



Australian Government
Productivity Commission

Conservation of Australia's Historic Heritage Places

Productivity
Commission
Draft Report

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The Commission will finalise its report to the Government after these processes have taken place.

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The Productivity Commission

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Opportunity for further comment

You are invited to examine this draft report, to provide written comments and/or to present your submission at one of the following hearings.

If you are presenting at a hearing, written comments should reach the Commission at least **a week before the hearing date**. Other written submission should reach the Commission **by Friday 24 February 2006**. If possible, could you please provide a copy of your comments in electronic form — by email or on a computer disk. Comments should also be accompanied by a submission cover sheet (available from the inquiry website: <http://www.pc.gov.au/inquiry/heritage/subcoversheet.rtf>)

The final report will be prepared after submissions have been received and the hearings have been completed.

Public hearing dates and venues

Location	Date	Venue
Sydney	Tuesday 31 January 2006 Wednesday 1 February 2006	Holiday Inn 203 Victoria Street Potts Point
Brisbane	Friday 3 February 2006	Mercure Hotel 85–87 North Quay
Adelaide	Friday 10 February 2006	Stamford Plaza 150 North Terrace
Melbourne	Tuesday 14 February 2006 Wednesday 15 February 2006	Productivity Commission Level 28 35 Collins Street
Canberra	Friday 17 February 2006	Rydges Capital Hill Canberra Avenue Forrest

If there is sufficient interest, additional hearings may be held in other cities or by video link.

Commissioners

For the purposes of this inquiry and draft report, in accordance with section 40 of the *Productivity Commission Act 1998* the powers of the Productivity Commission have been exercised by:

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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
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 (10 ⁹).
Findings	<i>Findings in the body of the report are paragraphs highlighted using italics, as this is.</i>
Recommendations	<i>Recommendations in the body of the report are highlighted using bold italics, as this is.</i>
Requests for further information	<i>Information requests are paragraphs highlighted using italics, as this is.</i>

OVERVIEW

Key points

- Historic heritage places provide important cultural benefits to the wider community, in addition to the use value they provide to their owners.
 - There is extensive private sector involvement in the conservation of historic heritage places.
 - Governments at all levels not only own heritage sites, but also identify, list and provide strong regulatory protection for non-government heritage places, to provide broad community benefits.
- The recently adopted three-tier framework (whereby the Australian Government takes responsibility for nationally and internationally significant places; the States and Territories for State-significant places; and local governments for locally significant heritage places) provides a sound basis for government involvement.
 - However, significant deficiencies remain — in particular, an over reliance on prescriptive regulation — a view shared by many inquiry participants.
- Prescriptive regulation can lead to ineffective, inefficient and inequitable outcomes, particularly for less significant (marginal) places. Typically, the regulations restrict development and use, which can inappropriately and unnecessarily erode property rights and values. There is little, or no:
 - restraint on the tendency to list all properties identified with heritage values, irrespective of degree of significance; and
 - consideration of the added conservation costs (of operation, maintenance and use restrictions).
- To improve incentives for historic heritage conservation, privately-owned properties should be statutorily listed only after a conservation agreement has been negotiated with the owner. The agreements would cover the management and funding of the additional heritage benefits. This would:
 - bring greater integrity and rigour to the statutory listing process by aligning the decision to conserve additional heritage for the relevant community with the decision on funding the added costs of its conservation;
 - provide the flexibility necessary to take into account the evolving nature of heritage values; and
 - build on the practices already employed in some jurisdictions.
- Little change would be required at the Australian Government level to expand the use of negotiated agreements. Expanding the use of negotiated agreements at the State and Territory level would require Heritage Councils to change the focus of their heritage conservation activities away from prescriptive regulation to accommodate the negotiation and management of conservation agreements. The use of conservation agreements would require many local government Councils to substantially change their conservation activities.

Overview

This assessment by the Commission of the existing policy and regulatory framework and incentives for the conservation of Australia's historic heritage places was requested by the Australian Government, with the support of State and Territory governments.

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.

The importance of historic heritage conservation has been recognised in the community and is reflected in private action by individuals, corporations and community groups identifying, owning and conserving historic heritage places. It is also reflected by governments, at all levels, identifying, listing and owning important heritage places, accompanied by strong regulatory protection of their identified heritage values. Some assistance for their conservation is also provided.

For the purposes of this inquiry, historic heritage places include:

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

Not under reference is the conservation of: natural heritage (for example, the Great Barrier Reef); indigenous heritage (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 (for example, folk history).

The historical context

Private sector involvement in the conservation of historic heritage places is extensive and pre-dates formal government involvement. Indeed, the bulk of historic heritage places have been conserved, and will continue to be conserved, by the private sector.

Widespread organised community involvement in heritage conservation dates from the formation of the National Trust of Australia in Sydney in 1945. Subsequently, National Trusts were formed in all States and Territories — in four cases, backed by State legislation. The Trusts have a membership of 72 200. They employ a volunteer workforce of 7400 and manage 253 properties, some 170 of which are opened regularly to the public. They own almost two-thirds of the places they manage. The rest are managed on behalf of governments at all levels.

The Trusts maintain their own registers of places that they consider to be of heritage importance. They have been strong advocates of statutory protection of heritage places. They have also played leading roles in representing community concerns on heritage issues to governments and government authorities.

In addition to the active involvement of the National Trusts, many other trusts and common interest groups have been established to manage individual heritage places around Australia.

Government involvement in historic heritage conservation dates only from the mid-1970s. Arguably, it was the political activism of the 1960s and 1970s — in the form of ‘green bans’ and the like stopping bulldozers from demolishing old buildings in major cities — that led to governments adopting formal arrangements with mechanisms for the identification, protection and conservation of historic heritage places.

At the State and Territory level, this involved the passage of separate legislation to protect heritage and the environment. This commenced in Victoria with the passage of the *Historic Building Preservation Act 1974* and was quickly followed by legislation in New South Wales and South Australia. The other States and Territories followed. Typically, this involved the establishment of:

- a register of historic heritage places (including criteria and procedures for identifying places for inclusion on the register);
- a Heritage Council (to manage the register, advise government and oversight the review of heritage aspects of applications for changes to listed properties);

-
- controls over the development of listed places (including obligations on owners to conserve heritage aspects and requirements to submit proposed changes for approval); and
 - funding programs to assist conservation.

At the Australian Government level, direct involvement followed the Hope Committee of Inquiry which resulted in the formation of the independent Australian Heritage Commission (in 1976) to administer the newly established Register of the National Estate (RNE) to list important natural, indigenous and historic places throughout Australia. It listed sites of national, State, Territory and local significance. Reflecting 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, in relation to properties owned or controlled by the Australian Government, 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. Places listed on the Register were eligible for financial assistance for conservation.

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. 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, Territory and local 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. As a result, in 2004, the independent, statutory Australian Heritage Commission was replaced with an advisory Australian Heritage Council and two new heritage registers were established: the National Heritage List, which lists natural, indigenous and historic places of national and world heritage significance; and the Commonwealth Heritage List, which lists Australian Government owned or controlled places of heritage significance.

State, Territory and local government involvement in historic heritage conservation has also evolved to reflect this new national framework. With the exception of Tasmania, which is currently reviewing the relationship between local governments and the State government in listing places, the States have variously assigned

matters of local environmental significance, including for historic heritage conservation, to local governments.

The importance of historic heritage and its conservation

Historic heritage places generate benefits to the community in the way they are utilised (for example, 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 use-value, there is also the potential for historic heritage places to generate cultural benefits. The Burra Charter, developed by Australian chapter of the International Council on Monuments and Sites (Australia ICOMOS), relates the heritage value of a place to the ‘cultural significance’ of a site. According to the Burra 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. (sub. 122, p. 6)

Further, it explained that:

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; i.e. that the values (significance) of a place can be described and that retaining significance is the primary objective of conservation of the place. (Marquis-Kyle and Walker 2004, p. 11)

The definition of the ‘cultural significance’ of a place can be highly subjective and is dependent on community values and expectations, which can change over time. Classifying the degree of cultural significance introduces an added degree of subjectivity. Nonetheless, cultural values may be shared between different groups in society at no added cost. A place considered to be culturally significant to a local community, may also be regarded to have heritage value to a region, State/Territory, or even nationally. The retention of such wider community benefits from a property is dependent on conservation of the cultural values it provides, but this need not require a place to be preserved in its original condition or use. Rather, it is the retention of what provides its cultural significance that is important.

In developing their involvement in historic heritage conservation, all governments have drawn on the procedures and criteria contained in the Burra Charter. However, assessing the extent of cultural benefits to the wider community is difficult, as they are not fully captured in normal market transactions and are not easily quantified. In contrast, the costs to the community of their conservation are individually incurred and directly measurable.

Assessing the role for governments

The existence of these wider community benefits provides the basis for a case for government involvement in the conservation of historic heritage places. That is, while private owners can be expected to voluntarily undertake conservation activities which provide a net benefit to them, they may not undertake other conservation which would benefit the wider community.

However, the existence of these wider community benefits — and the possibility that private owners may not provide a socially optimal level of conservation — does not, of itself, establish a role for government. A necessary first step is to establish whether government involvement would increase private conservation above that which would have been undertaken anyway. Second, government intervention needs to be well targeted at the identified problem and is not costless. For example, where sufficient benefits are able to be captured to make the conservation viable from a private perspective, the rationale for government involvement is greatly reduced, if not removed altogether. Any appraisal of a role for government should consider the costs of government intervention in relation to the additional benefits expected to be generated. For government intervention to be warranted, the benefits to the community need to be greater than the costs.

Current government involvement

Under the new three-tier framework for government involvement and in keeping with the principle of subsidiarity,¹ different scales of significance of historic heritage (local, State or national) are now explicitly recognised and the responsibility for their conservation assigned to the corresponding level of government — nationally significant places to the Australian Government, State or Territory significant to the State and Territory governments, and locally significant to local government. While the degree of significance within any jurisdiction might

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.

vary from zero, or low, to extremely high, the existing regimes do not reflect that — significance is treated essentially as a discrete yes/no choice (though items on the National Heritage List and the Commonwealth Heritage List must be of ‘outstanding’ and ‘significant’ heritage value, respectively).

Australian, State and Territory

The Australian, State and Territory governments now operate broadly similar heritage systems. All have legislation that distinguishes the conservation of historic heritage places from natural and indigenous heritage. Some jurisdictions also have separate legislation governing movable heritage and shipwrecks.

All of these governments have a separate heritage agency (typically, called Heritage Council) to manage their statutory list and provide advice on heritage matters. The Heritage Councils use similar criteria and thresholds (based on the Burra Charter) to identify the significance of places.

Reflecting the limitations on the Australian Government’s power to act, protection of places on the National Heritage List typically involves negotiation with a State Government, and the development of a management plan for the property. Provision exists for conservation agreements to be entered into with private owners in situations where the Australian Government does not have the constitutional power to act directly. To date, no such agreements have been negotiated. The Australian Government acts directly where it owns or leases the property, and in developing the Commonwealth Heritage List.

The State and Territory governments exercise considerable regulatory control over the conservation of places which they have assessed as having significant historic heritage value. They control the use and development of each place in order to conserve the identified heritage values. Typically, this is achieved through the linking of heritage and general State and Territory planning control laws and regulations. Conservation agreements with non-government owners have also been used.

Local government

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 (which are attached as schedules to

their planning schemes). 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. As for the State governments, local governments rely on the use of regulatory control measures for listing and protection of heritage properties of local importance. Also, some councils have various programs (such as grants, loans and rate rebates) to assist private conservation of heritage places.

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 the comments they made about the current system are given in box 1.

Listing

The number of heritage places included in statutory lists is given 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.

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	..	8 742 ^b	1 498	31 176
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	9 034	13 986	>150 000

^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, pp. 34 & 60); CHCANZ (sub. 139, p. 10); WA Heritage Council; correspondence with State and Territory Heritage Offices.

Box 1 Selected comments from local government survey

The following is a selection of comments made by 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.

Listing in the new National Heritage List has been very slow, reflecting the initial desire to rely on the public nomination process, the rigorous selection process, and time to establish procedures for negotiating conservation agreements and management plans. The Australian Heritage Council expects that the National Heritage List would grow to a few hundred if it was to provide a similar level of representativeness of nationally significant properties as currently provided in the United Kingdom and the United States. It is, however, to be 'exclusive' and extremely selective.

Nationally significant places, and those nominated for the National Heritage List, are largely in public ownership. They are well recognised and maintained, and their heritage values are under little threat from inappropriate use or development. In contrast, most State, Territory and locally significant places are privately owned. At the local level, they are typically private residences. While the heritage values of most privately-owned places are well maintained at the owners' expense, there are a significant number of places where the cost to the owner of heritage conservation results in the owner being either unable or unwilling to maintain the heritage values. For example, a 2003 survey of the condition of places included in the Victorian Heritage Register found that one in five of the places were in poor or very poor condition (sub. 184, pp. 26–7). Heritage Victoria has targeted the owners of 'threatened' places to apply for financial assistance to undertake conservation and necessary repair works. This is reflective that the interests of the property owner and the broader community may diverge significantly.

A range of participants' views about the operation of the current system is given in box 2.

Other lists

There are a number of non-statutory heritage lists. Many, like the National Trusts registers, pre-date statutory listing and have been used to identify places for statutory listing and protection. In addition to the National Trusts, registers of heritage places are maintained by professional groups, such as the Royal Australian Institute of Architects and Institute of Engineers, and by other groups with an interest in twentieth century heritage, such as the Art Deco Society, DOCOMOMO² and Australia ICOMOS.

² DOCOMOMO is an international organisation dedicated to the documentation and conservation of building sites and neighbourhoods of the modern movement.

Box 2 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)

Mr James Reid:

Not too long ago near Warrnambool a landowner arranged to sell the original homestead on his property to a building relocation company. The sale was stopped on the basis the building was historically significant. As he had neither the funds or inclination to use the building himself, he has subsequently allowed the building to deteriorate beyond repair. (sub. 181, 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)

ACT Heritage Council:

When the methods of doing this 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 view of heritage control. (sub. 147, p. 11)

With the introduction of the new national framework for government involvement in historic heritage, the RNE has become, in effect, another non-statutory list (or database) for heritage conservation purposes. The Australian Government has undertaken to develop the two new statutory lists that it has responsibility for and the States, Territories and local governments have developed their own statutory lists for heritage regulatory purposes. Governments, at all levels, have drawn on the RNE in developing their statutory lists. The RNE should now be phased out for historic heritage purposes.

The inclusion of a property in such non-statutory registers generally has no implications for the owner. However, it has occasionally been used when heritage matters have been raised during negotiations on development approval and in planning appeals. Such use has created considerable uncertainty and cost for some owners. It has also contributed to many owners' negative perceptions about heritage listing procedures.

Expenditure

Reliable and comprehensive information on the amount of government expenditure on heritage conservation is not readily available. While information is available about expenditure under some heritage-specific programs, expenditure on other programs is not readily identifiable nor separately recorded in Budget Papers. Also, money spent by government agencies on the conservation of their own heritage properties is generally not separately reported. The available data are often fragmentary or come with much qualification. This situation does not enhance informed decision-making.

Just as there is little reliable information on how much is expended on heritage conservation and by whom, there is little information on how and where the funds have been spent, and even less on the outcomes achieved.

With the clearer delineation of responsibilities under the three-tier framework, the Australian Government has reduced its grants of assistance to private owners of (RNE) heritage places generally and has more closely focussed the assistance it provides for its responsibilities to identify and conserve places of national heritage significance, and for the conservation of heritage places it owns or controls. Many participants noted this policy change, with most of them commenting that the Australian Government should again play a leading role in funding heritage conservation at all scales of significance.

Assessment of current systems

Current government involvement in historic heritage conservation is aimed at increasing the amount and quality of historic heritage retained in the community, above that which would occur if left solely to private initiatives. The involvement is based on identifying places with significant historic heritage and protecting, through statutory listing and by accompanying regulation, the identified cultural values provided by those places for the benefit of the wider community.

There is considerable heterogeneity in the cultural values provided by historic heritage and yet this is often disregarded in the current listing and protection systems. All properties tend to be treated the same, irrespective of the degree of significance of the cultural values that they provide to the wider community and of the extent of additional costs that non-government owners incur in providing those benefits from the imposed use restrictions. Those costs include the extra operating and maintenance costs of maintaining the authentic fabric of the property and forgone development opportunities.

The national framework for historic heritage conservation has been improved in recent years with the adoption of the three-tier system for government intervention and responsibility. This has had the desirable feature of more clearly delineating the responsibility of each tier of government with the corresponding scale of heritage significance — Australian Government for historic heritage of national significance, State and Territory governments for historic heritage of State and Territory significance, and local governments for historic heritage of local significance. This has acted to reduce duplication of effort and improve public accountability for government involvement.

However, deficiencies in the overall policy framework and its operation remain and their level of significance varies by level of government.

Australian Government

Consistent with its constitutional powers and as indicated above, the Australian Government undertakes its responsibilities for identifying and conserving historic heritage places of national significance through two separate phases: advice from the Australian Heritage Council as to the scale and significance of places' heritage values; and then negotiations over their conservation. These negotiations cover conservation arrangements and management plans (including, where necessary, contributions to financing the conservation). As listing without the consent of owners would have little statutory effects on non-Commonwealth owned or controlled places, the negotiations with owners (and where necessary with States

and Territories) are to ensure that the added costs of conservation are considered, as well as the wider community benefits, prior to listing. Consequently, national listing is likely to be undertaken only where it would bring a net community benefit.

Similar requirements for approved conservation management plans apply for Australian Government owned or controlled places listed on the Commonwealth Heritage List. Also, there are strong measures to protect the identified heritage values of any listed Commonwealth property that is sold. These arrangements should also ensure that listing on the Commonwealth Heritage List is likely to be undertaken where it would bring a net community benefit. However, transparency and public accountability for conservation expenditures are poor, as the financing of the conservation is not explicitly recognised and reported in budget papers.

State, Territory and local governments

State, Territory and local governments rely heavily on prescriptive regulation to undertake their responsibilities, both with respect to listing and longer-term protection of the heritage values of places. States and Territories have the power to use voluntary conservation agreements, but they have rarely been used. In most cases there is little, if any, consideration of the added costs imposed on owners when the decision to list, with its strong regulatory consequences, is taken.

