

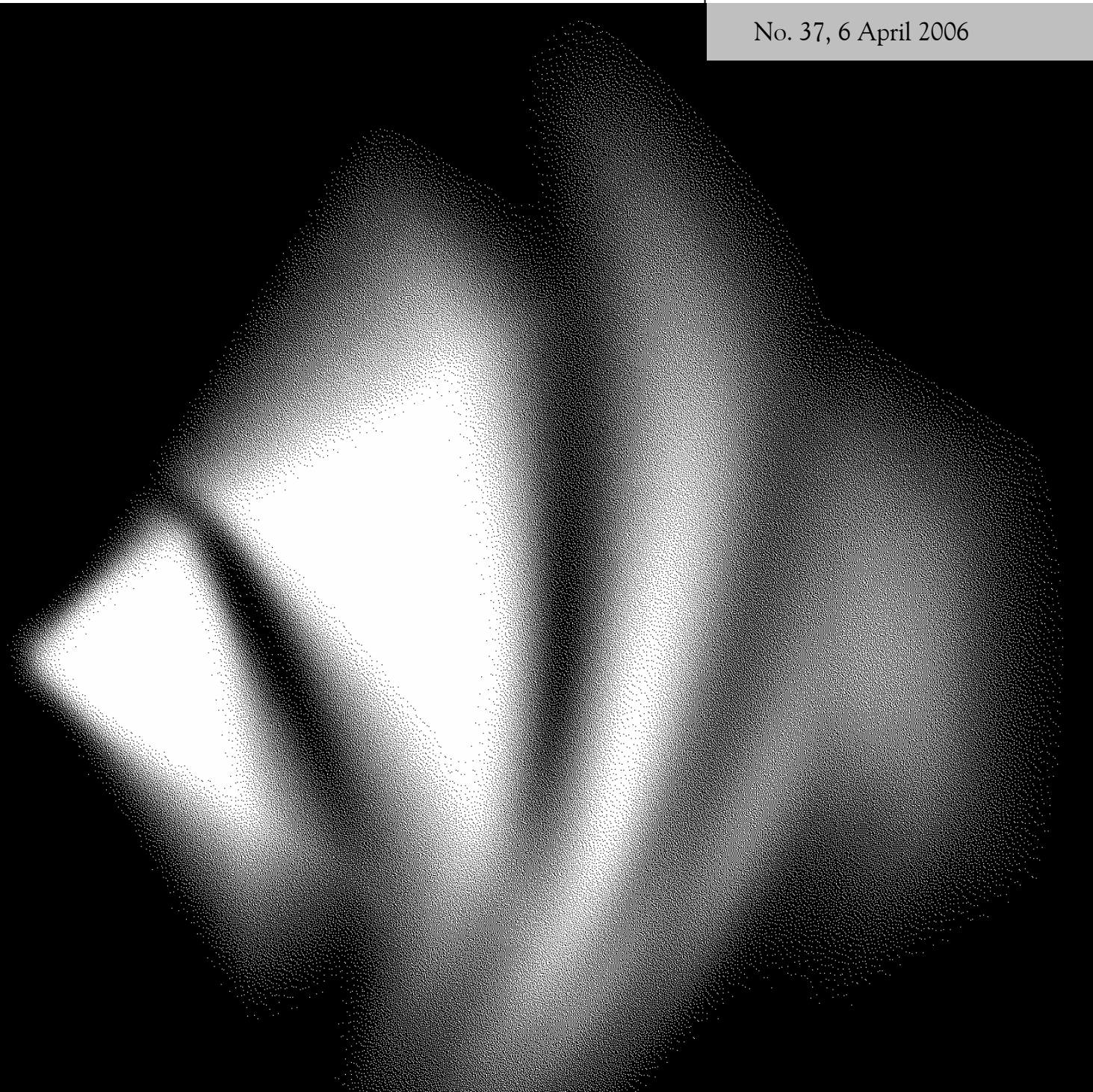


Australian Government
Productivity Commission

Conservation of Australia's Historic Heritage Places

Productivity
Commission
Inquiry Overview

No. 37, 6 April 2006



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ISSN 1447-1329

ISBN 1 74047 202 6

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An appropriate citation for this paper is:

Productivity Commission 2006, *Conservation of Australia's Historic Heritage Places*, Report No. 37, Canberra.

The Productivity Commission

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OVERVIEW

Key points

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

Overview

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

Heritage and its importance

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

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

Costs of heritage

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

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

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

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

Role for governments

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

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

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

Current government involvement

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

The Australian Government has established two new statutory lists:

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

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

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

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

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

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

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

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

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

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

Listing

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

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

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

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

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

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

Identification and assessment of heritage value

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

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

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

Government-owned places

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

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

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

Privately-owned places

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

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

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

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

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

Problems with current involvement

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

Box 1 Selected views of participants on the current system

Environment Protection and Heritage Council:

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

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

Dr Richard Bramley:

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

Shire of York:

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

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

Gordon Grimwade and Associates:

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

Goulburn Mulwaree Council:

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

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

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

The current system is too inflexible

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

Inadequate incentives are provided for ongoing maintenance

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

Listing is seen as a negative by many owners

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

Negotiations can resolve differences

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

Source: Productivity Commission Survey.

