

**STATEMENT OF REASONS**  
**DECISION UNDER SECTION 324JJ**  
**ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999**

**Willow Court Barracks Precinct and Frescati House**

**BACKGROUND**

1. On 6 February 2015, the Derwent Valley Council nominated the 'Willow Court Barracks Precinct and Frescati House' (the **nominated place**) for inclusion in the National Heritage List. In 2015, the nominated place was included in the Finalised Priority Assessment List for the National Heritage List (**NHL**) for the 2015-2016 assessment period.
2. The Australian Heritage Council (the **Council**) completed its assessment of the nominated place, in accordance with s 324JH of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).
3. The Council sent its written assessment of the nominated place, and the written comments which it received following the Council's invitation to comment in accordance with s 324JG, to me on 25 January 2018.
4. Having regard to the Council's report and public comments on the nomination, the Department of the Environment and Energy recommended that the Precinct should not be included in the National Heritage List.

**LEGISLATION**

5. Relevant legislation is set out in Annexure A.

**EVIDENCE OR OTHER MATERIAL ON WHICH MY FINDINGS WERE BASED**

6. In making my decision, section 324JJ(5) of the EPBC Act required me to have regard to the Council's assessment of whether the place meets any of the National Heritage criteria and any public comments submitted. I was also able to have regard to any other relevant information or advice.
7. The evidence and material on which I based my decision not to include Willow Court Barracks Precinct and Frescati House in the NHL consisted of a brief prepared by Heritage Branch, Department of the Environment and Energy in January 2018, which included the following attachments:
  - a. The nomination form for Willow Court Barracks Precinct and Frescati House;
  - b. The assessment report by the Council on the nominated place;
  - c. Written comments which the Council received under subsection 324JG(1) from:
    - i. Derwent Valley Council (the nominator and owner and occupier of the site), and
    - ii. Cultural Heritage Practitioners Tasmania;and
  - d. The recommendation of the Department of the Environment and Energy.

## FINDINGS ON MATERIAL QUESTIONS OF FACT

8. Under section 324C(2) of the EPBC Act, a place may be included in the NHL only if:
- The place is within the Australian jurisdiction, and
  - I am satisfied that the place has one or more National Heritage values.

### ***Whether the nominated place is within the Australian jurisdiction***

9. As the nominated place was located in New Norfolk, in south-east Tasmania, I noted that the nominated place was wholly within the Australian jurisdiction for the purposes of section 324C(2)(a).

### ***Whether the nominated place has National Heritage values***

10. I noted that, under section 324D(1), a place only has a National Heritage value if the place meets one of the criteria prescribed in the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth) (the **EPBC Regulations**) for the purposes of section 324D(1). The National Heritage values of the place are the place's heritage values that cause the place to meet the National Heritage criteria.
11. Under regulation 10.01A(2) of the EPBC Regulations, the National Heritage criteria for a place are any or all of the following:
- the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history;
  - the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history;
  - the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history;
  - the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of:
    - a class of Australia's natural or cultural places; or
    - a class of Australia's natural or cultural environments;
  - the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
  - the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period;
  - the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
  - the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history;
  - the place has outstanding heritage value to the nation because of the place's importance as part of indigenous tradition.

12. In considering whether the nominated place met any of the National Heritage criteria, I had regard to the Council's assessment and written comments received under section 324JG(1) in respect of the nominated place, the nomination form, and the Department of the Environment and Energy's advice.

***Importance in the course, or pattern, of Australia's natural or cultural history***

13. Under regulation 10.01A(2)(a) of the EPBC Regulations, a place may meet the National Heritage criteria if it has outstanding heritage value to the nation because of its importance in the course, or pattern, of Australia's natural or cultural history. I noted the claim by the nominator under criterion (a) that the place has National Heritage values because of its importance in the course or pattern of Australian history, and particularly because:

Willow Court has the distinction of being Australia's oldest surviving example of a purpose-built colonial mental health institution (p 6, Nomination).

14. In considering this claim, I noted the finding by the Australian Heritage Council that:

Willow Court Precinct is the oldest surviving and longest functioning mental health facility in Australia. [...] The length of its operating time is notable, but not of itself demonstrative of an aspect of the course or pattern of Australian history.

