

**Response to the Productivity  
Commission's Draft Report *Conservation  
of Australia's Historic Heritage Places***

Submission by the Australian Heritage Council

February 2006

**Productivity Commission Inquiry Into the Conservation of Historic Heritage  
Places**

## **Introduction:**

This is the third submission provided to the Productivity Commission's inquiry into heritage place conservation on behalf of the Australian Heritage Council. It specifically addresses the Commission's Draft Report entitled *Conservation of Australia's Historic Heritage Places*.

The Australian Heritage Council warmly endorses the recognition by the Productivity Commission of:

- the importance to the nation of our historic heritage places,
- the role of historic places in contributing to cultural capital,
- the enhancement of social capital through heritage providing a tangible link to the past and reinforcing the sense of community identity,
- the emerging trends of adaptive reuse and heritage tourism.

The Issues Paper produced by the Productivity Commission in May 2005 at the outset of the Inquiry identified the existence of market failure as a key question that had to be answered before any policy recommendations could be made. It is pleasing to note that the Draft Report acknowledges the fact that much of the value of heritage arises outside of the market and accepts that significant public benefits arise from the conservation of Australia's stock of historic buildings and sites. This provides a clear rationale for government intervention, a rationale that is reflected in the existing levels of involvement of all three tiers of government in supporting heritage conservation at the present time.

In our previous two submissions we have outlined our fundamental belief that heritage is part of Australia's social cohesion and underpins our national identity. Although your enquiry deals with historic heritage, the Commonwealth legislation has an integrated view of heritage as part of environment with its specific values - aesthetic, historic, scientific or social significance or other significance for current and future generations of Australians and indigenous heritage value as determined by indigenous persons in accordance with their practices, observances, customs, traditions, beliefs or history. The Australian Heritage Council believes in an integrated view of a shared heritage, both tangible and intangible, and therefore a broad and encompassing definition.

However, we believe that the Terms of Reference should have been read as broadly as possible, to include the whole place and its layers and setting, including archaeological and historic sites and cultural landscapes. In particular, the Australian Heritage Council believes that the Productivity Commission has:

- misunderstood important aspects of the nation-wide heritage system,
- under-estimated the importance of a national heritage strategy, whose policies aim to protect heritage for all Australians and aspects of which are delivered at different levels,
- ignored analysis of resource allocations and funding.

Our key concerns with the Draft Report relate to: inadequate discussion of the terms of reference, errors and omissions, narrowness of recommendations, Register of the National Estate, economic analysis of the preferred mechanism of negotiated

agreements, funding, sustainability and intergenerational equity, community benefits and choices. We address these and suggest a way forward.

In our second submission we reiterated our belief in the need for the Productivity Commission to consider the economic merits of our proposal for the development and implementation of an integrated national heritage policy through the Environment Protection and Heritage Ministerial Council. We considered that an integrated national heritage policy should include an overarching framework for the implementation of the three-tier heritage system, as well as a detailed plan for cooperative action on key areas including:

- improved consistency in assessment processes and conservation management plans;
- a consistent means of State of the Environment reporting on the condition of historic heritage places;
- new approaches to funding that may improve the economic self-sustainability of heritage places;
- improved access to expert advice and assistance, for instance through the provision of heritage advisers at local government level; and
- addressing the shortage of skills in heritage conservation by a variety of means.

However, the Draft Report does not analyse or endorse this overarching policy as the basis for subsequent findings or recommendations but rather goes straight to a narrow recommendation on the mechanics of negotiated agreements.

In its assessment of the current systems for implementing heritage policy in Australia, the Draft Report points to the fact that the national approach to historic heritage conservation has been considerably improved in recent years with the adoption of the three-tier system for government intervention. The resulting closer alignment of the responsibilities of all three tiers of government with the significance levels of heritage falling within their jurisdictions has reduced duplication of effort and improved accountability –in line with your avowed principle of subsidiarity. However the Report, while pointing out that there are still deficiencies in the system that need to be addressed, does not provide a detailed analysis of these.

Our prime responsibility under the *Australian Heritage Council Act* is to recommend to the Minister on places of national significance for addition to the National Heritage List and to add to and maintain the Commonwealth Heritage List as the Australian government is now bound to protect its own heritage property. However, these two types of places represent a small proportion of the total heritage places in Australia and one of our other major functions is to advocate for nation-wide heritage place conservation by:

- direct advice to the Minister for Environment and Heritage on a range of subjects including funding, grants, communication and education,
- participation in the Heritage Chairs and Officials of Australia and New Zealand forum, which reports to the Ministerial Council of all levels of government,
- participation in the National Cultural Heritage Forum.

We also endorse the third submission of the Heritage Chairs and Officials of Australia and New Zealand to the Productivity Commission and have participated in its composition.

## **Errors and omissions:**

We are deeply disappointed in the Draft Report. It fails to adequately represent thirty years of evolution of heritage conservation in this country and, although there are some areas where there is room for improvement, the system as a whole has adequately served the whole community as witnessed by the progressive development of legislation and regulations. These are necessary as market forces alone have not been sufficient to protect and conserve our irreplaceable built heritage. The emphasis on one overriding recommendation for negotiated agreements prior to listing fails to acknowledge that at all three levels of statutory listing in Australia there are arrangements for negotiating the level and detail of protection afforded; some of these courses of action are rights of appeal to the various courts involved in planning disputes or civil infringements. The findings and recommendations appear to have ignored the wealth of evidence available on the complexities of heritage values and do not result from well researched and argued analysis.

The Draft Report does not address terms of reference 4, 5 and 6 adequately so as to present new data and arguments for offering 'new approaches to the conservation of historic heritage' as required by the Treasurer.

The heritage conservation system as evolved in Australia is based on identification, assessment and listing as the first process. Then a second process follows from the statement of significance where management policies to conserve the heritage values are derived and protection is afforded from these via management plans being implemented for government owned places or development controls under planning schemes for private places, although in many jurisdictions the government agencies are also bound to apply for permits and private owners may be required to have conservation management plans for their heritage places. The range of requirements at each level in Australia is not reflected in your overall one-size-fits-all recommendation, which in itself is the antithesis of the variety of heritage places.

