

**RESPONSE TO THE PRODUCTIVITY COMMISSION'S DRAFT REPORT
Conservation of Australia's Historic Heritage Places
Submission by the Heritage Council of Victoria
February 2006**

KEY POINTS

Historic heritage places contribute to Australia's economy and social identity, and include buildings, structures, archaeological sites, urban areas and precincts, cemeteries, parks, gardens and other made-made and cultural landscapes.

Heritage listing in Victoria is based on an assessment of significance (against established criteria) and comparative analysis, which results in a rigorous and transparent system that ensures heritage places meet the appropriate threshold of state or local significance.

Extensive negotiation takes place between the individual property owner, regulatory agency and other stakeholders at a time that allows realistic proposals to be considered. The decision making process effectively balances the economic considerations of the property owner with the cultural heritage significance of the listed place.

The current prescriptive listing system in Victoria is neither excessive nor inequitable; it has been refined over 30 years and is accepted by the vast majority of heritage place owners and the wider community. The Heritage Council opposes any move to voluntary listing as it would place the private property rights of the individual over those of the wider community of future generations.

Covenants that run with the title have been used effectively for complex heritage sites in Victoria, and can complement but not replace regulatory controls.

The limited funding for the conservation of historic heritage places made available by the Heritage Council and Victorian Government is appropriately targeted and equitably allocated without political interference.

Heritage controls are an established and integral part of the Victorian Planning System and are no different from any other form of land use or development control.

There is no compelling evidence to suggest that heritage listing has a significant adverse impact on private property value.

The principle of subsidiarity should be applied to listing and management decision making, but due to the limited revenue gathering powers of State and local governments the Australian Government has a duty to fund heritage conservation at all levels.

Chronic skills shortages exist in heritage trades and professions. A collaborative approach between Commonwealth, State and Territory heritage and education organisations is required to address this problem.

1.0 Introduction

The Heritage Council of Victoria welcomes the opportunity to respond to the Productivity Commission's Draft Report on the Conservation of Australia's Historic Heritage Places. As with the first submission, views expressed do not necessarily reflect those of the Victorian Government or the Heritage Chairs of Australia and New Zealand.

The Heritage Council of Victoria is independent of the government, with its members covering a broad range of disciplines and experiences regarding heritage matters. Through our combined experience, both interstate and internationally, we are able to provide objective comment.

This submission will focus on:

- the Productivity Commission's findings, key recommendations and its misconceptions held about the process of conservation of historic places in Victoria;
- opportunities for government involvement raised in our initial submission which were not acknowledged in the Draft Report; and
- the misconceptions or misunderstandings on the operations of the three tiers of government based on our past experiences.

This submission will not focus on any errors in commentary and data regarding Victoria, as we understand this will be addressed in the Victorian Government submission.

The scope of this submission will refer to the original terms of reference, initially prescribed by the Treasurer Peter Costello, which includes archaeology, maritime archaeology, cultural landscapes and parks and gardens.

2.0 The Value of Historic Heritage

The Heritage Council agrees with the Productivity Commission that historic heritage is of value to Australia and should be conserved for current and future generations. Victoria has a long history of appreciating its historic heritage places and recent studies have reinforced the view that the community's understanding that heritage is a valued aspect of Australian culture. Historic heritage places form part of our shared cultural identity and one that would be missed if not conserved.

It is unfortunate that the breadth of what is considered historic heritage and is valued by the community is not reflected in the scope of the Productivity Commission's Draft Report. The terms of reference and Productivity Commission Issues Paper of May 2005 identified a wider range of historic heritage places, including archaeological sites, cemeteries and made-made landscapes (stock routes, gardens, mining sites and fishing areas) which have largely been overlooked in favour of built heritage, and in particular domestic dwellings.

The community's broadened understanding and appreciation of the value of historic heritage conservation is reflected in volunteerism through programs such as the Heritage Council's highly successful Hands on Heritage program, which is run in partnership with Conservation Volunteers Australia. Such programs aid and encourage the community to recognise and actively conserve their own historic heritage places.

As Helen Gibson, new Deputy President of the Victorian Civil and Administrative Tribunal (VCAT) and at the time head of Planning Panels Victoria has succinctly said:

"Community values have changed in Australia with respect to heritage. From a time typified by the 1960s when it was a battle to retain heritage assets of even State significance let alone what were perceived as just 'ordinary old houses'; when whole neighbourhoods in inner Melbourne were bulldozed by the Housing Commission in the name of slum clearance, the community now values and demands protection for its heritage." (Ballarat Planning Scheme Amendment C58 Heritage Amendment Panel Report, January 2004, p.120)

Historic heritage places contribute to Australia's economy and social identity, and include buildings, structures, archaeological sites, urban areas and precincts, cemeteries, parks, gardens and other made-made and cultural landscapes.