15. The nominator claimed that the Precinct has outstanding heritage value because of its importance in the course or pattern of Australian history, as:

Willow Court is highly significant in being able to demonstrate patterns in the evolution of the philosophy of design and construction of mental institutions. [...] The influence of the convict system is also evident in some of the early architecture (p. 6, Nomination).

The nominator also stated that:

Willow Court also records the evolution of philosophical attitudes of the treatment of the mentally ill throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries and attitudes towards those with mental illness (p. 6, Nomination).

16. The nominator also stated Frescati House is of high cultural heritage significance as an integral part of the Willow Court story, having been the home of a succession of Chief Medical Officers for more than a century (p. 6, Nomination).

17. In considering these claims, I noted the finding by the Australian Heritage Council that:

Willow Court represents the broad history of developing mental health treatment in Australia and attitudes to mental health more generally. While representing this broad history, Willow Court is not considered to be best placed to demonstrate it to an outstanding standard.

The long history of Willow Court is partially reflected in the hospital buildings on the site, which range from the early 19th century Barracks to later 20th century structures. To exhibit the progression of mental health history in Australia over 170 years, Willow Court would need to be able demonstrate this history through the site. The nominated Precinct does not have a large number of extant buildings of high integrity to demonstrate to an outstanding standard this progression over time. Many buildings which were part of the site's history have been demolished, particularly in the 1960s and 70s when improvements to the hospital led to the replacement of a number of older buildings. This impacted the site's ability to demonstrate the progression of mental health history in Australia.

[...]

In comparison to Willow Court, other institutions better exhibit the history of mental health care in Australia, including the Glenside Hospital in Adelaide, the Goodna Hospital for the Insane in Brisbane, and Callan Park Asylum in Sydney. All these institutions were established in the mid- to late-19th century and operated until at least late in the 20th century, with Glenside and Goodna still functioning hospitals. In comparing these institutions, the comparison is not in relation to their visual appearance or physical intactness alone, but rather the ability of the sites to demonstrate changing medical treatments, models of mental health care and attitudes to mental illness through their physical fabric. The types of care and facilities which existed at a more advanced level at these other sites are aspects which strengthen their historic value.

[...]

Willow Court was often behind other institutions in Australia in progression and modernisation of treatment. This is apparent in the way in which the Willow Court hospital looked to other Australian facilities for guidance, for example in the form of the visit in 1883 of medical experts from New South Wales, Victoria and South Australia to provide advice on improving Willow Court.

[...]

In conclusion Willow Court does not have an outstanding capacity to demonstrate Australia's history of mental health care. The nominated area and the broader historical site lack the integrity and coherency required to tell this story to a high standard. Other institutions with similar periods of operation are better able to demonstrate the scale and change of the history process of mental health care in Australia through the 19th and 20th centuries, due to their greater integrity and coherency as a site better allowing them to convey this story.

18. I also noted the findings by the Australian Heritage Council that the Precinct does not demonstrate the processes of convictism more generally due to it only exhibiting one aspect of this broader system, with the Council finding that:

As an invalid hospital, Willow Court is not well placed to demonstrate [...] core aspects of the convict system. The mental health care of convicts was part of the support system for convictism overall rather than an essential element of the historical process.

19. I agreed with the Council's assessment that the nominated place did not have importance in the course or pattern of Australia's natural or cultural history for the purposes of regulation 10.01A(2)(a).

***Possession of uncommon, rare or endangered aspects of Australia's natural cultural history***

20. Under regulation 10.01A(2)(b) of the EPBC Regulations, a place may meet the National Heritage criteria if it has outstanding heritage value to the nation because of its possession of uncommon, rare or endangered aspects of Australia's natural or cultural history.

21. Under criterion (b) the nominator stated that:

While parts of 19<sup>th</sup> century mental institution buildings are preserved in other places around Australia (for example the Gladesville Hospital in Sydney), Willow Court is rare and highly significant as the only example of an entire 19<sup>th</sup> century mental institution preserved in its original layout and setting (p 6, Nomination).