The Executive Summary (Overview) of the Report could be read to suggest that the Australian Government has no power to list and protect the heritage values of a non-Commonwealth place without an agreement with owners. This is not correct. For both World and National Heritage, the Australian Government consults, and aims to secure the agreement of property owners, but if necessary, it is able to list and protect heritage values in a wide range of circumstances without the owners' consent.

The Productivity Commission is right to draw attention to the tension between private and public rights in the protection of community heritage. At the national level there is careful provision of powers, procedures and protections to handle this balance. The Australian Government can only intervene to protect national heritage values on private property without an owner's consent after the Minister has taken into account the balance between heritage, social and economic issues and considered the views of the owner and other stakeholders. Depending on the nature of the controls imposed financial assistance for heritage management may be provided. This is a much more careful balance between private rights and the public interest than a reading of the report's Executive Summary would suggest - and it is one pursued in a policy environment that favours openness and cooperation not secrecy and compulsion.

This is a policy position that more properly reflects and balances the possible tensions between private interests and community concerns than the Productivity Commission's radical draft proposal that heritage listing on private property should be only voluntary. Accepting that suggestion would return the legal framework for protecting our heritage to the situation that prevailed before the Hope Report of the Committee of Enquiry into the National Estate in 1974. That said, the Commission's emphasis on the importance of making a heritage listing a sought-after distinction for private owners rather than a threat is important. And that will require selectivity in listing, care in heritage management strategies to ensure they only protect the values of a property that are genuinely significant and above all the resources necessary to ensure that private individuals do not carry an unfair burden of protecting the common good.

### **Narrowness of recommendations:**

We are also deeply concerned at the narrow concentration of the Commission's recommendations, which affect local government level heritage places in particular, and at the lack of analysis of the effectiveness and productivity of other heritage conservation approaches, as outlined in part in our initial submission such as:

- identification and interpretation of nationally significant heritage places and stories through historic themes which would link all levels of heritage conservation,
- developing consistent standards in assessment,
- development of education curricula incorporating knowledge and appreciation of Australia's heritage,
- supporting training programs in heritage conservation,
- lifting standards for conservation works in the built environment,
- funding conservation works where the private sector cannot provide resources, especially regionally disadvantaged places,
- development of a mix of grants and incentives to support sustainable use of heritage places including leverage from and/or participation in programs not specifically addressing heritage issues, such as tourism and regional development programs, and
- development of new mechanisms for co-ordination and co-operation across all levels of government and associated agencies to achieve heritage conservation.

Of your 16 recommendation we can only support 3 in the form in which they are written:

*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.*

*7.4: 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.*

*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.*

These recommendations all relate to data collection and reporting –an essential requirement for an iterative protection system where monitoring, and consequently adjusting the system, is essential. However in relation to 7.4, we note that at previous State of Environment reporting exercises attempts to acquire a breakdown of expenditure from government agencies on the precise amount spent on heritage repairs was not possible. As all built structures require maintenance irrespective of whether they are heritage-listed or not, the broader aggregate expenditure on building maintenance contributes to long term conservation. Some public works agencies may be able to provide subcontractors’ schedules for payment of specialized works to government owned heritage buildings.

### **Register of the National Estate:**

The following recommendations in the draft Report relate to the Register of the National Estate (RNE):

*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.*

*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.*

However, from the time of drafting the new legislation the understanding was that an integrated Australian Heritage Database would incorporate the intellectual assets and records of the RNE. The AHDB would be developed to contain all heritage records from each level of administrative jurisdiction in one system. This has had general support from the three tiers of government but the mechanics of establishing, operating and maintaining this system is one of the items for detailed consideration in the national heritage policy.

In the meantime the 2003 legislation which was amended during its passage through Parliament contains the requirement for the Australian Heritage Council to maintain the RNE. It is still a mechanism for alerting State and local levels of government to the heritage values of places already in the register and those few added since, chiefly where their values fall far below what is required for reaching national heritage listing.

The recommendations 7.1 and 7.2 stand without any analysis of the cost/benefits of identification of heritage places or developing consistent standards for their assessment so as to come to these conclusions regarding the future of the RNE.

### **Economic analysis of the preferred mechanism of negotiated agreements:**

The Draft Report’s principal proposals for dealing with deficiencies in the present system are seriously flawed and would be likely to lead, if implemented, to a substantial worsening rather than an improvement in the present situation.

In Australia, as in most other countries, the major tool of government intervention used in the protection of historic heritage is listing, where various lists are stratified according to levels of significance. The Draft Report voices the standard economic objections to any sort of regulatory instrument as a means for implementing government policy, without providing any assessment of the magnitude of the alleged inefficiency, ineffectiveness or inequity in outcomes produced by the present regulatory framework. The Draft Report goes on to recommend, for private owners of heritage buildings located outside designated heritage areas, a replacement of the present “compulsory, coercive” system with a voluntary one wherein owners, if they wish, can negotiate with the relevant public authority to conclude a conservation agreement. Throughout the Draft Report stress is laid, quite properly, on the need to demonstrate that a market-failure rationale for government intervention is valid only insofar as the benefits of intervention outweigh the costs involved.

There are three main shortcomings in the arguments presented in the Draft Report to support its criticisms of current arrangements and its recommendation for a voluntary negotiation process<sup>1</sup>.

(i) *Costs*

The Draft Report argues that the use of regulation to protect heritage imposes unnecessary costs. Apart from the administrative costs of implementing the current system, the Draft Report points to two specific costs imposed: the standard deadweight loss to society if the level of regulation exceeds the socially optimal level leading to “too much” heritage conservation, and losses to private heritage owners resulting from infringement of their property rights. We examine these sources of costs in turn.

