

# **CURRENT PROBLEMS AND NEW DEPARTURES IN CONSERVING PRIVATE HERITAGE RESOURCES WITHIN AUSTRALIA'S URBAN PLANNING FRAMEWORKS**

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## **ABSTRACT**

Over the last ten years, the efficacy of heritage as a public good in society has been in steady decline. In 2006, the Productivity Commission (PCR 2006) inquired into the management of Australia's historical heritage places. It found that more than 90% of the approximate 150,000 listed items nationwide is privately owned, but recommended nonetheless that Australian governments (Federal, State and Local) should withdraw from any direct involvement in the funding of such places. This recommendation has not been helpful. Heritage is under threat from a number of different sources. Under neo-liberal government policy, heritage as a private good has become marginalized. Economically, Australian planning frameworks have not properly embraced the real cost of maintaining the stock. In the meantime, owners have become alienated from their listed buildings due to a lack of funding from government or community sources. This paper outlines present threats to privately-held heritage resources in the absence of significant financial support from the state. It canvasses alternative policies for providing heritage support within local planning frameworks

## **INTRODUCTION**

In the late 20<sup>th</sup> century, heritage enjoyed rising prominence in the public consciousness and within evolving planning frameworks at every level of government. In the early 21st century however, heritage has diminished as a driving force of urban and environmental policy. This paper identifies present threats to the heritage sector drawing from a review of recent developments in Australia generally and in particular NSW. A fundamental shift is that heritage as a private good has become marginalized under neo-liberal government policy.

More than 90% of the approximate 150,000 listed items nationwide in Australia is privately owned (Productivity Commission - Conservation of Historic Heritage Places-2006,38). Economically, Australia' planning frameworks have not properly embraced the real cost of maintaining this stock. In 2005, the Howard Government commissioned a seminal inquiry into Australia's cultural built heritage policy frameworks. It recommended that all Australian governments (national, state and local) should progressively withdraw from direct involvement in the funding of privately owned heritage places (Productivity Commission, 2006). Such a watershed decision has had profound implications for private owners of listed buildings because of a lack of government funding. There are few direct concessions as a consequence of becoming a heritage 'listee'. Moreover, listing campaigns by local governments are plagued by poor roll outs and a paucity of information. Meanwhile, state governments have acquired rights to side-step or bypass heritage listings.

Local government which handles the lion share of cultural built heritage (CBH) is underfunded, under-resourced and incapacitated. In respect of its ability to deliver CBH services for a national stock of listed buildings which are predominantly privately owned, Wood's review (2007) identified twelve critical failures in current heritage management systems:

1. Commonwealth cost shifting without commensurate funding for local government;
2. Owners bear costs yet the community receives the benefit without any direct cost to it;

3. Lack of research programs to underpin heritage assessment and management;
4. Shortage of conservation and heritage trade skills;
5. Value of historic significance not adequately recognized with respect to requirements for heritage assessments, conservation plans and interpretation strategies to be undertaken as a prelude to any changes to listed items being carried out;
6. New national heritage system is failing expectations;
7. Land value distorted by unrealistic development opportunities;
8. Need for improved interface between heritage and planning;
9. Lack of coordinated policy to encourage good adaptive re-use;
10. Redevelopment pressures adversely affecting heritage conservation;
11. Failure to capitalise on local cultural tourism as an economic driver;
12. Lack of education and training programs for volunteers.

Picking up on some of these issues, and drawing primarily on a review of policy literature and submissions made to the PCR 2006, this paper sketches the major dimensions of this challenging national environment for heritage management systems (HMS). It canvasses five aspects of the decline of cultural built heritage (CBH) in Australia:

1. The neo-liberal policy framework within which Australian governments generally operate and its impact upon public goods such as CBH.
2. Heritage listing processes at state and local government level.
3. The failure of listing campaigns resulting from inadequate resourcing, poor information and negative perceptions by listees.
4. The failure by authorities to acknowledge the cost burden placed upon private owners of CBH and the resultant inflexibility/ unworkability of policy.
5. The lack of choice and options for listees of CBH with respect to financial opportunity and incentives.

Particular focus is then given to considering new funding models for privately owned CBH administered through local and state heritage management jurisdictions. The paper suggests exploration of a self-managed funding model for the future management of privately owned CBH.

