

**Public Accounts Committee**  
Parliament of New South Wales

**Report on the  
Heritage Council of  
New South Wales**

**1987-88**

**Parliament of New South Wales**

**Public Accounts Committee of the  
Forty-ninth Parliament**

**Fortieth Report**

Inquiry pursuant to Section 57 (1) of the Public Finance  
and Audit Act 1983, concerning the Heritage Council of New South Wales.

(Transcripts of Evidence tabled together with this Report.)

June 1988

P 80617-33889--1

## **MEMBERS OF THE PUBLIC ACCOUNTS COMMITTEE**

The members of the Public Accounts Committee are:

**Mr Phillip Smiles, LL.B., B.Ec., M.B.A., Dip. Ed.,**  
M.P. Chairman

Mr Phillip Smiles was elected Member for Mosman in March, 1984, A management and marketing consultant since 1974, Phillip Smiles has been involved with entrepreneurial business activities since his teens. Since entering Parliament he has been actively interested in the areas of small business, emergency services, welfare and financial analysis. He was appointed a Member of the Public Accounts Committee in 1984 and was elected Chairman in 1988.

**Miss Wendy Machin, B.A., M.P.**

Wendy Machin was elected Member for Gloucester in 1985. Following completion of a Bachelor of Arts (Communication) Degree she worked in public relations for the National Party and a Sydney consultancy. Later Wendy established her own public relations consultancy business specialising in the rural sector. She also served as an independent alderman on North Sydney Council prior to becoming a Member of Parliament. In 1988, following a redistribution, became Member for Manning.

**Mr John Murray, B.A., M.P.**

John Murray, formerly a teacher, was elected Member for Drummoyne in April, 1982. An alderman on Drummoyne Council for three terms, John Murray was Mayor of the Council for five years and served four years as Councillor on Sydney County Council. He has served as a member of the Prostitution Committee, and the House Committee and is a former Chairman of the Public Accounts Committee.

**Mr Allan Walsh, B.A. (Hons.), Dip. Ed., M.P.**

Allan Walsh was elected Member for Maitland in September, 1981. Following eight years as a Mirage fighter pilot with the RAAF, he was involved in business management. Allan Walsh has also taught industrial relations, management and history at technical colleges.

**Mr Terence Allan Griffiths, M.P.,**

Terry Griffiths was elected Member for Georges River in 1988 Prior to being elected to Parliament he was the Chief Executive of the Scout Association of Australia. Before this he was an Army Officer. He is a graduate of the Officer Cadet School Portsea, a graduate of the School of Military Engineering and a Fellow of the Australian Institute of Management. He has been actively involved in Lions, Rotary and other community organisations.



Committee Members. From left: Wendy Machin, Allan Walsh, Phillip Smiles (Chairman), Terry Griffiths, John Murray

### **Secretariat**

John Horder, LL.B., AASA CPA, Clerk to the Committee

Bronwyn Richardson, B.A.(Hons.), DipEd., M.Comm.(Hons), Senior Project Officer

Chris Thompson, B.Comm., M.B.A., Adviser on secondment from the Treasury

John Lynas, FASA, CPA, Adviser on secondment from the Auditor General's Office

Sandra Brien, Secretary/Word Processor Operator

Maria Hagispiro, Secretary/Word Processor Operator

## **N.S.W. Public Accounts Committee**

Parliament House  
Macquarie Street  
Sydney, N.S.W. 2000

Fax: (02) 230 2831

# REPORT ON THE HERITAGE COUNCIL OF NEW SOUTH WALES

## CONTENTS

	<u>Page</u>
Chairman's Foreword	i
Executive Summary	iii
List of Recommendations	iv
1. Introduction	1
2. The Financial Position of the Heritage Council	6
3. Financial Assistance	27
4. Adequacy of Procedures and Guidelines for Implementing the Heritage Act	60
5. Use of Consultants	90
6. Objectives and Performance Review	116
7. Organisational Issues	134
 <u>APPENDICES</u>	
1. Terms of Reference	149
2. Comments in Auditor-General's Report	150
3. Comments in the News Media	151
4. Issues in Heritage Conservation and Government intervention	155
5. Methodology of Inquiry	159
6. Submissions Received	161
7. Witnesses at Hearings	164
8. The Functions of the Heritage Council	166
9. Heritage Act Amendments, 1979 and 1987	168
10. Structure and Organisation Dealing with Heritage Matters	169
11. Branch Procedures and Guidelines for the Allocation and Control of Financial Assistance	171
12. State Contracts Control Board - Instrument and Schedule of Exemption for Department of Environment and Planning	173
13. The Heritage Advisors Scheme	174
14. Letter to Local governments and Heritage Advisors	178
15. Public Accounts Committee Survey of Heritage Advisors and Local Government	181
16. The Department's Corporate Plan	185
17. Letter to Ministers	187
18. Glossary	188
19. Transcripts of Evidence - Index to Volume 2	192

## **CHAIRMAN'S FOREWORD**

This report is timely, as the Heritage Council has been operating for just over a decade without review and Council decisions about Conservation Orders and demolition control of heritage properties and the consequent financial implications have been the subject of much controversy in the media.

Overall, the Heritage Council has assisted greatly in the preservation of the State's heritage. However, like any organisation that has been operating for over ten years, it is not without organisational difficulties and will benefit from a review and reassessment of its role and procedures.

A lack of a corporate planning perspective by the Council is evident and the Committee is dismayed that the Council could not even produce a Mission Statement until this Inquiry was almost completed.

Consequently, the Council had never developed well defined and appropriate objectives resulting in the Council's failure to determine adequate performance measures. This in turn has led to the absence of public accountability, inappropriate reporting and confusion concerning responsibilities within the management structure.

Overcoming these problems will greatly enhance the Council's effectiveness in preserving the State's heritage.

I thank the members of the Heritage Council and the staff of the Heritage and Conservation Branch and Finance Branch of the Department of Planning for their co-operation during the inquiry.

This report arises from a reference to the Public Accounts Committee of the 49th Parliament by the then Minister for Planning and Environment, Bob Carr. Following the appointment of a new Committee by the Legislative Assembly of the 49th Parliament on 17th May, 1988 the new Committee resolved to continue the inquiry.

As the Chairman of the new Committee, I wish to record my appreciation of the contribution to this report made by the former Committee, especially the former Chairman, Mr John Murray, B.A., Member for Drummoyne. His direction of the inquiry in its initial stages and the benefit of his wide experience in local government matters have been of great assistance to the Committee in its deliberations.

Also, I would like to express my appreciation to the very many people who assisted the PAC during the course of its inquiries and inspections of heritage items. These people include representatives from the National Trust of Australia (NSW); owners, managers and staff of heritage items and properties which the PAC inspected; heritage advisors; local government organisations and State Government Ministers and Departments who responded to PAC questionnaires; representatives of Heritage Commissions, Government Departments and Ministers' Offices in Western Australia and South Australia.

Finally, I would like to thank the Committee's Secretariat for their work during this inquiry. In particular, I extend my thanks to Ms Bronwyn Richardson for her excellent contribution to the inquiry.

Phillip Smiles, LL.B., B.Ec., M.B.A., Dip. Ed., M.P.,  
CHAIRMAN.



## **EXECUTIVE SUMMARY**

The Heritage Council of NSW was constituted under the Heritage Act, 1977, to make recommendations to the Minister for Heritage on matters affecting environmental heritage.

The Heritage Conservation Fund, the working account of the Heritage Council, recorded an accumulated deficiency of more than \$9.5m as at June 1987. The Heritage Council displayed little knowledge or interest in the financial affairs of their organisation, despite this deficiency and the fact that it has assets of almost \$7.5m and an annual income in excess of \$5.7m.

The State's financial assistance for heritage conservation was found to be inadequately managed. Approved grants and loans alone, amounted to almost \$1.5 million in 1987, and yet there were no clear, publicly available criteria for assessing the alternative uses of funds.

The Commonwealth's financial assistance for items on the National Estate is disbursed in NSW by the Heritage Council and the Department of Planning , although their roles were found to be somewhat confused. The Public Accounts Committee discovered unspent funds in excess of \$1.2 m lying dormant.

Procedures and guidelines for implementing conservation orders were deficient. There appeared to be considerable public frustration with delays and communication generally. Control over demolition of items had proved inadequate. The financial implications of decisions for developers, the public and taxpayers were not considered.

The Heritage Council did not have effective mechanisms in place for selecting, employing, managing or evaluating consultants. There was no evidence of open tendering or of fee competition. Of the Council's 20 members/alternate members five were paid as consultants to the Council.

Despite its explicit statutory functions, the Heritage Council shelved identification and systematic registration of heritage items. It has misdirected its effort to promote public awareness, and its input into overall State environmental plans was found wanting. After ten years' operation, the Heritage Council did not have a Mission Statement or a set of objectives.

Throughout its investigations, the PAC found it difficult to disentangle the respective roles and responsibilities of the Heritage Council and the Department of Planning. It also found that the responsibility for, and cost of, the State's heritage conservation programme was borne by other arms of Government, often hidden in maintenance and capital works budgets.

The PAC's principal recommendations are that both strategic and corporate plans be implemented, and that performance review mechanisms be established within the next six months. There should also be greater accountability for all Heritage Council activity. Procedures for employing consultants, and for implementing the Heritage Act, should be significantly upgraded. The full cost of the State's heritage conservation program should be identified.

## **LIST OF RECOMMENDATIONS**

A full list of the Committee's recommendations follows. The recommendations are listed consecutively and should be considered in light of the discussion in the relevant chapters. No recommendations are contained in Chapter 1.

### CHAPTER 2

#### Recommendation 1

That the funding available to the Heritage Council be reassessed by the Minister for Heritage.

#### Recommendation 2

That the Heritage Council investigate alternative ways of generating income.

#### Recommendation 3

That the functions and priorities of the Heritage Council be reviewed, if funding is to remain at its current level and income cannot be generated.

#### Recommendation 4

That, when the Heritage Council transfers property to another organisation, the debt associated with the property also be transferred or written off.

Public Accounts Committee

Recommendation 5

That the Annual Report provide information which explains the expenditure shown in the financial statements, in particular that actual expenditure on conservation grants be itemised and a summary of grants be shown.

Recommendation 6

That the Heritage and Conservation Branch be made responsible for the Heritage Conservation Fund and that the financial statements be included in the Department of Planning's Annual Report. (This would involve an amendment to Section 23 (2) (C) of the Heritage Act, 1977).

Recommendation 7

That the presentation and reporting of financial information relating to heritage conservation in New South Wales be revised.

Recommendation 8

That the proportion of salaries recorded in the Heritage Council records be a true representation of the actual costs incurred by the Heritage Council.

Recommendation 9

That an audit of the National Estate Grants Program to satisfy Commonwealth accountability requirements be undertaken.

Recommendation 10

That the economics and management of unspent National Estate Program funds in the Trust Account be evaluated.

## Report on the Heritage Council of New South Wales

### Recommendation 11

That, if the "administrative reimbursement" is to continue to be paid into the Heritage Conservation Fund, it be renamed "gift" and explained in the Notes to the financial statements. The words "interest earned on Trust Funds under the control of the corporation awaiting disbursement" should be deleted from the Notes.

### Recommendation 12

That the State negotiate with the Commonwealth for a larger share of the National Estate Grants Program funds on the basis of volume and importance of heritage items of national importance in New South Wales and for a separate contribution towards the administrative costs of distributing the National Estate Program Grants.

## CHAPTER 3

### Recommendation 13

That reporting of grants and loans show the status of unspent funds committed in previous years by year of initial approval.

### Recommendation 14

That loan funding as a form of financial assistance be increased, and that the trend towards grants be reversed, although the PAC recognises that flexibility to assess projects on their merits should be maintained.

### Recommendation 15

That dollar for dollar grant funding be extended to all grants except those where it can be demonstrated that it is not practicable.

Public Accounts Committee

Recommendation 16

That the financial implications of Heritage Council decisions be stated in the Heritage Council's Annual Report.

Recommendation 17

That separate funding be provided to relevant government bodies in order to facilitate land tax relief and alternatives to development or zoning restrictions specified under the Act.

Recommendation 18

That the publication "Avenues of Financial Assistance for Heritage Projects in New South Wales" be reduced in size and modified to reflect the true situation, that Sections 123-128, 129 and 108 of the Act be reconsidered and either excluded if they are shown to be defunct or activated if they are intended to be used.

Recommendation 19

That the total cost of the Government's heritage conservation activities be fully disclosed in a heritage program for the State.

Recommendation 20

That efficiency, equity and accountability criteria be employed in decisions concerning financial assistance for heritage items.

Recommendation 21

That low interest rate loans for heritage conservation be abolished, or at least modified to reduce the distortionary effects.

## Report on the Heritage Council of New South Wales

### Recommendation 22

That refundable grants and loans at market rates be increased and that local rate and land tax reduction be implemented more often, especially when the incidence of benefits is such that joint funding by local and State governments is warranted.

### Recommendation 23

That the respective financial reporting responsibilities of the Branch and the Council with respect to Commonwealth funding be clarified and that reporting practices be streamlined.

### Recommendation 24

That the National Estate Grants Program be reported by the NSW Department of Planning, not by the Heritage Council.

### Recommendation 25

That the financial report of the National Estate Grants Program include a more comprehensive statement concerning unspent balances, progress on each project and progress payments made at the end of each financial year. This information should be used in decision-making concerning whether committed but unused funds should be diverted to an alternative use.

### Recommendation 26

That Branch and Council publications clearly describe the role of the Commonwealth, the NSW Department of Planning, the Heritage Council and its Finance Committee and National Estates Subcommittee in National Estate Grant Program funding.

Public Accounts Committee

Recommendation 27

That the National Estates Committee (of the Heritage Council) include a representative from the Commonwealth Government.

Recommendation 28

That the Heritage Council investigate transfer of development rights and exchange of property as alternative means of heritage conservation.

Recommendation 29

That the availability of National Estate Grants Program funds be publicly announced and that a call for applications be published in the media.

Recommendation 30

That the Heritage and Conservation Branch be made fully responsible for financial assistance from the Heritage Conservation Fund and the Heritage Council be recognised as a purely advisory body, with no responsibility for financial matters.

Recommendation 31

That a formal set of criteria for assessing applications for financial assistance be established immediately.

Recommendation 32

That the criteria for financial assistance be clear and publicly available.

## Report on the Heritage Council of New South Wales

### Recommendation 33

That criteria for selection of applications for financial assistance be consistent across all applications.

### Recommendation 34

That review and checking mechanisms be implemented to ensure that the stated criteria for financial assistance are being implemented.

### Recommendation 35

That progress payments be made in a similar manner to the system adopted in the Master Builders Association standard contracts.

### Recommendation 36

That applications for funds should include a declaration of the legal owner on the application form and that only requests from owners be examined.

### Recommendation 37

That one government body be responsible for overseeing spending on heritage items. It is considered that the Department of Planning's Heritage and Conservation Branch would be the most suitable body to deal with this matter. A register of financial assistance provided by government could be maintained.

### Recommendation 38

That a plan for financial assistance be co-ordinated with an overall heritage plan for the State.



CHAPTER 4

Recommendation 39

That criteria for making Interim and Permanent Conservation Orders be developed and used in decision-making. The criteria should address the practicability of, the necessity for and (in the case of Permanent Conservation Orders) the economic/financial implications of the orders.

Recommendation 40

That criteria be based on well researched, sound, proper advice and knowledge of alternative conservation plans. In the case of Orders in country areas, inspections be made by the Heritage Council or its representative.

Recommendation 41

That a series of standard letters stating intention, and later notification of a Conservation Order, be posted to appropriate individuals or organisations.

Recommendation 42

That a standard checklist, listing criteria be developed, and that this checklist be completed and made available for public scrutiny in each case of an Interim or Permanent Conservation Order.

Recommendation 43

That local government be consulted before a conservation order is made and that notification of such orders be given to members of the community who may affect or be affected by those orders.

## Report on the Heritage Council of New South Wales

### Recommendation 44

That the time taken to implement conservation orders be reduced.

### Recommendation 45

That the use of computers to monitor and reduce the time taken to implement conservation orders and other decisions be investigated and that reasonable time limits for each stage of implementation of Orders be established.

### Recommendation 46

That guidelines (or at least a copy of the key parts of the Branch's briefing paper) outlining changes which may be made to properties affected by orders be provided to the owner at time of notification.

### Recommendation 47

That the Heritage Council follow-up whether the Interim Conservation Order review system is working in twelve months' time.

### Recommendation 48

That the issue of revoking Permanent Conservation Orders be investigated.

### Recommendation 49

That the issue of deterioration of heritage items with Orders be considered explicitly and options for preventing deterioration be canvassed.

Public Accounts Committee

Recommendation 50

That a routine progress checking system for all work being carried out on items which are subject to Orders imposed under the Act be implemented.

Recommendation 51

That penalties for breach of Section 130 orders (demolition) be enforced, that a readily available emergency service be established for the purpose of effective demolition control and that Section 130 Orders should be served on owners within three days of Gazettal.

Recommendation 52

That appeals against Demolition (Section 130) Orders should be dealt with promptly, and that a minimum pre-determined level of professional information be required before imposition of a Section 130 Order.

Recommendation 53

That appeal mechanisms be reviewed so that appeals may be made either to the Minister for Heritage or to the Land and Environment Court.

Recommendation 54

That heritage conservation orders or controls on properties be recorded on the title of properties by the Registrar General.

CHAPTER 5

Recommendation 55

That the employment of consultants be confined to technical tasks which complement rather than substitute for the skills of the Heritage and Conservation Branch staff and the Heritage Council members.

Recommendation 56

That consultants should not be intimately involved in decision-making which is explicitly the responsibility of the Heritage Council and should not be employed to follow up grants which have become outstanding.

Recommendation 57

That selection of consultants be based on fee competitiveness as well as on technical competence.

Recommendation 58

That consulting fees be based on costs and value of work, not on the final restoration sum.

Recommendation 59

That the Heritage Council not reimburse running costs of consultants and, if it must do so, costs should be paid on a cost reimbursement basis only after receipts have been received.

Recommendation 60

That consistent criteria be adopted which specify the amount or proportion that each progress payment to a consultant should be.

Public Accounts Committee

Recommendation 61

That procedures specified by the State Contracts Control Board for the employment of consultants be reviewed for all Departments.

Recommendation 62

That if the Heritage Council is to be exempted from State Contracts Control Board's procedures, then it should be for projects where there is a need for spontaneity, haste or confidentiality. No exemption is necessary for heritage studies, long term planning and assessment.

Recommendation 63

That if the present 'exemption were to continue, the Department should tighten its control of consultants to meet the PAC's objectives outlined in this Report.

Recommendation 64

That the Department instigate conditions in the consulting contract which address the following issues:

- vested interests and conflicts of interest
- public scrutiny
- selection criteria
- value for money

Recommendation 65

That selection procedures for consultants be reviewed, with guidelines concerning the employment of consultants who are members of the Heritage Council or one of its Advisory Panels. When a person is to be employed, the selection panel should have at least one truly independent member on it to ensure that there is no bias or self-generation of demand for services.

## Report on the Heritage Council of New South Wales

### Recommendation 66

Guidelines concerning appropriate work for a Member to perform as a consultant, as distinct from as a Member, be established.

### Recommendation 67

That the standard procedures should be followed in the employment of consultants, unless a heritage item is at risk or there is a recognisable need to expedite a project.

### Recommendation 68

That the Heritage Council should show in its Annual Report the names of all consultants not Just the consulting firms' names or "various". Expenditure on consulting which is performed by Members of the Heritage Council or its Advisory Panels should be clearly highlighted for public scrutiny.

### Recommendation 69

That the Heritage Council include a section "Declarations of Pecuniary or Other Interest" in its Annual Reports. Declarations of paid consulting, real estate ownership, paid legal representations etc. could be made in this section.

### Recommendation 70

That consultants be assessed on each project, using standard criteria and the assessment be retained for future reference.

### Recommendation 71

That, due to its perceived cost effectiveness and its apparent success, the Heritage Advisors Scheme be continued and expanded.

Public Accounts Committee

Recommendation 72

That, because contractual objectives are often unrealistic and unclear, objectives be expressed in realistic and achievable terms.

Recommendation 73

That the Heritage Advisors Scheme be oriented more towards advisors imparting knowledge and skills concerning heritage conservation to the public, and to elected representatives and officers of local government.

Recommendation 74

That effective communication skills be included as an essential requirement for the Job of heritage advisor.

Recommendation 75

That a precise mechanism for reviewing and evaluating the Heritage Advisors Scheme be developed.

CHAPTER 6

Recommendation 76

That the Heritage Council adopt and publish an effective Strategic Plan as a matter of urgency.

Recommendation 77

That the Heritage Council establish a specific objective "to identify the major items or areas of heritage value in New South Wales" and set, say, a specific area in New South Wales (or theme) each year as an achievable objective within the available budget.

## Report on the Heritage Council of New South Wales

### Recommendation 78

That the Heritage Council address the issue of a State heritage inventory in its 1988 and subsequent Annual Reports and indicate alternative action to achieve the objective of identifying the State's heritage items.

### Recommendation 79

That the Heritage Council and Branch in conjunction with the Local Government Association develop methods for sharing knowledge and skills relevant to heritage conservation and that the Heritage Council's formal publication effort be streamlined.

### Recommendation 80

That the Heritage Council's input into overall environmental plans be formulated as an objective of the Heritage Council and that progress towards the achievement of this objective be reported in Annual Reports.

### Recommendation 81

That the performance review mechanisms currently being considered by the Heritage Council and the Branch be formulated to meet the criteria outlined in the PAC's 1985 Report on the subject, that they be implemented in the next six months, and that they be reported on annually in the Heritage Council's Annual Report.

### Recommendation 82

That the Heritage Council and the Branch, in developing performance indicators, consider those developed by the Western Australian Heritage Committee.



CHAPTER 7

Recommendation 83

That information on funding commitments for heritage items in all government-owned bodies be compiled and that the Minister for Heritage be advised on priorities for spending within the public sector.

## **1. INTRODUCTION**

### **Reference from Minister**

- 1.1 The Public Accounts Committee (PAC) received a reference on 28 May 1987, from the then Minister for Planning and Environment and Minister for Heritage, Mr Bob Carr, to examine and report on the operations of the Heritage Council of New South Wales.

### **Terms of Reference**

- 1.2 The Terms of Reference, set out in the Minister's letter to the Committee of 28 May 1987, (see Appendix 1) are as follows:

*"To examine and report on the operations of the Heritage Council of New South Wales and in particular to:*

*review the overall financial position of the Council;*

*assess the adequacy of procedures and guidelines for the allocation and control of grants, loans and other financial assistance for heritage projects!*

*examine the use of consultants including guidelines for engagement and management of consultants, and evaluation of consultancy projects!*

*assess the adequacy of the organisation's objectives to fulfil the Council's statutory role and review performance review mechanisms! and*

*inquire into and report on any other matters arising from the inquiry which impact on the efficiency and effectiveness of the Heritage Council."*

## Report on the Heritage Council of New South Wales

### **Background**

- 1.3 The PAC was aware of the outset at the Inquiry that the Auditor-General had commented in both his 1984-85 and 1985-86 Reports that the financial position of the Heritage Conservation Fund was deteriorating. The Heritage Conservation Fund is the fund used to finance the activities of the Heritage Council (see Appendix 2).
- 1.4 The PAC was also aware that there had been several references in the media to controversial heritage issues involving Heritage Council action, including accusations of inaction which led to demolition of important heritage items and claims that the Heritage Council was imposing financial hardship on owners of heritage properties (see Appendix 3).
- 1.5 There are a number of issues in heritage conservation which are relevant to an examination of the NSW Heritage Council. These issues and the developing role of Government in the resolution of heritage controversy are discussed in Appendix 4.

### **Methodology**

- 1.6 The methodology of the inquiry (see Appendix 5) included inspections of heritage items in NSW and interstate, review of submissions (Appendix 6), and public hearings (Appendix 7).

### **The Heritage Council of New South Wales and the Heritage Act**

- 1.7 The Heritage Council of New South Wales was constituted under the Heritage Act 1977. Its broad charter, like that of its federal counterpart, is to provide expert advice on matters relating to conservation of the State's environmental heritage and to identify items of

## Public Accounts Committee

environmental heritage worthy of conservation. (See Appendix 8)

- 1.8 The significance of the State Act is that the legislative power available to preserve heritage items resides mainly with the States, not with the Commonwealth.
- 1.9 The Heritage Council has not adopted a Corporate or Strategic Plan defining its basic strategy or operating philosophy. Accordingly the Committee had difficulty in assessing the overall effectiveness of the Council.
- 1.10 The Act sets out the types of recommendations that the Heritage Council may make to the Minister. These include invoking and revoking interim and permanent conservation orders, control over development and demolition and maintenance of items with such orders, demolition control of other items, acquisition of property, curtailment or modification of laws affecting environmental heritage, and financial assistance.
- 1.11 The Heritage Act for the purpose of conservation of the State's environmental heritage incorporates the Minister for Heritage as "corporation sole" and creates under the Corporation the Heritage Conservation Fund. Thus the Fund is the direct responsibility of the Minister. The Minister receives advice from the Heritage Council.
- 1.12 The Heritage Council is required to report to the Minister annually on its activities. The Minister, under Section 41 B(1)(f), of the Public Finance and Audit Act, 1983, declares that the financial statements exhibit a true and fair view and that they have been prepared in accordance with the Public Finance and Audit Act, 1983, the Public Finance and Audit (Statutory Bodies) Regulation, 1986.

## Report on the Heritage Council of New South Wales

1.13 Amendments to the Heritage Act were made in 1979 and 1987. (See Appendix 9)

### **Heritage Council Committees**

1.14 The Heritage Council is assisted by a number of committees and advisory groups which include members of the Council and outside experts and advisers. These Committees include:

- The Finance Committee
- The Education and Publications Committee
- The Technical Advisory Group on Materials Conservation
- The Fire Advisory Panel
- The Archaeology Advisory Panel
- The History Advisory Panel
- The Historic Pipe Organ Advisory Committee

### **The Role of the Heritage and Conservation Branch**

1.15 Professional and administrative staff within the Heritage and Conservation Branch (Branch) of the Department of Planning (Department) provide technical and administrative assistance to the Heritage Council, local councils, other public authorities and members of the public. Staff of the Branch include specialists in archaeology, architecture, building design, the natural environment, engineering, finance, history, public relations and town planning.

1.16 It appeared to the PAC that the Branch was the most critical element for successful implementation of the Heritage Act and useful advice to the Minister. For this reason, the work of the Heritage and Conservation Branch of the Department of Planning is examined closely throughout this Report.

## Public Accounts Committee

- 1.17 The Branch supplied the Committee with an organisation chart showing the links between the Minister, the Department and the Heritage Council. Following discussions with the Minister's advisor (Director, Office of Heritage) and others, the PAC devised an organisation chart showing formal and informal lines of communication as it understood them to be in fact. (See Appendix 10)

### **The Heritage Act and the Environmental Planning and Assessment Act**

- 1.18 The Heritage Act is seen as an emergency backstop and a reference point for local government area conservation work under the Environmental Planning and Assessment Act, NSW 1979. (See Appendix 11). Both Acts are administered by the Department of Planning.

## **2. THE FINANCIAL POSITION OF THE HERITAGE COUNCIL**

- 2.1 As noted in Chapter 1, the Auditor-General had commented on the deteriorating financial position of the Heritage Conservation Fund in both his 1985-86 and 1986-87 Reports. The financial statements reveal an accumulated deficiency of more than \$9.5 million as at 30 June 1987 compared to \$6.3 million as at 30 June 1985. (See Tables 2.1 and 2.2).
- 2.2 This deteriorating position appears to be due to the burden of loan servicing costs, some of which is attributable to assets which have since been transferred to other bodies. For example, the Heritage Council purchased Elizabeth Farm House with borrowed funds, transferred (not sold) the House to the Historic Houses Trust in the 1985-86 financial year and continues, to date, to pay interest on the initial loan.
- 2.3 In view of this, the PAC inquired further into the financial position of the Heritage Council.

### **Heritage Funds**

- 2.4 There are two Funds which have Heritage Council involvement. The first is the Heritage Conservation Fund which was established under the Heritage Act and which the Heritage Council is required to report on annually. The second is the Trust Fund of the Department of Planning, which is the repository of National Estate Program Grants from the Commonwealth Government. The Heritage Council advises on the distribution of National Estate funds and in exchange, the Heritage Conservation Fund is credited with the interest on balances in the National Estate Trust Fund.

### **The Heritage Conservation Fund**

- 2.5 The Heritage Conservation Fund was established under the Heritage Act, 1977, Part VI "Other Measures for the Conservation of the Environmental Heritage". The Fund is the account from which payments may be made for charges, costs, expenses incurred and for financial assistance under the Act, that is, the financial dealings of the Heritage Council. While the Minister (as corporation sole) is responsible for the Fund, the Heritage Council is required to report annually on payments into and out of the Fund.

#### Administration of the Fund

- 2.6 The Department of Planning provides administrative support to the Heritage Council through its Heritage and Conservation Branch and in doing so the Branch effectively administers the Heritage Conservation Fund. The Fund is a Special Deposits Account held in the Treasury.

#### Payments into the Fund

- 2.7 The Act specifies that there shall be paid into the Fund any money appropriated by Parliament, money borrowed by the Corporation, fees and charges, penalties, insurance policy payments, gifts and bequests.
- 2.8 In fact, income to the Fund, as disclosed in financial statements, has been, in order of dollar value, the Consolidated Fund Contribution, interest on investments, statutory fees and other charges, administration reimbursement, and interest on advances. These were the only forms of income in the 1986/87 and 1985/86 financial years. There were apparently no penalties, insurance policy payments, gifts or bequests. (Table 2.1)



## Report on the Heritage Council of New South Wales

- 2.9 Statutory fees have recently been reviewed and increased to \$6 for an inquiry and \$5 for an application. Permits are now \$10 for other than Section 60 work. These fees do not cover the costs involved in processing, architectural and archaeological advice, records and finance. Approximately one person is employed full time to handle the 60 - 80 applications per day. The fees are based on "fairness" rather than on cost.
- 2.10 The PAC considered that the allocation of resources to the Heritage Council should include recognition of this inability to cover costs.
- 2.11 In the course of investigating a comment by the Auditor-General that expenditure on consulting in the 1985-86 year had increased significantly (Chapter 5), the PAC found that the increase was due to one consulting project on the Phillip Street Terraces, which are owned by the corporation sole.. From conversation with Departmental staff it was discovered that the consulting project was later paid for by contributions from the two lessees of the Phillip Street Terraces, an arrangement which was apparently specified under the original lease agreement. These payments were included in the financial statements as "Statutory Fees and Other Charges".
- 2.12 The PAC considers that the income from the lessees, which amounted to \$100,000, should have been identified by way of a note to the financial statements. Classifying it as "Statutory Fees and Other Charges" fails to reveal the true nature of the transaction. (Table 2.1).
- 2.13 Borrowings of the Fund are obtained by the "Minister administering the Heritage Act 1977", as corporation sole, and are applied towards grants and loans for restoration projects and property acquisitions.