First, the Draft Report asserts that the current system encourages “over-correcting” (p. 174) for market failure, i.e. a regulatory framework producing too much conservation, where some owners are obliged to incur costs they would not otherwise incur. However, no estimate is made of the number of owners affected in this way, nor of the level of costs they incur, nor of the losses to consumers and producers from “too much” conservation. Rather, the Draft Report relies largely on anecdotal evidence to draw its conclusions in this respect, and there is no evidence produced to demonstrate even the existence of a deadweight loss, let alone its size. In adopting this approach, the Draft Report ignores the more systematic and less partial evidence from the Allen Consulting Group’s survey that indicates exactly the opposite to the Draft Report’s findings. These results suggest that, far from over-correcting for market failure in this area, governments generally have not gone far enough, when judged against community preferences. Only 9 per cent of the Allens’ sample agreed with the proposition that “we protect too much heritage”, with 69 per cent disagreeing with this statement (Table 4.10); furthermore 62 per cent of respondents felt too little was being done across Australia (to protect heritage), with only 3 per cent agreeing with the Draft Report’s contention that too much conservation is being undertaken (Table C.5)<sup>2</sup>. Thus the existence of a deadweight loss arising from the use of regulation in

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<sup>1</sup> The assistance of Professor David Throsby in preparing this critique is acknowledged.

<sup>2</sup> It can be assumed that these statements refer collectively to “us” as a society, and thus it is reasonable to infer that they relate to the actions of governments on society’s behalf.

this context would have to be questioned, insofar as it would seem that the socially optimal level of conservation has not been exceeded under current arrangements.

Second, the Draft Report makes much of the restriction on private property rights brought about by listing, yet appears unconcerned by the fact that rights in real property are restricted in many other ways that impose significant constraints and sometimes losses on owners. There has been argument as to whether there is a difference between regulation to prevent a public bad (e.g. prohibitions against smoking) and regulation to yield a public good (e.g. listing of heritage properties). This argument has little substance; it is just as appropriate to see listing as a device to prevent a public bad arising from the downgrading or destruction of heritage qualities of privately-owned property, with consequent loss of community value, as it is to see it as a means for securing the public good. In any case listing is not the only means by which governments seek to promote and protect the public interest in heritage; rather, heritage policy is delivered as a package, with fiscal measures complementing the regulatory interventions, e.g. by providing financial assistance to some private owners when they undertake conservation work on their properties.

But the real issue here is the overall effect on the welfare of private owners as a result of listing; while there are some cases where unwarranted costs may be imposed, there are also many cases (as indicated by the majority of studies both here and overseas) where heritage listing improves property values and bestows benefits rather than imposes costs on owners. The net effect of these various tendencies is unclear but what is clear is that an across-the-board solution is not the way to deal with those cases where genuine financial disadvantage arises. Rather it is likely to be both more efficient and more effective to address such cases on a targeted basis, an approach that could be readily incorporated into current administrative arrangements.

Finally under the heading of costs it is essential to consider the administrative costs of implementing a voluntary negotiation scheme. The Draft Report provides no estimate of these costs for any tier of government, nor does it show how they would compare to the costs of operating the current system of heritage protection. But it seems likely *prima facie* that the costs would be substantial, given the numbers of properties involved. Most of the negotiations would be taking place with local government, the tier of government that is probably least well-equipped overall in terms of resources and expertise to undertake such a task; at the very least there is sufficient variability in the capacities of local government authorities to implement the proposed scheme to raise serious doubts about consistency of outcomes across Australia.

(ii) *Benefits*

The Draft Report refers to the choice modelling study undertaken on behalf of the Heritage Chairs by the Allen Consulting Group, but does not give this study anything like the weight it deserves. Admittedly the study was not delivered until late in the Commission's work schedule, and this may explain the less than adequate attention it receives in the Draft Report. The Commission should be urged to consider the implications of this study more fully in its final Report.



In summary, the Allens' study comprises the first full-scale and systematic national study of the demand for the public-good benefits of heritage protection ever undertaken in Australia and possibly anywhere else in the world.<sup>3</sup> It shows substantial levels of perception of the option, existence and bequest values of heritage amongst the general community, and indicates a willingness to pay for these benefits that significantly exceeds current levels of government provision. Like all such studies, the Allens' work cannot be used to derive a precise estimate of the optimal level of public expenditure, but it can be validly used to indicate socially desirable directions for change. In this respect the study provides clear and objective evidence that an increased commitment of public funds to heritage protection over present levels of provision would meet with general community approval.

This evidence is relevant to an assessment of the impact of the proposed system of voluntary conservation agreements. It seems virtually certain that the introduction of such a scheme would result in a significant decline in the level of conservation of privately-owned heritage in Australia, for several reasons, including the following:

- the costs and other deterrents would mean that a certain number of private owners would not enter into a negotiation process;
- the administrative burden would limit the number of negotiations a given government authority would be able to take on at any one time; and
- the veto power available to private owners and other obstacles to reaching agreement would limit the number of actual negotiations that would be carried through to completion.

If introduction of the proposed scheme were indeed to lead to a decline in the level of heritage protection compared to the present situation, the empirical evidence from the Allens' study indicate clearly that such a result would be significantly out of line with public preferences.

(iii) *The negotiation process*

The Draft Report identifies three main ways in which market failure can be remedied in a competitive economy: fiscal measures, regulation and negotiation between affected parties. The Draft Report opts for the last-mentioned as its preferred instrument in the heritage case, basing its argument on the Coase theorem. As is well known, a Coasian solution requires three necessary conditions for its successful application:

- the interested parties can be identified and property rights can be assigned;
- transaction costs are negligible or zero; and
- contracts can be enforced.

The Draft Report's proposed scheme fails on all three counts. First, while there is likely in most cases to be no difficulty in identifying who is the private owner of a property, defining the extent and nature of their rights may present problems. This arises from the well-known difficulties of identifying the rights of owners of real

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<sup>3</sup> Randall Mason's recent annotated bibliography of the economics of heritage preservation lists several state-wide studies in the US but no national-level estimation of the non-market benefits of heritage in any country; see Randall Mason, *Economics and Historic Preservation: a Guide and Review of the Literature*. (Discussion Paper prepared for the Brookings Institution Metropolitan Policy Program, Washington DC: September 2005).

property (e.g. is compensation for resumption of land based on “maximum” or “reasonable” alternative use value? etc.), problems that are likely to be exacerbated in the case of heritage when alternative development or renovation proposals are to be the subject of negotiation. More important, however, are difficulties in specifying the public right. Heritage yields multiple values with different meanings and significance for members of the local and wider community. Future generations are also stakeholders in heritage conservation, and their interests must also be taken into account. The nature and importance of these rights are difficult to specify, and although government officials may be expected to have some cognizance of the costs of conservation in particular cases, it is difficult to see how they can accurately estimate the monetary value of the aggregated public interest as a basis for negotiation.