As a consequence of the disconnect between:

- a) those who decide on heritage values of significance to the community that should be protected by listing; and
- b) those who would bear the cost of providing those values when listing occurs, there are strong incentives to ‘overlist’ properties and to under provide for their conservation.

There is little effective restraint on the desire to have listed and protected, by regulation, all those properties identified with significant heritage values, irrespective of the degree of significance.

Owners suffer an erosion of property rights and potential loss of value, which does not encourage them to actively conserve heritage values and may, in some cases, encourage degradation and destruction of those values. This undermines owner support for the system.

In addition, the requirements imposed on owners by heritage listing are often unclear and uncertain, particularly at the local government level. Heritage controls can be imposed retrospectively on places which are not on statutory lists. Also, the need for Heritage Council approval for works done on State-listed places results in the Heritage Council being the de-facto development approval authority. For

owners, this can result in the need to seek dual approvals, with sometimes differing results. There is no requirement to include statements of heritage significance in local planning schemes and this adds to the regulatory confusion. Also, there are the added costs of monitoring and enforcement which reliance on prescriptive regulation entails.

Without change, the disincentives for many owners to support conservation would remain, while the incentives for listing agencies to list where heritage values are small compared to the cost of their conservation would also remain. This mismatch between the incentives faced by owners and governments perpetuates the adversarial nature of the current enforcement-based system. It is inefficient, often ineffective, and unnecessary. There are, however, a few local governments that list only with the consent of the owner. Also, in the Northern Territory, because of their procedures ‘It is rare for a place to be declared [listed] over the objections of the owner’ (sub. 192, p. 4). In those cases, listing is likely to be undertaken where it would bring a net benefit to the community.

Many participants expressed complaints about the current system, particularly at the local government level. Their concerns focussed mainly on the lack of accountability, inadequate transparency and certainty, and listing generating unwarranted costs, especially through the erosion of property rights.

Improved incentives for historic heritage conservation

To improve incentives for historic heritage conservation, there needs to be a better balance between the desire of the community to conserve important aspects of its historic heritage and recognition of the costs of achieving that objective. This can be achieved by ensuring that *both* the benefits *and* costs of conservation are taken into account when heritage places are being considered for listing and protection.

This would involve the community, through governments, being required to contribute to achieving the community-wide benefits that conservation delivers, and only intervening to conserve and protect those places where the benefits exceed the costs of doing so. With the community bearing an appropriate share of conservation costs, individual owners would have the incentive to be actively involved in conservation efforts, rather than resisting the identification and listing of their properties.

The most direct way of putting in place improved incentives for historic heritage conservation of non-government-owned places would be to widen the application of negotiated conservation agreements to cover all statutory-listed properties. This would entail a system whereby the community, through governments, would

negotiate arrangements with property owners over the management and, where appropriate, funding of the additional heritage values that the community seeks to have conserved. Subsequent listing would be conditional on reaching such an agreement. The objective would be to maximise net community benefits by facilitating cost-effective heritage conservation, rather than trying to protect and conserve everything that has been identified as having some heritage value. Governments would seek to maximise outcomes for their community from the funds they provide for historic heritage conservation.

Such agreements would operate at all three levels of government, consistent with the principle of subsidiarity, which aligns the scale of significance with its level of government decision making. This application of conservation agreements would, in effect, involve the implementation of ‘best practice’ across all three levels of government. Importantly, the implementation of conservation agreements would be through those resources already involved in administering the current systems. In particular, local government officials currently involved in administering development applications (with or without heritage considerations), which involve negotiation with owners, would take on the task of implementing conservation agreements.

In negotiating agreements with owners, governments would draw on the advice of heritage advisors as to the heritage attributes of places being considered for listing, much as they do now, but then explicitly consider the additional heritage values that would be conserved by entering into a conservation agreement. This would involve considering not only the heritage attributes of the place nominated for a conservation agreement, but also consideration of how well those attributes are already represented by listed properties and by prospective listings. The owner would consider the cost of providing the specified conservation outcomes and the ongoing opportunity cost of any use restriction that it would entail.

Historic heritage places would be included on a statutory list only after such a conservation agreement has been entered into, and would remain on the list only so long as an agreement was in force. Such listing with the consent of the owner would be the most appropriate and practical method for the community, through governments, to obtain the additional heritage benefits in a cost-effective manner. The community then has the appropriate incentive to conserve only those places where the additional community-wide benefits are worth the cost, and owners have the appropriate incentive to be actively engaged in the conservation process. It would also take into account the evolving nature of heritage values and opportunity costs.

Level of assistance

The overall level of assistance that the community, through governments, is prepared to contribute to heritage conservation cannot be easily determined in advance. The theoretical and practical limitations of techniques for valuing non-market heritage benefits have meant that the political process has been relied upon to assess the community's demand, or willingness to pay, for heritage conservation, at least at a very broad level. The use of the political process to establish the level of funding emphasises the need for ensuring the integrity of the system for negotiating voluntary agreements and improving the transparency of expenditure on historic heritage conservation.

The system proposed by the Commission would involve all jurisdictions setting up common frameworks to make cost-effective choices between historic heritage places and the extent of heritage conservation within the constraints of whatever overall level of funding the community is prepared to contribute. The system would provide considerable flexibility. Each local government would be responsible for its own agreements (that is, each would decide on what is significant and worthy of conservation, based on expert advice) and would negotiate with owners about the level and type of assistance (if any) to be provided. Similarly, State and Territory governments would handle such negotiations in relation to agreements for the conservation of places of State and Territory significance.

Using conservation agreements

The full application of voluntary negotiated conservation agreements would bring integrity and rigor to the statutory listing process by aligning the consideration of conserving additional historic heritage for the relevant community with the decision on how it is to be managed and funded. Different tiers of government have different institutions and abilities already established, which means that the degree of change would vary significantly for different governments.

By bringing more rigour to the system, conservation agreements could be expected to lead to some sites being delisted. On the other hand, conservation agreements could also be expected to encourage some owners of historic heritage places to no longer object to listing and to become actively involved in conservation. More importantly, it would end 'pre-emptive' modifications and demolitions by those afraid that unwanted restrictions might be placed on the management of their property.

There is a wide range of means by which assistance could be provided by governments to owners of historic heritage places. Under a regime of individually

negotiated conservation agreements, the means of assistance could vary from property-to-property, as could the level of assistance provided. However, while jurisdictions should be free to use any of the funding tools at their disposal, a number of matters are relevant.

- The assistance provided needs to be flexible enough to differentiate between properties, depending on the balance of heritage values and the costs involved.
- The assistance should not involve cost-shifting between jurisdictions.
- Where there are legislative restrictions on the use of certain means of providing assistance (such as on rate rebates by local government), they should be reviewed with a view to their removal for the purpose of negotiating agreements in relation to historic heritage conservation.
- Assistance (including revenues forgone) should be costed and documented, and that information should be available publicly. Transparency and accountability are important to sustaining public support for government involvement in heritage conservation.

The range of conservation agreements negotiated would vary. The agreements need to reflect the wide variety of heritage places with different mixes of heritage benefits and conservation costs. They also need to reflect the different levels of private benefits which would influence the level of costs that owners would be willing and able to accommodate. While there is potentially an infinite variety of agreements that could be devised, in practice, standardised contracts, or standardised contract elements, are likely to be developed, reflecting the trade-off between the desire for precise assistance targeting and the benefits of administrative simplicity.

If agreement could not be negotiated with the property owner, governments would have a number of options. In the first instance, depending on the nature of the heritage values whose conservation is being sought, the government could seek to conserve such values from other owners of similar places, including by tender. Alternatively, the government could consider the next highest ranking property for a heritage conservation agreement (as noted above, the objective would be to facilitate the best conservation outcomes for society, from the available resources).

In other situations, the government may seek, through negotiation with the owner, to purchase the property concerned and manage it so as to conserve the heritage values — including by direct management, contracting out management, or reselling with an appropriate covenant. In exceptional circumstances, State and Territory governments may consider using their existing powers of compulsory acquisition. Where warranted, this would provide a limit to the owner's ability to 'ask too much' and would provide the ultimate incentive to negotiate and seek to

reach agreement in good faith. It should, 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 governments can not compulsorily acquire, use of this option at the local level would require councils to convince the relevant State Minister of the necessity for the State to act on their behalf. It is unlikely that acquisition would occur in many cases. The costs of such action are likely to be a strong disincentive, except in extreme circumstances.

It would, of course, always be an option for the owner to sell the property to a party who would be prepared to negotiate a conservation agreement prior to subsequent listing.

Existing listed places

The proposed changes to the new listing arrangements for historic heritage places raise the issue of what transitional changes, if any, should be made to the arrangements applying to places already listed. Ideally, statutory lists should only include places where the community-wide benefits of continued conservation exceed the added costs of the conservation. However, the information and resources are not available to undertake such a full-scale and complete re-evaluation, which means that there should be a staged approach to progress toward the longer-term goal.

The Commission considers that in implementing the new arrangements, three situations could be distinguished for the existing list. First, where the owner of a listed place is satisfied with the existing regulatory arrangements, a basic heritage agreement could be signed to continue the existing arrangements.

Second, where the current owner acquired the place after it was listed, the current regulatory arrangements (and assistance, if any) would continue as if it were a perpetual conservation agreement, until reviewed. After all, acquisition would have occurred in knowledge of its statutory listing and at a price reflective of the implications/obligations of that status. Any review of such arrangements would be part of the periodic reviews Heritage Councils would undertake of their portfolio of agreements to ensure their continued relevance in providing cost-effective heritage conservation for the community. It would also be appropriate to consider such a review when any substantive development application was received in relation to a property in this category. The costs of preparing a substantive development application would act as a disincentive for contrived reviews.

Third, where the owner had not consented to their property being listed, (s)he should be given the opportunity to opt out of the existing listing and to negotiate an agreement for listing under the new rules, with the proviso that the relevant government could purchase the property at an assessed fair market value.

Heritage conservation agreements and planning regulation

The eventual extension of conservation agreements to all statutory individually-listed properties would necessitate a reassessment of the relationship between heritage decisions and planning approval arrangements. For instance, any conservation agreement would need to be consistent with the general zoning of the property. That is, it should not allow any activity that is prohibited or restricted by the existing zoning regulations.

Further, the provisions of the conservation agreement made between property owners and local councils should govern the interaction between heritage controls and general planning considerations. Any development sought by owners would need to be consistent with the additional restrictions contained in the conservation agreements. Reliance on controls in conservation agreements should also remove the unclear duplicative-approval system for State-listed properties. Conservation agreements between the State Heritage Council and property owners should clearly outline which body (Heritage Council or local government) is to assess any development applications.

As the heritage attributes of properties would be managed under conservation agreements, heritage matters should not enter into planning decisions for other properties, (that is, properties not covered by either a conservation agreement or included on an existing statutory list). This would require State and Territory governments to modify their planning legislation and regulations to remove any requirements to take heritage considerations into account in relation to any individual property other than those requirements relating to zoned heritage areas. To retain such provisions would be to undermine the incentives to enter into conservation agreements, as restrictions could be placed on individual properties by local government without any requirement to come to a negotiated agreement with the owner. There would be no need to change existing procedures for obtaining interim heritage orders whilst the heritage significance of a property is being assessed.

Heritage areas

The above discussion has focussed on the treatment of *individual* properties included in conservation agreements or on existing statutory lists. Heritage areas, precincts or zones, where restrictions apply equally to properties within a wider area, would remain under the planning system for decision and enforcement by local authorities. Such arrangements would be subject to the normal review, public participation and appeals processes of zoning decisions and planning controls. State Heritage Councils should not have any decision-making or veto powers, rather they should only have an advisory role. Heritage areas are not significantly different, in principle, from the zoning of other areas that require development to be compatible with general amenity, appearance, or streetscape of an area. This would require State and Territory governments to remove the identification and management of heritage zones, precincts or similar area from their heritage conservation legislation and regulations, leaving these matters to local government planning schemes.

Implementation issues

The issues associated with the full application of conservation agreements as the principal vehicle for conserving and protecting historic heritage places would be different for each tier of government. Nevertheless, for all jurisdictions, it would require government investment in the conservation of historic heritage places to be prioritised.

Application of a system of conservation agreements would involve a change in practice at the national level as use of negotiated agreements is currently not a requirement for the listing of non-government historic heritage properties. There is provision for their use where the Australian Government does not have constitutional authority.

Introducing conservation agreements at the State and Territory level is unlikely to impact on many currently listed properties of State and Territory significance, but would involve some significant changes in operational practice. The Heritage Councils would need to change their focus from reliance on strong regulation for statutory listing and conservation control purposes, to encompass developing new procedures for negotiating conservation agreements and listing with the consent of owners. Currently listed heritage places, where appropriate, would continue to operate under existing regulations until reviewed, as outlined above.

The full application of negotiated conservation agreements would involve a substantial change for many local governments. Listing with the consent of the owner would involve little change in current practice for some, but there would be

substantial changes for those that have, to date, taken limited account of the wishes of owners in compiling their statutory lists. The role of Heritage officers would change from enforcement of regulations (‘police-officer’) to become an advisor working *with* property owners. Local governments would also need to implement changes to their planning regulations to ensure that the consideration of heritage matters was confined to statutory-listed properties and not used to undermine heritage agreements.

Government-owned heritage places

The majority of iconic historic heritage places are owned and managed by governments. It is also necessary for them to ensure that individual government agencies with heritage places do not have incentives to neglect or unnecessarily dispose of their properties in order to avoid heritage conservation obligations and the related costs.

To the extent that governments are both the owners of the heritage places in their care and represent the wider community through the political process, decisions on both the costs and benefits of heritage conservation can be seen as essentially fully internalised. So long as the costs of conservation are clearly documented, transparent and accountable, governments should be able to make sensible decisions on which heritage places to conserve and at what cost.

Conclusion

In brief, implementation of the proposed recommendation that conservation agreements be the basis for the statutory listing of historic heritage places would bring more rigour and integrity to the conservation process. In addition, it would help counter any negative perceptions that owners of places with potential historic heritage might have about the conservation process, and could encourage them to be actively involved in the conservation process. It would be:

- more selective (prioritising places to be conserved on the basis of the net benefits to society of that conservation);
- more effective (ensuring that the desired conservation outcomes are actually achieved);
- more cost-effective (delivering the greatest social benefits for the amount of funding provided); and
- more equitable (in term of sharing the costs and benefits between owners of heritage properties and the wider community).

Findings

3 Overview of historic heritage conservation in Australia

DRAFT FINDING 3.1

Little 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.

4 Australian, State and Territory governments' heritage systems

DRAFT FINDING 4.1

The listing of properties onto 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.

DRAFT FINDING 4.2

The commitment to identify, conserve and manage publicly-owned historic heritage places varies considerably between States and Territories.

DRAFT FINDING 4.3

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

5 Planning controls and heritage conservation at the local level

DRAFT 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 and this has resulted in inconsistent outcomes within many local governments.

DRAFT FINDING 5.2

While statements of significance are recommended in State guidance material, no State requires its local governments to include a statutory statement of significance in their local heritage lists. The absence of such statements seriously impairs subsequent decision-making about listed properties.

DRAFT FINDING 5.3

Heritage conservation areas impose less stringent restrictions on the ability to demolish and redevelop properties than do individual heritage controls.

DRAFT FINDING 5.4

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

DRAFT FINDING 5.5

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

DRAFT FINDING 5.6

There is significant scope to improve the management of heritage conservation by local governments in their systems and processes for land use and planning.

6 Analytical framework

DRAFT 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. The potential for owner detriment arising from development controls may differ significantly between properties.

DRAFT 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.

7 Assessing governments' involvement

DRAFT FINDING 7.1

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, consistent with the principle of subsidiarity, aligns the scale of heritage significance with its level of government decision-making.

DRAFT FINDING 7.2

Negotiated agreements are desirable as they facilitate voluntary conservation and ensure the costs of conservation are considered alongside the community benefits.

DRAFT FINDING 7.3

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, clearly identifying expenditure on conservation would improve accountability and provide more incentives for government agencies to better conserve listed heritage places.

DRAFT FINDING 7.4

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 and transparent reporting of expenditure on conservation.

DRAFT FINDING 7.5

At the State, Territory and local government levels, there is an over-reliance on prescriptive 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) and possibly perverse effects (such as destruction to avoid maintenance costs).

DRAFT FINDING 7.6

The current listing process does 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:

- the community has an incentive to over-list (or be non-selective) 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 actively conserve heritage values and may, in some cases, have an incentive to degrade or destroy the heritage place.*

DRAFT FINDING 7.7

The assistance available to private owners of heritage properties is poorly targeted, and in some cases, falls well short of the additional costs of obligations imposed on owners as a result of listing. In these circumstances, property owners will not have an incentive to actively conserve heritage values.

DRAFT FINDING 7.8

At the local government level, the management of heritage conservation under 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.*

8 Getting incentives right

DRAFT FINDING 8.1

Conservation of historic heritage on privately owned heritage property could be more effectively achieved through negotiated conservation agreements between governments and owners.

Recommendations

The Commission's key recommendation is as follows:

DRAFT RECOMMENDATION 8.1

Privately-owned properties should be included on a national, State, Territory, or local government statutory heritage list only after a negotiated conservation agreement has been entered into and should remain listed only while an agreement is in force.

The following lists the recommendations in chapter order:

3 Overview of historic heritage conservation in Australia

DRAFT 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

DRAFT RECOMMENDATION 7.1

The Australian Government should phase out the Register of the National Estate for historic heritage purposes, beginning with the closure of the Register to any new nominations.

DRAFT RECOMMENDATION 7.2

State and Territory governments should remove any reference to the Register of the National Estate from their planning and heritage legislation and regulations.

DRAFT RECOMMENDATION 7.3

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

The Australian Government should implement reporting systems that require government agencies with responsibility for historic heritage places to document and publicly report on the heritage related costs associated with their conservation.

State, Territory and local governments should:

- *produce adequate conservation management plans for all government-owned statutory-listed properties; 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 costs associated with their conservation.*

8 Getting incentives right

Privately-owned properties should be included on a national, State, Territory, or local government statutory heritage list only after a negotiated conservation agreement has been entered into and should remain listed only while an agreement is in force.