3.0 Description of Victoria's Heritage Listing System a systematic listing system

The Victorian heritage management system has evolved over the last 30 years and, while not without some imperfections, is one of the most rigorous and well established in Australia, serving the community effectively.

The community views heritage conservation in Victoria as successful and representative of Victoria's cultural diversity. This has been demonstrated by recent attitudinal surveying which identified that 88% of Victorians surveyed agreed or strongly agreed that heritage plays an important part in Australia's culture and only 10% believe that too much heritage is protected (Allen Consulting Group, 2005). This research is reinforced by the low number of objections to listing on the Victorian Heritage Register (2 out of 56 in 2004/05, 3 out of 82 2003/04 and 7 out of 65 in 03/02) - refer to Table 1 on page 5 for further detail.

The Draft Report revealed that the Productivity Commission has some misconceptions about the Victorian listing process. The primary misconception lies in what matters are considered at the time of listing. The intellectual separation of listing from management is enshrined in the Victorian legislation, which provides an objective assessment of the significance of an historic heritage place. This is one of the key principles established by the Burra Charter, and is a feature of the heritage system in all Australian jurisdictions.

3.1 State Government Listing

Is this place of cultural heritage significance to the State of Victoria?

Nominations for inclusion in the Victorian Heritage Register are considered strictly on the nature and degree of cultural heritage significance. The owner of the nominated place is consulted throughout the process, and has the opportunity to challenge the expert assessment of cultural heritage significance. Under the regime established by the Victorian *Heritage Act 1995* management issues, permit exemptions, community benefit and financial considerations are not taken into account during the process of assessing places for the Victorian Heritage Register.

In accordance with the Victorian *Heritage Act 1995*, any individual or organisation may nominate a place for inclusion on the Victoria Heritage Register (VHR), including the Executive Director (a statutory position established under the Act). If a nominated place satisfies at least one of Heritage Council's criteria, as laid out in the Act, it is assessed by the staff of Heritage Victoria. Many private residential heritage places may only meet one or two criterion; whereas places with a multi-layered range of values, like the Fitzroy Gardens, might meet all seven criteria. The sole question addressed in this process is whether or not a place is of cultural heritage significance to the State of Victoria.

The assessment process consists of a visit, research into the cultural heritage significance of the place and a comparative analysis. Comparative analysis is common practice in assessments, which allows rigorous comparison with other similar places to ensure that the state threshold is met. A comprehensive registration report is prepared which includes a written description of the extent of the registration; a map of the place; and a statement of cultural significance, providing a history of the listed place and what, how and why the place is considered significant to the State of Victoria. In all cases, the application of the 'state significance' threshold is understood to be a very high bar.

Copies of the registration reports are appended for a privately owned home, Fitzroy Gardens, Hawthorn Bowling Club and Portland Flat Road Bridge.

The Executive Director recommends the nominated place for one of three outcomes:

1. the place is of state significance and should be added to the Victorian Heritage Register;

2. the place is of local significance and recommends its inclusion on the Heritage Overlay, either as a individual place or as part of a Heritage Overlay; or
3. the place does not meet any on the criteria and should not be added to any statutory list.

If submissions are made against the recommendation, the Heritage Council reviews the submission and decides on the outcome of the nomination. If the owner opposes State listing, they can request to be heard by the Heritage Council and challenge the assessment of significance. If there are submissions in support of the recommendation or no submissions are made in the 60 day timeframe, the Heritage Council decides on the outcome of the nomination.

From time to time, gaps in the VHR have been addressed as a result of thematic, typological and area heritage studies. The outcome of a timber bridges study, which was a partnership between Heritage Victoria, VicRoads and National Trust of Australia (Victoria), has led to the inclusion of over twenty of the best representations on the Heritage Register. A study of logging in Victoria has also led to the inclusion of over twenty sites associated with the timber industry on the Heritage Register.

Thematic and typological studies are funded each year by the Heritage Council to continue to redress identified gaps in knowledge of Victoria's heritage. For example, studies of places of archaeological potential are currently in progress in selected priority areas of the Cities of Maribyrnong, Greater Geelong and Port Phillip; identification and assessment studies of the maritime infrastructure sites of Port Phillip Bay are well advanced; and a study of Victoria's coal mining heritage has commenced.

3.2 Local Government Listing

Is this place of significance to a community or locality?