Moreover it is becoming more clearly understood in some overseas countries (e.g. the UK) that certain cultural values, such as those relating to the expression of cultural identity, cannot be readily expressed in monetary terms, and yet such values should have an important bearing on cultural policy decision-making. These values are known to be particularly important in the field of heritage conservation and preservation; thus the public-sector negotiators would not be able, even in principle, to account fully for the value of the heritage with which they are dealing.

The difficulty here arises because the Commission’s proposal is for listing to occur *after* a negotiation has produced an agreed outcome, whereas it is the process of listing itself that is the means towards defining public value. In other words, a systematic listing process – involving not only defining the multiple qualities of properties that endow them with their heritage value but also attaching levels of significance to them – provides an orderly means for a government instrumentality at whatever level to judge the relative values of the public interest in the heritage under its jurisdiction. Such a process has at least the potential to be complete, in the sense of covering all the significant heritage falling within the instrumentality’s jurisdiction and thus providing full coverage of the public interest; by contrast the Commission’s proposal, being voluntary, opens up the possibility of significant gaps in the government’s capacity to secure the required public benefits. Overall it is clear that listing processes currently employed, if efficiently and systematically applied, have the capacity to provide a far more rigorous approach to establishing public value than the *ad hoc* piecemeal approach recommended by the Commission.

The second requirement of the Coarse theorem is that transaction costs are zero or at most negligible. This provides the most serious argument against the Commission’s proposal; it is inconceivable that it could satisfy this requirement. We have pointed already to the Draft Report’s failure to identify the administrative costs of the scheme, and have suggested that these costs would be substantially greater than the costs of administering current heritage policy. It should be added that, as noted above, private owners would also have to bear costs, including information and search costs, that could be quite significant and that could be expected in some cases to deter owners from entering into a negotiation process at all.

Finally, effective monitoring and enforcement of contracts can be problematical in some cases and can impose significant additional costs on parties subsequent to the conclusion of any negotiation process. In the heritage case, no matter how carefully conservation works are specified, disputes as to satisfactory performance under

contract are likely to arise in some cases, given the qualitative nature of the variables involved. In other words there can be no certainty that all contracts negotiated under the proposed scheme could be monitored and enforced sufficiently to satisfy the third requirement of a Coasian process.

To summarise, it is apparent that the Draft Report's proposal for a voluntary negotiation scheme does not comply with the requirements of the theory on which it is based. Furthermore, it fails the Commission's own test of demonstrating that the benefits of any form of intervention outweigh the costs. The Report offers no indication of the relative costs of its proposals compared with alternative uses of the resources involved. Moreover, it provides no estimate of the magnitude of the improvement in private welfare supposed to result from this scheme, nor does it admit the likelihood that, if the effect were to reduce the numbers of properties conserved, public welfare would decline. It would be a perilous matter for any government to accept a recommendation based on such a flawed application of theory and such an absence of empirical justification.

### **Funding:**

The Draft Report makes no recommendations as to levels or sources of funding, even though it acknowledges (p. 182) that its own recommended policy initiative would shift part of the costs of conservation from the private to the public sector; presumably this shift, together with the (unacknowledged) increase in administrative costs, would require an increased level of government financing. Indeed it can be said that virtually any proposals for addressing shortcomings in current heritage policy are likely to require increased funding. The Commission should be clear not only that such an increase will be necessary but that, if it results in improved levels and standards of conservation, it would be consistent with community preferences for government expenditure.

In regard to sources of funds, it should not be beyond the scope of the Commission to endorse our arguments for allowing cultural heritage access to the Natural Heritage Trust or equivalent; the Inquiry's terms of reference (see especially item 6) would seem to permit such a recommendation. It is important to be reminded that the Commonwealth set up this Trust and administers it in the interests of all Australian people, not just in the discharge of specifically Federal-government responsibilities. This point is relevant when considering the pervasiveness of the contribution that heritage makes to Australian identity, etc. at whatever level it occurs.

There is no analysis of the complexities –equity, transparency, assessment of the heritage values to be purchased etc, much less the formulae for costing, of 'purchasing public-good heritage characteristics from private owners' as a mechanism for choosing which places to list and conserve (p.186). It is the integrity of attributes of the history of such places which help determine their significance for listing. A place may exhibit multiple values subject to different jurisdictional interests and obligations and agreement to sell privately owned heritage characteristics is not a basis for setting public heritage priorities.

We see the need for funding for historical studies, field surveys of historic places to fill in the thematic types of places underrepresented in heritage protection, for conservation works like repairs, restoration, replacement of missing parts, for on-site

interpretation, marketing of places for education curricula, for tourism and promotion. There are many ways of undertaking these and some analysis of the most efficient methods would assist.

There are current government grant programs offering small amounts in comparison with that from the Natural Heritage Trust and we seek some parity in analysis of the effectiveness of these natural heritage programs in achieving better conservation. We had hoped for your economic skills in analysing such and providing some guidance to us in arguing for a more effective range of incentives, financial and otherwise, in assisting conservation of historic heritage.

Rural heritage places often remotely located, present urgent challenges. A report to the Queensland Heritage Council in 2003 noted that ‘because of the current organizational shifts and rates of change in rural property management, there is a very real risk of losing a large amount of Queensland’s rural heritage.’ It further elaborated:

There is currently a lack of knowledge about the extent and significance of the places, there is a lack of incentives for owners and custodians to conserve them, a lack of local skills to assist the owners in their conservation work, and a lack of monitoring of the condition of isolated and remote places entered in the Queensland Heritage Register<sup>4</sup>.

The report outlined possible areas for improving this situation:

- i. Awareness raising
- ii. Recording and documentation
- iii. Funding models
- iv. Advice and specifications
- v. Training of tradespeople
- vi. Undertaking conservation repairs
- vii. Integration into local community programs for heritage tourism, festivals
- viii. Advocacy
- ix. Reuse policy for redundant rural heritage places.