## **NEO-LIBERAL GOVERNANCE**

Since the early 1980s neoliberalism has emerged and gathered strength as a major structural reform ideology that has enormously influenced the reshaping of public institutions and policy frameworks undertaken by a succession of 'reformist' state and Commonwealth governments (Wiseman 1998). The principal thrust is deregulation, which is evident in various spheres of public policy and urban governance such as environmental policy, infrastructure management, transport policy etc. Neoliberalism adds to managerialism the assumption that the state must submit to the demands of global business to create the conditions that will attract investment: low taxes, financial stability and subsidies to business. Social justice and environmental protection are seen as irrelevant to this 'main game'. Neoliberalism, however, demands a strong state steered from the centre in order to shrink and 'hollow out' the public sector and reduce public expectations of the role to be performed by the state (Gamble 1988). Neoliberalism has transformed Australian planning through the practice of outsourcing and privatising. It may be no exaggeration to say that Australian planning is deeply imperilled by the reform agendas of neoliberalism (Gleeson 2000).

Currently, the dominant market power of supranational economic institutions has entirely subordinated cultural policies to the global economic order. The effect of the uncritical appropriation of neoliberal discourses in urban renewal policies has been to replace local geographical, cultural, social, and environmental conditions in cities, towns and rural areas with a geometric grid of economic reductionism. Instead of improving urban life, the rhetoric of development usually leads to gentrification, commercialisation, and the reduction of the cultural and the local to economic concerns only. (McGuigan 2004, 98).

In Australia, like every other country, cultural policy is always a balancing act between competing visions of the role of culture in society. However, planning authorities have progressively embraced the neoliberal model. Policies are largely market-driven. The spatial redesign of urban and rural centres that results is entirely conditioned by the strong alliance between state interventionism and

neoliberal economic reductionism. This is evidenced by the release of public assets through deregulation, privatisation, financial liberalisation, and the commercialisation of cultural and historical assets that were once in the public domain. The development of Barangaroo on the east bank of Darling Harbour in Sydney, NSW is an example of this trend. The \$6 billion project is being delivered by a major global corporation. The decision making processes for the project are not transparent and the NSW State government appears to favouring the corporation whose interest is primarily to deliver a profit to shareholders. Such an interest is diametrically opposed to the public interest which is greater access to its historical assets in the city. The architectural and planning fraternity in Sydney is highly critical of the project and feels cut out of the process. Typically, erstwhile welfare contributions by government to such public goods as health, education, policing, social services, transport and heritage have been cut back. Evidence of this is demonstrated by a marked negative trend in heritage policy across most Australian jurisdictions. Listings in NSW particularly have stagnated and as is demonstrated in this paper, public funding for heritage services generally in Australia is at its lowest ebb since protective legislation was introduced to most Australian States between 1975 and 1980.

Since the 1980s, governments have been shifting progressively away from the post-war 'Welfare State' model towards the neo-liberal paradigm. The distinctive difference between these two diametrically opposed styles of governance is that today, governments no longer directly provide public goods so much as facilitate their delivery through private entities such as corporations. As a result, they have over time become increasingly dependent upon private enterprise for the delivery of infrastructure and public goods such as schools, hospitals, transport and heritage. Concomitantly, in most developed countries, we have witnessed a steady rise in the corporatisation of national and state economies in the last four decades to the point now that many economies are dominated by corporations and governments are relegated to subservient roles.

Insofar as CBH is characterised as a public good, a reverse trend arises. Traditionally, citizens expect that governments to not only regulate but also fund and maintain cultural, natural and indigenous heritage. Yet, this is not the case as demonstrated in the Productivity Commission's Report on *Conservation of Australia's Historic Heritage Places* (hereafter PCR 2006). The PCR 2006 states that a centrally contentious issue is the extent to which governments should participate in the conservation of historic heritage places and the principles which might guide that intervention. Government intervention can be warranted in the presence of market failure. That is where the private benefits or costs of an activity do not fully reflect the social benefits or costs (115).

In its submission, Australia ICOMOS argued that there has been clear evidence of market failure in historic heritage conservation. It stated that it is abundantly evident in Australia's capital cities that the absence of effective historic heritage regulation in the mid-twentieth century accounted for vast swathes of inner-city areas in Sydney and Melbourne being deprived of a rich stock of historic buildings to make way for large-scale commercial developments. Underlying land values, reflected in the 'developable potential' soared because the market did not value the existing historic building stock for its role as a 'public good' (PCR 2006, Submission 112, 9).