## Public Accounts Committee

- 2.14 The Consolidated Fund appropriation is provided to meet loan servicing costs and administration costs of the Council and is reflected in the allocation by the Treasury to the Department of Planning Program "Conservation of State's Environmental Heritage (Heritage and Conservation Branch)". Some of this appropriation has been used for matters not directly concerning the Heritage Council. In 1986/87, for example, it included salaries and costs associated with valuation undertaken by the Department in respect of Heritage matters but not on behalf of the Council.
- 2.15 "An administration reimbursement" is also paid into the Heritage Conservation Fund from the Department of Planning Trust Fund. (See 2.55 to 2.77 and 3.60 to 3.75).

### Payments out of the Fund

- 2.16 The Act specifies that there may be paid out of the Fund all charges, costs and expenses incurred, *remuneration* payable to Heritage Council members, money required to repay borrowed money, interest and expenses on borrowings, the cost of acquiring land, the cost of consuming items, grants or loans, insurance, costs associated with land, gifts and bequests and money required for the purpose of discharging any liability of the corporation under a guarantee given by the corporation.
- 2.17 As shown in Table 2.1 expenditure from the Fund has been, in order of dollar value, interest on loans, salaries, conservation grants, administration expenses, consultant fees, loss on sale of land, transfer of land to other bodies, bad debts, audit fees and council ~~and~~ *committee* fees.

TABLE 2.1

*CORPORATION SOLE "MINISTER ADMINISTERING THE HERITAGE ACT, 1977"*  
**INCOME AND EXPENDITURE STATEMENTS FOR THE YEARS ENDED 30 JUNE**  
**1985 TO 30 JUNE 1987**

	86/87	85/86	84/85
	\$'000	\$'000	\$'000
<b>INCOME</b>			
Statutory Fees and Other Charges	165	53	54
Interest on Advances	48	53	56
Interest on Investments	523	456	229
Administration Reimbursement	162	138	232
Grants Repaid	-	-	30
<b>CONSOLIDATED FUND CONTRIBUTION</b>			
Recurrent Services	4,850	2,000	2,000'
Capital Works and Service		1,200	1,000
	5,748	3,900	3,601
<b>EXPENDITURE</b>			
Conservation Grants and Advances (Loans)	670	881	442
Salaries and Related Payments	936	843	749
Administrative Expenses	601	464	435
Council and Committee Fees	3	7	7
Consultant Fees	373	384	267
Interest on Loans	1,582	1,490	1,257
Transfer of Land to Other Bodies	161	1,227	60
Audit Fee	5	5	5
Loss on Sale of Land	210	4	--
Bad Debts	5	--	--
	4,546	5,305	3,237
<b>OPERATING SURPLUS BEFORE ABNORMAL</b>			
<b>ITEM</b>	1,202	(1,405)	(364)
Abnormal Items	100	14	1,201
<b>OPERATING SURPLUS AND ABNORMAL ITEMS</b>			
	1,202	(1,393)	(1,565)
	9,099	6,298	5,610
	7,997	7,691	7,175
Transfer to Loan Repayment Reserve	1,519	1,408	877
Loans Repaid	34	--	--
<b>ACCUMULATED DEFICIENCY</b>			
	9,550	9,099	6,298

## Public Accounts Committee

- 2.18 The income and expenditure statements shown in Table 2.1 indicate that expenditure on conservation grants and loans (which could be considered to be the priority area of expenditure of the Council) has been only relatively minor in recent years compared to expenditure on loan servicing (interest), administration/salaries and transfers of land. In 1986/87 it accounted for less than 15% of total expenditure.
- 2.19 The financial position of the Fund has been deteriorating in recent years. At the end of the 1987 financial year the accumulated deficiency of the Fund amounted to \$9.55 million as shown in Table 2.1.
- 2.20 This led one observer to comment to the PAC that "the Heritage Council is living beyond its means"
- 2.21 The problem was attributed primarily to the borrowings of the corporation sole and the inability of the Fund to generate sufficient income to meet loan servicing costs, particularly as it had transferred assets at no cost to another heritage body and had made losses on the sale of properties.
- 2.22 Losses are largely the result of transfer of property to other Government organisations, such as the Historic Houses Trust. A few properties have been sold on the open market and in most of these cases the cost has been recouped. In recognition of this deteriorating financial position no new borrowings were made by the corporation sole in 1986/87.
- 2.23 It is considered that it would not be prudent for the corporation sole to resume borrowing given:
- a) the accumulated deficiency that has resulted from past borrowings;

**TABLE 2.2**

CORPORATION SOLE, "MINISTER ADMINISTERING THE HERITAGE ACT, 1977"

**BALANCE SHEETS FOR YEARS ENDED 30 JUNE 1985 TO 30 JUNE 1987**

	86/87 \$'000	85/86 \$'000	84/85 \$'000
<b>CAPITAL AND RETAINED EARNINGS</b>			
Capital Debt:			
Private Loans	11,333	11,552	9,548
State Government Contribution for Loan Repayment	319		
<b>RETAINED EARNINGS:</b>			
Loan Repayment Reserve*	4,768	3,434	2,026
	<hr/>	<hr/>	<hr/>
	16,420	14,986	11,574
	<hr/>	<hr/>	<hr/>
<u>Less:</u> Accumulated Deficiency	9,550	9,099	6,298
	<hr/>	<hr/>	<hr/>
	6,870	5,887	5,276
	<hr/>	<hr/>	<hr/>
<b>REPRESENTED BY:</b>			
Fixed Assets (At Cost):			
Land and Property	1,206	1,738	2,780
Investments (At Cost):			
Interest Bearing Deposits	4,627	3,405	1,933
Long Term Loans	637	830	727
Current Assets:			
Sundry Debtors and Cash at Treasury	967	358	101
	<hr/>	<hr/>	<hr/>
	7,437	6,331	5,541
	<hr/>	<hr/>	<hr/>
<u>Less:</u> Current Liabilities			
Accrued Interest Creditors	373	338	265
	194	106	--
	<hr/>	<hr/>	<hr/>
	567	444	265
	<hr/>	<hr/>	<hr/>
	6,870	5,887	5,276
	=====	=====	=====

\*The Loan Repayment Reserve is a requirement under the Public Authorities (Financial Arrangements) Act, 1987.

## Public Accounts Committee

- b) the non-commercial nature of conservation activity at present.
- 2.24 There is not much that can be done about the accumulated deficiency. It is unlikely that the Heritage Council could ever generate enough income to reduce this amount significantly. Assumption of the debt by Treasury (that is, writing off of the debt of the Heritage Conservation Fund) is merely a transfer. Thus, there is no means of substantially reducing the already accumulated deficiency.' It would appear that the only means of ameliorating the position is for the Council to be allocated money from the Consolidated Fund each year to cover this previous commitment.
- 2.25 The PAC considered it extraordinary that a body primarily concerned with heritage should have a financial profile more in keeping with a lending institution, and that the "grants and loans" item in the expenditure statement has such a low ranking in dollar value. It is apparent that this was not intended by the Heritage Act and demonstrates that the Heritage Council's financial management bears little resemblance to its responsibilities under the Act.
- 2.26 By way of contrast, the Victorian Historic Buildings Council (a similar type of organisation) has "grants" as its major item of expenditure. (Historic Buildings Council -1985/1986 Annual Report).
- 2.27 While it is recognised that there are constraints on the Heritage Council's ability to generate income, the PAC received submissions outlining possible alternatives, some of which were observed to be operating in other States. For example, if the bulk of financial assistance was by way of repayable loans and grants, a rolling fund which earned interest might be established. Alternatively, instead of

## Report on the Heritage Council of New South Wales

transferring historic houses and other items, it might turn some heritage items in its ownership into commercial activities. Other suggestions include increasing fees, penalties, price of publications and charging for advice. Some of these are discussed in Chapter 3.

- 2.28 If funds are likely to remain static, the existence and viable functions of the Heritage Council would require review since the Council is not able to fulfil its functions under current funding arrangements.

### **Recommendation 1**

That the funding available to the Heritage Council be reassessed by the Minister for Heritage.

### **Recommendation 2**

That the Heritage Council investigate alternative ways of generating income.

### **Recommendation 3**

That the functions and priorities of the Heritage Council be reviewed, if funding is to remain at its current level and income cannot be generated.

### **Recommendation 4**

That when the Heritage Council transfers property to another organisation the debt associated with the property also be transferred or written off.

### **Explanation of the Financial Statements**

- 2.29 Another matter of concern to the PAC is that the contents of Heritage Council Annual Reports do not always explain

## Public Accounts Committee

items in the financial statements. For example, expenditure on conservation grants is shown in the Income and Expenditure Statement but, in the section of the Annual Report dealing with financial assistance, only the new projects approved in that year are listed. There are no details concerning the extent to which grants in previous years had been spent and what the expenditure shown in the Income and Expenditure Statement was actually for. This matter is discussed later in Chapter 3.

### **Recommendation 5**

That the Annual Report provide information which explains the expenditure shown in the financial statements, in particular that actual expenditure on conservation grants be itemised and a summary of outstanding grants be shown.

#### Accountability for the Heritage Conservation Fund

- 2.30 It is not clear that the Heritage Council is actually the appropriate body to report on the Heritage Conservation Fund. While the "approvals" are formally endorsed by the Council, it is the Branch that:
- a) provides briefing papers and recommendations concerning projects and funding levels to the Heritage Council's Finance Committee;
  - b) administers the Grants and Loans and the Fund generally (including initial budget bids to Treasury)
  - c) makes progress payments
  - d) monitors progress reports



## Report on the Heritage Council of New South Wales

- 2.31 After initial approvals, the Heritage Council may not ever see the results. There is apparently no routine mechanism (for example via an agenda item) by which progress reports are reported back to the full Heritage Council. It appears that the Branch is really the body which takes responsibility. While it may be argued that the Council has delegated this responsibility to the Branch, the Heritage Act and the Annual Report imply that the Heritage Council is the body where responsibility rests.

### Accountability for Financial Reporting

- 2.32 The PAC during its Hearings asked about financial reporting. Relevant Parts of the transcript are reproduced as follows :

#### **PUBLIC ACCOUNTS**

**COMMITTEE:**

*'How often are financial reports presented to the full Council?'*

**HERITAGE CCOUNCIL:**

*"We do not have a financial report of the whole situation because the Department is responsible for that part of the activity. The Finance Committee generally deals with the distribution of money, both from Federal and State sources, for ... the protection of heritage. We do not deal ... with specific accounts".*

#### **PUBLIC ACCOUNTS**

**COMMITTEE:**

*"So it is just at the end of the year you receive a financial statement?"*

**HERITAGE COUNCIL:**

*"Yes, a balance sheet and an annual report.*

*"I do not know that it would be of much assistance to the Heritage Council carrying out its statutory role to have a frequent briefing on the financial situation of the branch as a whole."*

*"As to whether the Council should monitor finances on a monthly basis, feel that the answer is no, but that should be done on a regular basis."*

Public Accounts Committee

DEPARTMENT

*"That \$1.1 million dealt with by the Council's Finance Committee is separate. The administration of the branch is part of a separate allocation ... it is available to the Heritage Council if it wants it. But generally speaking, it does not show any interest in it ... I do not recall there ever being requests from the Heritage Council to see routine departmental budget papers".*

- 2.33 It seems extraordinary that the Council knows so little about the total cost of the State's heritage program or of the financial arrangements for which it is accountable under Section 23 of the Act. While it is understandable that routine administration be conducted by staff of the Branch, and the Minister (corporation sole) authorises expenditure (on advice from the Heritage Council), the Heritage Council is the body legally accountable for the Heritage Conservation Fund under the Heritage Act.
- 2.34 Much of the work of the Branch is in the execution of the Council resolutions (decisions under the Heritage Act). The true cost of Council's decisions should include the cost of the Branch. The statements above illustrate that the Council members are not clear as to their statutory role. They should feel responsible for financial matters related to their decisions.
- 2.35 It is also clear that the Heritage Council members may not be allocating funds in an efficient manner if they are not aware of the full costs of their decisions.
- 2.36 It would appear desirable either for the Heritage Council to take full responsibility for heritage conservation spending or for the Heritage and Conservation Branch to be made formally responsible for its current de facto role. There are advantages and disadvantages with both alternatives. The Heritage Council would need to implement a mechanism to inform itself of staff and other costs associated with its decisions. The PAC considered that the

## Report on the Heritage Council of New South Wales

Heritage Council could not fulfil its financial reporting responsibilities without a considerable expansion in resources and a permanent staff of its own. Expansion would mean duplication between the Heritage Council and the Department. Thus, on balance, it is considered that the Heritage and Conservation Branch with its already established infrastructure should be the body responsible for overall accountability.

### **Recommendation 6**

That the Heritage and Conservation Branch be made responsible for the Heritage Conservation Fund and that the financial statements be included in the Department of Planning's Annual Report. (This would involve an amendment to Section 23 (2) (C) of the Heritage Act, 1977).

### **Overlap in Financial Statements**

- 2.37 There appears to be considerable overlap in reporting of financial information between the Department, the Treasurer (in the Budget Papers), and the corporation sole as reflected in the annual report of the Heritage Council and shown in the financial statements in this report.
- 2.38 For example, salaries of Heritage Branch staff are shown in the Department's Consolidated Fund Budget expenditure allocation and, in part, in the Heritage Council's Heritage Conservation Fund. However, expenditures not related to the Heritage Council but to the Department are shown in the Budget papers. While this appears to be an attempt to attribute costs between the Department and the Heritage Council, it is not a true reflection of actual costs.

## Public Accounts Committee

- 2.39 Reports of financial information relevant to heritage conservation are confusing and indicate the need for some rationalisation in procedures and co-ordination of effort in preparation of accounts for annual reporting.
- 2.40 Before any evaluation of efficiency of either the Department or the Heritage Council could be carried out, this recording of costs in multiple locations and duplication would have to be eliminated.
- 2.41 The Heritage Conservation Fund is the responsibility not of the Heritage Council but of the Minister in his role as corporation sole, under Division 2 of the Act. The Heritage Council advises the Minister on how funds should be spent, and this advice in turn is largely on the advice of the Heritage and Conservation Branch. The Heritage Council authorises expenditure of funds which are then managed and administered by the Department.
- 2.42 This convoluted structure results in a reporting system which renders any attempt to evaluate the efficiency of either the Department or the Heritage Council extremely difficult.

### **Recommendation 7**

That the presentation and reporting of financial information relating to heritage conservation in New South Wales be revised.

### **Recommendation 8**

That the proportion of salaries recorded in the Heritage Council records be a true representation of the actual costs incurred by the Heritage Council.

## Report on the Heritage Council of New South Wales

### Minor Irregularities - Payment of Heritage Council Members

2.43 Section 20 of the Act specifies that:

*"Each member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him"*

2.44 Members of Heritage Council are paid an amount of \$785 per annum. This is the remuneration payable to part-time members of Boards and Commissions, which is reviewed from time to time by the Premier's Department.

2.45 Alternate members, when attending a meeting in place of the member, are paid the standard meeting fee of \$61 for up to half a day or \$102 for a meeting which extends beyond half day on any one day. These rates are determined by the Premier's Department.

2.46 While the magnitude of this expenditure is, relatively, very small, the PAC was concerned that members who were Government employees were paid. These included the Government architect, the Director of the National Parks and Wildlife Service and the representative from the Department of Planning. However, under Section 4.2.16 of the Public Service Board Staff and Personnel Handbook, it is stated that all staff representing their Departments on bodies (such as the Heritage Council) shall have any remuneration paid to the Crown.

### **The Trust Fund**

2.47 In addition to the Heritage Conservation Fund, the Heritage Council is involved with the Department of Planning's Trust Fund because of its role in distributing National Estate Grants.

## Public Accounts Committee

- 2.48 The National Estate Grants Program is a Commonwealth Government funded program of financial assistance for items on the Register of the National Estate. Each State receives an identical allocation.
- 2.49 In New South Wales the Program is administered by the Department of Planning. The Finance Branch of the Department liaises with Treasury with respect to the management of the balances of the Program which are held (along with balances of other non-heritage programs) in the Trust Fund. The Trust Fund is a Special Deposits Account held with Treasury.
- 2.50 The Heritage and Conservation Branch manages the funds. That is, the Branch calls for applications from specified organisations, assesses the applications and, after approval from the relevant State and Federal Ministers, arranges progress payments and reviews progress reports received.
- 2.51 The Heritage Council of New South Wales, via its Finance Committee (and some outside experts co-opted to the Finance Committee) provides advice to the Branch on the distribution of the Commonwealth funds. That is, it recommends projects and items for funding on the basis of about two meetings per annum. Briefing and background papers and the agenda are prepared by the Branch.
- 2.52 The "approvals" for funding are listed exhaustively in the Annual Report of the Heritage Council. The Trust Fund account is reported in the Department's Annual Report. An "administrative reimbursement" from the Trust Fund to the Heritage Conservation Fund is recorded in the Heritage Council's Annual Report, as discussed earlier in this Chapter.

## Report on the Heritage Council of New South Wales

- 2.53 The link between the Heritage Council and the National Estate Grants Program is that the Heritage Council provides advice on distribution of funds in exchange for the "administration reimbursement" which is paid into the Heritage Conservation Fund. (The amount is equal to interest earned on Trust Funds under the control of the corporation sole awaiting disbursement.)
- 2.54 The PAC considered that this arrangement is questionable. First, neither the Heritage Council nor the corporation sole provide any administrative input and indeed, as occurred in 1986, the Council's input is only two meetings per year of a sub committee. The Heritage and Conservation Branch and Finance Branch staff of the Department do the administration but they are already paid for their administrative work.
- 2.55 Thus the administration reimbursement is not related to costs of the program but is dependent on interest earnings from Trust Fund balances. It is really a gift. This is not a satisfactory arrangement. It is, however, recognised that to negotiate a cost related administration charge with the Commonwealth may be difficult and could leave the State worse off.
- 2.56 Secondly, it is considered unsatisfactory that there were significant unspent funds in the Trust Fund, particularly as some were outstanding since 1982/83 and before, as shown below:

Public Accounts Committee

Table 2.3

**National Estate Grants Program - Unspent Funds**

<u>Year. of Approval</u>	<u>Unspent Funds As At June 1987</u>
Prior to 1982/83	\$ 116,646
1982/83	\$ 66,615
1983/84	\$ 152,676
1984/85	\$ 170,662
1985/86	\$ 235,868
1986/87	\$ 463,028
1987/88	\$ (3000)*
TOTAL	<u>\$1,202,495</u>

\*Funds drawn against anticipated 1987/88 allocation during 1986/87.

- 2.57 As at June 1987, the balance of unspent funds in NSW was \$1,202,495.
- 2.58 It is evident that the Commonwealth is unconcerned once funds are transferred into the State's Trust Fund.
- 2.59 While the Commonwealth funds the scheme, it is a poor reflection on the project management and administration by New South Wales that the level of unspent funds is so significant.
- 2.60 There is, of course, an incentive for the Heritage Council and the Department of Planning to encourage balances to grow (that is, discourage distribution of funds) because it receives interest on Commonwealth money which can be used for State projects (not necessarily those items on the National Estate). The reverse incentive exists for the Heritage Conservation Fund, where interest on balances



## Report on the Heritage Council of New South Wales

reverts to Treasury. Staff of the Branch have indicated that this is their view.

2.61 Balances may grow as a result of slow administration (which was a complaint in submissions received by the PAC), of time lags in reallocating approved grants which have not been taken up to new projects, and neglect in following up uncompleted projects approved as long ago as 1982/83.

2.62 The PAC understood the gain to New South Wales in earning interest but questioned it on the following grounds:

- First, it does not represent adequate accountability for public funds at either the State or Commonwealth level.
  
- Secondly, the interest gained is relatively small, being in the order of \$160,000 compared with unspent funds in the order of \$1.2 million. The PAC questioned whether the benefits from spending the interest (on other projects) were greater than the extra costs which were being incurred as the result of delays in funding the projects for which the (much larger) unspent funds were intended. The PAC had received submissions from the public and professional bodies which indicated that costs of conservation rose disproportionately with the length of time allowed to elapse before intervention. It is evident that the Heritage Council and the Department have not considered the economics of their implicit decisions concerning unspent funds.
  
- Finally, there is a question concerning the auditing of National Estates Program funds. During the Public Hearings on 10th June 1987 the PAC asked about the auditing of the National Estate Grants Program as follows:

Public Accounts Committee

*Public Accounts*

*Committee:*

*Is the auditing done by the NewSouth Wales Auditor-General or is it a Commonwealth audit ?*

*Department:*

*The National Estate audit is done by the New South Wales Auditor-General?*

*Public Accounts*

*Committee:*

*Does he undertake that audit as agent for the Commonwealth Auditor-General ?*

*Department:*

*I think that relationship is direct with our Treasurer. The Treasurer undertakes to provide audited statements to the Federal Government.*

A check with the New South Wales Auditor-General's Office and the Audit Team at Treasury revealed that the Commonwealth has not requested an audit certificate, that no audit certificates have been completed and the only attempt by the Department to prepare an audit was in fact rejected by the Auditor-General's Office. There has been no follow up by the Department's staff or by the Commonwealth.

**Recommendation 9**

That an audit of the National Estate Grants Program to satisfy Commonwealth accountability requirements be undertaken.

**Recommendation 10**

That the economics and management of unspent National Estate Program funds in the Trust Account be evaluated.

**Recommendation 11**

That, if the "administrative reimbursement" is to continue to be paid into the Heritage Conservation Fund, it be renamed "gift" and explained in the Notes to the financial statements. The words "interest earned on Trust Funds under the control of the corporation awaiting disbursement" should be deleted from the Notes.

**Recommendation 12**

That the State negotiate with the Commonwealth for a larger share of the National Estate Grants Program funds on the basis of volume and importance of heritage items of national importance in New South Wales and for a separate contribution towards the administrative costs of distributing the National Estate Program Grants.

2.63 The National Estate Grants Program as a form of financial assistance is further in Chapter 3.

### **3. FINANCIAL ASSISTANCE**

3.1 In a submission to the PAC, the Heritage and Conservation Branch listed the avenues of financial assistance for heritage conservation as follows:

#### Commonwealth Government

- National Estate Grants Program Ministry of Cultural Activities
- Local Government Development Program
- Community Employment Program Building Apprentices Training Ltd
- Commonwealth Tax Saving

#### State Government

- Grants and Loans
- Rate and Land Tax Relief
- Waiver of Development Restrictions
- Loan Guarantees
- State Building Society Loan Service

3.2 There is a hidden subsidy in the form of an unrecorded level of administrative assistance. For example, in the case of the State, the Department of Planning's Finance and Heritage and Conservation Branch, the Treasury, the Land Tax Commission and the State Building Society all provide "free" administrative assistance.

#### **State Government Financial Assistance**

3.3 State Government funding is provided for in various parts of the Heritage Act and is shown in the Heritage and Conservation Branch's 1986 publication "Avenues of Financial Assistance for Heritage Projects in New South

## Report on the Heritage Council of New South Wales

Wales" (Page 11) as "... assistance from the Heritage Council". These are discussed below.

### **Grants and Loans**

- 3.4 Division 2, Section 105, of the Heritage Act, 1977 specifies the type of payments which may be made out of the Heritage Conservation Fund. They include charges, costs and expenses incurred in executing the Act; the remuneration payable to the members of the Heritage Council under this Act; money required to repay debts; the cost of acquiring land; the cost of conserving any item of the environmental heritage vested in the corporation; and grants or loans for the purposes of promoting and assisting the conservation of items of the environmental heritage.
- 3.5 At present, grants are more common as a form of assistance than loans and represent a greater proportion of expenditure payments out of the Heritage Fund than loans.
- 3.6 Loans and grants approved in 1987 amounted to \$1,435,607. Actual spending on grants and loans was \$726,608. While new projects and projects completed are recorded, the number and stage of incomplete projects is not shown in the Annual Report. The information was not in a form which could be made available to the PAC.
- 3.7 This matter is of concern for two reasons. First, the progress of all publicly funded projects should be disclosed in every Annual Report. Secondly, this type of information should not only be readily available to the public, it should be used in internal management decisions. The fact that this information could not be made available indicated poor management indeed.

**Recommendation 13**

That reporting of grants and loans shows the status of unspent funds committed in previous years by year of initial approval.

- 3.8 Over recent years the Heritage Council has shown a significant preference for grants over loans as the means of providing financial assistance. As indicated in Figure 3.1, grants have accounted for over three quarters of assistance approved since 1984/85. The trend over the three-year period is for grants to increase in relation to loans.
- 3.9 The PAC notes that this low ratio of loans to grants exists despite the Branch's comment that "loans are preferred to full grants because they enable the re-use of scarce funds for future projects"

**Recommendation 14**

That loan funding as a form of financial assistance be increased, and that the trend towards grants be reversed, although the PAC recognises that flexibility to assess projects on their merits should be maintained.

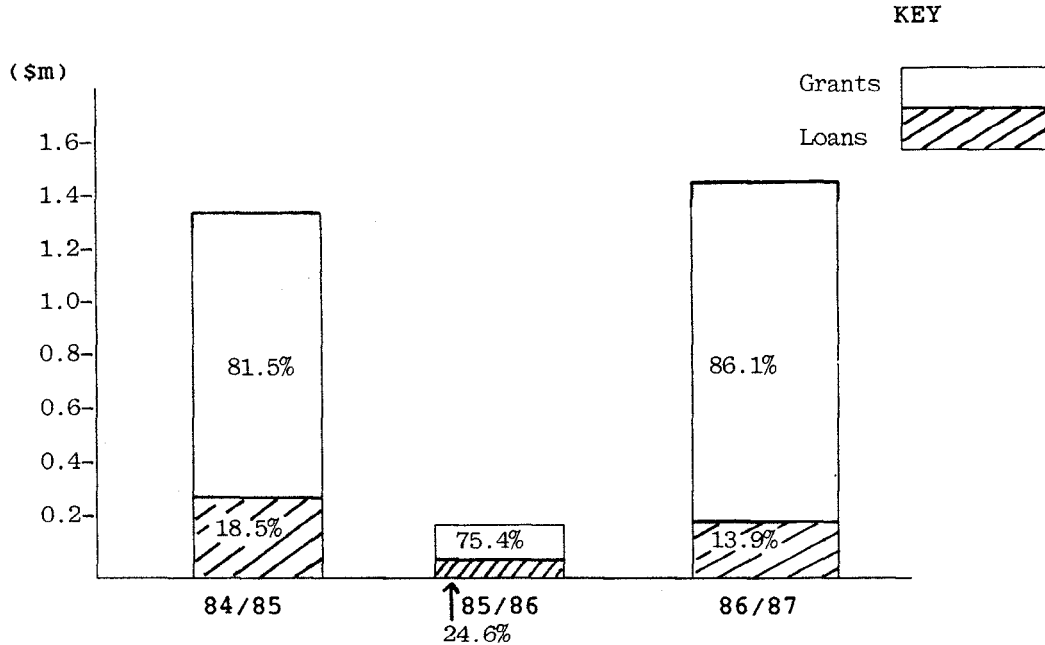
- 3.10 The majority of approvals and most of the committed funds were for grants. Apart from grants to local government there appear to be few cases of funding on a dollar for dollar basis.

**Recommendation 15**

That dollar for dollar grant funding be extended to all grants except those where it can be demonstrated that it is not practicable.

FIGURE 3.1

**FINANCIAL ASSISTANCE - GRANTS AND LOANS**



3.11 Despite the fact that the publication on "Avenues of Financial Assistance" states that:

*"In respect to restoration projects, grants are commonly made refundable on the disposal of the property and may be subject to an indexation amount to protect the value of the grant against inflation"*

such arrangements have not been mentioned in the 1985, 1986 and 1987 Annual Reports. The PAC considers this to be an important omission. The matter is discussed in 3.46 to 3.47.

**Rate and Land Tax Relief**

3.12 Rating and Taxing concessions are made possible under Sections 123'128 of the Heritage Act. A heritage valuation

## Public Accounts Committee

is made and all local government, water boards and land tax bodies are required to use the heritage valuation as the basis for assessing charges. For example, a cottage in a residential flat zone may be taxed as if in a residential housing zone. The PAC noted that differential rates impose a cost on other ratepayers. The extent of this cost should be disclosed.

- 3.13 The Heritage Council's 1986 and 1985 Annual Reports list decisions made under the Act, but do not show any decisions regarding sections 123-128. Such concessions do not appear to be reported elsewhere. That is, this particular form of financial assistance does not appear to have been used at all or, if it has, it remains unreported in the Heritage Council's Annual Reports.
- 3.14 The PAC considered it unsatisfactory that there is currently no avenue for disclosure of rate and *tax* concessions granted under the Act or for declaration of the income foregone by the various rating authorities.

### **Waiving of Development Restrictions**

- 3.15 Waiving of development restrictions is made possible by orders under Section 129 of the act. The Minister may revoke any instrument that restricts the conservation of a heritage item which is the subject of an interim or permanent conservation order. For example, a house in a residential area may be rezoned to operate as a tea house or Government fire requirements may be modified to enable conservation.
- 3.16 The Heritage Council Annual Reports show that one and three orders were made in 1985 and 1986 respectively. Relief from development restrictions (if it could be called 'financial' assistance at all), certainly could not be considered to be an important form of financial assistance,



although the series of examples given in the "Financial Assistance" publication imply that it is.

### **Loan Guarantees**

- 3.17 Section 108 of the Act specifies that a loan guarantee may be executed by the Minister with the concurrence of the Treasurer. Examples of loan guarantees given to assist in the purchase and restoration of heritage properties are given in the "Financial Assistance" publication.
- 3.18 Judging from the Annual Reports, apparently, there have, been no orders under Section 108 in 1985 and 1986, although several examples are listed in the "Financial Assistance" publication published in 1986.
- 3.19 The PAC believes that lifting restrictions in order to encourage the use of heritage properties in a financially viable manner should be encouraged. This will ensure self-sustaining maintenance of items and improved access to the public, both of which are referred to in the Heritage Act.

### **State Building Society Loan Service**

- 3.20 The promotional literature describes this type of assistance as either:
- a) an introduction to the Society;
  - b) a loan guarantee; or
  - c) an interest subsidy (in general, a maximum of 2%)
- 3.21 No examples of this are given in the literature and there is no report of such arrangements in either the 1985 or 1986 Annual Reports.
- 3.22 Subsequent advice indicated that as at 23 September 1987 , two loans for restoration work had been made under this scheme. The first was an "\$80,000 loan at 15% over 8

Public Accounts Committee

years" with a "subsidy of \$30,000 only to reduce interest on that amount to 8.5% at a cost of \$124 per month". The second was a "\$100,000 loan at 15.5% over 25 years with "no subsidy but covered by \$100,999 Government Guarantee." A third arranged loan of \$80,000 at 15% over 20 years was not taken up.