I noted the finding by the Australian Heritage Council that:

The Willow Court Precinct is a 19th century mental institution, with later 20th century additions to the site. There are a number of 19th century mental institutions in Australia, some of which continued into 20th century care, and some of which functioned as other types of institutions. These include the Gladesville Mental Hospital (1838 – 1997), the Goodna Mental Hospital, now the Park Centre for Mental Health (1865 – Present) and the Glenside Mental Hospital (1846-1852, then 1870-Present). Other 19th century mental hospitals which demonstrate the characteristics of such a site are the Fremantle Lunatic Asylum, now the Fremantle Arts Centre, the Parramatta Lunatic Asylum, now part of the Westmead Hospital. The Willow Court Precinct is therefore not rare in a national context, as there are a number of other similar mental health institutions throughout Australia.

The nomination indicates that Willow Court is uncommon because it demonstrates integrity that is rare in a national context, namely as an example of an entire 19th century mental institution preserved in its individual layout. While some original buildings from the 19th century era of Willow Court Precinct remain, the integrity of the site is not fully preserved in its 19th century form. A substantial number of 19th century buildings from the early era of the Precinct have been demolished, and in some cases replaced with early and later 20th century buildings.

22. I agreed with the Council's assessment that the nominated place did not possess uncommon, rare or endangered aspects of Australia's cultural history for the purposes of regulation 10.01A(2)(b).

***Potential to yield information that will contribute to an understanding of Australia's natural or cultural history***

23. Under regulation 10.01A(2)(c) of the EPBC Regulations, a place may meet the National Heritage criteria if it has outstanding heritage value to the nation because of its potential to yield information that will contribute to an understanding of Australia's natural or cultural history.

24. The nominator stated in reference to criterion (c) that:

Through its rich documentary record, Willow Court has the potential to contribute to an understanding of many aspects of Australia's cultural history. These aspects include: changing philosophies for the care and housing of mental patients [...], changes in government provision for the care of the mentally ill [...], development of the supporting health system, from its origins as part of the convict system to public hospitals; changes in public attitudes to the mentally ill. [...] During an exploratory and assessment visit to New Norfolk in late 2014, Associate Professor [Heather] Burke advised that the site and surrounding areas would support more than 10 years of archaeological work (p. 7 Nomination).

25. In considering these claims, I noted the finding by the Australian Heritage Council that:

A significant number of buildings have been demolished through the site's history, reducing its ability to yield information which contributes to a better understanding of mental health history in Australia. The value of the remaining buildings at the site does not demonstrate potential of national importance. [...] While mental health history is an area of Australia's story which could be informed through archaeological investigation, in comparison to other sites there is insufficient information to suggest the value of Willow Court to shed light on the story of mental health care in Australia is of national importance.

26. I agreed with the Council's assessment that the nominated place did not have potential to yield information that will contribute to an understanding of Australia's cultural history for the purposes of regulation 10.01A(2)(c).

***Importance in demonstrating the principal characteristics of a class of Australia's natural or cultural places***

27. Under regulation 10.01A(2)(d)(i) of the EPBC Regulations, a place may meet the National Heritage criteria if it has outstanding heritage value to the nation because of its importance in demonstrating the principal characteristics of a class of Australia's natural or cultural places.

28. In reference to criterion (d)(i) the nominator stated:

It includes many buildings which individually demonstrate the principal characteristics of the full range of development in mental hospital design and management from the 1830s onwards (p. 7, Nomination).

29. In considering these claims, I noted the finding by the Australian Heritage Council that:

As a class of place, there is great difficulty in establishing common characteristics for welfare, benevolent and other similar institutions overall across Australia, given the temporal and geographic breadth which the institutions cover. Institutions had some common characteristics, such as accommodation for their residents on a single campus, but in general there could be significant variation in the nature of the institution depending on its function and the time it was built. It is therefore difficult to identify the existence of principal characteristics of institutions in Australia. A thematic study of benevolent institutions commissioned by the Australian Heritage Council identified Willow Court as an institution likely to be of national significance. However, it was not possible to establish the key characteristics of such institutions as to reveal how Willow Court could be highly representative of these features. In addition, given the limited integrity of the site, it is considered Willow Court would not demonstrate such features.