9 Conservation agreements for privately-owned heritage places

The Australian Government should implement processes whereby any additions of non-government owned properties to the National List occur only after a conservation agreement with the owner has been entered into, and that the property remain on the list only while an agreement is in force. Consistent with its stated preference of relying on agreements for the management of world and nationally significant historic heritage places, the Australian Government may wish to make this a statutory requirement under the Environment Protection and Biodiversity Conservation Act.

State and Territory governments should modify heritage legislation to ensure that any additions of non-government owned properties to their statutory heritage

conservation lists occur only after a conservation agreement with the owner has been entered into, and that the property remain on the list only while an agreement is in force.

DRAFT RECOMMENDATION 9.3

State governments should require their local governments to add non-government owned properties to a local heritage conservation list only after a conservation agreement with the owner has been entered into and remains in force.

DRAFT RECOMMENDATION 9.4

State governments should put in place systems for their local governments to request compulsory acquisition in cases where this becomes the only way to ensure cost-effective conservation of places of local significance.

DRAFT RECOMMENDATION 9.5

Private owners of already listed properties, where the listing occurred after purchase of that property, should be able to apply for a negotiated conservation agreement and for listing to continue only if an agreement is reached.

DRAFT RECOMMENDATION 9.6

Private owners of already listed properties, where the listing occurred prior to the purchase of that property, would remain covered by the existing ‘package’ of restrictions and concessions (if any). These arrangements would be reassessed at the time of any substantive development application when negotiations for a new conservation agreement would occur and listing would continue only if an agreement is reached.

DRAFT RECOMMENDATION 9.7

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 other than those requirements relating to zoned heritage areas.

DRAFT RECOMMENDATION 9.8

State and Territory governments should remove the identification and management of heritage, zones, precincts or similar areas from their heritage conservation legislation and regulations, leaving these matters to local government planning schemes.



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.

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 their conservation.

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 1945. 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 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 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 protect heritage 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 led to governments adopting more formal arrangements, with mechanisms for the identification, protection and conservation of historic heritage 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. It is designed to assist ‘case-by-case’ enunciation of heritage values, but (deliberately and explicitly) takes no account of either the number and quality of like properties already listed or the cost of conservation.

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

Not under reference is the conservation of: natural heritage (for example, the Great Barrier Reef); indigenous heritage (that is, 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 (for example, folk history).

However, 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. Thus, 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. Participants, including the Australian Heritage Council (sub. 118, p. 3) and Australian Council of National Trusts (sub. 40, p. 31), expressed the view that conservation of historic heritage places should not be viewed in isolation from heritage conservation more generally.

Australia has many historic heritage places. They range from internationally recognised buildings, 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 (for example, 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.

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.

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 this 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;
- 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 proposals for improving the incentives are given in chapter 8, while the appropriate mechanisms for implementing these proposals, along with implementation issues for each level of government, are discussed in chapter 9.

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. To date, the Commission has spoken to about 90 organisations and individuals, representing a range of interests, including: Australian, State and Territory government 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.

To date, the Commission has received 192 submissions. During July and August 2005, public hearings were held in all capital cities (Darwin hearings were conducted 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 details of State and Territory planning regulations and of the heritage listing assessment processes undertaken by local governments.

In releasing this Draft Report for comment, the Commission has sought to provide the opportunity for interested parties to contribute further to the Commission's deliberations.

2 Historic heritage value, pressures and emerging trends

This chapter discusses the value of historic heritage places and the benefits from its conservation. It also reviews the pressures on, and emerging trends associated with, the conservation of Australia’s historic heritage places. Pressures on owners 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 (for example, 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 (1997) 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 may also 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.
- Contribution to the preservation of community heritage.
- Contribution to historic streetscape, neighbourhoods etc.

Community benefits

- The role of the historic heritage place in defining the cultural identity of a community.
- 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 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 whether, and 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)

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).

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.

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 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.

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, in the Ku-ring-gai Shire in Sydney, Zeny Edwards 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.

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 (for example, 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 CFMEU (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 budget 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 interested parties 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 change continuously in response 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 can 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)

Most 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. 12–13) 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

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.

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 physical conservation of historic heritage places.

2 Historic heritage value, pressures and emerging trends

This chapter discusses the value of historic heritage places and the benefits from its conservation. It also reviews the pressures on, and emerging trends associated with, the conservation of Australia's historic heritage places. Pressures on owners 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 (for example, 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 (1997) 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 may also 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.
- Contribution to the preservation of community heritage.
- Contribution to historic streetscape, neighbourhoods etc.

Community benefits

- The role of the historic heritage place in defining the cultural identity of a community.
- 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 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 whether, and 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)

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).

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.

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 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.

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, in the Ku-ring-gai Shire in Sydney, Zeny Edwards 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.

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 (for example, 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 CFMEU (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 budget 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 interested parties 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 change continuously in response 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 can 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)

Most 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. 12–13) 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

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.

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 physical conservation of 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 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 imposes obligations on these 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 the:

- *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	716	48	782	52
Victoria	631	32	1 361	68
Queensland	na	na	na	na
Western Australia	593	53	520	47
South Australia	725	33	1 470	67
Tasmania	403	8	4 923	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.

na Not available. .. Nil

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 a fully 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 253 historic heritage places, of which 170 are opened regularly to the public. Nearly 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	24	11	11
Western Australia	44	20	44
South Australia	86	62	51
Tasmania	14	7	8
Northern Territory	17	8	11
ACT	–	–	–
Totals	253	165	170

– 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, make decisions about, or undertake works to 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 are constitutionally able to 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 listed as national, State or local significance. But the RNE lingers, although overlapping with statutory listings, as well as listings by National Trusts,

the RAI A and others. The consequences of a statutory listing are 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
Number

<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	..	8 742 ^b	1 498	31 176
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	9 034	13 986	>150 000

^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, pp. 34 & 60); 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 considerable 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 C.

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.

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 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 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.

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.

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
WA ^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 indicated above, information on historic heritage places and their conservation is not readily available, nor easily discernible, particularly 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. There are either large gaps in the coverage or the data come with much qualification.

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.

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.

Draft 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.

Draft 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. Negotiation and bilateral agreements could be central to the system of conservation for nationally significant heritage places. However, the Australian Government's reliance on negotiated agreements is not yet fully implemented; while 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.

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 the local government responsibilities 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, State and 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). Places on the National List are protected using the Australian Government's constitutional powers, but are

managed cooperatively with State and Territory governments, or private owners (if applicable). 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 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, after negotiating management and conservation agreements with the owner (whether government or private).

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

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, as most of the places on these lists are significant, but not outstanding, and may be of significance to only local or state-level communities.

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).

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.

The decision to list typically involves ‘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).

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

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.

The approval process is limited by the constitutional powers of the Australian Government. That is, it only applies to the Australian Government, its agencies and corporations, and other people who fall within a constitutional head of power (such as an action for the purposes of trade or commerce, and an action in a Commonwealth area or Territory). For all other situations, the terms of intervention depend upon the individual terms of the bilateral conservation agreement made between the Australian Government and land owner (see below).

Once a 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:³

- 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.

³ Decided by the Minister.

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

Due to constitutional limitations, the Australian Government has to rely on voluntary agreements to ensure conservation of places that are owned privately (s. 304) or by State governments (s. 45).⁴ Where no agreement exists, the Australian Government is unable to use the enforcement provisions of the EPBC Act, which in effect, makes the controls and requirements of the Act inoperable. However, the extent of the Australian Government's commitment to 'conservation by agreement' is yet to be fully implemented — of the 15 places listed on the National Heritage List,⁵ only one is subject to a voluntary agreement (albeit yet to be finalised). However, most are owned by State governments.

Bilateral agreements occur between the Australian Government and State governments, for places that are owned by State governments. Such agreements 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.⁶ 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)

⁴ Places in Territories are subject to direct Australian Government control due to their location on Commonwealth land.

⁵ As at 23 November 2005.

⁶ <http://www.deh.gov.au/epbc/publications/draft-sydney-Opera-house-bilateral.html>.

For National Heritage places that are owned by State Governments, the successful completion of a bilateral agreement would, most likely, not be the determining 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). Out of these four places, there is potential for the two National Heritage places owned by corporations that reliance on mandatory listing rather than conservation

agreements could result in adverse conservation outcomes. Ideally, 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 List⁷ 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 refers to ‘outstanding’ value whereas Commonwealth refers to ‘significant’. Second, the National criteria requires that a place has outstanding value to the Australian community as a whole, whereas the Commonwealth list can contain heritage items that have State, Territory, or local significance.

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. This stems from Australian Government ownership of the places listed on the Commonwealth 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

⁷ The sections in the EPBC Act for the Commonwealth Heritage List are ss. 341C–341R.

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.

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.⁸

Repair orders

The Australian Government is also able to apply for repair orders. 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).

⁸ See *Yates Security Services v Keating* (1990) 25 FLR 1. The previous Australian Heritage Commission Act contained the same restrictions.

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 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 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 comes to around \$14.2 million between 2005-06 and 2008-09.

DEH's Budget Papers also contain a specific grant to the Defence Department for heritage management, totalling \$11.5 million between 2005-06 and 2008-09. This covers the estimated cost of heritage conservation for the Defence Department (sub. 52, p. 14).

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 to 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)

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, focusing on ‘conservation by agreement’ should result in greater conservation outcomes than ‘conservation by force’. Indeed, the focus on negotiated outcomes can be seen as an example of national leadership by the Australian Government, and is 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. Only New South Wales, 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.

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	na
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	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	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

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:

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.

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 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.

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.

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).

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 Council⁹ — 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 a prominent role in the administration of its Heritage Act — including determinations of permits and consents.

⁹ In Queensland, Western Australia and South Australia this body is included in the Council itself.

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.

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 States allow for an appeals mechanism. These can either include administrative appeals, judicial reviews or both. For example, New South Wales provides for a Ministerial review and the establishment of a Commission of Inquiry. In Queensland an owner may appeal listing to the Planning and Environment Court. Western Australia does not allow appeals on the issue of listing a place on the register. The Northern Territory does not allow appeals on the merits of the decision to list.

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 1997, 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.

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.¹⁰ 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. (1997, 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 (1997, 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.

The fundamental difference relative to the Australian Government approach is the ability of the States and Territories to impose direct regulatory controls on listed places, without the need to enter into bilateral conservation agreements with owners.

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

¹⁰ Heritage precincts can be conserved through the planning schemes and local significance conservation. See chapter 5.

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 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 between 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.

DRAFT FINDING 4.1

The listing of properties onto 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.

In every jurisdiction except New South Wales, the owners (or other people with appealable interests) have a right of appeal to the relevant Administrative Tribunal or Land Court. In New South Wales owners can appeal decisions to the Minister. In the Northern Territory appeals can only be heard on issues of law.

Penalties

In New South Wales the maximum penalty is a fine of 10 000 penalty units¹¹ 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.

¹¹ 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 between States and Territories.

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.¹²

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 agreements — other than re-valuation of the land for land tax purposes (McLeod 1997, p. 7188).

¹² Curiously, in New South Wales there is only provision for the Minister to seek an injunction in Court for breaches, not the property owner.

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 maintaining heritage values in Courts whether listed or not.

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.

The level of assistance provided to non-government owners of historic heritage places varies considerably between States and Territories. 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)

The States and Territories rely, much more heavily than the Australian Government, on the use of legislative controls rather than negotiating outcomes with owners of heritage properties. This is evidenced by the decisions in many jurisdictions not to utilise 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’. Mr 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 a bad 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)

At the broad level, the system for heritage identification and conservation at the Australian, State and Territory levels are quite similar. However, there remain some important differences. The systems are similar with regard to the two-stage listing system (the assessment and listing-decision are separated) and the imposition of statutory obligations once listed. There is a fundamental difference, however, in the manner with which places are listed. As noted in section 4.1, mutually satisfactory heritage conservation agreements are the primary mechanism the Australian Government uses for listing properties. At the State and Territory level, the use of such agreements varies from sporadic to negligible. This may be due to the inability of the Australian Government to ‘conserve by force’ because of constitutional limitations, but nonetheless, an approach involving ‘conservation by agreement’ has much to commend it. There is little doubt among participants that focusing on ‘conservation by agreement’ would result in more beneficial conservation outcomes.

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, rather than 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 contribute to the undermining of 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 Australian 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. 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 than for planning decisions over non-heritage properties.

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

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, 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 add more detail to local planning schemes. The level of State control over local schemes varies considerably between jurisdictions (see appendix C).

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).

Victoria and Tasmania also place a further layer of more detailed controls on top of zoning types, called overlays. Overlays relate to the environment, heritage, built form, and land and site management issues. In some cases, uses or developments

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).

which would be permissible under the zoning of the land, may not be allowed under the additional overlay requirements.

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 which 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.

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 C). 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 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 C.

It should be noted, however, that 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)

Unlike at the Australian, State and Territory levels (chapter 4), there is no requirement for local governments to identify and conserve its own historic heritage, apart from its 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.³ While all three documents outline in detail what heritage

³ New South Wales Heritage Office (2002); Victorian Department of Planning and Housing (1991); and Heritage Council of Western Australia (1991)

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.

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 suggests 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.

The NSW guidelines do not discuss 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.

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 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 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 does it 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)

DRAFT 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 and 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 5.3) 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. As a result, there are no legislative consequences for not having one, or having an inadequate statement. That is, 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.

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.

DRAFT FINDING 5.2

While statements of significance are recommended in State guidance material, no State requires its local government to include a statutory statement of significance in their local heritage lists. The absence of such statements seriously impairs subsequent decision-making about listed places.

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 leads to different requirements for, or different assessment procedures of, development applications.

How does heritage affect the need for development approval?

Most jurisdictions have established exemptions from the need to seek development approval (appendix C). 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.⁴ 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

⁴ 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.

(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.

... 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 LEP 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 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.

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:⁵

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, p. 3-4)

⁵ http://www.freofocus.com/council/resource/DBH13_Policy.pdf.

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 placed on developers 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)

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 on 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,⁶ which is the most common form of development, does not apply to heritage items or land within a heritage conservation zone.⁷

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

⁶ Developments that are automatically approved so long as they comply with pre-determined standards.

⁷ An example of this can be seen in Part 3 of the *Parramatta Local Environmental Plan 2001*.

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 5.3 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 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; and in South Australia the Adelaide City Council has declared the North Adelaide heritage conservation area.

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’.⁸

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

⁸ See also *Lonie v Brisbane City Council* [1998] QPELR 209; *Michel v Brisbane City Council* [1999] QPELR 374.

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 places and heritage areas or precincts are the same, there are important differences. The assessment criteria in a heritage area is to 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.

DRAFT FINDING 5.3

Heritage conservation areas impose less stringent restrictions on the ability to demolish and redevelop properties than do individual heritage controls.

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 and planning systems *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.⁹

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.

⁹ 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.

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.

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.¹⁰ 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)

¹⁰ 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).

However, the approach by the NSW LEC has been far from consistent. In *Wu v Ku-ring-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 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.¹¹

¹¹ 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

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);

planning provisions and heritage overlays rather than various conservation and heritage reports when making a decision over a heritage listed property.

- in Victoria, permission was refused for a satellite dish due to its impacts on nearby heritage places (*Bhatia v Whitehorse CC* [2001] VCAT 2354); and
- 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.

DRAFT FINDING 5.4

Heritage controls can be applied to properties that have not been individually listed or contained 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.

DRAFT FINDING 5.5

Many property owners do not fully understand the effect heritage listing has on their property. This is not simply a reflection of a lack of awareness by owners of the implications of listing, rather it flows from unclear legislative requirements and inconsistent administrative actions. More specifically, it is a direct result of the failure of all State Heritage Acts to specifically require 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 to the approach of properties that 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. 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.

DRAFT FINDING 5.6

There is significant scope to improve the management of heritage conservation by local governments in their systems and processes for land use and planning.

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 of 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 a historic heritage place include explicit conservation and maintenance costs; 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 three types of 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 system include mechanisms for assessing and weighing both the benefits and costs, and for ranking candidate places in terms of the net social benefits arising from their conservation.

Ownership of a historic heritage place confers a number of potential benefits (chapter 2). These may be tangible (for example, 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 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).

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.

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.

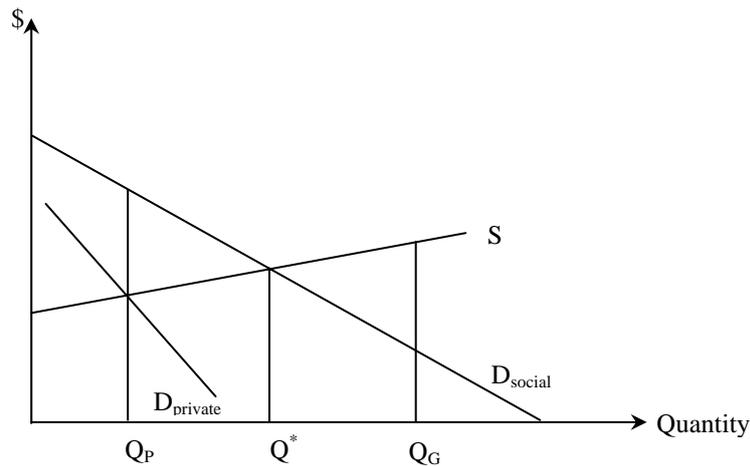
It is important to note that, while the existence of community-based benefits may provide a rationale for government involvement, it does not establish the case for such involvement. That is, the presence of market failure as a result of community-based benefits is a necessary, but not a sufficient, 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 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

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

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.

actions of the seller, to make a decision in their best interest. (Chairs of the Heritage Councils of Australia and New Zealand, 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.² 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.

According to the Chairs of the Heritage Councils of Australia and New Zealand, the market for historic heritage places may be susceptible to adverse selection:

² The classic example where adverse selection might arise is in the market for used cars. A purchaser may not know, before purchase, which cars are mechanically sound and which are poor quality (or 'lemons'). The owner of the car will, however, know. As the market price falls, reflecting the probability that a buyer may purchase a 'lemon', sellers of mechanically sound vehicles may withdraw their cars from sale because the price no longer reflects the good quality of the vehicle they are offering to sell. As more sellers of good quality used cars withdraw from the market, the proportion of 'lemons' offered for sale increases, further reducing average price and quality. Ultimately, this may lead to only 'lemons' being offered for sale and the collapse of the used car market as consumers look to new car market for good quality vehicles. In reality, however, the used car market operates well because of market-initiated solutions such as dealer warranties and pre-purchase mechanical checks.

