to ensure that resources are not wasted on the conservation of places with low heritage values, compared to the cost of their conservation.

These two elements underpin the options for change discussed below. Unless these fundamental matters are addressed and included, any change to the existing arrangements will be essentially arbitrary; are unlikely to be more efficient as the underlying incentives will remain flawed; and unlikely to be effective unless considerable resources are used fighting against the conflicting pressures inherent in the current arrangements.

Increased effort and resources in a situation where the fundamental incentives are inappropriate may only make things worse rather than better by adding to community costs while providing only marginal heritage benefits for the community. A soundly-based system with the right incentives is more likely to be capable of continuing to be robust in the face of changes in the pressures on heritage places and in response to the evolving nature of the community's judgments about heritage values.

9.3 A role for the community to purchase heritage conservation

If heritage listing substantially restricts current or potential use of a private property, or imposes additional costs that would not otherwise be incurred, then the wider community should be prepared to bear the financial consequences of its decision to list, rather than leaving all additional costs to the owner. This assessment is not

based on some notion of fairness (although perceived fairness is not irrelevant when owners are being required to provide the heritage services demanded by the wider community). Rather, it is based on achieving the outcomes that society desires from private property as efficiently as possible. This requires:

- clear specification of the heritage outcomes sought; and
- the ongoing cooperation, knowledge and effort of owners, who ultimately must deliver those outcomes through the conservation of their heritage properties.

This would involve public funding of heritage conservation that would not otherwise be undertaken through private activity, but which the community values. Having governments buy the extra heritage services that the community demands (including, in some more extreme cases, purchasing properties) would mimic private, voluntary transactions driven by the prospect of gains from trade accruing to both parties.

Acknowledgement and provision of community funding of the additional costs associated with heritage listing and protection would have three key beneficial effects:

- First, owners will be willing partners in conservation and thus the current pressures to degrade heritage values over time, or pre-emptively, will be reduced. Contract terms and conditions associated with public funding can be designed to provide certainty to owners and provide positive incentives for them to retain and manage heritage properties in the long term. For the owner, heritage characteristics would become an asset rather than a liability.
- Second, it will provide an important incentive for the wider community to consider the balance between the benefits and the costs of conservation when deciding on the extent of heritage conservation that should occur. A requirement to pay will place some discipline on the community's 'demand' for heritage services.
- Third, it would compel prioritisation of conservation demands, focussing attention on areas where the community benefits are likely to be the greatest in

comparison to the costs involved, such as areas which are currently poorly represented in the stock of conserved heritage places — a rebalancing of community's 'portfolio' of protected historic heritage places.

Purchasing conservation — examples from other areas

In the nature conservation area, the purchase of conservation services has been trialled in a number of jurisdictions. The Commission, in its 2004 report on the *Impacts of Native Vegetation and Biodiversity Regulation*, commented that:

Contracts with landholders for the provision of conservation services represent the dominant policy instrument in most OECD countries with contract coverage reaching 20 per cent of European Union farmland (OECD 2003). However, this option remains relatively unexplored in Australia. The ACF considered that:

- ... stewardship payments can have a role to play ... where (for example) very high cost management is necessary, entailing little if any private return, to retain the presence of very high conservation values. (PC 2004a, p. 204)

The Native Vegetation Report (PC 2004a, p. 205) also referred to the following payment systems:

- fixed rate payment for a standard service: an approach used often in agri-environmental schemes in the EU (for example, Environmentally Sensitive Areas in the UK);
- individually negotiated agreements used in the Private Forest Reserve Program in Tasmania; and
- conservation auctions used extensively in the United States where the Conservation Reserve Program (CRP) has been operating since 1985. The BushTender trial in Victoria is another example of a conservation auction scheme.

In regard to the similarities between native vegetation conservation and the challenges facing the conservation of historic heritage places, the Australian Council of National Trusts said:

There have been differences of opinion about the similarity of economic issues between natural and historic heritage, although clearly the core issues are the same (in particular, how to value the external benefits). It may even be possible to argue that the problems are more challenging with historic heritage because there may be some possibility of regrowth of native vegetation or preservation of an equivalent natural site elsewhere, whereas heritage preservation relates only to the individual asset that, once gone, cannot be replaced. However, in both cases, the main issue for economists is how the market can operate when much of the value accrues to external parties. (sub. 40, p. 10)

Contracting to achieve certain conservation objectives in the natural heritage area is not restricted to governments. For example, several schemes, such as Land for Wildlife and Trust for Nature (box 9.1) help landholders voluntarily maintain native vegetation on their properties.

Similarly, the Commission (PC 2004a, p. 205) reported that WWF Australia said that it was ‘heavily involved in testing some of the market instruments’ and that it was willing to bring in money to pay for environmental outcomes in a trial conservation auction in the Liverpool Plains (New South Wales). That trial has apparently proved to be very successful.¹

Box 9.1 Land for Wildlife and Trust for Nature (Victoria)

For over 20 years, Land for Wildlife has supported landholders providing wildlife habitat on their properties. The scheme offers help with property assessments but does not provide financial incentives to encourage conservation. The scheme establishes voluntary, non-binding agreements with landholders to manage land for biodiversity conservation. In Victoria over 4900 properties, covering more than 125 000 hectares of habitat, are involved. The scheme also provides extension and education services, emphasising the practical benefits of nature conservation to landholders.

Trust for Nature runs a conservation covenant program. Landholders place permanent covenants on parts of their land to protect it from clearing or other activities. Covenants are entered into voluntarily, but are legally binding on current and future owners of the land. Trust for Nature does not offer financial incentives to landholders for adopting a covenant, other than covering the legal costs of registering the covenant (around \$3500 per property). Legal costs are covered by a Stewardship Fund, which is partially community funded. Once a covenant is registered, a Trust for Nature representative meets with the landholder to discuss future management actions and periodically visits the landholder to assess the condition of the environment on the covenanted land, the potential threats to species on the land, and to review the landholder’s management actions in order to recommend future management guidelines.

Currently 500 covenants are registered, protecting over 20 000 hectares of largely threatened habitat on working farms, lifestyle ‘bush blocks’ and on rural/urban fringe properties. A further 300 covenants, representing another 15 000 hectares, have been approved by the Board of Trust for Nature and are awaiting final registration. Trust for Nature estimates that covenanters provide approximately \$1 million of in-kind management of habitat across Victoria per year; approximately \$150 million worth of property that would otherwise have to be purchased on the open market; and advice to other landholders on the need for nature conservation on private land.

Sources: Productivity Commission (2004a), p. 187.

¹ http://www.wwf.org.au/About_WWF_Australia/How_we_work/In_the_field/South-east/landscape_auctions.php.

Purchasing heritage conservation through negotiation

Such means of providing assistance or contracting with private property owners does not seem to be a feature of historic heritage conservation in Australia. While heritage legislation in all Australian jurisdictions includes provision to negotiate heritage agreements with property owners, they have very rarely been used. In part, this is because they are typically reserved for specific types of properties and the disposal of government assets. It can also be explained by the lack of any pressure to enter into such agreements after listing, with its obligations and restrictions on owners, has already occurred. Those seeking conservation have achieved the essential objective without the need to enter into any agreement with the owner, and there is subsequently little incentive to do so.

In the area of private funding and management, organisations such as the National Trust have owned and managed properties themselves, or lobbied government to buy or regulate other properties. They have not generally seen their role as one of providing assistance to other private owners. In part, this may reflect the shortage of funds that National Trusts face for the management of their own properties — National Trusts were characterised in submissions as being asset rich and cash poor.

This is not the case elsewhere. Some other countries have made much greater use of agreements between government and owners to conserve and manage heritage properties.

Conserving heritage in the United States

The United States system of heritage listing at the National and State level provides formal recognition for places of heritage significance, but carries no regulatory implications.

Local governments have the power to list and regulate heritage properties through heritage ordinances. However, the arrangements in each municipality are far from uniform. For example, in the State of Colorado, more than half of local governments require consent from the owner to list their property (a system of voluntary listing). A further 13 per cent of local governments require a higher standard to be met if they want to list a property without owner consent — for example, the place must be of ‘overwhelming’ heritage significance.

Many governments in the United States rely on conservation covenants or ‘easements’ and other financial incentives such as tax deductions and grants to achieve heritage conservation objectives.

A conservation easement is a voluntary contractual agreement between a property owner and an eligible organisation (government agency or NGO) to protect a significant historic property, landscape or archaeological site. In general, an owner agrees to conserve a place and seek approval for alterations, in exchange for an income tax deduction (equivalent to the loss of property value from the restrictions in the easement). Easements are often tailored to protect the individual characteristics of each heritage property, although most government agencies and NGOs use a standardised template agreement as a basis for negotiation. A sample easement is provided in appendix E.

Easements have been a long standing feature of heritage conservation in the United States. They are used in every State to protect natural and cultural heritage. While there is no comprehensive list of historic heritage easements in the United States, their usage is widespread and number in the thousands. By way of example, the use of easements to preserve natural heritage is extensive — by 2003, over 17 500 easements were in place, protecting over 5 million acres of land (Byers and Ponte 2005, p. 8).

These negotiated easements seem to have general support from government and heritage advocates (box 9.2).

Box 9.2 Views on conservation easements

The National Trust (US):

Preservation easements are a uniquely effective preservation tool — a tool that uses *private* — and *voluntary* — agreements to protect historic structures and significant historic areas from demolition or inappropriate alteration. For well over three decades, hundreds of non-profit organizations — and governmental agencies at the federal, state, and local levels — have responsibly used preservation easements to protect many thousands of historic structures, archaeological sites, battlefields, and rural landscapes. For many of these properties, easements serve as the only legal protection to preserve their historic or architectural values.

Rand Wentworth, President of the Land Trust Alliance, speaking on easements for natural conservation, said:

The great conservation opportunities of the next century will be on privately owned land, and conservation easements are the most effective way to protect those lands. Landowners like conservation easements because they are a refreshing alternative to government regulation: they are voluntary, local and respect private property rights. For the many people who love their land, it is the best way to ensure that it is preserved for all time.

Richard A. Epstein, University of Chicago:

Voluntary easements call for intelligent private monitoring and upkeep in the way in which no system of pure state designation can hope to match. The system works on win/win relationships. It leads people to think of innovative ways in which to shape easement, preserve façades, swap plots of land, make interior design alterations and the like. It works to save and rehabilitate far more properties than many efforts at designation. There is no question that the public subsidy from tax deductions drives the use of many of these devices, but that is defensible in sight of the positive externalities that are created by many preservation efforts. The plea here is general. Concentrate on the things that one does well in preservation. Here, as in other areas of life, cooperation beats coercion.

Source: National Trust (2005); Byers & Ponte (2005); Epstein (2003).

Conserving heritage in Canada

The United States is not the only jurisdiction to rely on negotiation with property owners. At the provincial level in Canada, both Ontario and British Columbia provide for, and extensively use, negotiated conservation agreements.

Although Ontario has a statutory heritage list as its primary mechanism for the protection of heritage places, it promotes the use of voluntary conservation agreements, particularly at the local government level. Under the Ontario Heritage Act, councils can pass by-laws entering into covenants with heritage property owners. The Ontario Government observed that:

Heritage easement agreements, also known as heritage conservation agreements are the most effective way for municipalities to protect their most valuable heritage resources.

Easement agreements set out requirements for maintaining a property or specific heritage features of a property. The agreement is registered on the title to the property and is binding on future owners. (Ministry of Culture 2005, p. 16)

Similarly, the Ontario Heritage Foundation argued that easements are a superior conservation tool compared with listing (designation):

A conservation easement is stronger, more comprehensive and more flexible than a designation. It is a private agreement registered on title to a heritage property. It ensures that the heritage property is prudently maintained and adequately insured. It also ensures adequate demolition control. And an easement can be tailor-made to suit the unique heritage character of the resource it protects. (Ontario Heritage Trust 2006)

Ministry of Culture has developed a template heritage agreement (see appendix E). Ontario currently has around 460 easements.

The system of heritage conservation in British Columbia is essentially based on statutory listing, but with a number of key differences to the existing system in Australia:

- a statutory right to compensation if listing reduces the value of a property;
- a set of conservation principles that recognise private property rights and seek to balance private rights and public benefit;
- a commitment to provide financial incentives for conservation; and
- a commitment to conservation by agreement with the property owner.

The Heritage Conservation Act 1996 states that the government must compensate an owner for any reduction in market value attributable to listing (designation). The amount of compensation may be determined by agreement of the owner and the local government, or, if they are unable to agree, by binding arbitration under the Commercial Arbitration Act 1986.

Despite the right to compensation, it appears that there have been very few, if any, claims for compensation. Since designation does impose significant costs on some property owners, this may suggest that governments are listing very few properties or that the administrative costs of seeking compensation are high. However, information from the Heritage Branch of the Ministry of Tourism, Sport and the Arts indicate that this is not the case. Rather, it appears that the right to compensation places a discipline on State and local governments to achieve conservation goals through agreement, or at least cooperatively, rather than solely through regulatory ‘taking’.

FINDING 9.1

Negotiated conservation agreements are central to the heritage conservation system in some comparable overseas jurisdictions. Rather than being seen as a burden, negotiated conservation agreements are regarded as being superior than non-negotiated statutory listing in some jurisdictions.

9.4 Targeting government involvement to achieve the greatest conservation benefit

In the draft of this report, released for public comment, the Commission recommended that governments, at all levels, should only impose statutory controls over individual heritage places after negotiating conservation agreements with the property owner. Negotiated conservation agreements would address the problems identified in the current system through rebalancing the imposition of costs for conservation from individuals to the community. The use of negotiated conservation agreements was supported by all participants who had been adversely affected by heritage listing. For example, Bill Frew commented:

As owners of property heritage-listed after we purchased it, we wholeheartedly endorse the Productivity Commission's draft recommendation 9.5 [use of negotiated conservation agreements]. (sub. DR401, p. 3)

Many participants, including local governments, supported the principle of negotiated conservation agreements. For example, both Campbelltown City Council (sub. DR371) and Ku-ring-gai City Council (sub. DR351) supported using negotiated conservation agreements so long as negotiations were not prohibitively costly. Ku-ring-gai Council noted:

Idealistically the concept of properties entering into a negotiated conservation agreement could provide for an effective heritage management system, however, in reality there are many obstacles that would prevent this form of management from being successful. (sub. DR351, p. 1)

Under the current heritage systems, the incidence of the costs of conserving historic heritage for the community's benefit falls onto owners of heritage places (be it either government or private) — irrespective of the size of the cost. While all property owners incur the cost of conservation, not all owners face the same burden. For example, heritage listing may restrict development, but property owners would not face a significant opportunity cost where development may have not been allowed under the zoning of the land. In other cases, owners may be willing to incur costs (including forgone development) because they receive personal benefits from owning, occupying and maintaining a heritage property.

There appear to be two categories of heritage owners: those who face disproportionately, or unreasonably, high costs of conservation; and those that face reasonable costs and/or are happy to undertake conservation. In response to the draft report, Australia ICOMOS noted that the proposed use of negotiated conservation agreements for all heritage properties did not appreciate this distinction:

I suppose one of the strong recommendations we would make to the Commission is, you've come up with one model [in the draft report], might there be some other models such as targeting the use of voluntary conservation agreements with additional grant funding or some sort of assistance to achieve better conservation for the problem [places]. (DR trans., p. 597)

As outlined in chapter 6, it is appropriate for the community to pay for the extra heritage benefits where it involves added costs to private owners. David Logan, a heritage architect and member of the NSW Heritage Council, commented in response to the draft report:

In relation to conservation agreements, I think that is also an excellent idea arising from the draft report. However, I don't think it is necessary to have conservation agreements for every place that's proposed for listing. The ones I do think would benefit from a conservation agreement are the ones where development potential is forgone as a result of listing. In those cases ... a conservation agreement I think is probably both beneficial and, arguably, necessary. (DR trans., p. 88)

This has implications for a system based on negotiated conservation agreements — the Commission's aim is to maximise the net benefit of the new system. Rather than applying negotiated conservation agreements to all private owners of properties, these agreements should focus on private owners that currently face unreasonable costs of conservation and hence, are not able to supply community beneficial heritage services. Such an approach would be likely to enhance the efficiency of the heritage conservation system.

In addition to suggesting the targeting of negotiated conservation agreements, participants informed the Commission of the likely high cost of implementation (including high negotiation and administrative costs).

The Commission, in the draft report, noted that parties who are happy to conserve would willingly sign negotiated conservation agreements — and these would be entered into without the need for extensive negotiation or payment. Only those that face unreasonable costs, and hence are opposed to listing, would require extensive negotiation.

However, in response to the Draft Report, many participants submitted that negotiation would be costly for the majority of people not adversely affected by listing. That is, several participants argued that even though the majority accepted

heritage listing, and listing did not impose unreasonable costs, property owners would not volunteer their house for listing. David Logan commented:

... owners generally won't agree, for the reasons that I've mentioned. People don't want to be controlled. Even if you say to them, "Look, we'll cover you for all your financial burden, we'll cover that, will you agree to be listed then?", the answer will still be no in the vast majority of cases. Once they're listed, it's fine. They realise that in fact there is no major detriment associated with the listing. But it's the fear of the unknown that would cause them to say no, in the same way that the fear of the unknown would cause them to say, "Well, we'd rather not have a zoning control, we'd rather not have a height control". (DR trans., pp. 95–6)

Participants also argued that a system of negotiated conservation agreements for all heritage places would:

- represent a radical change in the way heritage conservation was undertaken in Australia;
- involve potentially high costs in negotiating new agreements and converting existing listings to agreements;
- involve potentially significant and immediate pressure on funding resources; and
- introduce the potential for a major reduction in the number of listed and protected places if the resources were not made available to fund the extensive use of conservation agreements.

Some participants (e.g., DEH sub. 304) submitted that negotiated conservation agreements would incur transaction costs greater than the benefits to be gained from negotiation. However, the Commission believes that some submissions have significantly overstated the likely transaction costs. Transaction costs would be reduced through the use of template agreements (as used in other countries) and the willingness of some property owners to agree to heritage listing. In saying that, however, even if the transaction costs are modest, the mandated use of negotiated agreements may not be justified for all properties.

The Commission is mindful of the degree of change that would be entailed by a move to conservation agreements for all listed properties. Thus, the Commission considers that conservation agreements should be targeted to cases where heritage listing would involve an unreasonable cost for the owner.

FINDING 9.2

Negotiated conservation agreements should be targeted and used where the imposition of heritage controls would impose unreasonable costs on the non-government owner of the heritage property.

9.5 Unreasonable cost appeal

The current system of statutory heritage listing affects property owners to different degrees. Many property owners are happy and honoured to own and maintain a heritage property. Often these owners buy the property with knowledge of its heritage, or have agreed that their property be heritage listed. However, there are a significant number of property owners who are not happy with, or do not agree to, the heritage listing of their property. These owners typically do not agree to the heritage assessment of their property, or heritage listing imposes unreasonably high costs on them.

As discussed above, any reform to the current system of heritage listing should be targeted to the property owners who incur high costs for the provision of a community benefit. It is this group that would benefit the most from negotiated conservation agreements.

The size of this group is open to debate. Participants' comments to the Commission on the level of dissatisfaction with their property being listed ranged from 25 per cent of owners to 1–2 per cent. The actual proportion does not matter, so long as the system is able to ensure that those owners who unreasonably bear the cost of providing heritage services to the community can receive adequate financial assistance from the community.

This can be achieved by the introduction a right of appeal against heritage listing on the grounds that it would impose 'unreasonable costs'. An 'unreasonable costs' clause would provide an additional basis for property owners to appeal the decision to heritage list their property (either by State Heritage Office or local council).

A number of property owners informed the Commission about the costs they incur as a result of heritage listing. These typically are:

- cost of forgone development opportunity (including decreased land value even where the owner is not planning to develop);
- increased maintenance costs; and
- additional red-tape burden.

For example, Councillor Gary Green told the Commission:

Recently my retired parents had their only investment property heritage listed by COS [city of Sydney] against their will and without any compensation. The forced listing of my parents' property is consequential ex-appropriation of their property rights has cost them their life savings in foregone development revenue. It's also cost them tens of thousands of dollars in DA [development application] application fees to be directly lost too. As such, it's worse than unfair and is actually theft when heritage restrictions

are forced upon unwitting owners years after purchase, which is what happened in my elderly parents' case. (DR trans., p. 26)

Saman Rahmani also said that heritage listing would have serious consequences for the value of his property:

I have engaged an independent property valuer to value my property with a heritage listing and without. This valuation indicates that if this property gets a heritage listing its value will drop by \$170,000. This is a very substantial drop. (DR trans., p. 39)

The Uniting Church of Australia commented on the effect the cost of maintenance has on conserving its historic churches:

It is undeniable that a key pressure on the conservation of heritage places is the cost of their maintenance and upkeep. Given that many of the historic buildings protected under national, State or local government legislation are old (dating from the mid 19th century onwards) even basic repairs and maintenance costs can be prohibitive. (sub. 76, p. 7)

In addition to aggrieved property owners, several other participants also informed the Commission about costs, which they regard as being unreasonable. For example, David Logan said:

... you have, I think, very correctly identified the two most commonly perceived impediments resulting from heritage listing. Those are the perceived burden that owners suffer as a result of the need for heritage impact statements and the need to engage a heritage architect; that's the first burden. In the vast majority of cases there is no second burden, and the second burden is as you've identified yourselves, the loss of development potential resulting from a heritage listing, particularly on sites – as you again have said – where the zoning would allow a greater level of development than currently exists on the site. (DR trans., p. 93)

Reasonableness tests in other areas

Terms like unreasonable and reasonable are already used in a number of regulations. There are also many judicial decisions interpreting and applying these terms. The use of these terms in other regulation and court cases provides guidance on how an 'unreasonable costs' appeal could be used within heritage legislation.

Reasonableness or unreasonableness is used in the following areas:

- Disability Discrimination Act (DDA);
- the Environment Protection and Biodiversity Conservation Act
- telecommunication access regime under the Trade Practices Act;
- Corporations Act; and

-
- occupational health and safety; and

Reasonableness under the Disability Discrimination Act

The DDA contains many references to reasonable and unreasonable. Examples of reasonableness tests include :

- Indirect discrimination occurs when a general action ‘that is not *reasonable*, having regard to the circumstances of the case’ (s. 6).
- Similarly, it is not ‘unlawful to do an act that is *reasonably* intended’ to provide goods and services to meet their special needs (s. 45).
- In relation to the requirement to make adjustments for the disabled, the DDA limits action to the level at which they would impose ‘unjustifiable hardship’ on the provider (s. 15(4)).

The DDA requires that businesses undertake ‘reasonable adjustments’ in order to provide services for disability access. This is similar to the requirement for private firms and individuals to provide for heritage conservation. Both disability access and heritage conservation provide benefits to the community (positive externalities), and both impose costs that are not borne by the community.

The Commission, in its 2004 review of the DDA, commented that:

The DDA does not define ‘reasonable’ for the purposes of indirect discrimination. However, reasonableness is a well-established legal concept. (PC 2004b, p. 49)

The Commission recommended in its DDA review that the Act be amended to include a general duty to make a reasonable adjustment, and that reasonable adjustments should be defined to exclude adjustment that would cause unjustifiable hardships (PC 2004b, p. 196).

The Commission also looked at who should pay for the cost of meeting obligations under the DDA — obligations that provide a community benefit (box 9.3):

It has been presumed until now that the organisation that is required to make the adjustments, pays for the adjustment. But this might not be the most equitable or efficient arrangement. Furthermore, if the organisation concerned can prove that it cannot afford the adjustment, the community might have to forgo otherwise worthwhile opportunities. (PC 2004b, p. 215)

Box 9.3 **Who should pay: Disability Discrimination Act**

Stein (2003) provides a formal framework within which to compare the costs and benefits of workplace adjustments, and to decide which adjustments should be: funded by employers; funded by taxpayers; or not be undertaken. Stein identifies a range of possible adjustments, ranging from wholly efficient to wholly inefficient, depending on the ratio of quantifiable costs to benefits (box 8.4). From Stein's analysis, a clear delineation of adjustment funding responsibilities emerges.

In essence, Stein's funding rule is that employers should pay for any adjustments that allow them to maximise profit. This rule applies even in cases where disability discrimination legislation is required to show employers that they would benefit from employing and/or accommodating a person with a disability (see chapter 7).

More controversially, Stein argues that employers should be made to pay for adjustments that, while benefiting them in absolute terms, do not benefit them as much as the alternative of employing a person without a disability who needs no adjustments (example 2a in box 8.4). Stein argues that such adjustments therefore 'extract a differential cost from employers' (2003, p. 143).

Finally, when employers stand to gain no net benefit — or risk incurring a loss — from employing/accommodating a person with a disability, two possibilities arise.

- If hiring and/or accommodating produces a net social benefit, then employment should go ahead, with adjustments to be funded by government. To impose this cost on the employer would be unreasonable.
- If employment of a person with a disability would result in a net social loss, then employment should be discouraged and replaced with social security benefits (Stein 2003, pp. 176–77).

Source: Productivity Commission (2004b), p. 222.

With respect to the provision of community beneficial adjustments, the Commission identified the situation where the social benefits exceed the social costs of adjustment (similar to heritage where the social benefits exceed the social costs of conservation), but the private benefit to the employer is not high enough to justify expenditure on the adjustment. The Commission commented:

Under the Commission's revised unjustifiable hardship defence, these adjustments would pass the first hurdle of providing a net social benefit. Using Stein's approach, some of these adjustments would be funded by the employer and some by the community. (PC 2004b, p. 224)

The Commission concluded that:

... it is appropriate for governments to play a major role in funding adjustments in the workplace and elsewhere. This would serve to increase efficiency, equity and the opportunities for people with disabilities to participate as equals in society.' (PC 2004b, p. 230)

Similar to disability access, heritage conservation can provide a net social benefit. However, in some cases both access and conservation may provide a net social benefit, and yet be uneconomical for a private individual or company to undertake it. The DDA requires that private firms must undertake reasonable adjustments in order to provide disability access. Where access can only be provided through unreasonable adjustments, the Commission (2004b) argued that there is a role for government to assist in making the adjustments. There is no such provision in heritage legislation. That is, heritage legislation currently requires private individuals or firms to undertake conservation of all heritage places, irrespective of whether the cost imposed is reasonable or unreasonable.

Unreasonable exemption in the Environment Protection and Biodiversity Conservation Act

The Environment Protection and Biodiversity Conservation Act provides that all Australian Government departments and agencies must not sell assets that have either Commonwealth Heritage or National Heritage values unless the contract for sale contains covenants protecting these values.

This requirement is subject to two exceptions. First, inclusion of a covenant is impracticable; and second, having regard to other means of protecting those values, including such a covenant in the contract is unnecessary to protect them or is unreasonable (ss. 341ZE and 324ZA).

Reasonableness in other areas

Under Part XIC of the Trade Practice Act (telecommunication access regime), the determination of whether an action encourages the efficient use of infrastructure must have regard to 'whether the costs that would be involved in supplying and charging for, the services are reasonable' (s. 152AB(2)(e)). The Act provides further matters that must be considered in deciding whether particular terms and conditions are reasonable.

The Corporations Act allows exemptions for specific orders where the making of such orders would impose an 'unreasonable burden' on a company (s. 343). The Act also provides guidance on what the Australian Securities and Investment Commission (ASIC) is to have regard to when determining whether an order would impose an unreasonable burden. These include the expected compliance cost of the firm; the expected benefit of compliance; and any practical difficulties likely to be faced.

Reasonableness is also a factor under occupational health and safety regulation:

The duties of care imposed by the OHS [Occupational Health and Safety] legislation are either subject to, or have an available defence relating to, what is ‘practicable’ or ‘reasonably practicable’. That is, the prosecution must prove that the duty holder failed to do all that was reasonably practicable to avoid the risk to health and safety, or (as in New South Wales) a duty holder can avoid conviction for a strict liability offence by proving a defence that it did what was “reasonably practicable”. (CCH 2003, Australian Master OHS and Environment Guide, 2003, p. 121)

The introduction of an ‘unreasonable costs’ clause into heritage legislation would enable effective, efficient and equitable conservation outcomes — and would be consistent with the approach taken to the provision of community services by private individuals and businesses in other areas.

What would constitute ‘unreasonable costs’ of heritage listing?

The term ‘unreasonable costs’ should be interpreted so that its implementation gives effect to the issues addressed in section 9.2. Ultimately tribunals and courts would decide on what constitutes unreasonable costs when hearing appeals against listing. However, governments should provide guidance in legislation so as to ensure that the policy intent is implemented.

The Commission believes that the following should be observed when interpreting unreasonable costs.

First, the costs being assessed are the additional private costs incurred by the property owner to conserve the specified heritage attributes. The heritage identification process (i.e., the identification of heritage significance prior to the decision to list) assessed the heritage significance of the place and the benefits of heritage protection. Therefore, the assessment of heritage conservation benefits has already been undertaken prior to the use of an ‘unreasonable costs’ clause. The consideration of cost would complete a benefit–cost analysis for the property where listed is proposed and opposed .

Further, the additional private costs of heritage listing should not include the costs normally incurred by non-listed properties in the same zone (including restrictions on development faced by all properties in that zone). After all, the relevant question is how *more* costly is it to conserve the property given the allowed development in that zone. The assessment should also consider the cost of any potential reconstruction or remedial maintenance work due to restrictions on demolition — that is, would keeping a dilapidated heritage property impose an unreasonable cost on its owner.

Second, as far as practicable, any finding of unreasonable costs should not be dependent on the financial status of the current owner. The financial status of the owner is irrelevant when considering whether the private ‘burden’ of providing a community demanded service requires government assistance. The unreasonable costs clause provides a brake for governments’ demand of private heritage services — so governments can consider whether the conservation value of the heritage service justifies the cost impost. In saying that, however, at the margin, this may be difficult to achieve.

The Commission proposes that the consideration of ‘unreasonable costs’ should include:

- The value of opportunities forgone as a result of the listing, for example:
 - development opportunities lost;
 - decrease in the capital value of the land; and
 - consequences of forgone options to improve ‘liveability’ or ‘usability’, as a result of restrictions on modification or adaptation to current owner use and enjoyment.
- The additional maintenance and repair costs imposed to maintain the heritage-specific characteristics.

Participants identified both of these costs (forgone development opportunities and increased maintenance costs) as costs that are considered to be ‘unreasonable’ when the burden is solely left to the property owner.

Forgone development opportunities would normally result in the largest cost to property owners, although the number affected may be relatively small. This cost is only incurred where the zoning of the land (if the property were not listed) allows greater development than allowed under heritage restrictions. Many private residential properties are located in single dwelling zones. However, there seems to be an increasing number of properties subject to heritage controls, which otherwise would be zoned for multi-dwelling use. These costs are also high for properties (in both single- and multi-dwelling zones) that contain features which are deemed unsuitable in the modern property market, but cannot be altered or removed due to heritage restrictions.

Including forgone development opportunities as an ‘unreasonable cost’ would, in addition to addressing the private cost impost, help ensure that governments do not use heritage listing for non-heritage planning purposes.

The cost of refurbishing or maintaining a heritage property may also be considered a significant cost impost. While not common, high maintenance costs can impose

significant hardship on owners of heritage properties. This is particularly the case for many rural properties which are no longer used or occupied. Any assessment of unreasonable as regard to maintenance costs would have to have regard to some kind of hardship test (similar to that contained in the DDA for adjustments — see above). Use of terms already in other statutes, and subject to judicial decisions, would facilitate implementation.

RECOMMENDATION 9.1

Australian, State and Territory governments should enable non-government owners of properties to appeal the statutory listing of their property on the additional basis that it imposes an ‘unreasonable costs’. This appeal should be available for non-government owners of all newly listed properties. In addition in relation to currently listed non-government owned properties, it should also be available for those owners of properties that were acquired before the property was statutorily listed.

The following factors establish a prima facie case of unreasonable costs:

- *the zoning of the land permits higher value land use than that allowed under heritage restrictions; or*
- *maintenance, repair or restoration costs required to continue a property’s heritage significance impose an unjustifiable hardship on the owner.*

There are two important intentions of recommendation 9.1 that implementing governments should ensure are carried through into any legislative change. These are:

1. the unreasonable costs appeal should not apply to properties which were already listed when acquired; and
2. use of prima facie factors.

There is an important distinction (recognised by many participants) between property that has been acquired before listing, and property acquired already listed. Property owners that acquire their property after it has been heritage listing, do so with knowledge of its listing and the associated obligations. Such knowledge should be gained through routine title and zoning checks prior to settlement of the purchase. As such, a purchaser who buys property already listed, would have factored in these controls into the price paid — and hence, any added cost from heritage listing (e.g., extra maintenance costs required by the heritage restrictions) should have been reflected in paying a lower capital price than would otherwise be the case. Therefore, any purchaser of property who buys an already listed property would not face unreasonable costs because of the listing.

This can be compared with property owners who purchase a property prior to its heritage listing. When listing occurs after purchase, property owners suffer any financial loss that results from extra restrictions on their land, as well as potentially face higher maintenance costs which they would have been unable to foresee. It is these owners that potentially face unreasonable costs.

In addition, two specific examples of costs imposed by heritage listing were identified, which most participants (including affected owners (DR trans., p. 44), heritage professionals (DR trans., p. 97), and Australia ICOMOS (sub. DR295)) agreed imposed unreasonable costs on private owners of heritage properties. To give effect to the intent of the Commission's recommendation, the court or tribunal should accept that unreasonable costs have been imposed when the two factors identified in recommendation 9.1 occur. However, there may be a small number of cases where unreasonable costs have not been imposed even though one of the two factors is present. In these cases, the burden of proof should fall on the listing agency to show that no unreasonable costs have been imposed — the term 'prima facie' has been used to indicate where the burden of proof should lie.

9.6 Implications for different types of historic heritage

Introducing an 'unreasonable cost' clause into local, State and National heritage systems would affect different types of properties in different ways. The majority of private-owned properties are unlikely to face unreasonable costs and for those places, the current system of heritage listing, conservation and management would be largely unchanged.

This section provides a brief outline of how the Commission anticipates different categories of historic heritage places would be affected by the introduction of a right to appeal listing on the grounds of unreasonable cost. There is, of course, a range of buildings within each category, and the groupings are not necessarily exhaustive. For some, the imposition of heritage listing may be real but trivial, for others it may be large. The consequence of the variety of properties, heritage characteristics and costs is that case-by-case assessment is likely to be necessary for most, if cost-effective conservation is to be achieved.

Residential properties

Located within a low density zone

There are two groups of residential buildings within low density zones. First, dwellings that are readily adaptable to modern living standards and adaptations. Second, those dwellings that are not readily adaptable.

The *first group* are residential buildings, of a size and quality that are readily adaptable to modern living expectations (such things as family room, second bathroom, double garage, etc). If located in an area that is zoned for single residential dwellings, heritage listing is unlikely to impose an unreasonable cost. There is unlikely to be any capital loss, as it is not zoned for medium or high density (multi-unit development). While there may be additional costs associated with maintaining a listed property, most of these would have to be incurred whether listed or not, and owners benefit from the prestige and satisfaction of living in such residences with acknowledged heritage values.

Indeed, if located in an area where a heritage precinct is similarly protected, there may well be an increase in the capital value of the property, because of the greater certainty that the amenity of the setting is better protected.

For many such properties the heritage characteristics are sufficiently of value to the private owner for that owner to undertake the conservation willingly and without any need for assistance. In this situation, the only real 'imposition' on owners would relate to the additional cost imposed by any additional approval processes that result from the heritage listing, or any requirement to prepare conservation management plans, that would otherwise not be required. However, these should not amount to an unreasonable cost.

It is possible that the majority of privately-owned residences that are heritage listed, particularly at the local level, fall into this category. The heritage listing process would proceed largely unaffected by the implementation of recommendation 9.1.

The *second group* are residential buildings of a size and quality that are not readily adaptable to modern living expectations, usually because they are too small (such as miners' cottages or 1950s two bedroom fibro cottages) and/or where modifications to make them attractive for modern living are unlikely to be allowed because they would seriously compromise their heritage characteristics or integrity.

Here, listing does impose a potentially significant cost on owners, and would likely represent an unreasonable cost: first, by limiting their ability to modify the property

to improve their quality of life; and second, by limiting the building's adaptation to modern living, listing also limits its resale market at the expense of the owner.

These almost certainly represent a minority of privately-owned domestic listed buildings, but they are the ones that come to the fore because their listing does impose unreasonable costs on the owner. The implementation of recommendation 9.1 would result in governments being unable to list these properties without first entering into a negotiated conservation agreement with the owner.

Located within a medium or high density zone

Single residential buildings that are located in an area that is zoned for multi-dwelling, medium density, or high density use would typically fit within the definition of unreasonable costs under recommendation 9.1. The protection of the existing residential building precludes significant development opportunities which would otherwise be permissible — resulting in a capital loss to the owners. At the same time, by being located in an area that is becoming medium density or commercial, such buildings are more likely to be 'orphans', and unable to benefit from the joint amenity presented by precinct preservation. For example, the City of Stonnington noted:

The available evidence suggests that some buildings of individual significance (as opposed to those under a broader precinct control) may be less likely to benefit financially from heritage controls. There are suggestions that some property values can suffer where development or subdivisional opportunities are blocked by heritage controls. (sub. 81, p. 4)

Similarly, RE&WK Mews commented:

In the case of properties zoned 2(b) [can be redeveloped for multi-dwellings] (for good reason) there is a very substantial loss of value to the owner without compensation or apology. (sub. 123, p. 2) [emphasis in original]

These are likely to represent a minority of privately-owned domestic listed buildings, but they are the ones that generate the greatest level of debate as their listing does impose unreasonable costs on the owner. Upon implementation of recommendation 9.1, these properties would have access to the unreasonable costs appeal, and would likely succeed. The implementation of recommendation 9.1 would result in governments being unable to list these properties without first entering into a negotiated conservation agreement with the owner.

Commercial properties

One group of commercial buildings are those of a size and useability compatible with their existing zoning, and which are readily adaptable to modern usage. Here, listing may place little imposition on owners, as development potential is not an option because of zoning restrictions. And, as with residential buildings, if located in a commercial precinct which is heritage protected, there may be an increase in the value of the property because of the overall protected amenity of the area.

A sub-set of these buildings are those where the requirement to maintain heritage characteristics (while this may not appreciably limit development opportunities) may impose additional maintenance costs (such as maintaining a slate roof rather than a 'colourbond' roof) in situations where they must compete in the commercial market against other businesses whose properties do not incur such costs (see, for example, Adelaide Arcade (sub. 34) and Marriner Theatres (sub. 161)).

Again, there are additional costs associated with the increased approval procedure requirements. Generally, heritage listing would not impose unreasonable costs on this group and heritage listing, conservation and management would continue as it currently does.

Located within a higher density zone

Another group of commercial buildings are those in areas that are zoned for higher value or higher density use. That is, commercial buildings where their heritage listing precludes their modification or replacement to maximise the value allowed by the zoning (e.g., Queen Victoria Building in Sydney). As with single residential buildings in higher density or commercial zones, owners suffer a loss in the value of their property. This is due to limited development opportunity compared to similar unlisted properties.

This is typically one of the most contentious areas of heritage listing, manifested in the inner commercial areas of most of Australia's cities, as this is typically where commercial buildings with heritage characteristics are located and where the commercial pressures from redevelopment opportunities are the greatest.

In saying that, however, many of the cities affected by this already have in place innovative heritage assistance programs, such as transferable development rights. For example, the City of Sydney (sub. 143) Heritage Floor Space (HFS) scheme allows owners of heritage items to sell a proportion of the unrealised development potential of their site in return for undertaking approved conservation works. The City of Perth (sub. 67) has a similar scheme that enables the Council to offer

incentives to developments involving heritage places by either awarding additional plot ratio to developments or enabling the transfer of unused plot ratio from one site to another.

It would seem likely that under recommendation 9.1, these properties would successfully appeal against heritage listing on the basis of unreasonable costs. However, the impact of having to negotiate conservation agreements may not be onerous as many councils already have innovative and effective assistance programs that offset many of the costs incurred. In fact, one consequence of recommendation 9.1 is to extend to private owners of residences outside the central business district the same type of negotiated agreements as commonly already occur for commercial properties in the central business district.

'Relic' places located in commercial zone

Another group of commercial buildings are those with little or no reuse potential (e.g., a pumping station, gasworks, or old residences). In this situation, the owner is excluded from redeveloping the property, yet is unable to adapt it to another use. Here, listing represents a major burden for the owner, with particularly strong incentives to allow the progressive decay (or even destruction) of heritage characteristics.