30. I agreed with the Council's assessment that the nominated place did not have importance in demonstrating the principal characteristics of a class of Australia's cultural places for the purposes of regulation 10.01A(2)(d)(i).

***Importance in exhibiting particular aesthetic characteristics valued by a community or cultural group***

31. Under regulation 10.01A(2)(e) of the EPBC Regulations, a place may meet the National Heritage criteria if it has outstanding heritage value to the nation because of its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group.

32. The nominator claimed in reference to this criterion that the Willow Court Barracks Precinct and Frescati House is important because it demonstrates aesthetic characteristics valued by the local, Tasmanian and interstate community (p. 8, Nomination). The nomination stated that "one of the key observable features of the place is the sparseness and lack of decoration of buildings, the simplicity of open areas and the impact of enclosed outdoor spaces with no furniture or softening influences".

33. In considering this claim, I noted that the Australian Heritage Council found:

The nominator states that parts of the Precinct are valued for their aesthetic value, most prominently the Barracks and Frescati House. However, the aesthetic characteristic of these buildings are similar in aesthetic appeal to many other historic precincts in Australia. The aesthetic characteristics valued by the community for the Precinct are significant at the local and potentially state level, but in comparison with other sites listed for their aesthetic value, such as the Port Arthur Historic Site in Tasmania and the Kingston and Arthurs Value Historic Area on Norfolk Island, the Precinct does not exhibit characteristics of outstanding value at a national level. Additionally, evidence of the Precinct being valued by the community for its

particular aesthetic characteristics at a national level is not well demonstrated. There is a lack of evidence, such as surveys or public statements or lobbying by the local or state community which reveals that the community values the place for its aesthetic characteristics.

34. I agreed with the Council's assessment that the nominated place did not have importance in exhibiting particular aesthetic characteristics valued by a community or cultural group for the purposes of regulation 10.01A(2)(e).

***Importance in demonstrating a high degree of creative or technical achievement at a particular period***

35. Under regulation 10.01A(2)(f) of the EPBC Regulations, a place may meet the National Heritage criteria if it has outstanding heritage value to the nation because of its importance in demonstrating a high degree of creative or technical achievement at a particular period.
36. The nominator states that Willow Court demonstrates creative or technical achievement under criterion (f), as it "preserves aspects of the theory of design of early 19<sup>th</sup> century convict barrack buildings in its front-entry style constructed around the internal walls of a courtyard." (p. 9, Nomination). The nominator also notes that Frescati House demonstrates many elements of early 19<sup>th</sup> century weatherboard cottages.

37. In considering this claim, I noted the Australian Heritage Council's finding that:

Although designed by [John Lee] Archer, the barracks were not of a high architectural standard nor did they demonstrate technical excellence in relation to the provision of accommodation for convicts. [...] From its earliest establishment Willow Court Barracks was an extension of an already existing site, rather than a purpose built facility which had the capacity to enact leading and innovative approaches to mental health care buildings. [...] There is no indication that the building of Frescati House demonstrates a high degree of creative or technical achievement.

38. I agreed with the Council's assessment that the nominated place did not have importance in demonstrating a high degree of creative or technical achievement at a particular period for the purposes of regulation 10.01A(2)(f).

***Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons***

39. Under regulation 10.01A(2)(g) of the EPBC Regulations, a place may meet the National Heritage criteria if it has outstanding heritage value to the nation because of its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons.
40. The nominator states that Willow Court has outstanding heritage value to the nation because of its special association with the Tasmanian community. This connection extends to ex-patients and their families, both local and interstate. The nomination also claims that the Barracks and Frescati House have strong associations for Tasmanians and the Derwent Valley community as symbols of convict and colonial past (p 9, Nomination).

41. In considering this claim, I noted the Australian Heritage Council finding that:

The association of the New Norfolk community, and of former patients and their families, with the Precinct is a special one, reflecting the intimate connections people had with the Precinct

due to the nature of the care it provided. However, the association of these groups with the Precinct is more prominent at a state and local level, due to the role Willow Court played in local and state mental health care. There is no evidence to suggest the community association with the Precinct is outstanding nationally, in comparison with sites such as the Australian War Memorial, which have an association with the Australian community which is iconic at a national level.