While acknowledging the crucial role of the private sector in historic heritage conservation, the Chairs of the Heritage Councils of Australia and New Zealand in their submission, identified circumstances under which government intervention could be justified. Generally, communities voluntarily support the conservation and maintenance of heritage places because they receive a range of benefits and values from doing so. However, the nature of some of these benefits mean that sometimes the market will not provide a socially optimal level of protection for historic heritage places. In such cases, 'market failure' exists when there is a divergence between the marginal social costs and benefits and the private costs and benefits of investing in conservation. In the presence of this divergence, there is a prima facie case for government intervention to correct the market failure (PCR 2006, Submission 187, 4).

However, adopting a classic rationalist economic approach, the Commission argued that without government's ability to enter into a bargain or trade over the positive externality which may result from an inability to enforce private property rights over the externality, there will be no mechanism to ensure that those benefiting from the externality are able to encourage a socially-optimal level of external benefit. Noting that the existence of community-based benefits may provide a rationale for

government involvement, this does not necessarily justify such involvement. That is, the presence of market failure as a result of community based benefits is a necessary, but not a sufficient condition for government intervention. To establish whether intervention is warranted, it is necessary to consider the costs and effectiveness of such intervention (PCR, 2006, 117).

Essentially, this line of argument signifies the government's position in respect of CBH in Australia today. It argues that despite CBH being able to generate positive externalities for communities, there is no role for government to play in respect of privately owned CBH which constitutes the overwhelming majority of national heritage resources – 90% (PCR 2006, 38). The reasoning extends to a prohibition in which not even the occurrence of market failure in the sector would justify a need for government to intervene.

Daniels and Trebilcock (1996) argue that policy-makers, constrained by severe, ongoing fiscal pressures and being sensitive to concerns over bureaucratic inefficiency, have endorsed a shift away from reliance on governmental provision of goods and services in favour of provision by other actors. The claim is that in comparison with governmental delivery systems, private sector modes of delivery offer a superior means for organizing productive activity because greater incentives exist within such arrangements, especially in respect of lower-cost, innovation and efficiencies. Neo-liberalism promotes a laissez faire approach to the economy in the belief that market forces alone establish relative values in society. In this sense, governments need not regulate where markets are seen as capable of self-regulation. Notwithstanding, public goods such as CBH suffer in a number of ways.

In her 2007 review of submissions made to the Productivity Commission Inquiry (PCR 2006) on behalf of the Heritage Chairs and Officials of the States and Territories of Australia, Wood maintains that the overarching message is that government – specifically, local government - although committed to heritage conservation and appreciative of its value to local communities, is unable to manage its responsibilities in respect of conflicting community expectations because of inadequate resourcing, cost shifting, and failure of federal and State/Territory governments to provide the kinds of support and incentives required. The local government submissions indicate that there is lack of capacity to research or access research, to train or access training and to inform and engage and support the community's heritage interests. This places limits on the quality of conservation at local level which results in a denuding of community support for heritage systems nationwide. The Wood review exposes an incapacity of current heritage management systems in Australia by identifying a lack of political commitment to funding the sector.

## **HERITAGE LISTING PROCESSES AT STATE AND LOCAL LEVEL**

The HMS in most States is administered primarily through planning instruments providing for general controls by local councils, upper level intervention for items and issues of state significance, and mechanisms for certain appeal rights. The HMS in New South Wales (NSW) illustrates these three layers:

1. The *Environmental Planning & Assessment Act, 1979*, known as the EP&A Act, governs the operation of the state's 150 local government areas (LGAs). Each LGA has or is moving toward a comprehensive local environment plan (LEP) which lists local heritage items giving them the status of an officially gazetted listing. There are approximately 26,000 items of local heritage significance protected in this fashion.
2. The *Heritage Act, 1977* regulates state-listed items through the State Heritage Register covering approximately 1700 items.
3. The *Land & Environment Court Act, 1979* is effectively an appeal Court apparatus established to hear planning matters. In its Class 1 Appeals Division, the Court is able to hear disputed heritage matters arising either from dissatisfied owners who have had their applications to modify their heritage listed buildings refused by local councils or in which disaffected third parties bring heritage matters to be heard in the public interest.