Appendix 2 to this submission is a copy of Appendices to the 2003 rural places report examining the incentives and assistance offered for conservation of historic heritage in rural England and France, and in the USA in general. English Heritage programs were also mentioned in our first submission. We had hoped for some analysis of these in relation to Australian conditions.

### **Sustainability and intergenerational equity:**

Heritage conservation fundamentally involves sustainability of the heritage characteristics and intergenerational transmission of these. It follows then that public funding to ensure future public good is necessary.

The Draft Report treats the intergenerational question far too lightly (p. 117) and in so doing is out of step with current thinking about the role of government in fostering sustainable resource use as we pointed out in our first submission with English

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<sup>4</sup> Jane Lennon, 2003. *Rural Heritage Places Issues*, Discussion Paper for the Queensland Heritage Council.

examples. Moreover the Draft Report's discussion in this section does not mention the precautionary principle (that a risk-averse position should be taken when a decision with irreversible consequences is being considered); this principle is of the utmost importance in heritage matters since historic buildings, once destroyed, cannot be retrieved. Although the precautionary principle does not mean that everything has to be preserved, its recognition is an essential concomitant of listing as a policy tool for governments in the heritage field, since this form of regulation enables rapid response to threats to historic heritage as well as providing a systematic basis for assessing the implications of the threat.

### **Community benefits and choices:**

The assertion on p. 137 of the Draft Report that the measurement of community benefits undertaken by the Allen Consulting Group may be "of limited relevance in the current policy framework" seems to indicate a complete lack of understanding of what stated preferences can and cannot do. The results of a study such as this do not purport to be useful in informing case-by-case assessments; rather they simply provide a sound basis on which to judge optimal directions for policy change. In this case they suggest strongly that an increase in overall public funding for heritage would be warranted. The calculations that the Commission puts forward on p. 139 are particularly ill-advised. Even if the choice-modeling results were amenable to use in this crude manner, the figure of \$5.53 per person is just one estimate from many based on alternative assumptions, each of which would provide a different result. In any case, why quote just this one instance when many other similar calculations for Kuring-gai or anywhere else would lead to the opposite conclusion?

There is an urgent need to convince governments at all levels of the economic value of conserving heritage places; the Australian population believes this as illustrated by the responses quantified in the Allens survey.

### **A way forward:**

It needs to be argued very strongly that problems in the present heritage policy mix can be far more effectively and efficiently remedied by policy improvements targeted at the specific problem areas rather than by a broad-brush one-size-fits-all approach.

Whilst the Productivity Commission acknowledges that the purpose of heritage policy is to protect and enhance the public benefits of heritage in the most effective and efficient way and recognise that the overall three-tier framework is an appropriate one for this purpose, the major proposal recommended is aimed at just one perceived problem area – the supposed disadvantages suffered by private heritage owners outside designated areas under local government government administration. Yet is recommended for application across the board, including in areas where present arrangements are acknowledged to be working satisfactorily. This does not fit with the Commission's objective of providing heritage protection in accordance with the principle of subsidiarity.

Recommendations for policy improvements in particular areas could include the following:

- shortcomings in the mechanics of the listing process could be addressed through

- better data gathering, information exchange, coordination etc;
- processes for working out the appropriate balance in funding between tiers of government, avoiding cost-shifting etc. could be improved through better public-sector collaboration and cooperation;
  - questions of compensation for loss of private property rights in particular cases could be addressed directly, with assessments assisted by better information and improved funding arrangements;
  - standardisation of procedures at local government level could be worked towards over time through involvement of local government associations, professional and community groups, etc.; and
  - questions of information failure as it affects conservation decision-making could be addressed at all levels through heritage education programs, improved data provision, etc.

It is important not to lose sight of the Commission's insistence on getting incentives right, but it is clear that much progress could be made towards improving the incentives without abandoning the strengths of the present system; for example, the role of government as catalyst (something the Commissioners referred to during the hearings) could be pursued in a variety of ways such as matching grant programs, etc. that can target incentives where they would be most effective.

**Appendix 1: AHC main recommendations to the Productivity Commission, initial submission, 5 August 2005.**

1. The importance of integrating all aspects of heritage at all levels of government in both legislation and policy;
2. The Australian Government build the National Heritage List as a central plank of its heritage policy;
3. A strengthened Commonwealth leadership role in fostering national identity through the identification and interpretation of nationally significant heritage places and stories and through historic themes;
4. The need to lift standards for conservation works in the built environment and to develop consistent standards in assessment;
5. The need to close the legislative gaps in protection of the historic environment;
6. The development of education curricula incorporating knowledge and appreciation of Australia's heritage and supporting training programs in heritage conservation;
7. The development, especially for regionally disadvantaged places, of an appropriate shared formula between governments for funding conservation works where the private sector cannot provide resources;
8. The development of a mix of grants and incentives to support sustainable use of heritage places, including the imaginative use of programs not specifically addressing heritage issues, such as tourism and regional development programs;
9. The development of new mechanisms for co-ordination and co-operation between governments, especially Commonwealth-State/Territory cooperation in building the National Heritage List.

## **Appendix 2: European and US examples of financial assistance to owners of historic heritage.**

(from *Rural Heritage Places Issues*: Discussion paper for the Queensland Heritage Council, Jane Lennon, July 2003)

### **A. ENGLAND**

The 1998 Monuments at Risk Survey showed that since 1945 agriculture had been the biggest cause of unrecorded loss of archaeological sites. Changes to farming practices have also led to large-scale loss of traditional countryside features like walls, hedges and ponds as well as to redundancy and dereliction of many traditional farm buildings – for example, between 1984 and 1993 one third of English hedges were lost and one-third of dry stone walls were derelict in 1994. In 1992, 17% of listed farm buildings were ‘at risk’ and 24% were ‘vulnerable’, and a 1997 study of unlisted field barns in the Yorkshire Dales National park showed that less than 60% were intact (Trow, 2002: 4-5).

