

**Heritage and  
social housing:**

Implications for  
repairs,  
maintenance,  
modifications and  
redevelopments

**Chris Martin**



Heritage and social housing: implications for repairs, maintenance, modifications and redevelopments

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This Shelter Brief is dedicated to the memory of Col James: architect, activist, educator and life member of Shelter NSW. Col was a great defender of heritage and a great proponent for social housing.

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## Introduction to the second edition

At the time of the first publication of this report, in October 2013, the author noted that the *Residential Tenancies Regulation 2010* exempted premises that were heritage items where the landlord was the Crown, a public authority or a local council, from the *Residential Tenancies Act 2010*. (See page 6 of this edition). Notwithstanding this interpretation of the Act and Regulation, the author's discussion of residential tenancies law in relation to social-housing tenancies in heritage properties assumed those 'will' be covered by the *Residential Tenancies Act 2010*; this assumption was made on the basis of correspondence between the Tenants Union of NSW and the NSW Land and Housing Corporation at the time. Since then, the Regulation *has* been amended to provide that heritage items owned by the NSW Land and Housing Corporation and the Aboriginal Housing Office are not exempt from the *Residential Tenancies Act 2010*. This amendment to the Regulation was made on 30 October 2015. It confirms that social-housing tenancies in heritage properties owned by those government bodies are covered by that Act.

— Shelter NSW, November 2015

## 1. Introduction

Social housing has been built in New South Wales for more than 100 years.<sup>1</sup> Over that time, the design and construction of social housing has been shaped by contemporary thought, tastes and technology, sometimes in a pioneering or exemplary way. Also over that time, social housing providers have acquired housing stock built by others, including buildings built in the nineteenth century.

For all these reasons, heritage is an important issue for social housing now. The NSW Land and Housing Corporation (LAHC), the State Government agency that owns the large majority of social housing properties in New South Wales, maintains a Heritage and Conservation Register that comprises 3,380 entries — almost all of them relating to buildings used for social housing.

Furthermore, the importance of heritage is heightened by the increasing prominence of questions of ‘asset management’ in social housing.

One aspect of asset management is repairs and maintenance – work to which more resources have been directed in recent years, but which remains a problem for many tenants. Another aspect is the alteration or modification of buildings, particularly to better accommodate people with disability.

In recent years, social housing asset management has also involved programs for the ‘renewal’ of buildings and estates, ranging from the renovation of social housing dwellings and grounds to their demolition and replacement with new buildings, some or all of which may be privately owned. Finally, and increasingly, social housing asset management involves consideration as to the suitability of properties for the purposes of social housing, with a view to the disposal of unsuitable properties.

As these questions – of repairs and maintenance, modifications, renewal and disposals – become more prominent, so too does the question of heritage protection in social housing.

The purpose of this Brief is to unpack ‘heritage’ and its implications for social housing asset management and, by extension, for social housing tenants. Some basic questions – such as that of ‘what is heritage’ – are considered in this introductory part of the Brief.

In Part 2, the Brief considers social housing asset management from the perspectives of residential tenancies law and policy, and planning law and policy, each of which has implications for the way in which social housing asset management works in the context of heritage protection.

In the third and fourth parts, the Brief reviews the main forms of statutory heritage protection in New South Wales and their application to social housing. Two legal regimes for heritage protection are considered in detail: the regime for local heritage protection, which includes local heritage registers in Local Environmental Plans (LEPs) under the *Environmental Planning and Assessment Act 1979* (NSW) (the EPA Act); and the regime for state heritage protection, which includes the NSW State Heritage Register under the *Heritage Act 1977* (NSW) (the Heritage Act).

Part 5 discusses how heritage is protected through a body of principles and best practice for heritage management, the principal statement of which is the Burra Charter of the Australian

National Committee of the International Council on Monuments and Sites<sup>2</sup>. Considered in the terms of the Burra Charter, heritage management is something that social housing landlords should do well, and social housing itself should be seen – and supported – as a means of heritage protection.

Finally, Part 6 completes the picture of heritage protection in New South Wales, by reviewing briefly the various other statutory and non-statutory heritage registers that may be relevant to the protection of heritage significant social housing.

### **1.1. What is ‘heritage’?**

It is commonplace to hear reference to a building as ‘a heritage building’, or even just ‘heritage’. This may mean a range of things, from the simple opinion that a building is worth keeping; to the classification of the building under one of the several legal regimes that protect heritage in New South Wales.

In our legal regimes for heritage protection, and in the principles and practice of heritage management, ‘heritage’ is a wide-ranging concept.

A thing may be regarded as heritage for a wide variety of reasons. These reasons are what is called ‘heritage significance’, which the Burra Charter refers to synonymously with ‘cultural significance’, defined as ‘aesthetic, historic, scientific, social or spiritual value for past, present or future generations’ (Article 1.1). Similarly, under our legal regimes for heritage protection a thing may be significant for reasons such as its place in the course of history; the aesthetic or technical achievement it represents; the value it presents to historical research; or its special association with a community group, or with a historically significant person.

Heritage law and practice also reflect the fact that heritage significance may vary greatly, both in degree and extent: a thing may have ‘some’ significance or something more (for example, ‘exceptional’ or ‘outstanding’ significance); and it may be significant for a local community, or for the population of the New South Wales, or Australia, or for all humanity. This is reflected in the way we have legal regimes for heritage protection at all three levels of government in Australia – local, State and Commonwealth – and internationally.

As a result, a great diversity of things may have heritage significance, to greater or lesser degree. The Burra Charter locates heritage first of all in a significant ‘place’, then sees its significance ‘embodied in the place itself, its fabric, setting, use, associations, meanings, records, related places and related objects’ (Article 1.1). Our legal regimes for heritage protection cover things ranging from wilderness areas to scarred trees, from works of art to domestic manufactures, and from entire towns to individual houses.

### **1.2. A brief history of heritage**

It is possible to consider ‘heritage’ itself in historical perspective. Our present legal regimes for heritage protection were established in the 1970s, though they have longer antecedents and have been amended and reformed from time to time since then.<sup>3</sup> In their early years, these regimes were concerned mostly with protecting heritage at threat of imminent harm. Non-

statutory heritage protection, consisting largely in drawing public attention to threats to heritage, was similarly reactive.

Since then, heritage protection has become more proactive, with statutory protections applied before threats arise, and the development of the concept of protection or conservation as ‘an integral part of the management of places of cultural significance and... an ongoing responsibility’ (Burra Charter, Preamble). At the same time, ‘heritage’ has become both increasingly professionalised, with an industry of heritage consultants advising on decision-making process and specialist tradespersons carrying out conservation work, and increasingly every day, with individual property owners attending to the stories of their properties and carrying out maintenance and other work in a way that is inflected, if not motivated, by the need to conserve.

If heritage laws, principles and practices are now relatively settled, the question of ‘what is heritage’ can still be contentious, particularly when asked in relation to modern things, and things for use in everyday life – so claims for the heritage significance of social housing may be contentious indeed. But then, if it were not contentious, heritage would hardly need to be protected at all.

### 1.3. Finding out about heritage and social housing

Heritage registers themselves are a key source of information about heritage. Tables 1.1 and 1.2 list respectively the various statutory and non-statutory heritage registers relevant to social housing in New South Wales.

Table 1.1. Statutory heritage registers in New South Wales

<b>Name of register</b>	<b>Level of government</b>	<b>Access</b>	<b>Social housing?</b>
Local heritage registers	Local – LEPs and environmental planning instruments (EPIs) under the EPA Act	<a href="http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0">www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0</a> (Browse EPIs for each local government area’s LEPs)	Yes
State Heritage Register	State – Heritage Act	<a href="http://www.environment.nsw.gov.au/heritageapp/heritagesearch.aspx">www.environment.nsw.gov.au/heritageapp/heritagesearch.aspx</a>	Yes
NSW Land and Housing Corporation Heritage and Conservation Register	State – Heritage Act, s 170	Housing NSW library and Heritage Branch library (see below)	Yes
Atlas of Aboriginal Places	State – <i>National Parks and Wildlife Act 1974</i> (NSW)	<a href="http://www.environment.nsw.gov.au/AboriginalPlaces/index.htm">www.environment.nsw.gov.au/AboriginalPlaces/index.htm</a>	None listed to date

National Heritage List	Commonwealth – <i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth) (the EPBC Act)	<a href="http://www.environment.gov.au/heritage/places/national/index.html">www.environment.gov.au/heritage/places/national/index.html</a>	None listed to date
Commonwealth Heritage List	Commonwealth – the EPBC Act	<a href="http://www.environment.gov.au/heritage/places/commonwealth/index.html">www.environment.gov.au/heritage/places/commonwealth/index.html</a>	None listed
World Heritage List	International – the World Heritage Convention and the EPBC Act	whc.unesco.org/en/list Australian items: <a href="http://www.environment.gov.au/heritage/places/world/list.html">www.environment.gov.au/heritage/places/world/list.html</a>	No Australian social housing listed to date

Table 1.2. Non-statutory heritage registers in New South Wales

Name of register	Access	Social housing?
National Trust Register	<a href="http://www.heritagespace.com.au/register">www.heritagespace.com.au/register</a>	Yes
Australian Institute of Architects Register	<a href="http://www.architecture.com.au/architecture/national/notable-buildings">www.architecture.com.au/architecture/national/notable-buildings</a>	No New South Wales social housing listed to date
Register of the National Estate	<a href="http://www.environment.gov.au/cgi-bin/ahdb/search.pl">www.environment.gov.au/cgi-bin/ahdb/search.pl</a>	Yes

In New South Wales the contents of most of the various statutory registers is collated in the State Heritage Inventory, which is maintained by the Heritage Branch of the NSW Office of Environment and Heritage. The State Heritage Inventory is available to search online at: [www.environment.nsw.gov.au/heritageapp/heritagesearch.aspx](http://www.environment.nsw.gov.au/heritageapp/heritagesearch.aspx).

This search facility may work for checking whether a particular property is listed on a heritage register, but it does not work well for researching whether a particular property owner – for example, LAHC – has heritage properties in a particular area or the whole of the state. In particular, searches for ‘NSW Land and Housing Corporation’ and ‘Housing NSW’ in the field ‘Owner Organisation’ return no results.

As indicated above, LAHC maintains its own Heritage and Conservation Register, as required under section of 170 of the Heritage Act. This register comprises all properties owned or occupied by LAHC that are registered on the State Heritage Register or a local heritage register,



or that LAHC itself has identified as having heritage significance.<sup>4</sup> It is, therefore, a crucial resource of information about heritage and social housing.

Like the Heritage and Conservation Registers of other NSW government instrumentalities, the LAHC register is available for public inspection. Unlike other registers, however, it is not available online, and is not collated in the State Heritage Inventory. The Corporation's rationale is that the items on its register are, unlike those owned by other government instrumentalities, private dwellings, and that in making information about them publicly available, it should not go further than is required by the Heritage Act. As such the LAHC register is available for inspection by appointment at LAHC's office in Ashfield, or at the Heritage Branch's library in Parramatta.

General information about heritage and heritage protection is available from the website of the Office of Environment and Heritage. Most of the relevant information is accessible via the drop-down menu under 'Heritage Sites' in the left sidebar of the page:  
[www.environment.nsw.gov.au/Heritage/heritagesites.htm](http://www.environment.nsw.gov.au/Heritage/heritagesites.htm).

General information about statutory heritage protection is also available from the website of NSW EDO, the state's specialist community legal centre for environmental and planning law:  
[www.edo.org.au/edonsw/site/factsh/fs07\\_1.php](http://www.edo.org.au/edonsw/site/factsh/fs07_1.php).

Information about heritage conservation principles and practice, including the Burra Charter, is available from the website of Australia ICOMOS: <http://australia.icomos.org>. The Burra Charter is also reproduced as an appendix to this Brief.

## **2. Social housing asset management: law and policy**

Before reviewing our legal regimes for heritage protection, it is first necessary to briefly review two other aspects of law and policy that bear on social housing asset management: residential tenancies law and associated policies; and planning law and related policies. Each of these aspects of law and policy has implications for the conduct of social housing asset management, including where it is within the context of our legal regimes for heritage protection.

### **2.1. Residential tenancies law and policy**

Social housing landlords' obligations under residential tenancies law influence social housing asset management. The principal piece of residential tenancies law in New South Wales is the *Residential Tenancies Act 2010* (the RT Act). The RT Act applies to most residential tenancies in the state, including social housing tenancies. It includes a number of provisions that are specific to social housing tenancies, but in most respects its provisions are the same for social housing tenancies as for private tenancies.

There is a problem, however, in the application of the RT Act to certain social housing tenancies in heritage properties.

### **2.1.1. Application to heritage properties**

Under clause 16(1) of the *Residential Tenancies Regulation 2010* (NSW), premises are exempt from the RT Act where the landlord is 'the Crown, a public authority or a local council' – this includes LAHC – and the premises are a 'heritage item', as defined at clause 16(3). 'Heritage items' include:

- (a) premises that are listed on the State Heritage Register kept under the *Heritage Act 1977*,  
or
- (b) premises that are the subject of an interim heritage order or heritage agreement under that Act, or
- (c) premises that are identified as items of state or local heritage significance under an environmental planning instrument ...