Despite a robust suite of protective measures as set out above, there are few incentives available to private owners of CBH to willingly embrace the HMS. There is an essential duality of listed buildings in that they are both privately and publically owned. The public nature of the asset gives rise to an expectation in society that private owners of CBH would do everything in their power to conserve the

asset and assume appropriate levels of custodial responsibility. However, the reality is that many private owners resent that role because they perceive the listing to work against both optimal market value and future development potential (PCR 2006, 169 & 170). Generally, heritage lists are drawn up without affected owners being consulted and disaffected listees claim that they are not granted sufficient say in this process. In response to this quandary, the PCR 2006 proposed a method of redressing disaffected owners by calling for a greater degree of consultation with private owners by listing authorities (Fig 1).

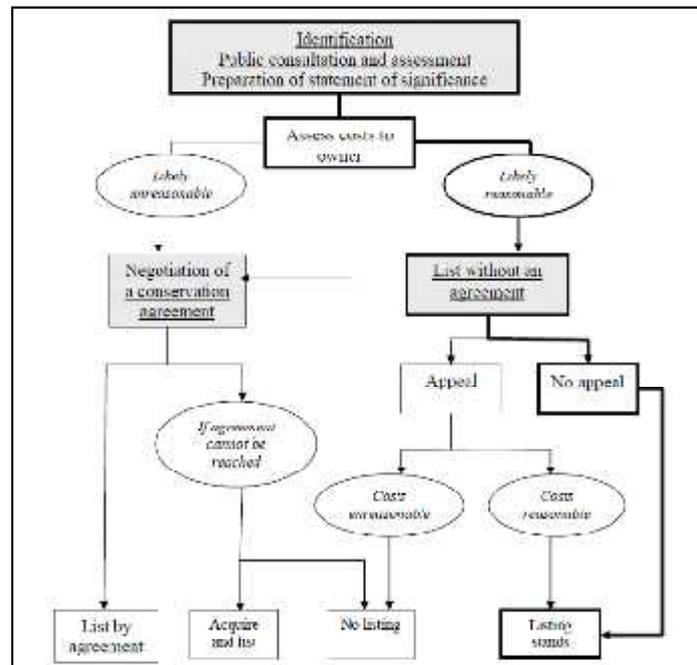


Figure 1: Summary of proposed listing procedure for heritage items (PCR 2006, 250)

Fig 1 asserts that listings would be better integrated into communities if owners had a greater say in the process. There are three key stages in the proposed review process. The first covers the identification, public consultation and assessment phase. The second covers the path of listing without a negotiated conservation agreement. The third involves the negotiation of a conservation agreement, whether undertaken prior to listing or as the result of a successful appeal on the grounds of unreasonable costs. The Commission explains that the aim of a negotiated conservation agreement is to achieve cost-effective heritage conservation for communities without imposing unreasonable costs on owners. Negotiated conservation agreements would ensure that, where the cost of conservation is likely to be high, heritage values for the community would be of a similar magnitude. The community, through the listing authority, would need to assess the heritage values it seeks to conserve against the likely cost associated with their conservation. In this fashion, governments need not intervene because the community's willingness to spend on conservation pervades as the essential motivation to list (PCR 2006, 253).

The Commission explores the notion of compensation for private owners of CBH. Compensation takes the form of a one-off monetary sum, ongoing assistance, or the ability to appeal listings on the grounds of 'unreasonable costs'. A notable departure from current HMS practice is signified by the suggestion that 'conservation agreements' become far more widely used. Conservation agreements take the form of 'voluntary planning agreements' and set out the possibility of tailoring conservation obligations to owner's specific needs and capabilities. They are seen as incorporating flexibility with a certain leeway granted to owners in order to facilitate ongoing conservation. The seven essential steps of the proposed methodology are as follows (PCR 2006, 266):

1. Set out an agreed statement about the heritage values contained in the place;
2. Set out a schedule of allowed works, development and uses;
3. Outline specific prohibited works, future development and uses;

4. Set out a system of assessment for the evaluation of future modifications;
5. Provide for an effective dispute resolution system to be determined by neutral third party experts;
6. Outline the range of financial or other assistance that would be available to the owner;
7. Provide a mechanism for the regular statutory review of the property's heritage values once every ten years.