42. I agreed with the Council's assessment that the nominated place did not have a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons for the purposes of regulation 10.01A(2)(g).

***Special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history***

43. Under regulation 10.01A(2)(h) of the EPBC Regulations, a place may meet the National Heritage criteria if it has outstanding heritage value to the nation because of its special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history.
44. The nominator states under criterion (h) that the place has outstanding heritage values because of its special association with the architect John Lee Archer, and the building of Frescati House as a summer retreat for the Van Diemen's Land Colonial Secretary, John Burnett (p 10, Nomination.)
45. When considering this claim, I noted the Australian Heritage Council's assessment that:

While John Lee Archer played an important role in the building of colonial Tasmania through his architectural contribution to the colony, it is not established that his contribution was of significance to the cultural history of Australia as a whole. His contribution was restricted to the colony of Tasmania, and the buildings he designed themselves are not of national significance.

[...]

There is no indication that [John] Burnett made an outstanding contribution to Australia's cultural history. In addition, Frescati House was a holiday location for Burnett and not associated with the work he was prominent for, as Colonial Secretary. There are a number of other figures who had passing association with Willow Court, such as Lt-Governor George Arthur, who ordered the construction of the hospital, and the composer John Woodcock Graves. However, these figures' contributions to Australian history, of varying levels of significance, are not greatly connected to their association with Willow Court.

46. I agreed with the Council's assessment that the nominated place did not have a special association with the life or works of a person of importance in Australia's cultural history for the purposes of regulation 10.01A(2)(h).

***Importance as part of Indigenous tradition***

47. Under regulation 10.01A(2)(i) of the EPBC Regulations, a place may meet the National Heritage criteria if it has outstanding heritage value to the nation because of its importance as part of Indigenous tradition.
48. I noted that the Precinct was not nominated for inclusion on the National Heritage List under this criterion. I also noted the Australian Heritage Council's assessment that on available evidence it is not demonstrated that the place is nationally significant under this criterion.



## **PUBLIC COMMENTS**

49. I noted two submissions had been received.
50. The submission received from the Derwent Valley Council supported the listing of the Precinct on the basis on the matters identified in their nomination, and also provided further information including Conservation Management Plans for Frescati House and other buildings in the Precinct.
51. The submission from Cultural Heritage Practitioners Tasmania supported the listing of the site under criteria (a), (b), (c), (d), (e) and (h), on the basis of claims consistent with those made in the nomination.
52. In its assessment of the National Heritage values of the place, the Council took into account all the relevant issues and evidence raised in the submissions.
53. I also had regard to these submissions when making my decision. I concluded that the comments were consistent with the claims made in the nomination and did not provide any additional information against the National Heritage criteria which demonstrated that the Precinct has National Heritage values.

## **RECOMMENDATION OF THE DEPARTMENT OF THE ENVIRONMENT AND ENERGY**

54. The Department of the Environment and Energy considered that the Council's report conclusively addressed the nominator's claims against each National Heritage criteria and the issues raised in public submissions, taking into account the information provided as well as undertaking research and comparative analysis against other heritage sites and the National Heritage criteria.
55. Based on consideration of the Council's assessment report and recommendation and public comments received, the Department of the Environment and Energy agreed with the Council's recommendation that the Precinct not be included in the National Heritage List.

## **REASONS FOR DECISION**

56. Based on the Council's assessment and the public submissions, as well as the nomination and the Department's recommendation, I decided that Willow Court Barracks Precinct and Frescati House did not meet the National Heritage criteria in regulation 10.01A(2) of the EPBC Regulations. On this basis, I was satisfied that Willow Court Barracks Precinct and Frescati House did not have National Heritage values for the purposes of section 324C(2)(b) of the EPBC Act.
57. Accordingly I decided, pursuant to section 324JJ(1)(b) of the EPBC Act, not to include the nominated place, Willow Court Barracks Precinct and Frescati House, in the National Heritage List.