It seems likely that such a situation would represent an unreasonable cost, as the maintenance and refurbishment cost would represent an unjustifiable financial hardship on the owner. In addition, it might be the case that the commercial property lies within a zone that allows development, which would not be allowed with heritage listing. Such a situation would also represent an unreasonable cost.

The unreasonable cost clause would force governments to consider whether the heritage values of such commercial properties justify the cost of conservation. The government, or listing agency, would need to negotiate a conservation agreement in order for the property to remain listed.

Rural properties

Another group of heritage properties are buildings in declining areas. This is a particular problem in some rural locations, where farm amalgamations and declining populations can result in redundant heritage-listed buildings which are unlikely to be occupied, or are difficult to occupy. While there are no capital value implications, the requirement to maintain the property which has little use value, represents a burden for the owner. If they are not maintained, they will decay and their heritage values can be irretrievably lost.

These properties probably fall into the category of ‘out-of-sight out-of-mind’. They are left to decay naturally with little effective enforcement because of the obviously unfair imposition that this would place on owners.

In such a case, it would seem likely that a property owner would succeed in an unreasonable cost appeal. Hence, listing would not be possible without agreement of the owner through a negotiated conservation agreement.

Historic sites (including gardens and parks)

An unreasonable cost appeal would, most likely, have little application for historic sites without buildings, gardens and parks, as they are generally zoned for parklands, and/or not privately owned.

However, there could be a few cases (especially with respect to private gardens) where an unreasonable costs appeal could be relevant — for example, a private garden located in multi-dwelling residential zone. In practice though, most owners of heritage gardens are honoured with listing, and do not incur unreasonable maintenance costs, and are unlikely to plan redevelopment (if possible).

Archaeological digs

Archaeological digs, where located within public or unoccupied land would not impose an unreasonable cost. However, there may be cases where an archaeological dig could impose unreasonable costs on private land owners.

For archaeological sites, there is the issue of temporary access to a site for research in situations where the site would be destroyed due to development but where development cannot realistically be precluded. The classic example is finding archaeological items when digging the foundations for a new office tower.

Currently, the cost of delaying completion while archaeological work is being undertaken is borne by the owner (and sometimes the cost of the archaeological research is the responsibility of the owner).

It would be possible to bring this into the proposed system by retaining the right of government to undertake archaeological research if something significant is found, but with the option for the owner to demonstrate unreasonable cost, triggering a negotiated outcome if the research is to continue.

In addition, it is also possible (although rare) that an archaeological dig finds artefacts so important as to justify ongoing digging, or preservation of the dig site.

In such a case, the private owner of the land would face an unreasonable cost due to restrictions on use and development. In order to maintain heritage protection, the relevant government would need to negotiate a conservation agreement, or perhaps acquire and manage the site.



10 Implementing change for privately-owned heritage places

This chapter looks at the implementation of the Commission's recommendation to provide private owners with the additional right to appeal heritage listing on the ground of unreasonable costs, together with the use of negotiated conservation agreements in such situations.

It outlines:

- where this right to appeal would fit into the existing identification and listing process;
- the use of negotiated conservation agreements in cases where unreasonable costs arise;
- what such agreements might look like;
- what options are available if agreement cannot be reached;
- how properties already listed could be brought into the proposed system; and
- some good-process reforms to the system.

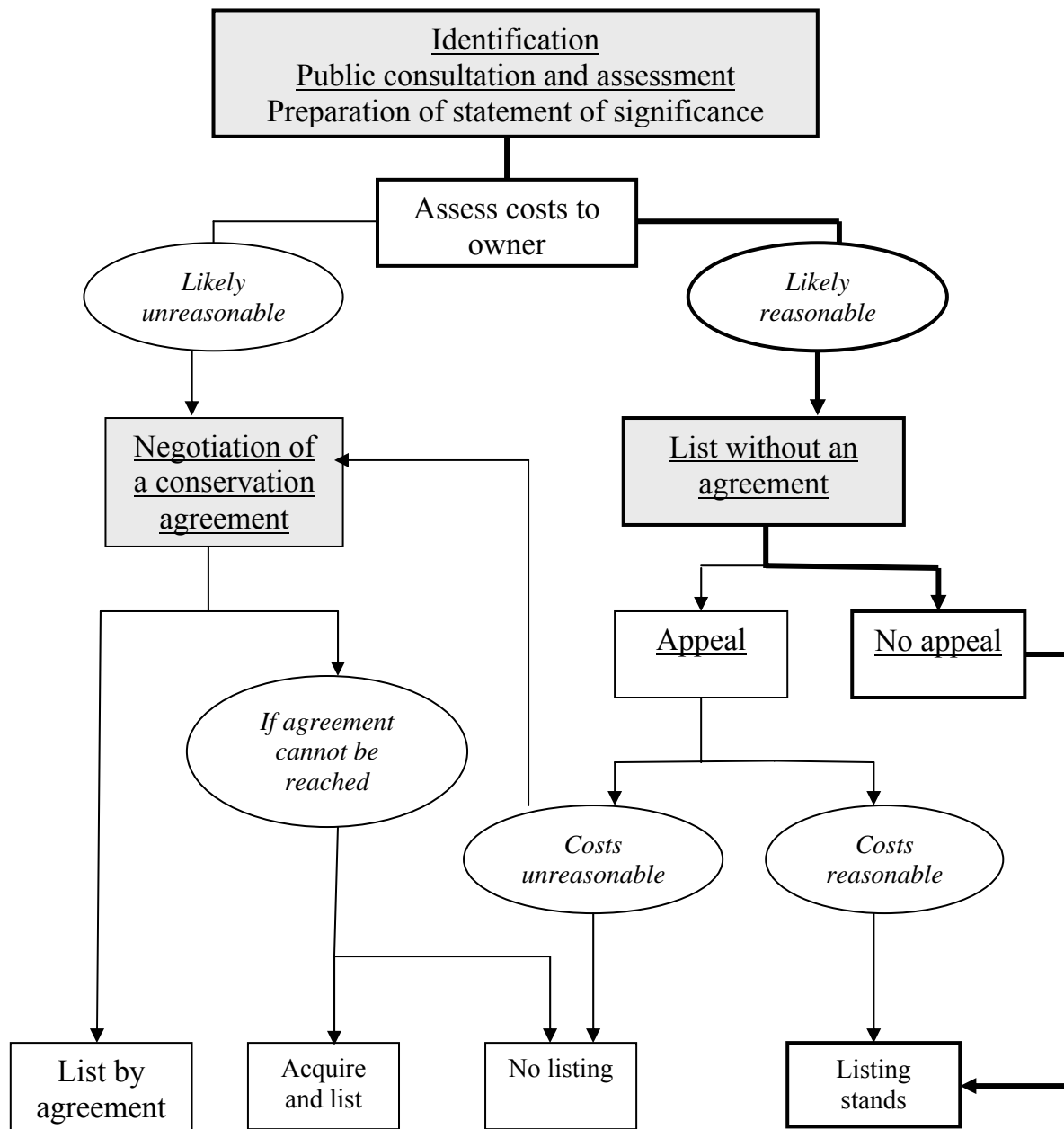
Action is most needed at the local government level, where there is considerable variability in the performance of individual jurisdictions, and growing lists of privately-owned heritage places. State and Territory listing of private properties is also increasing. The Australian Government should take a leadership role in negotiating effective and practical conservation agreements as a co-requisite for all national heritage listings.

10.1 Summary of proposed identification and listing processes

The following provides an outline of the processes proposed for identifying and protecting historic heritage places. It incorporates the proposed additional right to appeal on the grounds of unreasonable costs, together with the use of negotiated conservation agreements for listing heritage places (figure 10.1). Suggestions are also made to improve the listing and protection process that would continue to apply to the majority of places for which the right of appeal is unlikely to be applicable.

The descriptions of the processes (including the figures) in the following sections of this chapter do not cover the appeal rights (and processes) that are currently available to property owners to object to the listing of their property. This is because the Commission is proposing no changes to these existing appeal rights. They should stay in place, as outlined in chapters 4 and 5.

Figure 10.1 Summary of listing procedure with appeal and agreements



Identification, public consultation and assessment

The following are the key tasks involved in identifying and assessing places that can be considered for listing and conservation, including a judgment on the best way of proceeding with listing. These tasks include:

- identifying individual places that may have heritage characteristics worthy of conservation, either by nomination from the public or as the result of an assessment by the heritage authority;
- informing the owner and the general public that the place is being considered for listing and seeking their input;
- assessing the place's heritage characteristics to determine whether the heritage values warrant conservation, and if so, the preparation of a comprehensive statement of significance;
- deciding whether conservation of the desired heritage characteristics is most appropriately achieved through:
 - negotiation of a conservation agreement with the owner (necessary if the costs of listing/conservation are likely to be unreasonable), followed by listing subject to the conditions of the agreement; or
 - by direct listing without a negotiated conservation agreement if the costs are likely to be reasonable. Essentially this would activate the current protections available under heritage and related legislation — in particular, assessment of the impact of proposed changes at the time of a development application.

An important element of this part of the process would be the preparation, by the listing authority, of a comprehensive statement of significance for the place being considered for listing. This would involve a preliminary heritage assessment prior to public consultation and a final assessment and statement following consultation if a decision to proceed with listing is made. The statement of significance would include detailed background information necessary for the listing authority to make an informed decision on whether to list or not, and to provide sufficient information for both the owner and the public to assess and make comment on the proposal. Such information should be publicly available and, when finalised, is essential if the owner is to be able to conserve those heritage features of value, and to adequately inform the preparation and assessment of any subsequent development application.

Another important element of good process is adequate notification, particularly of the owner, of the intention to list and protect. This involves:

- directly informing the owner that their property is being considered for heritage listing;

-
- providing information on processes whereby the owner can have an input; and
 - providing information backing the decision to consider listing so that the owner, and the wider community, can make informed comment.

Heritage listing can have significant implications for the property owner, and even the fact that the place is being considered for listing can have an impact. To provide a degree of certainty, and as a component of a well-run system, it is important to specify clear time frames for the process to occur. It is also important that there is an incentive for the heritage authority to come to a decision once the process has commenced. This is best achieved by deeming the failure to reach a decision within the specified time period to be a decision not to list the place in question. An important part of this discipline on decision making would be the introduction (for all levels of government) of a specified time period before listing procedures can be recommenced if a decision not to list is the outcome at any stage of the process.

Listing without a negotiated conservation agreement

Where the listing authority considers that the likely cost to the owner would be reasonable, they may proceed directly to list the place, activating the existing set of regulations that protect listed places and activating the existing set of obligations on owners. Based on assessments provided by a range of heritage officials to this inquiry, this could be expected to be the overwhelming majority of cases.

The owner would, however, have the right to appeal this listing if the owner considers that the resulting costs would be unreasonable. Were such an appeal to succeed, listing could only continue following the successful negotiation of the conservation agreement voluntarily entered into by the owner and the relevant listing authority, or if the government (or any other party that welcomed listing) acquired the property in question. Entering into a conservation agreement would involve an assessment by the heritage authority that the heritage values are worth the likely cost associated with such an agreement.

Negotiation of a conservation agreement

Where the listing authority considers that the costs involved for the owner are likely to be regarded as unreasonable, it would be sensible for the listing authority to avoid the time and cost of an appeal and immediately seek to negotiate a mutually beneficial agreement with the owner. Negotiation of a mutually beneficial agreement for listing would also be an option following a successful appeal to listing on the grounds of unreasonable cost, in which case, listing could not proceed without such an agreement.

The aim with negotiated conservation agreements is to achieve cost-effective heritage conservation for the community without imposing unreasonable costs on the owner. It ensures that, where the costs of conservation are likely to be high, that the heritage values for the community are of a similar magnitude. The community, through the listing authority, needs to assess the heritage values it seeks to conserve against the likely cost associated with that conservation.

Such agreements could be used in any situation where the conservation of a heritage place is being considered. However, the Commission considers that their principal use will be in situations where the costs to the owner are unreasonable and where the community considers that the heritage values are nonetheless worth conserving. This would be a minority of places being considered for listing. It would also focus the analysis of benefits and costs to areas where the greatest problems currently arise, that is, where there is the greatest divergence between community and private benefits and costs associated with heritage conservation.

If agreement could not be reached, a number of options can be considered, including:

- abandoning the listing attempt and seeking an alternative property with those heritage characteristics (if available) or with different heritage characteristics; or
- in exceptional circumstances, the government may seek to acquire the property either voluntarily or compulsorily if necessary.

The following sections set out the key steps in the listing process, in more detail.

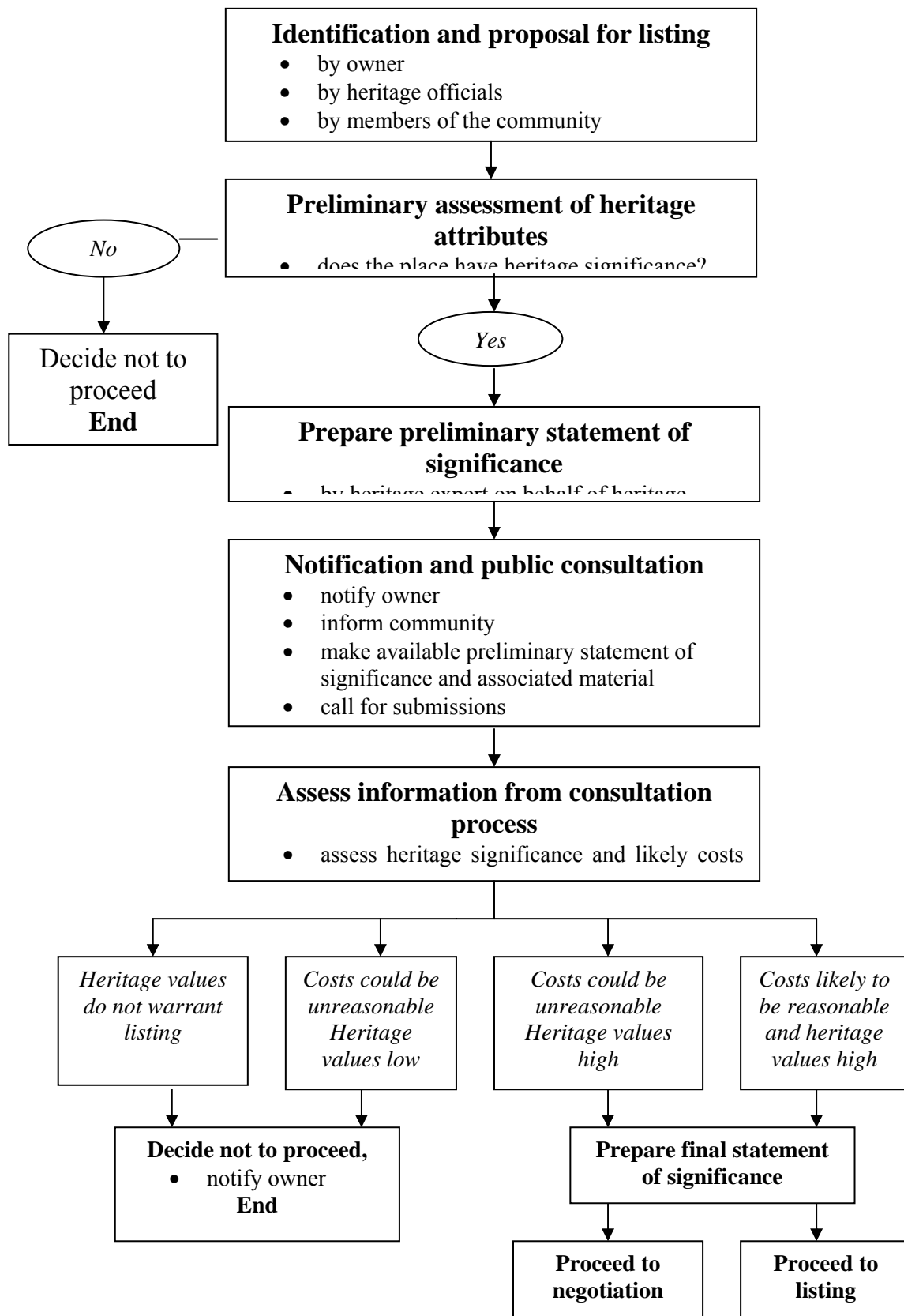
10.2 Detail of process and key elements

There are three key stages in the proposed review process. The first covers the identification, public consultation and assessment phase. The second covers the path of listing without a negotiated conservation agreement. The third involves the negotiation of a conservation agreement, whether undertaken prior to listing or as the result of a successful appeal on the grounds of unreasonable costs.

Identification, public consultation and assessment

Key elements of this group of procedures are depicted in figure 10.2.

Figure 10.2 Identification, public discussion and assessment



Identification

The current arrangements for the identification of places with the potential for listing would remain essentially unchanged. They allow anyone to propose, or nominate to the relevant listing authority, a place for listing. Heritage agencies can also initiate their own assessment, either in response to suggestions from the public or as the result of their own research (such as, as the result of a heritage survey).

Preliminary assessment

Preliminary assessment of the nominated place would be undertaken by the heritage authority responsible for listing the property, or on their behalf by appropriately qualified agents. This assessment would result in a report to the heritage listing authority indicating whether the place has sufficient heritage significance to be worthy of listing and protection, and thus indicating that the process of assessment and consultation for listing and conservation should be commenced.

Preliminary statement of significance

If a place appears to have sufficiently significant heritage characteristics that warrant its consideration for listing and conservation, a preliminary statement of significance should be prepared, by an appropriately qualified heritage expert. This would enable the next stages of assessment (by the heritage authority, the owner and the wider community) to be undertaken on an informed basis.

This preliminary statement of significance would form the basis of the assessment on whether to proceed with listing. After completing the consultation process and final assessment of the place's heritage significance, the statement would be updated and finalised by the listing authority. When finalised, the statement of significance, together with its supporting material should be readily available to the public and be provided to the property owner to enable any subsequent development applications to be undertaken with all necessary information on the protected heritage characteristics associated with the place's listing.

The quality of statements of significance varies widely, from as little as a statement that the place has 'architectural and municipal significance' (box 10.1) to a more comprehensive and detailed package of information (box 10.2).

While some jurisdictions undertake comprehensive assessments, and there is a wide recognition of the need for this to be done, the current arrangements still allow places to be listed, particularly at the local government level, with minimal information on their heritage characteristics. Indeed, in many cases it is not until a

development application is made in relation to a heritage listed property, that the listing authority calls for an independent heritage assessment to be undertaken, requiring this to be done by the owner at the owner's expense. Box 10.3 gives an example of the guidelines from Western Australia. Other jurisdictions provide similar guidelines for the preparation of heritage assessments. The guidelines build on guidance for the assessment of places for heritage conservation contained in the Burra Charter.

Box 10.1 Statements of significance: Example 1

Statement of significance

Architectural, municipal significance.

Recommendations

(blank)

Photograph

(blank)

Description

(blank)

Modification/conditions

Altered or extended unsympathetically

History

(blank)

Source: Kur-ing-ai Council.

Requiring a heritage study and comprehensive statement of significance to be undertaken and prepared at the development approval stage is completely inappropriate because:

- it implies that the decision to list was not taken on an informed basis;
- the owner does not know what the relevant heritage characteristics are that are to be conserved and protected when managing the property;
- the owner is at risk of wasting time and money preparing a development application with potentially limited chance of success; and
- it is unreasonable to expect the owner to pay for the cost of a study which should be the responsibility of the community on whose behalf the listing was made.

Box 10.2 Statement of significance: Example 2

Statement of significance

Historic, cultural, archaeological, aesthetic, state significance.

Recommendations

(blank)

Photograph

(blank)

Description

The Briars is a well built house retaining a large proportion of the original fabric. Historically it is significant as it marks the first period of residential expansion in Wahroonga which followed the opening of the railway in 1890. The style of the house is transitional between the late Victorian Italianate and Federation. It is a single storey brick house with a hipped slate roof. A projecting brick bay with three stuccoed arches marks the front entrance and intersects a timber framed veranda which surrounds the house to three sides. The veranda is decorated with timber brackets and dentillation. Shuttered french doors open onto the verandah from the principal rooms.

Internally the house retains much of its original joinery and fireplaces. The house is in good condition and has been sympathetically renovated by its present owners.

The grounds have been considerably reduced by subdivision, but several large trees remain on the site. Curtilage to be the property boundary.

Modifications/condition

Substantially intact.

History

The Briars was designed in 1895 by architect Charles H. Halstead for William Balcombe. Balcombe had formerly been Governor of St Helena: it is believed that the house that he lived in on St Helena was also called the Briars and that this house was built to the same plan.

Source: Ku-ring-gai Council.

The information sought in the example included in box 10.3 is the information that should be collected by the authority proposing the original listing as an essential input to an informed decision on whether to list or not. The Commission considers that statements of significance, backed by comprehensive data and analysis, should be prepared at the time that a statutory listing decision is being considered and that this should be undertaken on behalf of the authority proposing listing and at that authority's expense.

Box 10.3 Example of requirement for an independent heritage assessment at the time of a development application

The following guidelines are based on the requirements for heritage assessment required by the Heritage Commission of Western Australia (HCWA).

Documentation is to be undertaken by recognised heritage professionals in their field (ie conservation architect, historian etc. as per HCWA's consultant list).

Documentation to be provided includes:

1. A historical report associated with the place including ownership, occupancy, the dates of initial construction, subsequent additions/alterations and any other historical descriptive or pictorial information (including identification of other similar places within the City of Bunbury considering period of construction, architectural style, use, locations etc).
2. A brief architectural description and documentation of evidence of physical change to the place, as well as descriptions of setting/landscape, etc.
3. Comparative analysis of the place with respect to period of construction, architectural style, use and location. This is necessary to substantiate any claims made in relation to the degree of significance ie. Rarity and representativeness.
4. Relevant assessments of significance incorporating the historic, scientific, rarity, representative, social and aesthetic values of the place. Comments on condition, authenticity and integrity should also be included.
5. Statements of Significance having regard to the above assessment provisions in Point 4.

Source: City of Bunbury's Local Planning Policy – Development process for the assessment of places of heritage value in the City of Bunbury.

Notification of intention to list and public consultation

Notification of the intention to assess a place for listing on heritage grounds involves two elements. First, directly informing the owner, and second, informing the public. Such notification is to enable both the owner and the wider community to have an input into the decision-making process through submissions, and other public consultation processes as appropriate, in relation to the proposed heritage place.

An important feature of a good notification process is direct contact with the owner, providing information on procedures for the owner to make a submission on the matter, together with a copy of the preliminary statement of significance and associated background material. When it comes to notifying the owner, it is not sufficient, as seems to be a common practice at the local government level, simply

to place a notice in the public notices section of the newspaper. Such notification would, however, be appropriate when calling for more general community input into the listing decision. To enable informed comment, the preliminary statement of significance, together with associated background material should be publicly available.

Provision for emergency protection

Where there is a real threat of the loss of heritage values while the listing process is being undertaken, provisions should remain (as is currently the case) for emergency protection. At the State and Territory level, the relevant heritage agency has the authority to seek an interim protection order (or equivalent), while at the local level, councils, in most jurisdictions, can apply to the Minister (under heritage legislation) for interim protection in relation to a place being considered for local listing. Such interim protection should remain in force only for a clearly specified time period associated with the time frame of the listing procedures.

Final assessment

Following the public consultation process, the heritage authority would assess the information received, and make a decision on whether to proceed with listing. A decision to proceed with listing would also involve a decision on how to proceed — whether by immediate listing or through the negotiation of a conservation agreement. If the decision is made to proceed with listing, a final statement of significance would need to be prepared. As outlined earlier, the statement of significance should be comprehensive, be provided to the owner and be available to the public, and be undertaken on behalf of the listing authority seeking to have the place protected.

A place being considered would fall into one of the following four broad categories, which would influence the decision on how to proceed.

1. The heritage values do not warrant listing (they are not significant enough or are well represented by already protected places). The decision would be not to proceed with listing. When such a decision is made, it would be notified to the owner and the community would be informed. This decision would activate the time limit before another consideration of heritage listing could be initiated in relation to that particular place.
2. The heritage values are low and the costs to the owner are likely to be ‘unreasonable’ (were the listing to be challenged). The decision would be not to proceed with listing and, as above, notification of this decision would follow.

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3. The heritage values are high enough to warrant listing and the costs to the owner is likely to be reasonable (that is, the owner is unlikely to succeed if the listing were to be challenged on the grounds of unreasonable costs). The decision would be to proceed with listing, activating the existing protections and procedures outlined in the relevant heritage and planning legislation. The owner (and the public) would be notified of this decision, including information on the owner's appeal rights and processes.
 4. The heritage values warrant listing, but the costs to the owner may be unreasonable (that is, the owner could be successful if the listing were challenged on the grounds of unreasonable costs). The decision would be to approach the owner to begin negotiating a mutually agreeable conservation agreement and management plan, rather than listing and waiting for an appeal with associated costs and a high likelihood of the appeal being successful.

Listing without a negotiated conservation agreement

Key elements of the this group of procedures in the listing process are depicted in figure 10.3.

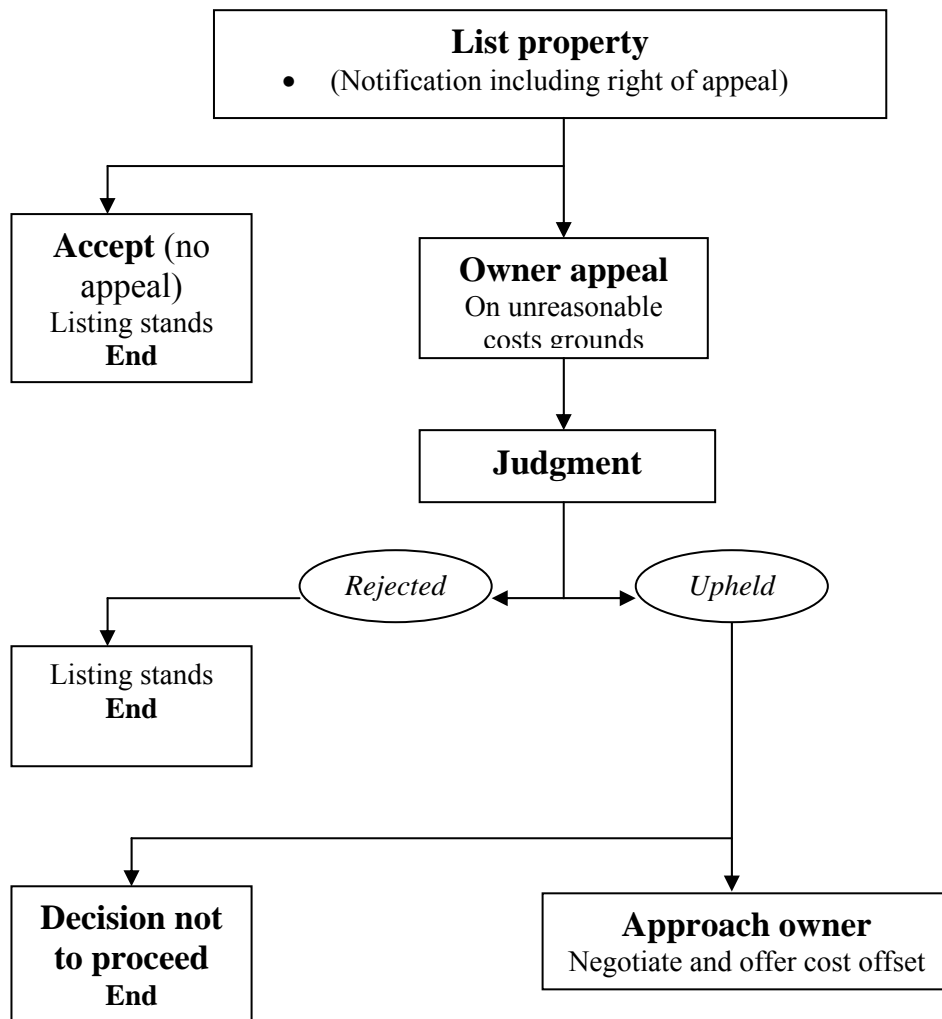
List property

A decision to proceed directly with listing would follow an assessment by the listing authority that the heritage values are worth protection, and that the cost to the owner as the result of listing is likely to be reasonable. That is, it is judged by the listing authority that it is unlikely that the owner would be successful if the listing were appealed on the grounds that it would impose unreasonable costs.

Once listed, the property would be subject to the protections, obligations and requirements outlined in existing heritage or planning acts as applicable. Essentially this involves an obligation not to damage the place's heritage characteristics and for any subsequent development applications to be assessable against those heritage characteristics by the relevant authority .

A decision to list a place would involve direct notification to the owner, including the provision of the final statement of significance and associated background material. This is essential if the owner is to subsequently manage and protect the important heritage features, and also to enable any subsequent development application to be prepared on an informed basis. Notification of the owner of the property's listing would also involve providing information on appeal rights, including those on the grounds of unreasonable costs.

Figure 10.3 Listing and appeal process



An appeal on the grounds of unreasonable costs

Once listed, the owner would have a period of time during which the listing could be challenged on the grounds that it would impose unreasonable costs (or on existing grounds such as a disputed heritage significance or failure to follow due process).

All jurisdictions have agencies which handle appeals in relation to planning decisions. In New South Wales, this is Land and Environment Court, while in Victoria, this is the Victorian Civil and Administrative Tribunal. These agencies should be well placed to assess whether the restrictions associated with heritage listing would impose unreasonable costs on the owner. However, it is important that the appeal procedures are both accessible and timely to ensure that owners are not

unnecessarily hindered in accessing their recommended right to appeal listing decisions on the grounds of unreasonable costs.

For listing decisions made after the introduction of the right to appeal on unreasonable costs grounds (new listings) it would be reasonable to specify a set time period after the notification of the listing decision, during which the owner can initiate an appeal. However, as outlined in section 10.3, the Commission is proposing transitional arrangements to handle places already listed and any such time limit on the right to appeal should not limit the recommended appeal rights for owners of properties already listed at the time that the appeal rights for new listing decisions is introduced.

Judgment on appeal and consequences

Two outcomes would result from the appeal process. First, if the appeal is rejected, the listing would stand and the place would continue to be subject to the general requirements outlined in the relevant Heritage or Planning Act. Second, if the appeal is upheld, the listing would lapse and subsequent listing would only be possible following the negotiation of a conservation agreement with the owner voluntarily entered into, or following direct acquisition of the property by the government, or a new owner.

As with the initial steps in the listing process, provision would need to be made for temporary protection (if the property was considered to be under immediate threat) while negotiations over a conservation agreement occur.

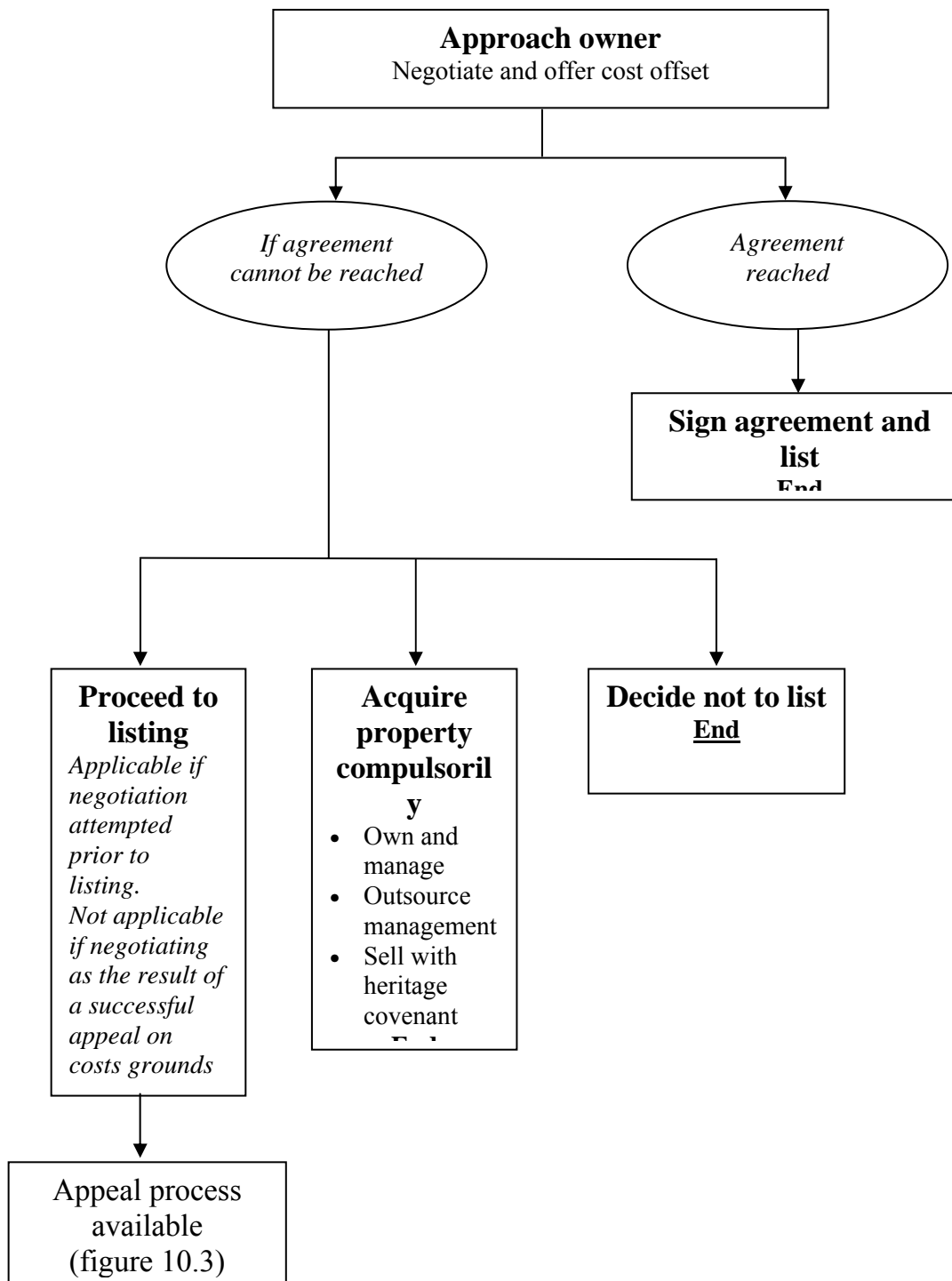
Negotiation of a conservation agreement

Key elements of the this group of procedures are depicted in figure 10.4.

Timing of negotiations

Negotiation of a conservation agreement can take place at two stages in the proposed process. First, the listing authority may judge that, were it to list the property, the owner is likely to face unreasonable costs and thus has a high probability of success in an appeal on those grounds. Rather than list and go through the expense of defending against such an appeal with little likelihood of success, a procedure that would also unnecessarily antagonise the owner, the listing authority can directly approach the owner to negotiate a conservation agreement prior to listing.

Figure 10.4 **Negotiation**



The second situation where negotiation of a conservation agreement would be initiated would follow a successful appeal on the grounds that listing imposes unreasonable costs on the owner. Listing can only proceed once a negotiated conservation agreement has been voluntarily entered into by both parties, or if the

government directly acquires the property. Once experience in assessing the likely cost impact on owners has been developed by the listing authority, it would be expected that most agreements would be negotiated prior to listing, rather than waiting for an appeal to be successful.

In the first situation, where negotiation occurs prior to listing, if negotiation is unsuccessful, the authority retains the option of listing the property if it is prepared to defend against any subsequent appeal on unreasonable costs grounds.

State and Territory heritage legislation already have provisions enabling the heritage agencies to enter into conservation agreements with owners of heritage properties. The Commission envisages that its recommendations would more formally activate these provisions in situations where listing would impose unreasonable costs on owners. Each jurisdiction should review their legislation to ensure that adequate provisions are in place to enable the negotiation of conservation agreements.

RECOMMENDATION 10.1

In relation to State, Territory and local listing, State and Territory governments should:

- ***mandate that statements of significance be prepared at the time that a statutory listing decision is being considered and that these statements should be prepared by the listing authority;***
- ***require that listing authorities directly notify owners of any intention to add their place to the statutory list;***
- ***require that listing authorities make available a preliminary statement of significance to the owner and the public prior to public consultation;***
- ***require that listing authorities follow timely public consultation procedures following a decision to consider a place for statutory listing;***
- ***require that listing authorities, when proceeding with a listing, provide a comprehensive final statement of significance to the owner of the property and make it publicly available;***
- ***implement an additional appeal grounds in relation to listing, based on unreasonable costs; and***
- ***ensure that listing authorities have the authority to negotiate and enter into heritage conservation agreements.***

Matters that could be included in a negotiated conservation agreement

Developing conservation agreements between the relevant jurisdiction and owners would, in effect, result in a contract introducing a form of covenant on the property. The Commission envisages that this agreement, or covenant, would remain in force with any subsequent change in ownership. That is, subsequent owners would be required to accept the existing agreement when purchasing the property and abide by its conditions for the remaining time-period of the agreement.

The extent and complexity of individual agreements could vary widely, and for important and unique sites may require a more detailed, site-specific, agreement. However, for many heritage places the development of a standard or template contract, either for direct use or as a basis for negotiation, would seem an appropriate development. Appendix E provides some examples of conservation agreements from other jurisdictions, indicating some variability in the length and complexity of the model contracts.

A range of elements that it would reasonably be expected to feature in an effective system of conservation agreements are in box 10.4.

Accommodating changed circumstances

Both heritage values and the costs of conservation will change over time. Community values evolve, with some places becoming more or less significant in their contribution to the community's sense of history and place. Owners' attitudes to historic heritage places may also change, affecting their willingness to voluntarily conserve, for both public and private benefit. With economic development and changing demographics, the pressures on historic heritage places, and thus the cost associated with their continued conservation, will also change. In addition, conservation agreements with owners of historic heritage places will involve the expenditure of public funds. Such expenditure should be open to review, and procedures should be in place to enable a periodic reassessment of their effectiveness.

For these reasons, the option for the renegotiation of conservation agreements should be available. This could, for example, be accommodated by the negotiation of agreements covering differing time periods, depending on the nature of the heritage characteristics being conserved, with the option to renegotiate, or roll over the agreement in the future.

Box 10.4 Elements of an effective conservation agreement system

An effective conservation agreement system, would be expected to have the following features:

1. An agreed statement of the place's heritage values.
2. Outline allowed works, development or uses.
 - these activities would be ones that clearly do not affect the place's identified heritage values. This could include external painting, internal alterations, constructing fences, developments at the rear of property.
3. Outline specific prohibited works, development or uses.
 - these activities would be ones that do affect the place's identified heritage values. This could include external structural alterations, demolition, removal or alteration of specific features that give rise to the identified heritage values.
4. Establish an agreed system whereby works, development or uses that are not covered above can be assessed against the place's identified heritage values.
5. Provide for effective dispute resolution system, such as determination by neutral third party experts.
6. Outline the assistance to be provided to the property owner. Such assistance could be a one-off sum or an ongoing contribution.
7. Provide for a mechanism to review the property's heritage values after a given period of time, for example, after 10 years.

Sources: Burra Charter and NSW Heritage Guidelines.

Negotiated conservation agreements and planning

The more widespread use of heritage agreements may necessitate a clarification of the relationship between heritage decisions and planning approval arrangements. In the first instance, any heritage agreement would need to be consistent with the general zoning of the property. That is, the agreement would not permit a development that would not be allowed under the existing zoning regulations. For example, if the zoning regulations prohibited, say, a three-storey extension, a heritage agreement could not be used to override this restriction. At the same time actions approved or allowed by the zoning status of the property should not override the conditions contained in the conservation agreement. For example, if the heritage agreement precluded a second storey in the interests of maintaining the place's heritage integrity, it should not be possible to use the underlying zoning regulations (that may allow such an extension) to override the heritage agreement.

Any development of the property sought by the owner would need to be consistent both with the conservation agreement and the general planning restrictions applicable to the property. Because the heritage characteristics are covered by the conservation agreement to be enforced by the parties to that agreement, the conditions of the agreements would not be part of the development approval process. It is up to the owner, in conjunction with the relevant heritage authority, to ensure that any development application lodged with local government is consistent with both the heritage agreement and the planning regulations.

If agreement cannot be reached

If agreement cannot be reached between the owner and the relevant listing authority over the provisions of a conservation agreement, the authority has a number of options.

