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FILE

HERITAGE COUNCIL

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Dear Sir/Madam

AUSTRALIA'S FUTURE TAX SYSTEM

The Heritage Council of Victoria is an independent statutory authority, and is the State's main decision-making body on cultural (non-Indigenous) heritage issues. Its role includes providing advice on heritage issues to the Victorian Minister for Planning and recommending the distribution of grants and loans, as well as the remission of land tax payable under the Victorian *Land Tax Act 2005* in accordance with the provisions of s.144 of the *Heritage Act 1995*.

The Heritage Council is interested in promoting any appropriate mechanism for supporting or incentivising heritage conservation, and wishes to see impediments to private and corporate philanthropy reduced. The Heritage Council contributed to the 2006 Productivity Commission Inquiry into the Conservation of the Australia's Historic Heritage Places, which considered, amongst other things, tax incentives for heritage conservation.

In 2005 the Heritage Council commissioned a report on the feasibility of the establishment of a Heritage Places Foundation and Heritage Places Fund. This report (copy enclosed) identified a number of impediments within Australia's existing tax system to capturing private philanthropy for the conservation of heritage places.

The Heritage Council requests that the review panel look at the use of tax rebates to incentivise private sector heritage conservation. This system is used extensively in the United States were private individuals and entities are able to claim tax deductions for conservation works to heritage places through the Inland Revenue Service's Rehabilitation Tax Credit. Although the similar Heritage Conservation Rebate was established in Australia under s. 159U of the *Income Tax Assessment Act 1936* this scheme was administratively more complex and was not backed up with the necessary level of support to those undertaking conservation work to enable this provision to achieve it objectives. The Heritage Council notes that there is no equivalent provision within the *Income Tax Assessment Act 1997*. The reintroduction of a heritage conservation rebate, in an appropriately modified form, would provide a significant incentive for private sector heritage conservation. This would also reduce the burden and expectation of grants for private individuals that is currently placed on the Heritage Council, and equivalent interstate organisations.

The 2005 report prepared on behalf of the Heritage Council identified the limited application of deductible gift recipient (DGR) status as a significant impediment to the establishment of foundations or funds with the purpose of supporting the conservation of built heritage. The Heritage Council contends that division 30 of the Income Tax Assessment Act should be amended to provide DGR status for not-for-profit organisations whose functions include, or are primarily, the protection and enhancement of cultural heritage. This would harmonise the treatment of cultural heritage with that already enjoyed by environmental organisations under

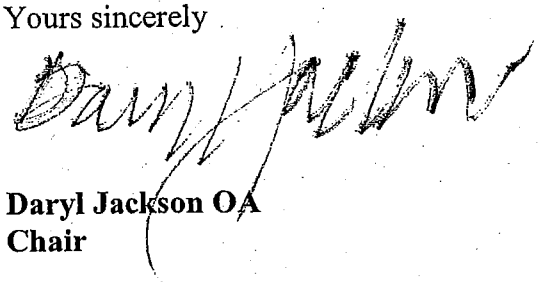
subdivision 30-E of the Income Tax Assessment Act. Section 30-300 (2) of that act, 'Meaning of cultural organisation', should be also broadened to include those organisations whose purpose is the promotion of fixed or built cultural heritage as well as moveable cultural heritage. These anomalies artificially constrain the ability of the not-for-profit sector engaged in the management or conservation of heritage places to successfully fundraise or accept gifts from the private and corporate sectors.

The comparatively simpler mechanisms for not-for-profit heritage organisations in the United Kingdom to gain charitable status has enabled imaginative third-sector responses to heritage conservation need. These include the many Building Preservation Trusts (BPTs) across the UK who have a long track record of attracting private gifts in both cash and real property to fund their activities in restoring, and then on-selling redundant or dilapidated properties. Further information on BPRs can be found on the Architectural Heritage Fund website www.ahfund.org.uk. The ability of not-for-profit organisations with the purpose of heritage conservation to enjoy charitable and deductible gift recipient status under tax legislation is critical to maximising private fundraising opportunities.

The Gift Aid provisions of the UK's tax regime provide for entry and membership fees to cultural and heritage attractions to be treated as charitable donations. Donors are commonly encouraged by cultural and heritage organisations, such as the National Trust, to forgo any personal tax deduction and pass on the tax paid on the donation to the charity itself. Gift Aid donations are treated as being paid to charity net of the basic rate of income tax, which equates to 28p being returned to the charity by HM Treasury for every pound donated or paid in entry fees. Gift Aid is a popular and well-used system with approximately one-third of people donating to charity in the UK using Gift Aid for one or more of their donations. In 2006-07 the amount of Gift Aid paid out to charities was £828 million, which otherwise would have been returned to tax payers as personal rebates. Such as scheme if developed in Australia would have the potential of greatly increasing the revenue of cultural heritage organisations without placing an additional burden on public funds.

I trust that this submission provides you with some potential tax incentives for heritage conservation in Australia. The Heritage Council may wish to provide a fuller response to the consultation paper or appear at one of the proposed hearings in due course.

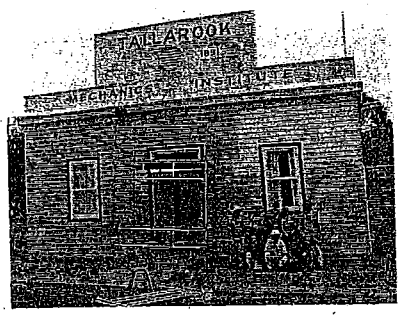
Yours sincerely

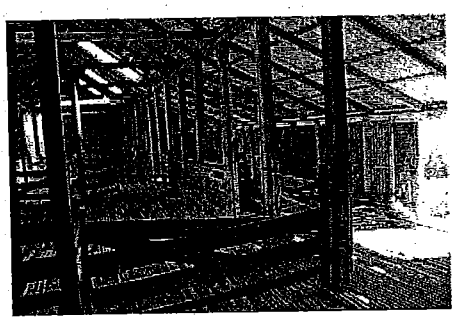


Daryl Jackson OA
Chair

HERITAGE PLACES FOUNDATION

Report on the feasibility of the establishment of a Heritage Places Foundation and Heritage Places Fund





JULY 2005

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I EXECUTIVE SUMMARY AND RECOMMENDATIONS

This project was initiated following the recommendation contained in the report *Managing Our Heritage* (2003), for 'the establishment of a community based Heritage Places Foundation to increase the level of private philanthropy for heritage places'. The consultants worked closely with a Steering Committee consisting of staff of Heritage Victoria and members of the Heritage Council, who were charged with oversight of the brief.

Tasks completed by the team throughout the project include desktop research of Australian and international material, interviews with a range of stakeholders and supporters, review of case studies of previously funded Heritage Council projects, and obtaining initial legal advice that will impact on the feasibility of the proposed Heritage Places Foundation and Heritage Places Fund. The consultants also brought their collective experience, spanning many years of working in the philanthropic and community sectors, to bear on the project.

Throughout the consultation, there was almost universal agreement that more funds should flow to the conservation and preservation of heritage places in Victoria. While there was general acceptance that the feasibility of establishing a Heritage Places Foundation should be pursued, there was little detail on how this might happen. There was also a general belief that the accumulation of a significant pool of funds for the conservation and preservation of heritage places would be difficult to achieve, as the establishment of a new foundation structure would inevitably result in competition for scarce funds in a market already crowded with competing fundraising demands. Such competition would not only be problematic because of the limited dollars available, but could also result in confusion and mixed perceptions by the public and potential supporters if the foundation was not clearly differentiated from others working in the heritage area.

Particularly, concern was expressed about how the proposed initiative of Heritage Victoria to establish a foundation would be differentiated from the National Trust, when there is already lack of clarity in the public domain about their respective roles.

There were a number of suggestions that the Heritage Council and the National Trust should work in collaboration, assuming confidence could be built and a suitable structure developed to meet the needs of both organisations. If this could happen, it would enable:

- clarification and less confusion about the roles of the two organisations;
- prevent duplication of fundraising effort and replication of structures; and
- provide the opportunity to develop the most appealing option for donors and potential supporters.

It was generally agreed that for the proposed foundation to be sustainable in the long term, it would need to receive a substantial commitment of unrestricted funds from government, either as a lump sum or on an annual, predictable basis. Questions were also raised about the ways in which the government would relate to a Heritage Places Foundation, either if the initiative was a collaborative partnership with the National Trust, or if it was a freestanding and independent foundation operating at arm's length from other organisations.

Following an initial exploration of the structural options available and the taxation issues surrounding the establishment of a Heritage Places Foundation, a Discussion and Options Paper was prepared by the consultants for the Steering Committee. Consideration of this Paper lead to identification of two preferred structural options:

1 The establishment of a stand alone public charitable foundation with a board of trustees made up of two different structures to receive contributions:
   - A tax-deductible option (to be called the Heritage Places Foundation), which would receive contributions from donors requiring a tax deduction.
   - A non tax deductible option for giving (to be called the Heritage Places Fund) which would receive funding attracted from government, as well as other monies that do not have tax implications, such as bequests and corporate funds received through marketing or sponsorship budgets.

2 An operating foundation that would attract both tax-deductible and non tax-deductible donations. An operating foundation would have the capacity to fund broadly with donations that had not received a tax deduction, but it would also have the capacity to carry out its own projects where issues of tax deductibility become a problem for recipient organisations that do not have tax-deductible status. The establishment of an operating foundation would require significant resources and skills at a governance and staffing level.