- 3.23 Thus, the real situation is that there has been only one case of an interest rate subsidy, and this was a 6.5% subsidy not the "maximum of 2%" advertised in the publication.
- 3.24 The PAC considers that the Heritage Council is misleading by advertising the scheme at all and *inaccurate* by stating in its promotional literature that "in general the interest subsidy will be at a maximum of 2% but where necessary a higher rate of subsidy will be considered."
- 3.25 The PAC asked representatives of the Heritage Branch the following questions concerning this loan service.

*PUBLIC ACCOUNTS*

*COMMITTEE:*

*There is an interesting item on page 14 regarding the service offered by the State Building Society which allows a 2 per cent interest subsidy for people who have difficulty refurbishing their properties. Is that a well-known provision - is it used extensively?*

*BRANCH:*

*I shall have to take that matter on notice in respect of giving the Committee figures. It is a benefit that has been developed only in the last 12 to 18 months and it is becoming known. We can obtain some figures on that matter.*

## Report on the Heritage Council of New South Wales

### *PUBLIC ACCOUNTS*

*COMMITTEE:* Will you also include information on the lines of how often the figure has been higher than 2 per cent"

*BRANCH:* Yes"

(Hearings, 10 June 1987, PP 10-11)

### **Public Information**

- 3.26 The PAC notes that, for all practical purposes, the promotional literature on "Financial Assistance" is largely unhelpful to the public. It dwells at length on assistance which is rare, not applicable to individuals and outside the control of the State. Grants, the most likely form of assistance, are discussed in less than half a page of the 14 page document.
- 3.27 With the exception of grants and loans, the authority under the Act to provide other forms of assistance has largely remained unused.
- 3.28 The PAC found the true situation to be hidden by rhetoric. The actual situation is that most financial assistance is by way of grants - more than half of which is by way of the Commonwealth's NEGP.
- 3.29 While each of the forms of State Government assistance discussed here is specified in the Heritage Act, and the Minister may direct such assistance to be given on the basis of advice from the Heritage Council, it should be noted that the costs of rate and land tax relief and the waiving of development restrictions are not borne by the Heritage Council or the Heritage Conservation Fund. To say that it is "assistance from the Heritage Council" is

## Public Accounts Committee

misleading. Also, the true cost of heritage conservation is underestimated if only the financial statements in the Heritage Council's Annual Report are examined.

- 3.30 The PAC recognises that there is general support in the community for heritage conservation. The PAC is concerned that the Heritage Council is not publicly accountable for the financial implications of the decisions it makes.

### **Recommendation 16**

That the financial implications of Heritage Council decisions be stated in the Heritage Council's Annual Report.

### **Recommendation 17**

That separate funding be provided to relevant government bodies in order to facilitate land tax relief and alternatives to development or zoning restrictions specified under the Act.

### **Recommendation 18**

That the publication "Avenues of Financial Assistance for Heritage Projects in New South Wales" be reduced in size and modified to reflect the true situation, that Sections 123-128, 129 and 108 of the Act be reconsidered and either excluded if they are shown to be defunct or activated if they were intended to be used.

### **Recommendation 19**

That the total cost of the Government's heritage conservation activities be fully disclosed in a heritage program for the State.

- 3.31 The concept of program budgeting has been endorsed by the PAC in previous reports, (Reports 34 and 40).

**The Optimal Type of Financial Assistance**

- 3.32 Each type of assistance discussed above may be examined in terms of efficiency, equity and accountability criteria, in order to assess the optimal type of financial assistance for heritage conservation.
- 3.33 The efficiency and effectiveness of a particular type of assistance is whether it achieves the stated objectives, whether costs equal benefits on the margin and whether there are secondary distortionary effects.
- 3.34 Equity refers to the distribution or incidence of costs and benefits. For example, a "user pays" principle would suggest that the beneficiaries of heritage conservation should pay for conservation and that owners of heritage properties should be compensated for losses which they incur as a result of restrictions placed on the use of that property by the rest of the community.
- 3.35 Accountability refers to the ability to clearly identify the magnitude and incidence of costs and benefits.
- 3.36 Table 3.2 summarises the main issues for each type of assistance with respect to each criterion.

TABLE 3.2

**EFFICIENCY, INCIDENCE AND ACCOUNTABILITY OF VARIOUS TYPES OF FINANCIAL ASSISTANCE**

TYPE OF FINANCIAL ASSISTANCE	CRITERIA		
	Efficiency	Incidence	Accountability
GRANTS			
- full	Efficient, unless they reduce the use of private funds.	Fair, if all costs and benefits are to the NSW taxpayers.	Clear identifiable magnitude and incidence of costs and benefits.
- joint	Efficient, if benefits are primarily to the owner.	Fair - no-one loses	As above
LOANS			
- Market Interest	Efficient, if only a small externality exists.	Fair	Acceptable. Public Accountability less important.
- Subsidised Interest	Inefficient, since the cost of the subsidy varies as the market interest rate varies not according to economic decision concerning equation of benefits and costs on the margin.	Not fair - subsidy is such that recipient may gain a windfall. Some costs are borne by lending institution shareholders or administration.	It is unclear who bears the cost and how much the subsidy actually is.
RATE & LAND TAX	Should be efficient, as long as heritage rating is not easily reversible.	May be best if the local community is the main beneficiary i.e. the incidence of costs coincides with benefits.	Magnitude and incidence of costs and benefits can be identified clearly.

## Report on the Heritage Council of New South Wales

### Grants

- 3.37 Given that the grants are earmarked for specific heritage purposes, they should achieve the stated objective - with real benefits and costs having been weighed up in the initial decision to fund the conservation. The only distortion that might occur is if the recipient of the grant diverts private funds which might have gone into conservation if the grant had not been forthcoming. However, even here, it is not clear that the distortion is important in practice since the Heritage Council has very limited funds, and grants are presumably only given to "at risk" properties where alternative funds have not been available in the past.
- 3.38 In terms of incidence, the costs are clearly borne by NSW taxpayers, presumably for conservation which benefits NSW taxpayers as a whole.
- 3.39 If benefits are more specific to, say, a local population or the benefits are clearly to a private owner, then a dollar for dollar or some other joint funding mechanism is more appropriate. That is, marginal cost should equal marginal benefit for each contributor.
- 3.40 In terms of accountability, the magnitude in dollar terms of grants and the recipients are openly disclosed and fully accounted for.
- 3.41 There is a strong case for refundable grants when property has been improved or maintained by heritage funding is then sold for an amount above what it would have been sold for without Heritage Council funded conservation. Indexing could be included to allow for inflation. The case is particularly strong on equity grounds when the sale of property occurs very shortly after Heritage Council assistance.

## Public Accounts Committee

- 3.42 The PAC acknowledges an impediment to this form of funding in that attributing value added when, say, both Heritage Council and other funds have contributed to improvements or when the value of the property is sold at a loss (for example, because its development potential has been decreased by its registration on the heritage list).
- 3.43 The PAC believes that it should be possible generally to determine an equitable share of the value added which should be returned to the Heritage Council. Independent arbitration should be a condition of grants. In the case where the property is 'sold at a loss it would be inequitable to require a refund.

### Loans

- 3.44 Loans should be an efficient and equitable form of assistance when provided at market rates of interest. Owners will pay the real cost of conservation and hence their decision to conserve will properly depend on comparing of costs and benefits.
- 3.45 However, in the case of interest rates below market level, there is a hidden subsidy, the amount of the subsidy varying as the market interest rate changes. This is not efficient, since the cost is continually varying i.e. it is unlikely that marginal cost would equal marginal benefit. It may be warranted if there is a small externality.
- 3.46 Subsidised interest rate loans may also be inequitable if the lending institution is not fully reimbursed for the amount of the subsidy and the associated administrative costs. In other words, the incidence of the costs may fall on specific institutions, not on New South Wales taxpayers as a whole. In the case of the State Building Society, failure to reimburse for the full cost of subsidy may



## Report on the Heritage Council of New South Wales

render the organisation less competitive. Thus, in order that subsidised loans be equitable, the full cost of the subsidy should be borne by the government's heritage program, not by the lending institution.

- 3.47 It is not clear what the incidence or magnitude of an interest rate subsidy is, especially over a long period of time. Hence, accountability is likely to be poor. There is a need to disclose the real cost of heritage conservation to the public.

### Rate and Tax Reductions

- 3.48 If the main benefits of conservation are to a local government area, rather than to the State as a whole, then reductions in local rates and tax may be the most efficient form of financial assistance. Benefits fall mainly on local residents, so it is appropriate that the costs also be borne by local residents.
- 3.49 On efficiency grounds, the case may be made for a combination of national, state and local contributions to funding such that the marginal benefit is equal to marginal cost at each level of community involvement.
- 3.50 This form of assistance poses no problems for accountability. The magnitude and incidence of costs and benefits would be clear if documented, although perhaps a little messy to administer a large number of small reductions in the different rates.

### Waiver of Development Restrictions

- 3.51 This is necessarily an *ad hoc* form of assistance, so that efficiency, equity and accountability principles do not readily apply. For example, it seems sensible to permit a heritage cottage to be used as a tea house in a residential

Public Accounts Committee

area if this guarantees its preservation. Obviously, distortionary effects on neighbouring residents would need to be considered. The normal avenue of appeal is to the Land and Environment Court.

Heritage Council/State Building Society Loan Service

- 3.52 Introductions to the Building Society and security guarantees are both efficient forms of assistance, and, except in the case of deliberate defaulting, are unlikely to have any impact on the State finances. There is no problem with accountability.
- 3.53 Low interest rate loans are inefficient, inequitable and pose problems for accountability except under the terms proposed in this Chapter.

**Recommendation 20**

That efficiency, equity and accountability criteria be employed in decisions concerning financial assistance for heritage items.

**Recommendation 21**

That low interest rate loans for heritage conservation be abolished, or at least modified to reduce the distortionary effects.

**Recommendation 22**

That refundable grants and loans at market rates be increased and that local rate and land tax reduction be implemented more often, especially when the incidence of benefits is such that joint funding by local and State governments is warranted.

**Financial Assistance from the Commonwealth - The National Estate Grants Program**

- 3.54 As reported in Chapter 2, the Commonwealth Government provides a fixed allocation of NEGP funds to the NSW Department of Planning annually. The funds are deposited in the Department's Trust Fund Account which is held at Treasury. The Heritage and Conservation Branch runs the programme with input from the Heritage Council solely in terms of advice from two meetings per year of the Finance Committee's sub-committee with its co-opted members. It appears that the advice is usually acquiescence or rubber stamping of proposals contained in briefing notes prepared by Branch staff.
- 3.55 The Heritage Council, quite rightly, does not for the most part report on the Commonwealth's financial assistance. The exception is the NEGP.
- 3.56 Although the NEGP is funded totally by the Commonwealth, and the New South Wales Heritage Act does not mention the Program at all, the PAC was surprised to learn that the Heritage Council reports annually on the projects, the recipients and the size of each grant approved as though the Program were its own.
- 3.57 Such reporting is misleading since the very reporting by the Heritage Council implies to the reader that the Heritage Council has a major financial and decision-making input. In fact, its input in 1986 was exactly two meetings of a sub-committee (the National Estates Committee) of a committee (the Finance Committee plus some co-opted members from outside) of the Heritage Council.

## Public Accounts Committee

3.58 Surprisingly, the co-opted members do not include a representative from the Commonwealth Government, the organisation which is the body charged with the responsibility for the "National Estate".

3.59 There is also considerable confusion concerning the roles of the Branch and the Council. The Branch's publication, "Avenues of Financial Assistance for heritage Projects in New South Wales", which clearly states that the NEGP:

*"is run by the Heritage and Conservation Branch of the New South Wales Department of Planning".*

3.60 Calls for applications are on Department of Planning letterhead and the contact officer is the Heritage and Conservation Branch's Finance Officer.

3.61 The only mention of the Heritage Council in the entire 14 page publication appears in the return address for applications ie. "to the Secretary, National Estates Committee, c/- Heritage Council of New South Wales". The only mention of the National Estates Committee is that "it tries to ensure that these funds are equitably distributed".

3.62 The PAC considers that two meetings per annum of a subcommittee of a Heritage Council Committee could hardly be sufficient to "ensure" equity. The Branch's role is overwhelmingly significant and the Council is merely a rubber stamping body.

3.63 The Finance Committee co-opts outsiders for its National Estate Committee, for example, from the National Parks and Wildlife Service, for the purposes of National Estate funding. These institutions could similarly claim some credit for NEGP projects if they were to follow the Heritage Council lead.

## Report on the Heritage Council of New South Wales

- 3.64 There is duplication in reporting of the National Estate Program in New South Wales. In addition to the NSW Heritage Council and the New South Wales Department of Planning Annual Reports, the Commonwealth reports identical information in the Australian Heritage Commission's Annual Report. The PAC considers that this duplication in reporting is not only superfluous to standard accounting requirements but is inefficient and misleading.
- 3.65 Given that the NSW Heritage Act does not require that the Heritage Council report on the NEGP, and in view of the fact that the Heritage Council's role is as adviser to the Minister, the PAC considers that it is not appropriate that the Heritage Council should claim credit for the program and report spending as though it were financed by the Heritage Council, when it is essentially the proper concern of others.
- 3.66 Reporting is inadequate. The cumulative financial position of the NEGP component of the Trust Fund is not shown, only the amount approved for each project. As discussed in Chapter 2, a full account reveals significant balances of committed but unspent funds from approvals made in previous years.
- 3.67 The labelling of the list of approvals for Commonwealth funding in the Annual Report is also misleading. The list of "projects and recipients of assistance under the NEGP 1985-86" implies that the grants were received in 1985-86 whereas the list is really a list of approvals for funding.
- 3.68 The PAC questioned whether the NEGP is "in the control of the corporation" as shown in the 1986 Annual Report, "in the control of the Council", as shown in the 1985 Annual Report, or whether, it is in the control of the Heritage and Conservation Branch. As discussed in Chapter 2, it is

Public Accounts Committee

peculiar that the Heritage Council should receive an "administration reimbursement" for NEGP balances when it does no administration.

**Recommendation 23**

That the respective financial reporting responsibilities of the Branch and the Council with respect to Commonwealth funding be clarified and that reporting practices be streamlined.

**Recommendation 24**

That the National Estate Grants Program be reported by the NSW Department of Planning, not by the Heritage Council.

**Recommendation 25**

That the financial report of the National Estate Grants Program include a more comprehensive statement concerning unspent balances, progress on each project and progress payments made at the end of each financial year. This information should be used in decision-making concerning whether committed but unused funds should be diverted to an alternative use.

**Recommendation 26**

That Branch and Council publications clearly describe the role of the Commonwealth, the NSW Department of Planning, the Heritage Council and its Finance Committee and National Estates Sub-Committee in National Estate Grants Program funding.

**Recommendation 27**

That the National Estates Committee (of the Heritage Council) include a representative from the Commonwealth Government.

**Alternative Forms of Financial Assistance**

- 3.69 The PAC observed that Western Australia had used the transfer of development rights as an additional form of assistance.
- 3.70 Transfer was used in cases where the heritage item was located on a site which was also valuable for its development potential.
- 3.71 Negotiation with the owner/developer has included the possibility of transferring development rights from the site of heritage value to an alternative site which is the property of the State government or which could be purchased by the government. The properties could then be exchanged.
- 3.72 The State would benefit because it could retain the heritage property and lengthy or expansive negotiation and compensation could be avoided.
- 3.73 The developer would, in principle, be left in a "neutral" situation ie. be no worse off than if the original site had no heritage value. The incentive for the developer to cooperate would be the potential savings in negotiation costs and costs associated with modifying development proposals to comply with conservation instruments placed on the heritage item.
- 3.74 The PAC appreciates that there may be problems with this form of assistance.

## Public Accounts Committee

- First, a "neutral" alternative site may not be readily available or agreeable to all parties.
- Secondly, there is a potential for abuse. "Deals" may be made explicitly or implicitly. Developers may deliberately purchase heritage properties with the hope of bargaining for higher compensation and immediate compensation from a government which may want to avoid controversy over what may be seen either as anti-progressive or as an infringement of the civil liberties of private developers.

3.75 Notwithstanding these difficulties, the PAC considers that there is merit in this form of assistance, not just in the case of multi-million dollar development proposals but in the case of 'smaller properties where exchange may be superior to arguments concerning "proper" conservation or where non-compliance seems likely. The heritage property could be marketed for its heritage value, so that it would be probable that a purchaser would be sympathetic to heritage conservation and fully aware of the restrictions placed on it.

### **Recommendation 28**

That the Heritage Council investigate transfer of development rights and exchange of property as alternative means of heritage conservation.

### **Procedures and Guidelines for Financial Assistance**

3.76 In its initial submission to the PAC, the Branch outlined the procedures and guidelines for the allocation and control of State and Commonwealth financial assistance. These are summarised in Appendix 11.



- 3.77 The PAC found reason to question these guidelines and procedures for a number of reasons which are discussed in the remainder of this Chapter.

**Restriction of the Field of Applicants**

- 3.78 The initial submission by the Heritage Branch to the PAC stated that:

*"the availability of funds has not been publicly provided to date as it was felt that excessive demands would be made on limited funds"*

- 3.79 The availability of funds has not been made known to the public. Enquiries for assistance are received as the result of advice from a variety of sources including "other applicants who have received assistance".
- 3.80 The PAC considered the former statement quoted above to be lacking in logic. If public promotion were to increase the demand for funds (as seems likely) the Heritage Council's task would be greater, but not an insuperable burden (about 100 applications Heritage Council Fund, 150 from the National Estate Grants Program), but it is also more likely to ensure that the available funds would go to where they are most cost beneficial and not merely to the best application from those "in the know". This cronyism and "who you know" procedure is both inefficient and inequitable.
- 3.81 The fact that funds are scarce means that the Heritage Council needs to be even more careful that the assistance it gives is the very best possible.
- 3.82 Furthermore, the Council or Branch may be able to assist unsuccessful applicants in other ways. To pretend that the iceberg of potential demand is not even there can only mean that financial assistance is probably inefficient in the

## Public Accounts Committee

sense that some worthwhile heritage items are not being funded.

- 3.83 It is probably also inequitable in the sense that some possible recipients of funds do not even know that they are eligible.
- 3.84 The extent of these deficiencies will not be known until the field of applicants is widened to include those who at present are not even aware of the funding arrangements.

### **Recommendation 29**

That the availability of National Estate Grants Program funds be publicly announced and that a call for applications be published in the media.

### **Who Makes the Decisions - Council or Branch?**

- 3.85 An examination of the procedures shows that the respective decision-making roles of the Branch and the Council are confusing.
- 3.86 The Branch states that:

*"A certain amount of screening of potential applicants occurs by telephone or in person by the Finance Officer ... in order to cull projects which are not eligible under existing criteria. No formal record is kept of this type of inquiry".*

*"The Finance Officer assesses all applications but makes written reports to the Finance Committee of the Heritage Council on those which fall within criteria outlined ... Other applications are given no further consideration by the Finance Committee. Not all projects are inspected before a report is prepared by the Finance Officer to include recommendations for approval or not and to indicate the extent of funding with special conditions".*

## Report on the Heritage Council of New South Wales

- 3.87 Furthermore, the letter from the Heritage Council to potential applicants - "Application for Financial Assistance for Private Projects" urges applicants as follows:

*"If you have not already done so would you please discuss this matter with the Finance Officer prior to commencing to prepare your application."*

- 3.88 The Branch (indeed only one or two officers) does all the filtering of potential and actual applications, calls meetings of the Heritage Council, and prepares written reports and recommendations for the Heritage Council. The Council has no system of random checking or overviewing to ensure that the Finance Officer is complying with the guidelines or interpreting them in the way they would.

- 3.89 The Branch clearly does not expect anything but acquiescence from the Council based on its own record of what happens, as follows:

*"The Finance Committee endorses the recommendations (made by the Branch) ..."*  
*(Emphasis added)*

- 3.90 It appears to the PAC that the Branch is the *de facto* decision-maker concerning the Fund Grants and Loan Program and that it appears to suit both the Branch and the Council to have the Branch hide behind the Council. The Branch appears to be the "quiet achiever" and the Council accepts the public credit.

- 3.91 Given the practical expertise of the Branch, the PAC does not believe that the Council would make superior decisions if it were more involved in decision-making. However, the true situation (i.e the purely advisory role of the Heritage Council rather than financial responsibility) should be recognised at least for public accountability purposes.

**Recommendation 30**

That the Heritage and Conservation Branch be made fully responsible for financial assistance from the Heritage Conservation Fund and the Heritage Council be recognised as a purely advisory body, with no responsibility for financial matters.

**Lack of Assessment Criteria**

3.92 The Branch outlined several criteria for assessment of applications which appeared sensible and sound. However, the Branch also stated that:

*"This assessment criteria has not been formally adopted by the Heritage Council and some of the criteria have not been applied in*

3.93 The PAC considers that, 10 years after the Heritage Act has been in operation, it is a poor reflection on the Council/Branch:

- that the Heritage Council has not established a formal set of criteria for assessing who should receive financial assistance; and
- that the criteria are not readily available to the public or to interested organisations.

3.94 Four separate submissions to the PAC from responsible organisations expressed frustration at the fact that there is no clear statement of eligibility for funding, the method of allocating funds or the likely amount. There was questioning of the suitability of some projects, but since the criteria are not known, no assessment of suitability can be made. The submissions made the following points:

- The criteria are not consistent across all applications.

## Report on the Heritage Council of New South Wales

- The Council has not established review or checking mechanisms to ensure that the criteria have been applied. For example, one local council commented to PAC as follows:

*"Approximately \$600,000 is being spent on restoration work at Richmond Main  
There has been no inspection either during the work over a period of one (1) year or  
after completion".*

- The criteria do not include cost effectiveness (whether priority is given to the projects which yield the greatest benefit per dollar spent).

3.95 This matter is disturbing, particularly because it was also implicitly the subject of several submissions which queried Heritage Council's decisions to provide financial assistance for some purposes. For example, several submissions commented that financial assistance was given for part of a project, say maintenance of walls, when repair of a flaking ceiling above the walls was considered considered of higher priority.

3.96 Another comment was that funding was for "dubious" purposes when there were other priorities. For example, the Heritage Council required that plastering in one building had to be dry plaster which was considered by the owner to be impractical and inadequate in a building which was being used as a meeting place. It appears from the submissions that the criteria used are suspect since it is considered that the appearance would be no different if modern plaster were used.

3.97 In addition to the above criticisms, the criteria do not refer to being consistent with a heritage plan.

Public Accounts Committee

**Recommendation 31**

That a formal set of criteria for assessing applications for financial assistance be established immediately.

**Recommendation 32**

That the criteria for financial assistance be clear and publicly available.

**Recommendation 33**

That criteria for selection of applications for financial assistance be consistent across all applications.

**Recommendation 34**

That review and checking mechanisms be implemented to ensure that the stated criteria for financial assistance are being implemented.

**Recommendation 35**

That progress payments be made in a similar manner to the system adopted in the Master Builders Association standard contracts.

**Limited Refunding and Recycling of Funds**

3.98 The Branch added to its list of criteria a number of "additional matters.....taken into consideration". These included:

*"Generally, grants to private persons will be subject to a condition that requires the refunding of the grant on the sale, disposal or destruction of the item, with or without an allowance for the C.P.I.*

*Every attempt is made to "recycle" funds."*

## Report on the Heritage Council of New South Wales

- 3.99 However, none of the examples of briefing notes, correspondence with applicants or contracts which the Branch submitted to the PAC showed any evidence that this was the case.
- 3.100 As recommended earlier, (Recommendation 20), it is desirable that all grants and loans should have an appropriate refund clause wherever practicable.
- 3.101 One submission suggested that the distribution of assistance geographically across the State was imbalanced: While the PAC was not in a position to comment on this, it would urge the Council to give this issue some consideration in formalising the distribution criteria.

### **Provision of Funds to Non Owners**

3. 102 The Department' s letter to applicants for NEGP grants requires a non-owner applicant to provide:

*"a copy of the owners written consent to the proposal must be attached to the application "*.

3. 103 The letter from the Heritage Council to potential applicants for financial assistance from the Heritage and Conservation Fund does not contain such a requirement, although the Branch notes that after the Minister ' s approval:

*"An applicant may also be required to provide the owner (where the applicant is not the owner of the item) to the making of a Permanent Conservation order".*

- 3.104 The PAC received submissions from owners who were irate that applications had been made and finance given to people who were caretakers or tenants and not the legal owners of the heritage item.

## Public Accounts Committee

who were caretakers or tenants and not the legal owners of the heritage item.

- 3.105 This state of affairs appears extraordinary to the PAC, especially considering the extensive questionnaire which applicants are required to complete concerning their income and expenditure, date of birth, occupation and employer.

### **Recommendation 36**

That applications for funds should include a declaration of the legal owner on the application form and that only requests from owners be examined.

- 3.106 The Heritage Council may wish to consider placing conservation orders on items recommended by caretakers, tenants or any member of the public but financial assistance should only be provided to the legal owner.

### **Lack of a Review of Unspent Funds**

- 3.107 As discussed earlier in this chapter, and in Chapter 2, it is unsatisfactory that there is no regular review of either the NEGP or the Heritage and Conservation Fund to check that committed funds are actually spent, or to determine whether committed but unused funds should be diverted to alternative uses.

### **Administrative Errors**

- 3.108 One submission from a local council outlined some errors which had caused difficulties for them. It appears that an item which was approved for funding by the Heritage Council was "inadvertently omitted from the annual funding program". In addition, one progress payment was "misplaced".



**The Adequacy of the Financial Assistance**

- 3.109 Comment in submissions is consistent with the not surprising view of the Branch and the Council that funding is "never enough".
- 3.110 The Heritage Council has also been accused of showing little regard for the financial implications of its decisions, given that financial assistance is usually only the tip of an iceberg of financial commitment for someone else. This matter is very difficult to resolve without increasing the absolute level of funding. This is beyond the scope of the present inquiry.
- 3.111 While the PAC cannot comment on the adequacy of funding overall, it can comment on the efficiency with which present funds are disbursed. The timing and co-ordination of financial assistance, for example, are discussed below.

**The Timing of Financial Assistance**

- 3.112 The publication "Avenues of Financial Assistance for Heritage Projects in New South Wales" states that:

*"All of the programs... are run throughout*

- 3.113 It appears that funds are dispersed to some extent on an *ad hoc*, "first come, first served" basis. The Finance Committee meets on an *ad hoc* basis when and only when called by the Finance Officer after he has made the decisions. This method is not conducive to efficient project selection. Competing projects are not compared at the same time and priorities are not set on the basis of alternative uses of funds.

**Co-ordination of Financial Assistance**

- 3.114 There is no single government body to oversight the financial assistance given by government and other organisations for heritage conservation.
- 3.115 The PAC noted that a private individual or body may receive assistance from many different sources, such as the Heritage Council, the Bicentennial Authority, the National Parks and Wildlife Service, Sydney Cove Redevelopment Authority, the Public Works Department, the National Trust, and others. This point is discussed later in Chapter 8.
- 3.116 The PAC considered that this might be inefficient in the sense of a duplication of administration. Also it is difficult for the public to see just how much in total is being spent on heritage items.

**Recommendation 37**

That one government body be responsible for overseeing spending on heritage items. It is considered that the Department of Planning's Heritage and Conservation Branch would be the most suitable body to deal with this matter. A Register of financial assistance provided by government could be maintained.

**The Banaid Philosophy Behind Financial Assistance Procedures**

- 3.117 It appeared to the PAC that both the Council and the Branch were not proactive in determining where financial assistance was needed. They responded only to enquiries, which have been shown to be a biased selection, and the criteria used do not include adherence to any heritage conservation plan for the State.

## Report on the Heritage Council of New South Wales

3.118 The attitude seems to be that there is so much to be done and not enough funds, so the aim of the financial assistance is to patch up items which are drawn to their attention as being "at risk".

3.119 There are two major problems with this approach

- First, as was pointed out in a submission to the PAC, preventive maintenance is probably more cost effective than ad hoc bandaiding.
- Secondly, spending on several patch up jobs may be inferior to spending on a select range of heritage items.

3.120 The Heritage Council needs to come to grips with a point made in several submissions but which is anathema to "purists". Every old item need not and ought not to be conserved. Such a view is not only inefficient in the economic sense, it is simply not possible with even the most generous funding. There are always alternative uses of funds and the real cost of several bandaids is an alternative item which is not funded at all.

### **Recommendation 38**

That a plan for financial assistance be co-ordinated with an overall heritage plan for the State.

### **Finance Committee Participation**

3.121 The PAC noted from examples of Finance Committee meeting Minutes that there were occasions when only two members were present, and when more Branch staff than Non-Branch members were present (For example, meetings on 1 May and 15 October, 1987).

## Public Accounts Committee

- 3.122 It seemed to the PAC that meetings would thus be heavily dominated by Branch Officers whether or not they actually voted or helped "resolve" matters. This, of course, reflects the knowledge and interest of the Branch.
- 3.123 The PAC also noted from the Minutes that there were few cases in which the members in any way altered the Branch's recommendation.
- 3.124 The PAC wonders whether these meetings really only "rubber stamp" Branch decisions.

#### **4. ADEQUACY OF PROCEDURES AND GUIDELINES FOR IMPLEMENTING THE HERITAGE ACT**

- 4.1 Pursuant to the PAC's Terms of Reference (v) *to report on any other matters arising from the inquiry which impact on the efficiency and effectiveness of the Heritage Council* the PAC reports in this Chapter on the adequacy of procedures and guidelines for implementing the Heritage Act.
- 4.2 The PAC *received* numerous submissions which expressed considerable dissatisfaction concerning the way in which the provisions under the Heritage Act were being implemented and the adverse effects such procedures had on individuals and organisations.
- 4.3 The provisions of the Act discussed in this Chapter are as follows:
- Interim Conservation Orders (ICO's) and Permanent Conservation Orders (PCO's)
  - Control of Items under ICO's and PCO's including applications for approval of change and appeals
  - Demolition Control
  - Appeals
  - Integration of Procedures with the Register General
- 4.4 It should be noted at the outset that items considered for one of these orders or controls are those brought to the attention of the Heritage Council. There may be more valuable items of heritage which are not the subject of such constraints either because they are not considered to be at risk or because they are unknown. That is why conservation studies of an area are needed, as discussed in Chapter 6.

## Public Accounts Committee

4.5 In the 1986/87 fiscal year, the Heritage Council recommended:

- 66 Permanent Conservation Orders
- 130 Interim Conservation Orders
- 23 Demolition Orders to control demolition
- 8 section 136 emergency orders to halt demolition and
- 216 applications under section 60 of the Act for development or alteration of properties already protected.

4.6 As at 15 January 1988, there were 707 Interim and 450 Permanent Conservation Orders and 329 Demolition Orders in total.