Places of local significance are generally identified through local heritage studies undertaken on a geographic basis by experts in the relevant fields. The Victorian Planning Provision Practice Note 'Applying the Heritage Overlay' recommends that individual places as well as precincts and areas should be assessed against the (former) Australian Heritage Commission's eight criteria for the Register of the National Estate. The guidelines identify that a statement of significance should be provided to justify the application of the overlay. While some older listings at the local level do not have statements of significance, it has long been the common practice to provide these. Furthermore, many local government authorities periodically review and update the older citations (for example, the City of Melbourne is currently revising the citations for its heritage precincts, including the provision of clear statements of significance to guide residents and developers in appropriately managing change).

Before places identified as being of significance to the municipality are included on the Heritage Overlay, the planning scheme amendment is publicly advertised and open for comment. Where the owner and the council can not come to a resolution regarding the recommendation, submissions are heard by an independent panel appointed by the Minister for Planning to ensure procedural fairness. As for places nominated to the VHR, the vast majority of owners do not object to the inclusion of their heritage place on a local planning scheme Heritage Overlay. For instance, when the City of Whitehorse recently advertised a planning scheme amendment to add 148 individual places to the Heritage Overlay, only 9 objections were received.

It should be noted that not every place nominated is included on the Heritage Register or Heritage Overlay. For example, in recent years relatively few privately-owned residential places have been added to the VHR. This is because the Register already contains many of the best representative samples of each domestic dwelling period, style, theme, history, craftsmanship, architect, etc.

Heritage listing in Victoria is based on an assessment of significance (against established criteria) and comparative analysis, which results in a rigorous and transparent system that ensures heritage places meet the appropriate threshold of state or local significance.

4.0 Permits and Consents *the role of negotiation*

In Victoria, extensive negotiation between the owner, the responsible authority and other stakeholders takes place as a normal part of the process for consideration applications to undertake works to, or development of, listed heritage places. It is through the permit process that the costs and economic impact to the owner, benefit to community and effect on the cultural heritage significance of the place are assessed for specific development proposals.

4.1 Permits under the *Heritage Act 1995*

Permits for works to alter places on the Victorian Heritage Register are issued by the Executive Director, often after significant negotiation has been undertaken between the owner and Heritage Victoria officers. Heritage Impact Statements are commonly required to test the impact a development proposal has on the cultural heritage significance of the place. The Executive Director is also required under S.73 (1) (b) of the *Heritage Act* to consider “the extent to which the application, if refused, would affect the reasonable or economic use of the registered place... or cause undue financial hardship to the owner...”. The applicant may appeal the Executive Director’s permit if they disagree with the decision or associated conditions, which is heard by a committee of the Heritage Council.

There may be a substantial gap in time between the registration of a heritage place and a permit application being made because many owners will not have a medium or long term plan for its conservation, use or development at the time of listing. The needs of an individual owner will change over time as will the economic and social environment in which they manage the historic heritage place, making the need for change or the opportunity to develop impossible to accurately assess at the point of listing.

Permits may be applied for any capital works, subdivision or development proposal including the demolition of all or part of the listed place. As a result of individual negotiations that are undertaken as part of the permitting process, only 1% of the 400-500 permits applied for each year for places on the VHR are contested (see table below).

Permits for Registered Places	2002 - 2003	2003-2004	2004-2005
Number of permit applications	436	416	379
Number where the owner of a listed property sought further permit exemptions or changes to the current extent of registration	7	11	4
Number of permits refused	5	4	5
Number of permits/refusals appealed	9	3	3

When the Executive Director’s recommendation to add an historic heritage place to the VHR is advertised, the owner and other interested parties (e.g. if the nominator is a third party) are sent a draft Registration Report, including the permit policy. The development of the permit policy for each registered place is based on the retention of the cultural heritage significance of the place while allowing reasonable economic use and adaptation and involves extensive negotiation with the owner. Permit exemptions are applied to every listed place to ensure the best possible outcome for the owner and the community.

In situations where a more complex place is included on the VHR, Heritage Victoria may advise the owner to commission a conservation management plan (CMP) to assist in the ongoing management of the historic heritage place. With agreement between the owner and the Heritage Council, the conservation management plan may be used to establish permit policies and exemptions that are formally adopted as part of the registration document. Not all places will need a detailed CMP to determine the appropriate management of cultural significance, as these can be time consuming and costly to

produce. The Heritage Council and Heritage Victoria often provide financial assistance and practical advice in the form of a standard brief to assist owners of heritage places in their preparation.

There are currently two types of permit exemptions: site specific exemptions and exemptions for liturgical purposes to carry out works to places of worship. The Heritage Council is currently preparing a standard range of exemptions for all places on the Victorian Heritage Register to increase certainty and transparency for heritage place owners, and to reduce their compliance burden. Typical activities that would be exempted include routine maintenance and cleaning and like-for-like repairs.