In the first instance, it may decide not to pursue listing of that particular property. If this is the case, the owner would be notified of the decision not to pursue listing. Depending on the nature of the heritage characteristics being sought, and the availability of other properties offering similar characteristics, the authority may seek to identify alternative properties for listing and/or initiate negotiations with owners of such properties.

In the second instance, where the heritage values are particularly high, and alternatives are not available, government may seek to purchase the property concerned. In exceptional circumstances, the government may consider using its existing powers of compulsory acquisition. Together with the ability of government to ‘walk away’ from negotiations, the option of compulsory acquisition provides a limit to the owner’s ability to ‘ask too much’ and provides the ultimate incentive to negotiate and seek agreement in good faith.

The same two options apply where an existing agreement ends and there is a failure to reach a re-negotiated or new agreement. In the absence of any other path being pursued (such as direct acquisition), failure to reach a new agreement would result in the removal of the property from the relevant heritage register. That is, the heritage-related use restrictions would be removed, normal planning restrictions apply and any financial support for conservation would cease.

There are a range of options available for government if a property is purchased or acquired. These include:

- government ownership and management through organisations such as the New South Wales Historic Houses Trust;

-
- government ownership with management contracted out; and
 - reselling with covenants to ensure the protection of heritage characteristics.

The last option would be one that minimises the net cost to government, and could be operated through a revolving fund.

Compulsory acquisition would, however, be an action ‘of last resort’ requiring ministerial approval and being subject to appropriate appeals mechanisms as to matters of procedure and the level of compensation provided. As local government can not compulsorily acquire, use of this option at the local level would require a council to convince the relevant State Minister of the necessity for the State to act on its behalf.

Provisions for compulsory acquisition apply in other countries, typically at the initiation of government, but in New Zealand there are provisions where, in certain circumstances, the owner can move to initiate acquisition (box 10.5).

Box 10.5 Compensation in New Zealand

Rights to compensation for owners of heritage properties are currently limited to those owners whose property is subject to a heritage order. These owners are able to apply for relief to the Environment Court under section 198 of the Resource Management Act. In order to get relief, they must prove that they are unable to put their property to reasonable use and they have been unable to sell it for market value. The Environment Court can order that the Heritage Protection Authority acquires the property from the owner at market value or remove the heritage order.

Source: Nahkies, B. (1999), p. 11.

In the United Kingdom, the Secretary of State has the power to confirm a Compulsory Purchase Order by an appropriate authority if it appears that reasonable steps are not being taken to properly preserve the building. In exceptional cases, the UK Secretary of State also has to power to compulsorily acquire a listed building and any relevant land in such circumstances.

Time limits and protection from subsequent listing attempts

Listing can be a time consuming process, introducing uncertainty for the owner. This is compounded by the ease with which the listing process can be recommenced, particularly at the local government level. The Commission has received comment that simply the threat of listing has had a significant effect on the ability of the owner to realise the value of their property on the open market. In part,

this problem would be lessened by the introduction of the right to appeal on the grounds of unreasonable costs. However, it is also important that the process is not excessively arbitrary or time consuming. A resolution, one way or the other, is needed if the owner is to be able to make sensible plans for the future. In this situation it is important that the onus for completion of the listing process within the specified time frame is placed on the authority seeking listing, with any failure to make a decision within the specified time period being deemed to be a decision not to list the place in question.

An important element of certainty is the introduction (for all levels of government) of a specified time period before listing procedures can be recommenced if a decision not to list is the outcome at any stage of the process.

For example, in the United Kingdom a Certificate of Immunity (COI) is available, which precludes the Secretary of State from listing a building for five years and precludes the planning authority from serving a Building Preservation Notice [interim protection] for that period. It is designed to give greater certainty to developers proposing works which will affect buildings that may be eligible for listing.

The Commission considers that such immunity from listing and from the imposition of interim protection, should automatically follow any decision not to list a property. However, a system that requires an application for such immunity (as is the case in the United Kingdom) to be made in each case would be administratively costly and would effectively limit such protection to major developers who have the resources necessary to make such an application.

10.3 Bringing already listed properties into the proposed system

The introduction of the right to appeal listing on the grounds of unreasonable costs, together with the use of negotiated conservation agreements in those situations, is directed towards improving the incentives for both owners and the community when considering places being proposed for conservation. In particular, it aims to have the costs of conservation considered at the time that the decision to conserve and protect a property is made. This will provide an incentive for the listing authorities to introduce protection only where the extra community benefits exceed the additional costs of their conservation, and provides an incentive for owners to actively conserve valuable heritage characteristics where it is otherwise costly to do so.

The proposed changes raise the issue of what changes, if any, should be made for owners of places already listed. They have restrictions and obligations placed on them, often with little consideration of the costs involved and with little assistance provided to contribute towards those costs. There will certainly be some cases where these costs are high, and cases where these costs exceed the value of the heritage characteristics being conserved. This is an inevitable result of the current system where there is no requirement for listing authorities to take into account the costs of conserving heritage values when deciding on whether to list a heritage property, even when the costs are high and the heritage value low. This problem could be addressed by transitional arrangements, whereby owners of places already listed at the time that the right to appeal is introduced in relation to new listing decisions, with a period of time during which they could appeal their current listed status on the grounds that it imposes unreasonable costs.

Owners of already listed properties, however, fall into two broad groups. First, those who had their place heritage listed after they had purchased the property. Second, those who have bought places that were already heritage listed.

In relation to the first group, allowing such owners to appeal their existing listing on the grounds of unreasonable costs would ensure that they are treated fairly by the heritage system and would ensure that resources (both private and public) are not wasted protecting properties with little heritage value compared to the costs of conservation.

In relation to the second group, because the heritage-listed places have been acquired after listing occurred, any restrictions or additional costs imposed by listing would have been reflected in the price of the property at the time of purchase. Subsequent owners will have purchased knowing the restrictions and obligations involved with heritage listing of the property and, by willingly purchasing with such knowledge, have accepted the costs involved. In such a situation, it would be difficult to argue that listing has imposed unreasonable costs on the current owner. It would be highly unlikely that owners in such situations could make a valid case that they are bearing unreasonable costs associated with the listed status of their property.

The impact of allowing owners of already listed properties to appeal listing on the ground of unreasonable costs is difficult to assess. In part, it depends on the number of properties that have changed hands since listing and thus would have little grounds for a successful appeal. For the remainder, it depends on the number that could successfully argue ‘unreasonable costs’, and the nature of the places already listed.

For example, there are almost 14 000 places on State and Territory registers (table 3.3). If half of these are privately owned properties (this varies from jurisdiction to jurisdiction, see chapter 3, but is broadly the case) and only 10 per cent of owners are discontented with the system, as asserted by some in the heritage industry, this would imply some 700 properties could make an appeal. However, as many of these would have changed hands since listing the number that would be successful would be much lower. The number that could appeal would be much greater at the local government level as the number of places is greater (some 76 000 individual places, table 3.5) and the proportion in private hands is higher.

Many listed places will have high heritage conservation values and will be well worth the cost involved with a public contribution to their conservation. Others may be more marginal and not represent an effective use of conservation funding. Such places would be removed from statutory lists once an assessment is made of their heritage values compared to the cost of their conservation. The Commission has proposed, in recommendation 9.1, that the right to appeal listing on the grounds of unreasonable costs also be available for those owners of properties that were acquired before the property was statutorily listed.

Some historic heritage places are covered by private covenants (or similar contractual arrangements), and some former government-owned properties have been sold with heritage-related conditions attached. Such covenants or contracts would remain in place and be unaffected by the arrangements proposed by the Commission. Essentially they would be unlikely to be able to make a case for assistance on the grounds of unreasonable costs as this matter has already been addressed when the covenant was entered into or when the property was acquired with an agreed covenant in place.

10.4 Application to different tiers of government

The implications of a proposal to enable owners to appeal listing on unreasonable costs grounds, together with the greater use of conservation agreements will differ between the jurisdictions within Australia. Current arrangements vary, and jurisdictions have differing degrees of institutional sophistication and development, particularly at the local government level. Despite such differences, most have established frameworks for managing historic heritage conservation. The Commission's recommendations would nevertheless involve some re-focusing of their activities.

The Commission considers that action is needed most urgently at the local government level where there is considerable and growing use of heritage listing,

often as a replacement for the more constrained planning process. In addition, a much larger proportion of locally listed places are privately owned. State listing of private properties, however, is increasing and, with the exception of New South Wales, now forms half or more of the places on State and Territory lists (table 3.1). The Australian Government has listed only one privately-owned property.

Australian government

Under the Environment Protection and Biodiversity Conservation Act, the Australian Government has the key institutions and tools in place to operate a system where the listing of privately-owned heritage places is on the basis of negotiated conservation agreements. Currently, the Australian Heritage Council assesses whether a place meets one or more of the national heritage criteria and makes a recommendation to the Minister on that basis. The Minister decides whether to list the place on the National List. This typically involves negotiation with a State Government before a place is entered onto the National Heritage List. Provision exists for conservation agreements to be entered into with private owners. However, such agreements with private owners are not a universal requirement for listing, they come into play only if the Australian Government cannot act ‘unilaterally’. To date, no such conservation agreements have been entered into.

The Commission considers that the Commonwealth should take a leadership role by negotiating a conservation agreement prior to, or in conjunction with, listing for all places being considered for inclusion on the national list. This would also signal the importance that the Australian Government places on the cooperative conservation of places of heritage significance and, given the importance of such places, such an agreement, together with a sound management plan would seem to be an essential component of good conservation practice.

State and Territory governments

Key responsibilities for the conservation of historic heritage places rest with State and Territory governments. They have strong regulatory powers and these have been used extensively for the conservation of historic heritage places. Not only have they responsibility for the conservation of places of State and Territory significance, but also they set the regulatory framework for local government involvement in conservation. Their role is crucial to a coherent and effective national framework.

To implement the Commission’s recommendations for introducing a right of appeal on the grounds of unreasonable costs, together with the greater use of conservation agreements, would require a range of legislative, institutional and operational changes at the State and Territory level. In particular, it would involve changes to each jurisdiction’s Heritage Act to include the right, for non-government owners, to appeal heritage listing of an individual property on the grounds of unreasonable costs. Such changes will require the development of expertise and resources within the existing listing authorities. For example:

- Existing heritage agencies/councils would continue to be responsible for heritage listing, but would have the additional responsibility for negotiating and monitoring conservation agreements/management plans with some private owners.
- Improved and strengthened processes requiring the development and presentation of comprehensive and meaningful statements of significance would be necessary. This includes the preparation of preliminary statements prior to public consultation and the preparation of a final assessment prior to listing or the negotiation of a conservation agreement.
- The development of, or access to, expertise to allow the assessments of the likelihood that listing would impose unreasonable costs on the owner.
- Development of ‘agreement’ contracts, including template agreements or a package of standard clauses.
- Development of skills and resources for negotiation and monitoring of conservation agreements.
- A review of funding levels and of funding tools that heritage agencies would have access to, to enable them to provide assistance flexibly through negotiated conservation agreements. A review of funding and assistance options is presented in the following section 10.5.

Local government

At the local government level, the implementation of the Commission’s recommendations would require changes to each jurisdiction’s planning legislation in those areas under which local governments list individual properties of local heritage significance. Such changes would involve including essentially the same provisions as are suggested to be included in the relevant Heritage Acts to introduce the recommended appeal right and provide for the use of negotiated conservation agreements where costs are unreasonable. Because of the variability in local councils’ implementation of listing procedures, there is a particular need to ensure

that good process changes are introduced and that State and Territory governments ensure that action is taken to ensure that they are followed.

Implementing the Commission's recommendations at the local government level could raise resourcing issues for councils in areas with many heritage properties of local significance, though this would depend on the extent to which the costs imposed on owners are unreasonable. While many councils have large numbers of properties listed, many cover places where the heritage consideration would not differ significantly from the considerations that would enter into reviews of development applications under their existing zoning. While the regulatory frameworks for councils to consider historic heritage would be set at the State level, the councils would have to develop operational procedures suited to their particular circumstances. And those circumstances vary considerably — ranging from the Brisbane City Council with a population of 900 000 and annual budget of \$1400 million to the Shire of Cue (incorporating the heritage town of Cue) in Western Australia with a population of 367 and annual budget of \$2.4 million.

The changes proposed by the Commission to introduce good-process reforms and to allow formal appeals on the grounds of unreasonable costs, together with negotiated conservation agreements, will involve much greater institutional change at the local government level than at the State level. It is likely that some local government areas will struggle to afford to set up such structures for the few local listings that would occur in any given year. One option is for local councils to group together with neighbours to share resources (such as heritage advisers) necessary to undertake the process effectively.

Access to skills and resources will also be necessary to act on the proposed requirement to develop meaningful statements of significance, including the ability to make preliminary assessments of the likelihood that listing would impose unreasonable costs on the owner. Again, the sharing of resources between a number of local councils may overcome costs for the few that may be considered in any one year.

Local governments will also need to develop the knowledge and expertise necessary to develop, negotiate and monitor conservation agreements with private owners. However, as these skills, including the development of template agreements or standard clauses, will need to be undertaken at the State level, local governments may be able to tap into this work with useful guidelines and/or examples being developed and provided by the better resourced State heritage bodies.

10.5 Government expenditure and assistance mechanisms

Heritage conservation can be expensive, even given a well targeted and prioritised system for identifying historic heritage places. Therefore, the questions:

- where will funding come from?
- what are the appropriate levels of government expenditure?
- what methods might governments use to cost-effectively raise the funds they have decided to allocate for heritage conservation? and
- what are the best mechanisms for governments to disburse those funds?

are all matters of public policy concern.

In this inquiry, many participants, including some governments, pointed to a lack of financial resources as a primary cause of problems with the existing historic heritage system. Inadequate resources for the assessment of places for heritage listing were seen as leading to deficient assessments. Combined with insufficient funding for actual conservation works, poor conservation outcomes were the unavoidable result. Accordingly, they were disappointed that the Commission's Draft Report had not concluded that 'inadequate funding' was a central weakness of the current system and had not recommended a significant increase in government expenditures on historic heritage conservation, particularly from the Australian Government.

Sources of funding

The primary revenue-raising sources for conservation purposes are:

- *private sources* — earnings from commercial activities, philanthropic donations, memberships and the owner's own funds; and
- *public sources* — taxpayer/ratepayer funding.

Firstly, owners of historic heritage places should make best efforts for each place to 'pay its own way' to the extent this is possible, recognising that for many places this will be extremely difficult (even with community donations, volunteer efforts, etc). Taxpayer/ratepayer funding should be seen as complementary to private expenditure and as a last resort, rather than a first, as there is unlikely ever to be enough taxpayer/ratepayer funding available to satisfy all conceivable requests for public funds — that is, priorities have to be set. Importantly, public expenditures should not displace private funding sources, and should only be used if the

community benefits of conservation are assessed to be greater than the costs of conserving the ‘extra’ heritage value.

Levels of government expenditure on heritage

Participants generally referred to historic heritage as the ‘poor cousin’ of natural and indigenous heritage when it comes to direct government expenditure. However, it is difficult to make such a comparison, as the absence of reliable data does not allow an accurate assessment to be made of how much governments are spending annually on historic heritage conservation. As discussed in chapter 3, such expenditure would include the costs of:

- administering the overall historic heritage system, including any appeals arising therefrom;
- operating and maintaining government-owned and managed historic heritage properties; and
- providing advice and incentives to private owners to help offset the ‘additional’ and ‘forgone opportunity’ costs of their ‘community-demanded’ heritage provision.

As indicated in table 3.4, certain expenditures on historic heritage by Australian, State and Territory governments in 2004-05 totalled about \$46 million. However, total expenditure would be well in excess of this figure. In addition, information was not available to allow a similar estimate of total expenditure (on historic heritage identification, assessment, listing, advice, heritage-related approvals, appeals and assistance) by the 630 local councils in Australia.

Conceivably, total annual government expenditure on historic heritage conservation, across all jurisdictions in Australia, could be well in excess of \$100 million per annum. While not directly comparable, the Australian Government’s recurrent (discretionary) expenditures on natural and indigenous heritage in 2004-05 were around \$300 million and \$8 million, respectively (NHT 2006; Australian Government 2004).

Despite the difficulties of identifying and measuring government expenditure on historic heritage conservation, there is a widespread, and not entirely unjustified view that:

Budget appropriations for historic heritage in Australia have generally stagnated or declined over the last decade. (EPHC 2004, p. 32)

The overall level of expenditure by the various levels of government on historic heritage conservation will always be a contentious issue (as with any other area of

government expenditure). However, realistically, it can only be decided by the respective governments in the context of the overall level of funds available to them and in comparison with (or more accurately, in competition with) other demands on public money. Only the political process can elicit the community's views on whether government expenditure on heritage conservation should be increased in comparison with the community's other expectations.

Whatever that level of expenditure might be, each respective tier of government should have primary responsibility for funding the conservation of national, State or locally-significant historic heritage. This is in line with the agreed principle of subsidiarity for managing historic heritage conservation. Further, no case was presented as to why the Australian Government should undertake expenditure beyond its direct, nationally significant, responsibilities. Decisions on expenditure for the conservation of historic heritage places that are of State or Territory significance are generally best left to those governments. It is not up to the Australian Government to impose its views on the desired outcome, or the necessary means and expenditures to achieve them. The Australian Government makes significant transfers to the States and Territories, and each jurisdiction can decide how to spend the available funds as they see fit.

Similarly, it is generally for each local government to decide on expenditures for the conservation of locally-significant historic heritage places. However, there is nothing preventing the States from providing their local governments with additional funds for heritage purposes, if they see a need.

It is, of course, open for the Australian Government and for each State government to undertake expenditure on specific projects outside of this three-tier framework (as has occurred recently at the Australian Government level, with funding for the refurbishment of two State-significant cathedrals, in Sydney and Melbourne).

Decisions on what the overall level of expenditure should be on historic heritage conservation (*vis-à-vis* all other community demands) are best made by an informed political process.

While it is not possible, nor appropriate, for the Commission to judge what might constitute an appropriate overall level of expenditure on historic heritage conservation for any specific jurisdiction, it is possible to come to some conclusions on what are the more cost-effective ways to raise public funds and deliver support to private owners of listed heritage properties. Accordingly, the following sections look separately at a range of public revenue-raising and assistance delivery mechanisms, and make comments on their appropriateness as means of providing public funds and incentives for historic heritage conservation.

Revenue-raising mechanisms

Substantial increases in expenditures will no doubt be required in many jurisdictions, if governments commit to:

- a) implementing a rigorous system for the identification and assessment of historic heritage places (including up-front assessments of reasonable cost);
- b) managing their own heritage places as model historic heritage owners; and
- c) financially supporting private owners of listed historic heritage places, including the increased use of negotiated conservation agreements in situations where listing is judged to impose unreasonable costs on the owner.

A number of policy tools are open to one or more levels of government through which they can, if considered warranted, add to the heritage funding pool. Taxpayer/ratepayer funding, the hypothecation of lottery revenues (whether or not specific to heritage) and heritage levies are all methods that have been used, both in Australia and overseas.

The obvious source of funding for heritage conservation is an explicit budget allocation from consolidated revenue, collected from taxpayers. The Commission has assessed the current system for the conservation of historic heritage places to have deficiencies such as less than robust listing processes and poor conservation outcomes in some instances. This could be acting as a damper for additional government expenditures. Implementing the Commission's recommended improvements could overcome this impediment to increased budget allocations and government expenditure.

Heritage lottery fund

In the United Kingdom, the Heritage Lottery Fund has been operating since 1993. It operates as part of the National Lottery, with every pound spent on a lottery ticket resulting in a distribution of 4.66 pence to the Heritage Lottery Fund. A variable component of this is then distributed to historic heritage conservation groups and individuals, to assist building repairs and conservation work, acquisition of land and buildings, and projects to improve access. The annual allocation, for all forms of heritage, is currently around £330 million (HLF 2006), or A\$815 million.

On a much smaller scale, the Lotteries Commission of WA allocates a fixed amount from WA lotteries to a range of programs, including heritage funding of around \$1–1.5 million annually.

A number of participants spoke highly of the UK Heritage Lottery Fund model, proposing that a similar funding mechanism be introduced into Australia. The particular attraction of this approach is that a specified level of funding would be available with a high degree of certainty each year, free from competing interests that have a claim on general government revenue each year at budget time.

There is nothing preventing State governments from legislating that a certain percentage of profits from a lottery (whether or not heritage-specific) or any other gambling activity — indeed from any source — be hypothecated to an historic heritage fund, as is currently practised in Western Australia. However, there are two fundamental problems with this approach. First, the level of funding would be independent of any assessment as to whether it generated a net community benefit. All funds are likely to be used for historic heritage conservation simply because the monies are there and must be spent on that purpose, even on listing or works where the net benefit is very small, or even negative. Second, as all public funding is a scarce resource, it is appropriate that funding for historic heritage conservation be assessed against alternative uses for such monies — that is, there is no particular reason why funding of historic heritage should be hypothecated in preference to funding other public services.

Heritage levy

Under relevant State legislation, most local councils have the ability to impose a heritage levy on their ratepayers. The monies raised could go into an Historic Heritage Fund and, subsequently, be distributed to private owners for ‘community-demanded’ conservation works and repairs, or to pay for conservation management (or specialised heritage maintenance or restoration) of council-owned heritage places. The advantages of the use of a heritage levy are that the community is made aware of the cost of meeting its desire to conserve historic heritage places in its area. Some Australian local councils already have explicit heritage levies in operation.

Assistance mechanisms

Some inquiry participants active in ‘the Heritage industry’ asserted that the Draft Report had not adequately considered the merits of alternative incentive/assistance mechanisms.¹ Some also pointed to the differing assistance requirements for

¹ The heritage industry’s interpretation of the word ‘incentive’ — that is, any mechanism which provides assistance for conservation purposes — differed from the Commission’s — that is, any mechanism which evokes a behavioural response among heritage stakeholders.

heritage places in rural, suburban and inner city locations.

When considering improving the incentives for historic heritage conservation, the Commission has not focussed on increasing government assistance as such (although this may well be a result). Rather, it has sought to reduce perverse incentives — those structures or mechanisms that generate inappropriate outcomes — and replace them with positive incentives — those structures or mechanisms that encourage appropriate outcomes. To this end, the Commission's preference is for mechanisms which enable fully informed decisions to be made, avoiding such things as: hidden costs; hidden assistance; and the transfer of costs to others who do not benefit or are not the decision makers in relation to those benefits and costs. Where assistance is provided it should be targeted, transparent and accountable.

Within the budget allocation for heritage conservation in each jurisdiction in Australia, there is a wide range of assistance mechanisms available to governments to assist private owners in their conservation efforts on behalf of the community. Their appropriateness is reviewed briefly below for each level of government.

Australian Government

Tax relief

At the national level, financial support for private owners of heritage-listed properties can be provided through various forms of income tax concessions (e.g., rebates, credits or deductions), to reduce the cost of maintenance or restoration.

Many heritage industry participants called for the reinstatement of the Australian Government's *Tax Incentive Scheme for Heritage Conservation*. This tax rebate scheme, which operated from 1994 till 1999, offered a 20 per cent rebate under a cap of \$2 million per annum.

The scheme was criticised on a number of grounds, mostly related to the overall cap on funding. As a result, it was, in effect, an application-assessment scheme with high administrative costs and difficult eligibility rules aimed at keeping expenditure within the limit set. As a consequence, it had a very low take-up rate — which was exacerbated by the fact that it offered no benefits to large conservation projects; its carry forward provisions meant that some owners with a low annual tax liability often had to forfeit part of the value of the rebate; and it was not available to 'not-for-profit' organisations.

The National Incentives Taskforce (NIT) noted in its 2004 report, *Making Heritage Happen*, that:

The Commonwealth is not supportive of the reinstatement of the tax rebate scheme, on the grounds that (a) such schemes still require application-assessment processes and therefore may be more efficiently, effectively and transparently delivered through grant programs, and (b) grant programs allow taxpayers funds to be better targeted at heritage conservation projects that are of highest priority. (EPHC 2004, p. 8)

Further, when considering the pros and cons of tax concessions compared to outlay programs, the National Commission of Audit (NCA) Report commented:

Tax concessions and public spending programs can have a similar net effect on the budget balance. This is because a tax concession reduces revenue which, if collected, could be used to fund a spending program to meet the same objective.

Tax expenditures are less visible than outlays programs and are therefore likely to receive less critical review of appropriateness by government and parliament than outlays programs. In addition, tax expenditures are usually uncapped, open-ended and their costs can rise rapidly. ... If the objectives are considered appropriate, consideration should be given to converting tax concessions to outlay programs. (NCA 1996)

A variant for a national tax scheme was put forward by the Kensington Residents Association:

Heritage listed properties can be seen as an investment in the country's heritage. Accordingly, they should be treated as investment properties with repairs, maintenance and insurance classified as tax-deductible items. (sub. DR309, p. 2)

Another variant raised was allowing an owner to claim a tax deduction for any decrease in land value as a result of entering into a conservation agreement. This concession is currently available for private nature conservation activities in Australia.

Other tax measures proposed included stamp duty exemptions (mostly a State/Territory tax — see below), accelerated depreciation allowances and capital gains tax exemptions.

The Commission generally agrees with the conclusions of the NIT and NCA outlined above. In particular, tax concessions are poor vehicles for targeting assistance to areas with greatest net benefit to the general community, and such assistance would fund a lot of conservation activity that would occur anyway for private rather than community benefit. In addition, such generally-available Australian Government assistance measures would be contrary to the agreed division of heritage responsibility, where each level of government is responsible for funding those heritage activities that relate to its own listing decisions. Accordingly, the Commission strongly recommends against such schemes.

Tax deductibility of donations

Achieving ‘tax deductibility status for donations’ allows the value of donations made to accredited ‘non-profit’ bodies (or funds) to be deducted from the taxable income of donors. Currently, all National Trusts in Australia have deductibility status, which helps to promote the flow of resources (cash and property) to these organisations.

Such a tax expenditure transfers funds from consolidated revenue to the Deductible Gift Recipient (DGR) in such a way as to encourage private philanthropy and to provide public support to meritorious organisations (charities and DGRs) via the tax system.

Grants and loans

Given the concerns with tax measures, the Commission considers that assistance to private owners for conservation works and building repairs is, in the vast majority of cases, most efficiently, effectively and transparently delivered through a competitive grants process.

Grants allow taxpayers’ funds to be better targeted at heritage conservation projects that are of highest priority in terms of the greatest net benefit to the general community. They also allow the targeting of assistance to an ‘appropriate’ share of the total identified conservation works — that is, a share which covers the ‘additional’ (above normal) conservation, compliance and/or capital costs attributable to the restrictions imposed by heritage listing — in recognition of the shared benefits of the works to the owner as well as to the community. However, grants can be costly to administer.

There is no rational case for subsidised finance to property owners, either in the form of direct loans or loan subsidies, since there is no evidence of relevant market failure in capital markets (that is, the ability of property owners to borrow). An explicit tied grant for specific purposes, competitively assessed, would be more transparent and efficient. Such direct outlays are also the preferred mechanisms for delivering assistance to private heritage owners at the State/Territory and local government levels.

State and Territory governments

Land tax abatement schemes

Full or partial reduction of land tax, to reduce the ‘opportunity cost’ of retaining heritage values, is a relevant incentive mechanism at the State/Territory level. This is generally achieved by either adjusting the mill rate (that is, the tax rate per dollar of assessed value of land) or, more appropriately, by revaluing heritage-listed properties on the basis of ‘current’ (heritage-restricted) use rather than ‘highest and best’ use of the land. Most State and Territory legislation provides for such revaluations to occur, which could lead to reduced land tax assessments. Such schemes would at least partially offset the costs to the owners of properties whose market value was diminished by listing.

However, in considering such assistance schemes, it is important that they do not become a vehicle for cost shifting between jurisdictions. For example, land tax is a State and Territory tax and thus, it would be an appropriate vehicle for concessions in relation to State- or Territory-listed properties. However, if the property is nationally or locally-listed, it would be inappropriate to expect a State or Territory government to provide automatically such assistance (through a reduction in its revenue) to fund the listing decision of another jurisdiction.

Stamp duty reductions

Full or partial reductions in stamp duties paid on heritage-listed property transactions (to help offset any loss of value due to listing) are potential vehicles for providing assistance for heritage conservation. However, such assistance is not related to any particular conservation activity, nor to any assessment of the benefit of the property to the community. Property sales and transfers are decisions quite independent of whether the property is heritage-listed or not. Such assistance would fail the criterion of being well targeted.

Local governments

As evidenced in appendix B (section B.5), the Local Government Survey conducted by the Commission indicates that most local councils already offer grants for conservation work, with a varying financial contribution being required from the property owner. A few councils offer subsidised loans. Aside from such direct outlays, a wide range of incentives have been used, or considered for use, by local councils, depending on their individual circumstances.

Revolving funds

Revolving funds can be set-up and contributed to by any tier of government. However, they are most relevant at the local government level.

A revolving fund is a pool of capital created and used for heritage conservation, typically for the conservation of 'at-risk', low-return heritage properties that others are unwilling, or unable, to invest in. They are essentially a 'sponsor of last resort' for heritage places facing demolition by neglect (EPHC 2004). Such funds are revolving in that they are typically used to purchase places in need of conservation, with those places subsequently being refurbished and resold with a covenant attached (which aims to ensure the desired conservation outcomes) and with the proceeds of the resale being deposited into the fund. Initial 'seed' funding can be provided by various public and/or private sources, with the net cost of the fund being limited to any losses involved with resale.

In Australia, this type of fund already exists for the purpose of historic heritage conservation in the cities of Melbourne and Hobart, while the NSW Historic Houses Trust set-up an Endangered Houses Fund in 2001.

Overseas, some 170 Preservation Trusts have been set-up in the United Kingdom at the initiative of either a local authority or as a joint venture between a local authority and a community group. In all instances, they operate as companies limited by guarantee and have charitable status for tax purposes (EPHC 2004).

Such schemes generally involve an assessment of the benefits and costs for each funding decision, and typically involve willing participation to the mutual benefit of both parties. Accordingly, they could potentially be used as vehicles to fund the conservation of heritage properties where the private costs are judged unreasonable, but where agreement cannot be reached over a conservation plan. To this end, they might be considered an alternative 'last-resort' acquisition mechanism to compulsory acquisition.

Rate rebates

Most local councils have the ability to seek revaluations for rating purposes from their respective State governments. However, they have been reluctant, generally, to offer rate rebates or concessions for fear of eroding their revenue base.

Relatively few councils currently offer such incentives to owners of historic heritage properties. In the Northern Territory, however, all owners of listed heritage properties are eligible for rate rebates of 75 per cent, for residential properties, and 25 per cent for commercial properties (EPHC 2004).

It could be argued that, if local councils were required to give rate relief to State- or nationally-listed heritage places, this would conflict with the agreed division of responsibilities between jurisdictions. Their funding is the responsibility of the Australian or relevant State government. Alternatively, it might be argued that since residents in the municipality derive substantial benefits from the existence of a State- or nationally-listed property in their municipality (and more than other taxpayers in the State or the rest of Australia), rate relief would be one way of making an appropriate contribution.

Local governments may, however, offer rate relief for places they choose to list as locally significant. However, such assistance is not well targeted to, nor conditional on, conservation activity, and is not targeted to places of community value compared with those where the value of heritage conservation accrues primarily to the owner.

Planning incentives

Under relevant State legislation, most local councils are permitted to relax planning and building requirements to encourage use or conservation of a heritage site. In the case of commercial properties, this may involve flexibility with parking and open space requirements, variations to development standards and/or the provision of density bonuses. So long as such incentives or concessions are not fundamentally incompatible with the underlying planning regulations (which are presumably in place for good reasons), such incentives can be targeted to encourage particular desired conservation activities, and also at areas where conservation would provide the greatest benefit to the general community.

Transfer of development rights

In the central business district of large cities, where the market for development rights is most prevalent, local councils have the option to provide an incentive for historic heritage conservation through the use of transferable development rights (TDR) — or what are otherwise known as ‘air space’ schemes. In such areas, the owner of a listed historic heritage property may sell unused development rights to the developer of a non-heritage site, which may then allow that developer to construct a larger building than would otherwise be allowed, and the historic property owner to fund conservation work from the proceeds. The City of Sydney has operated a TDR scheme, known as the Heritage Floor Space (HFS) Scheme, for the past couple of decades. Its success has fluctuated markedly, depending on the strength of the market for commercial properties in Sydney’s CBD.

The Professional Historians' Association (NSW) noted that the innovative process of creating tradeable fractions of cultural environments is likely to increase and thus provide further market solutions to heritage problems. It said:

Like water rights and carbon emission rights trading, the fractioning of 'tradable heritage values' could allow the owners of heritage properties to trade on their decision to conserve, rather than demolish and develop their property. This decision could result in their acquiring certain 'heritage conservation rights' for example which they could trade with other property owners who need them. ... Perhaps 'cultural tree credits', 'sandstock brick futures' or 'wood smoke emission rights' will emerge as solutions to heritage problems like the preservation of culturally-important tree plantings, the declining availability of traditionally-made building materials, or the polluting aspects of some traditional energy generation methods. (DR306, p. 18)

Again, the Commission has no significant concerns with the use of such schemes by local councils, provided they are not fundamentally incompatible with the objectives of the relevant planning rules.

Advisory services

Subsidised (generally free) advisory services for private owners of heritage properties are currently provided by most councils with heritage lists. State governments also contribute towards the cost of these advisory services on a shared basis. For smaller councils, particularly in rural areas, these services are often shared between adjacent jurisdictions. While it is not clear that there is an information market failure somewhere in the heritage system, the provision of such assistance could nonetheless be justified if it involves assisting owners meet the compliance costs of their heritage obligations.

Reducing compliance costs

There are a number of avenues open to local councils to reduce 'red tape' costs for the owners of heritage properties. These include the waiving or fast tracking of development applications for minor heritage-related works, and the waiving of development application fees in relation to heritage activity required as a result of heritage listing. The largest single cost that owners typically face when making a development application for heritage-listed properties is the requirement to undertake a heritage study and prepare a statement of significance as part of the application. The Commission has recommended that such studies and statements be prepared by the listing agency at the time the listing decision is made and not be a requirement placed on the owner at the time of a development application.

11 Improving the operation and management of heritage zones

This chapter considers how the operation and management of heritage zones (precincts, areas or overlay areas) could be improved in order to make them more consistent with the systems and planning processes that apply more generally. The Commission considers that for each heritage zone there should be a statement of significance applying to the whole area and identification of the types of developments that would be permitted and prohibited — including development standards that could trigger automatic approval. Also, the Commission considers that the planning system should be designed so as to not allow the recognition of heritage zones to be misused to undermine the objectives and processes of the planning system.

In some local government areas, heritage zones cover up to 80 per cent of all properties (for example, City of Yarra, sub. DR346). Given the prevalence of heritage zones in some jurisdictions, consistency in the application of the planning system is important in order to provide effective conservation. The interaction of heritage zones and the general planning system raises several problems:

- inconsistency in the level of development guidance between heritage and non-heritage zones;
- greater red-tape burden of heritage zones compared with other zones;
- the interaction between State planning policies and local heritage;
- designation of State-significant heritage zones; and
- application of heritage controls to non-heritage places.

11.1 Addressing the inconsistent treatment of heritage zones

The Commission has set out ways to improve the effectiveness, efficiency and equity of regulating the land use of individual places deemed to be of heritage significance. An objective of statutory listing is to ensure that any future

development or use of the property is in keeping with, and sympathetic to, the heritage values of the property. The same rationale underpins the objectives of heritage zones.

A heritage zone contains features (houses, streetscape, trees, etc) that taken together contain heritage significance, even where the features individually may have little significance. While imposing the same red-tape burden on the owners of each property as individual listing, heritage areas allow greater potential for developments and land uses than individual listing (see section 5.3). Indeed, the test for appropriate development focuses on character, amenity and streetscape. This is consistent with the approach taken for non-heritage development in any residential zone (appendix D).

Reflecting this, the approach taken to development approval is largely consistent between heritage and other (non-heritage) zones. However, there still remain important differences between the two.

The Chairs of Heritage Councils of Australia and New Zealand, in response to the Draft Report, argued that:

There is no evidence to suggest that heritage represents a disproportionately high level of inconsistency when measured against other planning matters ... many heritage areas are much better served with guidance than are non-heritage areas. (sub. DR271, p. 29)

This can be compared to the view of the Western Australian Local Government Association, which acknowledged:

... the finding that the assessment of development proposals differs between heritage places and non heritage places and that Local Government discretion is higher for controls over heritage properties rather than non heritage properties. We acknowledge that this does result in a burden on the owners of heritage properties, the reason for which is to protect heritage values. (sub. DR380, p. 4)

The broad structure of the regulation of land use zones in the States' and Territories' Planning Acts is consistent (see chapter 5). That is, the controls are divided into three sections:

- uses and developments that are allowed and do not require approval;
- uses and developments that are prohibited; and
- uses and developments that are discretionary and require approval.

In addition, most States (except for Western Australia and Tasmania) provide scope for automatic development approval where the development meets pre-determined development standards.

Another important cost-minimising features of residential zones in some States is the ability of property owners to request a complying development certificate. These certificates enable a developer to have certainty that the proposed development meets the pre-determined standards and will be approved.

These features are typically not provided for in State-wide guidance for heritage zones. For example, the Model LEP provisions in New South Wales treat heritage conservation zones the same as individually-listed heritage properties. This is significantly different from the treatment of other (non-heritage) zones. For each non-heritage residential zone, the model planning provisions mandate that, at a minimum, development standards be set outlining building height restrictions, floor-space ratio and minimum allotment size. These standards, however, do not apply to property that is located within a heritage zone. For more detail, see chapter 5.

FINDING 11.1

Guidance in local planning schemes for non-heritage residential zones is generally greater and more precise than that provided for heritage zones.

In saying that, however, the absence of consistent State guidance over the structure and content of heritage zones does not necessarily lead to inconsistent or unhelpful information for heritage zones. An example of a good approach to heritage zones is the Parramatta Heritage Development Control Plan (DCP) 2001 (Parramatta City Council 2001).

The Parramatta Heritage DCP provides both general and zone-specific development guidelines. The general guidelines outline broad principles relating to scale, siting, architectural form and detailing, materials and finishing, and uses. Guidelines are also provided for new buildings. The Parramatta Heritage DCP provides the following information for *each* identified heritage conservation zone:

- history of subdivision and development in the area;
- statement of historical significance;
- council's objective for the area;
- specific objectives and controls for:
 - subdivision;
 - existing buildings;
 - siting, setbacks and gardens;
 - new developments at rear of existing buildings;
 - garages and carports; and

-
- fences.

For the specific objectives and controls, the DCP outlines features that should be kept and repeated and those that should be avoided or are prohibited. In addition, the DCP contains sketches demonstrating desirable outcomes. Other examples of similar control plans include North Sydney City Council, Leichhardt Council and Albury City Council.

A deficiency of Heritage DCPs is the lack of complying development — that is, automatic approval so long as the development meets the standards outlined in the DCP. Complying development is provided for development in non-heritage areas.

Several Victorian local councils also provide useful guidance for properties located within heritage areas.¹ Most councils provide general guidance through statement of local heritage policy (clause 22 in the relevant planning scheme) — this appears similar to the general guidance provided in the Parramatta Heritage DCP. However, with respect to each heritage zone identified (heritage overlay area), most Victorian councils only provide for a statement of significance and the identification of contributory places. They do not provide detailed development guidance — see, for example, City of Bayside Planning Scheme clause 22.06. However, there are exceptions where councils have done so — for example, City of Glen Eira, Greater Geelong City Council and Boroondara City Council.

The level of specific development guidance for heritage zones varies in the other four States. For example, in Queensland, the incidence of development codes for heritage zones is extremely rare — even though the new Queensland planning system is based on objective development codes. The incidence, by State, of specific development guidance for heritage zones is outlined in table 11.1.

The provision of clear policy statements outlining the approach to be taken for development applications in heritage zones is highly desirable. However, the benefits of such an approach would be greatly enhanced when combined with development standards — or at least development guidance — on what are appropriate developments within each heritage zone.

The Queensland Heritage Council, in response to the Draft Report, suggested that:

... it is essential to bring historic heritage further into the general planning mainstream so that it is dealt with in a transparent and predictable fashion – in much the same way that Commonwealth, State and local governments routinely regulate any number of other planning issues. (sub. DR378, p. 5)

¹ Overlay areas occur when a heritage overlay applies to more than one property.