To address economic, social and environmental needs the **England Rural Development Programme (ERDP)** has been established with 10 coordinated grant-aid measures totalling £1.6 billion between 2000 and 2006. The 10 schemes are: Countryside Stewardship, Energy Crops, Environmentally Sensitive Areas, Farm Woodland Premium, Hill Farm Allowance, Organic Farming, Processing and Marketing Grants, Rural Enterprise, Vocational Training, Woodland Grant. There are specific policies relating to landscape and the historic environment including:

- Conservation and repair of ancient monuments and landscapes at risk;
- Repair of rural historic buildings at risk, appropriate adaptive re-use of functionally redundant buildings and maintenance of the diversity of local vernacular features;
- Maintenance and repair of traditional man-made and semi-natural features such as hedgerows and dry stone walls.

There is also an emphasis on collaborative management of cultural and historic features and the values landscapes and habitats of commons as a national resource. The grants are open to those who have had management control over suitable land for 10 years –farmers, non-farming landowners and managers, voluntary bodies, local authorities and community groups. The following landscape types and features are eligible: arable farmland, chalk and limestone grassland, coastal areas, countryside around towns, field boundaries, historic features, lowland heath, new access, old meadows and pastures, old orchards, uplands, waterside land. There are also specific targets for landscape types and features in each county. (See [www.defra.gov.uk/erdp](http://www.defra.gov.uk/erdp) for more details).

i. Agri-environment schemes provide major benefits to the historic environment through the **Environmentally Sensitive Areas (ESAs)** programme and the **Countryside Stewardship Scheme** both of which have the following:

- Farmers and landowners can enter voluntary 10 year agreements to undertake certain farming practices and capital works to maintain and enhance the rural environment;



- Agreement holders are compensated for undertaking the work by payments calculated on the basis of payments foregone (into which can be included a small incentive element, up to 20% of the total);
- Capital works are grant-aided up to a maximum of 80% of the total costs.

Under the schemes the historic environment is protected in two ways: by cross-compliance whereby all agreement holders are obliged to prevent damage to historic assets such as historic and archaeological features, and by proactive works. Cross-compliance is assessed through on-site monitoring of land –use changes (resulting from say of the Organic Farming Scheme or Hill Farm Allowance) on individual monuments recorded in baseline surveys. Results suggest that monuments are better protected on ESA agreement land than on land not under any agreement. Proactive works include reversion of arable land to permanent grassland, scrub clearance, boundary restoration and fencing for grazing management, as well as site specific measures under ESA Conservation Plans and Countryside Stewardship Scheme Special Projects which permit restoration of a wide range of individual sites, from Bronze Age barrows to World War II airfield buildings.

There are provisions in both schemes for restoration of traditional farm buildings – essentially pre World War I buildings in traditional materials. Under these provisions authentic materials must be used, with replacement on a like-for-like basis. Although grant-aid does not dictate the post –repair use of the building, the fundamental structure of the building cannot be changed.

These programs have been expanded as part of the ERDP and business data about the rural property is now included in the applications for grant-aid so that environmental actions are related to the ability to undertake management action. The environmental data including sites and monuments register information is collated and synthesised and priorities identified; for archaeological remains in need of management action, a payment is available for ‘Restoring historic features in upland landscapes’. This approach has also been adopted by other agri-environmental schemes aiming for sustainable new farming while maintaining and restoring historic features –the Welsh Tir Gofal and the Scottish Rural Stewardship Scheme (Middleton, 2002: 16-18).

#### ii. Historic farm buildings –abandon, repair or convert?

English Heritage grant aids the repair of particularly architecturally significant structures listed as Grade I or II; ESA projects can contribute up to 80% and Countryside Stewardship Schemes up to 50% of eligible costs to land managers undertaking restoration of traditional farm buildings.

The **Redundant Building Grant Scheme**, operated by the Regional Development Agencies, is designed to support the conversion of redundant farm buildings to business use, particularly in Rural Priority Areas. The funds can contribute up to 25% of the cost of necessary building works and can be combined with other public funding, such as the new **Rural Enterprise Scheme (RES)** a part of the ERDP. The RES can assist with the conversion of rural buildings, including historic farm buildings, to alternative business or community use. Where projects will have a minimal economic return for the applicant, funding can vary between 50% and exceptionally 100%. Where an economic return is likely, grant is paid at a rate between 30% and 50%. RES is administered on a regional basis with each region having its own priorities. Farmers considering the future of their farm buildings are

eligible for the cost of a day's advice from a planning consultant in order to help them apply for a grant under the RES. It is hoped that this new flexible scheme will have a major potential for finding new uses for traditional rural buildings – as traditional farm buildings are often unsuited to the demands of modern commercial farming (Trow, 2002:24-25)

Identifying priorities:

Domestic conversions tend to be the most damaging to historic fabric and character and potentially the most intrusive in sensitive landscapes. They also tend to attract inward migration to the countryside rather than serving local communities.

What historic, social and economic criteria should be adopted in order to determine whether conservation or conversion is the most appropriate option for a building? How can the landscape contribution of individual buildings be evaluated? How important are individual farm buildings in encouraging tourists to visit particular landscapes? Because there are an estimated 1.2 million farm buildings dating from before 1914 in England and Wales, English Heritage conducted an audit through local government. Over 62% do not monitor changes to the listed resource; only 12% who have kept a Buildings At Risk register have updated it annually. The outcome shows the need for the most basic guidance on regional character and acceptable levels of adaptation with refinement at county and regional level.

There is considerable appreciation of the value of historic farm buildings among the farming community and DEFRA officials and practical advice was welcomed where it had been provided at the right time.

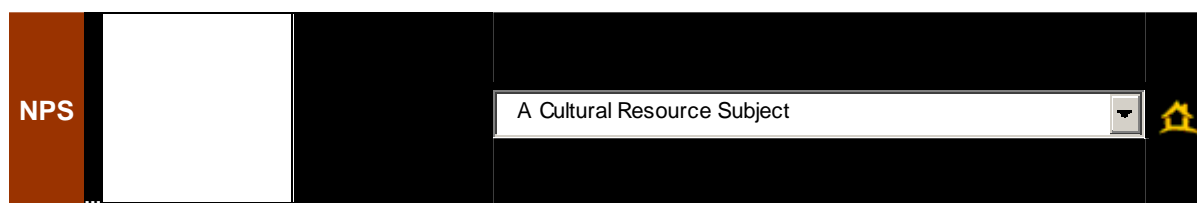
## **B. FRANCE**

The Ministry of Culture only spends funds on its own buildings, the 'monuments historiques'. Local authorities –and there are 36,000 mairies - can decide to protect rural villages through designation of 'secteurs sauvegardés' and then national incentives apply through a tax rebate equivalent to the amount spent which is deducted from the total tax payable. Funds come from the Ministry of Works –over the last 20 years up to 50% of the costs of toilets, insulation and heating have been eligible to encourage reuse of buildings.