Hundreds of public housing premises match this definition, being either listed on the State Heritage Register (clause 16(3)(a)) or listed on a local heritage register (clause 16(3)(c)).<sup>5</sup> As these premises are exempted from the RT Act, the public housing tenancies for these premises are, for most purposes, also exempt from the RT Act.<sup>6</sup>

This problem has only recently been identified by the Tenants Union of NSW. It appears LAHC was not aware of the exemption and assumed that affected tenancies were subject to the RT Act. At the time of writing this Brief, the Tenants Union was in correspondence with LAHC about the problem, with a view to taking steps to ensure that affected tenancies are covered the RT Act.<sup>7</sup>

The discussion of residential tenancies law in this Brief assumes that all social housing tenancies in heritage properties will be covered by the RT Act.

### **2.1.2. Repairs and maintenance**

Under the RT Act, every residential tenancy agreement (whether for social housing or otherwise) contains terms that require the landlord to:

- provide the premises in a state 'fit for habitation' (section 52(1));
- comply with health and safety legislation (section 52(3)); and
- provide and maintain the premises in 'a reasonable state of repair, having regard to the age of, rent payable for and prospective life of the premises' (section 63(1)).

The only qualifications on these obligations are those three factors – the age of, rent payable for and prospective life of the premises – relating to the reasonable state of repair of the premises. In particular, a landlord does not get out from any of these obligations simply because the necessary work would be costly.

Where a landlord is in breach of these obligations, the tenant can apply to the Consumer, Trader and Tenancy Tribunal for a remedy, which may include an order (a 'specific performance order') that the landlord take specified actions to perform their obligations under the agreement and the RT Act. The Tribunal is not, however, empowered to enforce obligations that do not come from the RT Act (for example, obligations under the Heritage Act, the EPA Act, or conditions on a development consent). So, for example, a specific performance order might require a landlord to repair a leaking roof by a particular date, but not specify that the roof be repaired by a specialist heritage tradesperson with slate shingles and lime mortar.

### **2.1.3. Alterations and modifications**

Nothing in the RT Act requires landlords to do work that goes beyond what is required by the provisions discussed above. They are not required, therefore, to make modifications or alterations<sup>8</sup> that improve a property that is already fit for habitation, compliant with health and safety legislation, and in reasonable repair.

Tenants may make alterations themselves, at their own cost, provided they have the landlord's consent (section 66(1)). If the proposed alteration is 'minor', the landlord must not refuse consent unreasonably (section 66(2)); consent may be reasonably refused if the work would involve structural changes; work not reasonably capable of rectification; painting; work prohibited under any other law; or work not consistent with the nature of the property (section 68(3)). Consent proposed alterations that are other than minor can be refused, whether it is reasonable to do so or not.

Aside from the RT Act, a public housing tenant can ask Housing NSW, under its 'Modifications' policy, to make modifications to a LAHC property, at its own cost, to suitably accommodate a person with a disability.<sup>9</sup> Housing NSW will do so where the modification is recommended by an occupational therapist (or, if the modification is minor, a doctor or other health care professional) and is economically viable.

In the terms of the policy, modifications may be 'minor' or non-structural – for example, installing grip rails, or a hand-held shower set, or lever-style taps – or 'major' or structural – for example, widening doorways, providing access ramps, or modifying the kitchen, bathroom or laundry.

## **2.2. Planning law and policy**

A large part of social housing asset management is conducted not at the instigation of tenants individually, but as programs for the 'renewal' of buildings and estates. These works typically include renovations to kitchens; the reconfiguration of bedsits to provide separate bedrooms; the addition of balconies; and fencing, gating and landscaping. Increasingly, renewal programs go much further, and encompass the demolition of public housing buildings and their replacement by new buildings.

All of these renewal activities are 'developments' for the purposes of our planning laws, principally the EPA Act. Many modifications and even repairs and maintenance (depending on the work involved) may also be developments for the purposes of the EPA Act.

### **2.2.1. Developments**

Under the EPA Act, developments generally require the prior consent of a consent authority. This may be obtained by making a development application; the consent authority will give or refuse consent according to its assessment of the requirements of relevant environmental planning instruments (EPIs), including the Local Environmental Plan (LEP), and other factors. For most developments, the consent authority will be the local council.

There are, however, numerous exceptions and variations from this general scheme. Some developments do not require consent obtained through the development application process –

particularly those classed under an EPI as 'exempt development'. Exempt development may be carried out without consent, provided it is not carried out where prohibited (EPA Act, section 76(2)). The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW) sets out a long list of activities that are exempt development, subject to various qualifications, including whether the development relates to a heritage item.

There are also special provisions relevant to social housing in the EPA Act and the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (NSW) (the ARHSEPP). These special provisions mean that many social housing developments do not require consent and, for those that do, the powers of the consent authority in relation to consent may be constrained, and the consent authority may not be the local council. Most of these provisions refer specifically to development carried out by or on behalf of LAHC. Whether development of a property owned by LAHC but managed by another social housing landlord is development 'on behalf of LAHC' may depend on the legal arrangements between LAHC and the other social housing landlord.

The special provisions are summarised below.

- *Repairs and maintenance, non-structural renovations and alterations, and gardening and landscaping* – where carried out by or on behalf of LAHC, these activities are exempt development (ARHSEPP, clause 41).
- *Demolition of dwellings and associated structures* – where carried out by or on behalf of LAHC, and not on land containing a heritage item or within a heritage conservation area, demolition may be carried out without consent, but LAHC must first notify the council and others and take account of any responses (ARHSEPP, clause 40).
- *Residential development* – where carried out by or on behalf of LAHC to produce 20 or fewer dwellings, 8.5 metres or less in height, on a single site with parking spaces as specified, residential development may be carried out without consent, but LAHC must first notify the council and others and take account of any responses (ARHSEPP, clause 40).
- *LAHC development as 'Crown development'* – where carried out by or on behalf of LAHC, a development is 'Crown development', which means that a consent authority (other than the Planning Minister) cannot refuse consent to a LAHC development application, or impose a condition on its consent, except with the permission of the Minister (EPA Act, section 89(1)). If the consent authority fails to determine LAHC's development application within a certain timeframe, it must be referred to another consent authority, as specified (section 89(2)). Also, if the capital investment value of the development is more than \$5 million, and it is not in the City of Sydney, the consent authority will be a joint regional planning panel, not the local council (EPA Act, section 23G; Schedule 4A).
- *Development for 'affordable housing'* – where a development application is for the purpose of affordable housing, and its capital investment value is more than \$5 million, the consent authority will be a joint regional planning panel, not the local council (EPA Act, section 23G; Schedule 4A). Note this provision is not limited to LAHC; other organizations and persons proposing to develop affordable housing may use this provision.
- *State significant development* – where development is within a specifically identified site

on the State Significant Development Sites Map (*State Environmental Planning Policy (State and Regional Development) 2011, Schedule 2*), and meets other criteria specified for the site, the development is a state significant development, which has its own development consent process under section 89C-L of the EPA Act. Particularly relevant to social housing are: The Rocks Site, and the provision for NSW Land and Housing Corporation Sites – though at present, none of the latter have been identified on the Sites Map.

Proposals for state significant development proceed by a development application and environmental impact assessment prepared in accordance with Environmental Assessment Requirements formulated (at the request of the developer) by NSW Planning and Infrastructure in consultation with other agencies, including the Office of Environment and Heritage. Where the requirements are met, the application goes on public display and submissions may be made. The consent authority is the Minister for Planning (or delegate), who must consider, amongst other things, the development's economic, environmental and social impacts, relevant EPIs, submissions received, and the public interest.

### **2.2.2. Disposals**

Like other property-owners, social housing landlords may dispose of their properties. Typically disposal of social housing properties is by sale, though LAHC has disposed of state significant heritage properties at Millers Point by grants of 99-year leases.

Disposing of a property by sale or lease is not a development for planning law purposes. Sometimes the disposal of a property may also be the occasion of a change in its use, and a change in use may be a development for which development consent is required. However, in most cases where a social housing property is disposed of, its use – that is, for the purpose of a dwelling house – does not change. In particular, a social housing provider does not need development consent for a disposal of property that will result in the property no longer being used specifically as social housing, or rental housing, as distinct from its wider use as a dwelling house.<sup>10</sup>

### **2.2.3. Planning reform**

At the time of the writing of this Brief, the NSW State Government has proposed a comprehensive reform of the state's planning system and legislation.

Many of the basic features of the present system will be incorporated in the proposed new system incorporates, with some changes. LEPs will be replaced by Local Plans, which will, amongst other things, identify local heritage items and places. SEPPs will be replaced by NSW Planning Policies, though it is not clear to what extent the provisions of existing SEPPs, such as the ARHSEPP, will be incorporated. The proposed new planning system will provide for development with consent, exempt development, complying development, Crown development and state significant development, with new provisions for certain development applications to proceed via a 'code assessment track' with less scope for objections from members of the public, and less scope for refusal or conditional consent by the consent authority.

The NSW State Government states that existing heritage protections will be maintained during the transition to the proposed new planning system.

## 2.3. Summary

Social housing asset management activities may be carried out at the initiative of tenants (either as a matter of their contractual rights, as in repairs and maintenance, or as a matter of social housing policy, as in modifications for people with disability), or at the initiative of social housing landlords (particularly in renewal programs, or in disposals of properties). Many of these activities – particularly those carried out as renewal, but also modifications and even some repairs and maintenance – are ‘developments’ that bring social housing landlords into contact with planning laws and its system of development consents. In this regard, there are numerous special provisions and exemptions, particularly for LAHC.

These activities may also bring social housing landlords into contact with our legal regimes for heritage protection. The special provisions our planning system makes as regards social housing development, have important consequences for the ways in which statutory heritage protections apply to social housing.

## 3. Local statutory heritage protection

Although the Heritage Act is New South Wales’s dedicated piece of heritage legislation, and an obvious place to start a review of statutory heritage protection, this Brief will begin with our local-level regime of statutory heritage protection, represented by the local heritage registers and associated provisions in councils’ LEPs.

This level of statutory heritage protection works through the planning system established by the EPA Act. It is the starting point for this Brief because it is useful to understand it as a basic part of statutory heritage protection in New South Wales; while the state-level regime of the Heritage Act works partly through the planning system, and partly in addition to it.

The local level is also the level at which most heritage items are protected: there are more than 20,000 heritage items listed individually on local heritage registers in New South Wales, and thousands more properties within 183 listed ‘heritage conservation areas’. (By contrast, there are about 1,600 heritage items on the State Heritage Register under the Heritage Act.)<sup>11</sup>

### 3.1. Local heritage registers

Local heritage registers are maintained by councils in schedules to their LEPs under the EPA Act.<sup>12</sup> Most LEPs are now based on the Standard Instrument – Principal LEP (the standard LEP), which includes a standard heritage schedule (at Schedule 5).<sup>13</sup>

Local heritage registers are divided into categories, the two main categories being:

- ‘heritage items’, and
- ‘heritage conservation areas’.<sup>14</sup>

Heritage items are individual things, or small groups of things (for example, a house, or a row of houses, or a park); heritage conservation areas are whole streets, groups of streets or suburbs.

The heritage protections that apply to properties in heritage conservation areas are lighter than those applying to properties listed as heritage items.

Heritage items and heritage conservation areas are nominated for listing on the register by the council, its heritage committee, and members of the public, and assessed by the council for their local heritage significance. Councils generally use the following criteria, formulated by the NSW Heritage Council<sup>15</sup>:

- a) an item is important in the course, or pattern, of New South Wales's cultural or natural history (or the cultural or natural history of the local area);
- b) an item has strong or special association with the life or works of a person, or group of persons, of importance in New South Wales's cultural or natural history (or the cultural or natural history of the local area);
- c) an item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in New South Wales (or the local area);
- d) an item has strong or special association with a particular community or cultural group in New South Wales (or the local area) for social, cultural or spiritual reasons;
- e) an item has potential to yield information that will contribute to an understanding of New South Wales's cultural or natural history (or the cultural or natural history of the local area);
- f) an item possesses uncommon, rare or endangered aspects of New South Wales's cultural or natural history (or the cultural or natural history of the local area);
- g) an item is important in demonstrating the principal characteristics of a class of New South Wales's cultural or natural places; or cultural or natural environments (or a class of the local area's cultural and natural places; or cultural or natural environments).<sup>16</sup>

Local heritage registers also include items of state heritage significance that are located in local government area, if they are listed on the State Heritage Register.

Numerous social housing properties are included on local heritage registers as heritage items or as part of heritage conservation areas. Two examples of each are provided below. The information extracted indicates both the heritage significance of the properties described, and the particular ways in which this significance is protected through the planning system.

