

Dear Sir/Madam

As I read through the draft report of the Productivity Commission on the “Conservation of Australia’s Historic Heritage Places” I could not help but nod my head at many of the conclusions. I wish to give you my experience and to make some points from these experiences, though it may be that I am already re-stating matters that are in the draft report.

Our Story:

My wife and I bought a house in Williamstown, Victoria, a city that is run by the Hobson Bay City Council. Prior to purchasing the property I understood that the house was in a heritage overlay (all of Williamstown is!) but had no contributory significance. I went to council on a few occasions to be told that demolition was not a problem. There had been conservation studies done in Williamstown since 1993 and the house was ignored, other than being in an historical precinct. We settled on the house in May 2005.

In June 2005 we submitted our plans. We had some objections including one from a Mr. X (no need for real names). Mr. X has decided the place is of historic interest and lays these out in his objections. Council in July/August, with no consideration to mediation, refuses our plans, but in the body of the report make the statement “we do not oppose demolition of the house”.

We subsequently meet with council, and essentially told the main problem is with setback, there are no heritage issues. We therefore proceed to VCAT. The hearing date is December 13th.

In October we receive a letter from council now opposing demolition as they had “new information”. They also commissioned a report on the significance of the house we bought. In the meanwhile Mr. X submits an application to Heritage Victoria to list the property as of State Significance.

All of a sudden I have to employ a solicitor with expertise in planning, a town planner and a heritage advisor (total cost to me, not including my time is about \$50,000 including my architect). Council employs lawyer and an historian to at rate payers expense (my money again as I am a rate payer), so no cost to the council. Mr. X is retired, has little else to do, cost to him is nothing.

The report the council got gave a nice little history of Williamstown, and retraced the owner and architect of the original house, but no evidence of significance. When it came to the architectural aspects of the house the historian, in her own words, relied solely on Mr. X. Indeed, in her report she acknowledges the help and support from Mr. X, but at no time sought external independent advice. Not surprisingly, influenced by Mr. X she thought the house was of significance and should be retained. This flawed study was accepted by council.

Heritage Victoria subsequently visited the house and was not impressed, and thought it unlikely to be of State significance, and their preliminary report suggested the current protections, of an heritage overlay, was sufficient. This draft was only received after our first mediation hearing.

On the 8th December council asked to meet with me. They gave me 2 “footprints” of the house they would accept. One was by retaining the current house, the second by demolishing the current house. If I stuck to these footprints, then demolition would not be opposed (and as this is inexorably linked to the heritage of the house, they would not pursue heritage issues). This proposition was put forward by the councils heritage advisor and a senior town planner, after a meeting I understand they had that morning (where I believe they were told by their urban planner that our original design was fine). Essentially, we were being blackmailed on heritage issues.

We went to mediation at VCAT on 13th December 2005. Council’s lawyer said we had a package deal, make the changes and council would not oppose demolition. We were stuck on a couple of aspects of the design. We satisfied neighbours and most of what council wanted, but they wanted to push as back further. In this mediation, Mr. X made it clear that he would accept the decision of Heritage Victoria. We had an impasse and a second date was made for January 30th 2006, by which time the Heritage Victoria decision would be through.

On Thursday 15th December my wife, architect and I met with the town planner from council and his student. At this meeting a deal was struck on design. This was on the understanding that council would drop all heritage issues against us in any forum. The town planner and I shook hands on this. I confirmed this immediately with my lawyer. The town planner rang me up at approximately 4pm that same day saying he had confirmed the agreement with his bosses and council’s lawyer. We agreed to meet on Thursday 22nd December with the revised plans. He agreed to the plans, he agreed to the deal that council would not pursue us on heritage issues in any forum and he then gave me a copy of the draft permit conditions. On this day I had heard verbally from Heritage Victoria and relayed the message to the town planner.

On January 23rd Heritage Victoria sent their draft report. I informed the town planner on Tuesday 24th and confirmed I will give him a schedule of colours and materials for the VCAT mediation. I confirmed we still had a deal re heritage/demolition.