An exploration of the tax issues and the implications for establishment of a foundation structure has indicated that, as a matter of priority, the Heritage Council should seek expert legal and taxation advice before proceeding with implementation of any structure described in this report.

If a Heritage Places Foundation is to ultimately succeed, a capital base of $25- $50 million is required. A substantial amount of this must come from government by way of unrestricted funds, and while the new foundation structure should remain separate from government, there must be a clear perception that government is supportive.

RECOMMENDATIONS

1 That before the Heritage Council makes an in-principle commitment to the establishment of a Heritage Places Foundation, the following issues must be addressed and resolved. These are:

- resolution of the legal and tax issues raised in this report;
- further exploration of the possibility of collaboration and alignment with key organisations, particularly the National Trust; and
- ascertaining the possibility of securing support from the state government in the form of a substantial financial contribution either as an initial lump sum or on an annual predictable basis.

2 That the Heritage Council seeks expert legal advice on the tax implications and fiduciary responsibilities relating to establishment of a Heritage Places Foundation.

3 That the Heritage Council formally approaches the National Trust to discuss the potential for collaboration in the establishment of a Heritage Places Foundation, and to jointly determine the best structure and implementation strategy.

4 That the Heritage Council explores the potential for state government to make a substantial financial contribution to the corpus of a Heritage Places Foundation that does not jeopardise the current government funding stream.

II PROJECT BRIEF AND DESIRED OUTCOMES

The brief for the Feasibility of a Heritage Places Foundation and Heritage Places Fund for the Heritage Council of Victoria was to:

1. Undertake a feasibility study on the establishment of a Heritage Places Foundation and associated Heritage Places Fund, highlighting the complex realities in undertaking such an initiative.
2. Suggest viable options and models for the establishment of a Heritage Places Foundation and associated Heritage Places Fund to attract tax-deductible donations and distribute funds to heritage places in Victoria.
3. Assist the Heritage Council to build a case to Heritage Victoria and the Victoria Government as to why government should financially support such an initiative if it is determined to be feasible.
4. Flag some of the implementation issues to be anticipated.

As the project progressed, it was confirmed with the Steering Committee that the intentions of the new foundation structure are to:

- Raise funds for the conservation and restoration of places of cultural heritage significance in Victoria.
- Attract support for heritage activities, including funds and volunteers.
- Promote awareness of the diversity and value of Victoria's heritage places.
- Provide options about the most suitable tax-deductible structures through which to undertake this work.

This final report addresses the following:

- The environment for fundraising and establishment of foundations.
- The rationale and structures for a number of viable models for attracting funds.
- The relationship between the proposed model, the Heritage Council, Heritage Victoria and government generally, as well as the National Trust.
- Taxation issues that will impact on the feasibility of the Heritage Places Foundation.
- Issues of positioning and marketing the foundation in a competitive funding environment.

As this consultancy is a feasibility study, it is beyond the scope of this report to address questions of implementation in any detail. However, in anticipation of an implementation stage for establishment of a foundation, the following critical factors in implementation have been flagged:

- vision, values and objectives;
- management and governance;
- distribution policies and priorities for funding; and
- accountability and transparency of operations

III SETTING THE SCENE

THE PHILANTHROPIC ENVIRONMENT

In the last two decades there has been a rapid growth in establishment and operation of structures to promote giving in Australia, brought on by a range of influences. These include:

1. Shifts in the relationship between government and the voluntary sector, leading to stronger interest from government and the public in attracting philanthropic dollars.
2. An increase in the capacities of nonprofits to raise funds, combined with pressures on them to become more financially independent of government.
3. Increased collaboration and innovative partnerships between community, government and business interests.
4. Refined notions of civil society, social capital and the ways in which the philanthropic dollar can contribute to community strengthening.

Of the income options available, philanthropic dollars are a sometimes limited but strategic source of funding for community development and social enhancement. Income generation through commercial enterprise is a demanding and exact endeavour, often costing more than it returns to not for profit organisations. Funding from government is largely directed at service delivery, and inevitably linked to votes at the ballot box. Much of corporate giving is necessarily linked to profitability and returns to shareholders. While philanthropic funding is also defined by trust deeds, donor vision and, sometimes, statutory requirements, these constraints still allow for creativity and substantial social investment which might otherwise not be possible.

The philanthropic dollar may be only one in a hundred available to communities for their development, but this dollar is often the one that is available on terms that can facilitate new directions and allow creative growth in social fabric. On a civil society map, philanthropic trusts could be described as the social venture capitalists working in partnership with the managers of social development.

The traditional notions of philanthropy based on grace and favour, patronage and gratitude, have been steadily breaking down, and the growth of understanding of civil society has spurred this on in recent decades. As is the case in New Zealand, Britain, Canada and the USA, charity

and philanthropy is still ultimately defined in Australia by 15th century British statutes, which principally took the form of 'alms giving to the powerless poor'.

There were inspired examples of forward thinking, such as giving each boy over the age of six a bow and arrow to secure his future, and the service of arranging marriages for poor young maidens, but the basis for giving was patronage and gratitude, and the assumption that the poor would always be with us.

From this history, it is commonly recognised that along with a growing awareness of the notions of civil society, philanthropic giving is being identified and defined in new ways. This shift away from traditional charity is a reflection of the growing awareness in many countries that the philanthropic dollar can be the truly creative dollar in social spending, and need not be simply supplementing the budgets of government and business required to meet many of the recognised social needs of our time.

We now have a range of structures for giving which make up the philanthropic sector, including trustee companies, private and family foundations, statutory authorities, community foundations, and corporate funds which can be defined either as sponsorship or philanthropic. There are also operating foundations, programs run by individual donors and more.

With this growth we now have new philanthropic terminology, including progressive philanthropy, community based philanthropy, strategic philanthropy, social venture capital. Expressions from philanthropists such as 'pushing the envelope and testing the boundaries but not going over the line....' reflect a venture capitalist approach. There is an increasingly popular style of giving where contributions are made in the context of creating social value, based on partnerships where both the philanthropists and the recipients of the funds have a constructive voice in the planning and outcomes of the activity.

There are limited figures available about the current levels of giving in Australia. Currently the majority of private charitable trusts and foundations are under no legal obligation to undergo an external audit, nor to report on their level of distributions. Appendix 1 provides information from research undertaken in a study called *Giving Australia,* which is research being undertaken as an initiative of the Prime Minister's Community Business Partnership. The Summary of Key

Data appended provides a summary of findings to date and indicates that of total giving to non profit organisations across a range of fields, arts and culture represent about 2% of total giving.

Further results from the research that are yet to be released indicate that donors are increasingly wanting to link their giving to particular causes and organisations as opposed to supporting general fundraising initiatives. As, in other countries, Australian donors are seeking higher levels of accountability and control of the placement of their donations.

MODELS OF FUNDRAISING

During the research phase of this project, it was noted that a number of innovative structures have been established with similar fundraising purposes, both in Australia and internationally. These initiatives offer valuable experience and insights for the Heritage Council, which can be noted as it moves forward with this current endeavour.

National

A joint initiative between Perth City Council and the Western Australian National Trust was recently established in Western Australia, called the **City of Perth Heritage Appeal**. Donations to the Appeal attract a tax deduction as the venture is a joint initiative between the Perth City Council and the Western Australian National Trust that already has DGR status. The Appeal aims to conserve places of cultural heritage located within the City of Perth. To date the City of Perth has put in $300,000 to start off the Appeal. 'Ultimately monies raised will be allocated through a grants process to help fund heritage related conservation in the purchase, maintenance, restoration, interpretation, research and trail development of buildings and spaces.'

The Appeal is planning to launch a $5 million tax-deductible appeal over 5 years from private individuals, corporate partners and grantmaking bodies.

The fund has appointed an independent board of business, community and heritage experts to assist it raise funds.

The New South Wales Historic Houses Foundation is a foundation established under the auspice of the Historic Houses Trust. It has an unrestricted corpus of $1million, the income from which is distributed for preservation projects, and a further $1 million that has been

specifically raised and earmarked as an Endangered Housing Fund. This fund is a revolving fund that purchases endangered heritage houses, renovates them and then returns them to the market.

The Historic Houses Foundation has an independent board appointed by the trustees of the Historic Houses Trust. The board is comprised mainly of business people but has some members with conservation expertise. Interestingly it has quite deliberately positioned itself in the arts rather than conservation and heritage, as it has determined that this positioning will give it a greater chance of attracting public and corporate funding support. Even so, the foundation has found it extraordinarily difficult to attract funds, as it now sees much of the support for the arts going into contemporary art. In addition it has found it extremely difficult to attract unrestricted funds to build a corpus and to raise funds to support its own properties. It believes it will continue to be difficult and may become even more so as they see donors increasingly shifting their support to social welfare, international aid and other areas of disadvantage. It has had much greater success running functions and dinners to support particular purchases or projects, but acknowledges that the organisation of these events is extremely resource intensive. A 4-day-per-week General Manager, a half time administrator and a part time events organiser staff the Foundation. The Historic Houses Trust also provides administrative support.

In Queensland, the **Queensland Heritage Council** has developed a relationship with the Bendigo Bank. Under this arrangement private owners of heritage-listed properties can receive loans with interest 1% less than normal commercial rates. NSW is currently working to introduce a similar program.