### **Interim Conservation Orders and Permanent Conservation Orders**

4.7 Interim Conservation Orders are defined in the Heritage Act, Part III, Division 1, Sections 24-35.

4.8 The Heritage Council may recommend an Interim Conservation Order to the Minister in respect to an item of environmental heritage or precinct:

*"the conservation of which it considers may be found, on further inquiry and investigation, to be so necessary as to warrant the making of .. o a permanent conserration order or ... an environmental planning instrument"*

4.9 Decisions are published in the Gazette and notification of owners is not required until after Gazettal. Originally, Interim Conservation Orders were for two years or until revoked as a result of an inquiry by a Commissioner. In the 1987 Amendment to the Act, the time period was reduced to 12 months. Objections may be made within 6 months of the date of an order. The original Act specified that the Heritage Council was to investigate the item "as soon as practicable" with a view to making a permanent conservation

## Report on the Heritage Council of New South Wales

order. This was also amended in 1987 to require a report on the item to the Minister within the period 12 months from the date on which the interim conservation order took effect.

- 4.10 Permanent Conservation Orders are outlined in Part III, Division 2, Sections 36-55 of the Act.
- 4.11 Permanent Conservation Orders may be recommended by the Heritage Council in respect of an item or precinct

*"the permanent conservation of which it considers necessary".*

Alternatively, owners may apply directly to the Minister for an order. After notification, submissions concerning the Order must be made to the Minister within a period of not less than 28 days. Inquiry by the Commissioner, gazettal and revocation are all similar to the procedures for Interim Conservation Orders.

### **Stringency of Criteria**

- 4.12 As discussed in Chapter 3, there have been queries and complaints about the criteria used in determining whether a conservation order should be imposed.
- 4.13 Blacktown Council commented on this matter as follows:

*"Where the heritage significance of an item is in doubt there appears to be tendency to make an Order in respect of that item 'just in case', without the necessary expertise to make an accurate assessment have been occurrences where Branch officers have sought advice from Council officers over the telephone, and have made an assessment/recommendation on the basis of this verbal opinion ... This may have effect of creating unnecessary anxiety and proper assessment had been made initially may not have resulted in the making of*

## Public Accounts Committee

- 4.14 Some submissions maintained that the definition of conservation being used was too strict and "purist" For example, with respect to a particular conservation order, the Church Administrative Officers' Group have argued as follows:

*"We submit that it is unnecessary to place an order on every building designed by BlackeSt, or for that matter any other architect. when it is uneconomical and impractical to conserve every such building".*

- 4.15 The Church Administrative Officers were particularly concerned about orders on items of liturgical importance, for example, a baptismal font in one case and wooden pews in another. One particularly controversial conservation order was imposed on a pipe organ in Saint Paul's Church, Burwood. Both the historical and musical value of the organ is being disputed.
- 4.16 while the PAC cannot comment on the heritage value of the organ, it was alarmed at the heated debate which surrounded the matter. Both parties remained intransigent and it appeared that resolution would be slow and unpleasant. There appears to be a need for skilled negotiation on such matters.
- 4.17 The PAC noted that the new Western Australian Heritage Act will exempt from conservation orders any alterations which are of a liturgical nature. It is suggested that the Heritage Council of New South Wales give consideration to the Western Australian treatment of liturgical items. Minimally, liaison between Heritage Council members and church officials on matters of such significance should be improved.



**Lack of Criteria**

- 4.18 The most common complaints were that no justification was given for an Interim or Permanent Conservation Order and that there appears to be an arbitrary element in decision-making.
- 4.19 The Managing Director of one company complained that he had been given no justification for the reimposition of an Interim Conservation Order applied to its property. The Company believed that the order had lapsed because a Heritage Council archaeological study had indicated that there was no need for a Conservation Order. The Council then advised that the Interim Conservation Order would be reimposed because their archaeological study had been unsatisfactory.

*"At a recent investigation (by staff of Heritage and Conservation Branch) .... they were given every opportunity to substantiate such a statement but did not do so. When I requested them to immediately lift the Interim Conservation Order, I was advised that it was not just Heritage items that (they) wanted to see preserved, but (they) wanted development restricted so that (the) heritage aspect of the landscape was dominant .... They also said that the Heritage Act could apply where the site was considered to be of exceptional beauty, and I replied that this had been created at great expense to the company .... "*

*"The Heritage Council has still given no valid reason for the placement of the Interim Conservation Order, and we believe that such must be disclosed so as to alleviate fears of selective or discriminating action'...."*

*"The Heritage Council has not given their reasons for selecting items or areas as being of special significance, and have not responsibility to prove such ".*

## Public Accounts Committee

- 4.20 The PAC does not have the expertise to make judgements on the heritage value of these items, and indeed understands that this particular case has been discussed at length by the Heritage Council. However, this and other evidence support the claim that the Heritage Council is not clear about its own criteria in imposing conservation orders, that it is not making the criteria or justification for imposing conservation orders clear to others, and that it changes its opinion without adequate consultation.
- 4.21 A public submission to the PAC from the Royal Australian Planning Institute, New South Wales Division commented further on this issue:

*"The Heritage Council lacks a clearly defined set of criteria for assessment of the significance of potential heritage items. The Institute considers it is essential that the Heritage Council should aim for consistency in its assessments of significance. Other organisations such as the National Trust, Australian Heritage Commission and overseas agencies have developed criteria for assessment, some in the form of checklists, or reporting forms. This approach, once it became widely understood, would give the public a better understanding of the Council's decisions and provide a more rational basis for the Heritage Council's recommendations to the Minister. It would also improve the operational efficiency of the Council and its staff.*

*"Development of a clearly defined set of should be given the highest priority".*

### **Inadequate Examination of Facts**

- 4.22 Several submissions maintained that Orders were placed without adequate examination of the evidence.

## Report on the Heritage Council of New South Wales

- 4.23 Cessnock City Council, for example, claimed that with respect to one item under an Interim Conservation Order:

*"There seems to be a reluctance on the part of the Architectural staff to actually carry out practical inspections on supervision.*

*"Approximately \$600,000 is being spent on restoration work at Richmond Main. There has been no inspection either during the work over a period of one (i) year or after completion*

- 4.24 A Company, quoted earlier in the Chapter, stated that:

*"We also advised that a number of so-called Heritage items were incorrect (that is, they were not heritage items) but they have taken no action on this ... they have not even bothered ... to confirm the statement and investigate".*

- 4.25 Ballina Shire Council, in its submission to the PAC, commented on an Order placed on a private property near Ballina. The Interim Conservation Order was to protect three plants listed as rare and endangered. The complaints were that the Interim Conservation Order covered 20 hectares but the plants were in a 20 metre square area; that when the Interim Conservation Order lapsed, the land was regazetted with an Interim Conservation Order; that there is no difficulty in propagating the plant; and mainly, the property is zoned Environmental Protection (Habitat) under Ballina Local Environmental Plan, which provides protection for the plants without the need for a Conservation Order.

### **Disregard for Economic Consequences**

- 4.26 'It appears that the Heritage Council has shown little regard for the financial implications of its decisions.

## Public Accounts Committee

- 4.27 Eight local government organisations submitted to the PAC that they were not consulted before Interim Conservation Orders were gazetted. One claimed that:

*"a substantial loss of financial development return has resulted .... "and this council has expressed concern on a number of occasions"*

- 4.28 The Heritage Act specifies in three different areas that it overrides other Acts in relation to heritage.

- 4.29 Submissions to the PAC indicated that there was a possibility that the Heritage Council was using its powers to make Interim Conservation Orders and Permanent Conservation Orders to bypass planning legislation and "stop" development.

- 4.30 Bega Council commented:

*"Instances at North Wallagoot and Boydtown to frustrate the overall planning considerations under the Environmental Planning and Assessment Act "*

### **Recommendation 40**

That criteria for making Interim and Permanent Conservation Orders be developed and used in decision-making. The criteria should address the practicability of, the necessity for and (in the case of Permanent Conservation Orders) the economic/financial implications of the orders.

### **Recommendation 41**

That criteria be based on well researched, sound, proper advice and knowledge of alternative conservation plans. In the case of Orders in country areas, inspections be made by the Heritage Council or its representative.

## Report on the Heritage Council of New South Wales

- 4.31 The PAC inspected heritage property in the Haberfield Conservation Area - an area commonly referred to as the "Federation Suburb" Here the Heritage Council has placed permanent conservation orders on whole streets. This concept of placing orders on whole areas, as distinct from single isolated buildings, is relatively new and is in accordance with a "heritage plan" which has advantages over the *hdc* placement of single Orders.
- 4.32 However, the PAC observed from inspections and from submissions received, that there were teething problems associated with the implementation of the Haberfield Conservation Plan, and with a similar application at Hill End. Residents complained of conflicting advice from local government, heritage advisors in the area and the Heritage Council. Complaints usually revolved around whether the integrity of a building could be maintained if minor changes such as replacement paving, roof tiles or other items could be similar to the original, rather than authentic reproductions. The latter was found to cost much more and the cost is borne by residents without financial assistance.
- 4.33 While the PAC recognises that resolution of these problems involves significant consideration of policy issues, the PAC was concerned that mechanisms were not in place to assist and advise residents on cost effective solutions and to resolve disputes.
- 4.34 Also associated with this issue is the burden of cost for local governments which encompass large segments of heritage in their municipality or shire. For example, Leichhardt, Marrickville and Ashfield (incorporating Haberfield) Councils.

**Recommendation 42**

That a standard checklist, listing criteria be developed, and that this checklist be completed and made available for public scrutiny in each case of an Interim or Permanent Conservation Order.

**Failure to Consult**

4.35 In a submission to the PAC it was reported that:

*"The placement of an Interim Conservation Order without consultation provided additional costs to Bega Valley Shire"*

4.36 Several complaints concerning lack of consultation were also received from individuals. For example, the Hill End Progress Association commented that:

*"We object to imposition . of an Interim Conservation Order being placed the over entire township .. without any form of prior consultation whatsoever with residents. This. order has effectively stifled the effect of anyprogress".*

4.37 One local government organisation commented that lack of consultation with property owners "results in fear of the unknown" This Council suggested a 60 day frozen period for consultation prior to gazettal.

4.38 The PAC understands the need for making Orders before unsympathetic owners may alter their properties. However, some consultation with local government appears to be warranted, given the importance of many local environmental plans. Some local government organisations had been surprised and even shocked by decisions to impose Orders.

**Recommendation 43**

That a series of standard letters stating intention and later notification of a Conservation Order be posted to appropriate individuals or organisations.

- 4.39 The PAC recognises while there is no legal requirement for the Minister to notify anyone concerning a decision to impose a conservation order.

**Slow Notification**

- 4.40 The PAC was informed that notification was not received by owners up to two weeks after gazettal of the Orders. The extent of this practice is unknown.

**Limited Notification**

- 4.41 The PAC was informed by a heritage consultant that the present arrangement of notifying only owners was unsatisfactory. Not only should local government be notified, but there is a strong case for notifying neighbours and local conservation organisations, since these people are also interested in the properties and may help to protect them.
- 4.42 In the case of private residential dwellings, neighbours in a street are not notified and the PAC believes they should be. The reason for this is twofold. First, it guarantees that the owner will not be able to make changes which affect the heritage value but it also notifies neighbouring owners that their own properties may have heritage significance, and that changes they may wish to make to their own properties may affect the original heritage listed property. The PAC believes that such notification after gazettal would be an avenue for community education with respect to the Heritage Council and its functions.

**Recommendation 44**

That local government be consulted before a conservation order is made and that notification of such orders be given to members of the community who may affect or be affected by those orders.

**Slow Communication and Decision-Making**

4.43 The majority of submissions to the PAC indicated extensive delays in making Orders and in correspondence about Orders.

4.44 For example, Blacktown Council submitted in June 1987 that:

*"Council wrote ..... requesting the making of a Permanent Conservation Order in respect of Blacktown Primary School ... in November, 1984 ..... Despite four letters requesting a reply since that time no further advice has been received regarding the outcome of .... examination". (Apart from an initial acknowledgement. )*

4.45 This experience does not seem to be uncommon.

4.46 A systematic study by McDougall (1985) of over 1,600 Heritage Council recommendations over the 1981-82 period showed the average number of days taken to implement Interim and Permanent Conservation Order recommendations. This information is summarised in Table 4.1.

4.47 The PAC considers that the time taken is excessive for the efficient administration of the Act.

**Recommendation 45**

That the the time taken to implement conservation orders be reduced.



## Report on the Heritage Council of New South Wales

- 4.48 The PAC noted that the Victorian Historic Buildings Council in its 1985-86 Annual Report noted that it had commissioned

*"a computer needs analysis as the basis for increasing Council's efficiency",*

- 4.49 While the PAC did not examine the computing requirements of the Heritage Council, it is possible that a computerised recording and follow-through system may be superior to the manilla folder type filing system to ensure that Conservation Orders are implemented within the statutory time limits.
- 4.50 Time limits for each stage of implementation could be specified by the Heritage Council as "reasonable and fair", and performance on these measures could be monitored on a routine basis.

### **Recommendation 46**

That the use of computers to monitor and reduce the time taken to implement conservation orders and other decisions be investigated and that reasonable time limits for each stage of implementation of Orders be established.

Public Accounts Committee

TABLE 4.1

**TIME ANALYSIS OF ADMINISTERING THE HERITAGE ACT**

ACTION IMPLEMENTED	NO. OF RECS.	TOTAL NO. OF DAYS	AVERAGE NO. OF DAYS
Section 130 Gazettal	1121	113855	101.56
I.C.O. Gazettal	229	17941	78.34
P.C.O. Rec. following the Gazettal of the I.C.O.	134	65630	489.78
P.C.O. Gazettal	196	55019	280.70

Source: Condensed from McDougall, R.A. "An Evaluation of the Heritage Act, 1977 New South Wales" Thesis submitted in part fulfilment of Master of Environmental Studies, Macquarie University, March 1985, Appendix C, Figure II.

**Lapsed Interim Conservation Orders**

- 4.51 The study by McDougall, cited above, also examined those items in 1981-82 which graduated from Interim to Permanent Conservation Orders. He found:

*"Significantly, 64% of all these items have been left unprotected for a specific period of time because the ICO expired before the PCO could be gazetted".*

- 4.52 Of those items which were finally gazetted:

*"The item was left unprotected for a period of 212 days on average". (Page 182)*

- 4.53 This delay is excessive. The PAC noted a letter from one company to the Heritage Council, which revealed the types of problems associated with allowing Interim Conservation Orders to lapse. The Managing Director of this company (also quoted earlier) informed the PAC that a Conservation Order was placed on a property in 1979. After it was lifted in 1981, his company spent in excess of \$5.5 million on development. Towards the end of 1986, a second order was imposed preventing, at least temporarily, further development, and causing considerable costs through interest and holding charges.
- 4.54 The PAC considers such actions to be most unsatisfactory. It is detrimental to development not as an inevitable result of heritage conservation but as a result of poor procedures and guidelines.
- 4.55 Some local governments including those of Wingecarribee, Kiama, Bathurst, Blacktown and Cessnock, also commented on the delays involved in the Heritage Council approving applications for changes to items protected by conservation orders. For example, one application, submitted in April

## Public Accounts Committee

1987 had not been considered at the end of July 1987. Some local governments believed this was because the Heritage Council met frequently - once a month (Bathurst, Hawkesbury).

- 4.56 Since this inquiry was commenced, Amendments to the Act appear to have ameliorated this problem. One local government commented that there had been:

*"delay in processing of applications for development but this has now been ameliorated by recent changes which permit concurrent applications to the Heritage Council and the Local Council".*

### **Ineffective Communication**

- 4.57 Some owners of heritage items were puzzled when they were notified concerning the meaning of a conservation order. They did not know what type of changes they may make without consultation.
- 4.58 The PAC considers that notification to owners of either an Interim or a Permanent Conservation Order should be accompanied by a statement of the type of change or development which will be permitted under the Order.

### **Recommendation47**

That guidelines (or at least a copy of the key parts of the Branch's briefing paper) outlining changes which may be made to properties affected by Orders be provided to the owner at time of notification.

### **Progression from Interim to Permanent Conservation Order**

- 4.59 In the case of Interim Conservation Orders, it has been argued that it should not be common for an Interim Conservation Order to be imposed on an item without it

## Report on the Heritage Council of New South Wales

later being converted into a Permanent Conservation Order. However, evidence before the PAC suggested that this was not the case. For example, one systematic study showed that:

*"A number of items which were subject to ICO's did not receive permanent protection under the Act. The 83 items concerned represent over 36% of the total number of ICO's gazetted within the study period"*

(McDougall, 1985, op.cit., Page 149)

4.60 The Council's 1987 Annual Report lists six Interim Conservation Orders which were revoked. In 1986, the number of such revocations was also six.

4.61 The time taken in graduating from an ICO to a PCO in the 1981-1982 period was found to be 490 days for the Branch staff to prepare a report for the Heritage Council concerning the recommendation and 281 days to seek the Minister's approval and publicly exhibit the notification before finalising the gazettal. Apparently, these time lags cannot be justified:

*"Since, in the majority of cases, the further report required to enable the Council to consider a recommendation for a Permanent Conservation Order does not contain a significant amount of additional information, there appears to be no justification for the excessive delay"*.

(McDougall, op.cit.)

*"Section 136 ... should provide an adequate period to gazette the Permanent Conservation Order for the majority of the items . . ."*

4.62 At the time these empirical studies were conducted, there was a two-year time period to carry out inquiries. The 1987 Amendment to the Heritage Act has altered this to one year.

## Public Accounts Committee

- 4.63 The 1987 Amendments ensure that all new items registered with Interim Conservation Orders must be reviewed at the, end of twelve months.

### **Recommendation 48**

That the Heritage Council follow-up whether the Interim Conservation Order review system is working in twelve months' time.

### **Revocation of Permanent Conservation Orders**

- 4.64 The Act allows revocation of a Permanent Conservation Order. For example, cases of orders being revoked as soon as restoration or conservation work has been completed, have caused some observers concern for the item's long run management as a heritage item. The Council's 1986 Annual Report listed revocations of five permanent conservation orders.
- 4.65 From the PAC's discussions with heritage consultants and planners in Western Australia, South Australia and New South Wales, it appears that the revocation of permanent conservation orders is not within the spirit of the Act, and hence should be abandoned.

### **Recommendation 49**

That the issue of revoking Permanent Conservation Orders be investigated.

### **Deterioration of Heritage Items with Orders**

- 4.66 There was considerable concern expressed to the PAC during its field inspections and its inquiry that properties under Interim and Permanent Conservation Orders had been allowed

## Report on the Heritage Council of New South Wales

to deteriorate, sometimes to such an extent that vandalism and arson finally rendered the property useless. While Section 57 of the Act specifies that demolition, excavation and other active actions are illegal for items with Conservation Orders, neglect is not specified (although, curiously, it is for items without Conservation Orders). The Heritage Council apparently has no policy to manage this problem.

- 4.67 If an item is of sufficient heritage value to prevent its alteration, it should also be protected from deterioration and vandalism. Loans for restoration are one possibility. Compulsory sale of the item is another. Central to this issue is who bears the cost.

### **Recommendation 50**

That the issue of deterioration of heritage items with Orders be considered explicitly and options for preventing deterioration be canvassed'

### **Control of Items with Conservation Orders**

- 4.68 The Act (Part IV) provides for control of items which are the subject of Interim or Permanent Conservation Orders. It is specified that demolition, damage or other harmful activities are illegal and that approval for changes to the item are by way of an "application for approval" to the Heritage Council. Where the Heritage Council has not determined an application within 40 days(*or where* public notice has been given within 60 days), it is deemed to have refused the approval.
- 4.69 Several local governments submitted to the PAC that the 40 day period to consider applications (which had to be done prior to consideration by local government) did not take

## Public Accounts Committee

into consideration the local government's legal obligation under the EPA Act to consider applications in 40 days.

4.70 The 1987 Amendments to the Act removed restrictions which prevented development applications from being lodged with consent authorities while being considered by the Heritage Council. Thus, the problems cited above appear to have been overcome at least from a statutory viewpoint.

4.71 Another comment from Glen Innes and Cessnock Councils concerned lack of practical inspections of alterations on items with Orders imposed. For example,

*"It is quite clear to me that I could have carried out extensive demolition work without the Heritage Council being any the wiser". and*

*"Although I made numerous requests for forms Council's submissions for approval mere, therefore, always by letter. On the last occasion... no reply was received and the work was proceeded with ... there has still been no inspection".*

4.72 While the particular local government organisation in this example apparently carried out the work according to heritage plans, the PAC was concerned that the Heritage Council's procedures lacked checks and safeguards, especially given the importance attached to this form of control in the Act.

### **Recommendation 51**

That a routine progress checking system for all work being carried out on items, which are subject to Orders imposed under the Act, be implemented.



**Demolition Control**

- 4.73 Until 1987, demolition control was governed by Division 8 of the Act "Controlling and Restricting Demolition of Buildings and Works not Subject to Conservation Instruments". This title was subsequently changed to "Controlling and Restricting Harm to Buildings, Works, Relics and Places" to extend coverage of damage to relics and places.
- 4.74 The demolition (Section 130) Order prevents demolition until a conservation instrument is made or after a notice to harm an item is given has expired or the Order is revoked by the Minister or the expiration of 12 months (this latter amendment was also introduced in 1987).
- 4.75 The Demolition Control is Order is probably the most publicly controversial matter which the PAC considered in this Inquiry.
- 4.76 The demolition of Rose's Emporium in Petersham and Brockleigh in Marrickville, both under Demolition Orders, during the course of the Inquiry raised considerable media attention about Demolition Orders and penalties for breaching them.
- 4.77 Demolition of Rose's Emporium commenced at 4.00 a.m and the owner and demolition contractor were each fined \$4,000.
- 4.78 Demolition of Brockleigh was commenced on Saturday by the owner who stopped when Police presented him with the Gazette Notice of the Order. He failed to notify the demolition contractor who completed demolition in 15 minutes at 6.00 a.m. on the Monday following.

Public Accounts Committee

4.79 The PAC considered both of these cases to be blatant contempt for the Heritage Act. In both cases, prompt action by the Heritage Council could have averted the demolitions.

4.80 The PAC considered, on the basis of evidence, that penalties for breaches of the Act were insufficient. The then Minister for Police and Emergency Services, wrote to the PAC:

*"... I was outraged by the blatant disregard shown to orders placed on buildings by the Heritage Council when the former Brockleigh mansion was demolished in ... Marrickville".*

4.81 A private individual wrote to the PAC on this same issue:

*"In the case of Brockleigh ... it took nearly four months from the time the local heritage society formally requested such an order, and .. indicated to ... the Heritage Council .. that there was a degree of urgency based on a tip-off that the building was going to be demolished".*

4.82 The PAC considers such slow progress most unsatisfactory.

4.83 An incident occurred in Maitland on 29th January, 1988, in which:

*demolition Order but the judge responsible for placing orders was away on holidays with no replacement, leaving the whole State vulnerable."*

4.84 A variety of reforms were submitted to the PAC for consideration including;

- Increasing penalties for breaches of the Act. Penalties were increased in April 1987 from \$10,000 to \$20,000.

## Report on the Heritage Council of New South Wales

- Enforcement of collection of penalties. One observer has estimated that no more than \$8,000 has been collected in penalties, and that tougher action should be taken.
- Delegation of demolition control to local councils
- An emergency 24-hour telephone service for the provision of information concerning urgent requests for demolition or conservation Orders and Section 130 enquiries.
- Tenanting and securing responsibilities for owners
- A 24-hour guard, at least until notification of the Order has been served personally to the owner.

4.85 Since the Inquiry commenced, Amendments to the Act in 1987 have permitted a series of delegations including the delegation to the Heritage and Conservation Branch Manager:

*"the function to approve the carrying out of minor harm to an item subject to a demolition Order where notice is given ... where one or more Members of the Council have considered such notification".*

4.86 It is expected that this will reduce the time and resources in making decisions which otherwise would have been dealt with on a monthly basis by the Heritage Council; The PAC commends the Heritage Council for initiating these changes, even if it is too late to save those demolished items which forced the issue.

### **Recommendation 52**

That penalties for breach of Section 130 Orders (Demolition Control) be enforced, that a readily available emergency service be established for the purpose of effective demolition control and that Section 130 Orders should be served on owners within three days of Gazettal.

Public Accounts Committee

- 4.87 Demolition Orders expiring before further action could be taken also appeared to be a problem. In a study of 57 Section 130 items for which data could be obtained in 1981-82, (McDougall, op.cit., Page 92 and 97).'

*"for 50% of the sampled items, the order expired before the Interim Conservation Order could be gazetted. Although this resulted in the demolition of only one building ... the opportunity, existed to demolish all the items without incurring any penalty or fine ".*

Further,

*"The average time required to protect a building or work by an Interim Conservation Order following a S.132 notification is 46.53 days, some seven days in excess of the period allowed under the Act ".*

- 4.88 While this study was conducted a few years ago, it appears that items can still become "at risk" in this way.
- 4.89 The question of time taken to review an objection to a demolition Order is illustrated by the following timetable submitted to the PAC:

*"Section 130 Order - Mittagong Council Chambers*

- *Council advised 13 June 1986 of making of Section 130 Order - prohibiting demolition.*
- *Council requests Minister to justify imposition of 130 order 28 July 1986*
- *Council again requests response 27 August 1986*
- *Council requests assistance of the Member of Camden 28 October 1986.*
- *Council again writes to Minister 21 January 1987 again requests the support of the Member of Camden.*

## Report on the Heritage Council of New South Wales

- *Council receives holding reply from Minister  
26 March 1987*
  
- *Council advised by Minister, 130 Order is  
to be revoked, 10 April. 130 Order revoked  
9 April 1987.*

*"The action that appeared to start in March occurred only after repeated phone calls and the assistance of the Member of Camden find it difficult to believe that the consideration of this issue could have taken 11 months and that the first response would take 10 months".*

- 4.90 The PAC noted from the 1987 Annual Report that there appeared to be many more revocations (39) than impositions of (27) Demolition Orders. It appears that many Orders are made on the basis of little or no expert heritage advice and hence are revoked after investigation.

### **Recommendation 53**

That appeals against Demolition (Section 130) Orders should be dealt with promptly, and that a minimum pre-determined level of professional information be required before imposition of a Section 130 Order.

### **Appeals to Alternative Authorities**

- 4.91 At present, an appeal against any decision under the Heritage Act must be directed to the Minister for Heritage. This is inconsistent with other Acts, such as the amended New South Wales Local Government Act (Building Certificates), which specifies that appeals may be made to the Land and Environment Court.
- 4.92 The situation in Western Australia, under their new Heritage Act, is that appeals may be made to the Minister or to the Town Planning Appeals Tribunal. It is envisaged that the Minister would deal with minor appeals, appeals on compassionate grounds and appeals where legal fees are not

## Public Accounts Committee

affordable whereas the Tribunal would deal with major issues concerning developers and large-scale development proposals.

### **Recommendation 54**

That appeal mechanisms be reviewed so that appeals may be made either to the Minister for Heritage or to the Land and Environment Court.

### **Integration of Procedures with the Registrar General**

- 4.93 It would be helpful to local councils, in their assessment of development applications, and for purchasers of property who may not be aware of the heritage significance of the property, that heritage conservation orders on properties be recorded in a central location.

### **Recommendation 55**

That heritage conservation orders or controls on properties be recorded on the title of the properties by the Registrar General.

### **A Final Note - The Ombudsman's Perspective**

- 4.94 The Office of the Ombudsman has investigated complaints concerning the Heritage Council every year since 1981.
- 4.95 The Ombudsman's 1985 Annual Report showed that one out of the four cases investigated showed wrong conduct. The 1986 Report showed that of six cases considered, one was still being examined for wrong conduct.
- 4.96 The PAC was concerned with many of the Ombudsman's comments in the Annual Reports, some of which are discussed later in Chapter 7.

## Report on the Heritage Council of New South Wales

- 4.97 In particular, with regard to the discussion in this Chapter on procedures the following example quoted in the Ombudsman's 1985 Annual Report is relevant involving land adjacent to Rouse Hill House, which was thought to be associated with the site of the Battle of Vinegar Hill, the clash in 1804 between soldiers and convicts.

*"The owners of the land were initially prevented from building on the land, which at various times from July 1979 was covered by Interim Conservation Orders. Interim Conservation Orders were first placed on the land on the grounds that it was associated with the Battle of Vinegar Hill. The landowners wished to build a house; officers of the Department tried to persuade the owners to build below the spur, out of sight of the main road, but the owners would not*

*"In early 1981 the Department offered to buy the land, the owners counter-offer was considered excessive. In July 1981 the Interim Conservation Order on the land lapsed, and was renewed some three months later.*

*"In May 1982, a Commission of Inquiry found the land was not the site of the battle, and the second Interim Conservation Order was revoked in July 1982. The owners assumed that they had "won", and in September 1982 wrote to the then Minister that they had applied to Blacktown City Council for permission to build. They received no reply. In December 1982 the landowners obtained building permission from Blacktown City Council.*

*"In June 1983 the Department, discovering that building had commenced, placed various restrictions on the activity, and eventually obtained orders in the Supreme Court. On 26th August, 1983 the land was resumed, essentially on the grounds that it was needed to protect the environs of Rouse Hill House.*

## Public Accounts Committee

4.107 The Deputy Ombudsman considered that the Department and the Heritage Council had been unreasonable in allowing a conservation order to lapse, and in not renewing the order between July 1982 and June 1983. He was also critical of the Department's failure to take any action following notification from the landowners to the Minister saying that building was to begin. The Department's resumption of the land was considered unreasonable.

4.98 The PAC considers that the Rouse Hill incident epitomises the theme of this Chapter.

- First, there is a question of the criteria used in determining the imposition of an Interim Conservation Order.
- Secondly, there appears to have been inadequate examination of the facts.
- Thirdly, there was a complete disregard for the economic consequences (both to the owners and later to the Government in terms of Court costs and to the Council in terms of loss of goodwill in the public eye).
- Fourthly, there was a failure to consult the landowners, neighbours and the local council.
- Fifthly, notification of the order was unsatisfactory and communication was slow and ineffective.
- Sixthly, the Heritage Council had permitted an Interim Conservation Order to lapse and had not renewed it for a period of one year.
- Finally, no action was taken by the Heritage Council even after the owners notified them of their intention to commence building.

4.99 The PAC requested further information from the Ombudsman on this and other matters. The Acting Ombudsman replied:



## Report on the Heritage Council of New South Wales

*"Unfortunately, the secrecy provisions of Section 34 of the Ombudsman Act appear to preclude this Office from providing more detailed information, even to a PAC of the Parliament of New South Wales itself. The many problems that arise for this Office, for Members of Parliament, and for members of the public, from the sweeping secrecy provisions of the Ombudsman Act have been set out in successive Annual Reports and in three special reports to Parliament by the Ombudsman"*

4.100 The PAC called the Acting Ombudsman to appear at Public Hearings which were held on Wednesday 7th October, 1987.

4.101 The PAC arranged for the then Minister for Planning and Environment to give permission for the Ombudsman to discuss issues concerning his Department. The Acting Ombudsman arranged for the consent of the individuals involved.