Local heritage item: the Strickland Building, Chippendale

The Strickland Building (including interiors) is a heritage item under the Sydney LEP 2012 (Schedule 5).<sup>17</sup>

**Statement of significance**

Of historical significance as an early, innovative and substantial residential apartment development. Of architectural significance for its detailing and original integrity. The complex is of environmental importance, greatly contributing to the character of its community.

**Description**

Designer/Maker: R. M. Broderick, City Council Architect

**Physical description:**

Three storey Federation Arts and Crafts style residential flat building. Occupying an entire block, these early apartments mark an important transition from terrace to flat dwelling. The overall massing and integration of the building with its gardens is well-executed. The building possesses a good range of material in its elevational composition including sandstone, plinth, timber detailing, face brickwork and roughcast stucco. Excellent retention of original detailing to interior and exterior public spaces. Commercial premises form a part of the complex at the northern and southern ends. Category: Individual Building. Style: Federation Arts and Crafts, Federation Free Style. Storeys: 3.

**Assessment of significance**

SHR Criteria a) [Historical significance]

Of historical significance as an early, innovative and substantial residential apartment development. Has historic significance locally.

SHR Criteria c) [Aesthetic significance]

Of architectural significance for its detailing and original integrity. Has aesthetic significance locally.

**Recommended management:** The building should be retained and conserved. A Heritage Assessment and Heritage Impact Statement, or a Conservation Management Plan, should be prepared for the building prior to any major works being undertaken. There shall be no vertical additions to the building and no alterations to the façade of the building other than to reinstate original features. The principal room layout and planning configuration as well as significant internal original features including ceilings, cornices, joinery, flooring and fireplaces should be retained and conserved. Any additions and alterations should be confined to the rear in areas of less significance, should not be visibly prominent and shall be in accordance with the relevant planning controls.

**Local heritage items: public housing, South Granville**

Each of the groups of public housing dwellings in Blaxcell Street, Chiswick Road, Clyde Street, Montgomery Avenue and Oakleigh Avenue, South Granville, is a heritage item under the Parramatta LEP 2011 (Schedule 5). The listing for the Montgomery Avenue group is extracted below.<sup>18</sup>

**Statement of significance:** The houses at 7-29 and 2-24 Montgomery Avenue are of significance for the local area for historical reasons, and as a representative example of Government provision of housing undertaken by the Housing Commission. This group of cottages was the first group development constructed by the newly formed Housing Commission in 1944. Combined with the houses in Blaxcell Street, Oakleigh Avenue and Chiswick Road, these houses show the standard of early Housing Commission development.

**Description**

Physical description: Centre of an estate of Housing Commission houses including both brick and fibro houses. No. 7-23, 2-18 Montgomery Street are all brick single storey houses with Marseilles tile roofs, brick entrance porches, and identical brick front fences. Numbers, 20, 22,24, and 27 and 29 are later dwellings but similar in scale and form and with similar fence detail. Fabric: Marseille tiled roof, glazed on stretcher bond brick walls. Roof Construction: A combination of styles including hip and gable roofs.



Chimneys: Tall brick chimneys with various patterned brick strap work with steps. Veranda: Porches only with decorative rounded brickwork. Veranda Decoration: Fence: Low brick stepped fence with brick coping and dentils below. Garden: Neat. Archt Style: A street of Housing Commission single-storey cottages. Front Door: Glazed five pane horizontal bars or timber flush. Other Features: Brick window boxes, specially moulded brickwork.

Physical condition and/or Archaeological potential: National Trust (Parramatta Branch): Good.

#### **Assessment of significance**

SHR Criteria a) [Historical significance]

This item historically significant.

SHR Criteria g) [Representativeness]

This item is representative.

#### **Local heritage item: the Erskineville Estate**

Public housing at Erskineville is part of the Erskineville Estate heritage conservation area under the Sydney LEP 2012 (Schedule 5).<sup>19</sup>

#### **Assessment of significance**

SHR Criteria a) [Historical significance]

Erskineville Park has local historic significance as a park dedicated in 1885 by the former Macdonaldtown Municipality and its part in the early history of Macdonaldtown/Erskineville.

The Erskineville Public Housing Scheme, built on the western end of the park, is significant as an early response to the Housing Improvement Act of 1936 and 1937. This development marked the return of the State Government into housing construction. The Lady Gowrie Child Centre which has close visual and historical connections with the Erskineville Scheme provides evidence of the attitudes towards the care of children in the inter-war period.

SHR Criteria b) [Associative significance]

The Erskineville Housing Scheme is associated with important architectural practitioners Louis Robertson & Son, Morton Herman and W.R. Richardson.

The Lady Gowrie Child Care Centre is associated with prominent architects, Fowell McConnel and Mansfield.

SHR Criteria c) [Aesthetic significance]

Erskineville Park has high local aesthetic significance as an active and passive open space in the area and is integral to the surrounding streetscape.

The clean simple lines of The Erskineville Public Housing Scheme reflect the austerity of the times and the influence of European functionalism on architecture of the Inter - war period.

SHR Criteria d) [Social significance]

Erskineville Park is of social significance for its role in providing active and passive recreation in the area, and also provides a civic focus.

The Erskineville Public Housing Scheme has provided alternative living options.

The Lady Gowrie Child Care Centre has continually served the community since 1940.

SHR Criteria f) [Rarity]

Erskineville Public Housing Scheme has rarity significance as an early model example of large scale public housing in an urban context that followed the Housing Improvement Act of 1936 and 1937.

The Lady Gowrie Child Centre remains as Sydney's example of the six centres built in the Australia's state capitals in the 1930s.

The tram shelter in Mitchell Road is a rare surviving structure associated with the former tramways in the area.

SHR Criteria g) [Representativeness]

Erskineville Park is representative of a municipal park dedicated in the 1880s, the western part of which was developed for the Erskineville Public Housing Scheme which is representative of public housing schemes of the 1930s - 1950s.

Integrity/Intactness:

The area generally has a high degree of integrity.

**Recommended management:**

1. Protection of Significance

(a) Subdivision- - Do not allow amalgamation of sites nor subdivision of Erskineville Estate

(b) Key Period Significant (Contributory) Development: Public Housing Scheme - Retain Public Housing Scheme - Retain Scale - Maintain building alignment - Retain form - Retain finishes and details Child Care Centre - Retain child care centre - Retain form and scale - Retain finishes and details Tram Shelter - Retain tram shelter Erskineville Park - Retain the open space - Retain and conserve the grand stand, and sandstone retaining walls - Retain and conserve former Tram Shelter on Mitchell Road

3. Enhance Significance of Area - Enhance vistas to Erskineville Park - Establish/maintain and enhance street planting to unify streetscape - Establish/maintain and enhance mature planting to Erskineville Estate - Interpret former Macdonaldtown Park - Reinstate street tree plantings - Prepare Conservation Management Plan for the Erskineville Estate - Prepare Plan of Management for Erskineville Park

4. FSR and Height Controls to reflect desired future character of area.

5. Potential Heritage Items: Consider Listing: - Erskineville Housing Scheme - Lady Gowrie Child Care Centre - Erskineville Oval - Former Tram Shelter on Mitchell Road

Local heritage conservation area: Woolloomooloo

Public housing at Woolloomooloo is part of the Woolloomooloo heritage conservation area under the Sydney LEP (2012) Schedule 5).<sup>20</sup>

**Assessment of significance**

SHR Criteria a) [Historical significance]

Woolloomooloo is one of the earliest residential districts of Sydney being first settled by John Palmer in 1793. The area grew rapidly after 1850. It is of historical importance in the growth of residential Sydney. Remnant warehouses and hotels provide evidence of the port activities particularly in the early 20th century with the reorganization of Cowper Wharf and the construction of the Finger Wharf

SHR Criteria b) [Associative significance]

Associated with a number of prominent architects including George Leslie Grant, Ernest Lindsay Thompson, Copeman and Lemont, Spain and Cosh, Wilshire and Hodges, and Samuel Lipson and Peter Kaad.

SHR Criteria c) [Aesthetic significance]

Significant for its historic terraces of a modest scale as well as its surviving hotels, most of which are architect designed, and early 20th century industrial buildings. The area now possesses a new coherent townscape based on the scale and form of the nineteenth century terrace.

SHR Criteria d) [Social significance]

The resistance of the community to redevelopment proposals in the 1960s and 1970s demonstrates the high regard for the area. Some sites have significance for identifiable groups including Plunkett Street Public School, St Columbkilie Church, Juanita Neilson Community Centre, Woolloomooloo Day Nursery and the existing hotels.

SHR Criteria f) [Rarity]

Modern social experiment. The scheme developed under the control of the Housing Commission of New South Wales and resulted from the unprecedented agreement between the Federal Government, the State Government and the Sydney City Council.

SHR Criteria g) [Representativeness]

Representative of a Victorian inner city suburb with later development overlays in the Federation and inter-war periods, as well as in the post - war period particularly with its 1970s public housing.

**Recommended management:**

POLICY RECOMMENDATIONS (Generic Conservation area policies) 1. Protection of Significance (a) Subdivision - Retain Victorian subdivision - Do not allow further amalgamation of sites (b) Key Period Significant (Contributory) Development: - Retain 1 Storey Workers Cottages - Retain 1-2 Storey Victorian / Federation terraces - Retain Victorian / Federation Public Buildings - Retain Victorian Federation / Inter-war Shops/Hotels - Retain small scale of early development - Maintain building alignment - Retain form - Retain finishes and details - Reinststate verandas, front fences, lost detail - Additions to rear not to exceed ridge height and retain original roof form - Discourage front dormers (c) Other Significant Development: - Retain Public Housing of the Post War period. - Retain intact industrial development pre 1940s - Do not exceed scale - Limit redevelopment to existing volume

2. Redevelopment of Non Contributing Sites - Encourage reinterpretation of Victorian Subdivision - Respect scale and form of significant development - Respect building line of significant development - Encourage rendered and painted finishes - Encourage contemporary detail - Provide landscape screening - Limit car parking access from street

3. Enhance Significance of Area - Retain residential usage - Maintain and enhance street planting to unify streetscape - Encourage render/paint finishes to detracting developments - Interpret Victorian street pattern and subdivision - Enhance vistas - Provide landscape screening to detracting sites.

## 3.2. How local statutory heritage protection works

Local statutory heritage protection works through the planning system, and in particular the development consent process. As such, it works where a person proposes to do something that may affect an item; by itself, it does not require a person to do anything with respect to a heritage item. It imposes no positive obligations to maintain, repair or restore items.

As well as providing for a local heritage register at Schedule 5, the standard LEP includes provisions for 'heritage conservation' at clause 5.10. This clause provides that development consent is required for:

- demolishing, moving or altering the exterior of a heritage item or a building, work, relic or tree within a heritage conservation area;
- altering a heritage item by making structural changes to its interior, or by making (non-structural) changes to anything inside the item that is specified in its listing on the local heritage register;
- erecting a building on, or subdividing, land on which a heritage item is located, or that is within a heritage conservation area (clause 5.10(2)).<sup>21</sup>

Where it receives an application for these sorts of development, the consent authority must consider the effect of the proposed development on the heritage significance of the item or area (clause 5.10(4)). To that end, it may require, as part of the development application process, the preparation of a 'heritage management document' or 'heritage impact statement' that assesses the heritage impact of the proposed development (clause 5.10(5)). It may also require the preparation of a 'heritage conservation management plan' for a heritage item. The consent authority will also consider other factors, including the council's Development Control Plan and other policies (see, for example, the 'recommended management' provisions in the extracts, above), any other submissions received in relation to the development application, and 'the public interest' (EPA Act, section 79C). It may then give consent, with or without conditions, or refuse consent to the proposed development (EPA Act, section 80).

That's how the standard LEP and the planning system deals with heritage protection *generally*; then there are the exceptions and special provisions.

### 3.2.1. Exempt development and heritage

The standard LEP provides that development consent is not required if the development is 'exempt development' (clause 5.10(3)(d)). As discussed above at 2.2, the ARHSEPP provides that LAHC can carry out, as exempt development, repairs and maintenance, non-structural renovations and alterations, and gardening and landscaping (clause 41) – including in relation to heritage items and properties in heritage conservation areas. It can also erect buildings of not more than 20 dwellings, and not more than 8.5 metres in height, without consent – including on land listed as a heritage item, or in a heritage conservation area, on a local heritage register – provided LAHC notifies the council and others and considers any responses made (ARHSEPP, clause 40). LAHC cannot, however, carry out a demolition as exempt development – this provision of the ARHSEPP does not apply where the development relates to a heritage item or a property in a heritage conservation area (ARHSEPP, clause 40).

The Exempt and Complying Development Codes SEPP also makes provision for exempt

development by property owners generally (not just LAHC), but its provisions are, in most respects, narrower than those applying to LAHC under the ARHSEPP. These provisions will be relevant, however, to other social housing landlords dealing with non-LAHC properties.