Despite the suggestion by the PCR 2006 that the provision of information about listed properties forms the basis upon which individual agreements with owners may be struck, very little of this is utilised in current Australian HMS frameworks. As a result, misinformation, confusion and a general reluctance by private owners of CBH to willingly participate in listing campaigns, continues to pervade the sector.

## **THE TROUBLE WITH LISTING CAMPAIGNS**

Underlying the future workability of any HMS is the notion of information. It is essential that information about restrictions and costs be made available to owners, future purchasers and developers. Information or the lack thereof about hidden costs associated with CBH is one of the greatest aspects of negativity that surrounds the sector. Owners and developers require certainty in terms of costs otherwise a continuing disendorsement of CBH may become pervasive. The Australian Council of National Trusts maintains that public and private funding for historic heritage conservation has fallen behind that for the natural environment, despite recognition of the value that heritage conservation makes to the overall wellbeing of the community and the development of social capital. It explains that the lack of funding is currently characterised by a reduction in necessary expenditure on essential maintenance and conservation as well as through a failure to invest in improved interpretation and the identification of new heritage places. Inadequate funding has the consequence of effectively reducing the capacity of governments at all levels to provide the kinds of information and advice the public requires in order for it to properly conserve their own and the community's heritage assets (PCR 2006, Submission 40).

It is notable that heritage listings in NSW for CBH have dramatically declined in number and local government lists remain stagnant. This tendency has been evident since the mid 1990s, and information availability is a crucial parameter. Due to under-resourcing, Councils suffer from a reduced capacity to roll out listing campaigns which require a high level of community consultation. The tendency in the past has simply been for Councils to commission heritage consultants to identify items of heritage significance based on familiar criteria such as historical, associational, aesthetic, technological and social significance. Traditionally, the consultant will draw up a list of buildings and places addressing the designated criteria. The list is advertised and affected owners are notified that their properties are scheduled for listing – inviting them to respond by way of written submissions. For those residents unfamiliar with the planning regime surrounding the listing campaigns, an enormous amount of disinformation and confusion is generated. Invariably, the Council, due to lack of funding, has insufficient means to deal with the plethora of claims, questions, fears and concerns on the part of affected listees. When local Council listings first commenced in NSW in the early and mid-1980s, there was no mechanism set in place for owners to appeal their listings. Councils were empowered and still are to ignore owner's written submissions and persist with the gazettal of listings. Despite the fact that today, this situation has not changed at local government level, Councils have generally become more aware of the plight of private owners and the 'NIMBY' opposition expressed by them. This coupled, with a paucity of resources to deal with the queries and concerns of listees has resulted in a general stagnation and in some cases, a freezing of lists. Traditionally, listing campaigns by local Councils in NSW are not followed up with any offers of compensation to affected owners or any negotiated agreements. Accordingly, potential listees regard the campaigns as highly suspicious, inflexible and antithetical to their needs and expectations as property owners.

Thus, at the core of listing campaigns is the notion of community support which cannot be won over by Councils in the absence of adequate levels of information, community consultation and a suite of compensatory policies. Castro, Guccio & Rizzo (2011) undertook a study of heritage management in Sicily and found that the public sector plays an important role in the conservation of cultural heritage notwithstanding varying degrees of effectiveness. Typically, government action follows community interest by applying a mix of regulatory tools such as public spending, tax exemptions and regulation. The efficiency and effectiveness of heritage conservation policy in its capacity to meet community expectation crucially depends on the decision-making process employed and on the

actors involved. Bureaucrats responsible for implementing conservation policies are affected by external variables. Public sector intervention in the heritage sector is most commonly affected by economic and political variables and to a far lesser extent by managerial variables. Their study stresses the positive role on efficiency exerted by incentives because they build greater operational autonomy into the management structure. Regulation of CBH could be made more effective by improving the distribution of information to owners, encouraging public participation and allowing processes and procedures to become more transparent. Schuster et al (1997) suggest that by using a number of tools including direct ownership, regulation, incentivising, modifying property rights and providing information, governments can retain a positive capacity to incentivise the heritage sector. Incentivising CBH would in turn encourage heritage listings because owners would be exposed to positive tangible benefits arising from such processes.