Table 11.1 Incidence of development guidance for heritage zones^a

<i>State</i>	<i>Number of councils^b</i>	<i>Number that provide guidance</i>	<i>Number that do not provide guidance</i>
New South Wales	152	37	115
Victoria	79	11	68
Queensland	154	2	152
Western Australia	123	17	106
South Australia	65	6	59
Tasmania	30	0	30

^a Local council websites were searched for development code/guidance on heritage properties or heritage areas. Guidance needed to be specific so as to provide ex ante guidance for developments prior to the development application process. ^b Some councils do not maintain websites; number may be less than actual number of councils.

Source: Local councils' websites: accessed through NSW Department of Local Government; Municipal Association of Victoria, and Australian Local Government Association.

There seems significant scope for Queensland to better integrate heritage into local planning schemes, with only two out of 154 local governments providing practical heritage development guidance. A good example of such guidance is chapter 6.1 of the Toowoomba City planning scheme.

The provision of specific and practical ex ante development guidance for places in heritage zones would provide owners with timely, sound and consistent heritage advice. In order to address the inconsistency in structure, content and guidance between non-heritage and heritage zones, all governments should require local planning schemes to contain the following information for heritage zones:

- statement of significance;
- allowed developments;
- prohibited developments; and
- development standards or codes.

RECOMMENDATION 11.1

State governments should ensure that all local planning instruments include the following information for each heritage zone or area:

- *statement of significance applying to the whole area;*
- *outline of what type of use and development is permitted;*
- *outline of what type of use and development is prohibited; and*
- *development standards (or codes) that trigger automatic approval upon proposed developments meeting them.*

There are two possible implementation options, depending on the general structure of the jurisdiction's planning laws and regulations.

In jurisdictions that mandate state-wide consistent provisions in local planning schemes, the State government should ensure (through a State planning policy) that heritage zones have the same structure and provisions as non-heritage zones — including the possibility of complying development. The New South Wales Government suggested that local councils are:

... seeking leadership, guidance and resources to be able to provide property owners with more timely, sound and consistent heritage advice and assistance. (sub. DR384, p. 11)

Such leadership and guidance could be provided by the relevant State government requiring that local governments adopt consistent approaches to heritage and non-heritage zones in local planning schemes.

In jurisdictions where planning laws and regulations allow for each individual council to adopt its own structures and contents of planning schemes, it is ultimately up to each local council to implement recommendation 11.1. It would, however, be beneficial if each State's Heritage Council and State planning agency promoted and actively encouraged the adoption of recommendation 11.1 as part of best-practice conservation at the local level.

11.2 Reducing the red-tape burden of heritage zones

Should recommendation 11.1 above be adopted, there still remains the issue of the additional red-tape burden imposed by a heritage zone compared with all other zones. Most heritage zones require that a heritage impact statement be prepared for any potential development, so that any impact on the heritage significance of the zone can be assessed — this is in addition to the normal development application. While the need for a heritage impact statement for every individual property may be justified for individually listed properties — given that the heritage significance would invariably differ for each property — it may not be justified for individual properties contained in a heritage zone.

The purpose of a heritage impact statement is to outline heritage significance and analyse the effects of the proposed development. Briefly, it includes:

- statement of historical significance;
- impact the proposed development would have on historic significance; and
- proposed measures to mitigate the effect of development on heritage significance (see chapter 5).

The adoption of recommendation 11.1 would require that local governments outline, for each heritage zone designated, a statement of significance outlining the heritage significance of the area. There is no need to have separate statements for every house since a house individually may not be significant, but taken together the area is. Hence the planning instrument containing the heritage zone would include the first element of a heritage impact statement (i.e., a statement of significance that applies to every property within the zone).

In addition, the inclusion of what development is allowed without approval, what development is prohibited in the zone, and importantly, the adoption of detailed development standards, would result in clear rules governing the type, form, style, set back, height, etc of developments. These rules are designed to ensure that developments meet the objective of the zone — that is, to develop sympathetically in accordance with the heritage significance of the area. Hence the planning instrument containing the heritage zone would include the other elements of a heritage impact statement.

In other words, the implementation of recommendation 11.1 and the adoption of clear and precise development rules based on a statement of significance would negate the need for individual heritage impact statements. In order to reduce the red-tape burden imposed on property owners, the requirement for a heritage impact statement for properties not individually listed within a heritage zone should be removed.

RECOMMENDATION 11.2

Upon adoption of recommendation 11.1, State and Territory governments should remove the requirement for a Heritage Impact Statement for properties not individually listed within a heritage zone.

11.3 State planning policies and local heritage

The increasing use of State governments' mandated code assessment and assessment against pre-determined development standards (such as Australian Building Codes) has removed discretion from local councils with respect to many development decisions. However, such a trend has not been mirrored for heritage places under local planning schemes. Heritage is one of the few areas in planning where local councils still retain significant levels of discretion as to the approval of developments.

This is highlighted where State planning policies allow development in local government areas that otherwise would not permit it. For example, a State policy

may mandate that medium density development is appropriate in specified local government areas where the local governments have not allowed such density in their local planning scheme (see, for example, box. 11.1).

Box 11.1 Ku-ring-gai case study

The New South Wales planning system provides for State Environment Planning Policies (SEPP), which can override local planning schemes. An example of this is the NSW SEPP No. 53 — applying only to the Ku-ring-gai local government area — which aims to facilitate urban infill through multi-dwelling houses.

However, SEPP No. 53 has several caveats regarding multi-dwelling development where it may affect places of local heritage significance. This has the effect of making heritage protection the only avenue through which local councils can reject multi-dwelling development. Not surprisingly, this has magnified the incentive to use heritage conservation as a mechanism to circumvent State-imposed development rules. An example of this is *Rahmani v Ku-ring-gai Council* [2004] NSWLEC 595 where the courts allowed Ku-ring-gai local council to reject a development allowed under SEPP No. 53 because of its effect on surrounding heritage places.

Several participants also commented on this. Saman Rahmani noted that:

... heritage has become a tool. It is used by some councillors to stop development that is not to their liking. In my case to stop my dual occupancy development and the State Environmental Planning program No. 53, also known as SEPP 53. (DR trans., p. 38)

Similarly, Zeny Edwards, an advocate for heritage protection in Ku-ring-gai, commented that:

... some councillors are hiding behind heritage to prevent development, and they're painting this very negative picture of heritage as anti-development, where it really isn't. (DR trans., p. 64)

This limitation on local planning controls can create a perverse incentive for the local government to try and by-pass the State mandated development policy. If the State policy allows development subject only to its potential effect on local heritage, there is an incentive for the local government to use the 'heritage card' for no other reason than to by-pass the unwanted State policy. Several participants raised concerns that heritage conservation is used in such a manner. For example, Councillor Green from Rockdale Council in New South Wales had no doubt that heritage is 'a means and a ways to stop development' (DR trans., p. 32). Similarly, Peter Jenson, a town planner from South Australia, noted that the 'heritage card' is often used for non-heritage amenity purposes (DR trans., p. 353).

Australia ICOMOS shared the Commission's concerns that local heritage protection is often used for non-heritage purposes (DR trans., p. 610). Australia ICOMOS

commented that this may be due to a lack of positive restraints for amenity considerations:

... very often the heritage card is played where in fact urban amenity is the issue rather than heritage. (DR trans., p. 609)

All State governments have the ability to over-rule local planning schemes through their relevant planning laws and regulations. If a State government chooses to do so (for whatever objective it sees fit), it should do so in a manner that does not create a perverse incentive for local councils to abuse heritage conservation in order to undermine the State policy. Abuse of heritage conservation in this manner has a significant negative effect on the community's acceptance of the heritage conservation objective.

RECOMMENDATION 11.3

State governments should ensure that State planning policies do not contain local heritage exceptions which could be used to undermine the objectives of the State planning policy.

11.4 Designation of State-significant heritage zones

Some Heritage Acts allow for the relevant Heritage Council to declare an area a heritage zone, and hence be subject to heritage restrictions. State Heritage Offices generally have a choice as to whether they wish to pursue a State listing of an area, or to pursue appropriate development controls through the planning system. See box 11.2 for an example of this interplay.

In the Commission's view, heritage zones should be treated consistently with other residential planning zones. As such, it seems incongruous to allow the State to over-rule local government planning powers without using the mechanisms already available to it through State Planning Acts. In other words, should the State wish to over-rule a local government's planning decision not to heritage list an area, it should be done through the adoption of a State planning policy, rather than through a separate decision-making process at the State Heritage Office.

When an area is protected through State heritage listing, the Heritage Office must be consulted for all works and developments that may affect heritage values of the area. The objective of this is to ensure that developments within a heritage area do not detract from the area's heritage values.

Box 11.2 **Braidwood case study**

There has been much debate over the merits of heritage-listing the rural town of Braidwood and its surroundings. Irrespective of whether it should or should not have been listed, the Braidwood experience provides an example of the interaction between State Heritage and local council planning powers.

In 2005, the NSW Heritage Office proposed to place Braidwood and its surrounds onto the NSW State Heritage Register. The NSW Heritage Office stated that the push for State listing was in response to what was considered inappropriate delay from the local council in developing an 'appropriate framework for managing the heritage significance of the town' (sub. 188, p. 14).

Upon listing, the NSW Heritage Office would become the de facto planning body for Braidwood and the surrounding area. Although the Heritage Office would delegate many of its functions back to the local council, the Heritage Office would determine applications 'for new developments, major renovations, subdivisions and demolitions' (sub. 188, p. 15).

Some local residents were concerned not only about the effect of heritage listing on land use, but also about a Sydney-based Heritage Office controlling development over rural Braidwood (DR trans., pp.614–23).

Following community action, the proposed protection of Braidwood and its surrounds was being pursued through the local planning scheme process — via the development of a Braidwood Development Control Plan.

Save Braidwood Inc informed the Commission that:

The state of the proposal now is that the local council is working on a development control plan. Minister Sartor [NSW Planning Minister] said that they could have another month to do that ... We hope that Minister Sartor will be happy that the heritage of Braidwood can be largely looked after by the DCP, and so the involvement of the Heritage Office should not be as great as the blanket listing originally proposed. (DR trans., p. 621)

On 30 March 2006, Minister Sartor announced that Braidwood and its surrounds were to be heritage listed on the State Register.

Sources: NSW Heritage Office (sub. 188); Save Braidwood Inc. (DR trans).

This objective would also be achieved through the making of appropriate development control plans. In addition, the use of the planning processes, rather than State heritage powers, ensures effective consultation with the local community, certainty as to future development opportunities and restrictions, and well accepted processes.

Further, even in unlikely cases where a local council is unwilling to negotiate the adoption of appropriate development guidance, there is scope for the State Heritage

Office, through the planning system, to advise the State government to issue a State planning policy to conserve the heritage values of the area.

The Royal Australian Institute of Architects, responding to the Draft Report, commented that:

Conservation areas of State significance need to be managed by and with State government involvement, and not delegated to planning schemes governed by resource-poor local government. State governments are better placed to provide expertise on state and strategic matters, and should be in a position of leadership with regard to these roles and liaise and consult with local government accordingly. (sub. DR392, p. 4)

The Commission agrees with the view that the State government should be involved in effective development guidance over areas that comprise State heritage values. However, rather than duplicating existing planning processes through State Heritage Acts, the conservation of heritage areas would be more effectively achieved through proper usage of procedures currently available through the planning system.

This does not mean leaving the making of development guidance for State-significant heritage areas solely to the local council. Rather, it would involve negotiation, advice and assistance between the State and local governments and the local community, in the development of appropriate planning guidance — as provided by planning laws and regulations.

RECOMMENDATION 11.4

State Heritage Acts should not contain powers to proclaim heritage zones or areas. Heritage zones and areas should only be imposed under the State's planning laws and regulations.

11.5 Application of heritage controls to non-heritage places

Most State and Territory Planning Acts include the conservation of historic places (or the built environment) as one of several over-arching objectives. In addition, historic heritage is also one of several broad considerations when assessing development applications. The Commission and all participants in this inquiry support the need to conserve Australia's historic heritage places. There is no doubt that such support exists.

However, these broad provisions can be used to apply heritage restrictions on properties that had not been previously assessed as heritage significant (for a full discussion of this issue, see section 5.4). The relevant policy question is whether the

use of such broad heritage considerations adds to the conservation objective. In other words, do these legislative provisions result in a net benefit to the Australian community.

Specific heritage controls apply to:

- individually listed places;
- places with a heritage zone; and
- places in the vicinity of a heritage place or zone.

The need for residual ‘catch-all’ conservation provisions may have been appropriate when heritage conservation was first introduced and the listing process was immature and under-developed. However, when existing specific heritage controls can apply to up to 80 per cent of all properties in a local government area, such an argument no longer holds (for example, see City of Port Phillip and City of Yarra). David Logan, a prominent heritage architect and member of the NSW Heritage Council, commented that:

... by and large, the vast majority of places that are of heritage significance have been listed already. As time goes on, more will be added, but that will be a relatively small proportion compared to the amount that are already listed. (DR trans., p. 89)

Since most places of heritage significance are already covered by some kind of heritage protection (be it zoned, individual or vicinity), there appears to be little practical benefit flowing from general provisions. Further, the ability of Courts to ‘impose’ statutory controls over non-heritage places undermines the role of local councils, under the principle of subsidiarity, as representatives of the local community’s willingness to conserve heritage places. Where the relevant local council has decided that a place should not be listed, even though it may have some heritage values, it would appear questionable practice to allow heritage proponents to undermine that decision through judicial appeals (for example, Cross 1999).

RECOMMENDATION 11.5

State and Territory governments should modify their planning legislation and regulations to remove any requirement to take heritage considerations into account in relation to any individual property not already listed as locally significant, other than those requirements relating to heritage zones.

This recommendation does not result in removal of current vicinity protections in planning schemes. Some councils, in response to the Draft Report, interpreted it this way (for example, Woollahra City Council (sub. DR375); Campbelltown City Council (sub. DR371); and Blacktown City Council (sub. DR337)). In saying that, however, vicinity protection can result in some perverse outcomes — for example,

Willoughby Council (sub. DR393, p. 5) noted that that some councillors are concerned that some owners may seek heritage listing so as to prevent development on adjoining blocks. Such abuse can only be prevented through diligent identification of ‘true’ heritage properties, and a commitment not to use heritage protection for non-heritage purposes.

APPENDIXES

A Conduct of the inquiry

A.1 Introduction

Following receipt of the Terms of Reference, the Commission placed advertisements in national and metropolitan newspapers, and other appropriate publications, inviting public participation in the inquiry. Information about the inquiry was circulated to people and organisations likely to have an interest in it. The Commission released an Issues Paper in May 2005 to assist parties in preparing their submissions. It then held an extensive round of informal discussions with a wide range of heritage industry stakeholders, to gain background information and a better understanding of the issues.

An initial round of public hearings was conducted in July and August 2005.

The Commission released a Draft Report in December 2005 and held a second round of public hearings in January and February 2006 to discuss its draft findings and recommendations.

Information about the progress of the inquiry was circulated to those who expressed an interest. This information was also made available on the Commission's website (<http://www.pc.gov.au/currentprojects>).

In September and October 2005, the Commission conducted a survey of all local governments across Australia, to gather information on their heritage conservation activities (see appendix B).

A.2 Submissions

The Commission received a total of 416 submissions — 192 prior to the release of the Draft Report and a further 224 after its release. A list of submissions is given in table A.1. All submissions with the prefix 'DR' were received after the release of the Draft Report.

Table A.1 List of submissions

<i>Participant</i>	<i>Submission no.</i>
Abbott, Dr G J	169
ACT Heritage Council	147, DR267
Adam, Paul	DR283
Adelaide Arcade Pty Ltd	34
Adelaide City Council	115, DR314
Adelaide Hills Council	DR319
Adelaide Parklands Preservation Association Inc	DR218
Alexander, John	167
Anderson, Alan	185
Anderson, Ted	DR265
Anderson, Diana	DR202
Anglican Church of Australia – Diocese of Tasmania	160
Armitage, Dr Lynne	182
Arms Collectors Guild of New South Wales	56
Artlab Australia	140
Association of Australian Ports and Marine Authorities Inc	DR296
Astronomical Society of Victoria Inc	DR302
Australasian Institute for Maritime Archaeology	138
Australasian Society for Historical Archaeology	DR330
Australia ICOMOS	122, DR255, DR295
Australian Council of National Trusts	40, DR237
Australian Heritage Council	118, 186, DR258
Australian Local Government Association	DR254
Authentic Heritage Services Pty Ltd	DR268
Balderstone, Susan	99
Balmain Precinct Committee	142
Banyule City Council	96
Barossa Council	DR354, DR398
Baskerville, Bruce	DR308
Bass Coast Shire Council	DR234
Bathurst Information and Neighbourhood Centre Inc	82
Baw Baw Shire Council	DR231
Bayside City Council	DR388
Bell, Christian	156
Bendigo Pottery	65

Table A.1 continued

<i>Participant</i>	<i>Submission no.</i>
Berger, Sue	21
Berry, Heather	87, DR344
Blacktown City Council	DR337
Bowie, I J S	6
Boyd, John and Janet	8, 166, 189, DR196, DR373
Braidwood & District Historical Society Inc	173*
Braidwood Historical Society	36
Braidwood Residents' Association	54
Braithwaite, Nicholas	DR402
Bramley, Richard	4, DR217
Brew, Don	DR215
Brighton Residents For Urban Protection	105
Brine, Dr Judith	DR256
Broken Hill City Council	12
Brown, Cr Sandra	DR355
Brown, P J	DR230
Bruny Island Historical Society	53
Buninyong & District Historical Society	135
Burnside Residents Action Group	DR298
Burwood and District Historical Society	102
Campbelltown City Council	DR371
Carlton Gardens Group	129
Carroll, Anne and Janine Kitson	126, DR216, DR276
Carter, Carlsa	DR353
Casley, Peter and Jenny	DR211
Castle Hill Historic Site Community Committee	DR224, DR327
Central Coast Community Forum	DR326
Chairs of the Heritage Councils of Australia and New Zealand	139, 187, DR271
Chapman, Barry	141
Christian Heritage Australia	DR274
City of Ballarat	100
City of Boroondara	DR406
City of Burnside	DR365
City of Canada Bay Council	DR270

Table A.1 continued

<i>Participant</i>	<i>Submission no.</i>
City of Casey	177
City of Fremantle	DR389
City of Glen Eira	DR273
City of Holdfast Bay	DR293
City of Maribyrnong	101
City of Melbourne	18, DR357
City of Mitcham	75, DR236
City of Monash	DR320
City of Moreland	DR284
City of Nedlands	DR275
City of Newcastle	78
City of Norwood, Payneham and St Peters	DR277
City of Onkaparinga	DR251
City of Perth	67, DR341
City of Port Adelaide, Enfield	DR 335
City of Port Phillip	62, DR 240
City of Prospect	DR404
City of Ryde Council	27
City of Stonnington	81
City of Subiaco	DR412
City of Sydney	143
City of Sydney Combined Residents Action Groups	DR370
City of West Torrens	DR263
City of Unley	DR415
City of Yarra	DR346
Clark, Robert	55
Coalition Chippendale Community Groups	DR329
Collections Council of Australia Ltd	85
Compatriots Movement, Polish Ex-Servicemen's Association Sub-Branch No 8 and Polish Group of Radio 4EB FM 98.1	163
Conservation Council of South Australia Inc	84, DR311
Conservation Solutions	190
Construction, Forestry, Mining and Energy Union – Construction and General Division	24
Convict Trail Project Inc	13, DR348
Coorparoo Christian Assembly	DR289

Table A.1 continued

<i>Participant</i>	<i>Submission no.</i>
Corporation of the Town of Walkerville	DR349
Cox, Henly J	DR291
Cranswick-Smith, Graham	DR282
Crilly, Kath	26, DR246
Crow, Vincent	171, DR366
Cummins, E	47
Danvers, Ron	DR 259
d'Arcy, Matthew	1
Davidson, Josie	DR405
Davies, John	23
Davis, Assoc Prof Bruce	121
Deodhar, Vinita	22
Department of Defence	52, DR328
Department of the Environment and Heritage	154, 183, DR304
Dingle, Margaret	DR361
Docomomo Australia Inc	58
Dwyer, John (QC) and Schapper, Dr Janet	DR300
Eagle Farm Community Projects	DR223
Edwards, Zeny	11, DR212
Engineering Heritage Australia	93
Engineering Heritage Committee, Tasmania Division Engineers Australia	29
English Heritage	35
Environmental Defenders Office (SA) Inc	117, DR299
EPBC Unit Project	46
Evans, Ian	20
Falkinger, R	128
Federation of Australian Historical Societies Inc	69, DR376
Frankos, D, B and M	DR292*
Fremantle Ports	DR253
Frew, Bill and Helen	DR401
Friends of Linnwood	51
Friends of the City of Unley Society Inc	DR307
Friends of the Quarantine Station and North Head Sanctuary Foundation	144
Glebe Point Residents Group	DR248

Table A.1 continued

<i>Participant</i>	<i>Submission no.</i>
Gold Coast City Council	42
Goligher, Robert	DR235
Gordon Grimwade & Associates	174
Goulburn Mulwaree Council	DR301
Government of South Australia	164
Graeme Butler and Associates	DR206
Graham Brooks and Associates Pty Ltd	72
Gray, Ben	DR339
Green, Cr Gary	DR199, DR229*
Greiner, Wendy	DR303
Haikerwal, Deepak	DR280
Hanlon, Des	33
Hannah, Helen	17
Hay Shire Council	5
Hemer, Christine	DR247
Henderson, K	90
Heritage Council of Victoria	178, DR242
Heritage Council of Western Australia	59, DR390
Heritage Group of Leichhardt District	41
Heritage Victoria	184, DR385
Hickson, Barbara	137
Hipper, John	DR200*
History Council of NSW	94
Hobart City Council	70, DR407
Hornsby Shire Council	176
Hornsby Shire Historical Society	60, DR350
Howe, Prof Renate	106
Hubert Architects	DR257
Hunter Heritage Network	DR395
Hunters Hill Council	DR394
Hutchison, David	2
Indigo Shire Council	DR266
Interim Namadgi Advisory Board	175
Ipswich City Council	DR332
Ivan McDonald Architects	30

Table A.1 continued

<i>Participant</i>	<i>Submission no.</i>
Iwanicki, Iris	DR205
Jack, Judy and Fred Schmidt	DR322
Jaycees Community Foundation Inc.	110
Jean, Amanda	120
Jensen Planning and Design	DR225
Joint Submission – Armidale Dumaresq Council, Guyra Shire Council, Uralla Shire Council, Walcha Council	DR318
Kensington Residents' Association Inc	DR309
Kershaw, Jack	DR203
Kew Cottages Coalition Inc	191, DR387
Kosciuszko Huts Association Inc	119
Ku-ring-gai Council	DR351
Lancefield Old Bank B&B	91
Leong, Judy	DR323
Lidcombe Heritage Group Inc	146
Local Government Association of NSW and Shires Association of NSW	179
Local Government Association of South Australia	DR382
Lockhart, Suzanne	170*
Logan, David	DR201
Logan, Prof William	107
Lotterywest (Community Funding)	39
Lovell Chen Pty Ltd	130
Ludlow, Christa	DR238
Macedon Ranges Residents' Association Inc	DR343
Maitland City Council	103, DR408
Makris Group of Companies	DR250
Maling, Jennifer	15, DR213
Manly Council	DR310
Manly, Warringah & Pittwater Historical Society Inc	50, DR333
Manningham City Council	DR391
Marks, R and M Adams	DR226
Marriner Theatres	161
Marshall, Duncan	44, 158
McCarthy, Betty	168
McConville, Dr Chris	DR315
McDougall & Vines Pty Ltd	DR286

Table A.1 continued

<i>Participant</i>	<i>Submission no.</i>
McIntosh, Noel	DR383*, DR398
McNamara, Shirley	DR243
Mechanics Institute of Victoria Inc	89
Melotte, Dr Barrie	111
Mews, R E and W K	123
Mitchell, Andrew and Phillip Chapman	DR312
Moore, Evonne	DR290
Mornington Peninsula Shire Council	DR386
Morris, Albert James	9
Mosley, Dr Geoff	DR197
Mosman Municipal Council	DR324
Mount Prior Vineyard	DR252
Mt Druitt Historical Society	DR363
Mt Kosciuszko Inc	92
Mulvaney, D J	10
Municipal Association of Victoria	66, DR367
Murphy, Ross	31
Museum Victoria	19
Museums Australia	95
National Capital Authority	153
National Cultural Heritage Forum	126, DR338
National Trust of Australia (NSW)	172, 180, DR358
National Trust of Australia (Tasmania)	131
National Trust of Australia (Victoria)	148, DR272
National Trust of Australia (WA)	108
National Trust of Queensland	16
Nepean Historical Society Inc	38, DR221
Newcastle City Council	DR396
Nillumbik Shire Council	DR359
Northern Territory Government	192
Northern Territory Tourist Commission	DR411
Norwood, Payneham, St Peters Residents Rights Groups	DR316
NSW Government	157, 188, DR384
Old Parliament House	124
Organ Historical Trust of Australia	7

Table A.1 continued

<i>Participant</i>	<i>Submission no.</i>
Owens, L	DR219
Parke, Lou	DR285
Parkville Association Inc	DR260
Parramatta City Council	DR379
Pausacker, Ian	109
Payne, K W	DR288
Pennay, Bruce	28
Perrigo, Tom	162
Petrie, Lesley-Anne	DR362
Phoenix Aero Club	133
Pine Rivers Shire Council	DR377
Pitt, Ian	DR194
Pittwater Council	DR356
PL: the Planning Action Network	112
Planning Institute of Australia	132, DR279
Polish Community Council of Australia and New Zealand	151, DR207
Polish Historical Institute in Australia	63
Polish Scouting Association ZHP in Australia Inc	155
Portland Historic Buildings Restoration Committee Inc	DR403
Port Melbourne Historical and Preservation Society Inc	DR287
Potts, David	DR249
Professional Historians Association (NSW)	DR306
Professional Historians Association (SA) Inc	DR261
Property Owners' Association of Victoria Inc	134, DR340
Protectors of Public Lands Victoria Inc	DR313
Public Schools Club Inc	DR294
Queensland Government	DR195, DR416
Queensland Heritage Council	DR378
Ragless, Maggy	DR368
Rahmani, Saman	DR214
Rajendran, Maria	DR317
Randwick City Council	48
Real Estate Institute of South Australia	DR410
Reid, James	181
Residents 3000 Inc	125

Table A.1 continued

<i>Participant</i>	<i>Submission no.</i>
Residents for Environment and Character Conservation	DR374
Rounsefell, Dr Vanda	DR244
Royal Australian Historical Society	37
Royal Australian Institute of Architects	68, DR392
Royal Historical Society of Queensland	61
Royal Historical Society of Victoria	79
Rypkema, Donovan	DR233
Sammut, Vincent	97
Save Braidwood Inc	113, 209, DR281
Scott, Max	DR210
Sea Freight Council of Western Australia	DR399
Shawcross, John	77
Shire of York	57, DR193
South Australian Government	DR352
South Australian Tourism Commission	DR414
Southern Midlands Council	71
Starrs, Dr C D	DR381
Stewart, Christine	25
Stewart-Zerba, Annabelle	DR400
Stock, H M P	DR262
Stocker, Margrit	3
Strathfield Council	74, DR325
Strathfield Residents' Action Group	DR245
Summit Air Travel	DR232
Sydney Engineering Heritage Committee, Engineers Australia	14
Tasmanian Government	136
The Australian Academy of the Humanities	49, DR345
The Australian Garden History Society	45, DR204
The Balmain Association Inc	32
The Glebe Society Inc	114, DR334
The Haberfield Association Inc	DR372
The Hills District Historical Society Inc	DR278
The North Adelaide Society Inc	DR220
The Reynell Business & Tourism Association Inc	DR369

Table A.1 continued

<i>Participant</i>	<i>Submission no.</i>
Toon, John	DR239
Toowoomba City Council	DR297
Tourism Council Tasmania	149
Town of Vincent	43, DR305
Traeger, Neil	DR331
University of Adelaide, Dept of Finance and Infrastructure	DR336
Uniting Church of Australia	76, DR241
Urban and Regional Planning Solutions	DR364
Urban Development Institute of Australia	116
Urban Development Institute of Australia (WA Division)	83
Victorian Government	DR413
Vines, Gary	104, DR198, DR264
WA Division of the Property Council of Australia	165
Walter Burley Griffin Society Inc	DR321
Warms, Tanya and Elizabeth Hore	159
Warringah Council	DR347
Wattle Range Council	DR409
Western Australian Local Government Association	73, DR380
Western Australian Planning Commission	98
Western Australian Museum	80
Western Sydney Regional Organisation of Councils Ltd	DR360
White, Richard	152
Whitehorse City Council	DR342
Whitlam, Christine	88
Whitmore, Trixie	DR228
Wiffen, Graeme	DR208, DR227
Willoughby City Council	DR393
Willoughby District Historical Society	86
Winter-Irving, John and Ona	150
Winter-Irving, Morna	145
Woollahra Council	DR375
Woollahra History and Heritage Society Inc	DR397
Young, Dr Linda	64
Young, David	127, DR269
Zanghi, Stefan	DR222

* Submission includes confidential information.

A.3 Informal discussions and visits

During the course of the inquiry more than 60 meetings were conducted covering each State and Territory, including regional visits in New South Wales and Victoria.

Australian Capital Territory

Australian Council of National Trusts

Australian Council of National Trusts: House Museums/Sharing
Significant Sites Workshop

Australian Local Government Association

Department of the Environment and Heritage

Environment ACT – ACT Heritage Unit

Michael Pearson – Heritage Management Consultant

The Royal Australian Institute of Architects

New South Wales

Bathurst Community Roundtable

Bathurst Goldfields

Bathurst National Trust

Bathurst Regional Council

Blayney Shire Council

Cabbone Shire Council

Canowindra Community Roundtable

Central NSW Tourism

Cowra and District Historical Society

Cowra City Council

Cowra Tourism Corporation

Enterprise Services

Experienced Hands Volunteer Organisation

Heritage Council of NSW

Local Government Association of NSW

National Trust Lithgow

National Trust of Australia (NSW)

NSW Heritage Office

NSW National Parks and Wildlife Service

Orange and District Historical Society

Orange City Council
Orange National Trust
Property Council of Australia

Queensland

Department of Premier and Cabinet
Environmental Protection Agency
Local Government Association of Queensland Inc
National Trust of Queensland
Office of the Minister for Environment
Property Council of Australia (Qld Division)
Queensland Heritage Council
Rockhampton City Council
Sustainable Tourism Cooperative Research Centre
Toowoomba City Council
Urban Development Institute of Australia

South Australia

Adelaide City Council
Department of Environment and Heritage
Department of Premier and Cabinet
Heritage Authority of South Australia
National Trust of Australia (SA)

Tasmania

Cooperative Research Centre for Sustainable Tourism
Department of Infrastructure, Energy and Resources
Department of Premier and Cabinet
Franklin House – Entally – Clarendon Homestead – Woolmers Estate
Heritage Tasmania
Hobart City Council
Independent Tourist Operators of Tasmania
Institute of Architects (Tasmanian Division)
Launceston Chamber of Commerce
Launceston City Council

Local Government Association of Tasmania
Low Head Pilot Station
National Trust of Australia (Tasmania)
Northern Midland Council
Northern Tasmanian Regional Development Board
Parks and Wildlife Service
Planning Institute of Australia (Tasmanian Division)
Real Estate Institute of Tasmania
Tasmanian Conservation Trust
Tasmanian Heritage Council
Tasmanian Tourism Council
Tourism Tasmania

Victoria

Australia ICOMOS
Ballarat City Council
Ballarat Historical Society
City of Greater Bendigo
Conservation Volunteers Australia – Castlemaine
Department of Premier and Cabinet
Heritage Council of Victoria
Heritage Victoria
Mount Alexander Shire
National Trust of Australia (Victoria)
Sovereign Hill Museum
University of Ballarat

Western Australia

City of Fremantle
City of Perth
Department of Housing and Works
Department of Planning and Infrastructure
Heritage Council of Western Australia
National Trust of Australia (WA)
Property Council of Western Australia
Urban Development Institute of Australia (WA)

WA Local Government Association
WA Planning Commission

A.4 Public hearings

The Commission held two rounds of public hearings, covering 134 participants in July and August 2005, and then January and February 2006. A list of hearing participants is given in table A.2. A 'DR' prefix means Draft Report transcript.

Table A.2 **Participants at the first round of public hearings**

<i>Participant</i>	<i>Transcript page no.</i>
Brisbane Hearing – 25 July 2005	
Ian Evans	3 - 16
Ivan McDonald Architects	17 - 29
Kangaroo Point Residents Association and Save our Brisbane	30 - 50
Christine Whitlam	51 - 58
National Trust of Queensland	59 - 86
Queensland Transport	87 - 88
Darwin Hearing – 28 July 2005	
National Trust of Northern Territory	90 - 114
Perth Hearing – 1 August 2005	
Western Australian Planning Commission	116 - 133
Town of Vincent	134 - 144
National Trust of Australia (WA)	145 - 160
Mount Kosciuszko Inc	161 - 170
Des Hanlon	171 - 180
The Jaycees Community Foundation	181 - 198
Shire of York	199 - 211
Margaret Carmody	212 - 219
Lotterywest	220 - 230
Barrie Melotte	231 - 244
Adelaide Hearing – 3 August 2005	
Artlab Australia	247 - 260
Adelaide Arcade Pty Ltd	261 - 271
Kath Crilly	272 - 286

Table A.2 **continued**

<i>Participant</i>	<i>Transcript page no.</i>
Heritage Preservation Association	287 - 298
Tim Simpson	299 - 310
Cultural Heritage Centre for Asia and the Pacific	311 - 325
Kelly Henderson	326 - 336
Collections Council of Australia	337 - 350
Kelly Henderson	351 - 353

Melbourne Hearing – 8 August 2005

Australian Heritage Council	356 - 376
Australian Council of National Trusts	377 - 398
National Trust of Australia (Victoria)	399 - 412
Assoc Prof Renate Howe	413 - 421
Municipal Association of Victoria	422 - 431
Marriner Theatres	432 - 440
Susan Balderstone	441 - 450
Residents 3000 Inc and Carlton Gardens Group	451 - 461
Museum Victoria	462 - 469
Roman Catholic Trust Corporation	470 - 478

Melbourne Hearing – 9 August 2005

Lancefield Old Bank B&B	480 - 489
Lovell Chen Architects and Heritage Consultants	490 - 503
Brighton Residents for Urban Protection	504 - 516
Mount Alexander Shire Council	517 - 525
RBA Architects and Conservation Consultants, and Ausheritage	526 - 535
Organ Historical Trust of Australia	536 - 548
Property Owners Association of Victoria	549 - 564
Engineering Heritage Victoria	565 - 574
Uniting Church of Australia	575 - 586
Mechanics Institutes of Victoria Inc	587 - 598
Lovell Chen Architects and Heritage Consultants	599 - 609
Peter Shephard	610 - 611

Table A.2 **continued**

<i>Participant</i>	<i>Transcript page no.</i>
Hobart Hearing – 12 August 2005	
Tasmanian Government	614 - 636
National Trust of Australia (Tasmania)	637 - 656
Hobart City Council	657 - 674
Tourism Council of Tasmania	675 - 684
Barry Chapman	685 - 693
Graham Abbott	694 - 699
Guy Parker	700
Engineering Heritage Tasmania	701 - 705
Anglican Church	706 - 713
Canberra Hearing – 15 August 2005	
Planning Institute of Australia	717 - 728
Save Braidwood Inc Group	729 - 741
Kosciusko Huts Association	742 - 755
National Trust of Australia (ACT)	756 - 766
David Young	767 - 775
ACT Heritage Council	776 - 790
Ian Wilson	791 - 799
Duncan Marshall	800 - 814
Royal Australian Institute of Architects	815 - 830
Engineering Heritage Australia	831 - 834
EPBC Unit Project	835 - 841
Sydney Hearing – 18 August 2005	
Chairs of Heritage Councils of Australia and New Zealand	844 - 868
NSW Heritage Office	869 - 883
North Head Sanctuary Foundation and Friends of Quarantine Station	884 - 897
Zeny Edwards	898 - 907
Australia ICOMOS	908 - 933
Phoenix Aero Club	934 - 941

Table A.2 **continued**

<i>Participant</i>	<i>Transcript page no.</i>
John Boyd	942 - 951
Australian Garden History Society	952 - 959
Lidcombe Heritage Group	960 - 969

Sydney Hearing – 19 August 2005

Graham Brooks and Associates	971 - 982
Balmain Precinct Committee	983 - 986
National Trust of Australia (NSW)	987 - 1007
Wilkie Architects	1008 - 1019
Department of the Environment and Heritage	1020 - 1032
Australian Heritage Institute Inc	1033 - 1041
City of Sydney	1042 - 1054
Convict Trail Project Inc	1055 - 1061
Richard White	1062 - 1071
Heritage Futures	1072 - 1090
John Boyd	1091
East Balmain (Precinct 2)	1092 - 1093

Table A.3 **Participants at the second round of public hearings**

<i>Participant</i>	<i>Transcript page no.</i>
--------------------	----------------------------

Sydney Hearing – 31 January 2006

National Trust of Australia (NSW)	DR3 - 25
Gary Green	DR26 - 37
Saman Rahmani	DR38 - 47
City of Sydney	DR48 - 60
Zeny Edwards	DR61 - 68
Castle Hill Historic Site Community Centre	DR68 - 81
Christian Heritage Australia	DR82 - 86
David Logan	DR87 - 108
Anne Carroll and Janine Kitson	DR109 - 122
Jean Posem	DR123
Galina Shein	DR124

Table A.3 **continued**

Participant *Transcript page no.*

Sydney Hearing – 1 February 2006

Don Brew	DR127 - 140
John Boyd	DR141 - 149
Jennifer Maling	DR150 - 162
New South Wales Local Government Association	DR163 - 177
Summit Air Travel	DR178 - 183
Kate Clark	DR184 - 190
Darryl Allen	DR191 - 192

Brisbane Hearing – 3 February 2006

Polish Community Council of Australia and New Zealand	DR195 - 210
Save Our Brisbane Association and Kangaroo Point Residents' Association	DR211 - 225
Aerospace Heritage Queensland and Eagle Farm Community Heritage Project and Victoria Barracks Historical Society	DR226 - 242
Save Our Brisbane Association and Kangaroo Point Residents' Association	DR243 - 252

Adelaide Hearing – 10 February 2006

Bishop Ian George	DR255 - 261
Jane Lomax-Smith	DR262 - 275
Evonne Moore	DR276 - 281
Australian Council of National Trusts	DR282 - 311
Mark Richards and David Miller	DR312 - 320
Gabrielle Overton	DR321 - 330
Jillian Hume and Paul Mellor	DR331 - 340
Peter Jensen	DR341 - 355
Shirley McNamara	DR356 - 362
Friends of the City of Unley Society Inc	DR363 - 374
Wanda Chesser and Murray Chesser	DR375 - 380
Hugh Wigg	DR381 - 383
Julia Evans	DR384
Shirley McNamara	DR385 - 386

Table A.3 **continued**

Participant *Transcript page no.*

Melbourne Hearing – 14 February 2006

Gary Vines	DR389 - 404
Astronomical Society of Victoria	DR405 - 417
Protectors of Public Lands (Victoria)	DR418 - 425
Jim Sawyer	DR426 - 442
Margaret Carmody (by phone)	DR443 - 453

Melbourne Hearing – 15 February 2006

City of Port Phillip	DR455 - 473
Australian Heritage Institute	DR474 - 489
Heritage Council of Victoria	DR490 - 513
Uniting Church in Australia	DR514 - 532
Maria Rajendran	DR533 - 541

B Survey of local governments

B.1 The survey

This survey was conducted by the Commission to better understand local government involvement in historic heritage conservation. Initially, a draft survey questionnaire was developed and distributed to State government heritage agencies and the Local Government Associations of Queensland and South Australia for comment. The Australian Bureau of Statistics also provided useful suggestions on how to make the survey more user-friendly. The survey questionnaire was then sent to nine local councils for testing. Based on their feedback, further changes were made before the questionnaire was sent to all councils in September 2005. Councils were informed that all responses would be treated confidentially and that the information provided would not be reported in a way which could identify individual local government areas.

The response rate varied by State (from 60 per cent in Western Australia to 93 per cent in South Australia) but overall, almost three-quarters of councils responded (table B.1). The Commission would like to express its appreciation to all those who participated in the survey. The responses revealed a number of insights into the conservation activities of local governments (who are responsible for conservation policy for most historic heritage places). In particular, it revealed a diverse range of approaches by local governments to historic heritage conservation.