The Exempt and Complying Development Codes SEPP makes a wide range of activities ‘exempt development’, but not all of them can be carried out as exempt development where they relate to a heritage item or a property in a heritage conservation area.<sup>22</sup> Of those that can be, there are numerous qualifications and conditions that apply. Table 3.1. summarizes the provisions for exempt development in relation to heritage items and properties in heritage conservation areas.

Table 3.1. Exempt development and heritage

<b>Type of development</b>	<b>May be exempt development in relation to...</b>	<b>Conditions for exempt development</b>
Access ramps	Heritage items and heritage conservation areas (HCAs)	If in rear yard
Aerials and antennae	HCAs	None
Air-conditioning units	Heritage items and HCAs	<i>Heritage items</i> – if not wall-mounted <i>HCAs</i> – if in rear yard
Animal shelters	Heritage items and HCAs	If in rear yard
Balconies, decks and verandas	HCAs	If behind the building line of any road frontage
Cabanas, garden sheds	HCAs	If in rear yard
Carports	HCAs	If in rear yard
Clothes lines	Heritage items and HCAs	If in rear yard
Communications dishes	HCAs	If in rear yard and not visible from a public road
Earthworks and retaining walls	HCAs	If in rear yard
Emergency work and temporary repairs (state of emergency)	Heritage items and HCAs	None
Evaporative cooling units	HCAs	If in rear yard and not visible from a public road
Fences (non-rural, behind the building line)	HCAs	None
Flagpoles	Heritage items and HCAs	None

Garbage bin storage enclosure	Heritage items and HCAs	If in rear yard
Home businesses	Heritage items and HCAs	None
Home-based child care	Heritage items and HCAs	None
Hot-water systems	Heritage items and HCAs	<i>If external</i> – in rear yard, and not on roof
Landscaping	HCAs	If in rear yard
Letterboxes	HCAs	None
Maintenance of buildings in draft HCAs	Draft HCAs	If development will reproduce the existing materials, finish and design of the building so as not to alter its appearance
Minor building alterations (internal)	HCAs	None
Pathways and paving	Heritage items and HCAs	None
Playground equipment	Heritage items and HCAs	None
Portable swimming pools and barriers	HCAs	None
Privacy screens	Heritage items and HCAs	None
Rainwater tanks	Heritage items and HCAs	<i>Heritage items and draft heritage items</i> – if in rear yard
Screen enclosures (of balconies, etc.)	HCAs	If not attached to any balcony, etc., that faces any road
Shade structures	Heritage items and HCAs	If in rear yard
Skylights	HCAs	If not visible from any road frontage
Water features	HCAs	If in rear yard

The standard LEP also provides that development consent is not required if the consent authority is satisfied that a development is ‘of a minor nature’ or ‘for the maintenance of’ a heritage item or building in a heritage conservation area (clause 5.10(3)). In these cases, the person proposing the development need only notify the consent authority of what they propose to do, and if the consent authority is satisfied they do not need to go through the formal development application process. Again, in the case of LAHC, it does not need to rely on this provision, because it can carry these activities out as exempt development under the ARHSEPP.

### 3.2.2. Other special provisions

Where LAHC proposes a development that goes beyond what can be carried out as exempt

development, it will have to make a development application, but those special provisions discussed at 2.3 will be relevant. In particular, a LAHC development, being 'Crown development', cannot be refused consent or given conditional consent by the consent authority except where the Planning Minister agrees with the refusal or conditional consent. Also, depending on the value of the development, the consent authority may be a regional planning panel rather than the local council. In some specific sites, the development may be a state significant development, in which case the consent authority will be the Planning Minister and the proposed development and its effect on local heritage will be considered according to the specific process for state significant development.

### **3.3. Support for local heritage**

Local councils may provide small grants to assist owners of heritage items conserve and restore their properties. They are usually awarded on a dollar-for-dollar basis.

Local councils also often retain a heritage advisor who can provide information and advice to heritage property owners.

### **3.4. Summary**

Where a social housing property is listed on a local heritage register as a heritage item, or is located within a heritage conservation area, the legal implications for social housing asset management are limited, and will not affect many asset management activities at all.

Neither type of listing imposes any restriction on the disposal of a property, nor any additional obligations to repair and maintain the property.

LAHC in particular can conduct repairs and maintenance, non-structural alterations, gardening and landscaping without going through the process of applying for development consent, or even notifying the consent authority (as is usually required in the case of 'minor' development) – although, as a matter of practice, rather than strict legal requirement, LAHC will usually liaise with the local council.

On the other hand, where it proposes to make structural alterations, or demolish a building, LAHC will have to apply for development consent, and this process will include an opportunity for submissions from the public and consideration of heritage impacts by the consent authority. As Crown development, the consent authority cannot refuse or impose conditions without the permission of the Planning Minister.

In certain cases (in particular, a renewal project that provides 'affordable housing'), the consent authority may be a joint regional planning panel; in certain other cases, depending on its site and capital investment value, a renewal project may be state significant development and have to proceed by that specific process.

## 4. The Heritage Act and the State Heritage Register

The Heritage Act establishes the statutory regime of protection for things of 'state heritage significance', as listed on the State Heritage Register. The Heritage Act also provides for interim protection for heritage items that have yet to be registered, and establishes the Heritage Council, which performs a number of functions under the Act.

### 4.1. The State Heritage Register

A 'place, building, work, relic, moveable object or precinct' may be listed on the State Heritage Register if it is of 'state heritage significance' (section 31(1)). Listings are made by the Minister for Heritage, on the recommendation of the Heritage Council.

'State heritage significance' means 'significance to the state in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item', and is distinguished from 'local heritage significance' (section 4A). The Heritage Council has set seven criteria of state heritage significance, which parallel those for local heritage significance discussed at 3.1. An item must satisfy at least one criterion to be considered significant.<sup>23</sup> The criteria are:

- a) an item is important in the course, or pattern, of NSW's cultural or natural history;
- b) an item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history;
- c) an item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW;
- d) an item has strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons;
- e) an item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history;
- f) an item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history;
- g) an item is important in demonstrating the principal characteristics of a class of New South Wales's cultural or natural places; or New South Wales's cultural or natural environments.<sup>24</sup>

The Heritage Act provides further criteria that the Heritage Council may consider (section 33(4)):

- a) whether long-term conservation of the item is necessary;
- b) whether the listing would render the item incapable of reasonable or economic use;
- c) whether the listing would cause undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated.

The Minister for Heritage also considers these criteria when deciding whether to list an item on the State Heritage Register (section 32(1)).

The Heritage Council makes its recommendations following a process of notification and consideration of submissions from certain relevant parties (section 33(1) and (2)). Items may



be considered by the Heritage Council at the request of the Minister for Heritage, the owner of the item, the local council in which the item is located, and at the Heritage Council's own initiative (section 32(2)) – and the Heritage Council takes suggestions from the general public. It may also be informed by government instrumentalities, particularly through their heritage and conservation registers.

There are numerous social housing properties listed on the State Heritage Register – all of them in and around Millers Point in central Sydney.<sup>25</sup> These properties are subject to two group listings, and numerous individual listings, on the State Heritage Register. The 'Millers Point and Dawes Point Village Precinct' listing covers all properties in Millers Point and Dawes Point; the 'Millers Point Conservation Area' covers all LAHC properties in Millers Point and Dawes Point; and the majority of the 101 individual listings in the area relate to LAHC properties.

State heritage item: Millers Point Conservation Area<sup>26</sup>

### **Statement of significance**

Millers Point Conservation Area is an intact residential and maritime precinct of outstanding state and national significance. It contains buildings and civic spaces dating from the 1830s and is an important example of nineteenth and early twentieth century adaptation of the landscape. The precinct has changed little since the 1930s.

### **Description**

Physical description: An integrated port town developed between the 1810s and the 1930s and little changed since then; considered remarkable for its completeness and intactness. Its components include deep-sea wharves and associated infrastructure, bond and free stores, roadways and accessways, public housing built for port workers, former private merchant housing, hotels and shops, schools, churches, post office and community facilities.

Further information: All individual listings for Millers Point are an integral part of the whole precinct and are of the same level of state significance as the precinct. The area is generally in State Government ownership and most individual items are identified in s170 registers of owning authorities (mainly Department of Housing). All items sold to private ownership are protected by SHR listings; however, recent practice has been to retain state ownership and sell leasehold only. Millers Point area endorsed as an item of state and national significance by the Heritage Council on 15 December 1988.

### **Assessment of significance**

SHR Criteria a) [Historical significance]

1.1 Miller's Point provides a geographically encapsulated portrayal of the evolution of Australian urban life prior to the mid twentieth century.

1.2 It demonstrates a complex layering of activities and events, ranging from early colonial merchant and official enterprise to twentieth century corporate port town and setting for social planning.

1.3 Its demonstrative capacity is heightened by the completeness and originality of its fabric which represents particularly strongly every decade between 1820 and 1930 and by the experiences and memory of its long term community.

1.4 Its public housing and its development into a Government corporate town were probably the first such developments in Australia (apart from first settlement) and may be of international significance.

SHR Criteria d) [Social significance]

3.1 It is occupied in part by descendants of its earlier communities and retains a strong community spirit.

SHR Criteria e) [Research potential]

4.1 Its long term residents provide a rich resource of oral evidence contributing to an understanding of the history of the place and the Sydney waterfront.

4.2 Its layered fabric, both in terms of structures and archaeology, has had relatively little disturbance since intervention by the Sydney Harbour Trust and has the potential to provide valuable evidence about the place and its community.

SHR Criteria f) [Rarity]

6.1 Its unity, authenticity of fabric and community, and complexity of significant activities and events make it probably the rarest and most significant historic urban place in Australia.

Integrity/Intactness: A complete government port town remarkable for its intactness. Very good condition.

State heritage item: Linsley Terrace, 25-35 Lower Fort Street<sup>27</sup>

#### **Statement of significance**

This group of terraces is historically significant as:

- the oldest extant terrace in Millers Point;
- an example of investment in residential property in Lower Fort Street during the early 1830s by a local publican for rent and as his own residence;
- its site and buildings were associated from the early 1820s with some of the earliest wharfage (early 1820s) at Millers Point owned by early merchants William Brown, T G Pittman and John Lamb;
- part of the historic building stock associated with the local community;
- it has the potential to contribute to an understanding of several phases of the development of Millers Point.

It has high aesthetic significance as:

- an example of early Victorian terraces.
- as a streetscape element, being part of the extraordinary collection of 19th century housing forms that make up the western side of Lower Fort Street.

This property is a group of two storey early nineteenth century terraces.

State heritage item: Stone Cottage and Wall, 14-16 Merriman Street<sup>28</sup>

#### **Statement of significance:**

Merriman Street contains housing groups of the utmost historical importance. This stone cottage was possibly a residence for the supervisor of the A. A. Co. Wharf.

#### **Description**

Georgian, two bedroom, stone cottage, single storey with gable ends. Corrugated iron verandah with timber posts. Storeys: 1 Construction: Painted stone, face to gable ends. Corrugated galvanised iron roof. Painted timber joinery. Style: Georgian.

### **Historical notes**

Merriman Street contains a substantial collection of Georgian style houses and terraces. This cottage was built circa 1840.

State heritage item: Flats, 2-4 Trinity Avenue<sup>29</sup>

### **Statement of significance**

This block is one of a group of three storey apartment blocks built circa 1910 which is a fine example of post-plague workers' housing.

### **Description**

Two bedroom unit in a block of three storey face brick c.1910 apartments with restrained detailing. Storeys: 3 Construction: Face brick, corrugated iron roof and timber bracketed sun hoods. Cast iron balconies. Painted timber windows. Style: Federation Arts and Crafts.

## **4.2. How state statutory heritage protection works**

State heritage items are protected through the planning system and through additional protections in the Heritage Act. Unlike the protections of the planning system, the additional protections of the Heritage Act include a positive obligation to maintain and repair items, to prescribed minimum standards.

### **4.2.1. State heritage items and the planning system**

As discussed at 3.2 above, the planning system protects heritage through the general requirement that proposed activities that change a property go through the development application process. Also as discussed, there are some exceptions to this general requirement – in particular, where the activity can be carried out as exempt development.

In relation to items listed on the State Heritage Register, no development can be carried out as exempt development under the Exempt and Complying Development Codes SEPP (clause 1.16(1)(d)). This means developments proposed in relation to items on the State Heritage Register receive the scrutiny of a consent authority, either through the development application process or, where the development is minor maintenance (per clause 5.10(3) of the Standard LEP), through being notified to the consent authority.

However, exempt development under the ARHSEPP (except demolition) can be carried out in relation to state heritage items. This means LAHC can carry out repairs and maintenance, non-structural renovations and alterations, and gardening and landscaping (clause 41), and certain small-scale residential construction (clause 40) without going through the development application process.

### **4.2.2. Minimum standards**

The Heritage Act's own regime of protections includes a positive obligation to maintain and

repair heritage items to prescribed minimum standards (section 118).<sup>30</sup> Owners who fail to comply with the minimum standards may be ordered by the Heritage Council to do, or refrain from doing, specific things to ensure that the item is maintained and repair to the standards (section 120); they may also be prosecuted (section 119).