## **THE COST BURDEN PLACED ON PRIVATE OWNERS**

It must be emphasised that all property owners whether heritage listed or not are constrained by planning restrictions which ultimately have a bearing on property values. However, heritage listings proceed on the basis that over and above privately captured values, there are values vested in the public interest. These public interest aspects may be demonstrated by certain rare or unique aesthetic or historical features contained in listed buildings. In the case of commercial and industrial buildings, there may be certain unique technological aspects conveyed. There is an expectation that owners of listed CBH would maintain these aspects of rarity and uniqueness on behalf of communities. Notwithstanding, the process of listing privately owned CBH under Australian jurisdictions lack mechanisms to compensate owners for the public interest component of their listed properties.

Traditional economic models fail to impute value to non-market mechanisms such as public goods. These models are designed to express values in terms of prices within established markets. Heritage values cannot easily be placed in traditional economic frameworks nor can they be measured in monetary terms (Throsby 2006). A greater level of engagement between cultural and economic concerns is essential for enabling conservation to play a greater role in civil society. Market economics holds ever increasing sway in spheres of contemporary society and has become the dominant factor negatively impacting upon conservation policies and decisions. This trend runs parallel to a rising globalization and corporatisation of society.

The PCR states that;

Both heritage values and the costs of conservation will change over time. Community values evolve, with some places becoming more or less significant in their contribution to the community's sense of history and place. Owners' attitudes to historic heritage places may also change, affecting their willingness to voluntarily conserve, for both public and private benefit. With economic development and changing demographics, the pressures on historic heritage places, and thus the cost associated with their continued conservation, will also change. In addition, conservation agreements with owners of historic heritage places will involve the expenditure of public funds (PCR 2006, 265).

The PCR 2006 suggests that Australian planning frameworks need to embrace the implications of the cost burden to private owners. With 90% of local heritage items privately owned (PCR 2006, 38) and, hypothetically, each listed property requiring on average \$200,000 capital cost to bring the listed item to a safe, sound and accessible condition, the conservation price tag in NSW alone would be nearly \$5 billion. Australia wide there are approximately 150,000 listed items (PCR 2006). Applying the same hypothetical multiplier produces a staggering \$27 billion shortfall nationwide. This excludes all publicly owned properties.

Disturbingly, despite the rough estimates of cost provided above, there are no official statistics that calculate the total conservation burden in detail, both in terms of capital costs for repairs required to bring the stock into safe, structurally sound and accessible condition and ongoing annual maintenance costs such as repairs to roofs, fenestration, landscaping, boundary fences, and paintwork. Current heritage policy does not acknowledge the burden placed upon private owners in

this fashion. Private owners of non-listed buildings are expected to foot the bill for the upkeep and ongoing maintenance costs to their own properties, yet the listed stock carries a public caveat requiring owners to maintain the stock for the ultimate benefit of the community. It could be argued that planning instruments such as zonings, height and envelope controls, minimum landscaping plot ratios and other development controls also restrict non-listed properties. However, the primary distinction between listed and non-listed building stock is that a greater degree of restriction is placed upon the listed stock. The restriction is indexed to the specific attributes of the listed building which may comprise an amalgam of historic, aesthetic, technological, associational and social values. These values may be expressed in a requirement by listing authorities to maintain facades, streetscapes and cultural landscapes. It may also extend to the placement of new components on the site relative to the significant components and it may even extend into the interiors of such buildings in which certain spaces, rooms and elements are required to be conserved.

Further, there is the cost to private owners of forgone opportunities in terms of development restrictions from which non-listed properties would also suffer. Yet, listed heritage buildings, due to their public nature, are required to be protected against unsympathetic or inappropriate change. Naturally, there are limitations placed upon such properties. Options for change are therefore limited compared with non-listed properties. Such imbalance places an extra burden upon the listed stock.

### **FINANCIAL OPPORTUNITY AND INCENTIVES FOR PRIVATE OWNERS**

Lack of incentivising is a key failure of current policy. Current HMS policies lack incentives for private owners of CBH. Small federal, state and local grants and rate concessions may be available. More innovative schemes, such as transferable floor space provisions, are rarely used. Most Local Environment Plans in NSW contain a single incentive relating to the use of heritage properties. That is, where a zoning prohibits a particular use, the listing would facilitate a use – even if prohibited by the zoning so long as the heritage building can be saved from demolition, destruction by neglect or inappropriate change. This single incentive in the entire policy framework of NSW's HMS constitutes a narrow opportunity for private owners of CBH.