Adverse selection appears to be most relevant to residential heritage places given that:

- investors may wish to purchase a residence with a heritage component, but have difficulty in assessing and comparing the relative value of the different heritage attributes of the properties on the market;
- it may also be difficult to determine, without incurring significant costs, the validity of heritage claims on properties;
- the uncertainty of the quality and value of heritage properties potentially increases the risk of any heritage property, including the costs associated with conservation and maintenance. For instance, if an owner has an opportunity to invest in conserving or upgrading a heritage house, but has limited ability to signal the quality of this property over and above others in the market, the investment in the property's conservation and restoration is less likely to take place. (sub. 187, p. 6)

However, 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.

It is also not clear why an owner would have 'limited ability to signal the quality of this property over and above others in the market'. Real estate is a market in which sellers can, and typically do, emphasise the unique attributes of their properties. Finally, when assessing the impact of asymmetric information, it should be acknowledged that it is not necessarily the case that the seller will possess more information than the buyer. The Department of the Environment and Heritage

(sub. 154, p. 52) considers a situation in which the seller has less information about the heritage values of the property than prospective buyers.

Clearly, as identified above, 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 intergenerational 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, perhaps 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 foregone development opportunity but may also prevent a development which would be considered heritage by future generations.³

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

³ 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 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)

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 additional benefits (inclusive of all community benefits) from such conservation equal the incremental costs.

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 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 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:

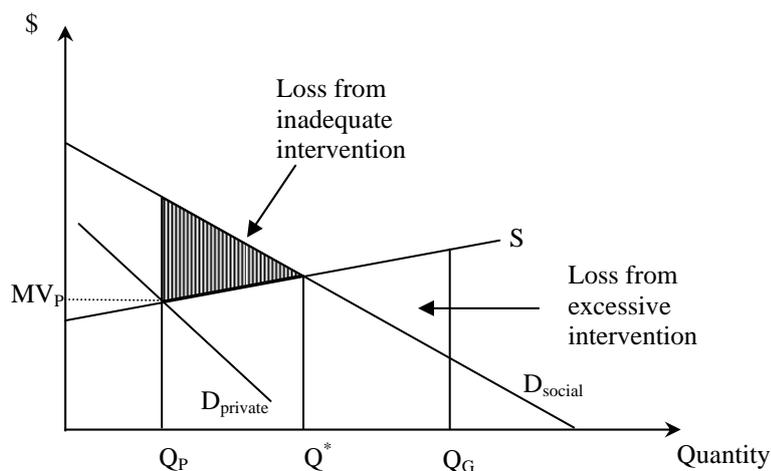
... there is a question of principle. Is it correct for owners to have their property rights expropriated without compensation, through an arbitrary and capricious system? Certainty is a cornerstone of the law, yet owners can never predict what will next make the list ... This injustice infects community 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. (Mr 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.

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.⁴ 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).

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

⁴ 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.

requiring certain behaviour'.⁵ 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. 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 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:

⁵ In terms of general public policy, 'hard' regulation is often referred to as 'command and control' regulation (see chapter 7).

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 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 either 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 acknowledged the wide range of government-owned heritage assets:

The Rocks provides a further example of an important government role, as property steward. While for the majority of historic heritage places, good decision-making that is reflective of identified heritage values will enable and facilitate appropriate and viable uses, there are some historic heritage assets that rely on government stewardship for retention of their cultural significance. These are typically icon places such as museums and historic sites. Typically, such places demonstrate heritage value (assessed according to accepted statutory criteria) at a high-threshold level, as well as a high degree of integrity/fragility. Their heritage value could be compromised by private ownership and management, even in a regulated market situation, or alternatively, it is not feasible to conserve them without public subsidy.

These places are well known. They include our national and community icons. Places like Mawson's Huts Historic Site, Fremantle Gaol, Old Parliament House, the mining landscape at Burra in South Australia and the Port Arthur Historic Site. At the local level, they are often community museums, libraries or cherished historic buildings that, while tourist attractions or focal points for local community initiatives, are not self-sustaining economic entities. In these cases, particularly where the place already exists in public ownership, government has an important role as steward of the public asset and community resources are appropriately allocated as a matter of community service obligation. There can however, be difficulties in resourcing conservation, even of places in public ownership. (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.

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, the reality is that governments, households,

businesses and community organisations such as the National Trusts are well aware of the significant costs of conserving historic heritage places.

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 7). 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 less direct relevance.

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 8, the Commission will outline a policy framework, centred around market-based mechanisms, which ensures that owners reveal the costs and benefits associated with heritage status and encourages community representatives to be more explicit in weighing the private costs faced by owners with the expected

community benefits. 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. For example, Ms Vinita Deodhar submitted that, based on evidence from the Kuring-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 Ms 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)

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.⁶

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. For example, Mr 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:

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. (Ms Margrit Stocker, sub. 3, p. 3)

Similarly, 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

⁶ Of course, as discussed below, it is necessary to distinguish between the effects of listing and the inherent heritage attributes of a property. In an internet survey of heritage properties for sale (conducted on 21 November 2005), the Commission could find no evidence of sellers advertising their properties as ‘heritage listed’.

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 Ms 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, 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)

Existing 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.

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.

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 Ms 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.

DRAFT 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. The potential for owner detriment to arise from development controls may 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.

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. There is a negative marginal valuation associated 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 willingness to pay estimates also 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.

The Allen Consulting Group use 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? As noted by the Chairs of the Heritage Councils of Australia and New Zealand (among others), heritage is a heterogeneous concept and the valuation placed on it could be expected to vary with the nature of the place.

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.

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.

However, to the extent that the estimate does incorporate values common to all heritage, it may be used by governments to provide an indicative guide to the value of listing an additional historic heritage place. The Commission does not wish to comment on the validity of listing decisions, except where this reveals strengths or weaknesses of current arrangements. However, a number of participants have indicated that, under current arrangements, the costs to them are not adequately accounted for when listing decisions are made. Furthermore, while evidence on the costs of listing may be provided, there is typically no explicit estimate of the community benefits involved. For example, John and Janet Boyd (sub. 8, p. 1) have argued against the listing of their property on the Ku-ring-gai Council list on two occasions. They have received a property valuation suggesting that the value of his property would decline by \$120 000 if listed. As there are around 107 000 people in Ku-ring-gai local government area, the estimates provided by the Allen Consulting Group suggest that the community would value listing of this property at around \$592 per year. Assuming that the property was perpetually listed, this figure could be capitalised (at an interest rate of 7 per cent) to a total community benefit \$8500. Even setting aside the costs already incurred in disputing the listing of the property, the anticipated decline in the property's value suggests that its listing would fail a simple benefit-cost test.

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)

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.

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.

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... Over the centuries, being cognisant of the rights of one’s neighbours, being cognisant of the impacts of one’s activities on a neighbouring property, has led to a succession of changes in the way in which we deal with property. The first controls, one could look right back in the medieval days which were restraints in the way we use water, that we didn’t pour sewage from the top layers of a building into the public street as passers went by. That was a health safety issue.

Subsequent to that we realised that if we just used our properties for the burning of rubbish in the backyard or for the disposal of our waste that then created pollution. So we then saw the introduction of pollution laws. As time went by we then saw the introduction of controls on noise and then most latterly we’ve seen, through the planning process, introduction of controls which actually deal with the physical fabric of the properties we have. That evolutionary process which we can trace back over the centuries is nothing more than a recognition that when one actually holds property, one is doing it as part of a community and one is cognisant of the rights of others within the community. 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. 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

This chapter provides an assessment of government involvement in the conservation of historic heritage places in Australia. Overall, although the framework for heritage conservation has been improved in recent years with the adoption of a three-tier system for government intervention and new arrangements for national heritage places, significant deficiencies remain. Many interested parties expressed concerns about the current arrangements.

Governments, particularly at the State, Territory and local level, rely on prescriptive regulation to conserve historic heritage places. Inadequate consideration is given to the costs of providing the wider community benefits that statutory listing seeks to protect. Some inappropriate listings occur, with significant costs for property owners, such as loss of opportunity to redevelop. The interaction of planning and heritage regulation further exacerbates this problem, with limited transparency and accountability in the decision making process.

Governments, at all levels, need to improve information on their expenditures and achievements in heritage conservation.

This chapter draws on the analysis presented in the preceding chapters, and the description of planning regulation in appendix C, to present an overall assessment of government involvement in historic heritage conservation in Australia. 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 government intervention 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. In response to this concern, all Australian jurisdictions have now implemented 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, a large portion of heritage conservation is undertaken by individuals and communities operating in the market without resort to direct government involvement. For example, 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 heritage conservation vary, as do the costs, for example, in terms of the impact on the value of a property. In many cases, property owners will have normal commercial and private incentives to conserve the heritage values embodied in their property, but in some cases they may 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. For example, the main pressures on heritage places in urban areas may be demolition and redevelopment, whereas in 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 socially 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 costs and benefits of addressing it.

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 or 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.

Listing of historic heritage places is a means to preserving historic heritage — not an objective per se. The outcome that society seeks is a comprehensive and representative portfolio of places to be kept in prosperity 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 its benefits 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. 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, 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 policy makers.

To enable decision makers to weigh the equity implications of different policy options, an important step for policy assessment 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

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)

Good governance also 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.

7.2 How well are the existing arrangements working?

While there has been significant progress with national reforms and the introduction of the three-tier legislative system, other areas of heritage regulation, particularly 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.

At the **national** level, heritage places are typically ‘icons’ in public ownership that would almost certainly be preserved in the absence of government intervention, because of their high cultural significance and wide ranging benefits for the Australian community. These places are well-known, generally secure and well-managed, and under very little threat of demolition or neglect. The task of looking after these elite places, while very important, should not be too difficult. Australia could spend too much time, effort and resources addressing a non-problem. The new three-tier legislative framework and National Heritage List, although in the early stages of operation, appears to provide a sound framework for the conservation of heritage places that are highly significant for all Australians.

At the **State** level, heritage places are a mix of public, quasi-public and private buildings. All States and Territories have established a similar set of institutions and mechanisms to promote heritage conservation, based on a Heritage Council identifying places of heritage significance and imposing regulatory controls. Most States and Territories also provide assistance to encourage conservation by offsetting, at least partially, compliance and opportunity costs of statutory protection for some owners.

The system has some strengths, including the statutory powers to provide official recognition of heritage places, and an institutional structure and regulatory controls

to protect the heritage values embodied in listed places. It also has major weaknesses, primarily arising from the reliance on prescriptive solutions that do not recognise the costs associated with conservation. In addition, statutory protection (regulation) may be largely effective in preventing demolition and unsuitable modifications to heritage properties, but much less so in preventing demolition by neglect. Its efficiency and equity implications are questionable.

The exercise of **local** government powers for heritage conservation are perhaps the most controversial. 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 typically 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 for individual iconic places, to precincts or areas of heritage significance.

7.3 Strengths and weaknesses of current government involvement

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 and delineating the respective roles of the Australian, State and Territory 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.

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 wider 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. 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 resources where warranted.

DRAFT FINDING 7.1

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, consistent with the principle of subsidiarity, aligns the scale of heritage significance with its level of government decision making.

National regime and conservation agreements

Although the new national system for conservation of historic heritage places is broadly similar to existing systems elsewhere, it has a number of specific design features which display desirable characteristics. For example, entering a place on the National Heritage List involves a two-step process to assess both the heritage significance of a place and the costs of conservation, before a determination is made on whether a place should be listed. In this way, there is a conscious evaluation of the costs as well as the benefits to determine whether listing provides a net benefit to the community.

Another feature of the national regime, which has been used for the Sydney Opera House, is the ability of the Australian Government to negotiate conservation agreements with owners to ensure the on-going conservation of a heritage place (including agreement on funding responsibilities). Some State and Territories also have provisions for conservation agreements with property owners, although they are generally used in a limited range of circumstances (e.g. as part of the disposal of government properties).

A major advantage of negotiated agreements, compared to involuntary listing, is that both parties must commit to the conservation of the heritage place (that is, the owner is a willing partner in conservation and agrees to conserve the heritage values of a place). Negotiated agreements also allow for property owner flexibility and innovation in identifying cost effective means to deliver the heritage conservation outcomes sought by governments on behalf of the community. Agreements are usually valid for a certain period, after which time they can be reviewed to assess the on-going significance of a place and how well the agreement is achieving its conservation objectives.

DRAFT FINDING 7.2

Negotiated conservation agreements are desirable as they facilitate voluntary conservation and ensure the costs of conservation are considered alongside the community benefits.

Register of the National Estate

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. The Council stated ‘... the RNE should become the multilevel database containing the complete inventory of Australia’s heritage places, which have been identified on a statutory heritage list, and accessible to all through its web links’ (sub. 118, pp. 12–13).

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 expect that inclusion on the register provides some form of statutory protection. While the RNE does not have any such regulatory status at the national level, it does have some implications at the State and local level through reference to the Register in some State legislation, and the practice of referring to it in heritage-related Court action.

As agreement has been reached between the jurisdictions in Australia on the sharing of responsibilities for the identification, listing and protection of historic heritage places, there is now little that is added by 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.

This would be overcome by the progressive phasing out of the RNE, beginning with its closure to any new nominations. However, the RNE contains places of natural and indigenous significance which are not as well catered for in other statutory lists as are historic heritage places. Rationalisation of places already listed on the RNE would need to take that into consideration. Such a rationalisation would involve:

- all RNE listed places already included on other statutory lists (national, State or local) being removed from the RNE; and
- any remaining historic heritage places that do not qualify for statutory listing in any jurisdictions also being removed.

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.

DRAFT RECOMMENDATION 7.1

The Australian Government should phase out the Register of the National Estate for historic heritage purposes, beginning with the closure of the Register to any new nominations.

DRAFT 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.

Relationship between governments and community organisations

The traditional role of not-for-profit organisations, such as the National Trusts, in listing, protection and conservation of heritage places has largely been taken over by the various government bodies. However, 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.

A number of participants expressed the view that not-for-profit organisations, and in particular, the National Trust could be the most efficient vehicle for the delivery of government heritage funding. 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 future of the National Trusts.

DRAFT RECOMMENDATION 7.3

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

7.4 Government-owned properties of heritage significance

As owners, the Australian, State, Territory and local governments are the custodians of the vast majority of highly significant, or iconic, heritage places for the Australian community. Appropriate management of government-owned heritage assets can, therefore, make a substantial contribution towards ensuring the most valuable parts of Australian heritage are preserved for current and future generations.

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.

Maintaining a heritage property is the responsibility of the agency in possession of the property. For those government agencies, the costs of meeting heritage obligations, which include the compliance costs of preparing conservation plans as well as additional capital and operational costs associated with managing a heritage place, can be substantial. The Department of Defence noted:

The social and environmental benefits of the conservation of historic heritage are well documented and recognised by Defence. However the financial costs of compliance and implementation of heritage conservation legislation are significant for Defence with no other financial assistance or cost recovery available. The identification, assessment and management planning requirements are expected to cost Defence in the order of \$11m over the next 5 years. The physical conservation works required on the listed historic heritage assets would be in addition to this figure and is expected to be a considerable amount. (sub. 52, p. 14)

Typically, these costs are funded from an agency's general budget. 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 business, to be funded to care properly for them. Heritage conservation thus competes with the core business of the organisation, and these competing objectives need to be well managed if the appropriate level of conservation is to be achieved. Unless this is done well, agencies may treat conservation as a burden to be avoided wherever possible.

If owners (be they private or a public institution) do not gain a benefit from conservation, then they have little incentive to make the necessary investment in heritage-related maintenance. In the public sector this is often manifested in pressures to dispose of 'surplus' heritage buildings so as to remove what is seen as a non-productive burden from their business.

Further, the failure to explicitly account for the additional cost of conserving government-owned heritage places (over and above normal capital and maintenance works) reduces transparency and accountability in the management of these assets. Identifying expenditure ensures that governments take decisions on the basis of accurate information and so allow for the effective prioritisation of government objectives. In the same way, a transparent heritage budget improves accountability to parliaments and the broader community for the management of public assets.

DRAFT FINDING 7.3

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, clearly identifying expenditure on conservation would improve accountability and provide more incentives for government agencies to better conserve listed heritage places.

DRAFT RECOMMENDATION 7.4

The Australian Government should implement reporting systems that require government agencies with responsibility for historic heritage places to document and publicly report on the heritage related costs associated with their conservation.

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 (NSWHO 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.

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.

The same accountability principles are relevant for local governments. Although local governments manage heritage through a single body rather than multiple agencies, there is typically limited use of conservation management plans and expenditure on conserving heritage places is not transparently identified in budget papers. If local governments were to produce a conservation management plan for each government-owned place on their local statutory list and transparently identify the cost of preserving those heritage places, local communities could make a comparison of the heritage conservation benefits and costs.

DRAFT FINDING 7.4

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 and transparent reporting of expenditure on conservation and achievements.

DRAFT RECOMMENDATION 7.5

State, Territory and local governments should:

- ***produce adequate conservation management plans for all government-owned statutory-listed properties; 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 costs associated with their conservation.*

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 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)

Regulation is 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 those heritage values. This is particularly the case at the State and Territory level (and the subsequent frameworks established for local governments) as they have constitutional powers to regulate heritage places. Throsby explained the appeal of regulatory instruments to conserve heritage:

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* (2004), the Environment Protection and Heritage Council argued that the traditional singular focus on regulation had failed to encourage appropriate heritage conservation (see box 7.1).

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: Making Heritage Happen (2004).

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)

In contrast, some inquiry participants argued that more prescriptive regulation and onerous enforcement provisions, rather than less, would improve heritage outcomes.