An interesting development within Victoria of some relevance to this study is the work being undertaken around **revitalising Victoria's community museums**. There are around 500 community museums across the State, holding an estimated 1.5 million items of social and cultural heritage. Many of the museums are located in heritage listed or significant buildings. This work explores the connection between built heritage, moveable and intangible heritage.

A report on the future of community museums is currently being prepared for government. It investigates ways of increasing support for these organisations which have the capacity to play a vital role within their constituent communities, particularly through celebration of living memory and presentation of significant local stories.

Many of these museums could potentially attract considerable financial support from within their local communities. There could be a range of mutual benefits if specific sub funds were set up under a public foundation structure to attract funds which could be specifically directed to museums in particular areas. For the particular museums, the professional financial management and investment strategies provided by the broader foundation could be a real benefit, while the specific fundraising appeal of local museums would assist the foundation to build up its corpus through sub fund development.

These connections should be further explored once the report is publicly available, towards the end of this year.

Mint Inc is a Committee of Management of five people, reporting to the Minister for Conservation and Environment with responsibility for the management of eight significant heritage buildings in Victoria. The two major buildings are the Royal Mint Site in Williams Street and the Horticultural Hall in the CBD. The Royal Mint building currently returns approximately $1 million per annum through rental of the car park at the rear, the main building and the gatehouse, which is leased as a restaurant. The other six are smaller buildings, mainly courthouses and police stations located across rural and regional Victoria. These buildings are 'given' to Mint Inc to renovate and then manage commercially. Rents received are then used for the maintenance of existing buildings and surplus funds are used for the renovation of other buildings acquired by the organisation. Currently Mint Inc. has a significant surplus and is looking for other buildings to acquire, renovate and then manage.

International

Established over 50 years ago, **The National Trust for Historic Preservation (USA)** is a privately funded non-profit organisation that provides leadership, education, advocacy and resources to save America's diverse historic places and revitalise communities. It has a membership base of over 270,000 members and relies totally on private and corporate donations for its operations.

In 1995 the Trust decided to forgo its annual congressional appropriation in favour of this full reliance on private sector funding, and in line with this decision, in 2003, it launched the framework for a restructured, reinvigorated organisation called The New Trust which will focus on eight major strategic initiatives.

In 2003, the Trust had a permanent endowment of US$117.5 million. From this, 64% of income is directed to historic sites, 14% to programs and 22% is unrestricted. Donations to the Trust are tax deductible.

It also operates a number of commercial programs in partnership with local businesses, community foundations and philanthropic trusts and foundations. Its Community Revitalization department provides consulting, advocacy, and financial and informational resources to promote historic preservation as an economic development tool that builds vibrant communities while protecting their distinct sense of place. The department functions as a family of several interrelated programs.

In addition, their **National Trust Loan Fund** provides loans and lines of credit to non profit organisations, local governments and for-profit entities for the rehabilitation or stabilization of properties that are eligible for listing in a certified local, state or national register of historic places.

The National Trust Community Investment Fund manages the USA National Trust's historic real estate equity investments. It provides federal/state historic tax credit equity - and New Markets Tax Credit equity where possible - to qualifying historic rehabilitation projects. The Trust leads the preservation-based commercial district revitalisation movement. This comprehensive, volunteer-based methodology has a 25-year track record of restoring life and commerce back to traditional downtowns and urban neighbourhoods. The National Trust Main Street Centre, based in Washington, which provides consulting services, conferences/training, publications and an online peer network for information sharing, guides the approach.

The department is also closely involved in the National Trust's Housing Initiative, an effort to promote historic preservation as a means to address the nation's affordable housing shortage.

In Canada **The Heritage Community Foundation of Canada** was established in 1999 with a mission to bring heritage into the mainstream in the province of Alberta. The goal of the foundation is to ensure that the rich heritage is enjoyed and appreciated by all. As a result of partnerships with a wide variety of heritage, governmental and non-governmental institutions the foundation has been able to make Alberta's and Canada's heritage come alive through the web. In addition, the consultants canvassed a range of local public foundations to look at the issues that have surrounded their attempts to develop a sustainable foundation model.

The National Trust in the United Kingdom is a registered charity that operates independently of government. It was founded in 1895 to preserve places of historic interest or natural beauty. It now protects and opens to the public over 200 historic houses and gardens and 49 industrial monuments and mills and owns more than 248,000 hectares of land and 600 miles of coastline.

The Trust generates its income from the generosity of its supporters including the UK Lotteries Fund, through membership subscriptions, gifts, bequests and from the funds generated through National Trust Enterprises (£11.7 million in 2000). It spends all its income on the care and protection of the land and buildings in its protection, but indicates that it struggles to meet these commitments.

The United Kingdom Landmark Trust is a building preservation charity founded in 1965 by Sir John and Lady Smith. It was established to rescue historic and architecturally interesting buildings and their surroundings from neglect, and when restored, to give them new life by letting them for holidays.

The Trust is a registered charity and relies on donations from individuals, grant giving trusts and other bodies such as English Heritage and the Heritage Lottery Fund for funds to acquire, restore and furnish new landmark properties. Donations to the Landmark Trust are tax deductible. Income from holiday rentals is then used to maintain the properties.

Similar local fundraising models

In addition to exploring both overseas and local fundraising models for heritage conservation, the consultants researched several local fundraising models that are similar to the proposed fundraising model for the Heritage Council, but are not in the area of heritage conservation. These are the Australian Business Arts Foundation (ABAF) and the Victorian Women's Trust (VWT). Both these organisations have, as part of their operations, established public funds in an attempt to build a significant corpus to be held in perpetuity. Both organisations have tax deductibility, ABAF having achieved listing on the register of Arts and Cultural organisations after a long and difficult campaign to the federal government.

Several years ago, ABAF abandoned its attempts to build a corpus to support funding to arts organisations as they found donors increasingly wanted to make a direct link between what they gave and what they were giving to. In place of the former arrangement, ABAF now

matches and links potential recipient organisations with prospective donors and assists both parties ensure that they achieve mutually acceptable outcomes. ABAF acts as the conduit/broker for the funds and where necessary provides the necessary tax deductibility. Over the last two years, ABAF estimates that $750,000 has been directed to arts and cultural organisations through their fund.

The public fund held at the Victorian Women's Trust received an initial corpus of $1 million from the Victorian Government at the time of its establishment some 20 years ago. Since then it has raised a further $500,000 that is retained in its corpus. Like ABAF, the VWT now focuses its funding on matching donors with potential recipient organisations, thus using the Trust as a conduit or pass through fro tax deductible funds. VWT has indicated that it is about to launch a fundraising campaign to increase its corpus to $4.5 million over the next 3 years.

In addition to the above cases, there are other relevant Australian and international models of foundations established to support broad charitable purposes such as education, health, community services and medical research. While these are not specifically heritage related, all have encountered their own unique challenges and successes, and there is a range of common issues that they have all faced. These issues include competition for limited dollars, efforts to attract money that require extensive resources, unpredictability of public response to fundraising, huge responsibility on the shoulders of Board members, and pressure to collaborate and align with peers and partners to avoid confusion in public perception.

SECTION 1: STRUCTURAL OPTIONS AND IMPLICATIONS

1.1 POSSIBLE APPROCHES

There are two approaches open to the Heritage Council as it explores the feasibility of developing a model for increasing funds available for the conservation and preservation of heritage places. These are encouraging direct giving to one or more existing heritage place that have DGR status or giving through a formal structure or foundation that seeks to build a permanent endowment over time and distribute the income for heritage conservation and restoration purposes. In considering the structural alternatives available to the Heritage Council, it must be recognised that there will need to be resolution of the taxation issues as outlined in Section 1.2.

1.1.1 Direct giving

The Heritage Council could establish specific appeals or promote existing ones as a means of increasing private philanthropic dollars to heritage places. This would enable individuals, corporations and philanthropic foundations to donate to heritage places directly or to use the Heritage Places Foundation merely as a conduit for funds to attract a tax deduction. However, attracting giving in this manner tends to be less strategic because it does not allow for development of long-term strategic and collaborative partnerships between donor, recipient and other possible funders. It is also resource intensive, short term and unpredictable.

It is understood that the Heritage Council is not generally seeking to encourage direct giving as its primary source of funding for conservation and preservation of heritage places. Rather it is seeking to establish a pool of funds from a variety of funding sources so that it can set priorities and develop strategic funding policies and practices. This will enable it to support general conservation and preservation activities as well as specific heritage conservation appeals.

1.1.2 Giving through a charitable foundation

A charitable foundation is a vehicle established, usually in perpetuity, to enable individuals, families, corporations and the public to carry out their philanthropic intent. Charitable

foundations are generally structured in a tax effective manner for those making contributions to it, as well as for income earned through funds investment. The receipt of an initial amount of money gifted to the foundation by an individual, government or corporation traditionally establishes a foundation. The initial contributor is known as the Founder, who may undertake governance as a sole trustee or appoint a board of trustees. The initial gift becomes the Corpus (capital) of the foundation.

Foundations can be established in **perpetuity or for a finite period of time.** The majority of foundations are established in perpetuity, with the aim of assisting the purposes for which the foundation was established, both now and over future generations.

Foundations can be established to accumulate capital (ie build an endowment) and keep the capital base intact, distributing only income, or it can be structured to enable both the distribution of income and capital. While aiming to build funds in perpetuity, most community foundations enable both the distribution of capital an income. It is recognized that in the early stages of development, while the corpus grows, income generated may not be sufficient to make a real impact on the issues the foundation seeks to support, so the foundation directors may choose to use some capital as well as income to ensure a positive impact on funded projects.