B.2 Historic heritage places in local government areas

Of those councils which responded, 75 per cent have a statutory list. In aggregate, these councils list over 76 000 individual places and 1770 heritage areas. There were marked differences between the proportions of councils with a list in each State (table B.2). In New South Wales and Victoria, over 90 per cent of responding councils had a list. In Queensland, less than half those councils responding had a list.

Table B.1 Local government historic heritage survey, response rate by State

<i>State</i>	<i>Total sent</i>	<i>Total response</i>	<i>Response rate</i>
	No.	No.	%
New South Wales	152	130	86
Victoria	79	64	81
Queensland	157	98	62
Western Australia	144	86	60
South Australia	69	64	93
Tasmania	29	22	76
Totals	630	464	74

Source: Productivity Commission Survey.

Across all States, some 10 per cent, on average, of locally significant historic heritage places were council owned. However, some individual local government areas diverged significantly from this average. In Queensland and Western Australia, at least one council reported that its list comprised entirely council-owned places. In contrast, in Tasmania and South Australia, the maximum proportion of council-owned listed places was one-third of listed places or less.

Table B.2 Local government listed places, by State; survey responses

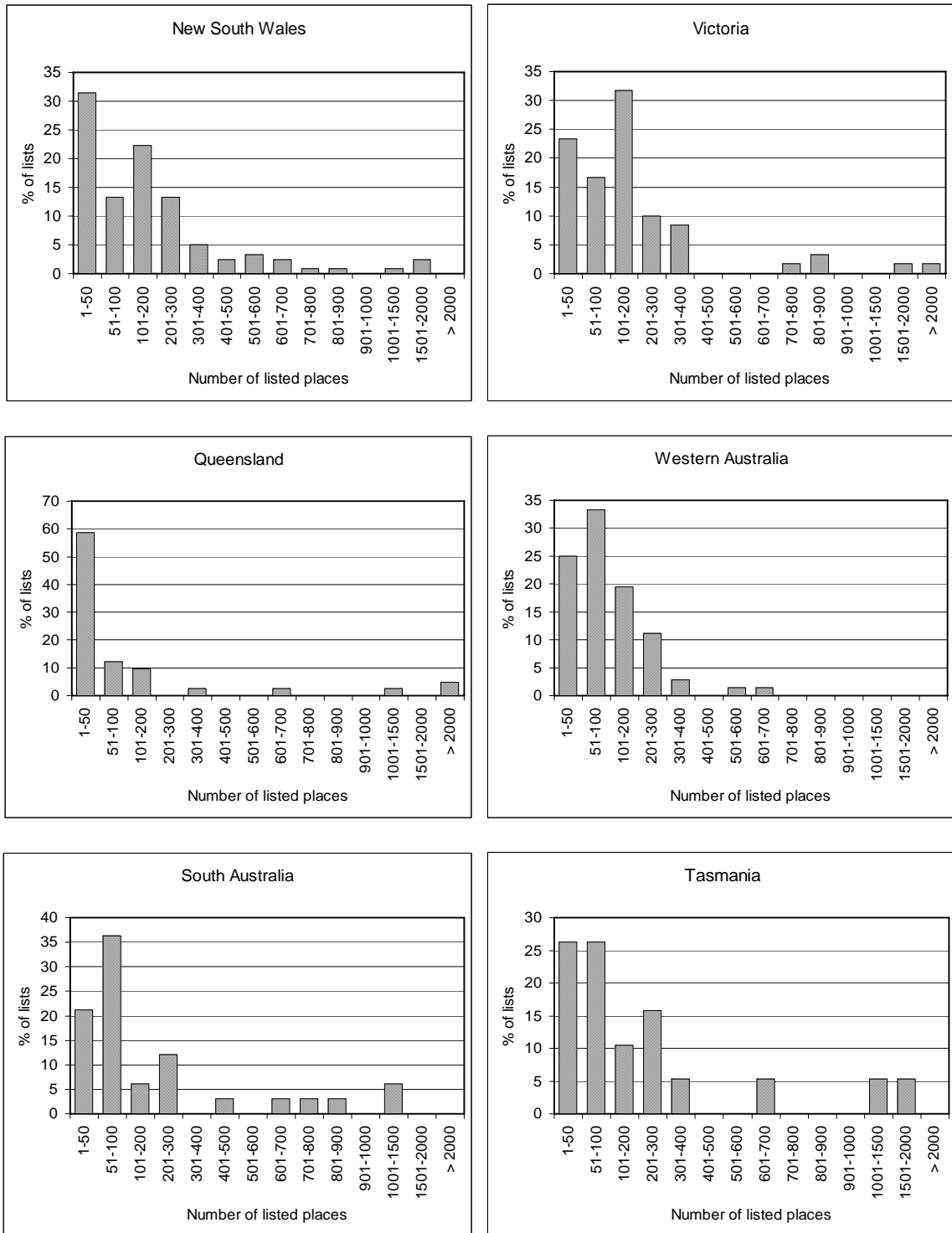
<i>State</i>	<i>Councils with a heritage list</i>	<i>Individual places</i>	<i>Heritage areas^a</i>	<i>Council owned places^b</i>	
	% respondents	No.	No.	<i>Average</i>	<i>Maximum</i>
				% listed places	% listed places
NSW	93	25 847	512	8.8	71
Vic	97	19 183	497	9.3	83
Qld	42	9 852	191	19.9	100
WAC ^c	84	8 178	391	12.7	100
SA	52	7 489	92	7.9	33
Tas	86	5 804	87	5.6	29
Totals	75	76 353	1 770	10.4	100

^a Includes historic conservation zones, heritage precincts, streetscapes and special areas. ^b Includes parks and monuments. ^c May include places in Municipal Heritage Inventories.

Source: Productivity Commission Survey.

The composition of statutory lists also differed between States (figure B.1). In Queensland, almost 60 per cent of lists had between one and 50 places. In other States, less than 30 per cent of councils had lists of between one and 50 places. The proportion of lists with over 200 individually listed places ranged from 12 per cent in Queensland to 37 per cent in Tasmania (table B.3).

Figure B.1 Places listed at the local government level



Source: Productivity Commission Survey.

Table B.3 Councils with lists of more than 200 individual places

<i>State</i>	<i>Proportion of councils</i>
	%
New South Wales	31
Victoria	27
Queensland	12
Western Australia	17
South Australia	30
Tasmania	37

Source: Productivity Commission Survey.

B.3 How locally significant places were identified

Table B.4 outlines the means by which local governments identified places for inclusion on their lists.

Table B.4 Sources of identifying local historic heritage places

Average responses^a

<i>State</i>	<i>Survey/ study</i>	<i>When survey was under- taken^b</i>	<i>Register of the National Estate</i>	<i>State Govt</i>	<i>National Trust</i>	<i>Owner request</i>	<i>Third party request</i>	<i>Other^c</i>
	%		%	%	%	%	%	%
NSW	80.4	1989	3.0	9.9	13.8	2.0	2.3	4.7
Vic	86.3	1991	3.1	10.6	4.1	0.2	0.3	0.4
Qld	73.2	1999	6.6	12.9	10.8	3.7	6.9	4.8
WA	67.4	1998	1.3	4.8	3.5	3.9	6.1	11.4
SA	85.5	1995	3.7	12.8	4.1	0.3	0.3	0.0
Tas	24.4	1994	10.6	32.6	44.4	1.8	2.3	8.9

^a Mean percentages of lists. Percentages may not sum to 100 because some councils identified multiple sources for a single listing. In other cases, councils were not able to identify all the sources of their listings.

^b Median response. The date the original survey was undertaken. The survey may have since been updated.

^c Includes Institute of Engineers list; National Trust Register of Significant Trees; National Parks and Wildlife Service; community committees and local historical societies.

Source: Productivity Commission Survey.

In all States, except Tasmania, the most common method of identification was a heritage survey or study. In New South Wales, Victoria and South Australia, 80 per cent (or more) of locally significant historic heritage places were identified in this way. In contrast, only one-quarter of locally significant places in Tasmania were

identified through a survey or study. Over three-quarters were sourced from Tasmanian State government or National Trust lists.

Surveys tended to be undertaken earlier in New South Wales (where the average survey date was 1989) and Victoria (1991) and later in Queensland (1999).

As averages tend to disguise significant differences between individual councils, table B.5 provides the maximum responses for each source of identification from each State. The maximum response of 100 per cent indicates that at least one council reported that it had obtained all its listings from a heritage survey or study. Similarly, in all States, at least one council indicated that it had sourced all the places on its list from the relevant State government list.

Table B.5 Sources of identifying local historic heritage places

Maximum responses^a

<i>State</i>	<i>Survey/ study</i>	<i>When survey was under- taken^b</i>	<i>Register of the National Estate</i>	<i>State Govt</i>	<i>National Trust</i>	<i>Owner request</i>	<i>Third party third request</i>	<i>Other^c</i>
	%		%	%	%	%	%	%
NSW	100	2005 (1979)	100	100	100	50	85	100
Vic	100	2004 (1978)	100	100	67	2	6	18
Qld	100	2005 (1987)	100	100	100	100	100	80
WA	100	2005 (1978)	30	100	70	100	100	100
SA	100	2001 (1978)	100	100	100	5	5	0
Tas	100	2001 (1972)	65	100	100	20	20	100

^a A maximum response of 100 per cent indicates that at least one council in that State obtained all its listings from that source. ^b The date the original heritage survey/study was undertaken for the purpose of establishing a list. The survey may have since been updated or extended to take into account new council boundaries. The maximum response refers to the most recent date a new survey was undertaken in that State. The figure in brackets refers to the earliest date an initial survey was undertaken. ^c Includes Institute of Engineers list; National Trust Register of Significant Trees; National Parks and Wildlife Service; community committees and local historical societies.

Source: Productivity Commission Survey.

In New South Wales, Victoria, Queensland and South Australia, at least one council indicated that it had obtained all the places on its list from the Register of the National Estate. In New South Wales, Queensland, South Australia and Tasmania, the National Trust was the source of all the listings for at least one council.

In Western Australia and Queensland, at least one council indicated that its list consists only of properties that had been listed by owner request.

In all cases the minimum response was zero. That is, for each nominating source, there was at least one council in every State which obtained none of its listings from that source. Dates at which surveys were undertaken to identify locally significant places also varied significantly. For example, in New South Wales, the earliest survey for the purposes of establishing a list was undertaken in 1979; while the most recent was conducted in 2005.

B.4 What information is available on locally significant places?

Councils reported that a range of information was provided on locally significant places. Western Australia had the highest proportion of councils providing heritage information on listed places (table B.6) with over 96 per cent of listed places having some information on their heritage values. The proportion of locally significant places with heritage information was lowest in Tasmania. Over 94 per cent of councils in Western Australia indicated that *all* their places had heritage information (and no council indicated that *none* of its places had such information). The comparable figures in Tasmania were 32 per cent in both cases.

Table B.6 Places which have information on heritage values

State	Places with heritage information	Lists for which all places have heritage information	Lists for which no places have heritage information
	% of listed places	% of lists	% of lists
New South Wales	81	66	10
Victoria	91	77	0
Queensland	72	61	17
Western Australia	96	94	0
South Australia	80	76	12
Tasmania	53	32	32

Source: Productivity Commission Survey.

Typically, information is provided on request to the public from council offices and local libraries (table B.7). However, a number of councils indicated that they did, or were moving to, also include information about listed places on their websites.

Table B.7 How information is made available to the public

Proportion of councils which make information on listed places available

<i>State</i>	<i>Council website</i>	<i>State Government website</i>	<i>On request from Council^a</i>
	%	%	%
New South Wales	7	12	81
Victoria	14	4	82
Queensland	29	8	63
Western Australia	9	0	91
South Australia	20	4	76
Tasmania	10	80 ^b	10

^a May incur a fee. Includes availability at local libraries and museums. ^b Includes places listed on the National Trust (Tasmania) website.

Source: Productivity Commission Survey.

Information available on locally significant places differs between councils (table B.8). Most councils provide some information on the heritage attributes of each listed place. To varying degrees, they also provide information on the heritage significance of the place; its condition and integrity at the time of listing; its architectural style and information which might be used by the owner in its conservation.

Table B.8 What information^a is provided on locally significant places?

Proportion of lists

<i>State</i>	<i>Heritage values</i>	<i>Significance</i>	<i>Condition</i>	<i>Integrity</i>	<i>Architectural style</i>	<i>Conservation information</i>	<i>Other</i>
	%	%	%	%	%	%	%
NSW	84	78	60	54	78	16	14
Vic	92	92	75	77	83	18	25
Qld	71	68	44	32	42	5	15
WA	93	92	83	76	74	25	26
SA	73	70	33	46	58	18	12
Tas	53	42	11	26	53	5	0

^a Heritage values are the notable features which gave rise to the heritage listing. Significance refers to whether the place is significant at a local, State and/or national level. Condition refers to the condition of the place at the time of listing. Integrity is the extent to which the appearance of the place related to its original appearance. Architectural style relates to an architectural period (such as 'Victorian' or 'Federation'). Conservation information is information provided to the owner on how the place might be sympathetically conserved. Other refers to a range of information which may include photographs and maps, architect, ranking according to its cultural contribution to an area, recommendations for future improvements, and current and previous uses.

Source: Productivity Commission Survey.

Table B.9 summarises the features which are separately assessed when determining heritage values. Most often, only external features, such as the façade, are assessed. It is less usual for the internal features of the property to be assessed. In New South Wales, Victoria and Western Australia around one-quarter of council lists typically assess internal property features for heritage value. In other States, the proportion is 10 per cent or less.

Table B.9 What heritage features^a are typically assessed?

Proportion of lists

<i>State</i>	<i>Entire building</i>	<i>Façade</i>	<i>Interiors</i>	<i>Gardens</i>	<i>Location</i>	<i>Views</i>	<i>Other^b</i>
	%	%	%	%	%	%	%
NSW	65	50	26	46	46	22	17
Vic	67	53	25	57	50	27	23
Qld	54	22	0	2	29	7	17
WA	69	47	24	22	43	15	21
SA	52	51	6	24	21	6	27
Tas	32	21	11	16	11	0	11

^a Categories are not mutually exclusive. Councils may identify all values as separately identified. ^b Various characteristics including: date of construction; social, historical and thematic context; gateways, outbuildings and associated structures; curtilage; relationship to significant families; oral history; architect/designer; archaeological potential; fences; trees; bridges; mining infrastructure; industrial equipment; association with historical event or person; and, photograph of each building/item (present and past where available).

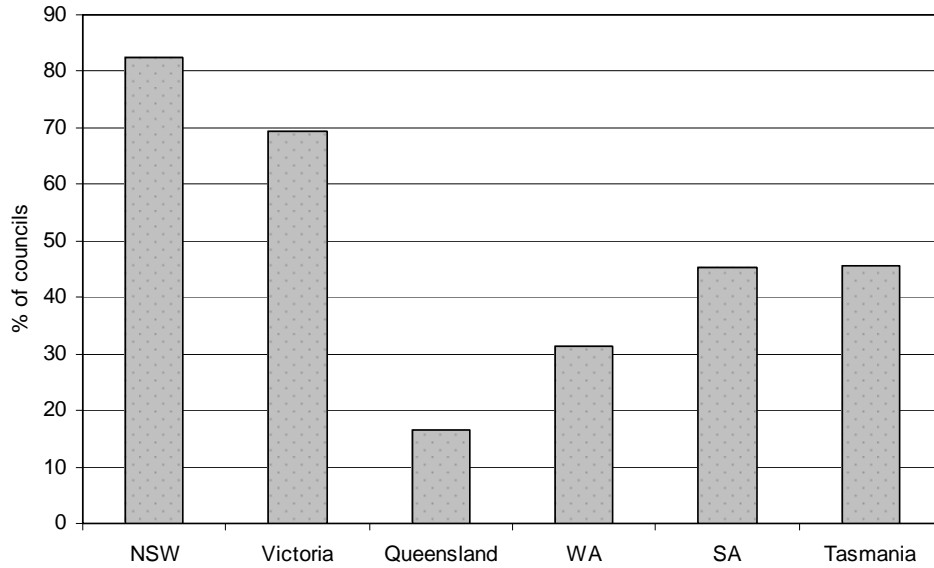
Source: Productivity Commission Survey.

B.5 What assistance do councils provide?

On average, across Australia, half of local councils provide some form of assistance to property owners for historic heritage conservation. The proportion of councils providing assistance is highest in New South Wales, where 82 per cent of councils provide assistance (figure B.2).

Most commonly, assistance takes the form of heritage advice (figure B.3). Invariably, the advice is provided free to owners. One-quarter of responding councils provide grants to owners to undertake conservation works. A little under 5 per cent of councils provide assistance through subsidised loans to carry out conservation work or through rate rebates and concessions. There are various other means through which councils assist property owners. Typically, these take the form of waiving application fees for development applications on listed places. One council, in conjunction with a major paint company, offers subsidised paint for heritage places.

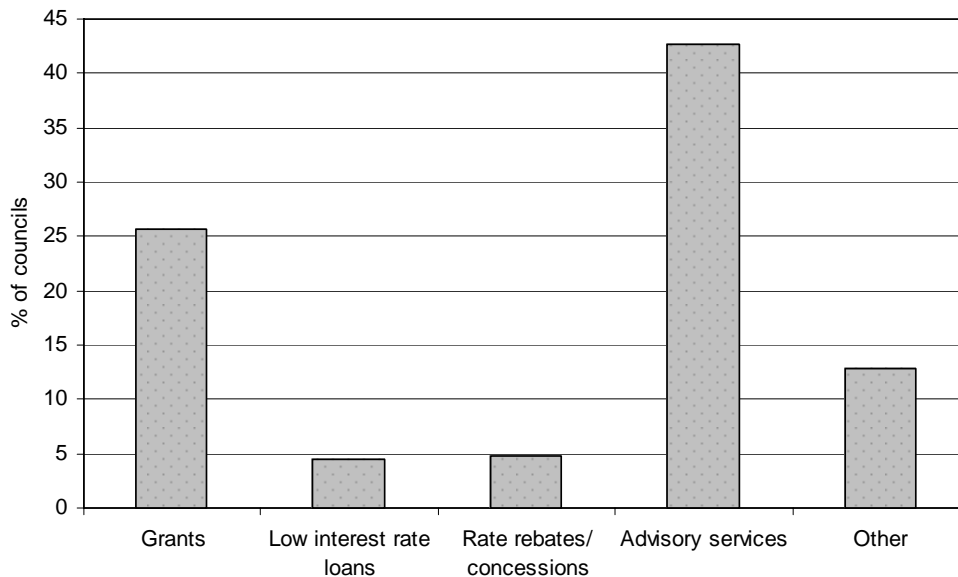
Figure B.2 Assistance provided to owners of historic heritage places^a
Proportion of responding councils



^a Nationally, 50 per cent of councils provide assistance for historic heritage conservation.

Source: Productivity Commission Survey.

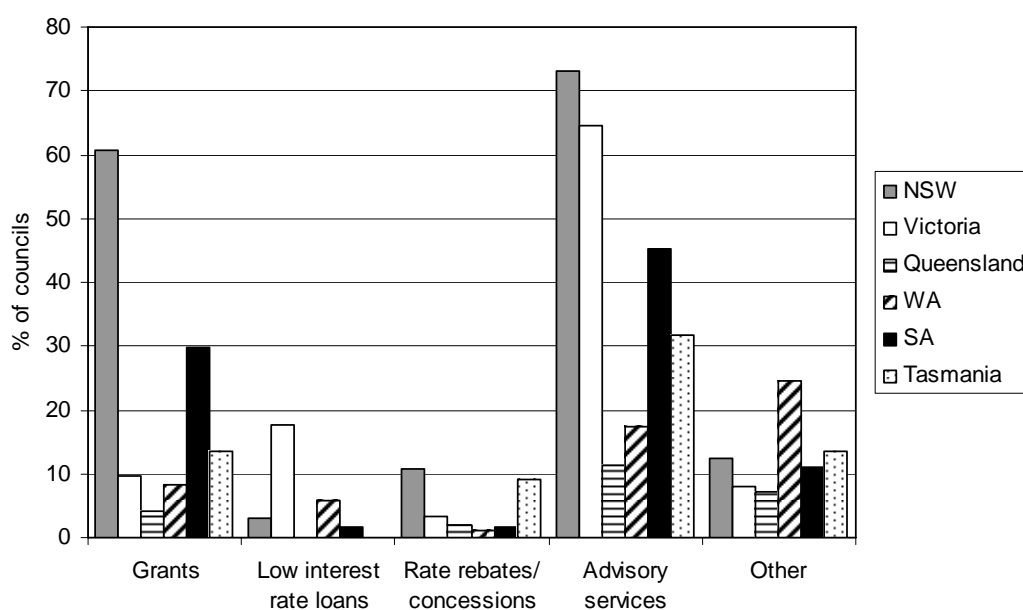
Figure B.3 What type of assistance is provided?
Proportion of responding councils



Source: Productivity Commission Survey.

The type of assistance provided varies significantly between States (figure B.4). Grants are most commonly used in New South Wales and South Australia. Low interest rate loans are more typically used in Victoria. Rate rebates and concessions are more common in New South Wales and Tasmania. Advisory services are more commonly provided in New South Wales and Victoria. Funding sources are not mutually exclusive. Many councils offer more than one type of assistance to property owners.

Figure B.4 Type of assistance by State
Proportion of responding councils



Source: Productivity Commission Survey.

Grants for conservation work

Grants offered by local governments for conservations works normally also require some financial contribution from the property owner. Funding is usually provided to listed places (although several councils indicated that listing was not a prerequisite).

In New South Wales, grants are offered on the basis that the owner contribute a matching amount. A number of councils indicated that their grants program was funded (on a 50:50 basis) with the NSW State Heritage Office. The maximum grant offered to an individual owner in New South Wales ranged from \$5000 in some local government areas to \$500 in others (and averaged around \$2000). One council indicated that grants were only available to low income earners.

In South Australia, property owners were also required to contribute to the conservation costs in order to receive a grant, although the contribution rate varied between 25 per cent, 30 per cent and 50 per cent. The maximum grant tended to be around \$2000; although this varied between \$10 000 and \$250.

In Western Australia, grants are offered by a relatively low proportion of councils. Some councils, while not having a formal scheme, indicated that they would consider a request for funding from property owners. One council reported that it distinguished between commercial and residential applicants (providing up to \$4000 for the former and up to \$500 for the latter).

Several Victorian and Queensland councils indicated that, while a grants program operated, no funds had been allocated in 2004-05. In Tasmania, three responding councils provided grants in 2004-05. In one Tasmanian local government area, grants were only available for community groups (not private owners).

Low interest rate loans

Low interest rate loans were most commonly identified as a source of assistance by Victorian and Western Australian councils. Some Victorian councils offered a loan of up to \$5000 at a low interest rate. In one case, the loan was for up to five years at a zero interest rate. One council operated a \$25 000 revolving fund. Councils in Western Australia offered low interest rate loans through a Heritage Loan scheme administered by the Western Australia Local Government Association.

In New South Wales, subsidised loans tended to be offered for specific purposes (such as a verandah reinstatement program) or on a more ad hoc basis (following requests for assistance from property owners). One council in South Australia reported that up to \$1000 could be borrowed under the scheme and there was no requirement for the property to be listed.

No council in Queensland or Tasmania indicated that they provided low interest rate loans.

Rate rebates and concessions

Rate rebates and concessions were offered by relatively few councils. In New South Wales, a number of councils noted that a reduced valuation for rating purposes could be obtained from the Valuer-General for heritage properties. Some councils also indicated that they would rebate the rates paid by owners of historic properties (in one case up to 50 per cent). Similarly, in Victoria, one council reported that it provided a 25 per cent rebate. One Tasmanian council responded that it would

‘possibly’ provide rate rebates, while another indicated that it effectively provided grants for painting and other minor heritage restoration work through a rate rebate.

Advisory services

Advisory services tended to be offered on a relatively consistent basis by councils with lists across all states. Typically, the service was provided by the heritage advisor engaged by the council, although some councils reported that members of the planning staff were also available to provide heritage-related advice. All councils reported that the service was free to property owners (although some councils placed a limit on the amount of time an individual property owner could spend with the heritage advisor).

Other forms of assistance

This category of assistance generally involved favourable treatment under the local planning code for owners of historic heritage places or assistance with applying for financial assistance and in lodging development applications. Among the assistance identified by councils under this category were:

- assistance with State Government Heritage Assistance Grant applications;
- running grants on owners behalf;
- variation to development standards to assist in retaining building as part of any development/redevelopment of site;
- possible consideration of density bonuses to assist conservation of heritage buildings;
- heritage floorspace scheme which allows owners to sell unrealised development potential of a heritage site to other developers;
- waiving of council development application fees;
- discount heritage paint scheme;
- video available to assist people to understand what ‘heritage’ is about (also brochure ‘demystifying’ heritage);
- heritage concession waiving the need for a development application for restoration works and reinstatement of missing detail;
- colour schemes and construction principles for historic heritage places;
- heritage awards are held every year to encourage and promote conservation of historic heritage places;
- fast tracking procedure for minor heritage applications;

- free heritage information kit; free heritage trails; free heritage planning of appropriate places; and
- free brochures with advice for garages/carports, fences, house extensions.

B.6 Access to heritage advice

Heritage advisors are engaged by local councils to identify places of local significance, to advise on the appropriateness of development applications for listed places and to provide conservation advice to local property owners. In New South Wales and Victoria, more than 80 per cent of responding councils employ a heritage advisor (table B.10). In other States, less than half responding councils employ an advisor, although councils may also have access to heritage advisors employed by other councils.

Table B.10 Employment of heritage advisors
Proportion of responding councils

<i>State</i>	<i>Councils who employ a heritage advisor</i>	<i>Proportion of heritage advisors employed on part-time basis</i>	<i>Average days per month^a</i>	<i>Access to a heritage advisor employed by another council</i>
	%	%	No.	%
NSW	82	85	2.1	2
Vic	84	96	2.7	2
Qld	9	78	2.9	4
WA	31	93	3.2	12
SA	44	93	1.9	6
Tas	32	86	5.0	0

^a For part-time heritage advisors.

Source: Productivity Commission Survey.

Typically, advisors are employed on a part-time basis. A few councils (specifically, major metropolitan or regional centres) employ full-time advisors.

Assistance to employ a heritage advisor is most commonly provided in Victoria (table B.11). Assistance is always provided by the State government and also requires councils to contribute to the cost. In Victoria, up to half the cost of a heritage advisor may be met. In New South Wales, where around half of councils receive assistance, the NSW Heritage Office usually meets one-third of the cost of a heritage advisor and councils are eligible to receive assistance for a maximum of three years.

Table B.11 Financial assistance for heritage advisor ^a

Proportion of responding councils

<i>State</i>	<i>Councils who receive financial assistance to employ a heritage advisor</i>
	%
New South Wales	52
Victoria	87
Queensland	0
Western Australia	7
South Australia	28
Tasmania	0

^a Financial assistance provided by State Heritage Office or equivalent. In some cases, other sources (such as rural development funds) have also been identified. Normally, the council is also required to contribute to the cost of the heritage advisor.

Source: Productivity Commission Survey.

B.7 Heritage values and development

Listed places typically have restrictions placed on the extent to which owners can modify or otherwise redevelop them. As table B.12 indicates, more than half the responding councils in New South Wales, Victoria, Western Australia and Tasmania reported that **all** works on listed places require prior approval. This applies to both locally and State listed places.

Some councils responded that prior approval only needed to be obtained for work which would impact on identified heritage characteristics. Other councils indicated that maintenance, painting and minor renovations did not require approval or that only demolition or moving a listed building required approval. Some councils indicated that an owner might not be required to obtain development approval if a heritage assessment concluded that the work would be unlikely to adversely affect the heritage significance of the place.

Table B.12 Obtaining development approval^a

Proportion of responding councils

State	<i>Development approval required for ALL works on listed places</i>	<i>Development approval required for only those works affecting identified heritage values</i>	<i>Other^b</i>
	%	%	
New South Wales	58	19	25
Victoria	53	24	23
Queensland	38	18	12
Western Australia	61	8	14
South Australia	48	17	22
Tasmania	82	9	9

^a Applies to State and/or locally listed places. Some councils indicated that modification to items on the Register of the National Estate also required approval. ^b Typically, councils that nominated this category indicated that maintenance, painting and minor renovations did not require approval or that only demolition or changes to the façade required approval.

Source: Productivity Commission Survey.

Tables B.13 summarises the treatment of development applications for heritage listed properties. A number of councils indicated that development applications on listed places were often negotiated between the owner and council prior to lodgement, which reduced the potential for later dispute.

Table B.13 Development applications for historic heritage places, 2004-05

State	<i>Proportion of development applications rejected</i>		<i>Proportion of rejected development applications appealed</i>		<i>Proportion of appeals upheld</i>	
	Average	Maximum	Average	Maximum	Average	Maximum
	%	%	%	%	%	%
NSW	2.8	98	10.4	100	4.7	50
Vic	1.9	20	33.5	100	31.0	100
Qld	0.2	10	12.5	100	16.7	100
WA	2.3	100	6.6	100	7.2	100
SA	4.3	100	16.3	100	17.2	100
Tas	2.7	25	11.7	60	5.0	20

Source: Productivity Commission Survey.

On average, in 2004-05, a small proportion of development applications for historic heritage places were rejected. The average was highest in South Australia where 4 per cent of applications were rejected. However, rejection rate in some local government areas was much higher than this. In Western Australia and South

Australia, at least one council reported that all development applications lodged by owners of historic heritage places had been rejected.

Appeals by owners against the rejection of their development applications can be high — ranging, on average, from 7 per cent in Western Australia to 33 per cent in Victoria. In all States, except for Tasmania, at least one council reported that all of its rejected development applications were appealed.

The success of owners' appeals against rejection of their development applications also varied by State — ranging from an average of 5 per cent in New South Wales and Tasmania to 31 per cent in Victoria. In all States, except for New South Wales and Tasmania, at least one council reported that all appeals in 2004-05 had been successful. One council reported that a dispute over a development application for a historic building ended when the building was destroyed by fire under suspicious circumstances.

In all States, more than half the responding councils indicated that *no* development applications had been rejected on heritage grounds in 2004-05 (table B.14).

Table B.14 Development approvals and listing, 2004-05

Proportion of responding councils

<i>State</i>	<i>Councils which rejected no development applications on heritage grounds</i>
	%
New South Wales	66
Victoria	58
Queensland	68
Western Australia	73
South Australia	58
Tasmania	73

^a Includes local government areas where no development applications were lodged.

Source: Productivity Commission Survey.

B.8 Comments from local councils

Below are some comments councils made about current policy arrangements and pressures on, and impediments to, historic heritage conservation in their local areas. In some cases, the responses have been edited to preserve the anonymity of individual councils.

New South Wales

The value of historic heritage

- Heritage conservation and public interpretation is of value to [this local government area] for tourism purposes and is of benefit to its economic development. Council could do with additional funding support from State Government. The Heritage Office are doing their best with limited means but given the importance of Heritage to the community and the devolution of powers to [local councils] more funding is required.
- It is important to broaden the public's understanding of the importance of heritage to the community and the value of property. Public relations is an important part of the process for a community to accept heritage as an asset rather than a liability.
- There is a need to protect the heritage of the area for its cultural, scientific, social and economic value to the community. Also, the demolition of existing fabric/building imposes a very significant cost in disposal of materials, which also needs to be factored into the environmental impacts of development.
- Conservation of the history and character [of the local government area] is intrinsic to shared [community] values in economic, social and environmental terms.
- The conservation of our heritage assets is fundamental to the retention of the unique character of [this local government area].

Pressures on historic heritage conservation

- At the Community level there is increasing awareness of the 'value' of heritage items. As property values are rising, property developers are seeking larger blocks of land. Many of these have heritage items and the issue of heritage curtilage is arising as development is encroaching close to heritage items.
- Council is currently reviewing heritage items in urban areas. Antipathy and lack of support from community are major obstacles.
- Heritage is of significant value to the local economy ... There are however continuing perceptions with the community that heritage conservation is obstructive ... The LGA is undergoing rapid change due to continuing in-migration of retirees and the sea change phenomenon. This is placing pressure on Council to approve changes to the older structure and heritage fabric.
- Minimal restoration other than on Council owned buildings.
- The development industry in general appears to hold and promote a negative attitude toward heritage conservation. The issue needs attention, perhaps education/strategies to improve the perception of heritage listing; to encourage the revitalisation of heritage sites; to celebrate rather than lock up and condemn these sites.
- The population of the local government area is growing rapidly. There are no conservation areas, and the majority of the listed items are individual houses, many of which are small and/or fragile. They are therefore subject to considerable development

pressure, aimed at replacing them with larger houses or multi-unit developments. Council encourages sympathetic extension and offers heritage incentives (ie. planning concessions on permitted uses, floor space ratios, parking) to encourage conservation.

Funding for historic heritage conservation

- Insufficient funds are provided to assist private owners (and government departments/councils). Heritage is a community value but conservation is primarily funded by owners. Too few heritage practitioners in regional areas. Too many planners, architects of building designers have a low opinion of heritage values and see it as a burden.
- Additional incentives are required for owners of heritage items. Additional funding towards conservation management in the form of larger grants are required. Council owned and managed items are ineligible for heritage grants and this results in poor maintenance ... The Commonwealth could provide greater financial support to heritage than is currently available.
- Further assistance either financial or through free heritage consultants should be provided to Councils. This is needed to: (1) increase the funds available for heritage conservation grants to property owners (2) provide or pay for heritage advisor for Council (3) assist in funding the management of heritage reviews (4) assist in funding development applications, additional assessment processes for heritage properties.
- Local government in NSW has great support financially from NSW Heritage Office.
- More funding should be made available to assist in the conservation of valuable places for future generations to see.

The current policy framework and how it can be improved

- Further advice and assistance on the best means of exercising some legislative controls over items listed in council's inventory of heritage items would be greatly appreciated. Some sort of easy to digest/use presentation in the form of a CD and associated handout for use at public forums and community gatherings that introduces heritage and conservation values would be very, very useful.
- Council has been limited to individual items not whole areas. The heritage items in the area are mostly listed for architectural/aesthetic value... Heritage is accepted by majority of residents and in many cases residents are well organized to defend their heritage. State government policy on introducing medium density housing is destroying heritage in this local government area. Many listed items are being demolished with State government approval.
- Council has conducted a complete review ... to update its heritage inventory. The Council area was divided into precincts and each precinct carefully analysed and potential heritage items and conservation areas identified. Draft Local Environmental Plans have been prepared and submitted to the State Government. However the plans

have not been progressed due to ‘potential conflicts’ with future regional strategies to be prepared by the State Government. Council does not agree with this opinion because many of the items/areas are in locations unlikely to be affected by regional strategies.

- Considerable Council effort goes into staff skills/knowledge and the interaction between the Council and the community to foster an understanding and appreciation of the area’s history and heritage. The heritage adviser, and the advisory service, add to the Council’s skills and promotion base.
- The most critical issue is the cost burden on local government in caring for and managing heritage listed places in its asset portfolio. Unlike other tiers of government, many assets cannot be sold as they are essential elements of community infrastructure — eg pools and libraries — many of which are heritage listed.
- Property owners see listing as a negative outcome for property ownership and resale value. There is little funding at State or local level to support conservation of local items. The NSW Heritage Office, which promotes the listing of local items (of which there are thousands in NSW) offers financial support to property owners for essential maintenance but places responsibility for managing that process on local government. Current legislation is also geared towards built items and offers no real management solutions for significant landscapes, trees and archaeological sites.
- Recognition has not been given in the past to historical buildings and trees preservation. Council has many buildings of significance, however they have never been listed. This is due to the process in gaining listing (red tape) and cost associated. Also people lose interest due to the miniscule grants available and their own lack of commitment to such a program. Very disappointing to lose many good buildings.
- The emphasis is on the adaptive reuse of heritage buildings so that Council encourages owners to find uses that assist the retention of the building.
- The following issues should be addressed by the inquiry: (1) perceived conflict between conservation areas and achieving urban consolidation outcomes (2) need for increased community education and (3) legislative powers for requiring owners of heritage places to maintain significant heritage assets.
- The process for listing items of Heritage Significance on a Local Environmental Plan (LEP) is lengthy. The ability for councils to make Interim Heritage Orders (IHOs) helps. Listing together with planning controls does not always help given that in NSW the majority of items are locally significant meaning that there is no mechanism to enforce maintenance.
- ... Council supports the conservation of historic heritage places in [this local government area], mainly through its planning and development controls ... Council recognises the need for more heritage incentive schemes and assistance for heritage conservation — that is, more and flexible private and public funding sources. This will become even more important in the future with economic pressures for more residential development, greater residential densities and the increasing price of land.

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- There needs to be more powers available in instances where there is wilful neglect of heritage properties, especially where they are owned by Government Instrumentalities.
 - We as council have to work on strategies to improve the image of heritage and give more active help to property owners in assisting them with conserving their buildings, not only through advice but incentive schemes.
 - We have had very good results by negotiating with developers to get results.
 - While there is a heritage advisor and a council employed heritage officer, the advice given to council is often discounted in favour of development. This has precipitated a range of very poor outcomes for the protection of local and State heritage items. The Heritage Office have not been strident in support of us locally with reasons ranging from 'the system' to understaffing and budgetary constraints.

Victoria

The value of historic heritage

- Council has a responsibility, as does the community to preserve the important links to our past for present and future generations. A heritage study is the principle means by which a municipality can carry out an inventory of those places within the municipality that may be of importance to the community and to future generations. The identification of heritage places is an ongoing process and council is committed to preserving these places.

Pressures on historic heritage conservation

- In a lower socioeconomic [area], it is difficult to encourage preservation or restoration of heritage buildings that are privately owned. Often it is just conservation works that are undertaken.
- Where heritage interest and economic interests clash, (particularly the further the place is from capital cities) there are huge 'pressures' in favour of development (particularly in Rural Towns where development is patchy or in decline). Heritage interests can be severely compromised.

Funding for historic heritage conservation

- Heritage is a major (and ongoing) commitment for Council. However as most European heritage places in [this local government area] are privately owned, it is difficult for Council to enforce/encourage maintenance and restoration. Is there an opportunity for more accessible Federal or State funding (for public grants etc.)?
- If a building is considered to be historically significant enough to be placed on a register for the benefit of the community, then there should be some corresponding financial assistance available to assist with its preservation.
- Lack of funding is leading to ongoing degradation.

The current policy framework and how it can be improved

- Pre-application is strongly recommended and a negotiated application/resolution means that few applications get to Council that are refused outright. Additional funding is needed to support owners with heritage properties. Particularly those that have redundant building types, for instance log huts used during land selection. If no assistance is offered these buildings will be lost.
- Review of Heritage study is anticipated for which it is not expected that State government funding will be available. Difficulties arise when property owners circumstances do not allow them to match funding or access low interest loans. Issue of 'demolition by neglect' needs to be overcome.
- Council has strong views regarding State heritage laws. Council believes these laws place an unfair burden on ratepayers.
- ... currently undertaking 'heritage gap study' which picks up those sites in [this local government area] not previously identified, ie. mainly post Victorian and significant trees and landscapes. Given the cost of the study (approx \$150 000) this means that the study is undertaken over approximately 3 financial years - there is no financial assistance that can help Council undertake this work. Note: a local philanthropic organisation has contributed approx \$20 000 to this project. Overall, the statutory system works well - consistency re: what is expected in heritage studies and benchmarks for justifying heritage protection is a moving beast and often frustrating.
- Land tax relief should be available to heritage places on a municipal register - this is available for places on the State register. Local government should have the power to serve maintenance orders - this is available to Heritage Victoria for places on the State Register.
- Local government plays an important role in heritage protection and education. Generally to a much greater degree than higher levels of government. Local government invests very significant resources (time, money and staff) to identify and protect local heritage and more recognition of that role would be welcomed. Not just financial assistance but technical advice and leadership would be of great benefit.
- Requirement for permits increases delays in building works — this isn't compensated for enough by Council funding. (We need a better 'fast-track' permit system for heritage applications.)
- Resourcing makes it difficult to maintain currency of heritage listings, assess proposed listings and to implement new heritage studies. Proactive promotion of heritage values is limited. Relationships between local heritage controls in the planning scheme with other levels of control are not straightforward.
- Stronger measures in the provisions of the local planning scheme are required to ensure compliance in development of heritage places. Heritage overlay is considered adequate in the conservation, restoration and retention of heritage places, but it is considered inadequate in protection of indigenous properties and sites.