The minimum standards are just that: minimal. Their purpose is to protect state heritage items from damage or deterioration – sometimes known as ‘demolition by neglect’ – and do not require the carrying out of restoration work. For example, the minimum standard for weather protection requires that roofs, walls, doors, windows, flashings, damp courses and drainage systems, if present, be ‘maintained and repaired (including by being cleaned and secured) to the standard necessary to ensure a reasonable level of protection for the building... against damage or deterioration due to weather’ (Heritage Regulation, clause 10). The minimum standards for fire protection (clause 11), security (clause 13) and essential repairs and maintenance (clause 15) are similarly stated.

#### **4.2.3. Prohibited and approved activities**

Secondly, the Heritage Act prohibits the demolition, damage, alteration or carrying out of development in relation to state heritage items, except where the activity is approved by Heritage Council (section 57). The Heritage Council can order a stop to unapproved activity (section 76); a person carrying out unapproved activity can also be prosecuted (section 156).

The process for applications for approval involves public notification of any proposed activity that would materially affect the significance of the item, and an opportunity for public submissions (section 61), and the Heritage Council is required to consider the extent of the effect on heritage significance, and any submissions, in determining the application (section 62). A high threshold is set for applications that involve the demolition of the whole of an item: these will be refused, except where the item poses a danger to occupiers or the public, or where it can (as a condition of approval) be relocated, or where it is part of a listed precinct (and not listed in its own right), and demolition will not be materially detrimental to the significance of the precinct (section 63).

Some activities, however, are exempt from the approval process. The Heritage Act allows the Minister to grant exemptions by order, including on the basis of a specified site, or a specified agency, or specified types of activities (section 57(2)). The following activities are ‘standard exemptions’, per the ‘schedule of standard exemptions’ made by ministerial order:

- Maintenance and cleaning;
- Repairs;
- Painting;
- Development endorsed by the Heritage Council (in particular, minor development specifically identified in a ‘conservation management plan’)<sup>31</sup>;
- ‘Minor activities with little or no adverse impact on heritage significance’;
- Change of use;
- Landscape maintenance;
- Compliance with minimum standards and orders under the Heritage Act.

The schedule of standard exemptions sets out detailed conditions and guidelines that must be followed if the activity is to be carried out as a standard exemption and, in most cases, also

require that the owner first notify a senior officer of the Heritage Branch and satisfy them that the work will be carried out in an appropriate way. (This is less onerous than the process for approval under section 60). So, for example, painting can be done as a standard exemption, provided it does not disturb earlier paint layers and employs the same colour scheme and paint types; it can also be done as a standard exemption using a different scheme, but the owner must first discuss the proposed colour scheme, paint type and preparation methods with the Heritage Branch.

#### **4.2.3. Consent and approval processes**

Generally speaking, activities that require the Heritage Council's approval per section 60 will also be 'development' for the purposes of the planning system. In most cases, the processes for seeking the Heritage Council's approval and development consent are integrated.

Under the 'integrated development' provisions of the EPA Act, the consent authority considering the development application will contact the Heritage Council to see if it would propose to give approval and, if so, what would be the general terms of the approval (section 91A(2)). Where the Heritage Council proposes to refuse approval, the consent authority must also refuse development consent (section 91A(4)). On the other hand, where the Heritage Council proposes to give approval, the consent authority cannot refuse development consent on heritage grounds (section 92(2); though it may refuse on other grounds; and any development consent given must be consistent with the general terms of approval indicated by the Heritage Council (section 91A(3)). Once the integrated development has development consent, the applicant can apply for Heritage Council approval under section 60 of the Heritage Act (which should be straightforward, as the general terms of approval will indicate what the applicant needs to do to get approval).

The integrated development process does not apply in all cases. As previously discussed, many LAHC developments are exempt development under the ARHSEPP and do not need to go through the development consent process. These developments are still subject to section 57 of the Heritage Act and, provided they do not fit one of the standard exemptions or other exemptions per section 57(2), would still have to go to the Heritage Council for approval per section 60.

Secondly, development that is a state significant development does not go through the integrated development process, nor the section 60 approval process. Considerations of heritage significance, and any conditions of approval, are part of the process for state significant development, discussed briefly at 2.2 above.

The need for Heritage Council approval of activities may also be addressed in a 'conservation management plan', which documents a strategy for the long-term management of a heritage item.<sup>32</sup> The Heritage Act does not generally require the preparation of conservation management plans, but the Heritage Council does encourage their use, and may give its endorsement to a conservation management plan (section 39A). In terms of the approval process, a conservation management plan may serve several purposes: specifying minor development per the standard exemption; providing support for an application for approval per section 60; or providing support for the formulation by the Heritage Council of site specific exemptions. More generally, a conservation management plan also serves the purpose of fostering heritage protection as a matter of ongoing practice, particularly guided by the best

practice principles of the Burra Charter.

#### **4.2.4. Interim heritage orders**

The Heritage Act provides for interim heritage orders, which protect items that may have state or local heritage significance, but which have yet to be placed on a register. For most purposes, an interim heritage order gives an item the same protections as an item on the State Heritage Register (section 57).

Interim heritage orders are made by the Minister for Heritage, with advice from the Heritage Council (section 24); they may also be made by local councils, where this power has been delegated by the Minister and the item is of potential local significance (section 25). An interim heritage order operates for up to 12 months, during which time its heritage significance is assessed and a decision is made as to whether to list it permanently on a register.

Currently there are no social housing properties subject to interim heritage orders.<sup>33</sup>

#### **4.2.5. Enforcement**

As noted above, the protections of the Heritage Act can be enforced by Heritage Council orders to comply with the minimum standards, or to stop unapproved activities, and by criminal prosecution. They can also be enforced by individual members of the public. Any person may apply to the Land and Environment Court for an order to remedy or restrain a breach of the Heritage Act (section 153; also *Land and Environment Court Act 1979* (NSW), section 20(1)(a)).

### **4.3. Financial support for state heritage**

The NSW Office of Environment and Heritage operates the 'NSW Heritage Grants Program: Works Projects – Residential or Commercial', which assists owners and managers of items of state heritage significance to conserve and restore their properties. Significantly for social housing, state government agencies – such as LAHC – are not eligible for a grant, but may be involved as a project partner. Funds of between \$12,500 and \$75,000 are provided on a dollar-for-dollar to successful applicants.

### **4.4. Summary**

Where a social housing property is listed on the State Heritage Register, the legal implications for social housing asset management are more significant than those of listing on a local heritage register, but they still allow considerable latitude in asset management decisions and activities.

Listing on the State Heritage Register does impose an additional obligation to repair and maintain the property according to certain minimum standards. This obligation may be enforced by order of the Heritage Council or, on application by any person, by order of the Land and Environment Court. The minimum standards, however, do not require the restoration of the property, or any work beyond what is necessary to prevent deterioration or damage. Nor does the listing restrict disposal of the property.

LAHC in particular can conduct repairs and maintenance, non-structural alterations, gardening and landscaping without going through the process of applying for development consent, which ordinarily applies to state heritage properties. In some cases, depending on the work, LAHC may have to apply to the Heritage Council for its approval; but in other cases, the work may be exempt from the approval requirement and can be done after less formal discussions with Heritage Branch, or without any notification at all.

Where LAHC proposes to make structural alterations to a building or demolish a building, it will have to apply for development consent and Heritage Council approval, under the provisions for integrated development (if not state significant development). This process will include an opportunity for submissions from the public and consideration of heritage impacts, primarily by the Heritage Council, which will indicate general terms of approval, or refuse approval. The Heritage Council will not approve the demolition of a state heritage building, except in limited circumstances.

Perhaps just as significant as the legal implications of the listing of a heritage item is a practical implication. That is, the implication, through practices of documentation and plan-making incidentally required by the Heritage Act and, to a lesser extent, the EPA Act, of the item's ongoing management within a non-statutory regime of best practice, particularly as set out by the Burra Charter. In the case of LAHC, this practical regime receives additional impetus from directions in statute and policy for heritage management by state government instrumentalities, and from its own corporate form.

## **5. Heritage practice**

This Part of the Brief considers the way in which heritage is protected by what might be called a regime of practice, as distinct from a statutory regime, set out in state government policy and in the Burra Charter's statement of heritage management principles and best practice.

### **5.1. Section 170 registers and the State Agency Heritage Guide**

Apart from establishing the State Heritage Register, the Heritage Act also requires government instrumentalities, including the LAHC, to establish and keep their own Heritage and Conservation Registers (section 170). As already noted, LAHC's section 170 register comprises 3,380 items – almost all of them representing social housing properties – being items that are listed on a local heritage register, or the State Heritage Register, or that LAHC itself has identified as being of heritage significance.<sup>34</sup>

Section 170 of the Heritage Act does not set out a separate statutory regime, like that of the EPA Act or the rest of the Heritage Act, for the protection for items listed on section 170 registers. Aside from the establishment of registers, section 170 provides for two requirements: that a state government instrumentality notify the Heritage Council before disposing of any item on its register (section 170A(1)); and that items on section 170 registers be maintained and managed in accordance with 'State Owned Heritage Management Principles' approved by the Minister for Heritage and with the 'heritage asset management guidelines' issued by the Heritage Council

(section 170A(2) and (3)). Both the principles and the guidelines are published in the 'State Agency Heritage Guide' (2004).<sup>35</sup>

The guide is the basis for a strong practical regime of heritage protection by state government instrumentalities/agencies. Amongst other things, the guide directs state agencies to:

- 'lead by example' and 'set the standard for the community' in the management of heritage assets (principle 3);
- integrate heritage management with their total asset management (guidelines – introduction);
- adopt the Burra Charter to guide heritage management decisions (guideline 2.2); and
- consider the state agency's own history, and that of the community it serves, and manage and keep sufficient heritage assets to reveal and interpret that history (guideline 2.3).

The guide also particularly directs government instrumentalities to aim to make conservation management plans for all state heritage significant properties (guideline 3.7), particularly where they propose to conduct work on, or dispose of, a property.

LAHC's section 170 register, therefore, is more than a mere record of properties subject to statutory heritage protections imposed from outside LAHC. It is a record of, and a working element in, LAHC's own heritage-conscious approach to asset management. The following extracts from the register – all referring to LAHC properties in Chippendale in inner Sydney – indicate this heritage-consciousness and its practical application, by identifying varying degrees of heritage significance in the properties and noting directions for appropriately managing heritage significance in future maintenance and other work.<sup>36</sup> Notably, only one of these properties is a heritage item on another statutory register (a local register, not the State Heritage Register), and two of the properties are regarded as detracting from the heritage significance of the wider place.

#### Property 1 — the Strickland Building

**Statement of significance:** Extensive Federation style public housing development fronting Balfour St, Meagher St and Dale Ave. Significance is not only derived from the strong expression of Federation Arts and Crafts style but also more subtly from the variations in the detailed treatment of balconies, parapets, entry doors and plan forms which succeed in avoiding the repetitious institutional appearance which is traditionally associated with public housing developments. This may be the first multi-unit public housing development in NSW.

**Year started:** 1914. **Year completed:** 1914

**Modification dates:** External: minor, window security grilles and adaptations by tenants.

**Recommended management:** High order of architectural and townscape significance. Care required in carrying out any work internally or externally. Refer to DOH Heritage Management Guidelines before carrying out maintenance, upgrading or refurbishment, which must be in context. Seek advice from a heritage architect, and liaise with LGA planners before carrying out any work.



Property 2 — a warehouse

**Statement of significance:** Large, corner warehouse structure constructed c1910 and built flush to the footpath edge. Contributing to the varied streetscape.

**Historical notes or provenance:** Substantial two storey corner warehouse building constructed with arch head windows and door openings and timber double hung windows. First tenanted by Department of Housing in 1991. Site is earmarked for redevelopment.

**Year started:** 1910. **Year completed:** 1910

**Physical description:** Substantial two storey brick warehouse built c1910. Large flat arched openings mark the simple bulky form. Storeys: 2. Construction: load bearing brick, timber floors and roof framing. Style: Federation warehouse.

**Modification dates:** External: ground floor doors and some fenestration modernised.

**Recommended management:** Of quality streetscape value. Refer to Department of Housing Heritage Asset Management Guidelines before carrying out maintenance, upgrading or refurbishment, which must be in context. Seek advice from a heritage architect, and liaise with LGA planners before carrying out any work.

Property 3 — a hostel

**Statement of significance:** Two storey early twentieth century warehouse style structure with parapet wall, built flush to the footpath edge. Contributing as a streetscape element and as an example of adaptive re-use of a warehouse for social housing.

**Historical notes or provenance:** Two storey former warehouse building exhibiting simple, symmetrical façade treatment. Of streetscape value. First tenanted by Department of Housing in 1992.