Likewise, foundations can be established as **a conduit or 'pass-through' fund.** A conduit foundation is a non-operating foundation that receives contributions that are passed through it in a relatively short period of time, and has the following characteristics:

- Either the foundation is not interested in building a large endowment, or can wait until a later date when the capital will be augmented through a planned donation.
- Gifts made to the foundation can be used within limits to pay foundation staff.
- Donors have flexibility as to whether or not all funds pass through the foundation or some are retained to add to a corpus.

The three financial advantages of 'pass through' foundations that aren't dependent on building a corpus, can be that they may offer an income tax deduction to donors; they may be exempt from tax on earned income; and they can pay for administrative costs out of trust funds.

There are a number of private family foundations that have made their wealth through family businesses and choose to allocate a certain percentage of their pre tax from that business to a foundation on an annual basis. They spend the bulk of the allocated funds each year. Similarly a number of corporate foundations operate in this way.

Foundations can also be established as **operating foundations**, a foundation that carries out its own charitable service or activity. Most often operating foundations receive their operating funds from an endowment created by an individual/corporate donor and/or government. Some operate through additional annual contributions from one donor or a number of donors as well as possibly from contributions from government. Substantial assets are often available to form an endowment, and monies received into the public fund must be accounted for separately to the operating costs. Some operating foundations make a limited number of grants in the chosen area of interest, although this is not common. It is a requirement that substantially all its income must be used for the active conduct of its charitable activities, not for grants to other organisations.

Commonly an operating foundation operates museums, libraries, nursing homes, health education, research institutes or historic preservation parks. They are normally established as companies limited by guarantee and are established purely to carry out the objects of the company. The National Gallery of Victoria, Opera Australia, the Abbotsford Convent and the Mental Health Research Foundation are all examples of operating foundations that raise money to support their own activities.

1.1.3 Advantages of the foundation model

In light of the recommendations contained in the *Managing Our Heritage* report, the consultants understand that the Heritage Council is not interested in developing the notion of direct giving, other than in the case of specific fundraising campaigns that may be initiated at a local level for particular conservation and preservation initiatives. Rather the interest lies in exploring the feasibility of establishing a foundation that will over time build a substantial capital base to support the preservation and conservation of heritage places both now and into the future.

What follows is a focus on the possible structural options for the establishment of the Heritage Places Foundation, as opposed to the more straightforward government funded Heritage Places Fund.

Such a vehicle would ensure that:

- The money is protected in a legal structure (the terms of which will need to be determined) that ensures funds are secure and not exposed to risk as a result of management or political change.
- The founder, the Heritage Council, has the opportunity to determine the broad terms and conditions of the structure when developing the trust deed.
- There is transparency (ie that purposes, activity, management, expenditures, procedures, beneficiaries etc are clear, accountable, and able to be scrutinised by interested parties).
- There is commitment (ie that activities will proceed with the confidence that support will continue, and would do so on a reasonably predictable basis).
- Appropriate credit, and due acknowledgment, would flow to the founders, donors and supporters of the structure who could be clearly identifiable as appropriate.
- Growth and participation would be encouraged through an accessible structure whose values, objectives, participatory mechanisms and evaluation criteria are clearly in place.
- Taxation and fiscal advantages would be optimised for donors and potential donors.
- A model, of relevance to Victoria's overall heritage conservation and preservation needs, would be demonstrated and could be replicated by others.

If the Heritage Council decides to pursue the option of establishing a charitable foundation there are two alternative foundation structures that it could adopt. These are giving through a public foundation or giving through an operating foundation. Each of these structures is explored in detail in this paper.

1.2 TAXATION ISSUES

Prior to any examination of the structural options available for the establishment of a foundation there are a number of tax issues that must be addressed as these will significantly impact on the feasibility of the foundation's establishment.

One of the key recommendations in *Managing Our Heritage* report is the establishment of a publicly supported Heritage Places Foundation 'that should receive tax deductible donations and distribute funds for the conservation and preservation of heritage places' and a government funded Heritage Places Fund that might sit alongside the Foundation.

Based on our own research and a preliminary discussion with John Emerson, a partner and charitable trust expert with Freehills, the following issues have been identified. Because of the nature of funding from government, (there are no tax implications) the Heritage Places Fund can have broad powers of distribution. Monies within that Fund would be able to be directed to the preservation and conservation of a broad range of community projects and organisations that do not necessarily have Deductible Gift Recipient Status (DGR).

In relation to the establishment of the Heritage Places Foundation, it is believed that the most obvious structure would be to establish a public charitable foundation with an independent board of trustees. This public foundation would have two funds, one a tax deductible fund, ie one that attracts tax deductibility for funds donated to it and the other, a non tax deductible fund, which could receive monies that do not attract a tax deduction, such as bequests and monies donated by corporations or business by way of sponsorship or marketing. The foundation would seek over time to build a corpus, the income from which would then be distributed to support a broad range of preservation and conservation projects

There are however, two problems that immediately arise with the proposed establishment of the Heritage Places Foundation. The first is that the Heritage Places Foundation would need to gain its own DGR status in order to be established and to set up a public fund.

There are two categories of DGR organisations, those that fit within a general category, and include health, education, research, welfare and rights, defence, environment, the family, international affairs, sports and recreation, cultural organisations, and ancillary funds, and

those that are named in tax law. It is believed that the establishment of a tax deductible Heritage Places Foundation would require that the foundation be named in tax law, as it does not neatly fit into the general category of DGR organisations. This requires parliament to amend the Income tax Assessment Act 1997. Currently there are fewer than 300 named organisations, and in the arena of arts and cultural organisations the only two named listed DGR organisations are the Australian Fund and the state and territory National Trusts, and the Australian Council of National Trusts. Appendix 2 sets out the general categories of organisations on the Register of Cultural Organisations and Environmental Organisations.

In order to achieve this status the Heritage Council would need to persuade the federal government that the proposed foundation should be specifically named in the Taxation Act as a DGR organisation. To achieve this would require significant political support. There are a number of difficulties associated with this:

- With the exception of the state and territory National Trusts, and the Australian Council of National Trusts, the Register of Environmental Organisations is comprised of only environmental organisations whose 'principal purpose must relate to the natural environment as distinct from other types of environment such as built, cultural and historic environments'. It is believed it would be extremely difficult to be named on this list.
- Those organisations not on either the Register of Arts and Cultural Organisations or the Register of Environmental Organisations, such as the Foundation for Rural and Regional Renewal and the Australian Sports Foundation, that are specifically named in the Act as DGR organisations all have a national focus. It is believed it would be highly unlikely that the Australian Tax Office (ATO) would include a state based organisation.
- It is believed that the ATO would be very unlikely approve the listing of an organisation that is raising tax deductible donations and wishing to use those funds to make distributions for the conservation and preservation of private properties.
- The few heritage buildings such as St Paul's Cathedral and the Shrine of Remembrance that do have DGR status, have achieved this because they are deemed to be significant 'landmark' properties. The majority of other fundraising appeals for the preservation and conservation of heritage buildings and places have carried out their fundraising appeals under the banner of the National Trust, as they do not have DGR status in their own right.

- The second issue is that, generally, monies in a public foundation that have attracted tax deductibility can, by law, only be distributed to organisations that themselves have DGR status.
- While the National Trust does work with, and can fund, non National Trust properties/places, these must have DGR status. If not, the Trust must take on the management of the project itself, so that it becomes a project of the National Trust rather than a distribution of funds or a grant. It is believed this would apply to the proposed Heritage Places Foundation.
- If the Heritage Places Foundation were to be established and gain DGR status, its powers of distribution for monies received through a tax deductible fund would be restricted as the number of organisations eligible to receive funding from the Heritage Places Foundation would be limited to those heritage places that had both DGR and ITEC status in their own right. An initial look at approximately 15 case examples of projects that have recently received Heritage Victoria funding, indicates that the vast majority of these do not have DGR status. While it could be argued that these projects could receive funding from the government funded Heritage Places Fund or from a non tax deductible fund established under the Heritage Places Foundation, the opportunity to support these projects will be severely limited unless the foundation would be prepared to take them on as foundation projects and manage them directly, as the National Trust does in these situations.

The resolution of these issues is a critical first step in examining the feasibility of the establishment of the Heritage Places Foundation and must be taken account of when examining the structural options.

1.3 WORKING IN COLLABORATION

The viability of any new structure for fundraising will depend not only on appropriate tax structures, but will also inevitably have to address issues of collaboration and alignment in Victoria. The strength of fundraising will be affected by:

- the amount of public and philanthropic funding available, which is known to limited and subject to competition from other similar interests;
- the fact that public perception and public support must be clear and confident; and

- the knowledge that the success of other fundraising initiatives has demonstrated the importance of relationships and collaborations.

Given the complex legal and tax issues that impact on the feasibility of establishing a Heritage Places Foundation, the consultants are of the view that the Heritage Council should consider working in collaboration with the National Trust which has DGR status, an established track record in the field of conservation and preservation, and established public awareness of its fundraising role. The advantages to the National Trust of such collaboration would be the increased access the Foundation would have to government funds.

The nature of this collaboration would need extensive investigation and may not be something that happens immediately but becomes part of a staged plan over time.