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- The cost incurred by local authorities through the continual process of identifying and protecting places of significance is an ongoing issue.
 - The current Heritage study was finalised in 1988 and is in need of review as there are some cases where structures no longer exist or where entire townships ... are inside a heritage overlay and this may be too restrictive on use and development.
 - One significant issue is that elements of the community attempt to use heritage as a means of prohibiting or limiting development. This is especially due to State Government policies supporting higher density development in inner-city areas. A challenge is to dissociate heritage issues from this broader political context and to protect only those places that meet the threshold of cultural heritage significance.

Another important issue is that the cost of heritage assessment work is often prohibitively expensive. Although a relatively well-resourced local authority, [this council] constantly struggles to find a sufficient budget to complete the required on-going heritage work... Greater financial and/or Heritage Advisor assistance to local government, especially in light of the volume of heritage places local governments are responsible for managing either directly (Council-owned) or indirectly (through planning permit application assessments), is required in order to appropriately manage Australia's heritage resources.

The final significant issue ... is the lack of consistency between Federal, State and individual local government assessment criteria for cultural heritage significance, heritage policy and guidelines for the management of heritage places. The lack of consistency means that considerable time and expense is invested in individual government bodies developing their own criteria, guidelines and policies. In addition, the lack of consistency creates uncertainty for owners of heritage places potentially resulting in negative planning, conservation and economic outcomes. Whilst the AHC assessment criteria has been largely touted as an appropriate standard for assessment, it's application to local heritage places is not always easy or desirable.

Queensland

The value of historic heritage

- Some Local Governments place very little value on the conservation of items and places of historic/heritage significance for diverse reasons including: (a) a development at all costs approach (b) a next election focus that stymies strategic vision (c) the mistaken belief that unchecked development is ultimately sustainable (d) the failure to understand that once a place or an item is 'lost' to development/ change, the cost of reconstruction/reconstitution, no matter how humble or ephemeral the object or environment, increases often to the point of prohibition (e) failure to understand that the integrity of authenticity drives much of the cultural tourism throughout the world. The potential costs to an owner of a heritage site in maintaining the heritage place is an issue that poses problems. Financial assistance in order to identify heritage places, assess their level of significance and help prepare appropriate criteria to guide

development is very useful but hard to come by. Until the benefit can be seen it is difficult to get movement in the direction of protecting and maintaining cultural heritage places.

Pressures on historic heritage conservation

- Heritage listing is generally not supported by owners due to perceptions of loss of value, difficulty in obtaining insurance, additional time and cost in development applications, exposing projects to public submissions and submitter appeals etc. It is hoped that recently introduced financial incentives will assist in overcoming this opposition. Queensland law has provision for compensation to be paid if a development application is made within two years of a place being listed and the local authority elects to assess it under the new listing rather than the superseded plan. This provides a two year window of opportunity for potential loss of a place following its listing.
- In the current climate of rampant development in [this area] and the need to maintain the viability of small towns (ie. we are all competing for the 'tree change' dollar) it is very difficult to conserve the places of local significance when council is keen on attracting development ... Our town has many timber dwellings spanning many years which provide a good indicator of past boom times. The desire for people to live in huge brick homes means these timber homes are demolished or removed changing the character of the town.
- The future maintenance costs for heritage buildings in the CBD and buildings under ownership of community organisations (eg Masonic Lodge Halls etc) will be a major factor in Council's consideration of development applications. Ensuring heritage buildings continue to offer economical and functional standards to owners will become one issue which will be raised by owners and may affect how [this Council] responds to ongoing maintenance and development proposals in the future.

Funding for historic heritage conservation

- Australian Government funding for Council would be beneficial. Australian Government Funding (Tax Incentives) for owners would be beneficial. Australian Government/State Government assistance to make it easier for people to insure their heritage places.
- Active and supported Heritage Incentive Scheme that would positively motivate heritage property owners to repair and maintain buildings would be helpful. But many factors involved and a wide range of opportunities for personal benefit needs to be investigated.
- [Council] has 2 sites nominated as heritage places and both are owned/run by community organisations with limited funding in the short term. These facilities are well maintained, however, long term they will require funding assistance to ensure the facilities are well maintained.

-
- Financial assistance from State or Federal Government is required for Heritage Advisory Services offered by local government in Queensland. Similar to that granted in other States. Protection of conservation areas/heritage precincts is a more palatable way to introduce historical heritage provisions/requirements in local government areas. Little support from public for individual heritage listing - seen as discriminatory.
 - [The issue of heritage advisors] is important because [this local government area] like many other small to medium sized councils is unlikely to have the resources to satisfactorily deal with this important issue of initially identifying the most significant sites and thereafter providing advice.

The current policy framework and how it can be improved

- [This local government area] has many more sites/places that can be researched, however, resources do not allow this to happen. Our cultural heritage study has only scratched the surface of a long list of potential places that require assessment. Budget constraint have hindered a fuller compilation of sites/places. Community awareness of heritage issues is important and more time and research is required with residents and historians to discuss heritage legislation, conservation and education.
- The current planning legislation in Queensland actually acts as an impediment to achieving good heritage outcomes because the ... process inhibits flexibility and open negotiation.
- There still appears to be some public confusion about the different registers (local, State and Federal) and the various processes for each of these registers.
- While Queensland's Integrated Planning Net seeks heritage sites to be included, there is no funding support for heritage surveys, heritage advisors, or for incentives for property owners. Therefore many local government authorities have not included heritage sites in the planning scheme.

Western Australia

The value of historic heritage

- The Municipal Inventory and its preparation has involved the community in contributing information and has raised the level of awareness of heritage places. Council also issues a President's Heritage Award annually to recognise conservation or promotion of heritage places.

Pressures on historic heritage conservation

- People are either conservation minded or not. Many people still believe there are disadvantages to their property/place becoming State or National Heritage listed. The cost of conservation work in rural areas is generally more expensive than in metropolitan areas as materials and tradespeople have to be sourced from outside the district.

-
- There are a number of misconceptions in respect of the impact of heritage listing on the owners perceived property rights. This has arisen unfortunately due to scaremongering, especially by the real estate and development fraternity in relation to the effect on property values. Additionally there is also an entrenched fear of using heritage experienced architects for design works due to the predominate use of designers/drafting services, especially among builders specialising in renovations/additions.
 - [This local government area] receives minimal financial assistance and support at the National and State levels. Conservation assistance to private property owners is ad hoc and re-active and is well below the levels needed to properly preserve the heritage of [the area]. Demolition by dereliction is possible for many heritage buildings where they are allowed to reach a stage of structural unsoundness. All public buildings on the National or State Registers should be the total responsibility of those levels of government. Many heritage buildings in Australia were not designed for a 200 years plus life and may not be sustainable into the future unless they are structurally modified. In heritage assessments there appears to be a missing value of functionality as the function and use will determine long term sustainability. Vacant structures will decay much faster than those occupied and used.

Funding for historic heritage conservation

- There has been a lack of support by State and Federal Governments providing meaningful heritage incentives to owners of heritage places that are only on a local municipal heritage inventory and not on a State heritage list. (0% of financial incentives are available to these owners) local government is largely left to its own devices to conserve local heritage places.
- Funding required to provide an incentive or owners to retain or upgrade building of heritage significance. A lot of these buildings are being left to run down and there is no authority to request land owners to maintain or upgrade building.
- The [Council] is making every effort to preserve and maintain the sites it owns. Several years ago many buildings of significance were destroyed as safety hazards. [There is only] one remaining building of significance in private ownership.

The policy framework and how it can be improved

- Heritage protection at local government level is always controversial because the Council must try to balance the community's wish to preserve heritage buildings, with the owners' rights and wishes to redevelop... This has caused the Council to accede to owners' requests to delete some places from the [Municipal Heritage Inventory (MHI)] whenever the owners request. Many Councillors sympathise with the owners' rights to capitalise on the full value of their land, which is seen to be jeopardised or reduced if the place has any level of heritage rating... It would be helpful for the State planning authority to prepare sample heritage 'zoning' provisions for use in local Town Planning

Schemes. Fear of compensation claims by owners is a deterrent to local governments listing privately owned properties.

- It appears that heritage lists have very little weight at appeal tribunals.
- Small LGAs with small rate taxes cannot afford to offer rate rebates. The cost of reviewing Municipal Heritage Inventories is very high and it would be better if these funds could be used to offer owners incentives. But legislation requires that MHI be reviewed.
- The [Council's] criteria for listing on the Municipal Inventory is based upon the contribution the residence or group of residents makes to the streetscape.
- This council has a significant number of places which would fall into the category of 'character' rather than heritage (although we have heritage places too) and it is more successful to achieve retention when determination is made and negotiations undertaken at officer level than at Council, although this is getting better.

South Australia

The value of historic heritage

- Conservation of heritage places has added to the townships within this Council area, attracting tourists and residents.

Pressures on historic heritage conservation

- When privately owned buildings are put to an economic use the heritage conservation is improved. A number of notable examples occur in this area. State/Federal governments should get some relief/grants to buildings.

Funding for historic heritage conservation

- Additional financial assistance should be made available to Local Government and/or to the owners of historic heritage places by way of State and Federal Government Grants/Programs. The formal processes of actually identifying and legally using places of historic heritage significance could be simplified and made less costly.
- More could be done to encourage rural and remote local government bodies to support local heritage conservation if adequate funding was available from either State or Federal Governments. Expecting local government to fund local heritage is merely an extension of cost shift. Local heritage conservation is not a core function of local government.

The current policy framework and how it can be improved

- Council had a voluntary approach to local heritage listing (only if owners agreed to list) ... Council has adopted a mandatory approach and will soon add an additional 30

places to the Development Plan. We have found financial incentives to be unsuccessful due to the insignificant amounts involved.

- Council is totally responsible for the maintenance and management of its local heritage list. The State Government is keen to have some State heritage listed buildings on the local register.
- In South Australia, we have a Commonwealth listing under Commonwealth legislation, a State heritage list under the Heritage Act, and local heritage lists contained in individual Council's Development Plans, prepared in accordance with provisions of the Development Act. Local heritage is a fairly recent innovation (10-15 years), and voluntary on the part of Local Governments. Individual councils have become involved because of local pressures, and because they have the resources to do so. There are signs now that the State Government will force local governments to be involved in local heritage and reduce their own involvement in State heritage. Smaller Councils simply do not have the capacity to become involved in a significant way.
- Local heritage places are only special and representative examples and a very low percentage of total character valued. More emphasis in historic areas (inner city) should be on collective character protection and heritage/historic/character areas or overlays. Currently in South Australia such a hierarchy of area status and control, and criteria for same, is missing. Further the process of listing places in a Plan Amendment Report process, even with interim effects, is too cumbersome and slow. Need an initial emergency/interim order process for protection until full investigation and processing occurs/follows.
- Requirements for Conservation Plans for State Heritage Places are onerous and over-prescribed. This means owners and Councils avoid carrying out these plans due to exorbitant costs.
- The council has made a significant effort to maintain and enhance built and cultural heritage. However funding assistance from State and federal levels has been extremely limited. Council convenes a Heritage Advisor group. Council also retains the services of a heritage consultant. There is an increasing need for this service.

Tasmania

The current policy framework and how it can be improved

- Our planning scheme and assessment of development applications relating to heritage properties/areas will be improved by the introduction of heritage overlays and codes, picking up on heritage values and lessening the reliance on the Tasmanian Heritage Council (although relevant principles will still be concurrently assessed under the Heritage Act).
- There appears to be many properties with heritage values but are not listed possibly due to a reluctance by the property owner of losing control over their property.

-
- There needs to be a national system, agreed by all States that clarifies the 3 levels of heritage significance — local, State and national. Sites that are only locally significant should be under the jurisdiction of local government. Sites that are of State significance should only require consideration by (in Tassie’s case) the Tasmanian Heritage Council.

B.9 Survey questionnaire

A copy of the survey questionnaire is attached.

1. Does your Council maintain a statutory list of locally significant historic heritage places?

(This may be referred to as a schedule to a local environment plan; heritage overlay; heritage list or planning scheme)

(please tick as appropriate)

No

(if no, please go to question 5)

Yes

a) How many individual places are listed on it?

.....

b) How many heritage areas, precincts or conservation areas are listed?

.....

c) What percentage of listed places are Council-owned?

%

2. What percentage of the list was drawn from the following sources?

a) survey/heritage study

%

(please indicate when the surveys/studies were conducted)

.....

b) Register of the National Estate

%

c) State Government list

%

d) National Trust list

%

e) owner request

%

f) third-party request

%

g) other (please specify)

.....

.....

.....

(Please note that careful estimates are acceptable if actual data are not available)

Questions continued over.../

3. Is documentation available for ALL places on the list which includes information on the place and the reasons for its listing?

(This documentation may be incorporated into the list, in a heritage assessment, heritage inventory or heritage survey, or in some other form)

(please tick as appropriate)

No

If no, what percentage of listed places would include such documentation?

a) None

(if none, please go to question 9)

b) Other %

Yes

If yes, is that documentation publicly available?

a) No

b) Yes

Please indicate how public access to the documentation is obtained

.....

.....

.....

.....

(Please note that careful estimates are acceptable if actual data are not available)

Questions continued over.../

6. Does your Council employ a heritage advisor?
(please tick as appropriate)

No

Do you have access to a heritage advisor employed by other Councils?

No

Yes

(please indicate on what basis that access is provided)

.....
.....
.....

Yes

On what basis is that advisor employed?

Full-time

Part-time

(please indicate average days per month)

.....
.....
.....
.....

7. Does your Council receive any financial assistance to employ a heritage advisor?
(please tick as appropriate)

No

Yes

Please specify amount and source of financial assistance.

.....
.....
.....
.....
.....
.....

Questions continued over....!

8. Does your Council require prior development approval for ALL works on listed heritage places?
(please tick as appropriate)

Yes

No

If no, is prior consent required

a) only for works which would alter specifically identified heritage features (eg. façade)?

b) other? (please specify)

.....
.....
.....
.....

9. What percentage of Development Applications for places considered to have heritage significance were rejected PRIMARILY on heritage grounds in 2004-05?

%

a) Of those Development Applications rejected, what percentage were appealed against?

%

b) Of those appealed against, approximately what percentage were successful?

%

(Please note that careful estimates are acceptable if actual data are not available)

Questions continued over....!

C Effect of heritage listing: a hedonic study of two local government areas

Historic heritage is of importance to many in the community and all Australian governments have heritage-specific legislation to list and protect identified heritage features. However, there is much debate over the effect heritage listing has on property values. Empirical evidence differs on this. On the one hand, individual valuation reports tend to indicate a loss on some properties of up to \$500 000 resulting from the extra development restrictions imposed (sub. DR202). On the other hand, some studies conclude that heritage listing adds value. For example, the Australian Heritage Directory states that one Sydney hedonic price study shows that heritage listing boosts house prices by 12 per cent.¹ This figure was quoted to the Commission several times over the course of the inquiry. The NSW Heritage Office (sub. 188) argued that property losses have not been demonstrated and independent studies have shown that heritage listing results in increased property values.

There have been several studies attempting to estimate the price effect of heritage listing. Armitage and Irons (2005) provide an extensive review of the literature. Three ‘approaches’ were identified. The majority of studies used repeat-sales techniques, which compare over time, the sale prices of heritage and non-heritage properties. Meese and Wallace (1997) demonstrate that this technique is less accurate and more susceptible to data problems than hedonic modelling.

Several studies have used hedonic price modelling to estimate the price effect of heritage listing. Ford (1989) and Asabere et al. (1989) examined the price effect of heritage zones and came to different conclusions. Ford (1989) concluded that designation of a heritage zone increased house prices, whereas Asabere et al. (1989) did not find any significant price effect. Scaeffler and Millerick (1991) estimated that heritage designation had a negative effect on house prices, while a more recent Australian study (Deodhar 2004) found that heritage listing in the Ku-ring-gai local government area (LGA) in Sydney had a positive effect on price.

The aim of this appendix is to examine the effect heritage listing has on the value of residential single-dwelling property in two Sydney local government areas noted for containing historic heritage: Ku-ring-gai and Parramatta. The Parramatta LGA,

¹ <http://www.heritage.gov.au>

Australia's first seat of government, was chosen for its high level of heritage places and as being representative of urban sprawl development pressures. The Ku-ring-gai LGA, as well as being the 'home' of the National Trust movement, is one of the leading local governments in the protection of twentieth century buildings. Ku-ring-gai has also been subject to a previous hedonic study (Deodhar 2004).

C.1 Hedonic modelling

The basic assumption underpinning hedonic modelling is that the market price of a good is dependent on the characteristics of that good (including non-market characteristics). With respect to housing, this assumption implies that a house is a bundle of size, quality, and location characteristics. Hedonic modelling seeks to explain (by making comparisons) the value of a house in terms of its individual characteristics. In this regard, each characteristic is valued (Malpezzi et al. 1980; Kain and Quigley 1970; Boyle and Kiel 2001). For example, if there are two houses in the same location within a competitive housing market, and the only difference between the two is that one has three bathrooms and the other has two, then the difference in price between the houses is taken to reflect the value of the extra bathroom. Where several attributes differ, the comparisons are not as straight forward and estimation techniques, such as multivariate regression analysis, are used to isolate the individual influence and value of each characteristic. Malpezzi et al. state:

The estimated regression coefficients are implicit prices which measure the value of each dwelling and neighbourhood characteristic. For example, the regression might determine that a central heating system adds 10 per cent to the value of a house. (1980, p. 11)

Hedonic price modelling not only identifies the value of individual attributes of a product, it can also identify the willingness to pay for non-market attributes. This is demonstrated by the difference between prices of goods that have different non-market attributes, when holding all other attributes constant.

The following is the general hedonic model:

$$P_i = P(S_{i1}, \dots, S_{ij}, N_{i1}, \dots, N_{ij}; u_i) \quad (1)$$

where P_i = observed price of commodity i

S_{ij} = structural characteristic j per unit of commodity i

N_{ij} = neighbourhood characteristic j per unit of commodity i

u_i = a disturbance term (Lucas 1975, p. 157).

C.2 Hedonic modelling of housing attributes

There are numerous studies estimating hedonic price equations for housing that focus on a varied selection of structural, locational and non-market characteristics.

Kain and Quigley comment:

[the] difficulty in measuring the physical and environmental quality of the dwelling unit and surrounding residential environment is perhaps the most vexing problem encountered in evaluating the several attributes of bundles of residential services. (1970, p. 533)

When estimating the value of characteristics, it is important to ensure that the relevant market is defined correctly, as each separate housing market may value characteristics differently and result in differing hedonic equation (Sirmans et al. 2005). For example, central heating may be valued more in Canberra than in Brisbane. A hedonic equation which spans several markets may produce biased estimates. Malpezzi et al. (1980) use metropolitan areas as markets, although they account for several sub-markets using dummy variables (e.g., different sub-markets for city and country houses).

Hedonic modelling has no strong theoretical preference for a particular functional form. Typically, most hedonic regressions use a log-linear (semi-log) functional form as it has several interpretational advantages over a linear functional form.

The first advantage is that the semi-log form allows for the value of an attribute to vary according to the other characteristics in the house. For example, the semi-log model allows air conditioning to be worth different amounts for a three bedroom and a six bedroom house. A linear model would estimate the same value for air conditioning irrespective of the other characteristics.

Use of the semi-log form also allows for more intuitive interpretation of a variable's coefficient. The coefficient of a variable can be interpreted as the percentage change in the value of the house given a unit change in the variable.

Independent variables, under the semi-log functional form, are typically entered as dummy variables. This enables maximum flexibility in the model. If independent variables were entered as true values, then the model would be forcing the same value on all units — for example, bedrooms where intuition indicates that buyers may value the third and sixth bedroom differently. Where dummy variables are used, the coefficients of the variables can be interpreted as the percentage change in the value of the house due to the presence of that characteristic.

A wide variety of independent variables could be included in estimating hedonic prices for housing. Typically, they can be broken down into structural and

neighbourhood/location variables. The variables used will inevitably be influenced by the hypothesis being tested — and data limitation. For example, one could use a Postcode variable as a broad indication of location and/or neighbourhood characteristics. This would be appropriate where the hypothesis does not seek to analyse the influence of each individual neighbourhood or location variable. Generally, the number, detail and type of variables included are limited by the available data.

Hedonic studies testing hypotheses regarding locational factors (which also usually measure the effect of environmental features such as landfill or pollution), typically provide more detailed locational and neighbourhood characteristics (see, for example, Din et al. 2001; and Hite et al. 2001) than studies that focus on actual real estate prices. Studies that estimate house prices concentrate on structural features, with only broad-level locational variables used (see, for example, Grether and Mieszkowski 1974; Malpezzi et al. 1980; and Chowhan and Prud'homme 2004).

Structural variables should represent aspects of the actual house that relate to size, use and quality. The most common structural variables are: land size; number of bedrooms; size of the house; age; and the number of bathrooms (Sirmans et al. 2005, p. 9). Dummy variables are included for other types of rooms — either generally (e.g., other types of rooms) or specifically (e.g., dummy variables for rumpus and lounge rooms). Where available, specific quality indicators such as roof leaks, holes or cracks in internal surfaces, and level of privacy can be included. Most hedonic equations do not contain this level of detail due to data constraints.

The most common internal characteristics used in hedonic modelling are:

- full bathroom;
- half bathroom;
- fireplace;
- air-conditioning;
- timber floor; and
- basement (Sirmans et al. 2005, p. 9).

The most frequently used external characteristics are:

- garage/number of car spaces;
- deck;
- porch;
- pool; and

-
- carport (Sirmans et al. 2005, p. 9).

Neighbourhood (or location) variables typically are a mix of subjective opinions of the area (such as whether the street is a 'desirable' street) and objective criteria (such as crime rate, distance to school and public transport). Malpezzi et al. (1980, p. 30) focused primarily on subjective neighbourhood characteristics, such as: households' rating of their street; presence of abandoned houses in street; and litter on the street. Sirmans et al. (2005, p. 10) noted that location was generally identified using postcodes. Crime rate, golf course, trees and distance from the central business district were also commonly used variables. Other environmental variables typically used include a good view, lake or ocean view and water frontage.

C.3 Estimating the price of heritage listing for selected local government areas

For this hedonic model, data were obtained from RP Data Ltd.² RP Data is the largest supplier of real estate data in Australia and New Zealand. Their services include detailed sales histories for properties searchable by LGA.

Sales data were obtained for the two chosen LGAs studied (Parramatta and Ku-ring-gai) for the financial year 2004-05. For each property sold during this period, RP Data provided a description of the property (number of bedrooms, bathrooms, other rooms, pool, renovated, etc), land size, zoning, land use and photos. Only properties that included sufficient detail were included in the modelling.

The structural variables collected for both the Parramatta and Ku-ring-gai hedonic equations were:

- number of bedrooms;
- number of bathrooms;
- car spaces;
- area of block of land;
- whether the house had two stories;
- rumpus room;
- recently renovated;
- pool;
- tennis court; and

² <http://www.rpdata.net.au>

-
- open plan.

These structural variables, except for area of block, were generally included as dummy variables. For example, the pool variable was either 1 or 0, with 1 representing the presence of a pool. Separate dummy variables were set up for the number of bedrooms (bed1, bed2, bed3, bed4, etc). However, for some structural variables, the actual number was included as this provided a better fit in the model.

Locational variables were taken into account through the use of Postcode dummy variables. As the focus of this hedonic model is the value of heritage listing, detailed locational variables were not required. Additionally, the ‘desirableness’ of a suburb and detailed locational variables, such as crime rates, can only be included on a suburb by suburb basis. Accordingly, the Postcode variable acts as a proxy for these more detailed factors.

Hedonic equation for Parramatta LGA

The Parramatta hedonic equation included 578 observations. That is, there were 578 sales during the financial year 2004-05 for which sufficient detail was available. Of these 578 houses, 20 were listed (3.5 per cent) as being of ‘local heritage significance’. The mean sale price for all properties sold during the sample period was \$495 800. The mean block size was 626 m². The mean number of bedrooms was 3.1 and the mean number of bathrooms was 1.4.

The mean sale price of the 20 heritage-listed properties during the sample period was \$613 600, some 24 per cent higher than the mean for all properties sold. The mean land size for heritage-listed properties was 629 m². The mean number of bedrooms was 3 and the mean number of bathrooms was 1.4.

As shown in table C.1, two hedonic price equations were calculated, one with just structural variables and one with structural and locational variables. The goodness-of-fit estimate, R-squared, of the structural-only model was 0.48. When the locational variables were added the R-squared increased to 0.72 and significant changes occurred in the estimates of all structural variables except for garaging. This indicates that locational variables play an important role in determining the value of property in the Parramatta LGA and that regressing the influence of most structural characteristics without accounting for them is fraught with error. The R-squared estimates are consistent with other hedonic regressions (see, for example, Sirmans et al. 2005; Malpezzi et al. 1980).

In regard to the first regression, which contained only structural variables, the size of the block of land (in 100 m²) was included, as were dummy variables for the third, fourth and above bedrooms. Dummy variables were also included for the

second and third or more bathrooms. The presence of a pool, undercover garaging for one and two cars, a second storey and a renovated interior were also included in this hedonic equation. In the absence of locational variables, block size, four or more bedrooms, second bathroom, third and more bathroom, undercover garage for two cars, and renovation were statistically significant.

Table C.1 **Parramatta hedonic price equations**

<i>Variable</i>	<i>Coefficient without location variables</i>	<i>Percentage effect on price</i>	<i>Coefficient with locational variables</i>	<i>Percentage effect on price</i>
R-squared	0.48	..	0.72	..
Constant	5.603**	..	5.689**	..
Area (100 m ²)	0.067**	6.9	0.048**	4.9
Bed 3	0.021	2.1	0.042*	4.3
Bed 4 plus	0.091**	9.5	0.105**	11.1
Bathroom 2	0.076**	7.9	0.042**	4.3
Bathroom 3 plus	0.136**	14.6	0.085**	8.9
Pool	0.026	2.6	0.054**	5.5
LUG 1	0.023	2.3	0.024+	2.4
LUG 2 plus	0.069**	7.1	0.064**	6.6
Second storey	0.020	2.0	0.049*	5.0
Renovation	0.157**	17.0	0.077**	8.0
Heritage	0.086*	9.0	0.019	1.9
PO 2115	..	..	0.058**	6.0
PO 2116	..	..	0.068	7.0
PO 2117	..	..	0.111**	11.7
PO 2118	..	..	0.037	3.8
PO 2121	..	..	0.386**	47.1
PO 2122	..	..	0.302**	35.3
PO 2142	..	..	-0.064**	-6.2
PO 2145	..	..	-0.088**	-8.4
PO 2146	..	..	-0.120**	-11.3
PO 2150	..	..	0.091**	9.5
PO 2151	..	..	0.127**	13.5
PO 2152	..	..	0.038	3.9
PO 2160	..	..	0.059	6.1
PO 2161	..	..	-0.086**	-8.2

** Significant at the 1 per cent level. * Significant at the 5 per cent level. + Significant at the 10 per cent level.
PO Postcode.

Sources: RP Data Ltd, Commission estimates.

The inclusion of locational variables in the second regression had a significant effect on the estimates from the model. This could be due to the diverse area covered by the Parramatta LGA. The effect of location on housing value was quite significant, with the two most expensive suburbs, Eastwood and Epping, adding 35 and 47 per cent respectively to the value of an equivalent house in the base suburb (Baulkham Hills) — these two suburbs also contained 40 per cent of heritage-listed properties. Ten of the 14 Postcode dummy variables in the Parramatta LGA were significant at the 1 per cent level. All structural variables in this model were statistically significant — third bedroom and second storey at the 5 per cent level, garaging for one car at the 10 per cent level and all others were significant at the 1 per cent level.

Heritage was represented by a heritage dummy variable (taking the value of 1 when heritage listed and 0 if not). A comparison of the two estimated hedonic models indicates that the heritage variable captured a strong locational effect. Without accounting for location (i.e., regression without Postcode variables), heritage listing was estimated to add some 9 per cent to the value of a house (and was significant at the 5 per cent level). After including locational variables, the estimate of heritage value reduced to 2 per cent and was not statistically significant.

The hedonic price equations indicated that the value of housing within the Parramatta LGA depends upon location and structural variables, such as the number of bedrooms and bathrooms, land size, amount of garage space and whether the house has been recently renovated. Importantly, the hedonic price equations demonstrate that the heritage listing of a property has a statistically insignificant effect on its value when account is taken of the differences in locational and structural composition of properties. The null hypothesis that heritage-listing does not affect the value of housing in the Parramatta LGA cannot be rejected.

Hedonic equation for Ku-ring-gai LGA

The Ku-ring-gai hedonic equation included 712 observations. That is, there were 712 sales during the financial year 2004-05 for which sufficient detail was available. Of these 712 houses, 17 were listed (2.4 per cent) as being of 'local heritage significance'. The mean sale price for all houses sold during the sample period was \$1.08 million. The mean block size was 1037 m². The mean number of bedrooms was 3.8 and the mean number of bathrooms was 2.6.

The mean sale price of the 17 heritage-listed properties was \$1.7 million, around 58 per cent higher than the mean sale price for all properties sold. The mean land size for heritage-listed properties was 1173 m². The mean number of bedrooms was 3.9 and the mean number of bathrooms was 2.7.

As shown in table C.2, three hedonic price equations models were estimated, one with just structural variables, one with structural and locational variables, and one that distinguished between types of heritage properties. The R-squared of the structural-only model was 0.47. When the locational variables were added the explanatory power of this regression, as reflected by the R-squared, increased to 0.58. The R-squared was also 0.58 when heritage was separated into two variables. These results are consistent with other hedonic regressions (see, for example, Sirmans et al. 2005; Malpezzi et al. 1980).

The first regression included only structural independent variables. A pool, second storey, rumpus room, renovation and tennis court were all dummy variables with 1 indicating the variable was present and 0 if the variable was not. Bed 4, bed 5, and bed 6 were also dummy variables, indicating the additional value of the fourth, fifth and sixth bedrooms above a three bedroom house. The number of bathrooms was a linear variable indicating the exact number of bathrooms. The area of the block of land (per 100 m²) was also included. No data were available on the size of the house, other than the number of bedrooms and bathrooms. It appears likely that the estimates of the bedroom and bathroom variables are also partly proxies for the size of the house.

All these structural variables were significant at the 1 per cent level. The sixth bedroom (31 per cent) and renovation (27 per cent) provided the largest percentage increase in value. Importantly, the coefficient and significance level of most of the structural variables remained fairly stable when locational variables were added to the model. This indicates that the observed structural variables were not accounting for locational effects.

Heritage was represented by a dummy variable (taking the value of 1 when heritage listed and 0 if not). The hedonic model estimates indicate that the heritage variable captured a strong location effect. Without accounting for location (i.e., regression without Postcode variables), heritage listing added 27 per cent to the value of a house (significant at the 1 per cent level). After including locational variables, the added value of heritage was reduced to 14 per cent (significant at the 5 per cent level). The addition of location variables did not effect the coefficient of other structural variables anywhere near as much, nor did it effect their significance (all were significant at the 1 per cent level before and after the addition of locational variables). This implies that, while there is a correlation between increased house value and heritage listing, caution should be exercised in ascribing causation. For example, the model indicates that the heritage-listed Ku-ring-gai properties sold in 2004-05 occurred in the more affluent, and desirable, suburbs to live — the most ‘pricey’ suburbs Killara, Roseville and Gordon, which comprise only 25 per cent of houses sold, represented 71 per cent of heritage-listed properties sold. That is, care

should be exercised in extrapolating the effect of heritage listing beyond those suburbs to say St Ives (Postcode 2075).

Table C.2 **Ku-ring-gai hedonic price equations**

<i>Variable</i>	<i>Coefficient without location variables</i>	<i>Percent effect on price</i>	<i>Coefficient with locational variables</i>	<i>Percent effect on price</i>	<i>Coefficient with different heritage</i>	<i>Percent effect on price</i>
R-squared	0.47	..	0.58	..	0.58	..
Constant	6.416 ^{**}	..	6.400 ^{**}	..	6.399 ^{**}	..
Pool	0.086 ^{**}	9.0	0.100 ^{**}	10.5	0.099 ^{**}	10.4
Second storey	0.089 ^{**}	9.3	0.059 ^{**}	6.1	0.059 ^{**}	6.1
Rumpus	0.051 ^{**}	5.2	0.052 ^{**}	5.3	0.052 ^{**}	5.3
Renovate	0.241 ^{**}	27.3	0.203 ^{**}	22.5	0.204 ^{**}	22.6
Tennis Court	0.121 ^{**}	12.9	0.112 ^{**}	11.9	0.108 ^{**}	11.4
Area (100m ²)	0.022 ^{**}	2.2	0.026 ^{**}	2.6	0.026 ^{**}	2.6
Heritage	0.242^{**}	27.4	0.133[*]	14.2	..	..
Heritage large	..	..	..	..	0.190^{**}	20.9
Heritage normal	..	..	..	..	0.059	6.1
Bed 4	0.071 ^{**}	7.4	0.094 ^{**}	9.9	0.093 ^{**}	9.7
Bed 5	0.149 ^{**}	16.1	0.149 ^{**}	16.1	0.149 ^{**}	16.1
Bed 6	0.273 ^{**}	31.4	0.255 ^{**}	29.0	0.251 ^{**}	28.5
No. of bathrooms	0.020 ^{**}	2.0	0.029 ^{**}	2.9	0.029 ^{**}	2.9
PO 2069	..	..	0.163 ^{**}	17.7	0.165 ^{**}	17.9
PO 2070	..	..	0.088 [*]	9.2	0.094 [*]	9.9
PO 2071	..	..	0.163 ^{**}	17.7	0.165 ^{**}	17.9
PO 2073	..	..	-0.049	-4.8	-0.044	-4.3
PO 2074	..	..	-0.109 ^{**}	-10.3	-0.105 ^{**}	-10.0
PO 2075	..	..	-0.172 ^{**}	-15.8	-0.168 ^{**}	-15.5
PO 2076	..	..	-0.130 ^{**}	-12.2	-0.124 ^{**}	-11.7

^{**} Significant at the 1 per cent level. ^{*} Significant at the 5 per cent level. **PO** Postcode.

Sources: RP Data Ltd, Commission estimates.

Distinguishing between heritage places

In addition to the strong locational bias of the heritage variable, there also appeared to be two distinct types of heritage-listed properties. First, many heritage-listed places (especially in the more affluent suburbs) were unique large buildings, with significantly above-average structural attributes. Other heritage-listed places had attributes which were more consistent with the average house in the Ku-ring-gai LGA. In order to investigate whether the ‘type’ of place listed mattered, heritage was split into large heritage and average heritage places. The hypothesis was that

heritage listing has different effects on properties depending on the pressures faced by each type of property. An average heritage house would face the normal development pressures that typical non-heritage houses face. Large iconic heritage places do not face these pressures as buyers typically do not generally purchase these properties with the intention to re-develop the land.

Of the 17 heritage places sold in Ku-ring-gai during 2004-05, 10 were assessed as being large heritage properties and seven were assessed as 'average' heritage places. The mean block size of large heritage properties was 1333 m², compared with a mean block size of 944 m² for an average heritage property. 'Large' heritage places also have double the mean number of bathrooms of 'average' heritage places. The mean number of bedrooms was 4.7 for 'large' heritage places compared with 2.9 for average heritage places. The mean sale price of 'large' heritage places was \$2.1 million, compared with \$1.1 million for 'average' heritage places. There is also a locational bias for 'large' heritage places, with eight of the 10 being located in Killara and Gordon. 'Average' heritage places were more evenly spread around the Ku-ring-gai LGA, with Roseville, Lindfield, Killara, Pymble and Wahroonga all containing such places.

Distinguishing between heritage places significantly affects the coefficient of the heritage variable. Other structural and locational variables remain stable when heritage was split. 'Large' heritage places command a 21 per cent price premium (significant at the 1 per cent level), which is above the 14 per cent premium estimated when heritage is combined. However, for places that have the characteristics of an 'average' house in Ku-ring-gai, heritage listing has, a coefficient of 0.06 and standard error of 0.09 — indicating no significant effect in explaining the value of property. Therefore, the null hypothesis that heritage-listing does not affect the value of an 'average' house cannot be rejected.

Do housing attributes affect the probability of heritage listing?

The hedonic price models estimated the significance of structural and locational variables in determining the sale price of properties in the Ku-ring-gai LGA.

A logit model is an additional model which can assist in analysing the extent to which the value of a property is influenced by heritage listing. This model estimates the percentage change in the probability of heritage listing that results from the presence of the independent variables. The logit model was estimated using the same information as used for estimating the hedonic model and the results are reported in table C.3.

The logit model results support the more detailed interpretation that heritage listing is dependent on location and on whether the house and land size are large. The model estimates that a two storey house with tennis court has almost a 300 per cent greater probability of heritage listing in Ku-ring-gai than a single storey house with no tennis court. Further, houses in Pymble, Turramurra and Wahroonga have around a 90 per cent *lower* probability of being heritage listed than the base suburb of Gordon. This supports the estimates from the hedonic equation (table C.2) that ‘large’ heritage places command a price premium, while heritage listing of ‘average’ houses has no significant price effect.

Table C.3 Ku-ring-gai LGA logit model
Significant variables

<i>Variable</i>	<i>Coefficient</i>	<i>% change in the probability of listing for an increase in the variable</i>
Constant	-4.01**	-98.2
Second storey	1.24*	245.6
Tennis Court	1.34*	281.9
PO 2073	-2.21+	-89.0
PO 2074	-2.39*	-90.8
PO 2076	-2.13+	-88.1

** significant at the 1 per cent level. * significant at the 5 per cent level. + significant at the 10 per cent level.
PO Postcode.

Sources: RP Data Ltd, Commission estimates.

C.4 Interpreting the results

Hedonic pricing models are location-specific and generalisations across geographical locations are fraught with difficulty. However, useful comparison can be made between areas when hedonic models identify those characteristics that are ‘consistently valued (either positively or negatively) by homebuyers’ (Sirmans et al. 2005, p. 4).

Both the Parramatta and Ku-ring-gai LGA hedonic price models demonstrate that generally, heritage listing does not have a significant effect (positive or negative) on the value of housing, when structural and locational attributes are taken into account. However, for ‘large’ unique houses in the Ku-ring-gai LGA there does appear to be a price premium for heritage listing. Importantly, the two regressions for Ku-ring-gai demonstrate the danger in extrapolating the price effect of heritage listing on large houses to average houses. That is, it is not correct to argue that heritage listing will increase values of average houses because ‘large’ heritage properties receive a premium.

Care should also be taken when interpreting hedonic modelling results to argue that heritage does not have a negative effect on an individual property. In addition to the general nature of hedonic modelling (i.e., it calculates the average price effect), it may not capture the full extent of any reduction in value because it is based on actual sales during the sample period (financial year 2004-05). That is, depressed land value may cause the owner to delay selling the property, resulting in such depressed prices not being included in the sample period of the hedonic model.

The two estimated hedonic models support the argument that the value of heritage listing is, like all real estate, highly susceptible to location attributes. This may reflect the fact that heritage listed properties occur mainly within the more highly priced suburbs of LGAs. Thus, the vast majority of the higher price of these properties comes from their location rather than listing — this is consistent with the old real estate adage: ‘location, location, location’.

D Planning controls and the identification of local heritage

D.1 Local government planning controls

All jurisdictions have State-wide planning statutes. These statutes set out the framework under which local governments determine development and planning applications — typically known as local planning schemes.¹ The statutes typically also provide for State and regional plans in addition to local plans.

State plans typically deal with issues of a State-wide importance. These can either cover issues which apply State-wide (such as environmentally sustainable development) or apply to specific areas that have high importance (such as the central western Sydney economic and employment zone in NSW). State plans also set out a general framework to be applied in both regional and local plans. Some jurisdictions make it compulsory for local plans to include State-wide consistent provisions outlined in State plans (for example, Victorian Planning Provisions).

Regional plans deal with issues that go beyond the local area — for example, protecting river catchments or providing public transport systems. These plans often apply to large areas (such as specific regions) but they can relate to small sites that have regional significance. For example, South East Queensland Regional Plan and NSW REP No. 4 – Homebush Bay.