CASE STUDY: former GPO Building, Melbourne

The former GPO in Melbourne's CBD, built in 1852, was included on the Victorian Heritage Register in 1992 due to its historical, social and architectural significance. In 2000, a heritage permit was issued for the construction of a 13 level hotel, retail and restaurant complex to the north of the building with the GPO converted into a restaurant and part of the hotel. The plans for redevelopment could not progress when a fire caused extensive damage in 2001. A heritage permit was issued in 2003 for the revised development of the GPO for retail and hospitality use. Although there was extensive consultation with the owners on a wide range of development proposals, a negotiated agreement could not have anticipated a catastrophic event, such as a fire, or the major shift in Melbourne's social and economic environment that has occurred over the past five years. For instance, in Melbourne's CBD the total number of dwellings increased from 1,334 in 1996 to 7,732 in 2001 contributing to a reinvigoration of the city's hospitality and retail sectors (ABS, 2005).

For a positive review of this case study refer to the attached article from *Property Victoria*, March 2005, p. 28.

4.2 Archaeological Consents

In a parallel process for permits for places on the Victorian Heritage Register, all archaeological consents are based on an extensive process of negotiation. As part of the consent process, a range of issues and options are discussed and negotiated between the applicant, the responsible authority and the project archaeologist. These issues include mitigation or avoidance options, excavation and investigation strategies, site interpretation outcomes, media and community promotion, research outcomes and a range of other variables. Importantly, it is the statutory framework that ensures that all the relevant parties are actively involved in negotiating an appropriate outcome for the archaeological site.

4.3 Local Government Permits

Planning permission for heritage places covered by a Heritage Overlay on the local planning scheme is treated in the same way as other planning matters. Heritage matters are considered alongside any number of other amenity, traffic, siting or planning matters. Expert advice on the impact a development proposal may have on the cultural heritage significance of the listed place will be obtained where appropriate, and the decision of the local planning authority will balance this with other relevant matters within the planning scheme. If after negotiation, the owner is dissatisfied with the determination of the local council they may appeal to VCAT.

4.4 Heritage Council Support For Local Government - Some Initiatives

To improve the consistency of decision making at local government level the Heritage Council is currently undertaking a number of projects including the development of local government heritage guidelines, and a review of the heritage advisory service and specific aspects of the operation of the Heritage Overlay control. The key reason for the preparation of the local government guidelines is to improve the consistency of the use of heritage precinct and area planning controls. The application of the Heritage Overlay

control to individually listed places has not been identified as a priority aspect for the review because, in the experience of the Heritage Council, these are generally clearer, better understood and more consistently administered.

Extensive negotiation takes place between the individual property owner, regulatory agency and other stakeholders at a time that allows realistic proposals to be considered. The decision making process effectively balances the economic considerations of the property owner with the cultural heritage significance of the listed place.

5.0 Voluntary Listing removing the 'stick'

The Productivity Commission's recommendation that negotiated conservation agreements should be the primary protection mechanism for privately owned historic heritage places is critically flawed. Such a system would place undue weight on the current importance and economic value and would substantially ignore the future and bequest value of historic heritage places.

To use the analogy provided by the Productivity Commission's Draft Report, the Heritage Council of Victoria asserts that any effective system for achieving the conservation of historic heritage places will rely on a good balance between 'carrots' and 'sticks'. The Heritage Council agrees that a heavier reliance on 'carrots' would be welcomed, should increased resources be made available, but utterly rejects the proposition of the Productivity Commission that the statutory protection 'stick' be removed altogether.

Prescriptive listing is a successful mechanism for heritage conservation in Victoria. Taken together, the listing and permit processes effectively balance the private property rights of the individual owner with the cultural significance the place holds for the wider community.

While the one of the main recommendations in the Draft Report is voluntary listing, the Productivity Commission does not acknowledge the low rate of owners who contest the nomination of their place for inclusion on the Victorian Heritage Register. The table below demonstrates that the vast majority of owners accept the listing of their historic heritage place.

State Listings 2002-2005

	2002- 2003	2003-2004	2004-2005
Number of places nominated to the Victorian Heritage Register	65	82	56
Number of places recommended for addition to the Victorian Heritage Register	47	36	33
Number of places which were NOT recommended for addition to the Victorian Heritage Register	18	46	23
Number of hearings where the owner objected to the inclusion of a place on the Victorian Heritage Register	7 (14%)	3 (8%)	2 (6%)
Numbers where the nominator opposed the recommendation not to include a place on the Victorian Heritage Register	5	6	9
Number Executive Director's decisions that attracted submissions or were heard by Heritage Council, including those not recommended for the Victorian Heritage Register ¹	26	33	18

¹ These figures include hearings called, and objections made, by the nominator (such as the owner, National Trust or community group) when the Executive Director has recommended to not include a place on the VHR.