If such an arrangement could be made to work in the long term it could alleviate duplication both in the public's perception and in reality. It could assist with fundraising and a more strategic and considered approach being taken to funds distribution for preservation and conservation of heritage projects and the management of heritage sites generally. Duplication and competition between fundraising campaigns in similar areas of endeavour will inevitably weaken all efforts and ultimately confuse potential donors and the broader public.

The National Trust is currently in the process of establishing its own foundation that will be launched within the next six months. The Trust is planning, through fundraising, to build a substantial corpus over time. Early fundraising has resulted in 18 known bequests with a target of 30 in the next two years, which they believe will be easily achieved. The Trust is planning to employ a Trust Manager who will undertake fundraising and trust administration for this, and a number of other trusts currently under the National Trust umbrella.

The majority of people, representing a broad range of organisations, interviewed during the course of the project in fact suggested that the Heritage Council should work with the National Trust to strengthen their joint fundraising role rather than duplicating efforts. In New South Wales the Heritage Office has just introduced a new funding program to support National Trust projects. It has undertaken to contribute $10,000 per approved National Trust fundraising project, and has made the first of these commitments, for the restoration of a church in Orange,

in the central west of the State. While not contributing to the building of a corpus, it is seen as a meaningful way of encouraging and tangibly supporting collaboration between the two bodies.

The National Trust has indicated that it is supportive of the establishment of a Heritage Places Foundation, provided it is properly resourced and has available a substantial pool of funds that is free of any tax restrictions and that can be used to fund broad preservation and conservation initiatives. In summary, the Trust stated that it would be willing to work collaboratively on the establishment of a Heritage Places Foundation and believes that if the initiative is to work in the long term a collaborative approach will be required.

Changes at a government level would be required to ensure a sufficient flow of funds to create such a corpus. This would need to be along the lines of the Lotteries funded Heritage Fund in the United Kingdom, to ensure long-term viability. Relying solely on public, corporate and philanthropic donations is unlikely to achieve the size of corpus necessary to make a Heritage Places Foundation viable in the long term. In developing a strategy and enlisting political support to attract a flow of government funds, the Heritage Council would need to ensure that the Government's current funding commitment remains.

Individual fundraising efforts in the past for other areas including the arts, social welfare, women, indigenous issues and education have proved extremely difficult without collaboration and co-operation between common interests. This is particularly so where organisations are working to build a corpus. It must also be noted that at this stage it is unclear to what extent donors will be attracted to supporting heritage issues at a time when there is competition in the market.

1.4 PUBLIC FOUNDATION GIVING

A public foundation is a foundation that can be established by an individual, family, organisation or group. It enables and encourages not only the founders but also the general public to contribute financially to the foundation and become involved in its operations. Public foundations are generally set up in perpetuity.

Public foundations generally have a high public profile as they generally actively seek public and/or corporate financial contributions. They are, by nature of their public status, accountable to the community for their operations. Public foundations are most commonly recognised worldwide as community foundations. The community foundation movement, while well established in the USA and the United Kingdom, is a relatively new concept in Australia.

The first independent community foundation in Australia, the Melbourne Community Foundation (MCF) was established in 1997 and currently has approximately $16 million under management. MCF and the MCF Extension Fund (a non tax-deductible fund) are both funds of the not-for-profit company limited by guarantee, Community Foundations Network Pty Ltd (CFN).

Public foundations are simple, flexible and cost effective mechanisms for corporations, individuals, organisations and families to establish a sub fund under a tax deductible, income tax exempt trust umbrella. Most modern public foundations are established as not-for-profit companies, limited by guarantee, with individually identified charitable sub funds established under the company structure to enable donors to raise funds with the aim of supporting particular charitable initiatives.

Trustees of public foundations are generally a group of community leaders selected for their commitment to the purposes of the foundation, and their expertise in various aspects of charitable trust administration, charitable funds investment, knowledge of the foundation's areas of funding activity, fund raising capabilities and experience in effective funds distribution.

In addition, sub funds established under public foundations can appoint their own advisory board of experts to make recommendations to the trustees regarding the distribution of funds. While the trustee cannot fetter his discretion, trustees will normally work with advisory boards to ensure a satisfactory funding outcome.

If the Heritage Council decides to utilise the public foundation model, there are five possible options:

1 The Heritage Council could establish its own independent public foundation as a not-for-profit company limited by guarantee with one or a number of sub funds sitting under it. These sub funds could be set up as required to support specific fundraising

initiatives for identified preservation and conservation projects. Under this structure, the Heritage Council could establish both a tax deductible and a non tax deductible funds, assuming it can gain DGR status. If it chooses to, the foundation established could purchase threatened heritage properties, restore them and then return them to the market for sale as the Historic Houses Trust does with a percentage of its funds in New South Wales.

2 The Heritage Council could become a sub-fund of a community foundation such as MCF (tax deductible) and the MCF Extension Fund (non tax deductible). In this scenario, the Heritage Places Foundation would not need to attract DGR status in its own right but would automatically gain that status through becoming a sub fund of MCF. It would still, however, still be restricted to supporting only DGR organisations if monies received into the fund had attracted a tax deduction.

3 The Heritage Council could replicate a foundation similar to MCF and MCF Extension Fund under CFN acting as a not for profit trustee company. In this case, new trust deeds would have to be developed for the Heritage Places Foundation. The tax-deductible fund would require approval from the ATO in order to attract DGR status, as it is MCF, not CFN (the company limited by guarantee) that has DGR status. Again, the same issues would relate to both the raising of tax-deductible donations and the distribution of funds from the tax deductible funds to DGR organisations.

4 The Heritage Council could establish a public foundation within a commercial trustee company, with that company acting as one of the trustees or the sole trustee of the foundation. Again, the same issues would arise in relation to both the receipt of tax-deductible donations and to the limitations placed on the distribution of funds as would be the case in a stand-alone public foundation model or in becoming a sub fund of an existing public foundation.

5 The Heritage Council could establish an operating foundation to conduct its own charitable service or activity in support of heritage places. A limited number of grants could be made to its chosen area of interest, however most of its income must be used for the active conduct of its charitable activities, not for grants to other organisations.

Of these five options, the Heritage Places Steering Committee has agreed to investigate two of these options more fully, the independent public foundation model above (1), and the independent operating foundation (5).

1.4.1 Public Foundation: Trustee option

The Heritage Council could create a new community based public foundation, through establishing an independent not for profit company limited by guarantee with the capacity for the foundation to become the trustee of a range of sub funds established to raise funds for particular conservation and/or preservation projects.

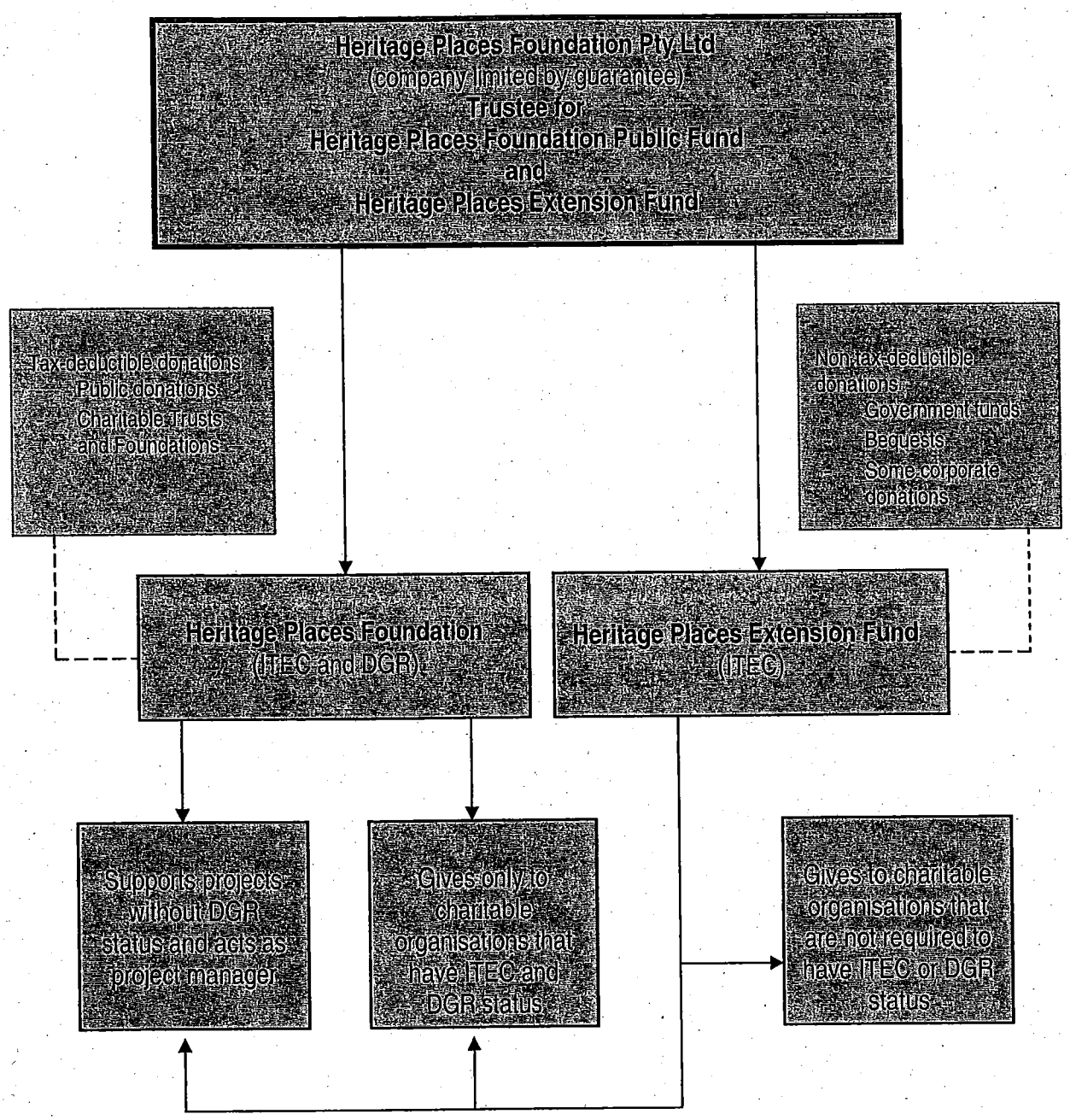
This option would require a new structure to start from scratch, would require the development of a tailor made trust deed and would involve an application to the Australian Taxation Office for Deductible Gift Recipient Status (DGR) and Income Tax Exempt Status (ITEC) (see above for discussion of these issues). As well as a tax-deductible fund, the foundation could establish a fund to receive non tax-deductible gifts, normally referred to as an extension fund.