Local planning schemes, typically prepared by local councils, guide planning decisions for a local government area. Through zoning and development controls, they allow councils to supervise the ways in which land is used. Development control plans (or codes contained in the local schemes) provide specific, more comprehensive guidelines for types of development, or small sections of the planned area. Councils can use development control plans to make local planning more detailed, or adopt their own codes. These allow the council to provide specific, more comprehensive planning policies for individual types of

¹ *Environmental Planning and Assessment Act 1979* (NSW); *Planning and Environment Act 1987* (Vic); *Integrated Planning Act 1997* (Qld); *Town Planning and Development Act 1928* (WA); *Development Act 1993* (SA); *Land Use Planning and Approvals Act 1993* (Tas).

development, or particular sections of the local government area. The level of State control over local schemes varies significantly between jurisdictions.

The prevalence of State control over local planning schemes

In New South Wales there are three separate types of environmental planning instrument: State Environment Planning Policies, Regional Environmental Planning Policies and Local Environment Plans (LEPs). A State plan overrides a local plan where a State plan specifically states it prevails to the extent of any inconsistency. McLeod (1997, p. 1-109) notes that ‘almost uniformly’ State and regional plans expressly provide that they prevail and hence typically over-rule LEPs. In addition, section 117 of the EPA Act enables the Minister to direct local governments to exercise their planning functions in accordance with principles that are specified in Ministerial directions. An example of this are the State-standard Model LEP provisions (including model heritage provisions).

Victoria requires that local plans include State-wide consistent provisions. These are contained in the Victorian Planning Provisions. These provisions are prepared by the Minister and each local council is to decide how these provisions are to apply to land in its area. This results in State-consistent zones and overlays as well as decision and performance criteria (including heritage conservation). The State planning policy framework includes the policies on the following issues:

- settlement;
- environment;
- housing;
- economic development;
- infrastructure; and
- particular uses and development.

In Queensland, the Department of Local Government and Planning can override all local government policies through the identification of new applicable codes (Integrated Planning Act (IPA) s. 3.1.10). There are currently four State codes. These relate to the clearing of vegetation, standard building regulations, licensed brothels, and water related developments. In addition, there are also State planning policies dealing with, for example, flood management, coastal management, and airport development issues as well as conservation of agricultural land. Such policies can apply to the whole State or parts thereof. There is no clear superiority of State policies over local policies, although, the Minister may direct a local council to make a local policy consistent with State policies (IPA s. 2.3.2). There

are ten current State policies. The State Government also produces a local planning scheme template — providing guidance only on the structure of the scheme. There does not appear to be active State guidance on local heritage conservation.

The planning system in Western Australia grants the Western Australian Planning Commission (WAPC) power to develop regional planning schemes and requires local governments to amend their local schemes in order to be consistent with regional schemes. The WAPC also issues policies and guidance notices. While such policies are not binding on local schemes, local governments must have due regard to the policies when developing local schemes and the courts are also to have due regard to the policies when assessing appeals. Western Australia also has a model text scheme. Unlike other States, Western Australia has maintained State control over subdivision of land enabling uniform standards and administration.

The South Australian planning system allows for State-wide planning strategy. It can incorporate documents, plans and policy Statements designed to facilitate strategic planning (s. 22 of the *Development Act 1993*). However, no action can be taken where development plans are inconsistent with the planning strategy (s. 22(10)). However, since all development plans must be approved by the Minister, development plans may contain State policies. The Minister is able to approve, decline, or suggest amendments to development plans made by local councils.

Under Tasmanian legislation,² provisions are made for the making of State policies with regard to environmental issues, land use planning and land management. The State Policies and Planning Act states that where a State policy and provision in a planning scheme are inconsistent, the planning scheme is void to the extent of the inconsistency (s. 13). Planning schemes are amended by the Resource Planning and Development Commission to remove any inconsistencies. There is currently no State policy on local heritage. In addition, the Planning Commission has issued a directive on the use of the model text scheme for local planning schemes.

Zoning restrictions

Zoning is the primary mechanism through which land use and development are controlled in local planning schemes. A zone is a planning provision that reflects the primary character of land (such as residential, industrial or rural) and indicates the type of use and development which may be appropriate (or prohibited) in that zone.

² *State Policies and Projects Act 1993* (Tas).

Local schemes typically allow for residential, business, mixed use, industrial and environmental zones. Within these broad categories, zones cater for different intensity of use. For example, Residential zone 1 may allow for low density residential, whereas residential zone 2 may allow for multi-dwelling development. Typically, similar types of activities are placed within one zone. This often results in similar restrictions on the land also being placed on similar types of land. Planning schemes may also place restrictions on the interaction between different zones. For examples, industrial zones may not be allowed to exist directly next to residential zones or environmental zones.

Some States, such as Victoria and Tasmania, also place a further layer of more detailed controls on top of zoning types. These are typically called overlays and are imposed in addition to the zone. Overlays relate to the environment, heritage, built form, and land and site management issues. In some cases, uses which would be permissible under the zoning of the land, may not be allowed under the additional overlay requirements.

Currently, in New South Wales there are over 3100 different zoning types, with an even greater range of allowed and prohibited development in each zone type (Draft Model LEP, p. 9). Although, current planning reforms are intended to reduce this to around 22 State-consistent zone types. In Victoria, there are 32 standard zones in the Victorian Planning Provisions. In addition to these zones, there are 22 overlays which apply further restrictions (Planning Schemes Online). The Tasmanian model scheme template allows for 15 different land zones.³ Queensland, South Australia, and Western Australia do not impose State control over the zones which local councils can include in their planning schemes.⁴

The controls over zones are generally divided into three sections. These sections cover: uses which do not require a permit; uses which are discretionary and do require a permit; and uses which are prohibited. In addition, planning schemes also contain tables outlining allowed, discretionary, or prohibited developments in any particular zone. For example, in Victoria, development permit requirements are set out following the table of uses in a planning scheme. These clauses set out whether a development application is required to construct a building or carry out works. There are also schedules for each zone which set out additional controls which apply only in that scheme such as setbacks, heights, minimum lot sizes, minimum subdivision, etc.

³ http://www.rpdc.tas.gov.au/planning/pln_docs/planningdirective1.htm.

⁴ The Queensland IPA states that zones and overlays are allowed. The model scheme template includes state-consistent structures. It does not include the number or type of zones or overlays to be used.

Changes in zone types, and permitted uses within zones, usually change land values and the impact of such value changes are accepted and borne by property owners. Such changes apply to all land within the zone's area and generally increase land values by allowing highest and best economic use of sites.

The need for development approval

The zoning and, where relevant, overlays of the land determines the need for development approval. Local planning schemes include allowed, prohibited and conditional developments in each zone. Proposed developments can also be assessed through reference to pre-existing codes or standards ('complying' or 'code' development), or through the use of case-by-case assessment of the merits. As with zoning types, the range of State control over local planning schemes varies greatly between jurisdictions.

In New South Wales, development approval is needed for developments identified in the zoning of the land as requiring consent. Development control is done primarily through LEPs. An LEP can do this through:

- expressly permitting specified development to be carried out without the need for development consent (s. 71(1));
- declaring development of a specified class or description that is of minimal environmental impact to be exempt development (s. 76(2));
- providing that specified development not to be carried out except with development consent (s. 76A(1));
- declare that local development that can be addressed by specified predetermined development standards as complying development (ss. 76A(4) and (5)); and
- provide that specified development is prohibited (s. 76B).

The most common form of controlling development is through 'complying development' (McLeod 1997, p. 1.170). Development addressing specified predetermined development standards (contained in the relevant LEP) is treated as complying development. Complying development may be carried out if a complying development certificate has been issued, and the development is in accordance with the certificate and the relevant provisions of the LEP, development control plan and regulations (s. 84A(1)). For example, a LEP together with a development control plan, may state that within a given zone developments are allowed if they are of a certain design or nature (box D.1).

Box D.1 **Parramatta City Council complying developments**

A complying development is one that meets stated requirements in a LEP and development control plan. In the Parramatta local government area this is shown through the Parramatta LEP and DCP. Parramatta City Council DCP states:

Complying development is development that can be described as having minimal environmental impact and no adverse impact on adjoining properties. Complying development allows structures and/or other uses to occur on land once either Council or a private certifier has issued a Complying Development Certificate.

A complying development certificate can only be issued if the development satisfies the pre-determined development standards. If the development falls outside these standards a Development Application must be submitted. (p. 207)

Complying developments include, but not limited to, single dwelling housing, carports and garages, swimming pools, so long as they meet the stated criteria (including where relevant Australian Building Code standard and Australian safety standards).

Exempt development in the Parramatta local government area includes:

Exempt development relates to minor works of negligible environmental impact and limited size, which do not require consent. Exempt development only relates to that development listed in Part 6.1 of the Parramatta Development Control Plan 2001. (p. 189)

Examples include access facilities, advertising signs, satellite dishes, skylights, cubby houses, and awnings and pergolas, so long as they meet the stated design criteria in the DCP.

Source: Parramatta City Council Development Control Plan 2001.

In Victoria, each zone contains a table outlining developments which are allowed, those which are banned, and those which are allowed with permission of the local council. Development includes:

... the construction or exterior alteration or exterior decoration of a building, the demolition or removal of a building or works, the construction or carrying out of works, the subdivision or consolidation of land, the placing or relocation of a building or works on land and the construction or putting up for display of signs or hoardings. (PEA, s. 3)

Prior to undertaking a development, the applicant can apply for a certificate from the responsible agency stating that a proposed use or development (or part of a use or development) of land would comply with the requirements of the planning

scheme at the date of the certificate (s. 97N). The certificate may specify any part of the development which would require a permit, or which is prohibited under the planning scheme. A certificate must be refused if the whole of the development would require a permit or is prohibited under the planning scheme.

In Queensland, development under the IPA is defined as carrying out work, reconfiguring a lot of land, and making a material change of use to a premises. Any activity which falls outside of these is not covered by the Act. Works includes building, drainage, plumbing and operational works. The IPA identifies three types of developments: exempt, assessable and self-assessable. Exempt developments cannot be made assessable under a scheme, and are not regulated by any code and do not require a development permit. Examples of exempt developments include mining activity and operational works by public entities.

In Western Australia, all local schemes — including the Metropolitan Region Scheme (MRS), covering Perth and suburbs — contain provisions which take away the common law right to develop land without approval. However, unlike other States, there is no State-wide centralised development control provisions in the Town Planning Act. Therefore, each local planning scheme deals with development differently (McLeod 1997, p. 4106). All schemes prohibit certain developments in some form, without the approval of the relevant local government. Most schemes allow some use and development in particular zones. Under the Model Text Scheme, all development on zoned or reserved land needs development approval. Generally, under the Model Text Scheme the following development is allowed:

- all building or works affecting the interior and that do not materially affect the external appearance — unless there are heritage controls over the building;
- erection of a single house on a lot (including extension, ancillary outbuildings, and swimming pools) — unless the lot is in a heritage area;
- the demolition or removal of any building or structure — unless there are heritage controls over the building;
- a home office within a dwelling by a resident of the dwelling;
- any temporary works which last for less than 48 hours; and
- exempted advertisements — unless there are heritage controls over the building.

In South Australia, approval under the Development Act is needed for all developments. Development is defined as including:

- the construction, demolition, or removal of a building;
- a change in the use of land;
- the division of an allotment;

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- in relation to a State heritage place — the demolition, removal, conversion, alteration or painting of, or addition to, the place, or any other work that could materially affect the heritage value of the place; and
 - in relation to a local heritage place — the demolition, removal, conversion, alteration of, or addition to, the place, or any other work (not including painting) that could materially affect the heritage value of the place (s. 4).

Each individual development plan sets out types of development which are allowed (complying), not allowed (non-complying), and those that require case-by-case assessment for each ‘precinct’ or zone identified within the plan. For example, in the Adelaide City Council development plan, approval is not needed for work on places in the North Terrace Precinct which does not affect the external appearance of the place (excluding heritage listed places).

In Tasmania, development approval is needed for certain activities listed in the table of uses for the zone of the land in the relevant local council’s planning scheme. Council planning schemes contain detailed provisions that set out whether a planning permit application is required for particular kinds of use and development. Planning schemes may also exempt certain kinds of use and development from requiring a planning permit. Tasmanian local planning schemes continue tables for each zone outlining exempt, permitted, prohibited and discretionary developments. Development includes: the construction, exterior alteration or exterior decoration of a building; the demolition or removal of a building or works; the construction or carrying out of works; the subdivision or consolidation of land; the placing or relocation of a building or works on land; and the construction or putting up for display of signs or hoardings.

Assessment of development applications

Local planning schemes typically outline developments which are prohibited, deemed permitted if meet predetermined standards (code assessment), or allowed on a discretionary basis (merit assessment). For development applications which require discretionary approval by the relevant local authority, each State’s planning laws outline the considerations that must be taken into account. The detailed considerations are often contained in local planning schemes. This section focuses on the State-mandated considerations. Generally, there are two types of assessments: assessment against pre-established standards (code assessment); and case-by-case assessment against general principles (merit assessment) — see table D.1).

Table D.1 Development assessment systems

Code or merit assessment

<i>State</i>	<i>Type of assessment^a</i>
New South Wales	Code assessment
Victoria	Guided merit assessment ^b
Queensland	Code assessment
Western Australia	Merit assessment
South Australia	Code assessment
Tasmania	Merit assessment

^a Code assessment also allows for merit assessment. Merit assessment does not allow for code assessment.

^b Victorian Planning Provisions provide for design criteria that must be met for each zone. However, there is no automatic approval when the criteria is met.

New South Wales

The most common form of development is complying development. For developments that require approval, the determination of development applications is governed by sections 79C, 80 and 80A of the Environmental Protection Act.

Section 79C specifies the matters, as relevant, that a local council must consider when assessing a development application:

- the provisions of any environmental planning instrument, and draft plan, any development control plan that apply to the land to which the development application relates;
- the likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality;
- the suitability of the site for development;
- any submissions made; and
- the public interest.

Section 79C of the EPA Act (NSW) — specifically subsection (1)(b) — means that developments occurring near heritage listed places must take into effect the impact on the heritage item. It also means that places which are not recognised as local heritage could still be subject to heritage restrictions.

Victoria

Each State-consistent zone and overlay has a corresponding purpose (see the VPP Manual).⁵ This outlines the objective of land use and development within that zone. For example, Residential 1 zone has the following purpose:

To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households. (p. 28)

Whereas, Residential 2 zone has the purpose of:

To encourage residential development at medium or higher densities to make optimum use of the facilities and services available. (p. 28)

Before considering a development application, the relevant authority must consider any objections received, any recommendation of a referral authority and any significant environmental effects (s. 60). Under the VPP (cl. 65), the authority is also required to decide whether the proposal will produce acceptable outcomes by reference to the objective or purpose of the relevant zone, or overlay applying to the land. In addition, clause 65 of the VPP requires the following general factors to also be taken into account:

- the orderly planning of the area;
- the effect on the amenity of the area;
- the proximity of the land to any public land;
- factors likely to cause land degradation;
- extent and character of native vegetation;
- whether native vegetation is to be or can be protected; and
- the degree of flood, erosion, or fire hazard associated with the land.

Further, any decision made must have regard to the objectives of the Victorian planning system (s. 60). These include:

- (a) to provide for the fair, orderly, economic and sustainable use, and development of land;
- (b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;
- (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;

⁵ <http://www.dse.vic.gov.au/dse/nrenpl.nsf/FID/-F62B3D930F953701CA256D480003CF54?OpenDocument>).

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- (d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
 - (e) to protect public utilities and other assets and enable the orderly provision and coordination of public utilities and other facilities for the benefit of the community;
 - (f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e); and
 - (g) to balance the present and future interests of all Victorians (s. 4).

Queensland

Under the IPA there are two forms of assessment; code assessment and impact assessment. These forms impose different requirements with which the local authority must follow. A code is defined as a document or part thereof in a planning instrument; in the IPA or other Act; or in a preliminary approval. A 'code assessment' involves assessing an application against the applicable code. 'Impact assessment' is a means of assessing the environmental effects of the proposed development and the ways of dealing with the effects. The procedural difference between the two is that code assessable developments do not require public notification, whereas impact assessable developments do (s. 3.4.2). Where an application contains some impact assessable elements, the whole application requires public notification. McLeod (1997, p.3-68) notes that most applications are notifiable-code assessable developments due to a lack of regulations designating developments as code assessable, and that the IPA does not preclude local planning schemes from declaring that code assessable development are publicly notifiable.

Individual local planning schemes contain development assessment tables which usually identify:

- the assessment category (assessable, self-assessable or exempt) that applies to development in a particular zone or affected by an overlay;
- the assessment criteria, including applicable codes, that are relevant to particular development; and
- whether code assessment or impact assessment is required for assessable development.

Development applications are assessed against the relevant 'development assessment criteria'. These are mostly contained in codes and are the criteria or

standards for achieving the outcomes sought from self-assessable or assessable development. Codes may address a specific type of development (e.g., reconfiguring a lot), a type of use (e.g., home business) or may relate to an identified zone or overlay.

Western Australia

The Western Australian planning system has two distinct processes: one for assessing subdivision; and the other for development applications. Compared to other States, the system is substantially common-law based.

Subdivision

Subdivision of land in Western Australia, is controlled at the State level through the Western Australia Planning Commission (WAPC). Section 20 of the Town Planning Act states that no subdivision may occur without the permission of the WAPC. Despite the apparent wide discretion afforded by s. 20, the WAPC must take into consideration the following when assessing an application for subdivision:

- orderly development of land;
- maintenance of the character of the area;
- the aesthetics of the proposed development;
- environment risks;
- size of the proposed blocks in relation to others in locality; and
- the control over the use of the land (Ipp J in *Falc Pty Ltd v SPC* (1991) 5 WAR 522 at 535).

Developments

There are no central State-wide controls over development and as a result each local scheme in Western Australia deals with development differently. The Metropolitan Regional Scheme (MRS) — covering Perth and suburbs — divides land into reserved land (Pt II of the MRS) and zoned land (Pt III of the MRS). Clause 24 of the Model Scheme Text (MST) states that the relevant authority (generally the local government of that area) must approve any development on zoned land. However, approval is not needed if the land is not subject to a Clause 32 Notice and the development consists of the erection of a single dwelling house which will be the only building on that land (McLeod 1997, p. 26-106).

Under both the MRS and the MST, the relevant authority must have regard to the ‘preservation of the amenity of the locality’ when assessing development applications.⁶ Amenity includes:

- the appearance to a passer-by;
- the streetscape;
- the overall visual aesthetics;
- preservation of flora;
- historical preservation;
- safety;
- privacy;
- security;
- community facilities; and
- other factors that arise in particular cases (*Tempora Pty Ltd v Shire of Kalamunda* (1994) 10 SR(WA) 296 at 303).

The WA Tribunal has also confirmed that heritage aspects of a building arise in the consideration of amenity.⁷ In addition, heritage is a valid consideration even where there is no formal designation as a heritage precinct or mentioned in the municipal inventory.⁸

The assessment of amenity involves a three-step process:

1. determine the objective character of the area that represents the present state of amenity;
2. determine the manner in which the proposed use may affect the existing amenity; and
3. determine the extent to which the new use will have an effect on the existing amenity (*Tempora* case).

South Australia

Section 32 of the Development Act states that any development can be undertaken with a development approval. A development approval could be made up of one or more of six consents. In this regard, the required number of consents depends on the

⁶ See cl. 30(2) of the MRS and cl. 10.2(n) of the MST.

⁷ *Fetherstone Holdings Pty Ltd v City of Fremantle* (unreported, TPAT, App No. 32/1997, 7.10.1997).

⁸ *Jean Arthur Pty Ltd v Shire of York* (unreported, TPAT, App No. 27/1994).

nature and kind of development proposal. When all necessary consents have been issued, the local council can issue a development approval to the applicant. The available consents are:

1. a provisional development plan (PDP) consent;
2. a provisional building rules (PBR) consent;
3. a consent in relation to the division of land, other than by strata plan or community title. This includes the satisfaction of the requirements for the provision of water supply and sewerage services, adequate open space, and adequate easements and reserves;
4. a consent in relation to the division of land by strata plan or community title including the requirements for the payment of a cash contribution to the Planning and Development Fund being satisfied, that any building or structures on the land comply with the building rules and each unit or lot to be created being appropriate for separate occupation;
5. a consent in relation to the encroachment of a building over a public place; and
6. a consent in relation to any other prescribed matter.

All forms of development (including strata plans and community titles) require a provisional development plan (PDP) consent. Each proposal is assessed by the relevant local council with regard to its conformity and consistency with the provisions of the relevant Development Plan (the local planning scheme). This Plan sets out provisions dealing with the design and location of development and includes matters such as zoning and design criteria.

All development, as defined by the Act and Regulations, requires the lodgement of a development application to seek development approval or a staged consent. There are three kinds of development:

- complying;
- non-complying; and
- development on consideration of merit.

The forms of development and building work deemed to be complying are listed in Parts 1 and 2 of Schedule 4 of the Development Act Regulations. Councils can also choose to include more extensive lists of complying development within the relevant Development Plan. The local council must approve developments which are deemed to be complying.

Non-complying development is development listed in the Development Plan as being non-complying in a particular zone or policy area. Development listed as non-

complying in the Development Plan will generally be inconsistent with the statements of objective and principles of development control for a particular zone or policy area. Accordingly non-complying development is not usually approved without some form of unique or special circumstances. In its assessment of a non-complying development, the relevant local council must assess an application in the same manner as if it were a 'merit' application, and must not grant a development approval or a consent if the proposed development is considered by the relevant authority to be seriously at variance with the relevant development plan.

Development for consideration on merit refers to any nature of development that is not listed as either a complying development or a non-complying development in a development plan or Schedule 4 of the Regulations. An application for a development for consideration on merit is assessed by the relevant local council, having regard to the objectives and principles of development control within the relevant development plan. In its assessment of this type of development application, the local council must not grant a development approval or a consent if the proposed development is seriously at variance with the relevant development plan. A development can be seriously at variance whether or not it is non-complying.

Tasmania

A planning authority must decide a development application be reference to its planning scheme as in force at the date of the decision (s. 51(3) of the *Land Use Planning and Approvals Act 1993* (LUPAA)). Where a planning scheme classifies a development as permitted, the planning authority must approve it. Where the development is categorised in the scheme as discretionary, the authority must refer to the objectives of the LUPAA in assessing the development application.⁹ The objectives of the LUPAA are separated into two sets. The first set states:

- to promote the sustainable development of natural and physical resources;
- to provide for the fair, orderly, and sustainable use and development of air, land and water;
- encouragement public involvement in resource management and planning;
- to facilitate economic development in accordance with the first three objectives; and
- to promote the sharing of responsibility for resource management and planning between the different spheres of government, community and industry.

⁹ This is in addition to the criteria, if any, listed in the relevant scheme.

The second set of objectives of planning system under the LUPAA include:

- to require sound strategic planning and coordinated action by State and local governments;
- to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects;
- to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians;
- to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural, or historical interest, or otherwise of special cultural value; and
- to protect public infrastructure and the orderly provision of public utilities.

McLeod (1997, p. 26A-8058) notes that the objective relating to the conservation of heritage buildings has been quoted in a few Tribunal cases but it is yet to be held that it imposes more obligations than those already imposed by an individual planning scheme. In *B Heckinger v Tasman Council* [1996] TASRMPAT 135 the Tribunal held that the objectives require a planning authority to consider environmental, historical and cultural values when assessing development applications. McLeod (1997) contends that the little reliance placed on the objective of heritage conservation probably flows from the protection afforded to heritage through existing planning schemes and the Historic Cultural Heritage Act.

D.2 Local government mechanisms to identify locally significant heritage places

New South Wales

The obligations of local governments for heritage identification and assessment, are imposed by the *Local Government Act 1993* (LGA) and through the powers and processes established under the *Environmental Planning and Assessment Act 1979*.

The LGA requires that in determining an application, the council should consider as relevant to the public interest any items of cultural and heritage significance which might be affected (s. 89(3)). Section 142 of the LGA is an important provision affecting councils dealings with heritage items. Heritage items are defined as places listed on the Register of the National Estate (RNE), subject to an Interim Heritage Order (IHO) under the Heritage Act, or identified under a planning instrument. For these items, the relevant council must:

-
1. not give an order until after it has considered the impact of the order on the heritage significance of the item; and
 2. not give an order affecting items on the RNE or under an IHO until it has given notice to the Heritage Council and has considered any submissions made by the Heritage Council (although the Heritage Council may in writing absolve the council from this responsibility).

The *Environmental Planning and Assessment Act 1979* enabled responsibility for heritage to be shared by State and local government agencies. The Act also provided local government with the power to protect items and places of heritage significance in the local area through local environmental plans (LEPs) and development control plans. A 1985 Ministerial Directive confirmed local council's obligation to identify heritage items in their local environmental plans.

The NSW Heritage Office has developed model heritage provisions to simplify statutory controls for the protection of local heritage items. A plan which incorporates the model provisions will receive the endorsement of the Heritage Office/Heritage Council, Planning NSW and Parliamentary Counsel (NSWHO 2000).

The provisions are based on Australian conservation practice and experience with planning instruments. The provisions comprise definitions, objectives and standard clauses. The clauses relate to:

- the protection of heritage items and heritage conservation areas;
- advertised development;
- notice of demolition to the Heritage Council;
- development affecting places or sites of known or potential Aboriginal heritage significance;
- development affecting known or potential archaeological sites of relics of non Aboriginal heritage significance;
- development in the vicinity of a heritage item;
- conservation incentives; and
- development in heritage conservation areas.

Individual councils can also prepare development control plans to specify more detailed management policies for those items and places listed in the schedule of a local environmental plan. However, there appears to be no State guidance as to the content of heritage development control plans.

Victoria

In Victoria, the requirement for local heritage conservation is through the provisions contained in the *Planning and Environment Act 1987* (PEA). Section 1(d) of the Act states that one of the objectives of planning in Victoria is to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest. The PEA allows local governments to impose heritage overlays on top of the zoning controls over a piece of land, as well as adopting heritage conservation zones.

The Victorian Planning Provisions (VPP) state that any heritage place with a recognised citation (RNE and Victorian State Heritage Register) should be included in the heritage overlay schedule to local planning schemes — this includes places identified in local heritage studies. Although, the Provisions note that the desire to include an extensive overlay may be limited by the need for the local council to physically administer the heritage control and provide assistance and advice to the affected owners. The Heritage Overlay schedule table (see table 5.2 at end of chapter) includes cells requiring a yes or no inclusion for:

- external paint controls;
- internal alteration controls;
- tree controls;
- outbuildings or fences included;
- included on Victorian State heritage register;
- prohibited uses may be required; and
- aboriginal heritage place.

The relevant controls are triggered through entering a yes in the relevant cell. The VPP Manual contains guidance on the use of the controls. For example, it is advised that internal alteration controls are used ‘sparingly and on a selective basis to special interior of high significance’ (p. 58). Prohibited uses cell should only be ticked as yes for places where its existing use will create difficulties for the future conservation of the building — for example, churches, warehouses.

In addition to the statutory controls over places listed in heritage overlay schedules, the Victorian planning system allows for voluntary agreements between a local council and land owner setting out conditions or restrictions on the use or development of the land. These are known as section 173 agreements (PEA s. 173). A section 173 agreement is a legal contract that can be registered over the title to the land so that the owner’s obligations under the agreement bind future owners and occupiers of the land. A section 173 agreement can be enforced in the same way as

a permit condition or planning scheme. These are different from restrictive covenants, as the agreements may place a positive duty on the owner. The Victorian Planning Guide states that such agreements can be used for heritage protection (Planning Guide, chapter 8.3.3).

Queensland

The *Integrated Planning Act 1997* states that heritage conservation is one of the 'core matters for planning schemes'. Consequently, local councils should identify and conserve areas or places of social, cultural or heritage significance, such as areas of aesthetic, architectural, historic, scientific, social or technical significance.

At present, the role of local government in considering cultural heritage issues in its planning and development processes depends on the extent to which it has elected to take up those issues. The Environmental Protection Authority (2005, p. 6) commented that 'there is little certainty or consistency from one local government to another'. The State-wide template scheme contains provisions for the implementation of 'cultural heritage' and 'natural features or resources' overlays. However, these schemes do not provide any guidance on the structure or content of the 'cultural heritage codes' against which all heritage assessment are to be made (see <http://www.ipa.qld.gov.au/plan/planSchemeTemplates.asp>).

The Integrated Planning Act provides for the exercise of State powers in respect of planning schemes through State Planning Policies. State Planning Policies are instruments about matters of State interest. There is no State Planning Policy for cultural heritage. Such a policy (if one existed) would likely be directed to giving guidance to local government authorities when planning for places or precincts of cultural heritage significance (EPA 2005, pp. 11–2).

Western Australia

Section 45 of the *Heritage Act 1990* requires that local councils compile and maintain 'municipal inventories' of places of cultural heritage significance. The inventory includes buildings within the municipality which in the opinion of the council are, or may become, items of cultural heritage significance. The inventory must be updated every year, and reviewed every four years. The local council must give a copy of the inventory to the Heritage Council. The list must be compiled 'with proper public consultation'.

Listing on a municipal inventory has no legal implications for property owners, but it may be used to identify places for inclusion in a heritage list under a local planning scheme. Then specific heritage controls apply under local planning

controls. Approximately 16 332 places are listed in municipal inventories across the State (WA National Trust 2004 p. 87).

There are no statutory procedures for preparing a municipal inventory, other than a requirement for the local government to undertake proper consultation. Many local governments follow the Heritage Council guidelines published in the *Local Government Heritage Manual* and the *Guidelines for the Compilation of Municipal Inventories*.

South Australia

The *Development Act 1993* allows local councils to designate places of local heritage significance in Development Plans. This essentially creates local heritage registers for each local council. To be eligible, the item must meet at least one of the following criteria set out in section 23(4) of the Development Act:

- displays historical, economic or social themes important to the local area;
- has played an important part in the lives of the local residents;
- represents customs or ways of life characteristics of the local area;
- is associated with a notable local person or event;
- has aesthetic merit, design characteristics or construction techniques of significance to the local area; or
- is a notable local landmark.

Once a place is subject to the Development Act, controls are placed on the 'development' of the place. Development is defined as works to demolish, remove, convert, alter or add to place of local heritage value or to do any work, except painting, that could materially affect the heritage value of such a place.

If a local council wishes to designate a place as having local heritage significance, it must follow the usual procedure for amending a Development Plan and, prior to public release, inform and invite submissions from the owner of the property. The local council must prepare a report on these submissions and submit it to the relevant Minister, who must seek advice from the Development Policy Advisory Committee. If the owner objects, the Committee must allow the owner to make submissions.

Under the Heritage (Heritage Directions) Amendment Bill 2005 and Development (Sustainable Development) Amendment Bill 2005, local government authorities would be required to undertake mandatory heritage surveys, five yearly reviews and prepare Heritage Plans with their Heritage Surveys (with mandatory requirements

for including identified places in the plans for confirmation or rejection after public consultation).

Tasmania

Recognition of heritage significance at the local level is undertaken through the planning system of heritage overlays and heritage areas, similar to the system in Victoria — upon which the Tasmanian system was modelled originally. Interestingly, heritage conservation in Tasmania is conducted mainly through the use of the State Heritage Register. The Tasmanian *Guide to the Resource Management and Planning System* outlines the State heritage system without reference to, or distinguishing from, locally significant heritage items. The *Common Key Elements Template* for local planning instruments does not contain any reference to the need for local heritage recognition or protection. The focus appears to be on using the State Heritage Register rather than local planning schemes for the recognition of locally significant heritage places. Tasmania is currently reviewing its heritage processes.

E Heritage conservation by agreement

Conservation agreements or ‘covenants’ for the protection of historic heritage assets are not new to heritage conservation. All Australian jurisdictions currently have provision to negotiate heritage agreements with property owners, although they are typically reserved for specific types of properties and the disposal of government assets. Internationally, conservation agreements are a common feature of historic heritage conservation systems in a number of jurisdictions, particularly in the United States and Canada. The use of covenants to protect *natural* heritage is widespread in Australia and overseas.

E.1 Protection of historic heritage places by agreement

United States

In the United States, heritage listing provides only honorary recognition for places of heritage significance and has no regulatory implications. The National Register of Historic Places is an inventory of heritage places in the United States, somewhat similar to the Register of National Estate. There are around 79 000 places on the register. State registers are similarly used to identify, not regulate, places of heritage significance.

Local governments have the power to list and regulate heritage properties through heritage ordinances. However, the arrangements for each municipality are far from uniform. For example, in the State of Colorado, more than half of local governments require consent from the owner to list their property (a system of voluntary listing). A further 13 per cent of local governments require a higher standard to be met if they want to list a property without owner consent (e.g., the place must be of ‘overwhelming’ heritage significance).

Many governments rely on conservation covenants or ‘easements’ and other financial incentives such as tax deductions and grants to achieve heritage conservation objectives. Easements have been a long standing feature of heritage conservation in the United States, with the first easements written in the late 1880s to protect parkways designed by Fredrick Law Olmstead in the Boston Area. In the late 1930s, governments started to use easements extensively to protect parkways,

and by the late 1970s, government agencies were routinely using easements to protect natural and historic heritage places. They are now used in every State to protect cultural and natural heritage. While there is no comprehensive list of historic heritage easements, their use is widespread and number in the thousands. Examples are given in box E.1. Also, the use of easements to preserve natural heritage is extensive — by 2003, over 17 500 easements were in place, protecting over 5 million acres of land (Byers and Ponte 2005, p. 8).

Box E.1 Historic heritage places protected by easements: United States

Historic heritage easements are used to conserve a wide variety of heritage values across a range of places, including historic government and commercial buildings, residential homes, archaeological sites, historic gardens and landscapes. For each place, an easement may protect the entire historic structure, one or more facades, the gardens, the interior or a particular room, feature or finish.

For example:

- The Land Title Building (c. 1897), one of Philadelphia's first major structures and an example of early skyscraper design, is protected by a preservation easement assuring its place in the Philadelphia skyline.
- The architectural features of Georgian and Federal style homes in New England are protected by historic preservation easements.
- An easement protects the Cedar Creek Battlefield site in Virginia, (which is mostly privately-owned). Cedar Creek was the location of one of the final, and most decisive, battles in the Valley Campaigns of 1864 during the American Civil War.
- An easement placed on the Field-Hodges House in North Andover c. 1839, MA protects the grounds, barn and fencing, as well as the majority of interior features and finishes of the house.
- The ornate detailing of an oriel window is protected under a facade easement on a late 19th-Century rowhouse in New York's Central Park West Historic District.

Source: National Park Service (2003).

A conservation easement is a voluntary contractual agreement between a property owner and an eligible organisation (government agency or non-government organisation (NGO)) to protect a significant historic property, landscape or archaeological site. In general, a property owner agrees to conserve a place and seek approval for alterations, in exchange for an income tax deduction (equivalent to the loss of property value from the restrictions in the easement). Easements are often tailored to protect the individual characteristics of each heritage property, although most government agencies and NGOs use a standardised template agreement as a basis for negotiation. Agreements can range from basic easements to protect the

façade of residential homes to more detailed easements covering approval for interior works, maintenance of gardens and public access. A sample easement from the City of Phoenix is provided in attachment I.

The main criticism of conservation easements in the United States has been the direct link between easements and the taxation system. An easement automatically entitles a property owner to an income tax deduction, rather than providing an assistance package commensurate with the costs of conservation. As a result, a property owner may receive tax incentives where they would conserve heritage values in the absence of any assistance, because of the private commercial incentive to do so. As discussed in chapter 10, this suggests any assistance program, regardless of whether its attached to an easement program, must be transparent and well targeted.

Aside from the criticism of the use of the tax system, conservation easements are generally supported by governments and heritage advocates. The National Trust encourages the use of easements to conserve historic heritage places:

Preservation easements are a uniquely effective preservation tool — a tool that uses private — and voluntary — agreements to protect historic structures and significant historic areas from demolition or inappropriate alteration. For well over three decades, hundreds of non-profit organizations — and governmental agencies at the federal, state, and local levels — have responsibly used preservation easements to protect many thousands of historic structures, archaeological sites, battlefields, and rural landscapes. For many of these properties, easements serve as the only legal protection to preserve their historic or architectural values. (2005, p. 1)

Rand Wentworth, President of the Land Trust Alliance, speaking on easements for nature conservation, said:

The great conservation opportunities of the next century will be on privately owned land, and conservation easements are the most effective way to protect those lands. Landowners like conservation easements because they are a refreshing alternative to government regulation: they are voluntary, local and respect private property rights. For the many people who love their land, it is the best way to ensure that it is preserved for all time. (Byers and Ponte 2005, p. 7)

Richard A. Epstein, speaking at the University of Chicago Cultural Policy Centre conference:

Voluntary easements call for intelligent private monitoring and upkeep in the way in which no system of pure state designation can hope to match. The system works on win/win relationships. It leads people to think of innovative ways in which to shape easement, preserve façades, swap plots of land, make interior design alterations and the like. It works to save and rehabilitate far more properties than many efforts at designation. There is no question that the public subsidy from tax deductions drives the use of many of these devices, but that is defensible insight of the positive externalities

that are created by many preservation efforts. The plea here is general. Concentrate on the things that one does well in preservation. Here, as in other areas of life, cooperation beats coercion. (2003, p. 5)

Ontario

Ontario has a statutory heritage list for the protection of heritage places, but promotes the use of voluntary conservation agreements, particularly at the local government level. Under the Ontario *Heritage Act 1990*, the Ontario Heritage Trust (similar to a State Heritage Council in Australia) and local councils are empowered to enter covenants with property owners to protect heritage places.

The Ontario Heritage Trust uses conservation easements in a variety of circumstances including:

- to protect provincially significant places, such as commercial buildings, town halls, community courthouses and residential homes;
- to ensure heritage conservation where there is a significant public investment in the restoration of a heritage place;
- to protect heritage places when they move from public to private ownership;
- to protect heritage places that have become redundant and no longer operative, such as old railway stations; and
- to protect natural heritage areas and significant archaeological sites.

Ontario currently has around 460 easements. The average administrative cost of a covenant, for a place of provincial significance, is around \$2000 to \$3500 plus any ongoing monitoring costs. Data and information on costs at the municipal level are not available.

The Ontario Government considers that, in many cases, easements are the most cost effective means for heritage conservation. While easements involve some upfront costs and resources to negotiate, they provide a means to ensure active conservation in the longer term. The Ontario Government observed that:

Heritage easement agreements, also known as heritage conservation agreements, are the most effective way for municipalities to protect their most valuable heritage resources. Easement agreements set out requirements for maintaining a property or specific heritage features of a property. The agreement is registered on the title to the property and is binding on future owners. (Ministry of Culture 2005, p. 16)

Similarly, the Ontario Heritage Trust argued that easements are a superior conservation tool compared with listing (designation):

The Ontario Heritage Act empowers municipalities to protect heritage properties using heritage designation bylaws. Municipal designation, however, cannot prevent demolition or loss due to neglect. A conservation easement is stronger, more comprehensive and more flexible than a designation. It is a private agreement registered on title to a heritage property. It ensures that the heritage property is prudently maintained and adequately insured. It also ensures adequate demolition control. And an easement can be tailor-made to suit the unique heritage character of the resource it protects. (Ontario Heritage Trust, 2006)

A sample heritage agreement from Ontario is provided in attachment II.

British Columbia

The system of heritage conservation in British Columbia is based on statutory listing, but with a number of key differences to the existing system in Australia:

- a statutory right to compensation if listing reduces the value of a property;
- a set of conservation principles that recognise private property rights and seek to balance private rights and public benefit;
- a commitment to provide financial incentives;
- a commitment to conservation by agreement with the property owner.

The *Heritage Conservation Act 1996* states that the government must compensate an owner for any reduction in market value attributable to listing (designation). The amount of compensation may be determined by agreement of the owner and the government, or, if they are unable to agree, by binding arbitration under the *Commercial Arbitration Act 1986*.

Despite the right to compensation, it appears that there have been very few claims, if any, for compensation. Since designation does impose significant costs on some property owners, this may suggest that governments are listing very few properties or that the administrative costs of seeking compensation are high. However, discussions with the Heritage Branch of the Ministry of Tourism, Sport and the Arts indicate that this is not the case. Rather, it appears that the right to compensation places a discipline on State and local governments to achieve conservation goals through agreement, or at least cooperatively, rather than solely through regulatory ‘taking’.