The National Incentives Taskforce (2004, 42) suggests that the 'principal elements of best practice in incentives and other innovative policy instruments for historic heritage conservation would be constituted by a suite of policy instruments rather than any single approach. The eight principles suggested, are listed as follows;

1. Measures which provide effective support for owners of heritage places, provided either by the Commonwealth or States independently or in partnership with Local Government including; tax deductions for donations to approved funds; tax concessions for owners that enter into Heritage Agreements or other conservation covenants; tax rebates for qualifying private expenditure; land tax remissions; local government rate rebates; grants; loan subsidies; and revaluation provisions for heritage listed places.
2. Improved town planning practices at the state and local levels that promote historic heritage conservation including; reducing disincentives to conservation in the form of incompatible zonings; and making imaginative use of planning incentives wherever possible in sympathy with other planning objectives.
3. Inclusion of historic heritage conservation as an integral element of Commonwealth, State or Local sustainability policies or strategies.
4. Provision of an effective network of specialist heritage advisory services.
5. Ensuring information, promotion and awareness activities are given a high priority, with cooperation between States wherever possible.
6. Establishment of special funding sources for heritage programs to supplement consolidated revenue appropriations such as a share of lotteries or gaming revenue; or a share of Land Tax or another suitable tax.
7. Establishment of Revolving Funds for the acquisition, restoration and disposal under covenant of historic heritage places.
8. Mechanisms for measuring the effectiveness of financial incentive schemes for historic heritage in Australia.

## NEW DEPARTURES IN INCENTIVISING PRIVATE HERITAGE CONSERVATION

Programs aimed at conserving the built heritage of the recent past, like those for conserving earlier heritage, include a number of interrelated processes that complement, and in many cases precede, physical interventions. These include identification (or definition), inventory (or framework for analysis), listing (or commemoration, classification, designation, registration, depending on the jurisdiction), protection, research, and awareness. While most local and national governments address some or all of these aspects of conserving earlier heritage, many are still developing strategies for the heritage of the recent past. Approaches vary considerably from State to State and at the local level within the same State. (Bronson 1997)

Cultural heritage can play a relevant role as “strategic” resource for sustainable local development. A necessary, though not sufficient condition, for such a role is that cultural heritage is properly conserved. The public sector plays an important role in the conservation of cultural heritage, albeit with different quantitative and qualitative characteristics. Government action can follow various patterns using a mix of different tools such as public spending, tax-expenditures and regulation. The efficiency and effectiveness of heritage conservation policies, i.e. their capability to meet the public’s demand and to achieve expected outcomes in terms of the ‘public interest’, crucially depends on the features of the decision-making process and of the actors involved. A crucial role is played by heritage authorities, i.e. the bureaucrats responsible for implementing conservation policies (Castro 2011).

The creation of heritage value through more innovative policies is the key to the sustainability of the conservation sector and community support. There are lessons to be gained and adapted from international best practice. For example, the modification of property rights incorporating the granting of easements is a nascent area of heritage policy reform and has the advantage of pinning owners down to defined conservation commitments in exchange for advantages over and above normal planning controls. In the case of easements, such as façade easements, the idea is to get the community to pay for components of deemed sharing. That is, the listed building may be privately owned but the parts that connect with the visual communal environment such as facades, gardens and streetscapes become costs to the community which are directed back to private owners for maintenance works (Schuster 2002). Another form of incentive is the so called ‘enabling development’ policy brought in by English Heritage. The policy sits within the framework provided by English Heritage’s Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment (2008). It promotes a values-based approach to assessing heritage significance by enabling development that would be unacceptable in planning terms but for the fact that it would bring public benefits sufficient to justify it being carried out and which could not otherwise be achieved. Such a policy acknowledges the necessity to secure the long-term future of listed buildings and the key public benefit they generated for society as well as associated business through local tourism.

Wood and Johannson (2008, 359) explain that ‘smart regulation’ is an umbrella term used to describe a middle path between the extremes of command regulation and deregulation. It aims to make effective and efficient use of public resources by use of a sophisticated mix of regulatory instruments involving corporate environmental covenants, disclosure obligations and public participation rights. It emphasizes environmental performance goals over the precise techniques used to achieve them. Smart regulation stimulates self-reflection and self-correction by regulated actors in line with public goals, rather than by dictating the details of permissible behaviour. It attempts to create incentives and procedures that induce entities to act in certain ways and to engage in internal reflection about what form that behaviour should take. It relies on education, persuasion, rewards, and voluntary self-regulation where possible, and escalates up the regulatory pyramid toward mandated self-regulation, co-regulation, fines, and imprisonment when necessary. The smart regulation movement emerged in the 1990s as an effort to seek middle ground between the conventional “command and control” model of environmental regulation that prevailed in the 1970s and the excesses of deregulation experienced under neoliberalism in the 1980s onward.