To put it at arms length from government and to ensure the perception and reality of independence and a community base, as recommended in the *Managing Our Heritage* report, the foundation could be 'under the auspices of a non- government body' (the National Trust may be a suitable organisation). The foundation should have the capacity to receive tax-deductible donations and to distribute funds for the conservation and preservation of heritage places.

Trustees of the foundation could be made up of representatives of the Heritage Council, Heritage Victoria, the National Trust, Parks Victoria, trustees of the foundation, other individuals with conservation and preservation expertise, as well as community representatives.

Public Foundation: Trustee option

DGR – Deductible Gift Recipient status
ITEC – Income Tax Exempt status



The advantage of this model is that the foundation could be structured, governed and operated independently of any factional interests. It could be positioned and marketed to ensure that both in perception and reality it is truly community based, thus maximising opportunities for attracting funds from corporate, philanthropic and community sources as well as garnering volunteer community support and good will.

Under such an arrangement, the foundation could choose to undertake the trust administration, funds management and distribution itself or it could contract some or all of these activities to an external body with charitable trust expertise.

1.4.2 Public Foundation: Operating Foundation option

The Heritage Council could consider setting up an operating foundation but would, as with the other options, still face the problem of gaining DGR status for the foundation. However in this case, if the Heritage Places Foundation were to undertake the preservation and conservation projects themselves, they would not have the problem of only being able to make distributions to DGR organisations from the tax-deductible fund.

This option would however take the Heritage Council and Heritage Victoria into new territory as project managers, the implications of which would need to be carefully considered.

1.5 BUILDING A CORPUS OR CREATING A 'FLOW THROUGH' FOUNDATION

If the Heritage Places Foundation is established under a trust deed, it will need to determine whether or not it wishes the foundation to have the power to distribute both income and capital.

In establishing a fundraising foundation, there is a recognised tension between the longer-term need for capital growth and the desire to meet the immediate needs identified by the foundation. This is further complicated by the wishes of donors and potential donors who may wish to see their contributions to the foundation be used support heritage projects that are immediately identifiable.

If the deed is written in such a way to enable the distribution of both income and capital, the onus is on the foundation board to develop policies that will satisfactorily balance both the desired short and long-term foundation fundraising outcomes

While the consultants understand that over time the Heritage Places Foundation wishes to establish a significant endowment, the board will need to determine whether it wishes to exclusively focus on building that endowment or whether it is willing to have some funds pass through the foundation in relative short periods of time.

A foundation can be established as a permanent endowment, a conduit or pass-through fund, or a combination of both. A conduit foundation receives contributions that are generally passed through it in a relatively short period of time. A foundation that operates as both a permanent endowment and a pass-through fund gives its board the flexibility to determine how foundation income and capital will be distributed.

The pass-through function of a fundraising foundation is generally used at an early stage of development, or if the foundation is not interested in developing a large corpus. Using this function enables the foundation to immediately commence making distributions to identified projects, thus demonstrating the foundation's potential and credibility to external stakeholders, as well as existing and potential donors. This option may prove attractive to the Heritage Places Foundation.

In addition as one of the foundation's fundraising aims will be to attract unrestricted bequests as well as other unrestricted donations, it may choose to treat these bequests as capital in order to gradually build up the capital base.

SECTION 2: IMPLEMENTATION AND MANAGEMENT ISSUES

As stated earlier in this report, any proposed foundation will be operating in an increasingly competitive and crowded fundraising environment. A businesslike, sophisticated, open and transparent approach that is appropriately governed and resourced will be required to give the confidence donors will seek when deciding whether or not to invest in the foundation's activities. An implementation strategy will be required to address these issues in detail.

While it is beyond the scope of this project to address questions of implementation in any detail, critical factors are flagged, in anticipation of an implementation stage for establishment of a foundation. While the consultants are of the view that the Heritage Council should pursue the option of working in collaboration with the National Trust to raise funds for the conservation and preservation of heritage places, the management of any structure will require the following issues to be considered and determined.

2.1 VISION, VALUES AND OBJECTIVES

The **vision** for the Heritage Places Foundation will capture how it sees itself into the future and what it would like to achieve as a result of its endeavours to raise funds to support the conservation and restoration of places of cultural heritage significance in Victoria. The vision should also be an opportunity to further enhance and promote the objectives of the Heritage Council and distinguish it from its competitors as well as from government.

The foundation's vision will demonstrate that it is seeking to play a significant role in the conservation and preservation of heritage places in Victoria. It will also help establish the foundation's image as a professionally run, transparent and modern vehicle for giving which will promote awareness of the diversity and value of Victoria's heritage places. In crafting the vision for the foundation, it is important to recognise the foundation as an enabling mechanism, working effectively over the long term. The vision should not focus on particular projects but rather on the role of the foundation as a fundraising and granting body for the Heritage Council.

Further discussions with the foundation's stakeholders and the Heritage Council will be a means of establishing **values** that will underpin the foundation's operations and complement the values of the Heritage Council. Typically, progressive foundations espouse values that relate to inclusion, diversity, equity, transparency and access.

Talking through a range of values is important because one of the great strengths of a foundation is the way it reflects its community, in this case the Heritage Council, the foundation, its volunteers and those seeking to conserve and preserve existing heritage places.

In development of its **objectives**, it is suggested that the foundation focus on supporting the conservation and preservation of heritage places that:

- Meets agreed identified priorities within the Heritage Council that have been determined and ratified by its Board. The Heritage Council already has considerable experience in the distribution of funds to support particular priority areas of funding, so if it chooses, it should not be difficult to align these with the foundation priorities, or to determine that the foundation will pick up different priority areas for funding that complement or extend existing Heritage Council funding.
- Aims to bring together sectors of the Heritage Council's extended community, including volunteers, to help support projects in a variety of ways; and
- Identifies new sources of funding from individuals, corporations and philanthropic trusts and foundations.

It is suggested that the following objectives underpin the foundation's operations:

- Develop an operational model for the foundation that provides maximum opportunities for public as well as corporate involvement in its operations, in this, as well as in future generations.
- Encourage a culture of philanthropy across generations of potential foundation donors.
- Ensure supporters of the foundation are kept informed of new and emerging issues that may impact on heritage issues.
- Regularly identify/review areas of funding interest that are consistent with the Heritage Council's Board and planning.

- Enlist the support of expertise as appropriate to assist the foundation in all aspects of its operations.
- Actively seek out heritage projects for funding that fit within the foundation's areas of identified interest.
- Ensure that funds allocated by the foundation achieve value for money, by establishing that appropriate research, evaluation and accountability procedures are in place.
- Develop a collaborative approach to funding, by encouraging others to contribute to the projects and initiatives developed by the foundation.
- Assist, where possible, foundation funded projects to become self-sustainable.
- Be publicly open and accountable for all aspects of its operations.

In addition, it is important that the values of the foundation reflect and support those of the Heritage Council's Board as well as those of Heritage Victoria. Equally, funding priorities should reflect those of the Heritage Council Board and should be reviewed annually.

2.2 FUND VIABILITY

Three important factors must be taken into consideration in determining the feasibility of a start up size for the foundation:

- The breadth of the foundation's purposes. A narrow single-purpose foundation, for example one that supports a single purpose such as the Australian Ballet, can be successful with fewer resources. A broad multi-purpose foundation, such as the Victorian Women's Trust, the Australian Cultural Fund and the proposed Heritage Places Fund will require more administrative support.
- The level of distributions that will be required to enable the foundation to make a difference. In the case of the proposed Heritage Places Foundation most of the distributions will be directed to conservation and preservation costs such as renovations, repairs and construction, all of which are generally very costly.
- The level to which the foundation can accomplish its purpose both effectively and efficiently while employing good standards of operation.

As discussed earlier, the minimum sustainable size for a stand alone public charitable foundation with a tax deductible fund, a non tax deductible fund and a number of sub funds for

specific fundraising purposes is generally accepted worldwide to be $25 - $50 million. With a capital base of this size, the foundation can:

- earn a return on investments, sufficient to distribute acceptable levels of funding that will enable it to make a difference;
- have a critical mass of funds which give it a perception and reality of permanence;
- have a level of sophistication and reporting of its operations that give donors and the broader community confidence in it; and
- support the level of staffing and resourcing necessary to carry out its functions adequately.