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

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

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

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

A better system: Negotiated conservation agreements

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

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

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

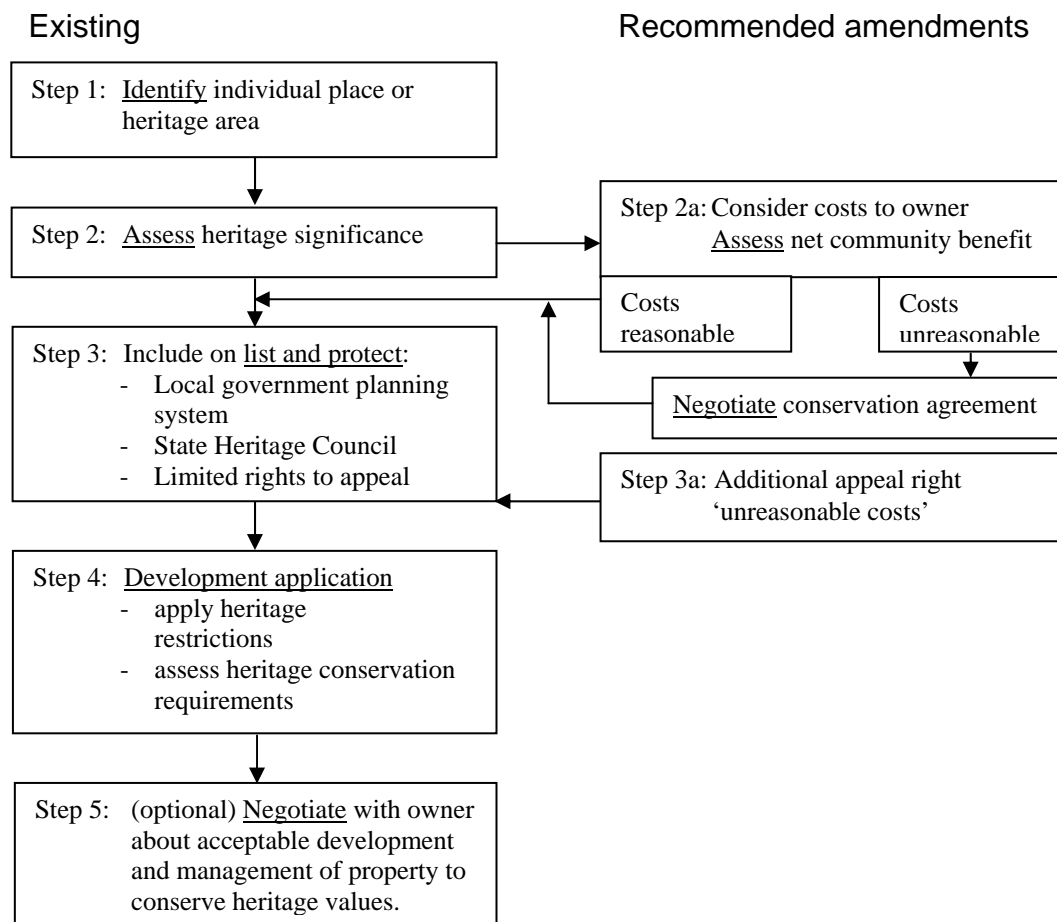
A number of overseas jurisdictions (e.g., British Columbia, Ontario and widely in the United States) successfully use negotiated agreements as the basis for heritage conservation. Responses to the Commission’s Draft Report indicated that there is widespread agreement as to the Commission’s analysis of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

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

A better system: 'Unreasonable costs' appeal

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

Figure 1 **Schematic outline of statutory listing and approval systems**



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

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

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

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

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

Introducing ‘unreasonable costs’ retrospectively

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

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

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

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

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

Recommendations

The following lists the recommendations in chapter order:

3 Overview of historic heritage conservation in Australia

RECOMMENDATION 3.1

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

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

RECOMMENDATION 7.1

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

RECOMMENDATION 7.2

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

RECOMMENDATION 7.3

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

8 Management of government-owned heritage places

RECOMMENDATION 8.1

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

RECOMMENDATION 8.2

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

RECOMMENDATION 8.3

State, Territory and local governments should:

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

9 Getting incentives right for privately-owned heritage places

RECOMMENDATION 9.1

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

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

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

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

10 Implementing change for privately-owned places

RECOMMENDATION 10.1

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

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

11 Improving the operation and management of heritage zones

RECOMMENDATION 11.1

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

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

RECOMMENDATION 11.2

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

RECOMMENDATION 11.3

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

RECOMMENDATION 11.4

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

RECOMMENDATION 11.5

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