The British Columbia heritage conservation guidelines provide detailed guidance for State and local government heritage conservation. Principles for heritage conservation are outlined in box E.2. Under these principles, local governments are encouraged to assess the significance of a place first and then choose an appropriate

conservation tool. Conservation tools range from simple recognition or temporary heritage protection, to covenants, alteration permits and statutory designation.

Box E.2 Principles for heritage conservation: British Columbia

1. Research and planning come first —
 - Identification and evaluation will help avoid conflict and last minute attempts to save valuable heritage resources.
 - Set goals and objectives for the conservation of the community's heritage.
2. Legislation is NOT a substitute for research and planning — Regulation, by itself, can lead to ad hoc and piecemeal management of heritage resources.
3. Plan incrementally and build on success.
4. An incremental approach helps build expertise and manage limited resources.
5. Heritage conservation is an on-going process (plan—implement—evaluate).
6. Get organised and build community support.
7. Consider the whole community — Rather than focusing on individual heritage resources, it is necessary to consider the needs of the whole community.
8. Identify the issue first, then select the tool for conservation — It is important to assess the problem or opportunity before a conservation tool is selected. It helps to identify the problem first, look at alternative solutions, and then select the tool(s) which can best be used to solve the problem.
9. Heritage conservation must be fair — The *Heritage Conservation Act 1996* has been designed to provide fairness to both the public interest and to property owners. It is important to consider the costs of conservation on property owners.
10. Heritage conservation requires stewardship — Heritage conservation requires commitment and long term management.

Source: British Columbia Heritage Conservation: A Community Guide.

Heritage designation is rarely imposed against the owner's wishes in British Columbia. In almost all cases, the government will attempt to reach an agreement with the owner, by offering financial and other incentives in exchange for designation. This is called 'friendly' designation or designation by agreement. There have been a few instances of involuntary or 'unfriendly' designation, although few, if any, have resulted in a claim for compensation.

E.2 Covenants to protect the natural environment in Australia

Contracts with landholders for the provision of conservation services represent the dominant policy instrument in most OECD countries, with contract coverage reaching 20 per cent of European Union farmland (OECD 2003). The Australian Government and all State Governments have provision for authorised bodies to negotiate a conservation covenant with a landowner to protect and manage the environment. The Department of Environment and Heritage also uses covenants to pursue other environmental objectives, such as waste reduction. For example, the National Packaging Covenant provides for agreement between government and business to reduce waste from packaging.

A conservation covenant is a voluntary agreement between a landholder and an authorised body to protect and conserve the natural, cultural and/or scientific values of the land. An authorised body can be a government agency such as the Department of Environment and Heritage, a covenant organisation such as Nature Conservation Trust of New South Wales or a local council. Many local governments, such as the Caloundra City Council, also maintain a separate covenant program. A covenant is usually registered on the title of the land and binds all future owners. In entering a conservation covenant, landowners have access to assistance such as specialist technical advice, assistance with management costs and tax benefits (DEH 2004, p. 1).

Conservation covenants have been used to successfully conserve valuable native vegetation and biodiversity areas. For example, the Conservation Partners Program in New South Wales, a voluntary registration and covenanting scheme, covers more than 1125 properties and 1.75 million hectares. The South Australian Government has negotiated over 1300 covenants covering more than 570 000 hectares of native vegetation. They protect 292 threatened plant species and 63 threatened animal species (DEH 2005a, p. 18). Box E.3 provides an overview of the Private Forest Reserves Program in Tasmania to illustrate how a covenanting program operates.

While there are costs associated with conservation covenants, mainly the initial upfront cost of negotiating an agreement plus any assistance provided to the owner, covenants have a number of strengths over other conservation tools. As noted by the Department of Environment and Heritage, since much of the land the community seeks to conserve is on private property, the long term protection of Australia's unique natural areas depends, in part, on the actions of private owners (DEH 2005b, p. 2). Since conservation is secured by agreement, rather than compulsion, property owners are willing participants committed to the long term conservation of an area. For example, a landholder who entered a covenant for her property in South

Australia, which supports more than 100 native plants and is home to a number of vulnerable wildlife species, noted the mutual commitment to conservation that covenants encourage:

The most surprising part of the process was the very positive feeling we had on signing the heritage agreement documents — one of contributing something real to conservation. (DEH 2005a, p. 18)

Box E.3 Extract from ‘Protecting Tasmanian Private Forests’

A fair deal – that’s the aim here. A voluntary covenanting program operating in Tasmania has secured the long-term conservation of 32 000 hectares of high-conservation-value forest on private land.

The Private Forest Reserves Program (PFRP) is a market-based incentive program launched in 1998. The PFRP aims to protect forest biodiversity on private land by registering perpetual conservation covenants on land titles. On rare occasions, properties are bought.

However, the preferred outcome is covenanting – making use of the landowners’ experience and knowledge in an on-going partnership with government. So far 175 covenants have been registered and 31 800 hectares protected. The average total cost/ha of the program is \$536 – thanks to the willingness of landholders to protect these incredibly significant areas.

A landholder is paid an up-front incentive on the signing of a covenant. There may also be payments for specific management works such as fencing and weed removal.

So who determines which areas of land have high values? Forest conservation specialists give independent scientific advice on priorities. They look at many factors including rarity of forest type, the presence of threatened species, old-growth forest, significant natural features (wetlands, caves, etc) and potential connectivity. They use spatial and other data to design the best possible reserve system on private land.

Following a field study, the program negotiates with landowners to secure conservation of target forests for the best possible expenditure of public funds. Covenant documents are tailored to be compatible with conservation objectives and the landowner’s vision and needs.

The natural values conserved to date include 13 000 hectares of rare, vulnerable and endangered forests, 50 threatened plants and forest habitats of 20 threatened animal species including wedge-tailed eagles and giant freshwater crayfish. The program’s aim of protecting forest communities has also resulted in spin-offs for other values – areas of karst, including Pleistocene cave fossil sites, as well as native grasslands and wetlands of international significance.

Source: DEH (2005a), p. 14.

Further, the Department of Heritage and Environment noted that a major benefit of covenants is that they secure the active conservation of natural heritage:

Another benefit of a covenant is that it generally involves developing a management plan in consultation with the landholder to set out practical strategies that will ensure the conservation of the natural values. For example, a plan may include details on the management of weeds and pest animals or recommendations for prescribed burns. (2005b, p. 10)

A sample conservation covenant developed by Trust for Nature is provided in attachment III.

Attachment I: City of Phoenix easement

WHEN RECORDED RETURN TO:
City of Phoenix
City Manager's Office
Historic Preservation Office
200 W. Washington Street, 17th Floor
Phoenix, Arizona 85003

EXEMPT UNDER A.R.S. 11-1134 (A) (2)

DEED OF FACADE CONSERVATION EASEMENT

THIS DEED OF FACADE CONSERVATION EASEMENT (the "Easement") is made as of the _____ day of _____, 20____, by and between _____, (the "Property Owner"), whose principal address is _____, Phoenix, Arizona 850____ and the City of Phoenix, a municipal corporation organized and existing under the laws of the State of Arizona, (the "City").

RECITALS

A. The City is authorized under Arizona's Uniform Conservation Act, Arizona Revised Statutes, Sections 33-271 through 276, inclusive (collectively, as and if amended, the "Act") to accept easements to protect property significant in Arizona history and culture for the education of the general public.

B. The City is a municipal corporation whose responsibilities include the protection of the public interest in preserving architecturally significant structures within the City of Phoenix.

C. The Property Owner is the owner in fee simple of that certain property located at _____, Phoenix, Maricopa County, Arizona, which is more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"), including all improvements, fixtures and buildings thereon (the "Structures"). (Any reference to the "Property" hereinafter shall be deemed to include each of the "Structures".)

D. The Property is listed on the Phoenix Historic Property Register; and the Property Owner and the City recognize the historical or architectural value and significance of the Property and have the common purpose of conserving and preserving the aforesaid value and significance of the Property.

E. On _____, 20____, the Property Owner executed an Exterior Rehabilitation Program Agreement (the "Program Agreement"), wherein the Property Owner has agreed to sell to the City an Easement on the exterior surfaces of each of the Structures (collectively, the "Facades") and any associated fences, walls, or fixtures on the site (collectively the "Site"), and use the proceeds of the sale together, if applicable, with a matching amount of Property Owner's funds or own labor to rehabilitate the Facades.

F. In order to effectuate the obligations of the Property Owner under the Program Agreement, the Property Owner desires to sell, grant, convey, transfer and assign to the City and the City, pursuant to the Act, desires to accept an Easement on the Facades and Site.

AGREEMENT

NOW, THEREFORE, in consideration of the City's agreement to pay the Property Owner up to \$ _____, (the "Purchase Price") subject to the terms and conditions of the Program Agreement, the Property Owner and the City hereby agree as follows:

1. Grant of Easement: The Property Owner does hereby irrevocably grant, convey, transfer and assign unto the City an Easement, as provided for under the Act, in gross for a term of fifteen (15) years from the date hereof through and including _____ 20__ (the "Term"), in and to the Facades and Site, and which covenants contained herein contribute to the public purpose of conserving and preserving the Facades and accomplishing the other objectives set forth herein.

2. Property Owner's Covenants: In furtherance of the Easement herein granted, the Property Owner hereby covenants and agrees with the City as follows:

2.1 Documentation of the Exterior Condition of the Facades and Site. For the purpose of this Easement, the owner or his designee shall depict the exterior Facades and Site in an original set of photographs dated thirty (30) days following the request for reimbursement from the Historic Preservation Bond Fund by the Grantor(s), (collectively, the "Photographs") and filed in the office of the City of Phoenix Historic Preservation Officer, or designated successor. The exterior condition and appearance of the Facades and Site as depicted in the Photographs (collective, the "Present Facades") is deemed to describe their external nature as of the date thereof.

2.2 Maintenance of the Facades. The Property Owner will, at all times, maintain each of the Structures and their respective Facades, as well as the Site, in a good and sound state of repair in accordance with the City's existing guidelines for the historic district in which the Property is located (the "Standards") so as to prevent the deterioration of the Facades or any portion thereof; to prevent visual obstruction of the Facades from public viewpoints such as adjacent streets; and prevent the intrusion of new improvements, walls, fences, statues, landscaping or fixtures which substantially modify the public view of the Property and its associated streetscape and open space, and are deemed to be not in accordance with the Standards delineated above. The Property Owner will request and obtain advance approval from the City Historic Preservation Office prior to implementing any physical changes to Structures or Facades on the Property or to the Site. This provision does not apply to routine maintenance, landscaping other than hardscape improvements, or installation of sprinkler systems. Subject to the casualty provisions of Paragraph 4 below, this obligation to maintain shall require replacement, repair and reconstruction according to the Standards within a reasonable time whenever necessary to have the external nature of the Structure at all times appear to be the same as the Present Facades.

2.3 Maintenance of the Structural Elements. The Property Owner will maintain and repair each of the Structures, and any associated fences, walls or fixtures on the Site, as is required to ensure the structural soundness and the safety of the Structures and the Facades, and the fences, walls or fixtures on the Site.

2.4 Inspection. In order to periodically observe the Structures and Facades, representatives of the City shall have the right to enter the Property to inspect the exterior Facade. This inspection will be made at a time mutually agreed upon the Property Owner and the City.

2.5 Conveyance and Assignment. The City may convey, transfer and assign this Easement to a similar local, state or national organization whose purposes, *inter alia*, are to promote historic preservation, and which is a "qualified organization" under Section 170(h)(3) of the Internal

Revenue Code of 1986, as amended, provided that any conveyance or assignment requires that the conservation purposes for which this Easement was granted will continue to be carried out.

2.6 Insurance. The Property Owner, at their sole cost and expense, shall at all times (a) keep the Structures insured at their replacement cost value on an "all risk" basis to ensure complete restoration of the Facades and Site in the event of loss or physical damage. Said property coverage policy shall contain provisions which ensure that the face amount of the policy is periodically adjusted for inflation, and the Property Owner shall provide a Certificate of Insurance to the City evidencing such insurance, including an endorsement naming the City as a loss payee; and (b) carry and maintain liability insurance in an amount satisfactory to the City to protect against injury to visitors or other persons on the property, and to provide a Certificate of Insurance to the City evidencing such insurance, and naming the City as an additional insured on the policy.

2.7 Visual Access. The Property Owner agrees not to substantially obstruct the opportunity of the general public to view the exterior architectural and archaeological features of the Property from adjacent publicly accessible areas such as public streets and sidewalks. The Property Owner shall obtain advance approval from the City Historic Preservation Office for any proposed changes to the site which would obstruct or modify the general public view of the exterior architectural or archeological features of the Property from adjacent publicly accessible areas. If the Structures are not visible from a public area, then the Property Owner agrees that the general public shall be given the opportunity on a periodic basis to view the characteristics and features of the Facades which are preserved by this Easement to the extent consistent with the nature and conditions of the Property.

3. Warranties and Representations of the Property Owner. The Property Owner hereby represents and warrants to the City as follows:

3.1 Information Furnished, True and Correct. All information given to the City by the Property Owner in order to induce the City to accept this Easement, including all information contained in this Easement, is true, correct and complete.

3.2 Legal, Valid and Binding. This Easement is in all respects, legal, valid and binding upon the Property Owner and enforceable in accordance with its terms, and grants to the City a direct, valid and enforceable conservation easement upon each of the Facades.

3.3 No Impairment of Facade Easement. The Property Owner, for himself, his heirs, personal representatives, and assigns, has not reserved, and to his knowledge, no other person or entity has reserved, any rights, the exercise of which may impair the Easement granted herein.

4. Application of Insurance Proceeds. Subject to the insurance proceeds requirements of any recorded Deed of Trust or Mortgage applicable to the Property, in the event of damage or destruction of any of the Structures resulting from casualty, the Property Owner agrees to apply all available insurance proceeds and donations to the repair and reconstruction of each of the damaged Structures and any associated fences, walls or fixtures on the Site. In the event the City determines, in its reasonable discretion, after reviewing all bona fide cost estimates in light of all available insurance proceeds and other monies available for such repair and reconstruction, that the damage to the Structures or Site is of such magnitude and extent that repair and reconstruction of the damage would not be possible or practical, then the Property Owner may elect not to repair or reconstruct the damaged Structures or associated fences, walls or fixtures on the Site. Notwithstanding the foregoing, in the event the City notifies the Property Owner in writing that the City has determined that repair and reconstruction of the damaged Structures or associated fences, walls or fixtures on the Site is impossible or impractical and that the damaged Structures presents an imminent hazard to public

safety, the Property Owner will at his sole cost and expense raze the damaged Structures or associated fences, walls or fixtures on the Site and remove all debris, slabs, and any other portions and parts of the damaged structure or associated fences, walls or fixtures on the Site within the time period required by the City to protect the health, safety and welfare of the public, unless the Property Owner has commenced and is diligently pursuing repair or reconstruction of the damaged Structures or associated fences, walls or fixtures on the Site. Upon razing of the damaged portion of the Structures or associated fences, walls or fixtures on the Site, the City shall release any interest it has in the insurance proceeds for the damaged Structures or associated fences, walls or fixtures on the Site. Nothing in this paragraph is intended to supersede or impair the rights to insurance proceeds of a lienholder pursuant to a recorded Deed of Trust of Mortgage applicable to the Property.

5. Indemnification. The Property Owner covenants that he shall pay, protect, indemnify, hold harmless and defend the City at the Property Owner's sole cost and expense from any and all liabilities, claims, costs, attorneys' fees, judgments or expenses asserted against the City, its mayor, city council members, employees, agents or independent contractors, resulting from actions or claims of any nature arising out of the conveyance, possession, administration or exercise of rights under this Easement, except in such matters arising solely from the gross negligence of the City, its mayor, city council members, employees and agents.

5.1 Survival of Indemnification. The obligations of the Property Owner under this indemnification shall continue beyond the term of this Easement for a period of two (2) years.

5.2 Explanation of Indemnification. For purposes of explanation of Paragraph 5 only, and without in any manner limiting the extent of the foregoing indemnification, the Property Owner and the City agree that the purpose of Paragraph 5 is to require the Property Owner to bear the expense of any claim made by any third party against the City, which arises because the City has an interest in the Property as a result of this Easement. The Property Owner will have no obligation to the City for any claims which may be asserted against the City as a direct result of the City's intentional misconduct or gross negligence.

6. Default/Remedy. In the event the Property Owner (a) fails to perform any obligation of the Property Owner set forth herein or in the Program Agreement, or otherwise comply with any stipulation or restriction set forth herein, or (b) any representation or warranty of the Property Owner set forth herein, is determined by the City to have been untrue when made, in addition to any remedies now or hereafter provided by law and in equity, the City or its designee, following prior written notice to the Property Owner, may (aa) institute suit(s) to enjoin such violation by ex parte, temporary, preliminary or permanent injunction, including prohibitory and or mandatory injunctive relief, and to require the restoration of the Property to the condition and appearance required under this Easement, or (bb) enter upon the Property, correct any such violation, and hold the Property Owner responsible for the cost thereof, and such cost until repaid shall constitute a lien on the Property, or (cc) revoke the City's acceptance of this Easement and upon written notice from the City, the Property Owner shall reimburse the City all or part of the Purchase Price. Determination of the amount due to the City shall be made as follows: during the first half of the Term of the Easement, the Property Owner shall reimburse the City the full amount of the Purchase Price. Thereafter, on each anniversary of the execution of the Easement, the amount the Property Owner shall pay in the event of a default shall be reduced by a pro-rata portion of the original amount of the Purchase Price for the remaining years of the Term. In the event the Property Owner violates any of its obligations under this Easement, the Property Owner shall reimburse the City for any and all costs and expenses incurred in connection therewith, including all court costs and attorneys' fees.

7. Waiver. The exercise by the City or its designee of any remedy hereunder shall not have the effect of waiving or limiting any other remedy and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

8. Effect and Interpretation. The following provisions shall govern the effectiveness and duration of this Easement:

8.1 Interpretation. Any rule of strict construction designed to limit the breadth of restriction on alienation or use of property shall not apply in the construction or interpretation of this Easement, and this Easement shall be interpreted broadly to affect the transfer of rights and restrictions on use herein contained.

8.2 Invalidity of the Act. This Easement is made pursuant to the Act as the same now exists or may hereafter be amended, but the invalidity of such Act or any part thereof, or the passage of any subsequent amendment thereto, shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties hereto to agree and to bind themselves, their successors, heirs and assigns, as applicable, during the Term hereof, whether this Easement be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent thereto.

8.3 Violation of Law. Nothing contained herein shall be interpreted to authorize or permit the Property Owner to violate any ordinance or regulation relating to building materials, construction methods or use, and the Property Owner agrees to comply with all applicable laws, including, without limitation, all building codes, zoning laws and all other laws related to the maintenance and demolition of historic property. In the event of any conflict between any such laws and the terms hereof, the Property Owner promptly shall notify the City of such conflict and shall cooperate with City and the appropriate authorities to accommodate the purposes of both this Easement and such ordinance or regulation.

8.4 Amendments and Modifications. For purposes of furthering the preservation of the Facades, the Structures and the other Property and the other purposes of this Easement, and to meet changing conditions, the Property Owner and the City are free to amend jointly the terms of this Easement in writing without notice to any party; provided, however, that no such amendment shall limit the terms or interfere with the conservation purposes of this Easement. Such amendment shall become effective upon recording the same among the land records of Maricopa County, Arizona, in the office of the County Recorder.

8.5 Recitals. The above Recitals are incorporated herein by this reference.

8.6 Time of the Essence. Time is of the essence in the performance of each and every term and condition of this Easement by the Property Owner.

8.7 Feminine and Masculine. For purposes of this Easement, the feminine shall include the masculine and the masculine shall include the feminine.

IN WITNESS WHEREOF, the Property Owner and the City executed this Easement on the date first above written, which Easement shall be effective immediately upon such execution.

“PROPERTY OWNER”

By _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____.

Notary Public

My Commission Expires:

CITY OF PHOENIX, a municipal
corporation
FRANK FAIRBANKS, City Manager

By _____
Rick Naimark, an Executive Assistant
to the City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Rick Naimark, an Executive Assistant to the City Manager.

Notary Public

My Commission Expires:

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Attachment II: City of Ottawa Heritage Conservation Agreement

Example of a Heritage Conservation Agreement

CITY OF OTTAWA

THIS AGREEMENT made in triplicate the _____ [day] _____ [month] 20_____

BETWEEN

_____ [name]

(hereinafter referred to as the "Owner")

OF THE FIRST PART,

AND

_____ [NAME OF MUNICIPALITY]

(hereinafter referred to as the "City")

OF THE SECOND PART.

WHEREAS _____ [name] is the registered owner of the property known municipally as _____ [municipal address], situated in the _____ [name of municipality], more particularly described in Schedule "A" attached hereto, and upon which is erected _____ [description of property] now a residential development (hereinafter referred to as the "Building");

AND WHEREAS the Owner and the City desire to preserve and maintain the historical, architectural and aesthetic character and condition of the exterior of the building located at _____ [municipal address], as set out in the Statement of Reasons for Designation recited in Schedule "S" attached hereto;

AND WHEREAS the Council of the City, pursuant to the *Ontario Heritage Act*, R.S.O.1990, Chapter 0.18, has approved a Heritage Grant in the amount of _____ [amount] DOLLARS for _____ [restoration description]

AND WHEREAS pursuant to Section 37(1) of the *Ontario Heritage Act*, R.S.O. 1990, Chapter 0.18, the City is authorized to enter into easements or covenants with owners of real property, or interests therein, for the conservation of buildings of historic or architectural value or interest;

AND WHEREAS the Council of the _____ [name of municipality] has recommended entering into this Agreement for the conservation of the building located on the property known municipally as _____ [municipal address];

NOW THEREFORE THIS AGREEMENT STATES that in consideration of the sum of One (\$1.00) Dollar of lawful money of Canada paid by the City to the Owner (receipt thereof is hereby acknowledged), the parties hereto agree to abide by the following covenants which shall run with the real property forever:

1.0 PRESERVATION AND REPAIR

1.1 Owner agrees to preserve and maintain, at all times, except to the extent the parties may otherwise from time to time mutually agree in writing, the exterior of the Building located at _____ [municipal address], more particularly described in Schedule "A" attached hereto.

1.2 The Owner agrees to maintain the Building in as good and sound state of repair as a prudent owner would normally do, so that no deterioration in the present condition and appearance of the exterior of the Building shall take place.

1.3 The Owner agrees not to alter, remove, change in any manner, or do any act to the Building which detracts from or is inconsistent with any provision of this Agreement or the Statement of Reason for Designation attached as Schedule "B", without prior written consent of the Council of the City.

1.4 The Owner agrees not to proceed with any demolition of, or construction to, the Building without prior written consent of the Council of the City.

2.0 INSURANCE

2.1 The Owner shall, during the period of this Agreement, provide and maintain adequate All Risk Property insurance coverage to a limit, which will effect the replacement and restoration of the heritage building. Such insurance coverage shall include the enactment of applicable by-laws in the event of a loss.

2.2 Evidence of All Risk Property insurance, in the form of a Certificate of Insurance, shall be provided to the City prior to the signing of the Agreement. If requested by the City, a certified copy of the insurance policy must be provided. The Owner shall notify the City, as soon as possible, if the policy or policies are cancelled or changed.

2.3 The _____ [name of municipality] shall have the privilege to request the Owner to obtain a "Certified Building Appraisal" to confirm the replacement cost of the Heritage Building, excluding land. The cost of the appraisal is the responsibility of the Owner and must be performed by a competent licensed appraiser or contractor, architect, engineer, etc.

2.4 The Owner agrees that all proceeds receivable by the Owner under the insurance policy, described in paragraph 2.1, must be applied to the replacement, rebuilding, restoration or repair of the Building in a manner consistent with the heritage aspects of the Building and the Statement of Reasons for Designation attached hereto as Schedule "B", unless written approval to the contrary has been received from the Council of the City pursuant to the Ontario Heritage Act, R. S.O.1990, Chapter 0.18. Replacement, rebuilding, restoration or repair shall not be undertaken without the prior written consent of the Council of the City.

3.0 RECTIFICATION OF BREACH

3.1 The parties agree that in the event of a breach of the provisions herein contained, the aggrieved party(ies) shall give written notice of the breach to the party(ies) committing the breach, requesting rectification thereof within a reasonable period of time, and, in default of rectification, the aggrieved party(ies) may proceed to enforce compliance with the provisions in any manner it may deem appropriate in accordance with the law, at the cost and expense of the defaulting party(ies).

4.0 NON-LIABILITY OF MUNICIPALITY

4.1 The City shall not be held liable for any damage to the building located on the said property known municipally as _____ [municipal address] that may result from the operation of this Agreement save and except for any such liabilities or claims for or in respect of any act or deed done by the City, its agents or servants pursuant to paragraph 3.1 of this Agreement.

5.0 GENERAL PROVISIONS

5.1 The parties agree that where there is a conflict between the provisions of this Agreement and any provision of section 33 or 34 of the Ontario Heritage Act R.S.O, 1990, Chapter 0.18, or any amendment or statute substituted therefor, the provisions of this Agreement shall prevail.

5.2 This Agreement shall apply to and be binding upon the property known municipally as _____ [municipal address], in the _____ [name of municipality],

5.3 This Agreement and every provision herein contained shall be to the benefit of and be binding upon the parties hereto and their respective successors and assigns, and shall hereinafter form part of the legal and equitable interests in the said property known municipally as _____ [municipal address].

6.0 USE OF PROPERTY

6.1 The owner expressly reserves for herself, her representatives, heirs, executors, administrators, successors and assigns, as the case may be, the right to continue the use of the Property for all purposes not inconsistent with this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

SIGNED, SEALED AND DELIVERED) _____ (name)
)
)
) _____
) Name and Title
)
) _____
) Name and Title
)
) (NAME OF MUNICIPALITY)
)
)
) _____
) _____, MAYOR
)
) _____
) _____, CITY CLERK

SCHEDULE "A"

DESCRIPTION OF THE PROPERTY

Attachment III: Trust for Nature Deed of Covenant

DEED OF COVENANT FOR THE CONSERVATION OF LAND

THIS DEED is made the day of 200 by

Example – Typical Deed

(the Owner)

and

Trust for Nature (Victoria)

(the Trust)

RECITALS

- A. The Owner is the registered proprietor of the land described in the Schedule (the Land) and desires to enter into a covenant with the Trust which runs with the Land empowering the Trust to enforce such covenant against the Owner and persons deriving title from the Owner.
- B. The Trust and the Owner being satisfied that the Land possesses the appropriate characteristics and acknowledging that their aims and purposes are the conservation of the Land its:
- (i) native plants and wildlife;
 - (ii) natural interest and beauty;
 - (iii) ecological significance;
 - (iv) historical interest;
 - (v) bushland, trees and rock formations; and its
 - (vi) watercourses, lakes, ponds, marshes and other bodies of water
- have agreed to enter into this Deed.

NOW THIS DEED WITNESSETH:

OWNER COVENANTS

The Owner for the Owner and for all future owners *COVENANTS* at all times to observe and perform the following obligations and duties in relation to the Land to the extent that it is within the power of the Owner to do so:

1. Not to do any act or thing upon the Land which in the reasonable opinion of the Trust is prejudicial to its conservation.
2. In particular on and with respect to the Land, except with the prior written consent of the Trust (which consent will not be unreasonably withheld if the Trust is satisfied that the proposal will not prejudice the aims and purposes of this Covenant), the Owner *SHALL NOT PERMIT*:
 - (a) the destruction or removal of any local indigenous trees, plants or grasses, or the planting of any flora other than local indigenous flora save in relation to an area which may extend 30 metres from the dwelling approved pursuant to clause 3 (the Domestic Area) where the Owner shall not introduce any invasive plants as specified from time to time by the Department of Natural Resources and Environment (or its successor);
 - (b) any act or omission which may adversely affect any local indigenous flora or any indigenous fauna or their related habitats;
 - (c) (unless required by law) any deterioration in the natural state or in the flow, supply, quantity or quality of any body of water provided however that the Owner may draw off water for reasonable domestic purposes;
 - (d) livestock to enter and where the Land is adjacent to an area being grazed the Owner shall erect and maintain fences and gates between such area and the Land in good stockproof order and condition;
 - (e) the introduction of any non-indigenous fauna or any cat, dog or other domestic animals save for two dogs which are to be kept under control at all times;
 - (f) (unless required by law) any exploration or mining extraction or production of gas, petroleum, minerals or other substances. The Owner shall notify the Trust of any such activity and refrain from giving any consent until approved by the Trust;

- (g) (unless required by law) any transmission lines or other services or works save for those required for the dwelling approved pursuant to clause 3;
 - (h) the removal, introduction or disturbance of any soil, rocks, or other minerals or the construction of dams save for the construction of one dam, the size and location of which shall be approved in writing by the Trust;
 - (i) subdivision of the Land or the operation of any trade, industry or business (other than home occupations to be located in the Domestic Area), the recreational use of trailbikes or four wheel drive vehicles, the accumulation of rubbish or the storage of any materials other than materials being used or intended to be used by the Owner on the Land, or any other activities not consistent with the objectives of this Covenant;
 - (j) the removal of any timber save that the Owner may remove fallen timber for firewood for use on the Land provided that good habitat for native fauna (hollow trees) is not removed;
 - (k) regular access by the public at large save that the Owner may provide access to friends and special interest groups;
 - (l) the erection or display of any notice, hoarding or advertising matter save for identification signs.
3. The Owner shall not place nor permit any structure or dwelling on the Land save for:
- (i) one private dwelling, together with the usual outbuildings, which shall be located within the Domestic Area as defined in clause 2(a);
 - (ii) non-habitable structures the type and size of which shall be approved in writing by the Trust.

The location of all structures and dwellings shall be approved in writing by the Trust prior to construction and designed and finished to blend with the natural environment. In the event of the destruction or removal of the dwelling, any replacement dwelling shall be on the same site as the original dwelling.

ACKNOWLEDGEMENT BY THE TRUST

The Trust **ACKNOWLEDGES** that compliance with the prohibitions and restrictions may be treated as waived to the extent necessary for:

- (i) reasonable fire protection, weed and pest control;
- (ii) maintenance of fences, culverts, dams, bridges, watercourses, buildings, tracks, paths;
- (iii) the proper management of the Land as a protected environment for indigenous flora and fauna.

FURTHER COVENANTS

The Owner for the Owner and for all future owners **FURTHER COVENANTS AND AGREES:**

- (i) **TO MAKE** reasonable efforts to remove pests and weeds and to prevent their future invasion;
- (ii) **TO PERMIT** upon being given reasonable prior notice, officers, agents or nominees of the Trust acting on behalf of the Trust to enter the Land in order to assess its condition.

Optional Paragraph - #1:

Where the Owner has violated the terms of this Covenant notice may be given by the Trust requesting rectification. Where the Trust believes that there has been inadequate response following a period of thirty days from such notice the Trust or its agents may enter the Land, undertake the necessary conservation work and thereafter the Owner must reimburse the Trust for the costs incurred;

Optional Paragraph - #2:

The Trust and the Owner and all future owners agree that if a dispute arises between the Owner and the Trust in connection with anything done or to be done or in connection with any proposed use or activity upon the Land, an arbitrator shall be appointed by the parties. Should the Trust conclude that it is not reasonably possible to reach agreement as to the appointment of an arbitrator, then the dispute shall be referred for arbitration to the Minister for Conservation and Environment (or his successor in title) for determination. The decision of the arbitrator shall be final and binding.

Trust for Nature (Victoria) Conservation Covenant – Example Only

- (iii) **UPON** resolving to sell any portion of the Land the Owner shall include within the contract a copy of this covenant and shall promptly notify the Trust of any new owner.
- (iv) **UPON** resolving to lease any portion of the Land the Owner must do so in writing and include an Acknowledgment by the Lessee to perform and observe the duties and obligations as assumed by the Owner pursuant to this Deed. The Owner shall promptly notify the Trust of such lease;

SCHEDULE OF LAND

The whole of the land described in Certificate of Title Volume 5555 Folio 666.

EXECUTED as a Deed.

SIGNED SEALED AND DELIVERED by)
the said)

in the presence of:)

.....

SIGNED SEALED AND DELIVERED by)
the said)

in the presence of:)

.....

.....

THE COMMON SEAL of)
Trust for Nature (Victoria))
was hereunto affixed by the authority)
of the Trustees in the presence of:

..... Trustee

..... Trustee/Director

It is hereby certified that the approval of the Minister under sub-section 3A(8) of the *Victorian Conservation Trust Act 1972* has been obtained to this covenant (ref. Schedule TNV).

..... Director
Trust for Nature (Victoria)

F Examples of public sector asset management guidelines

F.1 Examples of asset management guidelines

Best practice heritage guidelines emphasise the need to ensure that strategies for managing a heritage asset are consistent with the organisation's corporate objectives and with the asset management requirements of its overall portfolio.

NSW Government – Heritage Asset Management Guidelines

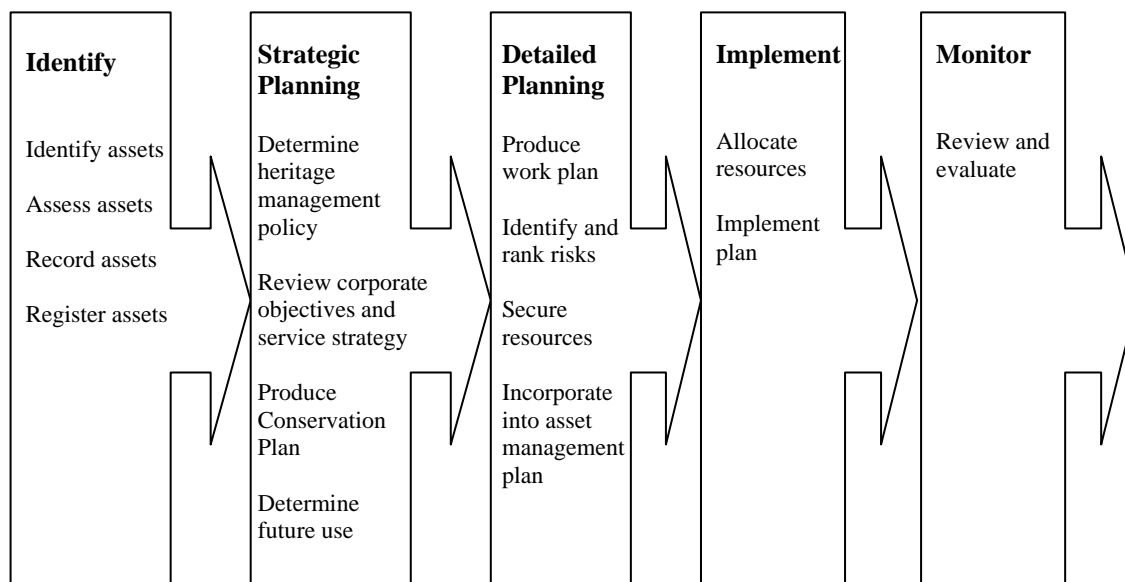
The NSW Government has issued heritage guidelines to its agencies as part of a total asset management framework which views heritage as one aspect in the management of the asset:

The management of heritage issues should be viewed as an essential part of the management of the assets, rather than another problem and cost impost. Sustainable management of heritage values should be treated by an agency as part of its core business. (GMAC 2003, p. 13)

The first step, identification, involves the agency establishing what heritage assets it has under its control and what condition they are in. Ideally, this would involve advice from a heritage professional on the cultural significance of the place. The purpose of identification is to ensure that adequate information is available on the asset for detailed management planning in the short-term and longer-term strategic planning. Heritage assets identified are then registered for inclusion on the State Heritage Inventory Program.

Strategic planning involves assessing how the asset fits in with the agency's corporate objectives and the service delivery strategies. At this stage in the process, an agency will plan the future use of an asset (whether it is to be retained in its current use, adaptively reused, or whether it will be sold or transferred to another agency). It will also establish heritage management policies which should involve the development of a conservation plan incorporated into the agency's overall asset management plan.

Figure F.1 Heritage management process
 NSW Government – Heritage Asset Management Guidelines



Source: NSW Government Asset Management Committee (GAMC) (2001a), p. 11.

Professional expertise should be sought by employing experienced conservation practitioners to prepare a Conservation Plan for individual items or groups of items where appropriate.

A good Conservation Plan is an essential problem-solving tool, which clearly establishes the significance of the heritage asset. It may make recommendations for future use, however there is no standard brief. Conservation Plans should be reviewed regularly and updated as necessary. (GAMC 2001a, p. 14)

Once strategic planning has been undertaken, a detailed management plan should be established for the individual heritage asset. This includes: identifying and prioritising conservation tasks; identifying the resources and the risks involved in the preferred management plan; and preparing a maintenance plan.

Once the plan has been developed, the agency can implement it and put in place a review process to monitor outcomes.

English Heritage – guidance for local government

English Heritage has established a set of guiding principles for local authorities in England which own heritage assets (some of which are outlined in box F.1). However, the principles have broad applicability to all governments. The principles developed by English Heritage emphasise a ‘whole-of-government’ approach and also calls for the appointment of heritage ‘champions’ to ensure a coordinated approach to management and that heritage interests are not overlooked by the local authority. The guidelines developed by English Heritage encourage local governments to explicitly consider the costs and benefits of retention in current use and, where warranted, to seek an alternative use or dispose of the asset.

Box F.1 English Heritage: Management principles for local government

Setting a good example

It is essential to local authorities’ credibility as stewards of the historic environment that they set a good example in the management of their own heritage assets. This means demonstrably achieving the standards they expect of others.

The benefits of good governance in managing local authority heritage assets and the repercussions of failure to utilise or maintain them adequately, especially historic buildings of long-standing civic importance (such as town halls, assembly rooms and swimming baths) should not be underestimated. Credibility in action to secure the future of heritage assets in private ownership depends on the stewardship of council-owned assets.

Making the most of heritage assets

Many heritage assets, particularly historic buildings that have, or had, a functional purpose, are capable of continuing beneficial use.

Local authority buildings represent a major public investment. Although such buildings need not always remain in public ownership, being generally well constructed, they can be inherently sustainable and often capable of significant adaptation to meet an authority’s changing needs.

Know what you own

In order to review and rationalise council-owned property and provide for funding and managing heritage assets, it is essential to have full and up-to-date information on the extent, nature and physical condition of the estate ... Such information provides the basis for effective management of property assets and needs to be both available and accessible.

Develop a council-wide strategy

An over-arching strategy for council property, regularly reviewed within the authority’s overall strategic plans, will be the key to keeping heritage assets in compatible uses, or determining appropriate disposal ... The local authority’s over-arching strategy for its property should support its wider strategic

Continued...

Box F.1(cont)

priorities. The long-term maintenance and repair, and appropriate use, of council-owned historic buildings and other heritage assets, such as parks and gardens, should therefore be identified as a strategic objective in the council's community and corporate plans — not least because of the wider cultural, social and environmental value that these assets may have regionally, as well as for the local community.

Understanding as the basis for management

Understanding the nature, significance, condition and potential of a heritage asset must be the basis for rational decisions about its management, use, alteration or disposal.

A sound, but succinct, understanding of a heritage asset is essential in order to determine why and how it is significant. This in turn highlights the opportunities for and constraints on change, and informs decisions about management, alterations, or disposal. Clear understanding must also provide the basis for the detailed planning brief that normally should be prepared when disposal is considered.

The importance of maintenance

Planned maintenance and repair programmes are essential for all heritage assets, and should be based on regular, detailed inspections and condition reports.

Best value reviews give local authorities the opportunity fundamentally to re-examine management of their properties. These reviews, and the asset management plan process, should provide the context in which managers can prioritise and set maintenance programmes and predict the future of maintenance needs. It may therefore be useful to link cyclical inspections and reports on the condition of heritage assets with a best value review. A higher standard of maintenance is likely to be required for heritage assets than for the corporate property estate as a whole and management arrangements should make this explicit.

Take a positive attitude to disposal

The disposal of heritage assets, especially those that are potentially straightforward to adapt to alternative uses may provide the best solution for such property.

... A distinction should be made, however, between those assets whose historic importance rests largely on their character as public buildings and those that are only in public ownership by chance. For the former, every effort should be made to continue their core civic/public uses. If that is not reasonably achievable, disposal should take account of the community interest in the public spaces, perhaps through a partnership arrangement (say with a private sector partner, or a building preservation or community trust).

Obtain optimum value

The aim on disposal of heritage assets should be to obtain optimum value, rather than the highest price.

The aim should be to obtain the best return for the taxpayer that is consistent with government policies for the protection of heritage assets: this may well limit the realisation of potential development values.

Source: English Heritage (2003), pp. 7–9.

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