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. Increasing statutory powers in these circumstances would not address the underlying problem — that many private owners of historic heritage places are expected to maintain the heritage values of a place at their own expense 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 type and design of regulation are instrumental to ensuring it achieves its objectives at minimum cost to the community. The OECD suggests:

There is little doubt that most governments can substantially reduce regulatory costs, while increasing benefits, by making wiser regulatory decisions. A wide range of anecdotal and analytical evidence supports the conclusion that governments often regulate badly, with too little understanding of the consequences of their decisions, and with little or no assessment of any alternatives other than traditional forms of law and regulations. (quoted in Argy and Johnson 2003, p. 5)

The current arrangements for heritage conservation are based on prescriptive 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 costs and benefits 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, aside from the official recognition value, statutory listing does not provide a property owner with any additional incentive to preserve heritage values or ensure the on-going conservation of the place. The regulatory controls that accompany listing may provide nominal protection for some heritage places. However, the Commission has received evidence that regulatory compliance may be largely due to voluntary conservation by owners who have normal private and commercial incentives to do so (for example, to maintain the value of a property), rather than for those places where there is a threat to heritage values. This suggests

that regulation may be less effective in those cases that the regime is intended to target.

Where the regulation 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 protect heritage values may deliver better outcomes than regulation that merely prohibits certain actions, such as development and neglect.

Box 7.2 Regulatory controls and adverse heritage 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)

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)

At the State, Territory and local government levels, there is an over-reliance on prescriptive 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) and possibly perverse effects (such as destruction to avoid maintenance costs).

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 usually lists developed by the National Trusts. Typically, a government 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 uncontrolled growth over time.

The listing process for State, Territory and local registers is based on the Burra Charter, which sets out best-practice principles for heritage conservation. While these principles provide a sound basis for assessing heritage values and creating a 'catalogue' of heritage places, they were not set up as an objective means of deciding which heritage places were best to conserve and at what cost. Tom Perrigo concluded:

... 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)

The benefits of heritage conservation are not rigorously assessed

The benefits of imposing statutory protection on a particular place are not 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).

Under the current assessment process, the benefits arising from heritage conservation are 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).

Especially at the local government level, there can be minimal guidance and rigour in the assessment process. There is no statutory obligation to include a statement of heritage significance when listing, and 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.

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 cost of managing a heritage place to conserve those attributes. Under the current regulatory process, while the benefits of retaining heritage are always assumed to be positive,

in most cases no account is taken of the costs imposed on property owners for the on-going conservation of a heritage place.

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 a range of 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).

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).

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.

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. 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 or funding. That is, regulation of privately-owned heritage properties occurs without any automatic right to compensation. 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’ 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.

DRAFT FINDING 7.6

The current listing process does 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:

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- *the community has an incentive to over list (or be non-selective) 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 actively conserve 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. 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 of 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)

Similarly, 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)

Some 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 of Australia, sub. 76, p. iii).

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)

John Boyd, in discussing the potential listing of his property, noted that the assistance available would not outweigh the 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)

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 7.3). 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 governments can force private owners to provide heritage conservation services without compensation 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? Simply because governments may have the power to take or diminish private property rights via regulation without paying compensation, does not automatically imply that this is a desirable course of action. At the same time, government intervention cannot be ruled out simply because it may affect property rights.

Box 7.3 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. The major problem in making owners bear these costs is that it necessitates compulsion via regulation. 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.

DRAFT FINDING 7.7

The assistance available to private owners of heritage properties is poorly targeted, and in some cases, falls well short of the additional costs of obligations imposed on owners as a result of listing. In these circumstances, property owners will not have an incentive to actively conserve heritage values.

Local government involvement in heritage conservation and interaction with the planning system

As previously discussed, heritage conservation at the local government level is further complicated by their additional responsibilities for planning regulation and limited financial and professional resources. Local government heritage and planning systems differ significantly between States, especially with respect to the level of delegation and guidance provided to local governments. Nonetheless, most local governments have broad-ranging regulatory powers for heritage conservation.

The interaction between heritage regulation and the planning system is a major source of uncertainty and dispute. 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).

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.

DRAFT FINDING 7.8

At the local government level, the management of heritage conservation under 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 would facilitate better policy choices, through the recognition of the costs of conservation and the 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 those 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.

The shortcomings of the current system imply that 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 Getting incentives right

This chapter looks at improving incentives for historic heritage conservation that provides a positive net benefit to the community. This involves getting the incentives right for owners of historic heritage places, and for those making decisions on behalf of the community on which places to conserve and protect.

The objective is to ensure that both the benefits and costs of conservation are taken into account when heritage places are being considered for protection. If left solely to private action, too little conservation is likely to occur, particularly of certain types of heritage places. However, if the costs of conservation are not considered when listing and protection occurs, there would be a tendency to conserve too much and/or an inappropriate mix of historic heritage places.

Getting the incentives right involves the community only conserving those places that it is prepared to pay for, that is, where the benefits exceed those costs. With the community contributing to the cost of the conservation from which they benefit, individual owners would have the incentive to be actively involved in conservation efforts, rather than resisting the identification and listing of their properties.

The most direct way of achieving this objective is for each jurisdiction to negotiate conservation agreements with heritage property owners, specifying the conservation effort required, and agreeing on the sharing of any additional costs involved. Statutory listing and protection would only occur once such a conservation agreement has been entered into by mutual consent.

The current regulatory regime has essentially been driven by a view that owners, if unregulated, would conserve too little historic heritage. Several reasons for this have been canvassed:

- heritage conservation provides external community benefits that the owner cannot obtain an adequate return for. The owner does not have the incentive to provide those benefits, resulting in the under-provision of heritage characteristics from a community-wide perspective; and

-
- some owners, for various reasons, may not take full advantage of the private benefits of retaining heritage values or attributes on individual properties.

Chapter 6 has looked at this in some detail and the Commission has concluded that there is a *prima facie* case for some level of government intervention in historic heritage conservation.

Governments have introduced 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 conserve heritage characteristics, and undertake no action that threatens those characteristics unless approved by the relevant authority.

However, current listing and protection only takes into account the heritage values of a property and does not (or only very poorly) take into account the costs associated with its conservation. As outlined in chapter 7, this introduces incentives to list and conserve historic heritage places where the benefits are less than the costs of conservation. In some ways this can be seen as governments ‘over correcting’ for the perceived under-conservation of heritage places.

So long as the parties benefiting from an increase in the services provided by heritage places (the general community operating through the listing agencies) do not have to pay, they are likely to continue to press for further conservation effort until there are no more benefits to be had, irrespective of the costs involved. Without the constraint 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, imposing a net social cost, rather than benefit, on society.

While financial and other forms of assistance are available to owners, they are not currently related to the decision to list and protect and therefore do not influence the essential decision on the range and level of heritage places protected.

A consequence of the disconnect between the incentives facing heritage property owners and those of the listing agencies (as representatives of the wider community) is a reservoir of hostility towards heritage conservation and its administration — hostility on the part of the very people society is expecting to actively conserve those heritage places.

This is a potentially growing problem as the number of listed places has increased considerably, particularly at the local level, and as listed heritage places have become increasingly, and are now overwhelmingly, privately-owned properties in daily use. In addition, listing has progressively moved beyond widely 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.

8.1 A better balance is needed

The need for a better balance between the roles and responsibilities of private owners and the community was recognised by many participants, both from the private sector and in government. 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. 14–15)

Similarly, the Adelaide City Council commented:

There is a perception that new heritage listing of places in commercial precincts results in significant devaluation. This is inequitable, and some mechanism for balancing values is needed. ...

While regulation imposed by government in the form of heritage listing and development control helps prevent inappropriate development and demolition, *the most effective way of conserving historic heritage places is through incentives*. Incentive and policy tools aid in ensuring owners of heritage buildings are not unduly disadvantaged by development constraints or conservation costs and help generate conservation activity throughout the community. (sub. 115, pp. 3–4) [emphasis added]

Government of South Australia said that:

An ideal arrangement would be that government pays for the public share of the benefits from heritage conservation, leaving the private share to be funded by private beneficiaries (in the main, the owner or lessee of heritage places). In practice, however, the public and private shares of benefit are difficult to estimate and a better principle is to determine how to spread government funding to best effect across a large conservation task. (sub. 164, p. 7)

Ivan McDonald Architects commented:

If proper incentives were to be provided, the heritage listing process could be changed from a negative to a positive perception in the community creating a desire (rather than a loathing) for heritage listing. Having people wanting their place listed would allow easier and more-reliable comparative assessments of significance and would relieve much of the current community and government cost in objecting to and appealing such listings. (sub. 30, p. 4)

Where certain activities generate external effects (imposing costs or providing benefits on others in the wider community), there is a continuing debate over how those effects can be brought into the decision making framework of those who control the activity generating those effects. The objective is to have the full range of the effects of any decision considered when that decision is made so that a more appropriate balance between benefits and costs is reached.

A key question is whether it is reasonable for the wider community to seek a benefit for itself and then expect one particular (and very small) group within that society to carry the cost of providing that benefit?

8.2 Getting the incentives right

There are two essential elements in looking at the system of protecting and conserving historic heritage places with the objective of getting a better balance of incentives, both for those choosing which heritage places should be protected and conserved, and for those who are responsible for undertaking that conservation. These elements are:

- allocating the costs appropriately — the beneficiary pays principle; and
- including the costs as well as benefits in the process of deciding which heritage places to protect and conserve.

These 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, unlikely to be robust 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.

8.3 Purchasing public-good heritage characteristics

In the Commission's view, the wider community should bear the costs of actions to promote public-good heritage services that it seeks, and which are likely to impinge

significantly on the capacity of owners to utilise their property for business, or as a desirable place to live.

This assessment is not simply based on some notion of fairness (although perceived fairness is not irrelevant when owners are being relied upon to provide the heritage services demanded by the wider community). Rather, it is based on the reality that achieving the **outcomes** that society desires on private property as efficiently and effectively as possible will require:

- clear specification of the heritage outcomes demanded; and
- the ongoing cooperation, knowledge and effort of owners, who ultimately must deliver those outcomes through the conservation of their heritage properties.

Over and above agreed owner responsibilities, the Commission therefore considers that public-good heritage conservation should be purchased from owners of heritage properties. This would involve public funding of heritage conservation that would not otherwise be undertaken through private activity, but which the community sought to have conserved. Having governments buy the extra heritage services that the community demands (including, in some more extreme cases, buying-up 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 will 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 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 greatest in comparison to the costs involved and/or on areas which are currently poorly represented in the stock of conserved heritage places — a rebalancing of society's 'portfolio' of protected historic heritage places.

Rather than being the foundation of (and first line of defence for) heritage protection, regulation would become a means of enforcing conservation agreements (quality assurance); a ‘back-stop’ to guard against maverick behaviour; and/or a means of providing temporary protection, while funding arrangements are worked out.

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* (PC 2004, p. 204), 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. (sub. DR302, p. 8)

The report (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.

Details of the direct payment options considered in the Commission’s Native Vegetation and Biodiversity report are given in box 8.1. 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 (sub. 40, p. 10), 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)

Box 8.1 Direct payment options

There are several ways that governments could deliver payments to landholders for conservation services. These include fixed cash payments for a standard service, auctions of conservation contracts to landholders or individually-negotiated payment rates. Payment can be delivered as a once-off up-front payment for an activity, such as fencing, or may involve a stream of regular payments under a contract (management agreement or conservation covenant) between the landholder (or group of landholders) and the government.

Fixed-rate payments for a standard service

The government (or other entity) pays landholders a fixed amount for a standard service. The payment, and the service, are determined by government independently of the landholder. It is transparent, offers landholders certainty of payment rate, and administration costs are relatively low. However, it is inflexible as key aspects of the transaction are centrally determined and fixed.

Individually-negotiated agreements

The government negotiates individual agreements with landholders. This approach is flexible, as agreements are site-specific, but there is a trade-off between flexibility and transparency and contracting costs. Administrative costs of assessing, negotiating and preparing agreements, as well as monitoring and dispute resolution can be high for governments. This approach may be suitable for remote locations, or for land with unique features, where subjecting landholders to competition for provision of the conservation service is not feasible.

Auctions

Auctioning contracts for conservation services introduces a market mechanism that requires landholders to compete directly for funds. Through their bids, landholders reveal some of their information about the value of the service, and the costs of providing it. For a given budget, a well-designed auction can generate more conservation than fixed-rate payments for standard services.

Since environmental services are heterogeneous, a common index is required to compare bids. The Conservation Reserve Program (CRP) in the United States devised an Environmental Benefits Index (EBI) to measure variables like wildlife and erosion benefits enduring beyond the contract period. Bids are compared on the basis of EBI score per dollar of payment. The BushTender trial in Victoria uses a Biodiversity Benefits Index, a composite of the conservation value of the site and the value of services offered by the landholder per dollar of payment.

Auctions are best suited to widescale purchase of conservation. If there were only few bidders, this would increase the risk of bidder collusion, which may undermine competitive benefits, while retaining the high administrative costs of running an auction.

Source: PC 2004, chapter 9, p. 205.

Contracting to preserve 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 8.2) help landholders voluntarily maintain native vegetation on their properties.

Box 8.2 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: PC 2004, p. 187.

Similarly, the Commission (PC 2004, 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

¹ http://www.wwf.org.au/About_WWF_Australia/How_we_work/In_the_field/South-east/landscape_auctions.php.

Such assistance or contracting with private property owners does not seem to be a feature in the historic heritage area. Traditionally, National Trusts 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. It may also reflect the inclusion of heritage places on statutory lists placing obligations on owners and providing protection of heritage characteristics without any requirement for the community to contribute towards the cost of that conservation.

However, were change to occur such that listing and protection did not occur without an associated conservation agreement (which would include some element of funding), private heritage conservation groups, (such as the National Trusts) could reassess their strategies and roles in the heritage conservation industry. This could, for instance, include a range of ways of interacting with private owners to increase the impact of the available funds through jointly-funded conservation agreements.

The key principle that underlies the Commission’s development of a mechanism to improve the funding of heritage conservation is that: if the general community wishes to conserve more heritage places than would occur voluntarily, and in so doing place obligations and restrictions on owners to achieve this, the community, either directly or through government, should be prepared to pay for the additional cost that such obligations generate.

The costs of conservation are real costs, both those of opportunities forgone and of the ongoing operation and maintenance. The fact that they are not considered when decisions are made on what to protect and conserve, does not make these costs disappear. They are a cost to society even if they are imposed involuntarily, and arguably unfairly, on one particular group. Such costs must be considered when protection decisions are made if the correct incentives are to be in place, and if the socially optimal level and composition of heritage conservation is to be achieved.

Negotiating conservation agreements and subsequent listing with the consent of owners ensures that these costs are considered. It also provides incentives to ensure that only places that are cost-effective to conserve are listed and protected. Importantly, the full application of conservation agreements would not represent entirely new ground for government. Most jurisdictions have provision for conservation agreements in their heritage legislation but they are, under the current arrangements, used infrequently and typically as a last resort. The Commission

considers that using conservation agreements as the first resort would represent the best practice approach to encouraging the effective, efficient and equitable conservation of historic heritage places.

By providing a reward for conservation effort, payments can provide closer alignment between owners' incentives and the community's objectives for heritage conservation. Payments can be tailored or targeted to different situations and, as the decision to enter into a conservation agreement would be voluntary, and as a payment is provided, this option may be perceived as fairer than some other options, such as regulation. As this is likely to aid decisions on which properties to conserve and enhance compliance levels, it would improve the overall effectiveness of heritage conservation efforts.

DRAFT FINDING 8.1

Conservation of historic heritage on privately owned heritage property could be more effectively achieved through negotiated conservation agreements between governments and owners.

Impact of purchasing heritage conservation

Purchasing heritage conservation would shift some, but not all, costs currently incurred by owners to taxpayers. While some may regard the potential budgetary impact as a major disadvantage, the appropriate objective of policy should be maximising net community benefits, not minimising budgetary outlays.

However, an approach based on paying for the provision of heritage 'services' from private property would not result in the wider community paying the cost of maintaining and conserving each and every protected heritage place in Australia. There is clearly a range of types of heritage places and the need for government involvement to get the balance right will vary significantly between them.

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 for such buildings is unlikely to represent a particular burden for owners. As it is not zoned for medium density (multi-unit development), there is unlikely to be any capital loss. While there may be additional costs associated with maintaining a listed property, most such costs 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. While the wider community will benefit from such activity, there is no need for wider community funding to ensure that the necessary conservation activity occurs. 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 etc, that would otherwise not be required.

Indeed, in this inquiry, the Commission received a number of comments to the effect that many owners are willing to bear the cost of conservation as part of their normal maintenance regime, regarding listing as recognition of the heritage value of their property. Their main concern was about the cost of the additional ‘red-tape’ associated with being a listed property. This did not mean that they regarded the administrative requirements as undesirable in themselves, only that the cost was ‘unfairly’ placed on the owner.

It is possible that the majority of privately-owned residences that are heritage listed fall into this category.

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. First, by limiting their ability to modify the property to improve their quality of life. Second, by limiting the buildings adaptation to modern living, listing also limits its resale market at the expense of the owner.

As with other listed buildings, there are additional costs associated with the increased requirements associated with approval procedures.

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 cause hardship for owners.

The *third group* are residential buildings in an area that is zoned for multi-dwelling, medium density, or even commercial use. Here, by protecting the existing building,

significant development opportunities may be precluded, 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)

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 cause hardship for owners (for example, see subs 8 and 166).

The *fourth group* are residential 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. A clear policy of paying for the community-wide benefit of heritage conservation would enable such properties with particularly desirable heritage characteristics to be conserved while removing the threat of prosecution from owners of properties that are not worth the cost of conservation.

The *fifth group* are commercial buildings 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 rental market against properties without such costs (see sub. 34).

Again, there are additional costs associated with the increased approval procedure requirements.

The *sixth group* are commercial buildings 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 because their opportunity for development is limited 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.

The *seventh group* are commercial or industrial buildings with little or no reuse potential (for example a pumping station or gasworks). 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.

Such buildings are unlikely to remain in private ownership. Its value is, to all practical purposes, negative, and unless acquired by government, has little realistic prospect of surviving intact.

There is, of course, a range of buildings within each category, and the Commission is not suggesting that the groupings are by any means 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.

While much of the cost of conservation will be borne by private owners, a system of agreements to purchase ‘additional’ levels of heritage conservation from private owners will involve administrative costs and will not be without potential problems.

For instance, criteria have to be developed for prioritising heritage objectives and for assessing conservation outcomes, and contracts need to be designed, monitored and enforced. Because it requires case-by-case assessment, the approach is resource-intensive. But prioritisation and clear specification of heritage objectives, the discovery of least-cost solutions and the monitoring of outcomes, so that performance of the intervention can be assessed and improved over time, should be undertaken for any policy intervention, including regulation.