4.102 The Acting Ombudsman told the PAC that "a substantial amount of compensation had been awarded to the complainant", although the matter has been appealed and is still being negotiated.

4.103 The Acting Ombudsman also commented that:

*"the common theme seemed to be that the problem ultimately arose because of delay in taking action at the key time".*

4.104 The delays which have been reported to the PAC do not appear to be associated with the heritage significance of the item. That is, it is not always the most important items which are the subject of delays. The Ombudsman's opinion was that the procedures were poor, not because of the Heritage Council *per se*, but because of the administrative procedures of the Council's support staff in the Department of Planning, some of which have been discussed in previous chapters. The relationship between

## Public Accounts Committee

the Branch and the Council is discussed later in Chapter 7 of this Report.

- 4.105 The PAC is concerned that, while there appear to have been some changes in procedures since the Rouse' Hill incident, it is not clear that these changes have resulted in any substantial improvement.
- 4.106 The PAC believes that the problems encountered by the Ombudsman would be significantly reduced if the PAC's recommendations in Chapters 3 and 4 were adopted. However, some of the difficulties are more fundamental and refer to the lack of overall review mechanisms and confusion concerning the respective roles of the Heritage Council and the Department. These matters are raised in Chapters 6 and 7.

## **5. USE OF CONSULTANTS**

### **Expenditure on Consultants**

- 5.1 In 1985/86, expenditure on "consultant fees" (\$383,390) represented almost half of what was spent on "salaries and related payments" from the Heritage and Conservation Fund. That is, consulting was an important financial commitment for the Heritage Council, especially if considered in relation to the salaries component of its budget.
- 5.2 The PAC noted that there were concerns about the extent and rate of increase of expenditure on consultants, and about the procedures for selection, management and evaluation of consultants. These concerns were investigated by the PAC and are the subject of this Chapter.

### **Increase in Expenditure on 'Consultants**

- 5.3 The Auditor-General noted in his 1985-86 Report that consultant's fees (in the income and expenditure statement) had increased from \$267,999 to \$384,000, an increase of 43.8%. Expenditure on consultants represented 9% of total expenditure.
- 5.4 The PAC followed up the Auditor General's comments and found that the increase in expenditure resulted almost entirely from consulting on one project - the Phillip Street Terraces.
- 5.5 Expenditure on consulting, however, did not decline in subsequent years as would be expected. This is indicated in the following table.

Table 5.1

**Heritage Conservation Fund: Expenditure on Consulting**

<u>Year</u>	<u>Expenditure</u>
1984-85	\$267,459.00
1985-86	\$383,390.00
1986-87	\$372,665.00
1987-88 (to 4.5.88)	\$328,392.78

**Reasons for Hiring Consultants**

5.6 During the Hearings, 10th June, 1987, the PAC asked members of the Heritage and Conservation Branch and Heritage Council to comment on the significant proportion of the budget going to consulting fees (\$383,390) compared with salaries and related payments (\$842,777).

5.7 While some Heritage Council members appeared to have little understanding of these arrangements, the following three reasons were given:

*'many of the matters in which the Heritage Council gets involved are technical' ... "we need a variety of expertise, which often we could not afford to engage full-time".*

*"in many cases the Heritage Council wants a report on an item before it decides to act".*

*"when we get an overload of urgent matters ..... to do a quick report".*

The PAC examined all the consultancies for 1985/86 and others and found that about 50 different consultants had been employed and their use reflected the Heritage Council's stated need for a variety of technical expertise

## Report on the Heritage Council of New South Wales

ranging from architectural, historical, archaeological environmental, legal and economic expertise.

- 5.9 It was noted that several consultants whose names appeared in 1985/86 documentation also appeared for separate projects in 1987. Consulting is a largely "closed shop operation.
- 5.10 The PAC was concerned that this might reflect the fact that consulting contracts were not decided on a competitive basis but solely on the basis of "being known" to Branch staff or Council members.
- 5.11 It is considered that such an approach would be inefficient if the consulting firm knows that the Heritage Council is concerned only about the accuracy of advice, not the cost of advice.
- 5.12 The PAC noted that some tasks performed by consultants were within the range of experience and competence of the Heritage and Conservation Branch staff. It appears that consultants are being used to substitute for staff time.
- 5.13 For example, one consultant (an *architect* by profession was engaged in 1984, initially for a period of four month and later for two more four-month periods.
- 5.14 His work was described by the Branch as follows:

*"following up grants made under the National Estate Program ... All outstanding projects for the 1974/75 grants period through to the 1981/82 period have been concentrated upon" and "considerable assistance in the preparation of a number of consultant briefs for specific projects which have been outstanding for some time".*

Public Accounts Committee

5.15 The Branch commented that:

*"... as a result of his employment tasks within the Branch which needed out, but through lack of staff resources had not been attended to, have now been completed ..."*

*"... His assistance in these areas has proved invaluable and has enabled projects to be undertaken far quicker and more effectively than might otherwise have been the case."*

5.16 The PAC considers this consultancy to be most unsatisfactory for a number of reasons.

5.17 In the first instance, it is inappropriate that a casual consultant, who was neither a permanent employee of the Department or an appointed member of Heritage Council at the time, should play such an important role in Heritage Council decisions.

5.18 Follow up of grants which had not been taken up or were still in progress, (in some cases up to a decade) are more properly the responsibility of a more senior person with the appropriate delegated authority. It is inappropriate for a casual consultant to be checking up on the work of other consultants.

5.19 Secondly, the preparation of briefs, which would have included recommendations, for NEGP is similarly an inappropriate task for a casual consultant because, given the way the Heritage Council apparently adopts almost all recommendations put to it by the Branch (Chapter 3 and 4), delegation of the briefing task is tantamount to delegation of decision-making authority.

5.20 Thirdly, this type of consultancy which "replaces" staff is not a generally accepted public service procedure and may have industrial ramifications. Certainly this use of

## Report on the Heritage Council of New South Wales

consultants was not alluded to at the June 1987 Hearings when the PAC asked why so many consultants were used.

- 5.21 Finally, the consultant was retained as an "architectural consultant" and yet the range of tasks in which he was apparently engaged appear to require more than architectural qualifications.
- 5.22 The PAC requested a copy of all documentation associated with this consultancy. Nowhere in the documentation, including briefing notes recommending appointment, were the consultant's qualifications and experience discussed.

### **Recommendation 55**

That the employment of consultants be confined to technical tasks which complement rather than substitute for the skills of the Heritage and Conservation Branch staff and the Heritage Council members.

### **Recommendation 56**

That consultants should not be intimately involved in decision-making which is explicitly the responsibility of the Heritage Council and should not be employed to follow up grants which have become outstanding.

### **Consulting Fees**

- 5.23 Fees charged appeared to be those recommended by the professional body representing the interests of the particular professions employed.
- 5.24 Three matters concerned the PAC about fees. First, there appeared to be no fee competition. Apparently, consultants were not chosen on a competitive fee basis, but only on the basis of their technical competence. The wording of

## Public Accounts Committee

contracts is sometimes of the form that the consultant is to work "to a maximum fee of \$66 per hour". The word "maximum" is superfluous given the current practice of the Branch/Council.

### **Recommendation 57**

That selection of consultants be based on fee competitiveness as well as on technical competence.

- 5.25 Secondly, the PAC noted that the consultant's fee was sometimes based on "the final restoration sum". The PAC considered that this form of fee setting does not in any way reflect the true costs of work and that it would establish incentives to provide advice for restoration work and other changes which would escalate that final restoration sum.

### **Recommendation 58**

That consulting fees be based on costs and value of work, not on the final restoration sum.

- 5.26 A third matter of concern to the PAC was the practice of accepting a consulting quote which included a "consultancy fee" plus an extra fee, for example, 'to cover fieldwork expenses, including car hire, accommodation and photography'. This particular consultant, according to the Branch's initial briefing note, had already agreed to do the work for the consultancy fee alone. A subsequent briefing note justifies the additional amount as follows:

*"I would consider this justified in terms of the time elapsed during the negotiation of this matter. (The consultants have extended the timescale by the five months' delay in forwarding their estimates."*



## Report on the Heritage Council of New South Wales

- 5.27 The logic here is not clear. The inflation rate at the time would not have justified such an increase, and it appears that the time elapsed was due to tardiness on the part of the consultant.
- 5.28 Also, the PAC noted from the other Branch/Consultant correspondence which it was able to examine that costs were normally considered to be part of the overall fee, with no separate charge being invoiced.
- 5.29 It is not clear that any attempt was made by the Heritage Council to ensure that the quoted costs were actually incurred by the consultant or to ensure that payments were made on the basis of itemised invoices received. A grant, rather than cost reimbursement, was given with no more itemisation than quoted above.

### **Recommendation 59**

That the Heritage Council not reimburse running costs of consultants and, if it must do so, costs should be paid on a cost reimbursement basis only after receipts have been received.

- 5.30 One consultant arranged subcontracting of a project to two other specialists for contracts in the order of \$34,000 and \$3,000. The Heritage Council apparently did not consider alternative specialists. While the PAC is not in a position to evaluate this particular case, such an arrangement would result in less direct control by the Heritage Council, is not based on open (fee or expertise) competition and may be conducive to hidden "commissions".

**Exemption from the Public Service (Stores and Services) Regulation, 1984**

- 5.31 During the Hearings on 10th June, 1987, the PAC was informed that consultancies were not arranged through the State Contracts Control Board but were by way of delegation to the Department under the Public Service (Stores and Services) Regulation, 1984.
- 5.32 The Regulation, which is intended for all Departments, sets out the requirements for obtaining tenders and quotations. Many of the regulations are relevant mainly to the requisition of stores and equipment. Some regulations are, however, relevant to the employment of consultants. For example, Part III, 8 (2), (3) and (4).
- 5.33 The Department of Planning was exempted from this section as far back as 1980.
- 5.34 The State Contracts Control Board issued "Guidelines for the Procurement of Consultancy Services" which became effective in January, 1986. The Guidelines were issued *for the guidance of departments to ensure that procedures followed are in compliance with general policies determined by the Board'* that is, with Government Policy.
- 5.35 The Department of Planning again requested an exemption from Act (and these guidelines) on 13 March, 1986. The exemption was specifically for the procurement of consultancy services. The Department's reasons included the technical nature of their consultancies, the need for a specific consultant with specific expertise, the need for someone known to the Department and the need for instant responses.
- 5.36 The State Contracts Control Board on 8th April, 1986 granted the exemption, specified in Appendix 12.

## Report on the Heritage Council of New South Wales

- 5.37 The exemption means that the Department, including the Heritage Branch (which acts on Heritage Council decisions is not subject to the Government's overall policy stated in the Guidelines for the Procurement of Consulting Services.
- 5.38 The arguments used by the Department did not appear to the PAC to be unique to the Department of Planning or the Heritage Council. They may equally apply to other Departments. For example, the Department of Health is required to conduct confidential inquiries with great haste. Also, it is not clear that the arguments apply to the bulk of Heritage Branch consultancies. The PAC is aware of many consulting studies on items which have waited for centuries and are in no immediate danger.

### **Procedures adopted by the Heritage and Conservation Branch**

- 5.39 The PAC was informed that the Heritage Council follows the procedures of the Department.
- 5.40 The substance of the procedures is as follows:
- Assistant Directors and the Head, Environment Protection Division, have delegated powers to spend up to \$10,000 and the Director has delegated powers to spend up to \$40,000 on any one consultancy.
  - For projects up to \$8,000, a consultant can be selected directly subject to the Director's approval, without the need to prepare a consultant short list and there select a consultant for the project.
  - For projects costing more than \$8,000, consultant nominations are submitted to the Consultant Selection Panel and the Director's approval is obtained.
- 5.41 The basic checks included on the Consultant Selection and Approval form are as follows: -funding is available
- brief has been completed

## Public Accounts Committee

- nomination consultants and reasons

5.42 The PAC noted that the delegated spending limits adopted by the Department (i.e. \$8,000, \$10,000 and \$40,000) bear no relation to the State Contracts Control Board limits of \$12,000 and \$30,000. The latter limits appear to be set by the Minister. The PAC could see no rationale for this difference.

5.43 All calls for consulting studies are exempted from the State Contracts Control Board regulation, not just those where there is a need for spontaneity, haste or confidentiality. The bulk of consultant studies do not appear to have these special characteristics.

### **Selection of Consultants**

5.44 Unlike the State Contracts Control Board Guidelines the checks mentioned above do not include the following:

- "avoid contracts with individuals or organisations having a vested interest which could affect the outcome of the project;
- "ensure that the selection of a consultant or other contracts for services will stand up to public scrutiny."

5.45 There is no open tendering and there is no process of selective tendering after invitation in the public press. The Board's requirement of "not less than three consultants invited" does not appear to be observed, although this is falsely implied by the form which has space for six alternative consultants.

5.46 There is no necessity to state the criteria to be applied in selection, or to state the basis of the fees or whether value for money is likely.

## Report on the Heritage Council of New South Wales

- 5.47 This is not only a matter which concerns the PAC. It is also the legitimate concern of many professionals and others who submitted their comments to the PAC.
- 5.48 When the PAC asked if the "Council gets a chance to view all the written quotations or letters?", the Chairman of the Heritage Council replied:
- "No, except what is suggested by the Director. In a special case we would be informed by him or the manager of particular firm being selected or proposed to large. it is run by the Department."*
- 5.49 In other words, the Council is not involved in the consultant selection process at all.
- 5.50 This appears to contradict some of the Minutes which show the Council and Advisory Panels actually requesting particular consultants to do the work.
- 5.51 In Summary, it could not be determined who assumed responsibility for selection of consultants although it is clear that the Branch does all the administration.

### **Management of Consultants**

- 5.52 The Heritage Council has issued "Heritage Study Guidelines" which have been produced specifically for the use of heritage consultants and local government in preparing heritage studies. The Guidelines specify the tasks of the consultant and a timetable for completion of various parts of the study. The PAC found these Guidelines to be excellent and considered them to be part of a sound management practice.

## Public Accounts Committee

- 5.53 Nevertheless, there were a large number of minor issues raised in submissions or noted from the Branch correspondence concerning management of consultants.
- 5.54 For example, approval for the appointment of one consultant to attend an Inquiry as a Heritage Council witness and to perform other work was not given until after most of the work had been completed.
- 5.55 In two cases where a first consultant had withdrawn services after significant payments had been made and a second consultant was employed to complete the tasks, the Department's records show that the consultant had left insufficient documentation and this resulted subsequently in higher costs. This demonstrates a lack of supervision and inadequate progress reports.
- 5.56 Examples of mistakes in the addition of progress payments, delays in payments to consultants, irregular meeting dates with consultants (which resulted in unnecessary delays) were noted.
- 5.57 On the matter of progress payments, there appears to be inconsistency concerning the stage at which progress payments are made. For example, one historical consultancy for only \$2,500 was paid in two instalments of \$500 and a \$2,000, a \$29,000 quantity surveying consultancy was paid in full as one payment and a \$61,550 contract for restoration/redevelopment was paid in two instalments of \$24,620 and \$36,930. The terms of progress payments appeared to be dictated to the Heritage Council in letters from the consultants.
- 5.58 It seems to the PAC overall that there are few procedures to ensure public accountability in selecting and managing consultants.

## Report on the Heritage Council of New South Wales

- 5.59 The PAC examined both the Department's procedures and the procedures outlined by the State Contracts Control Board. While the Board's procedures appeared to be thorough, they did seem to be unnecessarily bureaucratic and time consuming. However, the PAC believed that Government Departments other than Planning experienced the same frustration with slow and counterproductive rules when dealing with private consultants.

### **Recommendation 60**

That consistent criteria be adopted which specify the amount or proportion that each progress payment to a consultant should be.

### **Recommendation 61**

That procedures specified by the State Contracts Control Board for the employment of consultants be reviewed for all Departments.

### **Recommendation 62**

That if the Heritage Council is to be exempted from State Contracts Control Board's procedures, then it should be for projects where there is a need for spontaneity, haste or confidentiality. No exemption is necessary for heritage studies, long term planning and assessment.

### **Recommendation 63**

That if the present exemption were to continue, the Department should tighten its control of consultants to meet the PAC's objectives outlined in this Report.

**Recommendation 64**

That the Department instigate conditions in the consulting contract which address the following issues:

vested interests and conflicts of interest

public scrutiny

selection criteria

value for money

**Members as Consultants**

5.60 The PAC found that 5 of the 20 members/alternate members of the Heritage Council were paid by the Heritage Branch for professional architectural/heritage consultancy services to the Heritage Council during the three years 1985, 1986 and 1987.

5.61 Table 5.2 shows the nature of these consultancies and the amounts involved, totalling over \$100,000 in the 1985/86 period.

5.62 With regard to the second Consultant shown in the table, the Department of Planning Minute Paper 18/7/86 "Funding for Consultancy on Thematic History" reveals that the History Advisory Panel of the Heritage Council:

*"discussed with two consultant historians ... problems associated with provision of thematic histories for heritage studies ... The Panel resolved to request (the consultants) ... to prepare a checklist ... and seminar".*

5.63 This consultant was the alternative member representing the Royal Australian Historical Society on the Advisory Panel of the Heritage Council.



## Report on the Heritage Council of New South Wales

- 5.64 The PAC noted that although two consultants were engaged in the project there was only one invoice for the total amount which was paid to the alternative member at a private not a business address.
- 5.65 It appears that the Panel, and in due course the Heritage Council, appointed one of its own members to conduct the paid work. There was no discussion of alternative consultants, or of open or selective tendering. This appears to be a case of a consultant generating consultancy services.
- 5.66 In this case, there was apparently no particular rush to complete the job, and hence no reason to bypass usual Public Service procedures.
- 5.67 The Minute Paper states that:
- "The Panel's estimate of \$500 for this work is excessively modest representing payment for less than 10 hours' work at conservative consultancy rates. The project would occupy both consultants o.. an estimated 50 hours' work. Much of the work will therefore be undertaken voluntarily".*
- 5.68 The PAC is concerned about why there is a charge at all for services delivered by a member of the Panel especially when there is such a small amount of time involved.
- 5.69 There are no clear guidelines on what is included in a Heritage Council member's work.
- 5.70 The PAC also questions the propriety of the Heritage Council appointing one of its Panel members because of:
- possible bias to choose members over outsiders;
  - the fact that cost effective alternatives are not canvassed;
  - the judges of the consultants are the consultants i.e. they cannot be independent in their assessment; and
  - other members may feel too embarrassed to comment on poor performance.

Public Accounts Committee

**Table 5.2**

**PAID CONSULTING FOR HERITAGE COUNCIL BY  
COUNCIL MEMBERS**

<u>Consultant</u>	<u>Type of Consulting</u>	<u>Amount paid/Contracted Date</u>
1. Alternative Member, 1984+	a) Conservation Guidelines for restoration and redevelopment of terrace houses	\$7,200 Paid 24/5/85
	b) Restoration of Terrace Houses - Architectural advice	\$61,550 Payments of \$24,620 on 5/11/85 and \$36,930 on 24/1/86
	- Quantity Surveyor	\$33,750 Payment of \$29,000 on 21/2/86
	- Electrical Contractor	\$3,000 Payment of \$400 on 21/2/86
2. Alternative Member, 1984+	a) Expert Witness	\$1,622.50 Paid 29/8/85
	b) Thematic History Guidelines - check list and seminar	\$1,000 Paid 9/2/87
3. Alternative Member, 1984+	Represent Heritage Council at public inquiry, negotiation, etc.	\$841.50 Paid 18/12/86 (12.75 hours @ \$66/hour)
4. Member, 1984+	Special advisor to Minister since 1974. Charged to Heritage Fund, eg attendance at Heritage Council meeting	\$200 per day from time to time e.g. \$1,528.51 Paid 10/2/86
5. Alternative Member, 1984+	Group of Terraces building study	\$1,520 Paid in 1986/87

## Report on the Heritage Council of New South Wales

- 5.71 The PAC found further consultant/member activities in the Wollombi Historical Study. A Minute Paper, Heritage Council 10/12/85, recommended that a particular consultant undertake necessary work to complete a study which was not completed by a former consultant.
- 5.72 The consultant who was chosen was the Chairman of the Historic Advisory Panel of the Heritage Council (Annual Report for 1985-86).
- 5.73 The work was undertaken by the consultant who was operating under a different consulting firm name registered in Canberra. The amount was \$2,000 plus \$500 to cover expenses (27/8/86). \$2,000 was paid on 3/7/87.
- 5.74 While most of the expenditure on Heritage Council member consultancies has been relatively small, one was in the order of \$100,000.
- 5.75 In this latter case, an initial "guidelines" study was prepared by the consultant, and the same consultant was employed to complete the major follow-up.
- 5.76 This procedure of employing the same consultant for the follow-up study raises a number of questions:
- i) Was the initial study written in such a way that it was inevitable that the same consultant be contracted to carry out the major study?;
  - ii) Was there open competition for both consultancies?; and
  - iii) Was assessment of the consulting work conducted by the member/consultant and/or colleagues?

Public Accounts Committee

- 5.77 In the list of consultants' reports provided to the PAC by the Heritage Branch, many do not have the actual consultants' name shown, only the name of the consulting firm or the first name of a partnership. In some cases, the name appears as "various".
- 5.78 The consultants, the type of work completed and the expenditure, are not shown in the Heritage Council's Annual Report (even though it contains full details of items such as the wholly Commonwealth funded National Estate Grants Program). The PAC views with great concern this practice.'

**Recommendation 65**

That selection procedures for consultants be reviewed, with guidelines concerning the employment of consultants who are members of the Heritage Council or one of its Advisory Panels. When a person is to be employed, the selection panel should have at least one truly independent member on it to ensure that there is no bias or self-generation of demand for services.

**Recommendation 66**

Guidelines concerning appropriate work for a Member to perform as a consultant, as distinct from as a Member, be established.

The PAC considers that, based on duties and payments to members shown in the Act, very little paid consulting by members could be justified.

(N.B. The Act does not say that Members should not be paid for consulting, but a fee is provided which implicitly suggests that this is in recognition of the performance of tasks for the Heritage Council.)

**Recommendation 67**

That the standard procedures should be followed in the employment of consultants, unless a heritage item is at risk or there is a recognisable need to expedite a project.

**Recommendation 68**

That the Heritage Council should show in its Annual Report the names of all consultants not just the consulting firms' names or "various" Expenditure on consulting which is performed by Members of the Heritage Council or its Advisory Panels should be clearly highlighted for public scrutiny.

**Recommendation 69**

That the Heritage Council include a section "Declarations of Pecuniary or Other Interest" in its Annual Reports. Declarations of paid consulting, real estate ownership, paid legal representations etc. could be made in this section.

- 5.79 The Victorian Historic Buildings Council (a similar type of organisation) has as part of its Annual Report a section "Declaration of Pecuniary Interest"

**Evaluation of Consultants**

- 5.80 There is apparently no formal evaluation of consultants. Briefing notes authorising final payment usually say that the work was "satisfactory" but little more is recorded.
- 5.81 While evaluation of consultants may seem unnecessary to the small number of people in the Branch who make decisions about consultants, changes in staff will mean that experience with particular consultants will be lost.

**Recommendation 70**

That consultants be assessed on each project, using standard criteria and the assessment be retained for future reference.

**The Heritage Advisors Scheme**

**Background**

5.82 The Heritage Council initiated the Heritage Advisors Scheme in 1984, with the aim of promoting discussion of heritage issues as they arise in local government areas and to provide advice

5.83 The Scheme involves the appointment of a "heritage advisor" by local government and is funded on a dollar for dollar basis by the Heritage Council from the Heritage Conservation Fund.

5.84 The advisor is a privately employed consultant and the contract is for one year. Advisors usually work 1 - 2 days/month at rates of about \$300/day.

5.85 The first advisor was appointed in the Hawkesbury area in 1984. There are currently six heritage advisors, all non-metropolitan. They are at Blayney, Maitland, Mudgee, Tallaganda, Glen Innes and Broken Hill. The Hawkesbury advisor ceased in 1987. That Council now employs consultants to advise on an ad hoc basis as required. At the time of writing, Byron Shire Council was negotiating with the Heritage Council for the introduction of an advisor in Byron Shire.

## Report on the Heritage Council of New South Wales

- 5.86 The philosophy behind the scheme, the functions and activities of advisors and administration of the scheme are outlined in Appendix 13.
- 5.87 The Heritage Advisors Scheme came to the PAC's attention following controversy in Maitland. Maitland Council was supporting an application to demolish a slab hut which the heritage advisor had indicated was of heritage value.
- 5.88 This led to questioning about whether the heritage advisor had any power in such circumstances and, more generally; whether the Heritage Advisor Scheme (funded on a dollar for dollar basis by the Heritage Council) was an efficient programme.

### **Financial Arrangements**

- 5.89 The Heritage Council provides a grant to local government on an agreed dollar for dollar basis. The actual amount of the grant is loosely based on an allowance of about \$300/day for a consultant plus travelling expenses.
- 5.90 Grants for the Scheme to date are as follows in Table 5.3.

Public Accounts Committee

TABLE 5.3

**HERITAGE COUNCIL EXPENDITURE ON SCHEME**

<u>Council</u>	<u>Year</u>	<u>Amount (\$)</u>	<u>Advisor Time Basis</u>
Hawkesbury	1984/85	10,000	1 day/week
	1985/86	10,000	
	1987	10,000	
Broken Hill	Jan '86	4,000	1 day/month
	Jan '87	4,000	
Maitland	Jan '85	5,000	2 days/month
	Apr '87	5,000	
Mudgee	May '85	3,000	1-2 days/month
	Apr '87	3,000	
Glen Innes	Apr '87	3,000	10 visits/year
Blayney	Apr '87	3,000	1 day/month
Tallaganda	Apr '87	2,000	1 day/month
Total All Councils to Date \$62,000			



**The PAC Survey of Heritage Advisors**

- 5.91 The PAC wrote to all participating local governments and all past and present heritage advisors asking:
- a) Are the stated objectives being achieved?
  - b) Is the Scheme cost effective?
  - c) Are there matters of disagreement and how are these resolved?
  - d) Are there difficulties with the Scheme?
  - e) What improvements/achievements might be made?
  - f) Any other matters?
- 5.92 The PAC's letter to governments and heritage advisors is reproduced in Appendix 14.
- 5.93 The responses are discussed in Appendix 15.
- 5.94 On the basis of answers received the Heritage Advisors Scheme appears to be successful according to the Heritage Council, local government and advisors.
- 5.95 The Scheme's objectives facilitate the implementation of the Heritage Act and the Environmental Planning and Assessment Act, 1979.
- 5.96 The stated objectives are being achieved within the budget allocation although everyone involved would clearly-like to be able to achieve even more.
- 5.97 The early resolution of differences in opinion and avoidance of conflicts, made possible by the spontaneous nature of "on the spot" advice, appears to have saved time and money for all parties - owners/developers, local governments and the Heritage Branch. While it is difficult to evaluate precisely, this does seem to be a cost

## Public Accounts Committee

effective scheme. Given the importance of the educative role of the advisor revealed in the responses, greater emphasis on this appears to be warranted.

- 5.98 Delegation of planning powers is an issue which was raised by some heritage advisors. While there may be benefits in decentralising authority, the PAC decided against delegation to heritage advisors because of the practical difficulty in administering any such delegation and because of the independent role which heritage advisors currently perform.

### **Accountability of Heritage Advisors**

- 5.99 The advisor is answerable to both the local government and to the Heritage Council via the Manager of the Heritage' Branch.
- 5.100 The precise nature of this accountability to local government varies from one locality to another. In some, it appears to be very casual and in others it may take the form of an hour by hour description of the advisor's activities and a formal report.
- 5.101 Some councils seem to take the matter very seriously in the sense that they know precisely what their advisor does. Others are vague about the scheme and have apparently not attempted to evaluate the scheme or establish priorities.
- 5.102 For the Heritage Council, the advisor is required to keep a diary but the presentation of the diary to the Heritage Council appears to be discretionary. No evaluation of the scheme had been undertaken at the time of writing this Report.

## Report on the Heritage Council of New South Wales

- 5.103 Nevertheless, there usually appears to be informal liaison between the advisor and the Heritage Council, especially if controversial matters arise which involve Ministerial intervention.

### **Powers of Advisors**

- 5.104 The advisor "advises" local government and owners/developers in the local government area but has no power to enforce the advice given.
- 5.105 If local government or owner/developers go against the advice and the advisor considers that, as a consequence, an important heritage item is at risk, the advisor can alert the Heritage Council to the issue with recommendations/suggestions concerning appropriate Heritage Council action. For example, in the case of the Maitland slab hut, the advisor recommended that the Heritage Branch provide financial assistance to the owners.
- 5.106 As discussed earlier, the PAC considered that there would be insurmountable difficulties in delegating powers to advisors. The present system of informal liaison appears to be working effectively.

### **Recommendation 71**

That, due to its perceived cost effectiveness and its apparent success, the Heritage Advisors Scheme be continued and expanded.

### **Recommendation 72**

That, because contractual objectives are often unrealistic and unclear, objectives be expressed in realistic and achievable terms.

**Recommendation 73**

That the Heritage Advisors Scheme be oriented more towards advisors imparting knowledge and skills concerning heritage conservation to the public, and to elected representatives and officers of local government.

For example, public meetings, films and talks could be arranged to discuss matters which the advisor is working on or has completed.

**Recommendation 74**

That effective communication skills be included as an essential requirement for the job of heritage advisor.

**Recommendation 75**

That a precise mechanism for reviewing and evaluating the Heritage Advisors Scheme be developed.

## **6. OBJECTIVES AND PERFORMANCE REVIEW**

- 6.1 The PAC's Terms of Reference include assessing the adequacy of the organisation's objectives to fulfil the Council's statutory role and reviewing performance review mechanisms. These matters are discussed in this Chapter.
- 6.2 The PAC received several submissions which questioned the objectives of the Heritage Council. The PAC sought to clarify if the objectives of the Heritage Council were adequate to fulfil its role as specified in the Act.

### **Function, Roles and Objectives**

- 6.3 Annual Reports of the Heritage Council for 1985 and 1986 contained very brief statements about the functions of the Heritage Council. The 1987 Annual Report included the following statement:

*"The primary aim of the Heritage Act is to protect items of environmental heritage which are significant to New South Wales. The Heritage Council's role is to."*

- *advise the Minister and make recommendations on matters affecting the State's environmental heritage and on the implementation of the Heritage Act;*
- *investigate and research matters concerned with conservation!*
- *promote a public awareness of and an interest in conservation issues through publications, conferences, seminars and discussions "*

- 6.4 This statement is the only public one on the objectives of the Council. ~~Howe~~, it is really only a re-statement of the broad aim of the Heritage Act and a paraphrase of some of the functions as specified by the Act in Part II, Division 2.