The values and significance of many historic heritage places, especially archaeological sites, are not immediately identifiable or understood by their owners. Without statutory listing, in this case inclusion on the Victorian Heritage Inventory, significant archaeological places such as the mid-19th century urban neighbourhood excavated at Casselden Place in downtown Melbourne would not have been identified, appropriately excavated and interpreted.

CASE STUDY: Casselden Place, Melbourne

The excavation of parts of the historic “Little Lon” area of Melbourne in the late 1980s demonstrated that this part of the city’s mid-late 19th century archaeological record was substantially intact. In 2000, Heritage Victoria began negotiating with the site owners about a proposal to develop a large area within the district. The excavation unearthed extensive and highly significant building remains, a quarter of a million artefacts and other deposits from the early decades of Melbourne’s settlement.

Initially, the developer was very reluctant to make the site available for archaeological work, and to fund the project. However, through consultation and discussion of the needs of the development program, it was possible to organise a schedule for the archaeological investigations that did not significantly impact on the site construction program. Extensive media coverage and strong levels of community involvement and interest demonstrated a public fascination with the archaeological project.

The owner, who was also reluctant and had reservations, was soon proudly promoting its involvement, and will soon open a self-funded extensive, permanent archaeological and historical interpretation scheme in the foyer of the new office tower building, enabling an ‘invisible’ but fascinating and important aspect of the city’s history to be remembered and celebrated.

Many aspects of the statutory approvals that authorised the excavation and development of the site were negotiated between the site owner and Heritage Victoria. But it is hard to imagine that the applicant would have supported the project to the same extent, if at all, unless there was a strong statutory requirement. It was not until the archaeological character and significance of the site was demonstrated during excavation that the developers realised why the requirement for archaeological work had been made. They have become enthusiastic supporters and see the heritage values as adding cache to their new building.

The heritage listing system in Victoria is neither excessive nor inequitable, and it continues to evolve and adapt to changing cultural trends. For this reason, the Heritage Council fails to see any evidence to support the recommended radical overhaul proposed by the Productivity Commission given the current system is effective and accepted by the community.

The current prescriptive listing system in Victoria is neither excessive nor inequitable; it has been refined over 30 years and is accepted by the vast majority of heritage place owners and the wider community. The Heritage Council opposes any move to voluntary listing as it would place the private property rights of the individual over those of the wider community of future generations.

6.0 How Funding Support Should Be Triggered

The Heritage Council submits that it is not possible for a voluntary negotiated agreement to foresee every possible permutation or potential development proposal that the owner may propose for that place at either the point of listing or renegotiation of the conservation agreement. Due to their limited time-frame and inability to address changing societal values and economic environment, negotiated agreements would only address the present importance and value of heritage and would substantially undervalue less tangible, but equally important option, existence and bequest values.

In many cases considerable time will have passed between the listing of a property and the owner embarking on a capital works or development proposal, making it impossible to formulate an appropriate negotiated agreement at that time. The introduction of this system

will cause significant additional cost for both owners and responsible authorities as hypothetical development scenarios will end up being negotiated which may never eventuate.

7.0 Victorian Heritage Covenants

Section 85 of the *Heritage Act* enables the owner to enter into a covenant with the Heritage Council which binds the owner as to the development, use or conservation of a place. These effectively operate as negotiated conservation agreements which complement but do not replace regulatory controls. While the use of covenants is not common, it has been a useful tool to ensure new development will also provide for appropriate heritage conservation outcomes. The former Victoria Brewery is one such case. The Heritage Council and the body corporate entered into a covenant due to the large number of privately owned places within the complex and to ensure the objects (e.g. historic brewing machinery) were appropriately conserved as they were considered to be equally as significant as the fabric of the building.

If an owner of land has agreed to enter into or vary a covenant, the Heritage Council must publish a notice in the Government Gazette and local circulations. The notice must contain the location of the land, details of the proposed covenant or variation of the covenant and a statement calling for written submissions within 28 days of the publication. If the Heritage Council considers that owners of land in the vicinity of the land concerned may be affected by the proposed covenant or variation of a covenant, the Heritage Council may give notice of the details of the proposed covenant or variation of a covenant to those owners.

The Heritage Council may approve or refuse a covenant or variation of a covenant made between an owner and the Heritage Council. Covenants entered into under S.85 of the *Heritage Act* are perpetual and run with the title.