**Year started:** 1900. **Year completed:** 1900

**Physical description:** Two storey former warehouse altered to provide housing. It is simple in form, being a bulky building with no setbacks at front or side and simple symmetrical openings. This hostel has five bedrooms. Storeys: 2. Construction: load bearing brick, timber floors and roof framing. Style: Federation warehouse.

**Modification dates:** External: security grills to ground floor windows.

**Recommended management:** Of streetscape value. Refer to Department of Housing Heritage Asset Management Guidelines before carrying out maintenance, upgrading or refurbishment, which must be in context. Seek advice from a heritage architect, and liaise with LGA planners before carrying out any work.

Properties 4 and 5 — residences

[The content of the listing for each of these adjoining buildings is identical]

**Statement of significance:** Three storey modern walk-up development with ground level entry and garages. This building detracts from the heritage intactness of the area.

**Historical notes or provenance:** Of no historic conservation or streetscape value. This property offers an opportunity to provide, through development, a positive streetscape contribution. First tenanted by Department of Housing in 1984.

**Year started:** 1980. **Year completed:** 1980

**Physical description:** Three level modern 'out of context' terrace which intrudes in its heritage surrounds. This residence has three bedrooms. Storeys: 3. Construction: load bearing brick, concrete floors and timber frame roofing.

**Recommended management:** No conservation requirements. This property requires a 'redesign' in order that it fits its context more positively. Consult a heritage qualified architect before any future works are carried out.

## 5.2. The Burra Charter

The Burra Charter has already been introduced and referred to at a number of points in this Brief. It is reproduced in full as an Appendix. The stated intention of the Charter is to set 'a standard of practice for those who provide advice, make decisions about, or undertake works to places of cultural significance, including owners, managers and custodians.' As such, it informs heritage practice at numerous points in the operations of the statutory regimes for heritage protection: the identification of heritage significance; the drafting of development consent or approval applications, heritage impact statements and conservation management plans; the making of decisions as to whether to give development consent or approval, and on what terms. It also informs heritage practice outside those regimes, such as in LAHC's social housing asset management generally.

The charter does not prescribe specific outcomes for given problems in heritage management; instead, it sets out an orderly process for considering heritage problems according to certain principles. One heritage practitioner describes the charter basically as 'a guide to clear thinking'.<sup>37</sup>

The Burra Charter process is an iterative one, in which 'understanding cultural significance comes first, then development of policy and finally management of the place in accordance with the policy' (Article 6.1), with management, policy and understanding of significance all subject to regular review and revision as necessary. The charter emphasises the need at each stage of the process for documentation, and participation by groups and individuals with associations with the protected item, and persons with appropriate skills and knowledge (Articles 26, 30 and 31).

The principles of the charter are numerous. Above all, the charter 'advocates a cautious approach to change: do as much as necessary to care for the place and to make it useable, but otherwise change it as little as possible so that its cultural significance is retained' (Preamble).

This is an important principle to put into the balance against the assumption that heritage protection is costly. There is a basis for this assumption. Old fabrics tended to be complex to work with, and the specialist skills that sound heritage management requires may be in short supply and hence costly. But as observed elsewhere in the charter, 'the best conservation often

involves the least work and can be inexpensive' (explanatory note to Article 34). The frugality generally associated with social housing asset management may be compatible with a cautious, genuinely conservative approach to heritage management.

### **5.3. Social housing as heritage protection**

Prior to the establishment of our present legal regimes for heritage protection, there were instances in which social housing itself was used as a means of protecting heritage under threat. In particular, the acquisition of what are now LAHC social housing properties in the Bishopthorpe Estate at Glebe, and in Woolloomooloo, was at least partly motivated by the need to protect their heritage significance.

Considering the constraints under which the New South Wales social housing system now operates, the prospect of further acquisitions for the purpose of heritage protection seems unlikely. But ownership and use of heritage properties as social housing should be considered as a means of heritage protection, and LAHC in particular should be regarded as well-placed to conduct social housing asset management as heritage management in accordance with the principles of the Burra Charter.

LAHC should also be funded specifically to do so – and it is entitled to some special pleading in this regard. The heritage significance of numerous social housing properties listed on the State Heritage Register and local heritage registers relates specifically to their history and use as social housing; and the State Agency Heritage Guide further directs LAHC to keep a portfolio of heritage properties that 'reveals and interprets' the history of social housing provision and social housing communities. To retain the heritage significance of these properties, their specific use as social housing must be retained, and as such they can only generate submarket rents - (whereas if adaptation to another use were allowable, a higher rent would be generated and hence more funds be made available for heritage management). At least some portion of this gap should be funded from other than the social housing budget, in support of the retention and maintenance of social housing of heritage significance.

## **6. Other heritage registers**

This final Part of the Brief briefly notes the various other statutory and non-statutory heritage registers that operate in New South Wales. The purpose is to complete the picture of the heritage registers that may be relevant to the protection of social housing of heritage significance.

### **6.1. Other statutory heritage registers**

Apart from local heritage registers and the State Heritage Register, and their respective legal regimes, a number of other legal regimes for heritage protection operate in New South Wales, under state, Commonwealth and international law.

### 6.1.1. Aboriginal heritage

Heritage items that are particularly significant to Aboriginal persons may be protected by inclusion on local heritage registers, the State Heritage Register<sup>38</sup>, or under the separate statutory regime for the protection of Aboriginal heritage established by the *National Parks and Wildlife Act 1974* (NSW) (the NPW Act).

The heritage protections of the NPW Act apply automatically to 'Aboriginal objects' (as defined by the Act), and to declared 'Aboriginal places'. These are places of 'special significance with respect to Aboriginal culture' and are declared by the Minister for the Environment (section 84), who is advised by an Aboriginal Cultural Heritage Advisory Committee.

NSW Environment and Heritage maintains an online 'NSW Atlas of Aboriginal Places'.<sup>39</sup> There are currently 80 declared Aboriginal places: none include any social housing. Most Aboriginal places are sacred sites, but over the past decade more diverse places have been declared, particularly with a contemporary significance: camps, former reserves and mission buildings. There appears to be no statutory reason why a social housing building or estate could not be an Aboriginal place under the NPW Act.

It is an offence to 'harm or desecrate' an Aboriginal place (section 86(4)), with some exceptions: in particular, where there is an Aboriginal heritage impact permit (NPW Act, Part 6 Division 2) or where 'due diligence' has been exercised in accordance with the prescribed code of practice.<sup>40</sup>

### 6.1.2. The Commonwealth Government's heritage registers

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the EPBC Act) establishes two Commonwealth Government-level heritage registers – the National Heritage List and the Commonwealth Heritage List – and protects Australian items on the World Heritage List.

The National Heritage List comprises items that have 'outstanding heritage value to the nation', as determined by the Federal Minister for the Environment and Heritage, on the advice of the Australian Heritage Council (section 324C).<sup>41</sup> There are 116 items currently on the National Heritage List; none include any social housing. There is no statutory reason a social housing building or estate could not be listed, though the threshold for listing – 'outstanding' value – is high. It may be noted that the State Heritage Register's entry for the Millers Point Conservation Area states that the area is of 'outstanding state and national significance'.

A person must not take an action that has, will have, or is likely to have a significant impact on the heritage values of a listed National Heritage place without approval (section 15B) ([www.edo.org.au/edonsw/site/factsh/fs03\\_1.php](http://www.edo.org.au/edonsw/site/factsh/fs03_1.php)).

The Commonwealth Heritage List comprises items that have 'significant heritage values', as determined by the Minister on the advice of the Australian Heritage Council, and that are in 'Commonwealth areas' (land owned or leased by the Commonwealth or in certain Commonwealth territories: section 525). Because no social housing in New South Wales is in a Commonwealth area, it cannot be listed on the Commonwealth Heritage List.<sup>42</sup>

### **6.1.3. World Heritage List**

The principal piece of international law for heritage protection is the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage ('World Heritage Convention'), which establishes the World Heritage List. The Convention requires states parties to identify and nominate for registration items of heritage of 'outstanding, universal value' and protect them under their domestic laws. The World Heritage List is maintained by the United Nations Educational, Scientific and Cultural Organization (UNESCO). In Australia, world heritage items are protected by the EPBC Act.

None of the 19 Australian items on the World Heritage List includes any social housing. There is currently one item of social housing on the World Heritage List: the Berlin Modernism Housing Estates, which are six housing estates built by German housing cooperatives and non-profit organizations in the period 1910–1933.<sup>43</sup>

The State Heritage Register's entry for the Millers Point Conservation Area states that the area's 'public housing and its development into a Government corporate town were probably the first such developments in Australia (apart from first settlement) and may be of international significance.'

## **6.2. Non-statutory heritage registers**

A number non-statutory heritage regimes operate in New South Wales. The following are the most relevant to social housing. They aim to protect heritage by raising awareness and informing opinion, and may be influential in decisions to list items on statutory registers.

### **6.2.1. National Trust**

The National Trust (NSW) is a community-based, nongovernment, nonprofit organization committed to promoting and preserving the heritage of New South Wales. There is a National Trust in each Australian state and territory, and each elects representatives to the Australian Council of National Trusts. The National Trust (NSW) was the first to be established, in 1945 in Sydney.<sup>44</sup>

The National Trust (NSW) maintains its own register. Established in 1949, the National Trust Register currently lists about 12,000 items, being 'landscapes, townscapes, buildings, industrial sites, cemeteries and other items or places which the Trust determines have cultural significance and are worth of conservation.'<sup>45</sup>

Prior to the establishment of our present legal regimes for heritage protection, the National Trust Register was influential in raising public awareness about threats to heritage and in prompting public authorities to act to protect heritage. The National Trust Register also played a role in the 'green bans' of the NSW Builders Labourers Federation in the early 1970s, which were extra-legal prohibitions on work that would damage significant places or buildings. The combination of the National Trust's register and the Builders Labourers Federation's bans were effective not only in preserving individual items of heritage, but also in spurring the establishment of the statutory registers, interim heritage orders and stop-work orders of our present legal regimes for heritage protection.

In the context of our present statutory regimes, the National Trust (NSW) continues to be strongly influential in the identification of heritage significance. The National Trust (NSW) is represented on the Heritage Council, and its register is a source of information for agencies with statutory heritage protection functions. For example, the National Trust's listing for the public housing dwellings at South Granville informs Parramatta Council's listing of these properties as heritage items on its local heritage register. Also, the National Trust's listing of the village of Narrandera, in the central-west of New South Wales, is reflected in the listing of social housing properties in the village on LAHC's section 170 register.

### **6.2.2. Australian Institute of Architects**

The Australian Institute of Architects is the peak body for the architecture profession in Australia. As part of its promotion of the profession, it maintains its own register of heritage buildings, the Institute National Register of Significant Twentieth Century Architecture.<sup>46</sup> No social housing in New South Wales is listed on this register, but a social housing estate in the Australian Capital Territory is listed: the Dickson and Lyneham Flats.

### **6.2.3. Register of the National Estate**

The Register of the National Estate was previously a statutory heritage register established by the Commonwealth Government under the *Australian Heritage Commission Act 1975* (Cth), but its statutory status was phased out as part of the reforms that established the National Heritage List and the Commonwealth Heritage List. The Register was closed to new entries in 2007, and references to it were removed from the EPBC Act in 2012. The register is now maintained on a non-statutory basis as an archive and educational resource.

Social housing properties at Millers Point are listed on the Register.

## **Appendix: the Burra Charter**

‘The Australia ICOMOS charter for the conservation of places of cultural significance.’

### **Preamble**

Considering the International Charter for the Conservation and Restoration of Monuments and Sites (Venice 1964), and the Resolutions of the 5th General Assembly of the International Council on Monuments and Sites (ICOMOS) (Moscow 1978), the Burra Charter was adopted by Australia ICOMOS (the Australian National Committee of ICOMOS) on 19 August 1979 at Burra, South Australia. Revisions were adopted on 23 February 1981, 23 April 1988 and 26 November 1999.

The Burra Charter provides guidance for the conservation and management of places of cultural significance (cultural heritage places), and is based on the knowledge and experience of Australia ICOMOS members.

Conservation is an integral part of the management of places of cultural significance and is an ongoing responsibility.

### **Who is the Charter for?**

The Charter sets a standard of practice for those who provide advice, make decisions about, or undertake works to places of cultural significance, including owners, managers and custodians.

### **Using the Charter**

The Charter should be read as a whole. Many articles are interdependent. Articles in the Conservation Principles section are often further developed in the Conservation Processes and Conservation Practice sections. Headings have been included for ease of reading but do not form part of the Charter.

The Charter is self-contained, but aspects of its use and application are further explained in the following Australia ICOMOS documents:

- Guidelines to the Burra Charter: Cultural Significance;
- Guidelines to the Burra Charter: Conservation Policy;
- Guidelines to the Burra Charter: Procedures for Undertaking Studies and Reports;
- Code on the Ethics of Coexistence in Conserving Significant Places.

### **What places does the Charter apply to?**

The Charter can be applied to all types of places of cultural significance including natural,

indigenous and historic places with cultural values.