## Public Accounts Committee

- 6.5 The broad statement does not tell the reader what the Heritage Council has set as its objectives or targets, say, for a particular year. It appears that specific achievable aims, objectives or targets are not established. The PAC considers that the quote is too broad as a statement of the organisation's objectives and does not indicate how the organisation will implement the Act as specified in the Heritage Act.
- 6.6 In 1984 the Heritage Council published a discussion paper; "Environmental Conservation - Towards a Philosophy" written by an historian/town planner on the Branch staff. While this document contained some very interesting perspectives, it appeared to the PAC to have completely missed the point concerning what the author calls "political and administrative culture" and neglects the significant body of relevant economics literature on the subject of conservation.
- 6.7 Since 1984 little progress seems to have been made in further developing this philosophy into a Mission Statement or objectives for the Heritage Council, although comment on the document was invited by the author.
- 6.8 In its initial submission to the PAC, the Heritage and Conservation Branch presented two documents. The first was the Department of Planning's (1986) Corporate Plan and the second was a preliminary proposal for a consultant to facilitate a Strategic Plan for the Heritage Council.

### **The Department's Corporate Plan**

- 6.9 That section of the Department's Corporate Plan dealing with heritage is outlined in Appendix 16.

## Report on the Heritage Council of New South Wales

- 6.10 The PAC has since found that the Heritage Council has discussed but never adopted the Department's Corporate Plan.
- 6.11 Apparently the Department viewed a "State Conservation Plan" and "the establishment of a State Heritage Register" to be the basis of their heritage policy and planning. Neither have been achieved.
- 6.12 The PAC considered it significant that the Department of Planning and the Heritage Council were not able to cooperate on this part of the Corporate Plan given how inextricably they are linked via the staff of the Branch which they share.
- 6.13 The PAC found it disturbing that important heritage objectives appear to have been shelved by the Department and the Council. There is no State Plan and no State Register.

### **The State Heritage Strategy**

- 6.14 The second document submitted by the Branch was the "Proposal to Assist the Heritage Council in Developing the State Heritage Strategy", by a private consultant and dated 20 October 1986.
- 6.15 At its meeting on 4 December 1986, the Heritage Council considered and approved a proposal by a private consultant for the development of a State Heritage Strategy.
- 6.16 The expenditure was, apparently, entirely for interviews with Council members, Heritage and Conservation Branch staff, members of other relevant organisations, attendance at Council meetings and review of reports and meetings. It was also to include development of a workflow model and two one-day Strategic Planning workshops.

Public Accounts Committee

- 6.17 While the PAC commends the Heritage Council in drawing on such resources to develop a Strategic Plan, it is troubled that no such plan existed a decade after the origin of the Heritage Council.
- 6.18 The Heritage Council resolution of 4 December, 1986 does not specify an amount of expenditure to be allocated to the consultancy. This was, apparently, determined by the Branch. The PAC is concerned that this divorce of financial and policy decision-making might not be efficient. This point was discussed earlier in Chapter 3.
- 6.19 As at 10 June 1987, when the PAC held Hearings, there still did not appear to be a Heritage Strategy. When queried by the PAC about the time taken, which appeared to have been lengthy, one Council member replied:
- "it has taken us ten years to get this far It is important that it should belong to the Council itself. That is probably why it has taken so long to get this far, We could put more pressure on the consultants to produce the timetable"*
- 6.20 The PAC asked for further information and was subsequently shown the consultant's timetable. This showed that he was about two-thirds of the way through the timetable and the Strategy was "now on target" for completion within the timetable (October). Of the estimated cost of \$12,000, \$5,000 had been paid.
- 6.21 The consultant reported to the Branch Manager on 16th November, 1987 (a decade, to the day, since the second reading of the Heritage Bill in Parliament) that the bulk of the task had been completed and he submitted a report for consideration by the Minister, Members and staff. At the time of finalising this Report, the Heritage Council was in the process of endorsing the Mission Statement,



## Report on the Heritage Council of New South Wales

Objectives, Performance Indicators and Strategies contained in the consultant's report.

- 6.22 The PAC is concerned that the Strategic Plan should have taken one year to complete, and that the consultant reported to the Manager of the Branch and not to the Chairman of the Council, given that the Strategic Plan is central to the Heritage Council's operations.

### **Recommendation 76**

That the Heritage Council adopt and publish an effective Strategic Plan as a matter of urgency.

- 6.23 Since the Plan is not yet public information, the PAC does not consider it appropriate to comment here on the Mission Statement and Objectives, except to say that the Heritage Council has attempted to determine an operational set of objectives for a five-year period.
- 6.24 There has apparently been no discussion of a "sunset clause" for the Heritage Council - a date when some functions might cease or be conducted in a routine manner by the Department. A plan for the Heritage Council needs to address this issue given the PAC's earlier recommendations concerning its future role.
- 6.25 Given that there were no specific objectives or targets, and no Strategic Plan, or a Mission Statement, from which to work, the PAC found it difficult to address in a satisfactory manner "the adequacy of the objectives" part of its terms of reference. However, some important observations have been made concerning identification and listing of heritage items.

**Identifying Items of Heritage Value**

- 6.26 It is clear from the Second Reading of the Heritage Bill, 16 November 1977, that the Heritage Council was intended to be:

*"chiefly responsible ... for giving expert advice on matters relating to the conservation of the State's environmental heritage ..., the prime task ... is to identify items of the environmental heritage considered worthy of conservation ..."*

- 6.27 With respect to expert advice concerning the State's environmental heritage, it seems to the PAC that the Heritage Council has taken a very restricted view. The Heritage Council has been reacting to issues brought before it in an *ad hoc* fashion, and has been "bandaiding" items which have been shown to be "at risk".
- 6.28 While the PAC commends the Heritage Council for handling the volume of items that come before it, it considers that the Heritage Council needs to have an explicit objective of identifying items of heritage value via proactive means.
- 6.29 The Heritage Council's move towards the use of local heritage conservation studies and the heritage components of local environmental plans means that items are more likely to be evaluated in the context of the heritage theme in an area, how many other such items may be in existence and whether there are higher priorities for the spending of the \$6 million of scarce public funds at the Heritage Council's discretion.
- 6.30 The PAC is also concerned that important heritage items are being lost because an Emergency Demolition Control Order or an Interim Conservation Order may be too late to provide adequate protection and, to an unknown extent, important heritage items may never be identified because they are

## Report on the Heritage Council of New South Wales

not, for whatever reasons, brought to the attention of the Heritage Council and hence may be damaged or obliterated.

### **Recommendation 77**

That the Heritage Council establish a specific objective "to identify the major items or areas of heritage value in New South Wales" and set, say, a specific area in New South Wales (or theme) each year as an achievable objective within the available budget.

- 6.31 In line with accepted management practices, the PAC recommends that a Corporate Plan be developed and reviewed on a three-yearly basis to coincide with the appointment of the Heritage Council members under the Act.

### **A list of Heritage Items**

- 6.32 In the context of identifying heritage items, there' appears to have been an original intention, as judged by the Second Reading of the Heritage Bill in 1977, to compile an inventory of items:

*"The report on the national estate emphasised the prime importance of compiling an inventory of ... assets of cultural and national heritage o o o The significance of the Bill now before the House is that important Legislative powers ... are vested in the States .o. The Bill .. represents o.o the resolve to ensure that the cultural and national heritage of this State is adequately identified, appreciated and conserved. And later,*

*"The task of identifying ... heritage considered worthy of conservation action in accordance with the Bill is formidable ... The National Trust has identified less than 40 per cent of the State's heritage ... Clauses 130 and 136 enable action to taken ... in what may well be a last opportunity of conserving many of these unidentified items of heritage."*

Public Accounts Committee

- 6.33 This, combined with submissions and discussions with a range of interested parties in Western Australia, South Australia and New South Wales, indicates that it was proposed to compile an inventory, not just register items affected by the Heritage Act, as is presently the case, or alternatively to expand the Register to include as many items as were found to meet the criteria of "heritage item" defined in the Act.
- 6.34 This has clearly not been done. The present situation is that there are currently six major registers of heritage items in New South Wales as follows:
- the Australian Heritage Commission;
  - the Heritage Council of New South Wales;
  - the National Trust of Australia (New South Wales);
  - the Royal Australian Institute of Architects (New South Wales);
  - National Parks and Wildlife Service of New South Wales;
  - Geological Society of Australia; and
  - inventories of heritage items owned by State Government instrumentalities.
- 6.35 Each of these specifies items which meet the particular requirement of each organisation. In the case of the Heritage Council it is not a systematic list but a Register of only those items which are subject to conservation instruments under the Heritage Act.
- 6.36 The Heritage and Conservation Registers for each government instrumentality, have only just been initiated under Section 170 of the Heritage (Amendment) 'Act, 1987. This Act requires that all government instrumentalities establish and keep a Heritage and Conservation Register from 1 January 1988.

## Report on the Heritage Council of New South Wales

- 6.37 The cost of maintaining all these separate registers is considerable. For example, the Australian Heritage Commission employs five full-time clerical workers to enter data, check, administer and provide information to the public on the 8,500 items registered on the National Estate. The National Trust (NSW) employs a staff of 12 to work on their Register. It is understood that these staff also work on associated activities.
- 6.38 There is considerable overlap in recording since, for example, a building designed by a particular architect is likely to be considered of value to the Australian Heritage Commission, the Heritage Council and the Royal Australian Institute of Architects.
- 6.39 The PAC also noted that there were numerous examples of heritage items owned by government which were not recorded on any register. For example, one of the oldest courthouses in New South Wales, Maitland Courthouse, is not listed on any Register and has recently become the concern of residents because some of its curtilage may be required for a new road engineering project. It is only when such an item becomes "at risk" that its heritage value is debated. Many railway stations, such as Morpeth, are similarly unregistered.
- 6.40 The new Heritage Act Amendments, 1987 do not require Government bodies to actively seek out items for registration, only to register those items which are subject to conservation instruments under the Act, or as instructed by the Heritage Council.

### **Heritage Council Register**

- 6.41 The Heritage Act 1977 requires that a Register of items subject to conservation instruments be kept and made available to the public.

**State Heritage Inventory**

6.42 In addition, the Council endorsed the preparation of a State Heritage Inventory, reported on page 1 of its 1986 Annual Report as follows:

*"The Council also made a number of important advances in other fields. The most significant of these was its endorsement of the preparation of a State Heritage Inventory, which has been programmed for completion by, 1988".*

6.43 This was seen as one of two major initiatives. It was described as part of the Department of Planning's Corporate Plan 1986 to establish a State Heritage Register (quoted earlier in this Chapter).

6.44 It was verified at the June 1987 Hearings of the PAC that this was still a Council objective and the target date for completion, that is, 1988, would be met. One Council member described it as "a very important issue".

6.45 As recently as November 1987 a joint Branch/Council "Report on the Working Party with Peter Saul and Associates" indicated that as part of a proposed five year strategic plan, the Heritage Council would:

*"Create and continually update an inventory of items of heritage significance and specify rules for inclusion".*

6.46 However, correspondence from the Heritage Branch of 23 October, 1987 indicated not only that the target date would not be met but that:

*"work on the State Heritage Inventory has not commenced as there are serious reservations about the appropriateness and practicality of such a document.*

Report on the Heritage Council of New South Wales

*"Further consideration is being given to a more workable process of identifying items of environmental heritage significance"*

6.47 The PAC is concerned at this state of affairs for the following reasons:

1. That such a cryptic response should be given
2. There has been no serious attempt over the span of more than a decade to construct an inventory, although this was clearly indicated by the spirit of the Heritage Act.
3. It has taken more than ten years to reach the conclusion that "there are serious reservations"
4. Heritage Council members at the hearings implied that a number of staff had commenced work on the inventory, but that they:

*"(couldn't) give that information (ie. the number of staff) off the cuff".*

The PAC is astounded that this has occurred, particularly in view of the fact that a working party indicated it was a major part of the strategic plan. Correspondence from the Branch shows that

*"work ... has not commenced" and may*

*and yet a working party has indicated it as a major part of a strategic plan".*

5. There is no timetable for decision-making concerning "a more workable process".

## Public Accounts Committee

- 6.48 It appears, in conclusion, that one of the Heritage Council's, and Department's, main objectives has not been achieved after ten years of operation, that work was never commenced by staff even though the Council clearly thought that they were working on it and that, ten years later, the very objective itself is being queried. This situation would not have occurred had there been some performance review in place.
- 6.49 The PAC noted that, despite an assurance to readers of the 1986 Annual Report that an inventory was being compiled, there is no progress report or even mention in the 1987 Annual Report.
- 6.50 The PAC heard the views of heritage consultants who thought that public listing (without control under the Act) might incite more abuse of the Act than was currently the case. This may be one reason for concern about such a list, although the Branch and Council have not communicated this concern to the PAC.
- 6.51 The Heritage Council has not satisfactorily explained the abrupt halt on the inventory to the PAC or to the public.

### **Recommendation 78**

That the Heritage Council address the issue of a State heritage inventory in its 1988 and subsequent Annual Reports and indicate alternative action to achieve the objective of identifying the State's heritage items.

### **Promoting Awareness of Heritage**

- 6.52 The Heritage Act lists, as a function of the Heritage Council, the making of recommendations concerning the "exhibition or display of; the provision of access to; and the publication of information concerning, items of



## Report on the Heritage Council of New South Wales

environmental heritage", in addition, "to arrange and coordinate consultations, discussions, seminars and conferences". The Second Reading of the Bill in 1977 described this as "an educative role in the appreciation and conservation of ... heritage".

- 6.53 The PAC noted that the Heritage Council has been active in pursuing these functions. It has a Publications Policy, and is currently preparing an Information Policy.
- 6.54 The PAC compliments the Council and Branch on the amount of work which has gone into publication. However, the PAC is concerned that the effort may be better expended on a broader educative role. In particular, it is considered that first hand education may be superior.
- 6.55 The PAC was impressed by the educative role which heritage advisors had in exercising their function in the local community, as discussed in Chapter 5. Heritage advisors imparted knowledge and skills en passant to local government staff, which apparently had a lasting effect, and were also available for public consultation when required. Where heritage advisors have operated, they have apparently had a lasting impact.
- 6.56 The value of such education was made clear to the PAC during its discussions in New South Wales, South Australia and Western Australia. It appears that basic awareness improves the likelihood of decision-making by consensus rather than dispute.
- 6.57 Based on the submissions, there is a perception by some local governments and individuals that the Heritage Council has neglected its educative role, despite the many publications produced.

6.58 It was recommended in *Chapter 5* that the Heritage Advisors Scheme be expanded.

**Recommendation 79**

That the Heritage Council and Branch in conjunction with the Local Government Association develop methods for sharing knowledge and skills relevant to heritage conservation and that the Heritage Council's formal publication effort be streamlined.

**Input into Overall Environmental Plans**

6.59 One of the most important objectives available to the Heritage Council is its input into the overall environmental plan of the State Government. However, to date, this input has been minimal.

6.60 The 1987 Amendment to the Heritage Act explicitly addressed this issue. The Amendment provides an opportunity for the Heritage Council to have much earlier input into the preparation of draft environmental planning instruments.

6.61 This is anticipated to save time for both local government and the Heritage Council. The community will also be aware of the Heritage Council's concerns at a preliminary stage of the planning process.

**Recommendation 80**

That the Heritage Council's input into overall environmental plans be formulated as an objective of the Heritage Council and that progress towards the achievement of this objective be reported in Annual Reports.

**Performance Review**

6.62 As discussed earlier in this Chapter, the Heritage Council and the Branch do not have clearly established objectives. They have both been "reactive" to the "bushfires" which have arisen. Of even less concern to them has been the measurement of performance against objectives.

6.63 The Department of Planning's Corporate Plan 1986 does not mention performance review for the Department or its constituent parts and in any case was never adopted by the Heritage Council. The consultant's "Proposal to Assist the Heritage Council in Developing the State Heritage Strategy" outlines a plan to establish review mechanisms for the Heritage Council.

6.64 A meeting held in November 1987, between the consultant, Branch staff and Council members produced a number of performance measures for discussion. Some examples of the 34 suggested performance indicators are as follows:

- percentage of recommendations accepted by Minister
- backlog of requests for information
- percentage of planning instruments containing heritage provisions
- number of revocations of orders
- extent of media coverage of heritage issues
- staff turnover
- degree of prominence of heritage issues on political parties' agendas

6.65 The consultant, in his progress report to the Manager of the Branch stated:

*"Because of the significant debate that surrounded each of these issues, they should developing performance indicators and discussion and elaboration by members of the Heritage Council and the Department".*

## Public Accounts Committee

- 6.66 The PAC considered that several of the indicators could not be interpreted sensibly and hence the list could only be considered to be a very rudimentary one.
- 6.67 This is the current situation with respect to performance review in the Heritage Council and the Heritage and Conservation Branch.
- 6.68 The PAC considers it unsatisfactory that performance indicators have not been adopted in any form and that it was only towards the end of this PAC Inquiry that a tentative list of possible indicators could be produced.
- 6.69 This matter is of particular concern to the PAC because performance review was the subject of its June 1985 "Report on Performance Review Practices in Government Departments and Authorities", and the subject matter of the report should have as much relevance for the Council as it does for Departments and Authorities.
- 6.70 In that volume, the following comments were expressed:

*"The PAC considers that objective setting and performance review are functions of management and accordingly recommends that each department/authority be required continually to review the performance of its organisational units and programs as part of its on-going line management' process."*

*"The PAC recommends that managers should derive performance measures to determine to what extent program and organisational objectives are being attained efficiently and effectively. Efforts should be made to compare performance measures with some form of standard, such as over-time, with other regions, states or countries, or against a standard developed by some external process of consensus (e.g. norms established organisations) or from major research projects."*

## Report on the Heritage Council of New South Wales

- 6.71 It appears to the PAC that the Heritage Council and the Department, with respect to the State's heritage conservation program, have ignored these recommendations, to the detriment of the public. The PAC has discovered in the course of its inquiry grounds, for believing that the Heritage Council is not operating efficiently and hence is particularly concerned that there are no mechanisms in place to provide feedback to the Council, the Department or to the public on the Council's efficiency and effectiveness.
- 6.72 It is essential that all bodies which spend public money and implement statutory functions be accountable for their actions. Nowhere is this more important than for matters which are controversial, not well understood by the public and in any way ethereal, as is the case with heritage conservation.
- 6.73 In its discussions with the Western Australian Heritage Committee, the PAC was shown examples of performance measures incorporated in the Western Australian Heritage Committee's 1986-87 Annual Report. These were the proportion of funds to different types of use (for example built environment, aboriginal sites, etc.); the geographic distribution of funds; public/private ownership; and the number of responses to requests for information (Ministerials and others).

### **Recommendation 81**

That the performance review mechanisms currently being considered by the Heritage Council and the Branch be formulated to meet the criteria outlined in the PAC's 1985 Report on the subject, that they be implemented in the next

Public Accounts Committee

six months, and that they be reported on annually in the Heritage Council's Annual Report.

**Recommendation 82**

That the Heritage Council and the Branch, in developing performance indicators, consider those developed by the Western Australian Heritage Committee.

- 6.74 A final comment which the PAC would like to make is that because objectives have not been clarified and performance has not been monitored the allocation of time has been biased towards urgent, but not necessarily important tasks, that is, to the day to day bushfighting activities to protect individual items.
- 6.75 The PAC noted that the Heritage and Conservation Branch has been concerned with the problem and was, in late 1987, attempting to devote 30% of its time to longer term planning and policy-making which it considered would reduce the administrative burden involved in ~~the~~ decisions.
- 6.76 The PAC commends the Branch for this plan, but is concerned that it does not seem to have been initiated by the Heritage Council.

1. The PAC has, since making this recommendation observed that the Heritage Council has added to its latest (1987) Annual Report a table indicating improvements between 1985 and 1987 in resolving inquiries before it. The PAC commends the Heritage Council for the inclusion of such information. This is an important step in performance review.

## **7. ORGANISATIONAL ISSUES**

7.1 The PAC's Terms of Reference for this inquiry included:

*"to inquire into and report on any other matters arising from the inquiry which impact on the efficiency and effectiveness of the Heritage Council".*

7.2 As evidenced in all of the earlier chapters, it was difficult to disentangle the respective roles and responsibilities of the Heritage Council and the Branch. Throughout its Inquiry, the PAC was continually confronted with the question "Is this particular matter the responsibility of the Heritage Council?"

7.3 The PAC also observed that matters of significant heritage concern were being dealt with by other State and Local government bodies.

7.4 The PAC considered that these matters required investigation.

### **Relationship Between the Council and the Branch**

7.5 The relationship between the Minister, the Council and the Branch is shown in the organisation chart in Appendix 10.

7.6 In its 1987 Annual Report the Heritage Council describes its relationship with the Branch as follows:

*"Staff provide technical and administrative assistance to the Heritage Council, local councils, other public authorities and members of the public. Staff of the branch include specialists in archaeology, architecture, building design, the natural environment, engineering, finance, history, public relations and town planning".*

## Public Accounts Committee

- 7.7 The Branch sees the Council as a group with wide ranging skills and expertise who are independent of Government. Branch staff are very enthusiastic about the Council as an advisory body to the Minister. They believe that because the Council is seen by the public to be separate from the Department the public are more willing to comply with Orders recommended by the Council.
- 7.8 While this appears to be perfectly straight forward, the situation is in fact more complex. For example, an article concerning the Heritage Council in the Sydney Morning Herald on February 17, 1988 prompted the Director of the Department of Planning to write a letter to the Editor defending the Heritage Council and its decisions on February 24, 1988. It is not clear why the Director of the Department, rather than the Chairman of the Heritage Council, wrote to the newspaper.
- 7.9 This confusion in roles was evident throughout the Inquiry, as reported in each chapter and summarised as follows:
1. There is no separate statement of the objectives of the Heritage Council and the Branch. In fact, the two bodies have been working with a consultant on the same strategic plan (Chapters 1 and 6).
  2. It was shown that the financial reporting of the Heritage Council and the Branch overlapped, to the detriment of the financial accountability responsibilities of both organisations (Chapter 2).
  3. While the Heritage Council was responsible under the Act for decisions concerning conservation orders and financial assistance, it appeared that this was really the role of the Branch, with minimal input from the *Heritage* Council. Sometimes the input appeared to be merely "rubber stamping" (Chapters 3 and 4).



## Report on the Heritage Council of New South Wales

4. The Council's responsibility for selecting, managing and monitoring consultants also appeared to fall to the Heritage and Conservation Branch (Chapter 5).
- 7.10 The PAC's investigation of the Heritage Council has been hampered by the confusion surrounding the respective responsibilities of the Heritage Council and the Branch.
- 7.11 This confusion was a theme emanating from Hearings on 7th October, 1987 in which the Acting Ombudsman commented that his Office found trouble in distinguishing between exactly what the Heritage Council was doing and what the Department was doing. The Acting Ombudsman cited the following examples:

*"Investigation of the Abbotsford matter was directed to the Department ..., not to the Heritage Council. The Heritage Council aspect of it was discontinued ... The investigation continued against the department. In the case of the Rouse Hill matter, it proceeded against both the council and the department."*

- 7.11 The Acting Ombudsman added that sometimes when his Office wrote to one organisation they received a reply from the other, or at least it was on the letterhead of the other organisation. The examples cited here were as follows:

*"Interim Conservation Orders coming up for renewal, which was one of the central points in the Rouse Hill and Abbotsford matters . . . When we set out the draft report on the Abbotsford matter, the replies to that draft report were received on the letterhead of the Heritage Council even though we had not investigated the Heritage Council in the first instance. At least one of the replies was on that letterhead."*

## Public Accounts Committee

*"As to the Rouse Hill matter, Z sent a letter to the Chairman of the Heritage Council asking a number of questions about what the council had done in relation to land and so on. That letter was responded to on departmental letterhead by the Manager of Legal Conveyancing Branch of the department, and the correspondence continued with the department. "*

7.12 The Ombudsman's 1985 Report made the following observation and recommendation:

*"The Heritage Council relies on the Department of Planning for its administration support. This Office's wrong conduct report on Abbots ford found that the support was ineffective, and recommended that the Heritage Council have its own administrative support unit. The Director of the Department strongly disagreed with this recommendation"*

7.13 The PAC agrees with the Ombudsman that the present situation should not be permitted to continue. However, as reported in Recommendation 2.42 in Chapter 2, the PAC recommends a combined, not separate, administration to be accountable for heritage conservation decisions, financial and otherwise.

### **The Relationship Between the Heritage and Conservation Branch: the Heritage Council and other Government Bodies**

7.14 The PAC's attention was drawn to a number of heritage matters which appeared to be managed by government bodies other than the Heritage Council or the Heritage and Conservation Branch.

7.15 For example, the NPWS (NPWS) Annual Report 1985-86, p49-50 stated that the Service is involved in the management of historic resources at all levels of its organisation and that its regional review program has identified a large and varied resource. Examples given are as follows:

Report on the Heritage Council of New' South Wales

*"In the Western Region alone some 180 Historic Places have now been listed in the Service's Historic Place Register...*

*"The Historic Resources Unit has conducted training schools in South Eastern, Western and Central Regions, and addressed a regional staff meeting in the Northern Region.*

*"The Service funded an archeological excavation of Cadman's Cottage Historic Site during the year.*

*"Conservation works on one of the most fragile buildings at Hartley Historic Site, the Shamrock Inn, have been completed. Works are nearing completion on the former Post Office and Old Trahlee, and leasing arrangements are currently being pursued. A basic program of planning, documentation and stabilisation is also a high priority at Hill End Historic Site intended to hasten the leasing of a variety of its buildings.*

*"A group of huts in Wollemi National Park, primarily related to former pastoral activity, were recorded and assessed by district staff. Conservation advice provided for the stabilisation and repair of two slab sheds at Cattai State Recreation Area (SRA)*

*"At Willandra National Park, formerly a large pastoral station, a works program, funded by the Boral Foundation, is underway.*

*"Eden District has been the focus of considerable activity with the appointment of consultants for the Ben Boyd National Park Bicentennial Project. As part of this project conservation planning is being carried out for Davidson Whaling Station (recently gazetted as an Historic Site), Boyd's Tower and the Bittangabee Ruins. A program of conservation works, archaeological investigation and interpretative proposals will follow the initial research and analysis phase of this project ".*

7.16 There are a number of questions arising from these extracts.

Public Accounts Committee

1. Was there liaison between the NPWS and the Heritage and Conservation Branch/Heritage Council? This was not mentioned in the NPWS Annual Report.
  2. How does the NPWS's Register relate to the Heritage Council register and other registers discussed in Chapter 6?
  3. Why is the Historic Resources Unit financed under the NPWS, rather than under the Heritage and Conservation Branch?
  4. How much is spent by the NPWS on funding excavation of historic items, conservation and conservation advice, planning research, documentation and stabilisation, that is, "hidden" funding of heritage projects?
  5. How much outside funding such as that provided by the Boral Foundation is used?
- 7.17 There is no mention in the Annual Reports of either the NPWS or the Heritage Council that the NPWS activity is coordinated with the Heritage Council. The PAC considers that there would be an economic and conservation advantage in combining the efforts of both bodies.
- 7.18 The Department of Lands' is similarly very involved with heritage matters. It has stated in its Annual Report that it has diversified its heritage preservation program by initiating several major restoration projects, introducing appropriate legislation, and working with other agencies to ensure that the heritage value of crown land is protected for future generations.

## Report on the Heritage Council of New South Wales

### 7.19 Examples cited include the followings

*"The restoration and renovation of the Wagga Wagga Lands Office building - a Cob and Co. coach-house purchased by the Government in 1885.*

*"Working with Parramatta City Council to implement the Parramatta Park management plan which provides for the preservation of a number of historic structures in the park. Consultants were employed to prepare working drawings for the restoration of the Tudor Gate House and the Governor's Dairy a typical colonial Georgian farmhouse which was constructed in 1797.*

*"The Department provided financial assistance to Tumut Shire for the restoration of the Adelong Falls goldmine, and assisted the Towrang Stockade Trust with the preparation of a conservation plan for Stockage Reserve, near Goulburn.*

### 7.20 Under the administration of the Western Lands Commission, a number of heritage projects were being undertaken, including the following:

*"In the historic village of Milparinka, the Department of Lands and the Heritage Council have provided \$10, 000 to restore the Courthouse building. This work is being carried out by the Milparinka Sporting Club under the guidance of a conservation architect .Substantial financial contributions have also been made by the local community.*

*"The Department also commissioned the Heritage Council to prepare a detailed heritage study of the far western village of Silverton. The study,, which was completed earlier this year, will provide the basis for a Local Environment Plan. In the meantime, action has been taken to resume 156 freehold blocks at Silverton for which the registered proprietors cannot be traced. This will ensure that no further development takes place which would be unsympathetic to the heritage values of the township.*

Public Accounts Committee

*"In terms of heritage legislation, both the Gore Hill Cemetery Act and the (Rookwood) Necropolis Act were amended during the year to ensure the conservation and effective management of two of Sydney's most significant historic cemeteries".*

7.21 This raises issues concerning:

1. who is responsible for initiating heritage preservation and associated legislation
2. the advisability of the purchase of heritage property by Government, and
3. the employment of heritage consultants by Government bodies other than the Heritage Council and the Branch.

**Heritage Matters in Other Government Bodies**

7.22 On the basis of the above extracts and the questions which they raise, the PAC decided to examine the possibility of inefficiency arising from duplication and lack of coordination between the different arms of Government administration responsible for heritage matters.

7.23 In the first instance, the PAC wrote to Government Ministers of all portfolios other than Planning concerning their involvement with heritage matters. (See letter in Appendix 17.)

7.24 The response to this letter has been enlightening.

7.25 A number of Ministers indicated that some parts of their administrations had varying degrees of involvement with heritage matters, sometimes involving extensive financial inputs. The responses are summarised, by type of involvement in Table 7.1.