8.0 Conservation Covenants

The Productivity Commission refers to the conservation covenant model for native vegetation established by Trust for Nature in Victoria and similar organisations in other jurisdictions. Although this mechanism has proven successful in protecting areas of natural significance in private ownership it does not replace existing regulatory control in the Victorian Planning Provisions for significant vegetation. In Victoria, for instance one or more Environmental Significance¹, Significant Landscape² or Vegetation Protection³ Overlay may apply to the area of land under covenant, which provides a degree of regulatory control through the planning scheme. Likewise, the application of conservation covenants does not solely rely on the altruism of the property owner, as tax incentives are made by available by the Australian Government for any diminution of the market value of the property in excess of \$5,000. The Heritage Council notes that the conservation covenants already operating in Victoria and elsewhere for the natural environment are in perpetuity, unlike the fixed period within the Conservation Agreements as proposed by the Productivity Commission.

The Heritage Council believes that negotiated conservation agreements can fulfil an important role in providing for improved conservation outcomes for historic heritage places when used in conjunction with regulatory controls, but not as a replacement. Their importance would be further enhanced if they if they were associated with appropriate tax incentives. The introduction of negotiated conservation agreements as the only mechanism for protecting and providing incentives for individual historic heritage places in private ownership will lead to the

¹ Environmental Significance Overlays (ESO) within the Victorian Planning Provisions are placed over land of environmental significance to achieve a particular stated objective. Permits are required to construct buildings or fences, remove vegetation or subdivide land depending on the contents of the schedule.

² Significant Landscape Overlays (SLO) are applied to conserve and enhance the character or significant landscapes. Permits are required to construct buildings or fences, or remove vegetation depending on the contents of the schedule.

³ Vegetation Protections Overlays (VPO) are applied to protect areas of significant vegetation. Permits are required to remove vegetation.

loss of many individual places. This will effectively value the current property owner's equity over that of the wider community and future generations.

Covenants that run with the title have been used effectively for complex heritage sites in Victoria, and can complement but not replace regulatory controls.

9.0 Heritage Incentives providing the 'carrots'

We concur with the finding by the Productivity Commission that, due to market failure, there is a justified need for government funding for heritage places. Furthermore, an increase in funds is necessary to appropriately conserve Victoria's heritage.

The vast majority of heritage conservation work undertaken in Victoria takes the form of regular maintenance and repair works by the heritage place owner. In the main, this work is undertaken irrespective of heritage listing as part of normal asset management, whether the owner is private or public sector, without any recourse to specific public heritage funds. The Victorian Government, local councils and the Heritage Council provide a range of incentives, some of which are available to all heritage place owners (such as the heritage advisory service) and others such as grants and loans which are distributed according to need and the benefits they bring to the wider community.

In Victoria assistance is currently provided to the owners of historic heritage properties in a variety of different ways:

- through free professional advice (heritage advisory services delivered through local government but part funded by the Victorian Government);
- the provision of free technical literature and other guidance to assist owners and their advisors;
- grant schemes provided by the Heritage Council of Victoria (Financial Assistance Program⁴);
- grant and low interest loan schemes provided by the State Government (Government Heritage Restoration Project⁵ 1994-98, Public Heritage Program⁶ 1999-2003, Victorian Heritage Program⁷ 2003-2005, and the current heritage streams of Creating Better Places⁸ 2005-2009);

⁴ The Financial Assistance Program is funded through the Heritage Fund (a trust fund administered by Heritage Council) and is made available to any place (or object) on the VHR or place within a Heritage Overlay for urgent conservation works. Support is provided in the form of low (or no) interest loans or direct grant aid. Approximately \$300,000 is distributed per annum.

⁵ The Government Heritage Restoration Program (GHRP) was established in 1994 to take the place of funding previously provided through the Victorian Government's Department of Public Works. The GHRP provided a total of \$16 million to 135 government owned places from 1994 until 1999.

⁶ The Public Heritage Program (PHP) replaced the GHRP providing \$8.3 million over three years from 1999-2002. Government owned heritage places, those managed under of Committee of Management from the Crown, and those owned by local councils were eligible for funding. The PHP contained a strategic funding component which targeted public heritage places at risk.

⁷ The Victorian Heritage Program (VHP) distributed \$4.5 million over two years from 2003 until 2005. As well as publicly owned places, privately owned places with demonstrable public benefits (such as places of worship) were eligible. \$550,000 of the VHP funding was allocated to the Places at Risk program which targeted privately owned places on the VHR which are at risk due to neglect.

⁸ Creating Better Places (CBP) is a grants program funded out of the Department of Sustainability and Environment which provides funding to local councils for urban improvement schemes and direct grants to the owners of heritage places under the two heritage streams. Two million dollars was made available to fund heritage conservation works to publicly owned places (including those owned by local councils or managed by a Committee of Management) throughout Victoria and any heritage place (including privately owned places where public benefit can be demonstrated) with designated urban 'activity centres' and Melbourne's growth corridor.