It was also suggested that an ideal size would be $50 million, on the basis that this could generate up to $5 million per annum for distribution. Given the cost of most conservation and preservation projects, generation of this level of funding for distribution was seen as necessary if the foundation was serious and 'did not just want to fiddle around the edges'.

2.3 GOVERNANCE AND STAFFING

2.3.1 Appointment of a Patron

In order to give greater credibility to the work of the foundation, the Heritage Council may decide to appoint a Patron who might be either a person who has made a significant contribution to heritage issues in the past or who is prepared to make a significant financial contribution to the foundation.

The Heritage Places Foundation, if it is to be ultimately successful, should aim for a high professional standard both at board and staff level, adopting best practice standards for foundations in 2005.

2.3.2 Setting up the Foundation Board

In developing the Board for the foundation, decisions will need to be made in relation to:

- Board composition.
- Size of the Board.
- Appointment of a Foundation Chair.

- Appointment of a Patron.
- Responsibilities of foundation board members.
- Board decision making.
- Board succession planning.
- Board composition.

Prior to determining the make up of the Board of the proposed Heritage Places Foundation, the Heritage Council will need to have determined a number of critical issues which will have a significant impact on how the Foundation will position itself in the current complex fundraising and community sector environment and the sorts of skills it will need to make up an effective board. These include:

- The extent to which the foundation chooses to work in collaboration with the National Trust. Whether or not the Heritage Council and the National Trust ultimately work through a single and/or complementary foundation structure, the Heritage Council will need to determine the relationship it seeks to establish between the Heritage Places Foundation and the soon to be established National Trust Foundation.
- The degree to which the foundation seeks be identified closely with government or to be seen and to behave at arms length from it. The consultants are of the view that the foundation will have much greater appeal to potential supporters from all target markets, the public, philanthropic trusts and foundations and corporations, if it is positioned at arms length from government and is seen to be independent of any factional interests. However, it is also believed to be important the government is perceived to be supportive of the foundation.
- The balance it seeks to have on the board between business and entrepreneurial people and people with heritage and conservation expertise. One organisation interviewed, while acknowledging the absolute necessity of having 'big end of town' people on the board, also talked of the risks of those without heritage expertise driving the agenda in opportunistic rather than considered ways. They stressed the importance of ensuring that the board of the foundation and the parent body, in this case the Heritage Council have clear policy and funding alignment.
- The level of staffing the foundation is prepared to commit to fundraising. This will have some impact on the type of board the foundation might appoint. While the

board of the foundation will always need to play a significant role in raising funds for the foundation, if professional staff with fundraising experience are employed this does take some pressure off the board on a day to day basis.

Having decided on the above, the following are all issues that must be addressed in determining governance arrangements for the Heritage Places Foundation Foundation. These include:

- Size of the foundation board (a minimum of eight and a maximum of twelve is considered an optimal number for a fundraising foundation, depending if there exists the ability to co-opt others for special projects as required).
- Balance of membership. This will be critical for the Heritage Places Foundation as it will need to have a mix of people with heritage knowledge and experience but will also need to balance this with people of influence who will be able to assist the foundation access funds. The Heritage Council may also decide that it would like to have a number of board positions allocated to specific organisations such as government and the National Trust. Given that many of the heritage places are located in regional and rural Victoria it would seem important that there is representation form this sector on the board. Again, it should be stated that the importance of achieving the right balance is critical.
- The criteria for choice of the chair of the foundation will include a person who is best placed to reach and inspire other foundation board members and a broad range of corporate and private stakeholders, can identify new and potential donors, and escalate the donations of existing donors and who will understand the importance of developing policies and managing practice to ensure an alignment between the foundation and the Heritage Council.
- The professional and community interests of the foundation's board's membership. The Heritage Places Foundation will need to ensure it has a mix of board members that reflect the foundation's stakeholders as well as potential target markets.
- Corporate representation that will be prepared not only to contribute to the operations of the Foundation, but also be willing to contribute financially and to actively fundraise on behalf of the Foundation.
- A clear set of expectations of the foundation board and its members.
- A spread of ages and ethnic/religious diversity.

- Gender balance.
- The terms of appointment in relation to both length of appointment and performance expectation of the foundation's chair and board members.

Again it needs to be stated that a critical issue for the Heritage Places Foundation will be the relationship between the various Victorian organisations involved in the conservation and preservation of heritage places as well as with government who will hopefully be a major financial supporter. It will need to be determined whether the foundation board should reflect the community broadly, or only those involved in heritage issues. Issues of community dynamics, generational differences, gender, age, professional interests, community knowledge, values and beliefs will all need to be taken into consideration.

Four steps will help in resolving the foundation board membership issue. These include:

- Reaching agreement on the vision and objectives of the Foundation.
- Preparing position descriptions for the foundation chair and foundation board members.
- Establishing some broad categories from which nominations might be sought for foundation board membership.
- Establishing a sub committee of the Heritage Council that can look at the overall balance and make appointments to the foundation board.

Size of the Board

If a board is large, say, more than twelve members, it can become unwieldy and costly to administer. On the other hand if the board is too small it may lack the range of skills necessary to operate the foundation effectively and may not be seen to be representative of the community of interests it seeks to reflect. Some foundations choose to have small boards of 4-6 people, but involve other external expertise through the establishment of advisory/sub-committees to assist with the work of their foundation. This can be also a useful mechanism for educating and apprenticing future advisory board members.

Ideally a foundation board should have the following skills represented on it:

- a strong commitment to the vision and values of the foundation;
- a strong commitment to, and understanding of, heritage issues;

- an understanding of charitable funds investment and financial management;
- a preparedness to assist raise funds for the foundation and champion its philosophies, policies and funding practice;
- extensive networks;
- grant making skills; and
- strong administrative skills.

Appointment of a Foundation Chair

The appointment of a Chair for the board of the Heritage Places Foundation will be critical for the future success of the Foundation. It will be the Chair, particularly initially, who will be instrumental in building the profile of the foundation and implementing strategic and business plans for funds development and distribution, as well as shaping the relationships between the foundation, the Heritage Council and Heritage Victoria. It will also be the foundation chair who will assist position the foundation as an accessible, imaginative and accountable community initiative to assist not only increase the funds available for conservation and preservation projects, but will also assist raise awareness of the diversity and value of Victoria's heritage places.

Responsibilities of foundation board members

Board members of the Heritage Places Foundation will be responsible for:

- all legal, taxation and fiduciary regulations required for the Heritage Places Foundation's operations;
- developing the vision, mission, values and objectives for the foundation;
- articulating the mission, including the value base of the fund;
- developing a funds development strategy and implementing a fund raising plan to build the corpus of the foundation;
- where appropriate, developing, and if necessary (because of deductibility tax issues) actually conducting specific fundraising campaigns to support particular preservation and conservation projects;
- implementing the mission of the foundation through the development of funding policies that might include managing projects directly;
- developing distribution policies and procedures for the fund;

- setting priorities for funding and making distribution decisions about funds allocation;
- resourcing the operations of the foundation;
- ensuring that they have no pecuniary interest in any aspects of the foundation's operations;
- public accountability for and reporting of the fund's activities; and
- succession planning for the foundation.

In the start up stage of many fundraising foundations, the board of the foundation will be required to contribute either financially or in kind to the administration of the foundation, as initially funds are rarely available for this work. The Heritage Council will need to determine whether or not there will be an expectation that board members contribute financially.

Board decision making

It is highly desirable that the board of the foundation makes decisions based on consensus. This should be achievable given a clearly articulated funding policy and an assurance that the necessary research and assessment has been made of applications for funding prior to them reaching the board for recommendation. However should consensus not be achieved and a vote be required, every member will have a vote, with the Chair casting the deciding vote if it is tied.

Board succession planning

The foundation will need to have in place policies that determine:

- the mechanisms by which board members are appointed;
- the duration of initial terms of board appointments and opportunities to serve further terms;
- the rotation of board members; and
- how new board members will be recruited

2.3.3 Operational support

At a minimum, it is believed that the foundation will need a permanent, full time CEO supported by a senior administrative assistant and backed up by a committed and active board. The role of the CEO would be to ensure the Heritage Places Foundation is effective in its establishment, operations and fundraising, and is an effective leader in promoting awareness of the diversity and value of Victoria's heritage places, as well as in the funding of cultural heritage places. It would involve:

- Successful fundraising and marketing to support the newly established foundation and its positioning.
- Successful foundation development and fundraising performance against targets.
- Positive and effective working relationships with foundation chair, board and other foundation and Heritage Victoria staff.
- The development of trusting and sustainable relationships with a broad range of donors and potential donors.
- Working collaboratively with the national trust and other organisations working to conserve and preserve heritage places.

2.4 EVALUATION AND REVIEW

Evaluation and review will relate to both the foundation's performance in the areas of foundation governance and funds development, as well as to performance of grant recipients in carrying out conservation and preservation projects for which they have been funded. Issues to be considered in relation to evaluating the foundation should include an annual review of a wide range of operational factors. Such factors could include governance and management, grant distributions, progress against fundraising targets, profile of the foundation, and effectiveness of partnerships.

Issues to be considered in evaluating funds development of the foundation include:

- identification of segments of the local community most likely to contribute to the foundation;
- establishment of targets for both the short and long term;
- specific targeting of possible funding sources such as individuals, corporations, local businesses and philanthropic trusts;

- development of collaborative funding arrangements and/or partnerships; and
- the degree to which board members assist with fund raising.