The Ministry for Culture has been trying a quality approach to such works compared with the strictly technical. Artisans are generally only available for historic monuments and not for general rehabilitation in the countryside so they have published a lot of small tools to protect and help private owners undertaking works, such as guidelines for new quality designed agricultural buildings; they also fund writers of brochures about history and design features of rural towns through the *Villes et Pays d'art et d'histoire* program which was established in 1995. (Mme Sophie Jevakhof, Ministry of Culture, 8 Rue Vivienne, Paris).

In regional parks which are similar to English national parks with stricter planning controls much restoration and rehabilitation was evident. In the *parc naturel régional du Luberon* many villages belong to the 'prettiest villages in France' designation and are thriving tourist attractions. Surrounding working farms may offer restored *gîtes* in old farm buildings; these are popular with hikers crossing the countryside on long distance paths.

## C: USA - GRANTS, TAX CREDITS AND ASSISTANCE WITH HISTORIC PLACES



# Grants, Tax Credit & Other Assistance ...

Find all you need to know about our wide variety of grants to preserve and protect cultural resources nationwide. Learn about the tax credit for historic rehabilitation. We also provide a variety of other ways to assist you.

### [Grants](#)

### [Tax Credit](#)

### [Other Assistance](#)



### Grants and Assistance

### Grants Information



The NPS administers a number of very successful federal historic preservation funding programs--just take a look at them!

#### [Battlefield Partnership Grants](#)

Once a year as part of its grants program, the American Battlefield Protection Program (ABPP) invites proposals for battlefield preservation projects. Most partners contribute matching funds or in-kind services to these projects.

#### [Certified Local Government Program](#)

NPS and State governments, through their State Historic Preservation Offices (SHPOs), provide valuable technical assistance and small matching grants to hundreds of diverse communities whose local governments are endeavoring to keep what is significant from their community's past for future generations. Jointly administered by NPS in partnership with SHPOs, the CLG program is a model and cost-effective local, State, and federal partnership that promotes historic preservation at the grassroots level across the nation

### **Historic Preservation Fund**

State Historic Preservation Offices (SHPOs) can find information and requirements regarding the distribution of federal monies for carrying out preservation activities in their state as directed under the National Historic Preservation Act.

### **Historic Preservation Fund to Tribes**

Grant information and application material available to tribal organizations and Native American groups for carrying out cultural projects and programs as directed under the National Historic Preservation Act.

### **LWCG Grants Available for Civil War Battlefields**

Land and Water Conservation Fund (LWCF) monies are available to help States and local communities acquire and preserve threatened Civil War battlefield land. Authorized under recent legislation, \$11 million is available for matching grants to units of State and local governments. Private non-profit organizations must apply for these funds in partnership with a State or local government agency. The American Battlefield Protection Program administers the LWCF grants.

### **Native American Graves Protection and Repatriation Act (NAGPRA) Grants**

NPS provides grants to assist qualified museums, Indian tribes, Native Hawaiian organizations, and Alaska Native villages and corporations with implementation of the Native American Graves Protection and Repatriation Act (NAGPRA). Applications and instructions for NAGPRA grants are available for the current year.

### **National Maritime Heritage Grants Program**

Information about this new grants program which supports maritime heritage education and preservation projects.

### **Preservation Technology and Training (PTT) Grants**

Information and application material for grants given by National Center for Preservation Technology and Training (NCPTT) for preservation research, information management, and training projects proposed by non-profit organizations, universities, and federal agencies.

### **PTT Grants and PTT Projects Catalog**

The National Center for Preservation Technology and Training funds projects through its Preservation Technology and Training Grants (PTT Grants) and Preservation Technology and Training Projects (PTT Projects) programs. A catalog of all PTT Grants and PTT Projects, including the resulting products, is available as a searchable database.

### **Save America's Treasures Grants**

Information on matching grants for the preservation and/or conservation of our nation's most significant historic artifacts and places. Federal and non-Federal entities may apply for these grants, which are available on an annual cycle.

NPS has helped revitalize our nation's communities since 1976! If you own a property listed in the National Register (or qualifying local historic district) that is income producing, rehabilitation work may be eligible for a tax credit if it is carried out in accordance with the Secretary's Standards for Rehabilitation.

### **Affordable Housing Case Studies**

Case studies provide practical development and financial information techniques for successfully preserving historic buildings while creating affordable housing. A detailed Tax Credit analysis is incorporated in an easy-to-read chart format. Other sections include Project Data, Project Financing, Rehabilitation Work, and Development Schedule.

### **Federal Preservation Tax Incentives Program**

Historic buildings are tangible links with the past. They help give a community a sense of identity, stability and orientation. The Federal government encourages the preservation of historic buildings through various means. One of these is the program of Federal tax incentives. All you need to know about the program, including an online application form, is available here.

### **Federal Historic Preservation Tax Incentives - Project Status**

You can check the status of your ongoing tax act project here if you have specific information necessary to access the site.

### **IRS Connection**

This is an extremely useful package of information about the tax credit and IRS, and includes these sections as links: Facade Easement Contributions, Frequently Asked Questions, IRS Code and Treasury Regulations, Late Submission of the "Historic Preservation Certification Application," Property Leased to a Tax-Exempt Entity, and Use of the Rehabilitation Tax Credit by Lessees.

### **The Secretary of the Interior's Standards for Rehabilitation**

The Secretary of the Interior's Standards for Rehabilitation are ten basic principles created to help preserve the distinctive character of a historic building and its site, while allowing for reasonable change to meet new needs. The Standards are regulatory (36 CFR 67) for the Federal Tax Incentives Program.

### **The Secretary of the Interior's Standards for Rehabilitation & Guidelines for Rehabilitating Historic Buildings**

A fully navigable web version of the popular book with new color illustrations, the online Guidelines can help property owners, developers, and Federal managers apply the Standards for Rehabilitation during the project planning stage by providing general design and technical recommendations. Unlike the Standards, the Guidelines are not codified as program requirements. Together with the Standards for Rehabilitation they provide a model process for owners.