**Josh Frydenberg**  
**Minister for the Environment and Energy**

29 / 6

/2018



## ANNEXURE A

### ***Environment Protection and Biodiversity Conservation Act 1999***

#### **324C The National Heritage List**

- (1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision and Subdivisions BA, BB and BC. The record is called the *National Heritage List*.
- (2) A place may be included in the National Heritage List only if:
  - (a) the place is within the Australian jurisdiction; and
  - (b) the Minister is satisfied that the place has one or more National Heritage values (subject to the provisions in Subdivision BB about the emergency process).
- (3) A place that is included in the National Heritage List is called a *National Heritage place*.
- (4) The National Heritage List is not a legislative instrument.

#### **324D Meaning of *National Heritage values***

- (1) A place has a *National Heritage value* if and only if the place meets one of the criteria (the *National Heritage criteria*) prescribed by the regulations for the purposes of this section. The *National Heritage value* of the place is the place's heritage value that causes the place to meet the criterion.
- (2) The *National Heritage values* of a National Heritage place are the National Heritage values of the place included in the National Heritage List for the place.
- (3) The regulations must prescribe criteria for the following:
  - (a) natural heritage values of places;
  - (b) indigenous heritage values of places;
  - (c) historic heritage values of places.

The regulations may prescribe criteria for other heritage values of places.

- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
  - (a) natural heritage values of places;
  - (b) indigenous heritage values of places;
  - (c) historic heritage values of places;
  - (d) other heritage values of places.



**324JG Australian Heritage Council to invite comments on places in finalised priority assessment list**

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must publish a notice inviting people to make comments on the place.
- (2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.
- (3) A notice under subsection (1), in relation to a place or places:
  - (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
  - (b) must identify the place or places to which the notice relates; and
  - (c) must invite people to make comments, to the Australian Heritage Council, about:
    - (i) whether the place or places meet any of the National Heritage criteria; and
    - (ii) whether the place or places should be included in the National Heritage List; and
  - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
  - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
  - (f) may also invite people to comment on other matters that the Australian Heritage Council considers appropriate; and
  - (g) may also include any other information that the Australian Heritage Council considers appropriate.
- (4) The regulations must provide for the following:
  - (a) how a notice under subsection (1) is to be published;
  - (b) the manner and form for making comments.

**324JH Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister**

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must (by the time required by section 324JI):

- (a) make a written assessment whether the place meets any of the National Heritage criteria; and
  - (b) give to the Minister:
    - (i) the written assessment (or a copy of it); and
    - (ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).
- (2) In making an assessment in relation to a place, the Australian Heritage Council, subject to subsections (3) and (4):
- (a) must take into account the comments the Council receives in response to the notice under subsection 324JG(1) in relation to the place; and
  - (b) may take into account the comments the Council receives in response to the opportunity referred to in paragraph (5)(c); and
  - (c) may seek, and have regard to, information or advice from any source.
- (3) The Australian Heritage Council is not required to take a comment referred to in paragraph (2)(a) into account if:
- (a) the Council does not receive the comment until after the cut-off date specified in the notice under subsection 324JG(1) in relation to the place; or
  - (b) the Council considers that regulations referred to in paragraph 324JG(4)(b) have not been complied with in relation to the comment.
- (4) In making an assessment, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets any of the National Heritage criteria.
- (5) If, in making an assessment, the Australian Heritage Council considers that a place might have one or more National Heritage values, the Council must:
- (a) take all practicable steps:
    - (i) to identify each person who is an owner or occupier of all or part of the place; and
    - (ii) if the Council considers the place might have an indigenous heritage value—to identify each Indigenous person who has rights or interests in all or part of the place; and
  - (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the National Heritage criteria; and
  - (c) give persons advised at least 20 business days to comment in writing whether the place should be included in the National Heritage List.