8.4 Implications for statutory listing and protection

The negotiating of conservation agreements between government and owners would have important consequences for the listing systems in operation in Australia.

Currently, the listing system in all jurisdictions (except at the national level) is still essentially structured (in terms of identification criteria) as if it were simply a ‘catalogue’ system, where potentially every place with historic heritage significance can, in time, be identified, listed and provided statutory protection. Whether there are many examples of that type of heritage place already listed is not considered. As previously noted (chapter 4), some jurisdictions specifically state that what is already listed will not be taken into account when a new place is being considered.

Similarly, the cost of conservation is not considered at the time that listing occurs and protection is applied. This imposes restrictions and obligations on owners, bringing with it a set of costs, both opportunities lost and ongoing maintenance, which vary from trivial to significant.

Those arguing against considering the cost of conservation say that it should not be included at the listing/protection stage, but come into consideration after listing when the means of conservation are being looked at. But listing involves regulations, restrictions and obligations being placed on owners which inevitably involve cost. Costs have been introduced into the system at this stage — it is just done without any explicit consideration of their level or impact. It is disingenuous to impose such costs without any assessment of their relationship to the expected benefits, and then claim that they could be considered afterwards, particularly as there are no procedures in place to make such a consideration of costs after listing, and there are only very weak mechanisms to ‘undo’ the listing decision when (or more accurately, if) conservation costs are subsequently considered.

The principle of purchasing public-good heritage characteristics from private owners, discussed above, provides a mechanism for choosing which heritage places to list, protect and conserve. That is, society would seek to protect and conserve

only those heritage places that is was prepared to pay for in addition to those that owners were willing to have protected in their own interest.

Essentially this involves including an historic heritage place on a statutory list only after a conservation agreement between government and the property owners has been entered into. Statutory listing becomes, in effect, a list of agreements, with the composition of places on the list changing as new agreements are entered into, old agreements are renegotiated, or when the occasional agreement lapses and is not renewed (effectively de-listing the property).

DRAFT RECOMMENDATION 8.1

Privately-owned properties should be included on a National, State, Territory, or local government statutory heritage list only after a negotiated conservation agreement has been entered into and should remain listed only while an agreement is in force.

The following chapter (chapter 9) looks in more detail at the mechanisms that could be used in the application of negotiated conservation agreements and the subsequent listing, protection and conservation of historic heritage places.

9 Conservation agreements for privately-owned heritage places

In chapter 8, it was concluded that listing with the consent of the owner on the basis of voluntarily negotiated conservation agreements over the management and funding of heritage characteristics is the most appropriate and practical method for the community, through governments, to obtain the heritage benefits it seeks in a cost-effective manner when the property is privately owned. This chapter looks in more detail at some of the mechanisms that would be associated with the implementation of such a system.

As different tiers of government have different systems already in place, the degree of required change will vary substantially for different governments, from relatively minor change at the Australian Government level to more significant change for some local governments.

This chapter considers some implementation issues involved with using negotiated conservation agreements between governments and property owners as the principle means by which non-government owned historic heritage places are conserved and protected. Statutory listing of such places would only occur once an agreement has been voluntarily entered into. As outlined in chapter 8, this would provide an incentive for the community to consider the cost of conservation compared to a place's heritage values when deciding on which places should be conserved. It also provides an incentive for the owner to be a willing and active partner in the conservation process.

The next section provides a summary of some key points that should guide government involvement in conservation agreements. This is followed, in section 9.2, by an outline, for each tier of government, of the implications of introducing negotiated conservation agreements as the principal vehicle for conserving and protecting historic heritage on private properties. As this would have major implications for some jurisdictions governments, section 9.3 looks at the key elements of an agreement system in more detail.

9.1 Some starting points

Previous chapters set out some key points that should guide government involvement, and inform policy initiatives, in the conservation of historic heritage places. These were:

- Acknowledgement of the primary role of the private sector in conservation of most identified historic heritage places (but not the most iconic). Consequently, government policy initiatives should not crowd out, or otherwise discourage, this activity. Most of the existing stock of private historic heritage places have been, and will continue to be, conserved through the initiative of their owners (chapters 2 and 6).
- Recognition of the important role played by community organisations, such as the National Trusts, in the conservation of historic heritage places. These organisations harness the goodwill of their members, and the financial resources of community members, to undertake conservation activities which might otherwise not be undertaken. Community organisations allow specific groups within a community to value and conserve places whose value might not be shared by the wider community. In many States, the National Trusts have been re-evaluating their role in historic heritage conservation (chapters 1 and 3). How they choose to define their role in the future will influence their interactions with governments and their place in the policy framework.
- Endorsement of the principle of subsidiarity (as recognised by the 1997 COAG agreement). Acceptance of this principle implies that there should be clear delineation of the roles and responsibilities of each level of government. Continued removal of overlapping responsibilities and jurisdictional conflicts will also improve the efficiency of the policy framework, and prevent cost-shifting between jurisdictions.
- Recognition that the imposition of use-restrictions through listing involves an erosion or diminution of accepted property rights. Negotiated outcomes between owners and government can address this erosion. Restrictions that are imposed in the interests of the entire community require the community to bear, at least part of, the cost arising from such restrictions on private owners (chapters 6 and 8). Accepting the costs of community decisions will provide greater incentives for communities to test the extent to which they value specific historic heritage places and to prioritise their demands. Negotiated outcomes would also allow community representatives to better incorporate conservation costs into decisions on which places should be awarded heritage status.

9.2 Applicability to different tiers of government

The implications of a proposal to introduce conservation agreements as the principal vehicle for conserving and protecting privately-owned (non-government) historic heritage places will differ between the jurisdictions within Australia. The current arrangements vary between the jurisdictions, and they have differing degrees of institutional sophistication and development, particularly at the local government level. Despite such differences, most jurisdictions have an established institutional framework for managing historic heritage conservation. The Commission's recommendations would involve some re-focusing of their activities.

Australian government

The Australian Government has primary responsibility for the identification and conservation of sites of outstanding national and international significance, and for the identification and conservation of sites it owns or controls that are of historic heritage importance.

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 and, because of constitutional limitations on the Australian Government's power to act, 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 does not have the constitutional power to act 'unilaterally'. To date, no such conservation agreements have been entered into.

DRAFT RECOMMENDATION 9.1

The Australian Government should implement processes whereby any additions of non-government owned properties to the National List occur only after a conservation agreement with the owner has been entered into, and that the property remain on the list only while an agreement is in force. Consistent with its stated preference of relying on agreements for the management of world and nationally significant historic heritage places, the Australian Government may

wish to make this a statutory requirement under the Environment Protection and Biodiversity Conservation Act.

State and Territory governments

The three-tier framework for government intervention in the conservation of historic heritage places emphasises the key responsibilities of State and Territory governments in this area. The Australian Constitution provides them with strong regulatory powers and these have been used extensively for the conservation of historic heritage places. Not only have they responsibility for the conservation for places of State and Territory significance, but also State governments set the regulatory framework for local government involvement in conservation. **Their role is absolutely crucial to a coherent and effective national framework.**

To implement the Commission's recommendations for improvement to conservation outcomes at the State and Territory level would require legislative, institutional and operational changes.

Legislative changes

Implementing the more rigorous and selective approach recommended for the listing of properties would be facilitated by amending the objective/purpose of heritage legislation to emphasise the cost-effectiveness of conservation sought by government intervention, as opposed to conservation per se. In addition, implementation would require that statements of heritage significance be publicly available as a precondition of statutory listing.

Legislated changes would be required to support listing in association with voluntary negotiated agreements and the provision for compulsory acquisition in extreme situations.

Legislated changes also would be required to implement the Commission's recommendation that heritage protection, under both heritage and planning legislation, be confined to statutory listed properties. For other (non-listed) properties, heritage matters would not be relevant matters when planning decisions are made unless the property was part of a heritage precinct or area. Such areas would be dealt with as a planning/zoning matter under planning legislation rather than under the heritage system which would be limited to conserving individual places through conservation agreements with the owner.

The State governments would also need to make similar legislative changes to the regulatory frameworks that they set for local governments to those that they make to implement the Commission's recommendations at the State level.

Institutional and operational changes

Implementing the recommended more rigorous and selective approach to listing would require changes to the manner in which identification and selection occurs. Procedures for the professional preparation of statements of heritage significance would need to be expanded to include assessments of how well the heritage attributes of the property are already represented on the State's list and for recognition that they would become publicly available documents for listed properties.

Implementing the recommended listing with the consent of the owner would require heritage agencies to develop some different heritage management procedures. These would place an emphasis on negotiated outcomes with owners, taking into account the quality of the identified heritage attributes, their relative scarcity and the requirements of the owner for their continued conservation. It would also require a review of the incentive tools available to heritage agencies to facilitate the negotiation of cost-effective agreements to list suitable properties.

Implementing the more rigorous and selective listing procedures should facilitate regulatory control of development applications and reduce the uncertainty associated with listing more generally for owners. It should also reduce disputation.

The recommended provisions for a review of listed properties would also have resource implications for heritage agencies. There are a large number of heritage places already listed and the publicly available statements of heritage significance of many are inadequate. Generally, there are no statements of relative significance and few are supported by agreed conservation plans. Reviewing State lists to have updated statements of heritage significance and contemporary agreements for the conservation of their significant heritage attributes would require significant resources. It would also take many years to reassess all the legacy of listed properties, although many straight forward cases could be resolved quickly.

To support the review process would require heritage agencies to continue with regulatory protection of listed properties and to develop rigorous procedures for delisting. These procedures would involve a separate professional review of the contribution to the heritage list of the property, use of the report subsequently in the assessment of the benefits and costs of the continued listing of the site, and a negotiation of any change to listed status with the owner.

State and Territory governments should modify heritage legislation to ensure that any additions of non-government owned properties to their statutory heritage conservation lists occur only after a conservation agreement with the owner has been entered into, and that the property remain on the list only while an agreement is in force.

Local government

Implementing the Commission's recommendations at the local government level would raise significant resourcing issues for councils in areas with many heritage properties of local significance. 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 \$2.39 million.

The recommended changes to the listing (and delisting) of places would require changes to existing procedures for most councils. As State governments would be involved in amending the legislative frameworks for local government involvement, there would be scope for them to provide advice and facilitate the changes by developing template regulation that could be adopted by local government. As with the States, there are a large number of heritage places already listed. The publicly available statements of the heritage significance of many are inadequate, generally containing no statements of relative significance.

The requirement to negotiate listing with the consent of the owner would involve major changes to current listing arrangements and have substantial resourcing implications for some councils. The shortage of heritage professionals, remoteness and small size of many councils suggest that contracting out, including to State heritage offices, could be a cost effective method of obtaining suitable statements of heritage significance that could inform councils in their negotiation with owners for formal listing under the modified planning mechanisms.

Like at the State level, the more selective and rigorous listing procedures recommended should facilitate the regulatory control of development applications and the operation of planning schemes more generally. It also should reduce the uncertainty to owners associated with listing and conserving historic heritage places and the associated disputation.

Introducing structured reviews of existing listed properties and delisting could have major resource implications for many councils. Most of the locally listed properties are in private ownership and the costs of retaining the heritage integrity of some is high relative to their added heritage value. The preparation of comprehensive statements of heritage significance would be a major undertaking for many councils, as would negotiation of any amendments to listings.

DRAFT RECOMMENDATION 9.3

State governments should require their local governments to add non-government owned properties to a local heritage conservation list only after a conservation agreement with the owner has been entered into and remains in force.

The following section looks at the key elements of an agreement system in more detail.

9.3 Key elements of an agreement system

Identifying heritage places

A key step for each jurisdiction is identifying places worthy of consideration for heritage conservation agreements. Currently this is done in response to submissions from the public or through surveys, or similar assessments made by those responsible for heritage matters in each jurisdiction — a process that would continue. However, the introduction of conservation agreements may require additional material to be developed as an input into the later negotiation process. In addition to documenting heritage characteristics, some ranking of properties on the basis of those characteristics and a comparison with the heritage characteristics of similar properties already protected by the jurisdiction could be necessary. Such rankings, and grouping of like properties within each jurisdiction, allows those undertaking the negotiation of conservation agreements to target their activities and resources to properties that are likely to bring the greatest community net benefit from additions to conserved heritage values — an important consideration when negotiating with the owner about the cost of conserving that additional property.

This is not to say that assessments of the range of protected places does not occur now. It is happening to varying degrees in different jurisdictions, particularly as the idea of using themes as a framework for management has become more widely accepted. Categorisation of historic heritage places in each jurisdiction through the use of themes could provide a useful matrix within which to place potential heritage sites, to assess whether adequate examples of each type have been identified and are

being conserved, and whether a new listing adds significantly to protected heritage values.

The pressures to develop a mechanism to make such choices can only increase, particularly as the listing and protection system moves from its focus on 19th century places, to one where the much more abundant 20th century places are being assessed.

Existing institutions at the Australian, State and Territory government level are well placed to undertake this identification and ranking task within their jurisdiction as it forms an important part of their current functions. In so doing, they also define the level of significance in national, state and local terms.

Negotiating agreements

Negotiating conservation agreements with owners would involve each jurisdiction determining a budget for heritage conservation, and using those resources to fund such agreements. The precise institutional arrangements may well vary greatly between jurisdictions depending on the existing institutions, the resources available and the extent and frequency of heritage conservation activity. The objective would be to maximise the historic heritage conservation outcomes for the community from the funds provided.

In many ways, the fundamentals of this type of arrangement are in place at the national level where the Australian Heritage Council assesses places nominated for inclusion on the National Heritage List and advises the Minister on the place's national (or world) heritage values. The Minister makes the final decision as to whether to include a place on the list. For privately-owned places, where the Australian Government does not have the constitutional power to provide protection, places may be protected under a conservation agreement between the private owner and the Australian Government. The negotiation of such a conservation agreement provides the potential for the costs of conservation to be part of the final decision on whether to list nationally.

State and Territories governments have provision for conservation agreements with owners of heritage properties (chapter 4), but these are not linked to the listing process through which obligations and restrictions are imposed on owners. In practice, they have been seldom used because using coercive regulation has avoided the need to use financial assistance to achieve conservation outcomes.

Developing conservation agreements between the relevant jurisdiction and owners as the principal vehicle for conservation and subsequent listing would, in effect, result in a contract introducing a form of covenant on the property.

Once identified, an effective system for conservation agreements should include a number of inter-related elements (box 9.1).

Box 9.1 Elements of an effective conservation agreement system

An effective conservation agreement system, should 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 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.

Basic to any system should be an agreed statement of the place's heritage values. This would delineate the nature and extent of the cultural values provided. The statement could usefully include the scope of their significance by indicating the community to which they are important. Only the Australian Government National Heritage List requires that such a statement be made prior to listing. Statements occasionally are made at the State and Territory level, and are rarely made at the local level.

Voluntary conservation agreements between governments and property owners would be an effective system for tailoring the conservation of heritage places to reflect the variety of circumstances of individual properties. Most importantly,

voluntary agreements enable property owners and governments to agree upon the heritage values that the property contains, as well as clearly outlining the level of type of financial assistance to be provided (to assist the property owner for the extra costs incurred for the benefit of the wider community).

The clear articulation of what works, developments and uses are and are not allowed addresses the concerns raised by participants with the dual-approval mechanism at the Australian, State and Territory levels. It would also ensure that the planning system and heritage conservation do not conflict as they currently do at the local level. The establishment of an ex ante agreed dispute resolution system would also avoid costly and time-consuming adversarial judicial appeals.

Transparency and accountability are important elements of good public policy (chapter 7), and are necessary if the community is going to be able to judge whether its expenditure on heritage conservation is appropriate. Consequently, it would be desirable that information on aggregate expenditure related to conservation agreements between government and owners be publicly available.

Statutory listing

The introduction of negotiated conservation agreements with owners would have profound implications for the system of statutory listing and protection. As recommended in chapter 8, properties would only be included on a statutory list once an agreement has been reached, and would remain on the list only so long as an agreement was in place. The list or register would, in effect, become a list of agreements, recognising the contribution of owners and the wider community towards conservation, providing information to the community on the use of public money, and a means by which agreements are enforced.

This form of listing by consent through the negotiated conservation agreement is an essential element in getting the incentives right. If listing occurs before agreements are reached, such agreements would not be voluntary and there is little discipline on the part of government to reach an agreement, or for the general community to contribute towards the cost of conservation.

Assistance mechanisms

There are a wide range of means by which assistance could be provided by governments to owners of historic heritage places. Under a regime of individually negotiated conservation agreements, the means of assistance may vary property-to-

property, as would the level of assistance provided. Jurisdictions should be free to use any funding tools at their disposal to reach a conservation agreement.

The essential idea behind individual conservation agreements is that only places with heritage values of importance to the wider community would be funded. The degree of community benefit will vary between properties as will the level and type of conservation action required. Levels and forms of assistance are thus likely to vary between properties.

Variations in types of agreements and contracts

The range of types of conservation agreements would vary, reflecting the wide variety of heritage places with different mixes of heritage benefits and conservation costs, and different levels of private benefits which would influence the level of costs that owners would be willing and able to accommodate. Similarly, the approaches government could take in setting up an agreement can vary, ranging from pro-active seeking to protect individual places identified as being potentially of interest, to calling for tenders for the provision and protection of types of places where a potentially wide choice is available.

For many domestic residences, particularly the larger, more appealing places more readily adaptable to modern living, or for classes of places which are abundant, the level of government involvement would be minimal. Indeed, many have said that so long as there is acknowledgment of the actions of owners, and they are not required to pay for the added red tape (additional approval applications, undertaking a heritage study, etc), they are quite happy to pay for the rest of the conservation costs associated with maintaining the heritage integrity of their property. At the other extreme, almost full public funding, or public ownership, may be necessary for properties where maintenance of their heritage integrity precludes any alternative use.

While there is potentially an infinite variety of agreements that could be devised, in practice, standardised contracts, or standardised contract elements, are likely to be developed reflecting the trade-off between the desire for precise assistance targeting and the benefits of reduced contracting costs and administrative simplicity.