Table 7.1

**GOVERNMENT BODIES OTHER THAN DEPARTMENT OF PLANNING**  
**INVOLVEMENT WITH HERITAGE MATTERS**

<u>TYPE OF INVOLVEMENT</u>	<u>GOVERNMENT BODY</u>
(a) <u>Non Financial</u>	
1. Receives advice from Heritage Branch on projects, suitable consultants, and the heritage register	Department of Agriculture, Lands, Attorney General's, Local Government, Premiers
2. Requests the Heritage Council to impose conservation orders on items owned by Department	Department of Agriculture, Lands
3. Liaison (and conflict) concerning imposition of conservation orders demolition.	Department of Lands, Attorney General's, Premiers
4. Heritage Branch administers Commonwealth Grants	Department of Lands
5. Valuer General makes valuations for Heritage Council	Department of Local Government
6. Nomination of one member of Heritage Council	Department of Local Government

Public Accounts Committee

(b) Financial

1.	Purchase of Heritage Properties	Lands
2.	Receives Grants from Heritage Council	Lands
3.	Owner of Heritage Properties and hence Costs of Maintenance Incurred:	
	- not separable from general maintenance budget	Lands, Attorney General's, Local Government Corrective Services,
	- identifiable	Premiers, Lands, Attorney General's,
	- Public Works involvement	Lands, Attorney General's, Corrective Services,
	- Joint with Heritage Council	Lands
	- additional costs incurred in alterations/extension due to heritage value	Attorney General's



## Report on the Heritage Council of New South Wales

- 7.26 The table shows that a number of Government bodies are involved with heritage conservation. This includes advice and liaison with the Heritage Council concerning conservation orders. It is not known what cost in terms of staff time is involved in this liaison.
- 7.27 Financial involvement varies from costs incurred because of the (unwitting or deliberate) ownership of heritage property which the Department is required to maintain and restore in order to retain its heritage value (for example; prisons, courthouses etc), the deliberate purchase of heritage properties and additional costs involved in altering or adding to properties so as to maintain heritage value.
- 7.28 Some of these expenditures are supported by grants given by the Heritage Council. Some expenditure is clearly identifiable as "heritage". For example, \$56,268 was paid for the purchase of "Tocal" .by the Department of Agriculture, and \$994,000 p.a. was paid by Premier's Department and \$350,000 p.a. by Public Works Department for Government House.
- 7.29 In the case of Lands and Forests, the spending is part of a general maintenance budget, sometimes shared with the Public Works Department. It is not clearly identifiable as "heritage". For example, the 160 Court buildings maintained out of recurrent expenditure on the Public Building Account of the Attorney General's Department and the 12 registered prisons and gaols maintained out of Public Works and Corrective Services Departments maintenance programmes.
- 7.30 The responses indicate that many parts of Government *are* responsible for heritage matters, that much of the spending on heritage items is "hidden" in the general maintenance

budgets of a diverse range of Departments and authorities, *that* there is not always the close liaison with the Heritage Council that might be expected, and that there are conflicts of interest which are not always resolved in *asatisfactory* manner. Each of these issues is considered below.

### **Responsibility for Heritage Matters**

- 7.31 The Government is itself an important owner of heritage property in New South Wales. It is difficult to separate the "heritage" component of a building from its functional attributes and hence it is difficult to divide responsibility for protection and maintenance of the heritage features. The present system of advice from the Heritage Council and payment by the government body appears to be working from the point of view of preservation<sup>1</sup>, if not conservation. That is not to say, however, that it is efficient.
- 7.32 The fact that there is no centralised record keeping of heritage upkeep and no "heritage program" across Government bodies is considered unsatisfactory.

### **The Burden of Cost**

- 7.33 It appears that Departments with responsibility for major heritage properties are not financed specifically for upkeep of heritage property to Heritage Council standard, even though under the amended Heritage Act Departments are responsible for listing and maintaining such items.

1. One local government body advised the PAC that State Government bodies did not always advise them of proposals which affected heritage items, and that this had caused difficulties at the local government planning level. While it is beyond the Terms of Reference of this Inquiry, it would appear that such co-operation is desirable.

## Report on the Heritage Council of New South Wales

- 7.34 This system is inefficient. There are limited funds, and multiple uses of funds. Thus, prioritising is important. Under the present system, funds being spent, say, by the Department of Corrective Services to maintain gaols precludes the same amount being spent on an alternative. It is not even possible to judge whether or not this is so because there is no centralised listing, prioritisation or even recording of total expenditure.
- 7.35 The fact that the burden of cost is significant is evidenced by some of the comments the PAC received from within the Ministers' portfolios. For example, the Attorney General's Department commented on *"the disproportionate cost of maintaining"* its large number of historic buildings and of a twofold penalty because of extra costs of additions and alterations required to ensure sympathy with the historic design of the building.

### **Effective Liaison**

- 7.36 Some Ministers provided comment from their portfolios concerning liaison with the Heritage Council and the Branch.
- 7.37 The Forestry Commission commented that the Heritage Council and the Branch, in preparing National Estate and World Heritage nominations,

*"have not always liaised with the Forestry Commission when nominating parts of State Forest and Flora Reserves ... This is one area where the consultative process could be improved"*

- 7.38 The Soil Conservation Service commented that:

*"One problem 'arose in 1986 concerning the Catchment Areas Protection Board, which is administered by the Soil Conservation Service. They had some difficulty with action recommended by the Heritage Council"*

Public Accounts Committee

*which caused embarrassment to the Government as a result of media reports of the incident "o*

- 7.39 The Hunter District Water Board commented that its dealings with the Heritage Council concerning the former Board's Stores Building - King Street, Newcastle,

*"Left the Board with the impression that the Heritage Council appeared to lack cohesion and direction ".*

- 7.40 The performance of the Heritage Council with respect to liaison is thus not only unsatisfactory from the viewpoint of private individuals and organisations, as discussed in Chapters 3 and 4, *but* from the perspective of State Government bodies who should be liaising on a regular, mutually acceptable basis.

**The Usefulness of Heritage Council Guidelines**

- 7.41 The NSW Bicentennial Council, commented that:

*"In most cases Heritage Council Guidelines have been followed in relation to funding of restorations but the Bicentennial Council has not been tied to these Guidelines and have made grants to various applicants who were considered appropriate but who did not meet Heritage Council conditions" (emphasis added).*

- 7.42 This raises the issue of whether there has been a lack of consultation and whether the Heritage Council's Guidelines for providing funds are satisfactory (as discussed in Chapter 3).

**Conclusions, Comments and Recommendations**

- 7.43 There is considerable wasteful overlap in the administration of heritage conservation policy with Departments employing their own conservation consultants, purchasing heritage property and carrying out conservation work.
- 7.44 These activities progress daily in an unco-ordinated fashion. Each Department conducts its business concerning heritage matters largely in isolation from other government bodies.
- 7.45 Overall, heritage conservation in New South Wales has been largely ad hoc. No dollar amount can be attributed to the conservation work which is being conducted on an every day basis.
- 7.46 There is no prioritisation of heritage conservation spending across New South Wales government bodies and there is no structure. at present whereby prioritising can be made possible. The PAC was surprised that the Heritage Council did not see this form of liaison as part of its role.
- 7.47 The PAC considers that the duplication and overlap in administration, the lack of co-ordination, the lack of centralised listing and the inability to set priorities for funding is unsatisfactory.

**Recommendation 83**

That information on funding commitments for heritage items in all government-owned bodies be compiled and that the Minister for Heritage be advised on priorities for spending within the public sector.

## APPENDIX 1

The Chairman'  
Public Accounts Committee,  
Parliament House,  
SYDNEY. 2000.

Could you please arrange for your Committee to examine and report on the operations of the Heritage Council of New South Wales and in particular to:

- i) review the overall financial position of the Council;
- ii) assess the adequacy of procedures and guidelines for the allocation and control of grants, loans and other financial assistance for heritage projects;
- iii) examine the use of consultants including guidelines for engagement and management of consultants, and evaluation of consultancy projects;
- iv) assess the adequacy of the organisation's objectives to fulfil the Council's ~~statutory~~ role and review performance review mechanisms;
- v) inquire into and report on any other matters arising from the inquiry which impact on the efficiency and effectiveness of the Heritage Council.

Should you require any assistance in your deliberations please do not hesitate to contact my office and I will arrange for officers of the Board to be made available.

Yours sincerely,

BOB CARR

## **APPENDIX 2**

### **Comments in Auditor-General's Report**

The Committee was aware at the outset that the Auditor-General had commented in both his 1984-85 and 1985-86 Reports that the financial position of the Heritage Conservation Fund was deteriorating.

The Heritage Conservation Fund is used to finance the activities of the Heritage Council and is administered by the Heritage and Conservation Branch of the Department of Environment and Planning.

In his 1985-86 Report, the Auditor-General stated:

*"The Fund's financial position has again deteriorated and will continue to do so unless it gains enhanced income or relief from the loan borrowing attributable to assets transferred to other bodies. If these actions, which were mentioned in my last other similar actions are not adopted, the Minister will again be forced to increase borrowings in order to meet the Fund's commitments for interest and repayment instalments on moneys already borrowed".*

In his most recent 1986-87 Report, the Auditor-General stated:

*"Prior to 1986-87, the operations of the Fund were financed from State Government grants and private borrowings. In previous reports, I have referred to the deteriorating financial position of the Fund resulting from the continuing burden of loan servicing costs. During 1986-87, no new borrowings were made by the Corporation as Government contributions to the Fund were increased. State Government grants for the year amounted to \$4.8 million (\$3.2 million,*

*"While Government contributions and other income in 1986-87 were sufficient to finance cash outgoings and appropriations to the Loan Repayment Reserve, the transfer of Land to Other Bodies, together with the Loss of Sale of Land resulted in the Accumulated Deficiency, at 30 June 1987, increasing to \$9.2 million. Expenditure included Conservation Grants totalling \$669,564 and Interest on Loans \$1.6 million."*

### **APPENDIX 3**

#### **Comments in the News Media**

The Committee was aware that there had been several references in the media to controversial heritage issues involving Heritage Council action, including accusations of inaction which had led to demolition of important heritage items and claims that the Council was imposing undue financial hardship on owners of heritage properties.

Since the Committee commenced its review in May last year there has been, on average, at least one issue of Heritage Council concern per week discussed in newspapers alone. For example, the following extract appeared in the Sydney Morning Herald, Monday, 14 September 1987, following the demolition of Rose's Emporium in Petersham.

*"The State Government will not tolerate the destruction and loss of protected buildings such as Rose's Emporium and Brockleigh ", Mr Carr said.*

*"Developers, owners and local government authorities should be aware that the Government is prepared to use the full extent of 'its powers to ensure the preservation of irreplaceable items of our heritage."*

*"(Rose's Emporium and Brockleigh House, Marrickville, were both demolished. The owner, and the project manager of the Emporium are appealing against fines of \$4,000 each for breaching a conservation order. )"*

*"Mr Carr's inspection tour revealed that Marrickville, Petersham and Stanmore are treasure troves of 19th Century houses."*

*"Two-storey townhouses with cast-iron balustrades and elaborately detailed windows, doors and turrets are reminders that this was the select residential area of Sydney before Point Piper, Bellevue hill and Vacluse."*

*"However, local authorities have only recently realised the heritage significance of the district."*

Questions were raised concerning the adequacy of the Heritage Council demolition control procedures to prevent loss of irreplaceable heritage.

Another reference, in the Sydney Morning Herald, 19 September referred to the experience of the owners of a heritage property in Woolwich.



## Report on the Heritage Council of New South Wales

*"The experience of the owners of a 150-year old house in the Point Road, Woolwich, is such a case. The Derwents, after acquiring the old house on the Lane Cover River waterfront (one of the oldest timber houses in the Hunters Hill municipality), planned a costly restoration with an extension. They discovered that the Heritage Council had imposed an conservation order on the house and the 100-year old trees, a Moreton Bay fig and a magnolia, in its grounds."*

*"Heritage Council officers made several visits to the house and insisted that the extensions retain the of the original building. The Derwents were happy to preserve the historic character of the building but they were less happy about the added cost of having plans redrawn, and long delays."*

*"Recently an owner-developer bought an old Federation-style house next door and proposed major redevelopment. The Derwents were not alarmed, believing that the Heritage Council, which had been so concerned, would look after their Historic property. Not so, they discovered. In fact the Heritage Council had absolved itself from responsibility and the interim conservation order had elapsed."*

*"The house had become the responsibility of Hill Council under its newly established plan. Local Government plans require councils to take into consideration other impact of nearby development on the heritage houses on its list. In the case of the Woolwich development, the adjoining building was built on the boundary and out to the waterfront, reducing views to and from the historic house and its sunlight. It required lopping a limb from the old magnolia*

This raised the issues of who should be responsible for heritage conservation orders, who should bear the burden of cost for heritage items, delays and the use of interim conservation, the meaning of and lapsing of sympathetic development and orders, and the inadequacy of liaison between local government and the Heritage Council.

Another press item in the Sydney Morning Herald, 18 November, 1987 reported a clash between a major conservation organisation, the National Trust and the Minister for Planning Environment.

*"The Minister for Planning and Environment. Mr Carr, has overruled a Commission of Inquiry hearing lifting conservation controls on a 1889 warehouse Reiby Place, Circular Quay."*

Public Accounts Committee

*"The National Trust said yesterday it was dismayed by Mr Carr's decision because the warehouse was one of the last remaining buildings of the Circular Quay commercial area."*

*"The environmental director of the Trust, Mr Chris Pratten, said:*

*"November 13, when the Minister took sanction, was a black day for conservation"*

*"By lifting the conservation order, the Minister has circumvent any recommendation of a Commission Inquiry convened under the Heritage Act."*

*"Mr Pratten said Mr Carr's decision to lift the conservation order was made against a recommendation by the Heritage Council."*

*"The Heritage Council, on November 5, had rejected a development proposal for the site."*

*"Mr Pratten said that in view of Mr Carr's determination to lift the conservation order, the trust would like to know why he did not announce his decision earlier."*

*"Mr Pratten said the warehouse in Reiby Place was rare example of 19th Century commercial building associated with the waterfront development of Sydney Cove."*

*"The Reiby Place building is to be demolished for a planned 17-storey tower by Northbourne Developments on part of the block bounded by Macquarie Place, Bulletin Place and Reiby Place."*

*"The old warehouse building is the only historical building left in the area after it was cleared from developments such as the Gateway Tower Building and the Hotel Tower on the old Coal Industry Board site."*

*"Mr Carr said he lifted the order because it would meant retaining a three-story building with a development enclosing it on both sides."*

*"The National Trust is once again urging a ludicrous example of facadism ", he said.*

*"Conservationists said Mr Carr was using the term "facadism" in its worst sense. The building was a whole building which could be retained without comprising a new development."*

## Report on the Heritage Council of New South Wales

While the Public Accounts Committee is precluded from commenting on Government policy by the Public Finance and Audit Act, 1983, this item is presented here because it raised issues about criteria used by the Heritage Council in implementing the Heritage Act, the controversial subject of facadism, how the Heritage Council handles conflict over development proposals, its relationship with non-government heritage conservation organisations such as the National Trust, and its relationship with other components of the Minister for Environment and Planning's portfolio.

## **APPENDIX 4**

### **Issues in Heritage Conservation and Government Intervention**

There are a number of issues concerning heritage conservation which are relevant to an examination of the New South Wales Heritage Council.

First, the community's demand for heritage may be underestimated. The community may not be fully informed of the options decision-makers have, of the irreplaceable nature of heritage items or of likely preferences in the future or of future generations. There may also be an "option" demand for heritage items from those who may never see or use the item.

For many people, the first they know of a threat to a heritage item is the media report of its demolition or hardship to a particular individual. A major argument for Government intervention in heritage is the provision of heritage advice to the community; that is, an "agent" role whereby government can act in the interests of the community in a broader way than would, say, a private developer. The Government may also redistribute resources if necessary via tax and subsidy.

Secondly, there may be a conflict between the community's objectives of development and environmental protection. It is argued that the role of Government here is to provide accurate information on the pros and cons (or the costs and the benefits) of such action which is not always available in the marketplace, and so improve decision-making, and co-ordination of development and planning.

Thirdly, the respective roles of Federal, State and Local Governments in heritage conservation are not clear. The Heritage value of an item may be perceived at an international level or may be of only local significance. Grants from the Commonwealth Government to each State are not proportional to the number or value of national estate items in each State.

Fourthly, in the case where Government legislates against the wishes of an owner, there is a question of who should bear the burden of cost and lost opportunities. This is a vexed issue and depends on whether one adopts a United Kingdom type or a United States type philosophy (see 1.42). The issue may become a matter of civil liberties versus the common interest, as witnessed by the cases which have been brought before the Ombudsman (as discussed in a later Chapter).

Probably the major current issue regarding heritage conservation today is that the legal owner of a heritage item may not value it for its heritage value to the same extent as the rest of the community. This difference in valuation arises because the

## Report on the Heritage Council of New South Wales

"property rights" to heritage are inadequately defined and delineated. Thus, for example, a developer may yield private benefits from demolition of an historic building, and while the loss of heritage may be a real "cost" to the public, there is usually no satisfactory mechanism for converting community demand for heritage into the market decision-making process.

The way in which this particular problem has been resolved in the past has varied. In some cases, private negotiation between developer and private persons (or more usually, private conservation organisations such as the National Trust) has resulted in a solution such as sale of the item to those valuing it or recycling of the item in a way consistent with heritage conservation (for example, use of an historic building as a restaurant).

On June 17, 1971, the Builders Labourers Federation (B.L.F.) agreed to place a bar on an area of remnant vegetation known as Kelly's Bush in Hunters Hill. With this an alternative, distinctly Australian "green ban" approach to conservation was born. (The term green ban was popularised by the then Secretary of the Builders Labourers Federation of New South Wales, Mr Jack Munday.) More than 40 green bans were imposed by the B.L.F. over the next four years leading up to Commonwealth and State legislation in 1975 and 1977 respectively.

Since the mid 1970's, government has intervened to protect heritage, both through legislation and financial assistance.

### **Government Intervention**

Kenneth Wiltshire, then Chairman of the Australian Heritage Commission, remarked in 1985:

*"The Australian Constitution is relatively silent regarding responsibility for environmental matters in general and heritage in particular."*

Wiltshire summarises the development of heritage conservation by Government in Australia as follows:

*"Whilst the origins of many bodies associated with nature conservation go back to the early part of this century in Australia, the National Trust movement was only founded in Australia in the mid-1940s. Until recently only 1.5 per cent of all Australians belonged to a conservation organisation of some kind; that can be compared directly with the figure of little more than one per cent of Australians who belong to political parties."*

## Public Accounts Committee

*"The real impetus towards heritage protection came in 1973 with the establishment by the Commonwealth Government of a Committee of Inquiry into the National Estate, chaired by Justice R. Hope. Amongst many other recommendations, the Committee strongly advocated the creation of a Commonwealth Government statutory body, to be known as the Australian Heritage Commission, which would operate under its own legislation. That recommendation was accepted by the Government of the day and in 1975 the Australian Heritage Commission was created under the Australian Heritage Commission Act 1975, coming fully on stream with amended legislation in 1976 (Australian Heritage Commission Amendment Act 1976).*

*The Australian legislation was closely modelled on the United States legislation. It should be noted that in the free world there are two quite distinct philosophies towards heritage protection. One view, which predominates in European and some developing countries, is that all important items of a nation's heritage belong to the people and should therefore be closely subject to public control even if they are in private ownership. These views are closely related to political philosophy about the role of the State, and its translation into questions of sovereignty and title to property. For example, the French 500 metre rule states that once a place is designated an historic monument, then no item within 500 metres of that historic monument can be changed or altered without incurring severe penalties, thereby having the effect of preserving precincts throughout historic districts in France. The contrasting view is to be found strongly accented in North America, where the overwhelming interest is in individual property rights and the inalienability of those rights. This view is often associated with a related argument that any public intrusion into private property should be automatically accompanied by compensation.*

*Based on the American philosophy and example, Australia's heritage legislation for heritage protection has to rely principally on example and inducements, rather than on powers of physical enforcement. It was uppermost in the minds of the members of the 1973 Hope Committee of Inquiry in Australia that the Commonwealth should set a good example throughout the nation in the way in which it protected and presented its own heritage property. Therefore, the Commonwealth legislation is directed largely at keeping its own house in order. After all, the Commonwealth Government is the largest single property owner in Australia and some of its places, for example customs houses, light houses, post offices, etc., are often the focal visual and practical point of a typical Australian urban or rural community.*

## Report on the Heritage Council of New South Wales

*The implementation of Commonwealth legislation is the responsibility of the Australian Heritage Commission, a statutory independent body composed of a Chairman and six other Commissioners. There is a requirement in the legislation that the Minister, in appointing Commissioners, should have regard to geographical representation. The practical effect of this is to ensure that regional viewpoints are expressed as well as specialist functional viewpoints.*

(From Page 47 - 48 of K. Wiltshire, Heritage in Mathews R.L., (Editor) "Federalism and the Environment", Anutech, Canberra 1985)

The Australian Heritage Commission is part of the portfolio of the Minister for Arts, Heritage and Environment. In summary, its responsibilities are: to prepare and maintain a register of national estate places; to advise the Minister on all matters relating to the National Estate; and to develop policies and programs for research, professional training and public education.

The National Estate is defined in the legislation as:

*"those places, being components of the natural environment of Australia, or the cultural environment of Australia, that have aesthetic, historic, scientific or social significance or other special value for future generations, as well as for the present community".*

The Commission consists of a part-time Chairman and up to six part-time Commissioners with various skills and interests in the natural and cultural environment, and is served by a Secretariat.

On the request of the Minister for Arts, Heritage and Environment in June 1985, the Department reviewed the Australian Heritage Commission Act, 1975. The review is reported in the "Report of the Review of the Commonwealth Government's Role in the Conservation of the National Estate", Canberra 1986.

In the 1970s a number of State Governments also introduced heritage legislation.

## **APPENDIX 5**

### **METHODOLOGY OF INQUIRY**

The Committee publicly announced the inquiry on 9 June 1987 and notices were placed in all major newspapers between 12 - 14 June, 1987.

#### **Invitation for Submissions**

Submissions were invited from interested organisations, such as local councils, and members of the public. In addition, all members of the New South Wales Parliament and New South Wales local councils were informed of the inquiry and invited to make submissions.

Submissions were received from a wide variety of sources and comments ranged from letters addressing one or two issues, verbal submissions to well documented and comprehensive submissions. One submission was a 500-page thesis which evaluated the Heritage Act, 1977.

A list of submissions received is given in Appendix 1. All submissions received have been reviewed by the Committee and taken into consideration in preparing this Report.

The submissions reflected a diversity of views. These and other sources of information were of valuable assistance to the Committee in its deliberations.

#### **Hearings**

A preliminary public hearing was held on 10 June 1987 at which the Acting Chairman of the Heritage Council and two Council members gave evidence. Evidence was also given by the Director of the Department of Environment and Planning and two senior officers.

A second public hearing was held on 7 October, 1987 at which representatives of the Church Administrative Officers' Group and the Acting Ombudsman gave evidence.

#### **Requests for Information**

In addition to requests for information from the Department of Environment and Planning, the Committee has written to Government



## Report on the Heritage Council of New South Wales

Ministers of all other portfolios concerning heritage matters within their domain.

The Committee also wrote to all consultants and local councils involved in the heritage advisors scheme.

### **Inspection of Heritage Items**

In the latter six months of 1987, the Committee, both collectively and singly, visited a number of several sites where there were items of heritage value across Sydney and New South Wales, with the assistance of a representative from the National Trust of Australia (NSW) and local personnel from local government.

### **Interstate Inspections**

In November 1987, the Committee visited South Australia and Western Australia to examine how heritage policies were implemented elsewhere.

South Australia has a proven track record in heritage conservation and Western Australia was at that stage in the process of introducing a Heritage Act and was debating the topic in depth.

### **Visits to Heritage & Conservation Branch**

The Committee visited the Heritage and Conservation Branch of the Department of Environment and Planning on 10th June, 1987. Staff of the Public Accounts Committee also visited the Branch on other occasions on behalf of the Committee.

### **Submissions from the Heritage & Conservation Branch**

At the preliminary hearings, the Branch provided the Committee with a pre-prepared submission. In addition, answers to questions raised by the PAC at the Hearings were provided in the form of written documentation on in October, 1987.

### **Literature Search**

The Committee reviewed the available literature relating to Government involvement in heritage matters and efficient management of heritage policies.

## **APPENDIX 6**

### **SUBMISSIONS RECEIVED**

#### **Ministers**

Minister for Youth and Community Services

The Treasurer

Minister for Industry and Small Business and Minister for Energy and Technology

Minister for Agriculture, Minister for Lands and Minister for Forests

Minister for Local Government

Minister for Police and Emergency Services

The Attorney General

#### **Members of Parliament**

Mr John Aquilina, MP - Member Blacktown

Mr Don Bowman, MP - then Member for Swansea Mr Bob Christie, MP - Member for Seven Hills The Hon.

Elisabeth Kirkby, MLC

Mr Tim Moore, MP - Member for Gordon

Mr John Price, MP - Member for Waratah

Mr Jim Small, MP - Member for Murray

Mr Robert Webster, MP - Member for Goulburn

#### **Local Government**

Shire of Ballina

Bathurst City of Council

Bega Valley Shire Council

Blacktown City Council

Blue Mountains City Council

Shire of Bombala

The Council of the Shire of Bourke

City of Broken Hill

Burwood Municipal Council

Campbelltown City Council

The Council of the Municipality of Casino Cessnock City Council

The Council of the Municipality of Concord

Drummoyne Municipal Council

The Council of the Shire of Eurobodalla

## Report on the Heritage Council of New South Wales

Glen Innes Municipal Council  
Gosford City Council  
Guyra Shire Council

Hastings Municipal Council  
Hawkesbury Shire Council  
Municipality of Hunters Hill  
Hurstville Municipal Council

Kiama Municipal Council  
Ku-ring-gai Municipal Council  
Kyogle Shire Council

The Council of the City of Greater Lithgow  
Liverpool City Council  
Local Government Association

Manly Municipal Council  
Municipality of Marrickville  
The Council of the Shire of Merriwa  
Muswellbrook Shire Council

Narrabri Shire Council  
Municipality of North Sydney

Port Stephens Shire Council

City of Queanbeyan

Shire of Snowy River

Tallaganda Shire Council  
Tamworth City Council

Greater Taree City Council

City of Wagga Wagga  
The Council of the Municipality of Waverley  
Western Sydney Regional Organisation of Councils  
Windouran Shire Council  
Wingecarribee Shire Council  
Wollondilly Shire Council  
The Council of the Municipality of Woollahra  
Wyong Shire Council

### **Other Organisations Individuals**

Anglican Church Diocese of Sydney  
Australian Heritage Commission  
Avalan Preservation Trust

Boydton Pty Ltd

Champion and Partners - Solicitors

Public Accounts Committee

Hill End Progress Association Hunters Hill Trust

Mr Reece McDougall

National Trust of Australia

Macquarie Towns Preservation Society

Office of the Ombudsman

Palm Beach Association

Royal Australian Planning Institute

Public Service Board of NSW

Mr Stephen Shortis

Mr Bruce R. Welch

## **APPENDIX 7**

### **Witnesses at Hearings**

(Transcripts of Evidence in Volume 2)

#### **Date of Hearing**

10th June, 1987

#### **Name of Witness**

*DEPARTMENT OF ENVIROMENTAL AND PLANNING*

Mr Richard Smyth

*Director*

Mr Anthony O'Dey

*Manager, Finance Branch*

Mr Robert Power

*Manager, Heritage Branch*

*HERITAGE COUNCIL OF NSW*

Mr Nigel Ashton

*Acting Chairman*

Mr Rodney Rimes

*Solicitor and Member*

Mr Christopher Pratten

*Environment Director of National  
Trust of Australia (NSW) and Member*

7th October, 1987

*CHURCH ADMISTRATIVE OFFICERS*

Mr Neville Malone

*Chief Executive Officer of the  
Anglican Church Diocese of Sydney*

Archdeacon Victor Roberts

*Anglican Archdeacon of Wollongong,  
Anglican Church Diocese of Sydney*

Mr Neil Cameron

*Solicitor*

Mr Kevin Stonham

*Assistance Secretary, Anglican  
Church Property Trust Diocese of  
Sydney*

Reverend Monsignor Peter Ingham

*Archdiocesan Secretary, Catholic  
Church Archdiocese of Sydney*

Public Accounts Committee

Mr Bruce MacDermott

*Solicitor*

Mr Raymond Thorpe

*General Secretary, Presbyterian  
church of Australia in the state of  
New South Wales*

*OFFICE OF THE OMBUDSMAN*

Dr Brian Jinks

*Deputy Ombudsman*

## **APPENDIX 8**

### **The Functions of the Heritage Council**

The Heritage Act, 1977, specifies the functions of the Heritage Council as follows:

- to make recommendations to the Minister for or with respect to the exercise by him or any functions conferred or imposed on him by or under this Act or the regulations;
- to make recommendations to the Minister relating to the taking of measures for or with respect to--
  - the conservation of;
  - the exhibition or display of;
  - the provision of access to; and
  - the publication of information concerning, items of the environmental heritage.
- to carry out investigations, research and inquiries relating to the above matters;
- to arrange and co-ordinate consultations, discussions, seminars and conferences relating to the above matters; and
- to exercise such other functions as are conferred or imposed on it by or under this or any other act or the regulations.

The Heritage Council is also required,

- to keep a register of buildings, works, relics and places which are and land (other than those places) which is subject to conservation instruments, orders made under this Act and notices served under this Act. The register shall be available for public inspection without charge at the office of the Heritage Council during ordinary office hours; and
- As soon as practicable after 30th June in each year the Heritage Council shall prepare and present to the Minister a report on its operations and activities
- The report shall, in respect of the year for which it is prepared, include:

Public Accounts Committee

- a summary of all recommendations made by the Heritage Council shall prepare and present to the Minister a report on its operations and activities during the year.

The report shall, in respect of the year for which it is prepared, include:

- a summary of all recommendations made by the Heritage Council to the Minister during that year;
- in the case of:
  - the first report - a copy of the register kept under Section 22(1); and
  - each subsequent report - particulars of all additions to, deletions from and other amendments of, that register during that year; and
- particulars of such financial assistance as is provided under Division 2 of ~~RaVI~~ during that year.



## **APPENDIX 9**

### **Heritage Act Amendments, 1979 and 1987**

Amendments to the Heritage Act in 1979 enabled conservation provisions to be part of environmental planning instruments made under the Environmental Planning and Assessment Act, 1979.