2.5 PUBLIC COMMUNICATION, MARKETING AND FUNDRAISING

2.5.1 Public communication

The role the Heritage Places Foundation plays, and is seen to play, in its community will be in a large part determined by the way it communicates with the community, as well as by the way it conducts its grant making activities.

It is important that the public messages concerning the foundation focus on the fact that it is first and foremost a public foundation which through its professional and accountable operations, seeks to play a significant role in the conservation and preservation of heritage places in Victoria as well as build awareness of the diversity and value of Victoria's heritage places

It is also important that the foundation showcases its funding outcomes. Experience has shown that new donors are most often persuaded to give, and existing donors to escalate their giving, as a result of seeing the positive outcomes of funded projects. In the case of the Heritage Places Foundation this should not be difficult as the outcomes from most funded projects will be quite tangible and certainly visible. Appropriate media attention should not be difficult to attract.

A communication strategy should be developed with regard to stakeholders for the foundation, including:

- those seeking funds from the foundation;
- colleagues or 'friends of the foundation';
- existing and potential donors;
- government; and
- volunteers who work on conservation and preservation projects;

The mechanisms for communication will include documentation such as the foundation's guidelines, newsletters, website, annual reports and those of funded organisations. In addition videos, publicity and media coverage given to funded projects could be used.

2.5.2 Marketing and fundraising

The ultimate success of the proposed Heritage Places Foundation will inevitably rest on its ability to position itself in the complex and competitive fundraising field in Victoria. If the Heritage Council decides to establish a stand-alone public foundation and work independently of other foundations working in the heritage area, such as the National Trust, it will need to carefully and clearly carve out a point of difference for itself both in public perception and in reality.

It is already clear that there is a certain level of confusion in the broader community about the differing roles of the Heritage Council and the National Trust. It will be imperative that this confusion is minimised and clear points of differentiation are identified if both foundations are in the market competing for funds.

With the imminent establishment and launch of the new National Trust Foundation there is not only the risk that confusion will continue, but also that there will be concerns about duplication and replication of effort. This whole issue of differentiation is further complicated by the fact that a number of heritage buildings with their own tax deductible status will be running their own fundraising campaigns, and those without tax deductible status will need to determine whether or not to run their campaigns through the National Trust or the Heritage Places Foundation.

Donors, be they individuals, philanthropic trusts and foundations or corporations are becoming increasingly businesslike about their giving. Increasingly, they are no longer prepared to participate in what used to be identified as 'cheque book' philanthropy, ie writing a cheque to a charitable organisation of choice with very little thought as to how the funds would be utilised and accounted for. More commonly, they are assuming a role of 'social investor' and are seeking greater levels of transparency and accountability from the charitable organisations they seek to support. This is proving to be particularly true for younger donors and of corporations.

The Heritage Places Foundation will also need to acknowledge that any major public fundraising campaign for general support will be head to head with the National Trust, which already has a strong public presence as a fundraiser, not just for individual heritage projects but also to support its own operations.

Government

The consultants are of the view that the best avenue for attracting significant unrestricted funds to seed fund a corpus for the Heritage Places Foundation must come from government. Without a substantial contribution either in a lump sum or on an annual, but predictable basis, the chances of achieving long-term sustainability for the foundation will be compromised. The consultants are of the view that a minimum government contribution should ultimately be $10 million. Achieving this sort of outcome will require mounting a particularly politically persuasive and irresistible argument to the appropriate level of government, as this quantum is not likely to be available within existing budgets.

It will also involve convincing government that it is currently not meeting its responsibilities in supporting the conservation and preservation of our heritage places.

In Western Australia, the conservation and preservation of heritage places have done very well from funds allocated from the Western Australian Lotteries Fund. While there has been no formal structure put in place to manage this process, nor any predictable allocation of funds, there has been considerable funding flowing form the Fund.

In the United Kingdom a formal Heritage Fund has been established with a regular income stream from the UK Lotteries Commission. The funds that flow to this fund are significant and predictable. Although for this to occur in Victoria would require a strong political will and also the establishment of structures and resources to support it, it may be an option worth pursuing.

A commitment of this size from government would mean that the Heritage Places Foundation has a critical mass of funds that would assist future growth from other non government sources and would indicate a real commitment by government to heritage issues. It would also act as a leaver when approaching other potential funders.

Charitable Trusts and Foundations

Currently it is estimated that charitable trusts and foundation fund approximately 4% of the applications that they receive, and contribute an average of 10% of the budgets of nonprofit organisations. Traditionally, many of the larger charitable trusts and foundations distributed significant sums of money to capital works projects that included the conservation and preservation of heritage places. This was most commonly done through the National Trust as many of the heritage places such as St Patrick's Cathedral, St Peters Eastern Hill, local cemeteries and other regional and rural projects did not have tax deductibility in their own right.

The capacity of the Heritage Places Foundation to attract funds from charitable trusts and foundations will be determined by its ability to:

- identify those charitable trusts and foundations that have a history and an ongoing commitment to funding capital works projects;
- identify those charitable trusts and foundations that are able to fund and are prepared to support the building of a corpus;
- work with charitable trusts and foundations that cannot fund a corpus, but would like to support the work of the Heritage Places Foundation, identify projects that they might fund directly;
- create a point of differentiation from other organisations working in the heritage area that are competing for funding;
- ensure the foundation can demonstrate good governance, best practice and openness and accountability in all its activities;
- develop persuasive approaches and applications for funding that will provide the foundation with the best opportunity to attract funding.

Corporations

Securing funding from corporations has become an increasingly sophisticated and resource intensive task. Corporations no longer engage in corporate philanthropy, but tie their giving to business objectives. This may involve a corporation seeking to increase its market visibility, increase its market share or position itself as a good corporate citizen.

To attract funding from corporations, the Heritage Places Foundation will need to:

- identify those corporations with which they believe they have a value and business alignment. Targeting building and construction companies for support may be a good starting place;
- work to build a relationship of trust with the corporation over time;
- identify the most appropriate person in the corporation with whom to work:
- work in collaboration with them to build a case for funding that will have satisfactory outcomes for both the funder and the recipient. This case may include not just funding support, but could involve in kind support and staff volunteer involvement; and
- continue to support and develop that relationship during and after the funding period.

It is commonly accepted that it takes a 3-5 year period to build these relationships and hopefully achieve a funding outcome. In the case of the Heritage Places Foundation, the make up of the board and the level of sophistication of the CEO will undoubtedly influence the ability of the foundation to build relationships with corporations, particularly as many of the larger corporations have a national focus and the work of the foundation will be directed to Victorian heritage places. The foundation will also have to compete for corporate funding with individual fundraising campaigns for the conservation and restoration of landmark buildings that will have national significance.

The foundation's greatest hope for funding in this area, may well be from second tier businesses that have a strong identity with local issues and local heritage places. They may respond more favorably to approaches for funding support for heritage projects located in their areas of operation. This might be particularly true for regional and rural initiatives.

Bequests

Bequests can be a major source of funds for charitable organisations. Major hospitals, medical research institutes and some of the major social welfare organisations regularly report that funds from bequests make up over 50% of their fundraising on an annual basis, so this is clearly a potential market. The fact that the National Trust indicates that it has already attracted 18 bequests to its proposed foundation would support the view that there is potential funding

support from bequests for the conservation and preservation of heritage places. The extent to which the National Trust has captured this market is unclear, however what is clear is that it's current support base is drawn from the demographic most likely to be considering making bequests.

2.6 ACCOUNTABILITY

In order to foster a culture of openness and transparency around the operations of the Heritage Places Foundation, it is recommended that the foundation produce a range of communication tools that demonstrate this, thus aligning itself with the many other modern and sophisticated fundraising bodies in the community.

Communication does not need to be expensive. Use of the internet for communication with supporters and potential supporters can be inexpensive and accessible. The uptake of internet usage by people in the over 50-year-old age group, who will be a large target for the foundation, has been extraordinarily high and the younger generation of donors just expect electronic communication as a means for transferring information.

In addition an Annual Report should be produced by the Heritage Places Foundation, which will serve as:

- a public accountability statement about the foundation's fundraising activities;
- an accountability statement about the foundation's funding decisions;
- a marketing document for donors and potential donors; and
- an opportunity to showcase successfully funded projects.

APPENDIX 1

Giving Australia: Research on Philanthropy in Australia - Summary of Key Data, September 2004,www.partnerships.gov.au/philanthropy/philanthropy_research.shtml

APPENDIX 2

DGR table - general categories. An excerpt from the Gift Pack for deductible gift recipients and donors current at May 2003, pages 38 and 39, www.ea.gov.au

APPENDIX 3

List of Interviewees:

Ray Tonkin - Executive Director, Heritage Victoria

Chris Gallagher - Chair, Heritage Council

Stephen Hare - CEO, National Trust Australia (Victoria)

John Dwyer - former member, Heritage Council

Jan Schapper - National Trust alternate nominee, Heritage Council

Peter Watts - Historic Houses Trust, NSW

Jan Penny - Ex Chair, Heritage Council and Committee Member Mint Inc.

Murray Brown - New South Wales Heritage Branch

Martin Hallet - Arts Victoria

Malcolm Mc Kinnon - Revitalising Community Museums Project

Jane Haley - Director, Artssupport (Australian Business Arts Foundation)

Mary Crooks - CEO, Victorian Women's Trust