The standards of other organizations may also be relevant. These include the Australian Natural Heritage Charter and the Draft Guidelines for the Protection, Management and Use of Aboriginal and Torres Strait Islander Cultural Heritage Places.

### Why conserve?

Places of cultural significance enrich people's lives, often providing a deep and inspirational sense of connection to community and landscape, to the past and to lived experiences. They are historical records, that are important as tangible expressions of Australian identity and experience. Places of cultural significance reflect the diversity of our communities, telling us about who we are and the past that has formed us and the Australian landscape. They are irreplaceable and precious.

These places of cultural significance must be conserved for present and future generations.

The Burra Charter advocates a cautious approach to change: do as much as necessary to care for the place and to make it useable, but otherwise change it as little as possible so that its cultural significance is retained.

## Article 1 Definitions

## Explanatory Notes

For the purpose of this Charter:

These notes do not form part of the Charter and may be added to by Australia ICOMOS.

**1.1** *Place* means site, area, land, landscape, building or other work, group of buildings or other works, and may include components, contents, spaces and views.

The concept of place should be broadly interpreted. The elements described in Article 1.1 may include memorials, trees, gardens, parks, places of historical events, urban areas, towns, industrial places, archaeological sites and spiritual and religious places.

**1.2** *Cultural significance* means aesthetic, historic, scientific, social or spiritual value for past, present or future generations.

The term cultural significance is synonymous with heritage significance and cultural heritage value.

Cultural significance is embodied in the *place* itself, its *fabric, setting, use, associations, meanings, records, related places* and *related objects*.

Cultural significance may change as a result of the continuing history of the place.

Places may have a range of values for different individuals or groups.

Understanding of cultural significance may change as a result of new information.



- 1.3** *Fabric* means all the physical material of the *place* including components, fixtures, contents, and objects.
- Fabric includes building interiors and sub-surface remains, as well as excavated material.
- Fabric may define spaces and these may be important elements of the significance of the place.
- 1.4** *Conservation* means all the processes of looking after a *place* so as to retain its *cultural significance*.
- 1.5** *Maintenance* means the continuous protective care of the *fabric* and *setting* of a *place*, and is to be distinguished from repair. Repair involves *restoration* or *reconstruction*.
- The distinctions referred to, for example in relation to roof gutters, are
- maintenance – regular inspection and cleaning of gutters;
  - repair involving restoration – returning of dislodged gutters;
  - repair involving reconstruction – replacing decayed gutters.
- 1.6** *Preservation* means maintaining the *fabric* of a *place* in its existing state and retarding deterioration.
- It is recognised that all places and their components change over time at varying rates.
- 1.7** *Restoration* means returning the existing *fabric* of a *place* to a known earlier state by removing accretions or by reassembling existing components without the introduction of new material.
- 1.8** *Reconstruction* means returning a *place* to a known earlier state and is distinguished from *restoration* by the introduction of new material into the *fabric*.
- New material may include recycled material salvaged from other places. This should not be to the detriment of any place of cultural significance.
- 1.9** *Adaptation* means modifying a *place* to suit the existing *use* or a proposed use.
- 1.10** *Use* means the functions of a place, as well as the activities and practices that may occur at the place.
- 1.11** *Compatible use* means a *use* which respects the *cultural significance* of a *place*. Such a use involves no, or minimal, impact on cultural significance.

- 1.12** *Setting* means the area around a *place*, which may include the visual catchment.
- 1.13** *Related place* means a *place* that contributes to the *cultural significance* of another place.
- 1.14** *Related object* means an object that contributes to the *cultural significance* of a *place* but is not at the place.
- 1.15** *Associations* mean the special connections that exist between people and a *place*. Associations may include social or spiritual values and cultural responsibilities for a place.
- 1.16** *Meanings* denote what a *place* signifies, indicates, evokes or expresses. Meanings generally relate to intangible aspects such as symbolic qualities and memories.
- 1.17** *Interpretation* means all the ways of presenting the *cultural significance* of a *place*. Interpretation may be a combination of the treatment of the fabric (e.g. maintenance, restoration, reconstruction); the use of and activities at the place; and the use of introduced explanatory material.

## Conservation Principles

### Article 2 Conservation and management

- 2.1** *Places of cultural significance* should be conserved.
- 2.2** The aim of *conservation* is to retain the *cultural significance* of a *place*.
- 2.3** *Conservation* is an integral part of good management of *places* of *cultural significance*.
- 2.4** *Places of cultural significance* should be safeguarded and not put at risk or left in a vulnerable state.

### Article 3 Cautious approach

- 3.1** *Conservation* is based on a respect for the existing *fabric, use, associations* and *meanings*. It requires a cautious approach of changing as much as necessary but as little as possible. The traces of additions, alterations and earlier treatments to the fabric of a place are evidence of its history and uses which may be part of its

significance. Conservation action should assist and not impede their understanding.

- 3.2 Changes to a *place* should not distort the physical or other evidence it provides, nor be based on conjecture.

#### Article 4 Knowledge, skills and techniques

- 4.1 *Conservation* should make use of all the knowledge, skills and disciplines which can contribute to the study and care of the *place*.

- 4.2 Traditional techniques and materials are preferred for the *conservation* of significant *fabric*. In some circumstances modern techniques and materials which offer substantial conservation benefits may be appropriate.

The use of modern materials and techniques must be supported by firm scientific evidence or by a body of experience.

#### Article 5 Values

- 5.1 *Conservation* of a *place* should identify and take into consideration all aspects of cultural and natural significance without unwarranted emphasis on any one value at the expense of others.

Conservation of places with natural significance is explained in the Australian Natural Heritage Charter. This Charter defines natural significance to mean the importance of ecosystems, biological diversity and geodiversity for their existence value, or for present or future generations in terms of their scientific, social, aesthetic and life-support value.

- 5.2 Relative degrees of *cultural significance* may lead to different *conservation* actions at a place.

A cautious approach is needed, as understanding of cultural significance may change. This article should not be used to justify actions which do not retain cultural significance.

#### Article 6 Burra Charter Process

- 6.1 The *cultural significance* of a *place* and other issues affecting its future are best understood by a sequence of collecting and analysing information before making decisions. Understanding cultural significance comes first, then development of policy and finally

The Burra Charter process, or sequence of investigations, decisions and actions, is illustrated in the accompanying flowchart.

management of the place in accordance with the policy.

**6.2** The policy for managing a *place* must be based on an understanding of its *cultural significance*.

**6.3** Policy development should also include consideration of other factors affecting the future of a *place* such as the owner's needs, resources, external constraints and its physical condition.

## **Article 7 Use**

**7.1** Where the *use* of a *place* is of *cultural significance* it should be retained.

**7.2** A *place* should have a *compatible use*.

The policy should identify a use or combination of uses or constraints on uses that retain the cultural significance of the place. New use of a place should involve minimal change, to significant fabric and use; should respect associations and meanings; and where appropriate should provide for continuation of practices which contribute to the cultural significance of the place.

## **Article 8 Setting**

*Conservation* requires the retention of an appropriate visual *setting* and other relationships that contribute to the *cultural significance* of the *place*.

New construction, demolition, intrusions or other changes which would adversely affect the setting or relationships are not appropriate.

Aspects of the visual setting may include use, siting, bulk, form, scale, character, colour, texture and materials.

Other relationships, such as historical connections, may contribute to interpretation, appreciation, enjoyment or experience of the place.

## **Article 9 Location**

**9.1** The physical location of a *place* is part of its *cultural significance*. A building, work or other component of a place should remain in its historical location. Relocation is generally unacceptable unless this is the sole practical means of ensuring its survival.

**9.2** Some buildings, works or other components of *places* were designed to be readily removable or already have a history of relocation. Provided such buildings, works or other components do not have significant links with their present location, removal may be appropriate.

**9.3** If any building, work or other component is moved, it should be moved to an appropriate location and given an appropriate *use*. Such action should not be to the detriment of any *place of cultural significance*.

## **Article 10 Contents**

Contents, fixtures and objects which contribute to the *cultural significance* of a *place* should be retained at that place. Their removal is unacceptable unless it is: the sole means of ensuring their security and *preservation*; on a temporary basis for treatment or exhibition; for cultural reasons; for health and safety; or to protect the place. Such contents, fixtures and objects should be returned where circumstances permit and it is culturally appropriate.

## **Article 11 Related places and objects**

The contribution which *related places* and *related objects* make to the *cultural significance* of the *place* should be retained.

## **Article 12 Participation**

*Conservation, interpretation* and management of a *place* should provide for the participation of people for whom the place has special *associations* and *meanings*, or who have social, spiritual or other cultural responsibilities for the place.

## **Article 13 Co-existence of cultural values**

Co-existence of cultural values should be recognised, respected and encouraged, especially in cases where they conflict.

For some places, conflicting cultural values may affect policy development and management decisions. In this article, the term cultural values refers to those beliefs which are important to a cultural group, including but not limited to political, religious,

spiritual and moral beliefs. This is broader than values associated with cultural significance.

## Conservation Processes

### Article 14 Conservation processes

*Conservation* may, according to circumstance, include the processes of: retention or reintroduction of a *use*; retention of *associations* and *meanings*; *maintenance*, *preservation*, *restoration*, *reconstruction*, *adaptation* and *interpretation*; and will commonly include a combination of more than one of these.

There may be circumstances where no action is required to achieve conservation.

### Article 15 Change

**15.1** Change may be necessary to retain *cultural significance*, but is undesirable where it reduces cultural significance. The amount of change to a *place* should be guided by the *cultural significance* of the place and its appropriate *interpretation*.

When change is being considered, a range of options should be explored to seek the option which minimises the reduction of cultural significance.

**15.2** Changes which reduce *cultural significance* should be reversible, and be reversed when circumstances permit.

Reversible changes should be considered temporary. Non-reversible change should only be used as a last resort and should not prevent future conservation action.

**15.3** Demolition of significant *fabric* of a *place* is generally not acceptable. However, in some cases minor demolition may be appropriate as part of *conservation*. Removed significant fabric should be reinstated when circumstances permit.

**15.4** The contributions of all aspects of *cultural significance* of a *place* should be respected. If a place includes *fabric*, *uses*, *associations* or *meanings* of different periods, or different aspects of cultural significance, emphasising or interpreting one period or aspect at the expense of another can only be justified when what is left out, removed or diminished is of slight cultural significance and that which is emphasised or interpreted is of much greater cultural significance.

## Article 16 Maintenance

*Maintenance* is fundamental to *conservation* and should be undertaken where *fabric* is of *cultural significance* and its *maintenance* is necessary to retain that *cultural significance*.

## Article 17 Preservation

*Preservation* is appropriate where the existing *fabric* or its condition constitutes evidence of *cultural significance*, or where insufficient evidence is available to allow other *conservation* processes to be carried out.

Preservation protects fabric without obscuring the evidence of its construction and use. The process should always be applied:

- where the evidence of the fabric is of such significance that it should not be altered;
- where insufficient investigation has been carried out to permit policy decisions to be taken in accord with Articles 26 to 28.

New work (e.g. stabilization) may be carried out in association with preservation when its purpose is the physical protection of the fabric and when it is consistent with Article 22.

## Article 18 Restoration and reconstruction

*Restoration* and *reconstruction* should reveal culturally significant aspects of the *place*.

## Article 19 Restoration

*Restoration* is appropriate only if there is sufficient evidence of an earlier state of the *fabric*.

## Article 20 Reconstruction

**20.1** *Reconstruction* is appropriate only where a *place* is incomplete through damage or alteration, and only where there is sufficient evidence to reproduce an earlier state of the *fabric*. In rare cases, reconstruction may also be appropriate as part of a *use* or practice that retains the *cultural significance* of the place.

**20.2** *Reconstruction* should be identifiable on close inspection or through additional *interpretation*.

**Article 21** *Adaptation* must be limited to that which is essential to a use for the *place* determined in accordance with Articles 6 and 7.

**21.1** *Adaptation* is acceptable only where the adaptation has minimal impact on the *cultural significance* of the *place*.

*Adaptation* is acceptable only where the adaptation has minimal impact on the *cultural significance* of the *place*.

**21.2** *Adaptation* should involve minimal change to significant fabric, achieved only after considering alternatives.

## Article 22 New work

**22.1** New work such as additions to the *place* may be acceptable where it does not distort or obscure the *cultural significance* of the place, or detract from its *interpretation* and appreciation.

New work may be sympathetic if its siting, bulk, form, scale, character, colour, texture and material are similar to the existing fabric, but imitation should be avoided.

**22.2** New work should be readily identifiable as such.

## Article 23 Conserving use

Continuing, modifying or reinstating a significant *use* may be appropriate and preferred forms of *conservation*.

These may require changes to significant *fabric* but they should be minimised. In some cases, continuing a significant use or practice may involve substantial new work.

## Article 24 Retaining associations and meanings

**24.1** Significant *associations* between people and a *place* should be respected, retained and not obscured. Opportunities for the *interpretation*,

For many places associations will be linked to use.



commemoration and celebration of these associations should be investigated and implemented.