Further review followed, and the Heritage Act was amended again in April 1987. The amendments included:

- simplification of the procedures for making permanent conservation orders (PCOs) following interim conservation orders (ICOs)
- limiting the application of Section 130 orders to control demolition to one year
- an increase in the maximum penalty for breaches of the Act from \$10,000 to \$20,000
- provision of a review process of ICO's within 12 months and, if there is no review, the ICO lapses. Where there is a Commission of Inquiry into an objection to a proposed PCO, the ICO remains in force until the Minister makes a decision
- the requirement that Government instrumentalities keep a register of items under their control
- the removal of restrictions which prevented development applications from being lodged with consent authorities while being considered by the Heritage Council
- an increase in the membership of the Council to 12, to include a representative of building, development and property industries. The Act now states that the Director of the National Parks and Wildlife Service and the Government Architect are to be members. The Chairman and nine others are appointed by the Minister for Planning and Environment. These represent:
  - The Department of Environment and Planning
  - The National Trust of Australia (New South Wales)
  - Property rights of citizens
  - The Royal Australian Historical Society
  - The New South Wales Chapter of the Royal Australian Institute of Architects and the New South Wales Division of the Royal Australian Planning Institute
  - The Labour Council of New South Wales
  - Local Government
  - Conservation interests generally

## **APPENDIX 10**

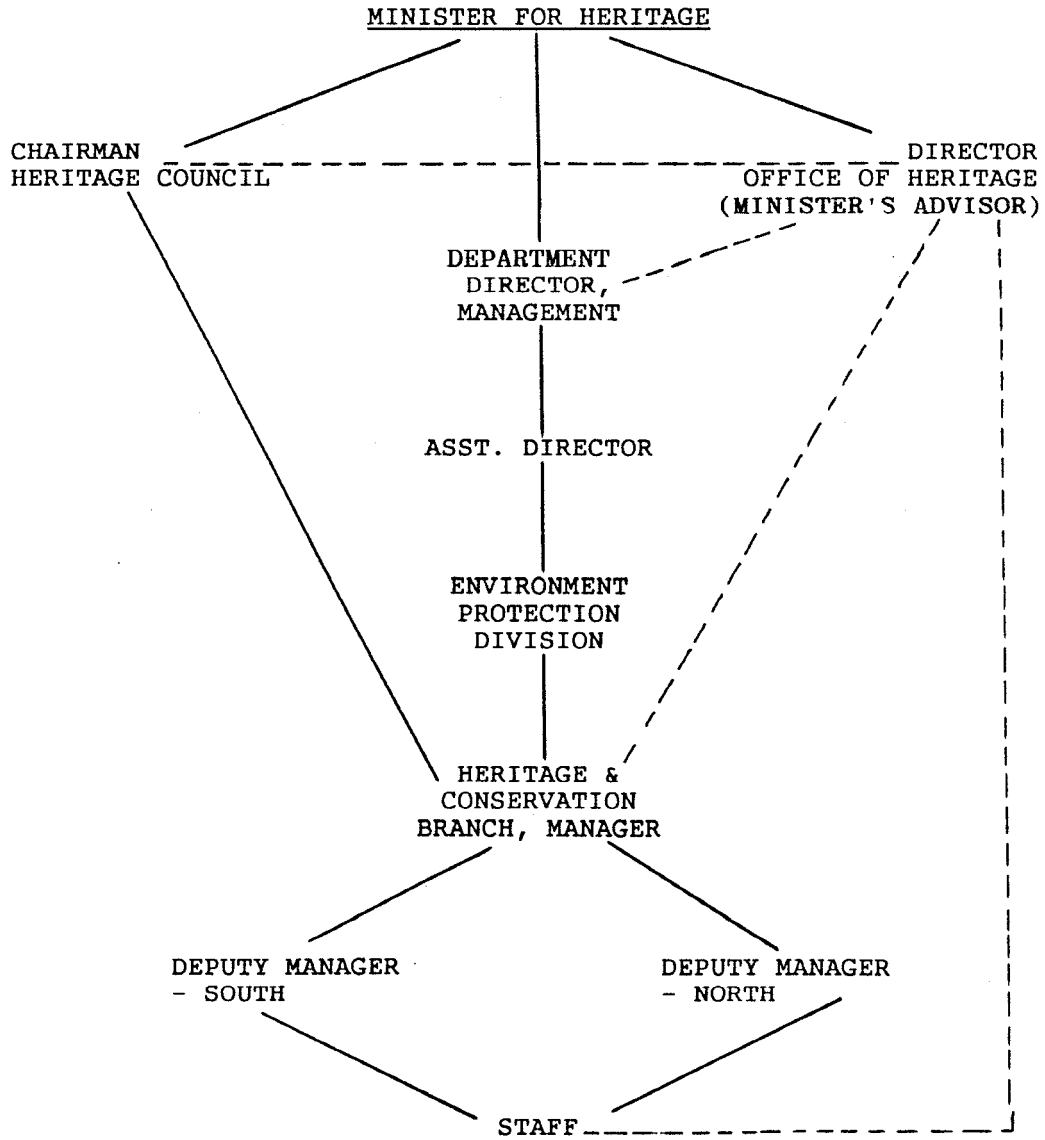
### **Structure of Organisation Dealing with Heritage Matters**

The Branch supplied the Committee with an organisation chart showing the links between the Minister, the Department and the Heritage Council. Following discussions with the then Minister's advisor (Director, Office of Heritage) and others, the PAC devised an organisation chart showing formal and informal lines of communication as it understood them to be. This is shown over page.

The importance of this chart is that it shows that the Heritage Council is responsible to the Minister, but the Branch, which services the Heritage Council, is responsible not only to the Heritage Council but to the Director of the Department and to the Minister, mainly via the Minister's advisor.

STRUCTURE OF ORGANISATION

DEALING WITH HERITAGE MATTERS



\_\_\_\_\_ Formal lines of communication  
- - - - - De facto lines of communication

**APPENDIX 11**

**Branch Procedures and Guidelines for the Allocation and Control of Financial Assistance**

1. Enquiries concerning funding come from the public as a result of advice from heritage advisors, local councils, consultants, Branch Officers or others who have received assistance. Enquiries are directed to the Finance Officer of the Heritage Council (in the case of the Heritage and Conservation Fund), or the Secretary, National Estate Committee of the Heritage Council (in the case of the NEGP). Both of these people are officers of the Heritage and Conservation Branch, the former a Town Planner/Specialist 1/2, the latter a Clerk, Class 9.
2. In the case of the NEGP only, a call for applications is dispatched to various selected bodies by the Secretary.
3. Application forms are dispatched.
4. Applicants are required to discuss their application with the Finance Officer prior to completing the form.
5. Applications are considered by Branch Officers. The Branch receives in excess of 100 applications per year for assistance from the Heritage and Conservation Fund and 150 for the National Estates Program. Branch Officers sort the applications, prepare project files, apply the guidelines, (discussed separately below) prepare briefing notes and recommendations for the Finance Committee and call meetings of the Finance Committee.
6. The Finance Committee "endorses" the recommendations and they are then forwarded with a submission recommending approval to the Minister together with press releases and letters to successful applicants for the Minister's signature.
7. On receipt of the Minister's approval, letters of confirmation are issued to applicants, who must return a signed copy of the schedule of conditions.

## Report on the Heritage Council of New South Wales

8. Funds are issued either as advances or progress payments when verification is received from the applicant that a certain stage of work is completed. The Finance Officer prepares a payment voucher for the Branch Manager's signature and the issue of a cheque. All records pertaining to a funded project are kept on individual project files, except for a monthly statement of expenditure and repayments of all grants and loans which the Accounts Branch of the Department provides.
9. Following the allocation of the last payment, the Finance Officer ensures that grant/loan conditions are complied with.

### **Delegation Authority**

The Minister has approved the Small Grants Heritage Advice Program whereby then Manager of the Heritage Branch (on the basis of documentation and recommendation of a suitable consultant by the Finance Officer) may approve expenditure up to \$12,500 out of the Heritage and Conservation Fund, with the upper limit of assistance for any. or project being increased to \$1,000.

**APPENDIX 12**

**State Contracts Control Board: Instrument and Schedule of Exemption for Department of Environment and Planning**

Instrument of Exemption

*"Pursuant to Clause 42 of the Public Service (Stores and Services) Regulation, 1984, the Board has approved of exemptions being granted from the provisions of Parts III-VI, inclusive, of the Regulation in respect of the items in the schedule hereunder the heading of "Matters Exempted" and has also approved of the the duties of the office within the Department as specified in the schedule under the heading "Office" being authorised, subject to such limitations as real, otherwise be applicable, to procure the stores and/or services indicated".*

Schedule of Exemption

<u>Matter exempted</u>	<u>Office</u>
2. Engagement of consultants, to best advantage, for associated studies on the basis of the policies adopted by the Minister and the Department from time to time.	Director Assistant Directors

## **APPENDIX 13**

### **The Heritage Advisors Scheme**

#### **Philosophy Behind Heritage Advisor Scheme**

The Heritage Branch, as part of the State Environmental Protection Plan, is attempting to encourage and assist local governments to be more responsible for heritage matters, firstly by invoking the Environment and Planning Act, 1979 which specifies that local governments are responsible for heritage matters, and secondly by providing a financial inducement to develop heritage plans. (This includes grants for the appointment of heritage advisors).

The financial assistance will have a sunset clause of two years, from the date of instigation although further grants may be possible if a good case is put forward. The Act will give local governments powers to override demolition.

It is the view of the Heritage Branch that all three levels of government should share responsibility for heritage matters. At present, there is a tendency for some local governments to abnegate responsibility by stating that they will not undertake heritage studies unless the Heritage Council finances them.

The Scheme is seen to be a "carrot rather than stick approach" to encouraging local government involvement. The Branch considers that if the advisors were more fore, ally responsible to the Heritage Council, they would not be seen by local government to be fully independent. At present, they are taken into council confidence and hence are able to have input at very early stages in, say, development proposals, and are in a good position to influence the outcome.

#### **Functions of Advisors**

The Heritage Council has described the role of heritage advisors to local governments as follows:

- a) to provide free advice to all owners of heritage properties in the local government area;
- b) to provide advice to on all development and building applications and proposals by government bodies involving heritage items; and
- c) to provide advice to local government on heritage projects of a civic nature, e.g. street improvement programs.

## Public Accounts Committee

The Heritage Council has also outlined benefits from such programs as follows:

- a) the advisor is able to liaise with owners before development proposals are formalised, and thus potential conflict situations can be avoided; and
- b) the advisor can positively promote projects which might otherwise not take place, e.g. seeking government funding or encouraging private and government owners to undertake restoration and enhancement projects.

### Activities

The Heritage Branch analysed the two-day diary accounts of one advisor and found the following:

21% of advisor's time spent assessing and commenting on new development proposals and on redevelopment.

10% on facade treatment and restoration/reconstruction.

16.8% on building renovations, conversions/extensions, retention, recycling and refurbishing.

10% on technical advice, preparation of specifications for work.

10% on Heritage Council related matters such

- 1) the availability of grants/funding;
- 2) the implications of a conservation instrument;
- 3) site identification; and
- 4) documentation of a ruin.

4.2% of the advisor's time was spent on developing policies on matters such as:

- 1) the preparation of development guidelines and criteria for listing items of heritage significance;
- 2) kerbing and guttering;
- 3) the demolition, restoration and recycling of old buildings;
- 4) paving; and



## Report on the Heritage Council of New South Wales

- 5) awnings and non-load bearing verandah posts.

The remaining 18% of the Advisor's time was taken with such miscellaneous matters as research and historic assessment, landscaping, appropriate signage, refurbishment, exterior painting and colour- schemes and fire order inspections."

### **Heritage Branch Administration**

The Branch estimates that it takes about one day/year to administer each of the council advisor schemes. This involves:

1. Discussion with council (phone, letter - about two hours maximum)
2. Brief Report to Finance Committee, Heritage Council
3. Resolution from Finance Committee to Heritage Council
4. Recommendation to Minister and letter to applicant (Council) outlining conditions for Minister's signature.
5. If council receives the Grant, a cheque is sent
6. Selection of an advisor (with approval of Manager, Heritage Branch, not usually a"local" applicant)
7. Preparation of a letter of contract for the advisor

This excludes the time taken to review suggestions/recommendations to the Heritage Council which arise out of the advisor's work.

### **Branch Evaluation of the Scheme**

There has been no evaluation of the scheme by the Heritage Branch/Councils, although they did employ a management consultant to interview heritage advisors in August 1987.

The Branch considers that the scheme has worked well in all but one case.

**Experience in Other States**

Victoria has a heritage advisor scheme which was modelled on the British concept of the "Conservation Officer" position which is in existence in historic towns in Britain.

New South Wales' scheme is based on Victoria's. However, Victoria appears to employ full-time, fully State Government funded advisors. South Australia has also employed advisors in this way.

**Public Accounts  
Committee**

Parliament House, Sydney 2000  
Telephone: 230 2631  
230 2111

PARLIAMENT OF NEW SOUTH WALES  
LEGISLATIVE ASSEMBLY

**APPENDIX 14**

Letter to Heritage Advisors and Participating Local Governments

27th November, 1987

Dear

The Public Accounts Committee of the New South Wales Parliament is inquiring into the Heritage Council of New South Wales, consequent to a reference from the New South Wales Minister for Environment and Planning and Minister for Heritage, the Hon. Robert J. Carr, M.P.

I have enclosed a copy of the Terms of Reference of the inquiry. To date, the Committee has received more than 70 written submissions and has conducted public hearings.

As part of its investigations, the Public Accounts Committee is examining the Heritage Advisory Scheme which I understand is currently being funded by your Council and by the Heritage Council. It is in this regard that the Committee would appreciate your comments concerning how the Heritage Advisory Program operates in your local government area in terms of its stated objectives or other objectives perceived by the Council.

The Heritage Council has described the role of heritage advisors as follows:

- a) to provide free advice to all owners of heritage properties in the local government area, including your own council;
- b) to provide advice to your council on all development and building applications and proposals by government bodies involving heritage items; and
- c) to provide advice to your council on heritage projects of a civic nature, e.g. street improvement programs.

The Heritage Council has also outlined benefits from such programs as follows:

- a) the advisor is able to liaise with owners before development proposals are formalised, and thus potential conflict situations can be avoided; and

- b) the advisor can positively promote heritage projects which might otherwise not take place, e.g. seeking government funding or encouraging private and government owners to undertake restoration and enhancement projects.

Please could you indicate whether you consider that the objectives and benefits are being achieved in your Council area, preferably with examples or comments to illustrate your views.

The program has been described as "cost effective". Could you comment on this in the light of your experience, and specify if there has been any spending, additional to that provided by the Heritage Council, on the Scheme to date.

Have there been issues on which the heritage advisor and your Council have disagreed? How have such matters usually been resolved?

Could you outline any difficulties or problems which you have experienced with the Scheme, and if possible, ways in which you think the Scheme could be improved or enhanced in the future?

I would be grateful if you could illustrate your comments with any documented material which you considers would assist the Public Accounts Committee in its Inquiry. Please feel free to raise any other matters regarding the Heritage Council which may be relevant to our Committee's Terms of Reference.

The Public Accounts Committee has written to the heritage advisor/local government in your locality, under separate cover.

A reply would be appreciated by 26th January, 1988.

Yours faithfully,

JOHN MURRAY, B.A., M.P. CHAIRMAN.

Enc.

P 80617-33889--15

Heritage Council of New South Wales

Terms of Reference

To examine and report on the operations of the Heritage Council of New South Wales and in particular to:

- i) review the overall financial position of the Council;
- ii) assess the adequacy of procedures and guidelines for the allocation and control of grants, loans and other financial assistance for heritage projects;
- iii) examine the use of consultants including guidelines for engagement and management of consultants, and evaluation of consultancy projects.
- iv) assess the adequacy of the organisation's objectives to fulfil the Council's statutory role and review performance review mechanisms and
- v) inquire into and report on any other matters arising from the inquiry which impact on the efficiency and effectiveness of the Heritage Council.

3 June, 1987

## **APPENDIX 15**

### **Public Accounts Committee Survey of Heritage Advisors and Local Government**

The response rate was 100% that is, responses were received from all advisors and local governments in the following areas:

Hawkesbury  
Mudgee  
Broken Hill  
Maitland  
Blayney  
Tallaganda  
Glen Innes

### **Are the Stated Objectives being Achieved?**

There was general agreement that all the stated objectives were being achieved. One response summed it up with the statement "everybody wins" The local government gains expertise, owners and developers receive "free" advice and the Heritage Council is ensuring that heritage matters are being considered in local government decision-making.

Most responses expressed the view that more could be achieved if greater resources were allocated. One council noted that without the heritage advisor, it would have to employ more planners or modify its policies.

According to the majority of responses, the key benefits are as follows:

- 1) Education of council staff and owners/developers. Many developers/owners would never have contacted an architect if it had not been via the advisor scheme. The knowledge imparted to council staff apparently had lasting effects.
- 2) Quick "on the spot" authoritative advice which meant that development proposals could be influenced early and hence reduce the cost and delay involved in disagreement over final plans.
- 3) The provision of field advice to the centrally located Heritage Branch staff and Heritage Council members.

## Report on the Heritage Council of New South Wales

### **Cost Effectiveness**

The Heritage Council, in its letter to local governments, states that the Scheme is "cost effective".

The PAC has tried to ascertain whether there is evidence to support this claim.

In answer to this question, the following points were made:

- Advisors were employed at below market rates, and hence the council was getting advice cheaply. However, it should be noted that the advisor is often given appointment making services, office space, use of a car, photographic materials, travel costs, etc, on top of the base rate.
- Most advisors apparently work longer than the appointed hours.
- There is evidence that development decisions have been revised early in the planning process as a result of the heritage advisor's advice and hence the cost to both the owner/developer and the Heritage Branch of a later clash or statement are avoided i.e. many costly problems are avoided before any expenditure is made. Being able to act spontaneously avoids wasted effort and unsuccessful development plans being adopted.
- Advisors can deal with many more development applications than are possible in the centralised Heritage Branch.
- Advisors cannot keep up with the requests for assistance.

Some examples of cost effectiveness include:

- An owner who would have to travel to Sydney for suitable advice;
- Savings in time by a Community Committee.

### **Disagreements and their Resolution**

Most advisors were reluctant to comment on disagreements, and some stated that there were no disagreements.

Others commented that disagreements were inevitable because of the different functions and perspectives of advisors and local governments.

Disagreements generally appeared to be resolved by on-going discussions and on site visits to sort out problems.

## Public Accounts Committee

In the case of some disagreements, such as the Maitland slab hut, the disagreement is not resolved at the local level, but by a Ministerial decision to implement a conservation order under Section 130 of the Act.

In one locality, the advisor and the council seemed to differ in their priorities because of differences in philosophy about heritage matters.

### **Difficulties and Possible Improvements/Enhancements**

The main difficulties which were raised are as follows:

1. Prioritising activities, given that there is a fixed budget.
2. The Heritage Branch appears to want to maintain close input and not delegate sufficiently. This is particularly poor from the public's viewpoint if they are subject to several layers of approval procedures and the delays in decision-making at the central level.
3. The advisor is actually employed by the local government (with a contract drawn up by the Heritage Council) but is responsible to both the Director of the Heritage Branch and the local government. This has apparently caused some problems for councils in terms of checking authorisation for advisors' actions.
4. Because of the below-market rates of pay council has to be "lucky" to find someone who is suitable or accept someone who is not sufficiently experienced. (The Heritage Branch suggests candidates who presumably meet minimum requirements to the local governments).

### **Other Comments in Survey Responses**

1. There is no point in being an expert unless some of that expertise can be imparted to the owners/developers and to the local government staff who are making decisions daily that affect the Heritage value of buildings, streetscapes, vistas, etc.
2. Private consultants are superior to full-time salaried advisor in that they do not provide stereotyped advice.
3. There is a need for the heritage advisor to be diplomatic and successful in public relations. The advisor needs to be able to explain heritage issues to, and enthuse, a wide range of people, that is, elected representatives, council officers, owners, developers, private architects, etc.



## Report on the Heritage Council of New South Wales

4. The independent advisor relieves the potential conflict which council staff may have with elected Councillors over heritage matters.
5. There is some debate about whether a conservation study should be completed or at least established before an advisor is appointed. It seems that a conservation study provides a good basis and theme for an advisor to work from.
6. It is considered that a strong local heritage advisory Committee is essential for the success of an advisor.

## **APPENDIX 16**

### **The Department's Corporate Plan**

The comment regarding the Corporate Plan was that it:

*"incorporate Heritage and Conservation within This plan is under review".*

The Corporate Plan outlines the Department's primary objective as follows:

*"The Department of Planning aims to provide a planned environment that promotes the social and economic welfare of the community and protects and enhances the State's natural and built heritage*

One of the five objectives is related to heritage matters, as follows:

*"d) to identify and conserve the cultural and natural heritage"*

The Department's Corporate Plan ( 1986 ) description of its heritage conservation responsibilities were as follows:

*The operation of the Heritage Act, since its enactment in 1977, has involved the Heritage Council of New South Wales, and this Department, servicing it, in a steadily increasing flow of casework and heritage studies. Two major initiatives, both intended to improve the capacity of the government to handle the task of conserving the State's heritage, are the formulation of a State Conservation Plan and the establishment of a State Heritage Register. Both are projects which are to be given a high priority in*

*The aim of a State Conservation Plan is the production of a central policy document for use by both the Government and the Heritage Council in making decisions about heritage conservation. The plan would establish an on-going program for achievement of long-term goals and would have three main objectives:*

\* *to encourage the community to recognise and appreciate environmental heritage;*

## Report on the Heritage Council of New South Wales

- \* *to provide a philosophical and practical basis for the conservation of the environmental heritage; and*
- \* *to provide a strategy for conserving the environmental heritage and for making it available to the community.*

*In 1985 a consultant brief was prepared for Stage I of the plan. Options for proceeding*

*The establishment of a State Heritage Register is a project complementary to that of the State Heritage Plan. The concept is that of a register of heritage items of State (as distinct from local) significance, that is, a statement of the corpus of the heritage items which are of such significance as to be the proper concern of the Government at the State level. By its nature, such a register would never be regarded as totally complete or comprehensive in its coverage.*

*It is proposed that the State Register, when established will be a sophisticated and computerised data base, with cross linkages to other relevant registers. A number of options and models exist for the register, and the Department can draw upon its experience of the last five years, during which briefs for standard local heritage studies have been widely tested and developed. A proposal for a five stage program for development of the State Heritage Register was produced in late 1985 and is now being refined.*

**Public Accounts  
Committee**

Parliament House, Sydney 2000  
Telephone: 230 2631  
2302111

PARLIAMENT OF NEW SOUTH WALES  
LEGISLATIVE ASSEMBLY

**APPENDIX 17**

**Letter to all Ministers**

November 1987

Dear

The Public Accounts Committee is currently inquiring into the Heritage Council of New South Wales, consequent to a reference from the Minister for Environment and Planning and the Minister for Heritage, the Hon. Bob Carr.

With reference specifically to Items (ii), (iv) and (v) of the Terms of Reference for the inquiry (attached), the PAC is endeavouring to examine the role of the Heritage Council and the Heritage Branch vis a vis other State Government bodies involved with administration and financing of heritage matters.

To this end, I would be grateful if you could provide the PAC with a brief outline of State Government bodies within your portfolio which have been involved with heritage matters. This may, for example, include the preservation or restoration of historic sites or buildings of cultural interest involving administrative or financial inputs from Government.

Please indicate the extent of financial commitments and if there is communication with the Heritage Council concerning these commitments.

A reply would be appreciated before 6th January, 1988.

Yours faithfully,

JOHN MURRAY, B.A., M.P.,  
CHAIRMAN.

## **APPENDIX 18**

### **Glossary**

Accountability is the obligation to answer for a responsibility that has been conferred. It presumes the existence of at least two parties: one who allocates responsibility and one who accepts it with the undertaking to report upon the manner in which it has been discharged. (PAC Report 15, 1985)

Accumulated Deficiency is a generally accepted accounting term which shows an organisation's loss since the commencement of a particular operational period.

Branch is the Heritage and Conservation Branch of the Department of Planning. Staff provide technical and administrative assistance to the Heritage Council, local councils, other public authorities and members of the public. Staff of the Branch include specialists in archaeology, architecture, building design, the natural environment, engineering, finance, history, public relations and town planning. (Heritage Council Annual Report, 1987.) Branch staff also provide advice on heritage matters directly to the Minister for Heritage and to the Department's Director.

Corporate Plan An organisation's thinking about its long term future that includes the setting of major overall objectives, the determination of basic approaches to be used in pursuing these objectives, and the means to be used in obtaining the necessary resources to be employed. Long term means more than, say, five years. Precise strategies and detailed planning are usually part of a strategic plan.

Corporation Sole The Heritage Act incorporates the Minister for Heritage as a corporation sole. The corporation sole is recognised as an accounting entity under Schedule 2 of the Public Finance and Audit Act.

Demolition Control of items which are subject to Interim Conservation Orders and Permanent Conservation Orders is defined in Part VI of the Act.' Demolition, damage or other harmful activity are illegal and approval for changes must be sought. Demolition control of items which are not the subject of Conservation Orders may be effected under Section 130 of the Act. A Section 130 Order controls and restricts harm to buildings, works, relics and places. The Order prevents demolition until an interim or permanent conservation order can be made.

Department is the Department of Planning, formerly the Department of Environment and Planning. The PAC's Inquiry was mainly conducted during the past administration's term. The Department includes the Heritage and Conservation Branch.

## Public Accounts Committee

Effectiveness An activity is fully effective if it achieves all its objectives. (PAC Report 15, 1985)

Efficiency relates to the conversion of inputs to outputs. A unit or program is more efficient than the standard if it achieves its actual outputs using less inputs (or, in money terms, lower cost) than the standard for that output. Economy is a subset of efficiency. It is popularly used to describe the objective of acquiring resources (or inputs) at least cost, measured by the relative unit cost of purchases, wages, finance, etc. (PAC Report 15, 1985)

Environmental Heritage means those buildings, works, relics or places of historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance for the State (Heritage Act, NSW, 1977). Similar definitions are used by the Australian Heritage Commission and other heritage bodies. Heritage may be of international, national, state or local significance.

Equity refers to the distribution or incidence of costs and benefits. For example, a "user pays" principle would suggest that the beneficiaries of heritage conservation should pay for conservation and that owners of heritage properties should be compensated for losses which they incur as a result of restrictions placed on the use of that property by the rest of the community.

Heritage Act, NSW, 1977 is the legislation aimed at conserving the State's heritage. The heritage conservation measures included are conservation orders, control of development and demolition and provision of financial assistance. The Act established the Heritage Council and the Heritage Conservation Fund.

Heritage Conservation means all the processes of looking after a place so as to retain its 'cultural significance' It includes maintenance and may according to circumstance include 'reservation' 'restoration', 'reconstruction' and 'adaption' and will be commonly a combination of more than one of these. Cultural significance means aesthetic, historic, scientific or social value for past, present or future generations. This definition is the one used in the Burra Charter. (The Burra Charter is the Australia ICOMOS Charter for the Conservation of Places of Cultural significance. ICOMOS is the International Council on Monuments and Sites).

Heritage Conservation Fund is the working fund of the Heritage Council. It was established under the Heritage Act, 1977, Part VI, "Other Measures for the Conservation of the Environmental Heritage". The Fund is the account from which payments may be made for charges, costs, expenses incurred and for financial assistance under the Act. While the Minister for Heritage (as coporation sole) is responsible for the Fund, the Council is required to report annually on payments into and out of the Fund.

## Report on the Heritage Council of New South Wales

Heritage Council was constituted under the NSW Heritage Act, 1977 and consists of 12 members, ten of whom are appointed by the Minister on the basis of their association with relevant organisations specified in the Act. Its functions under the Act are to make recommendations to the Minister for Heritage on matters affecting environmental heritage. The Heritage Council may recommend to the Minister the making of interim conservation orders (ICO'S) and permanent conservation orders (PCO's), control over development and demolition, and the provision of financial assistance under the Act.

Heritage see Environmental Heritage

Interim Conservation Orders (ICO's) are defined in the Heritage Act, Part III, Division 1, Sections 24-35. The Heritage Council may recommend an ICO to the Minister in respect to an item of environmental heritage or precinct, *the conservation of which it considers may be found, on further inquiry and investigation, to be so necessary as to warrant the making of ... a permanent conservation order or ... an environmental planning instrument.*

Mission Statement A definition of an organisation's permanent statement area or raison d'être which reflects its primary growth directions and philosophy.

National Estate is defined in Commonwealth legislation as those places, being components of the natural environment of Australia, that have aesthetic, historic or social significance or other special value for future generations, as well as for the present community. (Australian Heritage Commission, Annual Report 1985-86.)

National Estate Grants Program refers to the Commonwealth Government's financial assistance for items registered on the National Estate. In NSW the program is managed by the Department of Planning and the Heritage Council. Recommendations for funding are made by the Finance Committee of the Heritage Council to the Minister for Heritage who in turn makes recommendations to his Commonwealth counterpart.

Performance Renew refers to the measurement of performance in NSW public Sector organisations. Performance is concerned with the organisations:

- a) effectiveness in achieving objectives;
- b) efficiency and economy with which objectives are achieved. (PAC Report 15, 1985)

Permanent Conservation Orders (PCO's) are outlined in Part III, Division 2, Sections 36-55 of the Act. PCO's may be recommended by the Heritage Council in respect of an item or precinct *permanent conservation of which it considers necessary*. Alternatively, owners may apply directly to the Minister for an order.

## Public Accounts Committee

State Heritage Strategy is the name given to the document which encompasses the Heritage Council's Mission Statement, objectives, performance indicators and strategies for a five-year period. The document was completed by a consultant towards the end of this Inquiry, but has not yet been implemented.

State Heritage Inventory is a list of heritage items of State importance which would be more extensive than the statutory Heritage Register. The Heritage Council endorsed the concept in 1985, a completion date for the inventory of 1988 was set, but as yet, little progress has been made.

Strategic Plan An organisation's thinking about its immediate future, say the next five years, usually based on the overall Corporate or Master Plan. It covers the setting of specific targets, courses of action and application resources required to meet the organisation's objectives.



## **APPENDIX 19**

### **Transcripts of Evidence - Index to Volume 2**

#### **Witnesses**

(Transcripts of Evidence in Volume 2)

<u>Date of Hearing</u>	<u>Name of Witness</u>	<u>Page</u>
10th June, 1987	DEPARTMENT OF ENVIRONMENT AND PLANNING Mr Richard Smyth <i>Director</i>	2
	Mr Anthony O'Dey <i>Manager, Finance Branch</i>	2
	Mr Robert Power <i>Manager, Heritage Branch</i>	2
	HERITAGE COUNCIL OF NSW Mr Nigel Ashton <i>Acting Chairman</i>	19
	Mr Rodney Rimes <i>Solicitor and Member</i>	19
	Mr Christopher Pratten  <i>National Trust of Australia (NSW and Member)</i>	19
	7th October, 1987	CHURCH ADMINISTRATIVE OFFICERS Mr Neville Malone <i>Chief Executive Officer of the Anglican Church Dioscese of Sydney</i>
Archdeacon Victor Roberts <i>Anglican Archdeacon of Wollongong, Anglican Church Dioscese of Sydney</i>		65
Mr Neil Cameron <i>Solicitor</i>		65

Public Accounts Committee

Mr Kevin Stonham <i>Assistance Secretary, Anglican Church Property Trust Diocese of Sydney</i>	65
Reverend Monsignor Peter Ingham <i>Archdiocesan Secretary, Catholic Church Archdiocese of Sydney</i>	65
Mr Bruce MacDermott <i>Solicitor</i>	65
Mr Raymond Thorpe <i>General Secretary, Presbyterian church of Australia in the State of New South Wales</i>	65
<b>OFFICE OF THE OMBUDSMAN</b>	
Dr Brian Jinks <i>Deputy Ombudsman</i>	122