- (6) If the Australian Heritage Council is satisfied that there are likely to be at least 50 persons referred to in subparagraph (5)(a)(i), the Council may satisfy the requirements of subsection (5) in relation to those persons by including the information referred to in paragraphs (5)(b) and (c) in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
  - (b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the place;
  - (c) displays in public buildings at or near the place.
- (7) If:
- (a) the Australian Heritage Council considers that the place might have an indigenous heritage value; and
  - (b) there are Indigenous persons who:
    - (i) have rights or interests in all or part of the place; and
    - (ii) are neither owners nor occupiers of all or part of the place; and
  - (c) the Australian Heritage Council is satisfied that there is a body, or there are bodies, that can appropriately represent those Indigenous persons in relation to those rights and interests;

the Australian Heritage Council may satisfy the requirements of subsection (5) in relation to those Indigenous persons by giving the information referred to in paragraphs (5)(b) and (c) to that body or those bodies.

### **324JJ Decision about inclusion of a place in the National Heritage List**

*Minister to decide whether or not to include place*

- (1) After receiving from the Australian Heritage Council an assessment under section 324JH whether a place (the *assessed place*) meets any of the National Heritage criteria, the Minister must:
- (a) by instrument published in the *Gazette*, include in the National Heritage List:
    - (i) the assessed place or a part of the assessed place; and
    - (ii) the National Heritage values of the assessed place, or that part of the assessed place, that are specified in the instrument; or
  - (b) in writing, decide not to include the assessed place in the National Heritage List.

**Note:** The Minister may include a place in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values (see subsection 324C(2)).

- (2) Subject to subsection (3), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.
- (3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
- (4) Particulars of an extension or further extension under subsection (3) must be published on the internet and in any other way required by the regulations.
- (5) For the purpose of deciding what action to take under subsection (1) in relation to the assessed place:
  - (a) the Minister must have regard to:
    - (i) the Australian Heritage Council's assessment whether the assessed place meets any of the National Heritage criteria; and
    - (ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the assessment; and
  - (b) the Minister may seek, and have regard to, information or advice from any source.

*Additional requirements if Minister decides to include place*

- (6) If the Minister includes the assessed place, or a part of the assessed place (the *listed part of the assessed place*), in the National Heritage List, he or she must, within a reasonable time:
  - (a) take all practicable steps to:
    - (i) identify each person who is an owner or occupier of all or part of the assessed place; and
    - (ii) advise each person identified that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and
  - (b) if the assessed place:
    - (i) was nominated; or
    - (ii) was included in a place that was nominated; or
    - (iii) includes a place that was nominated;

by a person in response to a notice under subsection 324J(1)—advise the person that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and
  - (c) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and
  - (d) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.

- (7) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (6)(a)(i), the Minister may satisfy the requirements of paragraph (6)(a) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the assessed place is located;
  - (b) letters addressed to "The owner or occupier" and left at all the premises that are wholly or partly within the assessed place;
  - (c) displays in public buildings at or near the assessed place.

*Additional requirements if Minister decides not to include place*

- (8) If the Minister decides not to include the assessed place in the National Heritage List, the Minister must, within 10 business days after making the decision:
- (a) publish the decision on the internet; and
  - (b) if the assessed place:
    - (i) was nominated; or
    - (ii) was included in a place that was nominated; or
    - (iii) includes a place that was nominated;by a person in response to a notice under subsection 324J(1)—advise the person of the decision, and of the reasons for the decision.

Note: Subsection (8) applies in a case where the Minister decides that none of the assessed place is to be included in the National Heritage List.

***Environment Protection and Biodiversity Conservation Regulations 2000***

**10.01A National Heritage criteria (Act s 324D)**

- (1) For section 324D of the Act, subregulation (2) prescribes the National Heritage criteria for the following:
- (a) natural heritage values of places;
  - (b) indigenous heritage values of places;
  - (c) historic heritage values of places.
- (2) The National Heritage criteria for a place are any or all of the following:
- (a) the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history;

- (b) the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history;
  - (c) the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history;
  - (d) the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of:
    - (i) a class of Australia's natural or cultural places; or
    - (ii) a class of Australia's natural or cultural environments;
  - (e) the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
  - (f) the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period;
  - (g) the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
  - (h) the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history;
  - (i) the place has outstanding heritage value to the nation because of the place's importance as part of indigenous tradition.
- (3) For subregulation (2), the *cultural* aspect of a criterion means the indigenous cultural aspect, the non-indigenous cultural aspect, or both.