- 24.2** Significant *meanings*, including spiritual values, of a *place* should be respected. Opportunities for the continuation or revival of these meanings should be investigated and implemented.

## **Article 25 Interpretation**

The *cultural significance* of many *places* is not readily apparent, and should be explained by *interpretation*. Interpretation should enhance understanding and enjoyment, and be culturally appropriate.

## **Article 26 Applying the Burra Charter process**

- 26.1** Work on a *place* should be preceded by studies to understand the place which should include analysis of physical, documentary, oral and other evidence, drawing on appropriate knowledge, skills and disciplines. The results of studies should be up to date, regularly reviewed and revised as necessary.
- 26.2** Written statements of *cultural significance* and policy for the *place* should be prepared, justified and accompanied by supporting evidence. The statements of significance and policy should be incorporated into a management plan for the place. Statements of significance and policy should be kept up to date by regular review and revision as necessary. The management plan may deal with other matters related to the management of the place.
- 26.3** Groups and individuals with *associations* with a *place* as well as those involved in its management should be provided with opportunities to contribute to and participate in understanding the *cultural significance* of the place. Where appropriate they should also have opportunities to participate in its *conservation* and management.

## **Article 27 Managing change**

- 27.1** The impact of proposed changes on the *cultural significance* of a *place* should be analysed with reference to the statement of significance and the policy for managing the place. It may be necessary to modify proposed changes following

analysis to better retain cultural significance.

- 27.2** Existing *fabric, use, associations and meanings* should be adequately recorded before any changes are made to the *place*.

### **Article 28 Disturbance of fabric**

Disturbance of significant *fabric* for study, or to obtain evidence, should be minimised. Study of a *place* by any disturbance of the fabric, including archaeological excavation, should only be undertaken to provide data essential for decisions on the *conservation* of the place, or to obtain important evidence about to be lost or made inaccessible.

Investigation of a *place* which requires disturbance of the *fabric*, apart from that necessary to make decisions, may be appropriate provided that it is consistent with the policy for the place. Such investigation should be based on important research questions which have potential to substantially add to knowledge, which cannot be answered in other ways and which minimises disturbance of significant fabric.

### **Article 29 Responsibility for decisions**

The organizations and individuals responsible for management decisions should be named and specific responsibility taken for each such decision.

### **Article 30 Direction, supervision and implementation**

Competent direction and supervision should be maintained at all stages, and any changes should be implemented by people with appropriate knowledge and skills.

### **Article 31 Documenting evidence and decisions**

A log of new evidence and additional decisions should be kept.

### **Article 32 Records**

**32.1** The records associated with the *conservation* of a *place* should be placed in a permanent archive and made publicly available, subject to requirements of security and privacy, and where this is culturally appropriate.

**32.2** Records about the history of a *place* should be protected and made publicly available, subject to requirements of security and privacy, and where this is culturally appropriate.

### **Article 33 Removed fabric**

Significant *fabric* which has been removed from a *place* including contents, fixtures and objects, should be catalogued, and protected in accordance with its *cultural significance*.

Where possible and culturally appropriate, removed significant fabric including contents, fixtures and objects, should be kept at the place.

### **Article 34 Resources**

Adequate resources should be provided for *conservation*.

The best conservation often involves the least work and can be inexpensive.

*Words in italics are defined in Article 1.*

## Notes

<sup>1</sup> The state's first Housing Act was passed in February 1912, and work on the first public housing estate, Daceyville, commenced in June that year.

<sup>2</sup> The International Council on Monuments and Sites is known as ICOMOS; the Australian National Committee is known as Australia ICOMOS.

<sup>3</sup> NSW Heritage Office (2000) 'Heritage Listings in New South Wales: a brief history', accessed 29 August 2013 at: [www.environment.nsw.gov.au/resources/heritagebranch/heritage/infolistingshistory.pdf](http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/infolistingshistory.pdf).

<sup>4</sup> As required by the Heritage Regulation 2012 (NSW), clause 22(1).

<sup>5</sup> These categories are discussed, with examples, in Parts 4 and 3 of this Brief, respectively.

<sup>6</sup> It appears that Part 7 of the RT Act, which provides for a number of special provisions applying specifically to social housing tenancies, may apply to these tenancies, despite their being exempt from all other Parts of the RT Act.

<sup>7</sup> Clause 16(2) of the *Residential Tenancies Regulation 2010* provides for premises not to be exempted from the RT Act where the parties so agree in writing.

<sup>8</sup> The RT Act uses the words 'alteration, addition or renovation'; the relevant Housing NSW policy uses the word 'modification'.

<sup>9</sup> Accessed 29 August 2013 at:

[www.housing.nsw.gov.au/Forms+Policies+and+Fact+Sheets/Policies/Modifications+Policy.htm](http://www.housing.nsw.gov.au/Forms+Policies+and+Fact+Sheets/Policies/Modifications+Policy.htm).

<sup>10</sup> There is a recent exception, again in the case of the disposal of properties at Millers Point. A number of these properties have historically been used as boarding houses – which is a use distinct from that of dwelling houses. Anticipating that prospective 99-year leaseholders would prefer to use the premises as dwelling houses, LAHC sought development consent to change their use. Ordinarily, applications to change the use of boarding houses are subject to special provisions under the ARHSEPP for the retention of existing affordable rental accommodation; however, these provisions do not apply to buildings owned or managed by social housing providers (clause 49(2)(c)).

<sup>11</sup> Numbers from the NSW Department of Premier and Cabinet Annual Report 2011-12, and the Heritage Branch website, accessed 29 August 2013 at:

[www.environment.nsw.gov.au/Heritage/publications/localresources.htm](http://www.environment.nsw.gov.au/Heritage/publications/localresources.htm)

<sup>12</sup> Until 2008, the EPA Act also provided for the making of Regional Environmental Plans (REPs). Numerous REPs remain in existence, and may include schedules of items of regional heritage significance. In particular, the Sydney REP No 26 – City West has a heritage schedule, which includes social housing properties in Ultimo. These regional items are protected by the planning system in the same way as local items.

<sup>13</sup> Some older LEPs that pre-date the introduction of the standard LEP still exist in more varied forms; however, the main features of the standard heritage schedule also pre-date the standard LEP, so are typical of these older LEPs too.

<sup>14</sup> Local heritage registers may also include other categories, in particular: archaeological sites, Aboriginal objects and Aboriginal places (these last two if agreement is reached with the Aboriginal community for the listing of Aboriginal objects and Aboriginal places).

<sup>15</sup> The Heritage Council is established by the Heritage Act, and is discussed further in chapter 4. The criteria for local heritage significance are based on those formulated by the Heritage Council for the State Heritage Register, and are similar enough that both are referred to in the State Heritage Inventory and elsewhere as the 'SHR criteria'.

<sup>16</sup> Heritage Office (Heritage Branch)(2002) 'Local Government Heritage Guidelines', accessed 29 August 2013 at:

[www.environment.nsw.gov.au/resources/heritagebranch/heritage/localgovernmentheritageguidelines.pdf](http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/localgovernmentheritageguidelines.pdf).

<sup>17</sup> Extracted from State Heritage Inventory. Accessed 29 August 2013 at:

[www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2420437](http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2420437).

<sup>18</sup> Extracted from State Heritage Inventory. Accessed 29 August 2013 at:

[www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2240400](http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2240400).

- <sup>19</sup> Extracted from the State Heritage Inventory. Accessed 29 August 2013 at: [www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2435710](http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2435710).
- <sup>20</sup> Extracted from the State Heritage Inventory. Accessed 29 August 2013 at: [www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2421506](http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2421506).
- <sup>21</sup> Clause 5.10(2) makes similar provisions in relation to Aboriginal objects and places of heritage significance, and archaeological sites.
- <sup>22</sup> As for 'complying development' under the Exempt and Complying Development Codes SEPP, no development that would otherwise be 'complying development' can be carried out as complying development in relation to a heritage item – that is, it must go through the usual development application process (clause 1.17A).
- <sup>23</sup> Ordinarily, an item must satisfy two or more of the criteria, but an item that satisfies only one may be considered if it is 'such particular significance that it should be listed' (section 33(3)(b)).
- <sup>24</sup> Accessed 29 August 2013 at: [www.environment.nsw.gov.au/resources/heritagebranch/heritage/listings/criteria.pdf](http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/listings/criteria.pdf).
- <sup>25</sup> Outside Millers Point, LAHC owns one other property listed on the State Heritage Register – the Gunnery Building at Woolloomooloo – but it is not used for social housing.
- <sup>26</sup> Extracted from the State Heritage Inventory. Accessed 29 August 2013 at: [www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?id=5001049](http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?id=5001049).
- <sup>27</sup> Extracted from the State Heritage Inventory. Access 29 August 2013 at: [www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5045636](http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5045636).
- <sup>28</sup> Extracted from the State Heritage Inventory. Access 29 August 2013 at: [www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5045215](http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5045215).
- <sup>29</sup> Extracted from the State Heritage Inventory. Accessed 29 August 2013 at: [www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5001054](http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5001054)
- <sup>30</sup> Minimum standards for buildings are prescribed at clause 9-12 of the Heritage Regulation 2012.
- <sup>31</sup> Conservation management plans are discussed at 4.2.3.
- <sup>32</sup> NSW Heritage Office (2005) 'Conservation Management Planning Review and Endorsement Strategy', 6 April 2005, accessed 29 August 2013 at: [www.environment.nsw.gov.au/resources/heritagebranch/heritage/cmpstrategyapril2005.pdf](http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/cmpstrategyapril2005.pdf).
- <sup>33</sup> Indeed, at 29 August 2013 there were no interim heritage orders in force anywhere in the State. Accessed 29 August 2013 at [www.environment.nsw.gov.au/heritageapp/InterimHeritageList.aspx](http://www.environment.nsw.gov.au/heritageapp/InterimHeritageList.aspx).
- <sup>34</sup> There are a few items on the register that are not social housing: for example, commercial premises, community facilities, and vacant blocks. Also, it should be noted that the number of items does not equate either to dwellings (an item may comprise more than one dwelling), or to buildings (a building may comprise more than one item on the register). For example, the Strickland Building in Chippendale comprises 39 dwellings, and 12 items on the register: one for each of the building's street numbers on three streets.
- <sup>35</sup> Accessed 29 August 2013 at [www.environment.nsw.gov.au/resources/heritagebranch/heritage/StateAgencyHeritageGuide.pdf](http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/StateAgencyHeritageGuide.pdf).
- <sup>36</sup> The register, of course, identifies each of the buildings (by street number and name, if the building has one); however, because listings on LAHC's section 170 register are not widely publicized (as discussed at 1.3), four of the buildings are not identified in the extracts presented here. The one building identified here – the Strickland Building – is identified because it is a well-known heritage item listed on the local heritage register.
- <sup>37</sup> 'Heritage 101 Workshop', presented on behalf of the City of Sydney, 16 May 2013, Sydney.
- <sup>38</sup> Currently more than 20 items on the State Heritage Register – for example, the Bomaderry Aboriginal Children's Home – are listed specifically because of their Aboriginal heritage significance.
- <sup>39</sup> Accessed 29 August 2013 at [www.environment.nsw.gov.au/AboriginalPlaces/index.htm](http://www.environment.nsw.gov.au/AboriginalPlaces/index.htm).
- <sup>40</sup> 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales', accessed 29 August 2013 at [www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf](http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf).

<sup>41</sup> Australian Heritage Council 'Guidelines for the Assessment of Places for the National Heritage List', accessed 29 August 2013 at [www.environment.gov.au/heritage/ahc/publications/pubs/nhl-guidelines.pdf](http://www.environment.gov.au/heritage/ahc/publications/pubs/nhl-guidelines.pdf).

<sup>42</sup> The closest the Commonwealth Heritage List gets to social housing is its inclusion of the migrant flat buildings at the Villawood Migration Centre. Most items on the list are defence properties and post offices.

<sup>43</sup> Accessed 29 August 2013 at <http://whc.unesco.org/en/list/1239>.

<sup>44</sup> The very first National Trust was the National Trust in England, established in 1896 by Octavia Hill. As well as being interested in the preservation of heritage, Hill was a housing reformer who managed rental housing for poor households in London, and developed a system of tenancy management based on the close supervision and instruction of households by lady rent collectors. The 'Octavia Hill system' was an inspiration for social housing administrators in the early twentieth century. Through the establishment of the National Trust, Hill particularly sought to preserve areas of the English countryside, and was motivated at least in part by a desire that her tenants would visit and be morally uplifted by these places.

<sup>45</sup> Items on the register are said to be 'classified' by the National Trust (NSW), but strictly speaking, there are no 'classes' of listings. For a time, the National Trust Register did have a two-class structure.

<sup>46</sup> The Institute also nominates buildings to the International Union of Architects' (UIA) World Register of Significant Twentieth Century Australian Architecture, and the UIA's World Register of Significant Twentieth Century Australian Architecture. To date it has not nominated any social housing buildings to these registers.