- limited grant and loan schemes provided by some local councils;
- rates rebates offered by some local councils;
- remitting or deferring of land tax or rates to places on the VHR (seldom used provision under S.144 of the Heritage Act).

Direct grant and low (or no) interest loans schemes operated by the Heritage Council and the Victorian Government are advertised with applications considered in quarterly or annual batches respectively. Eligible work is generally limited to repair and restoration, the appropriateness of which assessed against urgency, need and the impact it will have on heritage significance. Each application is tested against criteria that generally include social/community cohesion benefits, economic benefits, environmental benefits and cultural heritage benefits. Geographic spread and other criterion are also considered in some cases. To be eligible for these schemes, a place must be included on a State or local heritage list.

The assessment process is undertaken in a rigorous and transparent way with the Heritage Council deciding on applications for its grant and loan schemes (Financial Assistance and Places at Risk) and making final recommendations to the Minister in the case of Victorian Government funded schemes. Demand for funds has exceeded the amount of available money for all of these grant schemes. For instance, the two heritage streams of the Creating Better Places⁹ grant program 2005/06 attracted in excess of \$10 million of eligible projects for a total of \$2 million of available funds.

In most cases it is not possible to foresee future financial assistance need for individual places at the time of listing. This would be dependant on a wide range of economic and other factors including future development proposals and market demands, which are not possible to accurately forecast during the listing assessment process.

The State Government is unable to fund every place of State significance, and likewise the local government is unable to assist all owners with places on Heritage Overlays. In addition, there are major heritage projects that require financial support that is beyond the capacity of State or local government. For instance, the conservation of HMVS Cerberus, a monitor-class ironclad of international significance (and was recently added to the National Heritage List), can not be secured without a major contribution from the Australian Government towards its \$7 million stabilisation and conservation costs. Although projects such as this have significant support from the community and non-governmental organisations alike, they have little chance of success without major Australian Government investment.

Similarly, there are already nine historic heritage places in Victoria which have been included on the National Heritage List. These places have varying resource requirements and conservation issues and, to date, the willingness of the Australian Government to directly contribute to these is uncertain

The Heritage Council notes the absence of any comment by the Productivity Commission's Draft Report on the current inequality of funds distribution between natural and cultural heritage, and would urge the inclusion of a finding about this matter be included in the Final Report. Recommendations are also sought regarding the applicability of incentives that currently only exist for nature conservation through the tax system, direct Commonwealth grants (the Tasmanian Private Forest Reserves Program and the Queensland Vegetation Incentive Programme etc.) or tax deductibility as an incentive for private sector conservation and to encourage public philanthropy for publicly accessible places (e.g. churches).

The limited funding for the conservation of historic heritage places made available by the Heritage Council and Victorian Government is appropriately targeted and equitably allocated without political interference.

⁹ Refer to footnote 8 on page 10.

9.0 Heritage Controls and Property Rights

The Heritage Council is deeply concerned the Productivity Commission appears to hold the view that heritage controls are different from any other kind of planning regulation. Heritage controls are no different to other State and local government controls over land use and development, which are provided for the wider public good.

In Victoria for instance, heritage controls at local government level exist as overlays which may be applied to any underlying land use zoning. These operate no differently from the other overlays within the Victorian Planning Provisions, such as the Significant Landscape Overlay¹⁰, Design and Development Overlay¹¹ or Floodway Overlay¹². All overlays may be applied to individual properties, small numbers of properties or larger areas. They are applied to protect the public good, whether for safety, mitigation of flooding, protection of amenity, views, landscapes, natural vegetation or heritage. Heritage Overlays, both over individual properties and those covering heritage precincts and areas, protect heritage values for the wider public good.

In addition to the submission made by Dr Lynne Armitage¹³, there is a large body of evidence demonstrating that in the majority of cases heritage listing does not depreciate the value of one's property. A study was conducted on the sale records and council valuations for 100 residential properties in Geelong in the 1980s, with half of the properties subject to heritage controls. It was found, "that other factors which influence property values such as street width, location, off-street parking have the most significant impact on property value. These results note that there was an increase in the value of the buildings with heritage controls of 19.5% compared to 6.9% for those properties which were not subject to heritage controls" (Heritage Victoria, p.6).

Heritage controls are an established and integral part of the Victorian Planning System and are no different from any other form of land use or development control.

There is no compelling evidence to suggest that heritage listing has a significant adverse impact on private property value.