This could, for example, be by way of offering a standard package of assistance linked to agreement to be included on the statutory list subject to the conditions applying under current heritage legislation. More property-specific negotiations and an agreement with a different mix of funding and obligations would take place if the government or the owner considered that the heritage place had characteristics that could not be accommodated by the standard package.

If agreement cannot be reached

If agreement cannot be reached, the government has a number of options. In the first instance, depending on the nature of the heritage characteristics being sought, and the availability of other properties offering similar characteristics, government may negotiate with alternative owners, including by tender. In other situations, government may seek to purchase the property concerned, and in exceptional circumstances 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.

There are a range of options for government management of purchased or compulsorily acquired properties. 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 to a private owner with covenants to ensure the protection of heritage characteristics.

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.

DRAFT RECOMMENDATION 9.4

State governments should put in place systems for their local governments to request compulsory acquisition in cases where this becomes the only way to ensure cost-effective conservation of places of local significance.

Compulsory acquisition of property for wider community use is a long established feature of Australia’s land use system, though it has not been a feature of the heritage conservation system. 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 9.2).

Box 9.2 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.

Length of conservation agreements

Both heritage values and the costs of conservation will change (slowly) 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. With economic development and changing demographics, the pressures on historic heritage places, and thus the cost of their conservation, will also change. Owners' attitudes to historic heritage places may also change over time, affecting their willingness to voluntarily conserve, for both public and private benefit.

In addition, conservation agreements with owners of historic heritage places will involve ongoing expenditure of public funds. Such expenditure should be open to review, and procedures should provide for a reassessment of the effectiveness of such expenditure.

For these reasons, the option for the renegotiation of conservation agreements should be available. This would, for example, involve 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 at the end of the designated life of the agreement.

Failure to reach a new agreement would result in the removal of the property from the relevant heritage register and its reversion to a status with no heritage-related use restrictions, and the cessation of all financial support to the owner.

Reviewing existing listed heritage places

The system of conservation agreements outlined above is directed towards establishing the correct incentives for the future assessment of places being proposed for conservation and protection.

The proposed changes raise the issue of what transitional changes, if any, should be made to places already listed. These have restrictions and obligations placed on owners, often with little consideration of the cost involved and with little assistance provided to contribute towards those costs. Certainly, the current assistance available for owners is not, in any systematic way, related to the level of community benefits or associated costs generated by the historic heritage place in question.

If both the community and owners are to have incentives to conserve and protect (only) those places where the benefits exceed the costs, a review of those places already included on statutory lists is warranted.

However, as the number of places on some lists is considerable, this cannot be undertaken quickly. The extent of this task will, however, vary between jurisdictions depending on the extent of the lists they have already established. It would involve, over a number of years, the negotiation of conservation agreements with owners until all existing historic heritage places in private ownership were subject to a conservation agreement or de-listed if the heritage values of the property were not sufficient to warrant entering into an agreement.

Existing listed properties can, however, be seen as falling into two broad groups. First, places which were heritage listed after purchase (and which remain in the hands of the owner at the time of listing). Second, places that have changed hands since the place was heritage listed.

In relation to the first group, there is a case for bringing these properties into the conservation agreement system, with continued listing being conditional on the conclusion of such an agreement. The range of such properties will vary. If the owner of a listed place is satisfied with the obligations associated with the existing regulatory arrangements, a basic heritage agreement could be signed to continue the property's listed status with little, if any, change being involved. However, where listing was involuntary, imposing additional costs or resulting in opportunities forgone for the owner, the owner would have the opportunity to opt out of the existing listing arrangements and negotiate for listing subject to a conservation agreement being reached.

DRAFT RECOMMENDATION 9.5

Private owners of already listed properties, where the listing occurred after purchase of that property, should be able to apply for a negotiated conservation agreement and for listing to continue only if an agreement is reached.

In relation to the second group, because they have changed hands, any restrictions or additional costs imposed by heritage listing will 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. Some owners in this group may be quite satisfied with their listed status and could be happy to be subject to an agreement on the basis of existing assistance and obligations (principally the requirement to seek approval for developments that may have an impact on their heritage characteristics). However, the ultimate objective is to have all privately owned (non-government owned) properties subject to conservation agreements negotiated on the same basis, thereby ensuring that an assessment is made of the balance between heritage values and the cost of conservation for all listed properties. That said, because owners of such properties have purchased them in the full knowledge of the obligations involved, there is less justification for immediate action. Thus, review of the status of such properties over a more extended period of time can occur without imposing any unwarranted hardship on the owner. Review triggered by a development application would provide a mechanism for this to be undertaken over a period of time.

DRAFT RECOMMENDATION 9.6

Private owners of already listed properties, where the listing occurred prior to the purchase of that property, would remain covered by the existing ‘package’ of restrictions and concessions (if any). These arrangements would be reassessed at the time of any substantive development application when negotiations for a new conservation agreement would occur and listing would continue only if an agreement is reached.

The impact of such a review is difficult to assess. In part, it depends on the number of properties that have changed hands since listing and thus would not be subject to negotiated conservation agreements. For the remainder, it depends on the nature of the places already listed. Many will have high conservation values and will be well worth the cost involved in 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. Many such places may, however, continue to be managed in a way that conserved their heritage features and so continue to generate some free community benefits.

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 for contracting between government and owners of heritage places as the basis of the listing process.

Implications for planning

As outlined in chapter 5, under current arrangements, decisions on heritage matters become operational at the local government level through the land use planning system. Listing of heritage properties typically specifies that heritage characteristics need to be taken into account in any assessment of development applications relating to the listed property. This may also involve submission of the development application to the jurisdiction's heritage council for advice or approval. In addition, planning legislation may include a general provision to consider heritage characteristics when assessing any development application whether of a listed property or not.

Heritage legislation also includes provision to identify heritage areas or zones for specific planning restrictions. Such areas or zones may, or may not, contain individually listed properties. Heritage areas are looked at in more detail in the following section.

The introduction of heritage agreements would necessitate a reassessment 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, it would not be able to allow any activity that was prohibited or restricted by the existing zoning regulations.

Conversely, a conservation agreement is a contract between the owner and the government. 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 the agreement, agreements between higher levels of government and the owners would not be part of the decision making process of the local authority, unless enforcement was delegated by the higher level of government to the local authority. It is up to the owner to ensure that the application is consistent with both sets of obligations. At the same time actions approved or allowed by the zoning status of the property should not be able to override the conditions contained in the conservation agreement.

As the heritage attributes of properties are managed via conservation agreements, heritage matters would not generally enter into planning decisions for other properties, that is, properties not covered by either a conservation agreement or included on an existing statutory list. This would involve repeal of any general provisions in planning legislation requiring local councils to consider heritage matters when making planning decisions. To retain such provisions would be to undermine the incentives to enter into conservation agreements as restrictions could

be placed on individual properties by local government without any requirement to come to a voluntary agreement with the owner.

DRAFT RECOMMENDATION 9.7

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 other than those requirements relating to zoned heritage areas.

Treating conservation areas/zones/precincts

The above discussion has focussed on the treatment of individual properties included in conservation agreements or on existing statutory lists. Provisions exist in a number of jurisdictions, and under both heritage and planning legislation, for groups of properties or specific areas to be designated as having heritage values even if individual properties would not, on their own, warrant listing (chapter 4).

For individual properties, the proposed arrangements would require an agreement to be entered into before listing. Such a process of identification and negotiation is unlikely to be practical for a much wider area or precinct involving a large number of diverse properties, which have heritage value as a group rather than individually. In addition, restrictions on the action of property owners typically applies equally to all properties within the area, and are typically focussed on streetscape and developments that are compatible with the heritage appearance of the area rather than the conservation of heritage features within individual buildings. As such, they are much closer in design and impact to general land use zoning arrangements than to the system of heritage listing of individual properties. Such arrangements, if undertaken by local governments, would be subject to the normal review, public participation and appeals processes of zoning decisions. It would also be subject to the normal procedural and political checks and balances that operate at the local government level.

To avoid duplication and ensure a degree of accountability, the identification and management of heritage conservation areas or zones would operate under the relevant planning legislation (and thus be the responsibility of local governments), rather than through heritage legislation, which would focus on the identification of individual properties that warrant a conservation agreement and subsequent listing.

Where an area had State, or even National, significance, its identification could be the subject of negotiation between the State, or Australian, government and the relevant local authority, with the local authority being answerable to its constituency for any agreement entered into and any decision made.

State and Territory governments should remove the identification and management of heritage, zones, precincts or similar areas from their heritage conservation legislation and regulation, leaving these matters to local government planning schemes.

In some jurisdictions, heritage conservation areas have already been identified and listed under heritage legislation. Consistent with the recommendation to leave the identification and management of conservation areas with local government, areas already listed under heritage legislation would need to be transferred to the relevant local government area for future management.

Incorporating occupational health and safety (OH&S), access and other regulations

An issue that has arisen with heritage properties is the potential conflict between maintaining heritage integrity and complying with modern requirements relating to access, OH&S, or other building regulations. In addition, the nature of some heritage places may mean that it can be more expensive to comply with those regulations in a way that has minimal impact on desirable heritage characteristics.

Such matters can, however, be incorporated within the process of reaching a mutually acceptable conservation agreement. If there are high costs associated with complying with modern building regulations, then these are legitimate costs to be considered when assessing whether to conserve the building and would impact on decisions on the distribution of funding between government and the owner. In some cases, some elements of heritage integrity may need to be sacrificed if the costs of compliance are too high. In other cases, where compliance may be incompatible with heritage integrity in such a way as to make the building effectively unusable, then government would need to make the decision on whether to acquire the property (if the heritage values are important enough) or forgo reaching any agreement allowing any changes necessary for compliance and reuse of the property.

In summary, the proposed use of conservation agreements as the principal means of conserving heritage values on private property involves a significant shift in the focus of conservation activity, at the State and particularly at the local level. A range of procedural and legislative changes would be needed.

Participants are invited to comment on such matters discussed in this chapter and in particular on the management of heritage areas by local governments, and the

treatment of already listed properties, notably those that have changed hands since listing.

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 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 also released an issues paper to assist parties in preparing their submissions. Subsequent information about the progress of the inquiry has been sent to those who have expressed an interest. All of this information has been made available on the Commission's website (<http://www.pc.gov.au/currentprojects>).

The Commission received 192 submissions prior to the release of the Draft Report.

In September 2005 the Commission conducted a survey of all local governments across Australia to gather information on their heritage conservation activities (appendix B).

A.2 List of submissions

The following table lists submissions received. Submissions containing commercial-in-confidence information has been denoted with an asterisk (*).

Table A.1 List of Submissions

<i>Participant</i>	<i>Submission no.</i>
Abbott, Dr G J	169
ACT Heritage Council	147
Adelaide Arcade Pty Ltd	34
Adelaide City Council	115
Alexander, Mr John	167
Anderson, Mr Alan	185
Anglican Church of Australia – Diocese of Tasmania	160
Armitage, Dr Lynne	182

<i>Participant</i>	<i>Submission no.</i>
Arms Collectors Guild of New South Wales	56
Artlab Australia	140
Australasian Institute for Maritime Archaeology	138
Australia ICOMOS	122
Australian Council of National Trusts	40
Australian Heritage Council	186
Balderstone, Ms Susan	99
Balmain Precinct Committee	142
Banyule City Council	96
Bathurst Information and Neighbourhood Centre Inc	82
Bell, Mr Christian	156
Bendigo Pottery	65
Berger, Ms Sue	21
Berry, Ms Heather	87
Bowie, I J S	6
Boyd, Janet and John	8, 166, 189
Braidwood & District Historical Society Inc *	173
Braidwood Historical Society	36
Braidwood Residents Association	54
Bramley, Mr Richard	4
Brighton Residents For Urban Protection	105
Broken Hill City Council	12
Bruny Island Historical Society	53
Buninyong & District Historical Society	135
Burwood and District Historical Society	102
Carlton Gardens Group	129
Chapman, Mr Barry	141
City of Ballarat	100
City of Casey	177
City of Maribyrnong	101
City of Melbourne	18
City of Mitcham	75
City of Newcastle	78
City of Perth	67
City of Port Phillip	62
City of Ryde Council	27
City of Stonnington	81
City of Sydney	143
Clark, Mr Robert	55
Chairs of the Heritage Councils of Australia and New Zealand	139, 187

<i>Participant</i>	<i>Submission no.</i>
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
Conservation Solutions	190
Construction, Forestry, Mining and Energy Union – Construction and General Division – CFMEU	24
Convict Trail Project Inc	13
Crilly, Ms Kath	26
Crow OAM, Mr Vincent	171
Cummins, Ms E	47
d'Arcy, Mr Matthew	1
Davies, Mr John	23
Davis AM, Assoc Professor Bruce	121
Deodhar, Ms Vinita	22
Department of Defence	52
Department of the Environment and Heritage	154, 183
Docomomo Australia Inc	58
Edwards, Mrs Zeny	11
Engineering Heritage Australia	93
Engineering Heritage Committee, Tasmania Division Engineers Australia	29
English Heritage	35
Environmental Defenders Office (SA) Inc	117
EPBC Unit Project	46
Evans OAM, Mr Ian	20
Falkinger F.R.A.I.A., Mr R	128
Federation of Australian Historical Societies Inc	69
Friends of Linnwood	51
Friends of the Quarantine Station and North Head Sanctuary Foundation	144
Gold Coast City Council	42
Gordon Grimwade & Associates	174
Government of South Australia	164
Graham Brooks and Associates Pty Ltd	72
Hanlon, Mr Des	33
Hannah, Ms Helen	17
Hay Shire Council	5
Henderson, Ms Kelly	90
Heritage Council of Victoria	178
Heritage Council of Western Australian	59
Heritage Group of Leichhardt District	41
Hickson, Ms Barbara	137
History Council of NSW	94

<i>Participant</i>	<i>Submission no.</i>
Hobart City Council	70
Hornsby Shire Council	176
Hornsby Shire Historical Society	60
Howe, Professor Renate	106
Hutchison, Mr David	2
Interim Namadgi Advisory Board	175
Ivan McDonald Architects	30
Jaycees Community Foundation Inc	110
Jean, Ms Amanda	120
Kew Cottages Coalition	191
Kosciuszko Huts Association Inc	119
Lancefield Old Bank B&B	91
Lidcombe Heritage Group Inc	146
Local Government Association of NSW and Shires Association of NSW	179
Lockhart, Ms Suzanne *	170
Logan, Professor William, of the Cultural Heritage Centre for Asia and the Pacific	107
Lotterywest (Community Funding)	39
Lovell Chen Pty Ltd	130
Maitland City Council	103
Maling, Mrs J	15
Manly, Warringah & Pittwater Historical Society Inc	50
Marriner Theatres	161
Marshall, Mr Duncan	44, 158
McCarthy, Mrs Betty	168
Mechanics Institute of Victoria Inc	89
Melotte, Dr Barrie	111
Mews, R E & W K	123
Morris, Mr Albert James	9
Mt Kosciuszko Incorporated	92
Mulvaney, Mr D J	10
Municipal Association of Victoria	66
Murphy, Mr Ross	31
Museum Victoria	19
Museums Australia	95
National Capital Authority	153
National Cultural Heritage Forum	126
National Trust of Australia (New South Wales)	172, 180
National Trust of Australia (Queensland)	16
National Trust of Australia (Tasmania)	131
National Trust of Australia (Victoria)	148

<i>Participant</i>	<i>Submission no.</i>
National Trust of Australia (Western Australia)	108
Nepean Historical Society Inc	38
Northern Territory Government	192
NSW Government – NSW Heritage Office	157, 188
Old Parliament House	124
Organ Historical Trust of Australia	7
Pausacker, Mr Ian	109
Pennay, Mr Bruce	28
Perrigo, Mr Tom	162
Phoenix Aero Club	133
PL: the Planning Action Network	112
Planning Institute of Australia	132
Polish Community Council of Australia and New Zealand	151
Polish Historical Institute in Australia	63
Property Owners' Association of Victoria Inc	134
Randwick City Council	48
Reid, Mr James	181
Residents 3000 Inc	125
Royal Australian Historical Society	37
Royal Historical Society of Queensland	61
Royal Historical Society of Victoria	79
Sammut, Mr Vincent	97
Save Braidwood Inc	113
Shawcross, Mr John	77
Shire of York	57
Southern Midlands Council	71
Stewart, Ms Christine	25
Stocker, Ms Margrit	3
Strathfield Council	74
Sydney Engineering Heritage Committee, Engineers Australia	14
Tasmanian Government	136
The Australian Academy of the Humanities	49
The Australian Garden History Society	45
The Australian Heritage Council	118
The Balmain Association Inc	32
The Glebe Society Incorporated	114
The Polish Scouting Association ZHP in Australia Inc	155
The Royal Australian Institute of Architects	68
The Uniting Church of Australia	76
Tourism Council Tasmania	149
Town of Vincent	43

<i>Participant</i>	<i>Submission no.</i>
Urban Development Institute of Australia	116
Urban Development Institute of Australia (WA Div)	83
Victorian Government	184
Vines, Mr Gary	104
WA Division of the Property Council of Australia	165
Warms, Ms Tanya and Hore, Ms Elizabeth	159
Western Australian Local Government Association	73
Western Australian Planning Commission	98
Western Australian Museum	80
White, Mr Richard	152
Whitlam, Ms Christine	88
Willoughby District Historical Society	86
Winter-Irving, John and Ona	150
Winter-Irving, Ms Morna	145
Young, Dr Linda	64
Young, Mr David	127

A.3 Visits

Leading up to the Draft Report, over 60 meetings were conducted covering each state and territory.