This paper advocates the establishment of alternative funding models for current and future listings where privately owned CBH is concerned. In line with the basic precepts of smart regulation, these

models could facilitate self-managed methods of acquiring capital for the repair and ongoing maintenance costs associated with all listed places. If such self-managed systems could be made to work, then private owners would become willing participants in a scheme designed to radically overhaul funding shortfalls. It is further suggested that the success of self-funded schemes could conceivably achieve the following positive externalities:

- Provision of consistency regulation and dependability upon such for owners and developers;
- Provision of capital sinking funds for maintenance, repairs and upkeep;
- Stimulation of investment in the heritage sector;
- Creation of employment in the heritage sector;
- Less dependence upon government for access to shrinking funding;
- Promotion of heritage as a positive public good in society;
- Increase in levels of technical proficiency and public awareness;
- Generation of more incentives for associated local tourism and businesses;
- Engagement by communities in more profound ways;
- Increase in the curatorial governance practised by private owners;
- Release of embargos placed on new listings.

A self-funded HMS would respond appositely to the strains that neo-liberal governance imposes upon provisioning of public goods and services. The key to such a transformation would be the shifting of the cost burden from individual private owners into a collective land trust management system not unlike the constitution of owner's corporations as practised under Strata Title Law in Australia. The pooling of resources into a common sinking fund would allow the collective heritage stock in designated precincts to receive funding equitably as required and like strata titled properties, voting rights and decision making would be established upon democratic entitlements. By combining the notion of collectivising the needs and expectations of private owners possibly with a system of transferable development rights as practised in USA and partially in Australia, it is conceivable that the owners corporations could receive external investment to boost the coffers of the sinking fund, thereby increasing the sustainability of the entire listed stock.

Such thinking suggests that a gradual shift away from the current HMS which fails to deliver positive outcomes for CBH as a result of funding shortfalls might be resolved by embracing alternative funding models. Neoliberal governance indicates that the lack of public goods provisioning by governments generally today is bound to continue as corporatisation and globalization systemically alters existing social and commercial forms of society. In response to this change, smart regulation dictates that the equitable resourcing through new private-public mechanisms need to fill the vacuum formed by government withdrawal under traditional funding models.

## **CONCLUSION**

Funding pressure on CBH has affected the manner in which heritage conservation and management operates. While much heritage literature has focussed on the values of heritage, relatively little attention has been given to the attendant costs. The community exercises choices regarding the quality and nature of heritage conservation. Such decisions entail costs which are either directly imposed (private owners) or indirectly imposed (governments and the community). Heritage regulation provides an opportunity to introduce a range of controls over public and private properties of which 'listing' is one type. In the longer term, economic viability of CBH dictates that a commercial rate of return will always be sought. If capital cannot be applied to achieve a return on equivalent applications, the opportunity cost of heritage conservation will decline.

In the current political climate there is clearly a threshold on how much government, whether local, state or national, will continue to subsidise heritage conservation activities or restrict private sector activities without there being an adequate return to either directly the government stakeholders or indirectly to the wider community. Under neoliberal governance, the future viability of privately owned CBH will be found in a search for policy tools and mechanisms that facilitate the provisioning of public goods by the private sector. CBH is by nature a public good yet public funding for it has diminished over the last 15 years in NSW. The way forward will therefore be constituted by a search for innovative ways of funding the privately owned component of the sector – ways drawn mainly from successful examples implemented in other sectors of public goods provisioning such as those in

health, education and the environment. Adaptive re-use for policy application in the heritage sector taken from successfully operated schemes used in other sectors such as Medicare (Health), Solar Feed-in Tariffs (Energy), Fair Trade (Employment), Social Impact Bonds (Community), Disability Insurance Tax Levies (Financial) etc would constitute a starting point in a search for better targeted and more flexible policies governing future funding opportunities and incentives for Australian CBH.

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