10.0 The Role of Government and the Principle of Subsidiarity

The Heritage Council agrees with the Productivity Commission's Draft Report that the principle of subsidiarity should apply for listing and management (e.g. permitting), which is most appropriately dealt with at the lowest appropriate level of government. However, due to the limited tax gathering power and relative financial resources it would be inequitable to apply the principle of subsidiarity to the funding of incentives. For instance, the economic hardship of many local governments makes it difficult for them to provide support for the conservation of locally significant places without direct involvement of the State Government and, previously, the Commonwealth through the National Estates Grants Program.

The Draft Report appears to overemphasise the current role of the Commonwealth Government in the conservation of historic heritage places that are not in its ownership. The effectiveness of the limited number conservation agreements prepared for places on the National Heritage List has also been overstated in the opinion of the Heritage Council.

¹⁰ Significant Landscape Overlays (SLO) are applied to wider areas to conserve and enhance the character or significant landscapes. Permits are required to construct buildings or fences, or remove vegetation depending on the contents of the schedule.

¹¹ Design and Development Overlays (DDO) are applied to specific sites and areas where specific design and built form outcomes are required to achieve amenity and other public benefit objectives.

¹² Floodway Overlays (FO or RFO) are applied to specific sites and areas to identify waterways and major flood paths, protect water quality and waterways and minimise flooding risk brought about by new development. Permits are required to subdivide land or construct a building.

¹³ Armitage & Irons, June 2005, Managing Cultural Heritage: Heritage Listing and Property Value (Productivity Commission Submission No. 182)

The principle of subsidiarity should be applied to listing and management decision making, but due to the limited revenue gathering powers of State and local governments the Australian Government has a duty to fund heritage conservation at all levels.

11.0 Skills Shortages

The scarcity of appropriately trained heritage professionals and skilled tradespeople is an ongoing concern to the Heritage Council, and was raised in a number of submissions to this inquiry. It is therefore disappointing that the Productivity Commission's Draft Report dedicates little space to discussing the current trade and professional skills shortages. Associated with this issue, and also neglected in the Draft Report, is the lack of available training for both heritage professionals and tradespeople.

The Heritage Council has identified that training is necessary for not only the fields of traditional trade skills and crafts associated with building conservation but also for heritage professionals such as conservators, historical archaeologists and planners. These shortages impact on the quality and timeliness of decision making and ultimately conservation outcomes.

Chronic skills shortages exist in heritage trades and professions. A collaborative approach between Commonwealth, State and Territory heritage and education organisations is required to address this problem.

12.0 Conclusion

The Heritage Council welcomed this Inquiry with the expectation that it would provide recommendations to achieve greater public involvement in heritage conservation. We also expected that incentives would be addressed to help remedy the inequality between natural and cultural heritage conservation and the inability of local government to effectively and directly fund heritage conservation. Unfortunately, the Draft Report provides disappointingly little useful analysis or direction.

For example, the Productivity Commission's Draft Report states that government intervention can only be justified if the benefit to the community is greater than the costs. However, it does not suggest a mechanism under which greater community participation in the conservation of heritage places might be encouraged. Mechanisms such as tax deductibility as an incentive for private sector conservation and to encourage public philanthropy for publicly accessible places (e.g. churches) should be explored further by the Inquiry. Other forms of government support should include regulation, works funding, leadership, advice, education and training. The Heritage Council would like to see the Productivity Commission's expertise applied in detail to each of these, with findings and recommendations identified in the final Report.

The Draft Report, in its recitation of the history of the protection of historic heritage places, overemphasises the role of the Commonwealth to date and fails to recognise that the success of the Victorian heritage system which has been refined over a 30-year period with considerable professional input as well as political and public support.

If the draft recommendation regarding voluntary listing and negotiated agreements were implemented, the Heritage Council contends it would have a major detrimental effect on the conservation of Victoria's irreplaceable historic heritage places.

The Heritage Council also reiterates the recommendations included in its original submission to the Productivity Commission:

- Without funding from the Commonwealth, the delivery of large-scale heritage projects is often beyond the capacity of State or local Government.
- The Australian Government needs to take a national perspective in relation to heritage funding, which includes places at all levels of significance.
- Governments at all levels have a role in funding publications and education programs to dispel myths and misinformation that contribute to market failure.
- The Productivity Commission should identify innovative examples of local government identification, protection and management of heritage places that could serve as best practise exemplars.
- Greater integration of heritage matters into planning strategies and decision making is needed to ensure community aspirations are met.
- Additional funding is needed from the Commonwealth to address gaps in Australia's understanding of historic heritage places.
- The Australian Government should consider extending the availability of deductible gift recipient status to include heritage funds, foundations and not-for-profit managers of heritage places.
- Broad and realistic permit exemptions for works to heritage places should be developed as these have the potential to reduce the burden on owners, statutory authorities and local government.

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