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
 Mr Michael Pearson – Heritage Management Consultant
 Royal Australian Institute of Architects (RAIA)

New South Wales

Bathurst Community Roundtable
 Bathurst Goldfields
 Bathurst National Trust
 Bathurst Regional Council

Blayney Shire Council
Canowindra Community
Central NSW Tourism
Cowra and District Historical Society
Cowra City Council
Cowra Tourism Corporation
Enterprise Services
Experienced Hands Volunteer Organisation
Gabbone Shire Council
Heritage Council of NSW
Local Government Association
National Trust Lithgow
National Trust of 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
Heritage Council
Local Government Association of Queensland Inc
National Trust (QLD)
Office of the Minister for Environment
Property Council of Australia (Qld Division)
Queensland Government
Rockhampton City Council
Sustainable Tourism CRC
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 (SA)
South Australian Government

Tasmania

CRC for Sustainable Tourism
Department of Infrastructure, Energy and Resources
Department of Premier and Cabinet
Franklin House – ‘Entally’ – Clarendon Homestead - Woolmers Estate
Heritage and Tourism Councils
Heritage Tasmania, DTPHA
Hobart City Council
Independent Tourist Operators of Tasmania
Institute of Architects (Tasmanian Division)
Launceston Chamber of Commerce
Launceston City Council
Local Government Association
Low Head Pilot Station
National Trust (Tasmania)
Northern Midland Council
Northern Tasmanian Regional Development Board
Parks and Wildlife Service
Parks and Wildlife, DTPHA
Planning Institute of Australia (Tasmanian Division)
Real Estate Institute of Tasmania
Tasmanian Conservation Trust (TCT)
Tasmanian Heritage Council (Works & Assessment Committee – Policy Committee – Register Committee)
Tourism Council of Tasmania
Tourism Tasmania, DTPHA

Victoria

Australia ICOMOS
Ballarat City Council
Ballarat Historical Society

City of Greater Bendigo
Conservation Volunteers Australia – Castlemaine
Department of Premier and Cabinet
Heritage Council
Heritage Victoria
Mount Alexander Shire – Castlemaine
National Trust (Victoria)
Sovereign Hill Museum
University of Ballarat
Victorian Government

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 (WA)
Property Council of Western Australia
Urban Development Institute of Australia (WA)
WA Local Government Association
WA Planning Commission
Western Australian Government

A.4 Public hearings

Public hearings were held during July and August in all States and the Australian Capital Territory. The Darwin hearing was held via video link.

Table A.2 **Participants at public hearings**

<i>Participant</i>	<i>Transcript page no.</i>
--------------------	----------------------------

Brisbane Hearing – 25 July 2005

Mr Ian Evans	3 - 16
Ivan McDonald Architects	17 - 29

<i>Participant</i>	<i>Transcript page no.</i>
Kangaroo Point Residents Association and Save our Brisbane	30 - 50
Ms Christine Whitlam	51 - 58
National Trust of Queensland	59 - 86
Queensland Transport	87 - 88

Darwin Hearing – 28 July 2005

National Trust Northern Territory	90 - 114
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Perth Hearing – 1 August 2005

Western Australian Planning Commission	116 - 133
Town of Vincent	134 - 144
National Trust (WA)	145 - 160
Mount Kosciuszko Inc	161 - 170
Mr Des Hanlon	171 - 180
The Jaycees Community Foundation	181 - 198
Shire of York	199 - 211
Ms Margaret Carmody	212 - 219
Lotterywest	220 - 230
Mr Barrie Melotte	231 - 244

Adelaide Hearing – 3 August 2005

Artlab Australia	247 - 260
Adelaide Arcade Pty Ltd	261 - 271
Ms Kath Crilly	272 - 286
Heritage Preservation Association	287 - 298
Mr Tim Simpson	299 - 310
Cultural Heritage Centre for Asia and the Pacific	311 - 325
Ms Kelly Henderson	326 - 336
	351 - 353
Collections Council of Australia	337 - 350

Melbourne Hearing – 8 August 2005

Australian Heritage Council	356 - 376
Australian Council of National Trusts	377 - 398

<i>Participant</i>	<i>Transcript page no.</i>
National Trust of Victoria	399 - 412
Associate Professor Renate Howe	413 - 421
Municipal Association of Victoria	422 - 431
Marriner Theatres	432 - 440
Ms Susan Balderstone	441 - 450
Residents 3000 Inc and Carlton Gardens Group	451 - 461
Museum Victoria	462 - 469
Roman Catholic Trust Corp	470 - 478

Melbourne Hearing – 9 August 2005

Lancefield Old Bank Bed and Breakfast	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	599 - 609
Mr Peter Shephard	610 - 611

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
Mr Barry Chapman	685 - 693
Mr Graham Abbott	694 - 699
Mr 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 Incorporated Group	729 - 741
Kosciusko Huts Association	742 - 755
National Trust of Australia	756 - 766
Mr David Young	767 - 775
ACT Heritage Council	776 - 790
Mr Ian Wilson	791 - 799
Mr 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

Heritage Chairs of Australia and New Zealand	844 - 868
NSW Heritage Office	869 - 883
North Head Sanctuary Foundation and Friends of Quarantine Station	884 - 897
Ms Zeny Edwards	898 - 907
Australia ICOMOS	908 - 933
Phoenix Aero Club	934 - 941
Mr 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 (NSW)	987 - 1007
Wilkie Architects	1008 - 1019
Department of the Environment and Heritage	1020 - 1032
The Australian Heritage Institute Inc	1033 - 1041
The City of Sydney	1042 - 1054

<i>Participant</i>	<i>Transcript page no.</i>
The Convict Trail Project Inc	1055 - 1061
Mr Richard White	1062 - 1071
Heritage Futures	1072 - 1090
Mr John Boyd	1091
East Balmain (Precinct 2)	1092 - 1093

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

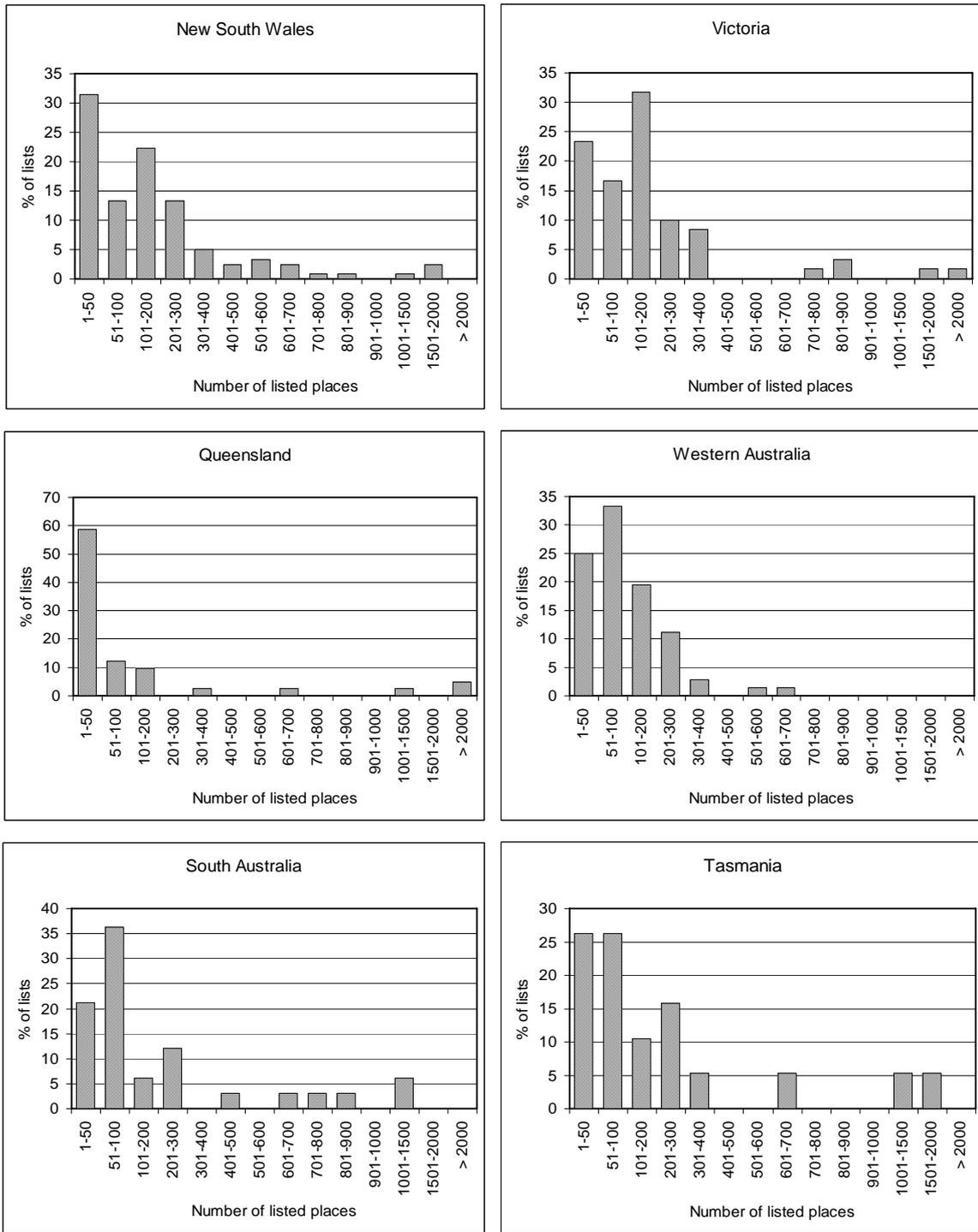
<i>State</i>	<i>Councils with a heritage list</i>	<i>Individual places</i>	<i>Heritage areas^a</i>	<i>Council owned places^b</i>	
	% respondents	No.	No.	<i>Average</i> % listed places	<i>Maximum</i> % listed places
NSW	93	25 847	512	8.8	71
Vic	97	19 183	497	9.3	83
Qld	42	9 852	191	19.9	100
WA ^c	84	8 178	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



Data source: Productivity Commission Survey.

Table B.3 Lists with more than 200 individual places

Proportion of council lists

	<i>Councils with more than 200 listed places</i>
	%
New South Wales	31.4
Victoria	26.7
Queensland	12.2
Western Australia	16.7
South Australia	30.3
Tasmania	36.8

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	80.9	66.1	9.9
Victoria	90.9	76.7	0.0
Queensland	72.0	61.0	17.1
Western Australia	96.3	94.4	0.0
South Australia	80.2	75.8	12.1
Tasmania	53.3	31.6	31.6

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	7.3	12.2	80.5
Victoria	14.3	4.1	81.6
Queensland	29.2	8.3	62.5
Western Australia	9.0	0.0	91.0
South Australia	20.0	4.0	76.0
Tasmania	10.0	80.0 ^b	10.0

^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	84.3	77.7	60.3	53.7	77.7	15.7	14.0
Vic	91.7	91.7	75.0	76.7	83.3	18.3	25.0
Qld	70.7	68.3	43.9	31.7	41.5	4.9	14.6
WA	93.1	91.7	83.4	76.4	73.6	25.0	26.4
SA	72.7	69.7	33.3	45.5	57.6	18.2	12.1
Tas	52.6	42.1	10.5	26.3	52.6	5.3	0.0

^a Heritage values are the notable features which gave rise to the heritage listing (see table B.8). 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	64.5	50.4	26.4	45.5	46.3	21.5	17.4
Vic	66.7	53.3	25.0	56.7	50.0	26.7	23.3
Qld	53.7	22.0	0.0	2.4	29.3	7.3	17.1
WA	69.4	47.2	23.6	22.2	43.1	15.3	20.8
SA	51.5	51.5	6.1	24.2	21.2	6.1	27.3
Tas	31.6	21.1	10.5	15.8	10.5	0.0	10.5

^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).

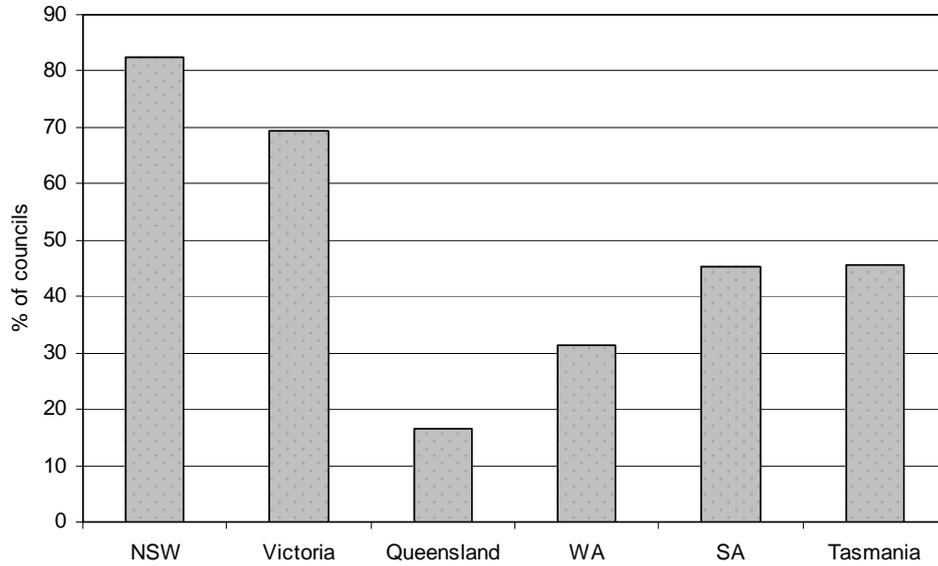
Source: Productivity Commission Survey.

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.

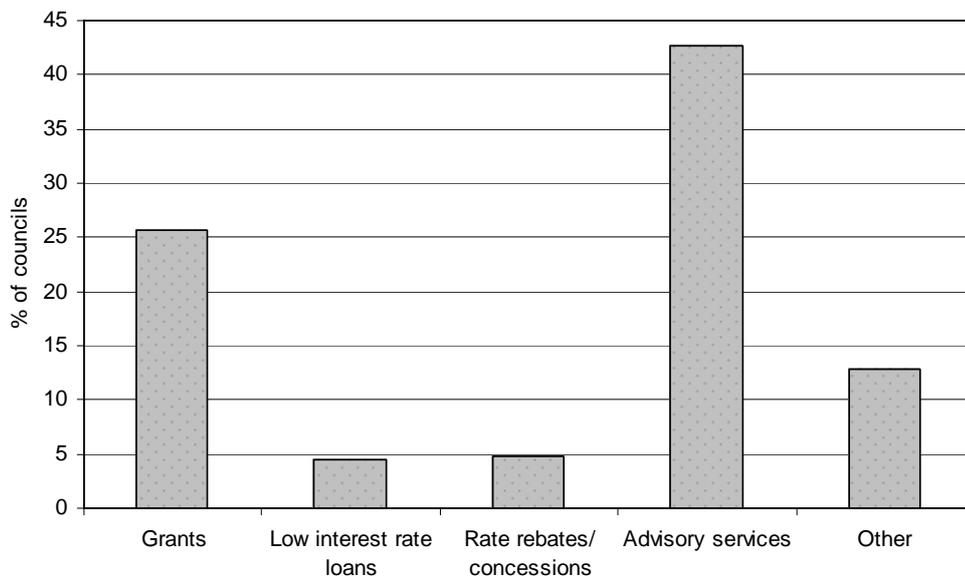
Figure B.2 Assistance provided to owners of historic heritage places^a
Proportion of responding councils



^a Nationally, 50 per cent of councils provide assistance for historic heritage conservation.

Data source: Productivity Commission Survey.

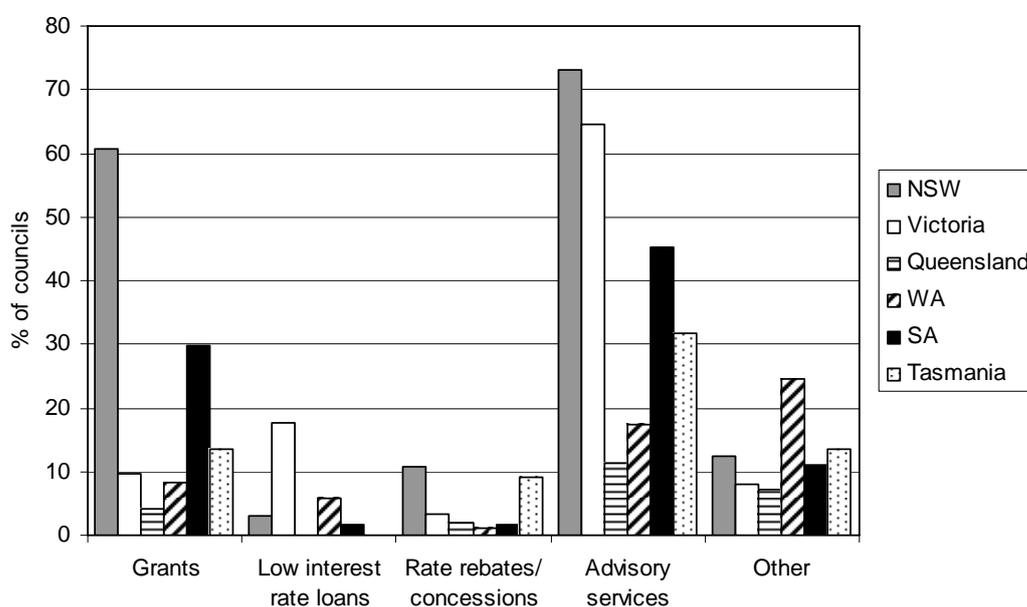
Figure B.3 What type of assistance is provided?
Proportion of responding councils



Data 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



Data 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	81.5	85.0	2.1	1.5
Vic	83.9	96.2	2.7	1.6
Qld	9.3	77.8	2.9	4.1
WA	31.4	92.6	3.2	11.6
SA	43.8	92.9	1.9	6.3
Tas	31.8	85.7	5.0	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	51.5
Victoria	87.1
Queensland	0.0
Western Australia	7.0
South Australia	28.1
Tasmania	0.0

^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	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: Productivity Commission Survey.

Tables B.13 summarises the impact treatment of development applications for heritage listed properties. A number 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>
	<i>%</i>
New South Wales	66.2
Victoria	58.1
Queensland	68.0
Western Australia	73.3
South Australia	57.8
Tasmania	72.7

^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 item 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.

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- 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.

- 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 ongoing 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, its 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).

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- 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 %

(Please note that careful estimates are acceptable if actual data are not available)

Yes

If yes, is that documentation publicly available?

a) No

b) Yes

Please indicate how public access to the documentation is obtained
.....
.....
.....
.....

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 Planning controls and the identification of local heritage

C.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 development, or particular sections of the local government area. The level of State control over local schemes varies significantly between jurisdictions.

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).

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 (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.

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.

² *State Policies and Projects Act 1993* (Tas).

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.

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.

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.

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 C.1).

Box C.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;

-
- 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 C.1).

Table C.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>).

-
- (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);
 - (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.

C.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 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 — eg, 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.

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