Looking for other help?  
Use these links to get  
to the right information.

### **Charles E. Peterson Prize**

Named in honor of the founder of the Historic American Buildings Survey (HABS), this student competition of measured drawings is intended to increase awareness and knowledge about historic buildings throughout the United States while adding to the HABS collection at the Library of Congress. Annual awards totalling \$7,000 are dispersed to architecture students and related programs. If you have structures needing HABS drawings, you might solicit the help of a nearby architecture school to meet that need.

### **The Historic Surplus Property Program**

State, county and local governments can obtain surplus federal properties at no cost if the property is listed in, or eligible for listing in, the National Register of Historic Places. Historic properties transferred under this program may be used for public facilities, such as museums and government offices. Properties can also be leased to not-for-profit organizations and to developers who may be eligible to take advantage of federal preservation tax incentives for historic buildings.

### **National Center for Preservation Technology and Training**

NCPTT facilitates the transfer of preservation technology by offering a listing of preservation-related Internet resources, including information about jobs, grants, and conferences, as well as links to Web sites, databases, libraries, archives, and museums

### **National Historic Lighthouse Preservation Act - Pilot Program**

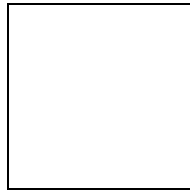
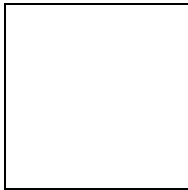
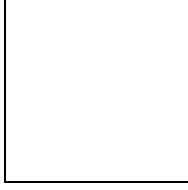
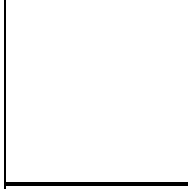
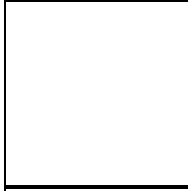
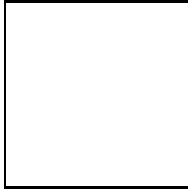
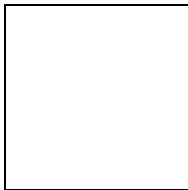
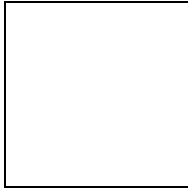
The National Historic Lighthouse Preservation Act of 2000 (NHLPA) authorizes the disposal of historic lighthouses and stations and establishes a national lighthouse preservation program. NHLPA allows lighthouse properties to be transferred at no cost to federal agencies, state and local governments, nonprofit corporations, and community development organizations for park and recreation, cultural and historic, and educational uses. Learn more here about the NHLPA, including the Act, light stations excessed during the pilot program, and the program application.

### **Rivers & Trails**

Rivers & Trails staff assistance includes help in building partnerships to achieve community-set goals, assessing resources, developing concept plans, engaging public participation, and identifying potential sources of funding. On occasion Rivers & Trails provides its assistance in collaboration with nonprofit organizations to further local conservation initiatives. Although Rivers & Trails does not provide financial assistance, we do offer technical assistance

to community partners to help them achieve their goals.

<http://www.cr.nps.gov/helpyou.htm>



### WHO WE ARE

The Federal Historic Preservation Tax Incentives program is one of the nation's most successful and cost-effective community revitalization programs. The program fosters private sector rehabilitation of historic buildings and promotes economic revitalization. It also provides a strong alternative to government ownership and management of such historic properties. The Federal Historic Preservation Tax Incentives are available for buildings that are National Historic Landmarks, that are listed in the National Register, and that contribute to National Register Historic Districts and certain local historic districts. Properties must be income-producing and must be rehabilitated according to standards set by the Secretary of the Interior.

### PROGRAM PARTNERS

Jointly managed by the National Park Service and the Internal Revenue Service in partnership with State Historic Preservation Offices, the Historic Preservation Tax Incentives program rewards private investment in rehabilitating historic buildings. Prior to the program, the U.S. tax code favored the demolition of older buildings over saving and using them. Starting in 1976, the Federal tax code became aligned with national historic preservation policy to encourage voluntary, private sector investment in preserving historic buildings.

### HOW WE HELP

The Historic Preservation Tax Incentives have proven an invaluable tool in revitalizing communities and preserving the historic places that give cities, towns, and rural areas their special character. The Historic Preservation Tax Incentives generate jobs, both during the construction phase and in the spin-off effects of increased earning and consumption. Rehabilitation of historic buildings attracts new private investment to the historic core of cities and towns and is crucial to the long-term economic health of many communities. Enhanced property values generated by the Historic Preservation Tax Incentives program result in augmented revenues for local and state government through increased property, business, and income taxes. Historic Preservation Tax Incentives also create moderate and low-income housing in historic buildings.



## STATS

Since 1976, the Historic Preservation Tax Incentives have produced the following benefits for the nation:

- more than 27,000 historic properties have been rehabilitated and saved
- the tax incentives have stimulated private rehabilitation of over \$18 billion
- more than 149,000 housing units rehabilitated and 75,000 housing units created, of which over 30,000 are low and moderate-income units.

## RELATED HPS PROGRAMS

[Technical Preservation Assistance](#)

## NPS PROGRAMS

[National Register of Historic Places](#)

[National Historic Landmarks Survey](#)

## NATIONAL ORGANIZATIONS

[State Historic Preservation Offices](#)

[Internal Revenue Service](#)

## LEARN MORE ABOUT IT

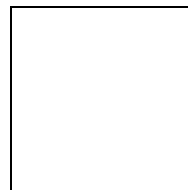
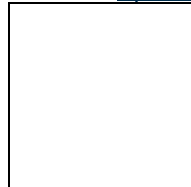
**Write:** Federal Historic Preservation Tax Incentives, Heritage Preservation Services (2255), National Park Service, 1201 Eye St. NW, Washington, DC 20005

**Phone:** Michael Auer at (202) 354-2031

**FAX:** (202) 371-1616

**E-Mail:** [nps\\_hps-info@nps.gov](mailto:nps_hps-info@nps.gov)

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3 July 2003