On January 30th 2006 at VCAT an agreement was made with the neighbours, council and Mr. X. A planning permit was to be issued for the demolition of the current house and construction of our amended plans. Mr. X was asked if he would accept the decision and he said he would wait for the Heritage Victoria process to be completed. This was NOT a VCAT direction but a mediation agreement under the auspices of VCAT, thus no-one was forced into something they did not want.

On 13th February 2006 my architect rang that he had been contacted by two of the local papers in Williamstown about the house. Articles were run on Wednesday 15th February

2006, including a front page article in one of the papers (clearly a slow news day). As it seemed it was only Mr. X stirring the pot I did not worry too much, though I did ring Heritage Victoria to see if there was any new developments. I also expressed my disappointment at the dishonesty of Mr. X in trying to run a public campaign and not accepting the “umpires decision” of Heritage Victoria as he said he would. I subsequently rang the journalist involved with the front page article to correct some points, at this point to be told that council was going to oppose me at Heritage Victoria!!

Here is where the duplicity of council comes to the fore. I rang the town planner immediately. He told me he had just returned from leave and had not seen the article, he was also surprised that council was going to Heritage Victoria and had only been told about it that morning. He could not understand it, and recognised that we had an agreement. He asked me to speak to his boss. I did so. This is the first time I can remember ever raising my voice in a prolonged manner to any official, I was emotionally distraught by this betrayal and turn of events. I was told that the agreement I had was only for VCAT and not for Heritage Victoria. That council were still going to seek heritage status on the house from Heritage Victoria; that I “misunderstood” the agreement and he had nothing more to say. I asked if he thought I was “stupid”, and why would I take a deal that was only valid in VCAT and not in all forums. He was silent. I asked why he did not negotiate the deal himself. He was silent. He did say that the town planner should not have made a deal that said council would not pursue the heritage status of the house in any forum, my reply was that this had occurred and was not my problem. I had a deal.

I then spoke to the Director of Planning for Hobsons Bay. I was much calmer this time, the aggression came from this man. I repeated the above and he told me there was no deal and that I should forget it. That council had an obligation to go to Heritage Victoria to preserve the house. He also said that I should not worry as Heritage Victoria had said they had no interest in the property and it was almost 0% chance that the house would be listed, so I would be able to proceed. However, allowing for the inconsistencies of his argument to defend the house at Heritage Victoria but allow it to be demolished at VCAT, it seems we both had a different idea on what the Heritage Victoria options were. As I understood it the options were:

- i) Maintain the current protection (the current Heritage Victoria recommendation)
- ii) Heritage Victoria to grant State significance and take control of the property.
- iii) Heritage Victoria to advise council to make its own decision.

We agreed on the first two, the Director of Planning was unaware of the third.

The closing date for Heritage Victoria submissions is 23rd March so at the moment I am in limbo. Almost certainly there will be a Heritage Victoria council meeting which will delay us even further, and more cost to us and more importantly put as through more emotional turmoil.

The Concerns:

So what are the lessons and concerns that I have from our story.

1. Heritage is a traumatic issue, especially for the inexperienced person (which I was). The bitter experience makes me resent heritage as an issue and more likely in the future to support over development rather than conservation. This bitter experience is passed onto friends and relatives and eventually few wish to be caught up in such a terrible situation.
2. Lack of responsibility. There is a saying that is often repeated: “with rights come responsibility”. Those individuals and organisations that feel they have a right to protest and “protect” then have a responsibility. They should be made to pay in some form for the process that they set in motion. If they win, then they have preserved something of importance, if they lose then they bear the financial penalty, not the home owner who is often caught unawares. There should be a consequence to ones action, currently there are none. A financial hurdle would stop frivolous protests and wasting of valuable public and private time.
3. Heritage Advisors should be accredited. I do not know how the current system of heritage advisors and historians work, but there should be some sort of accreditation. It is not enough to have done an history degree, it is not enough to be an architect. There should be some official accreditation process that allows appropriate people to make decisions. This may shrink the pool, but would improve the quality. I do not feel that an advisor can work for a council on a part time, once a day capacity. They should be employed full time and perhaps cover districts, they should be adequately supported.
4. Unbiased. When an advisor works for a council, they may feel an obligation to work for that council, and thus not necessarily give an unbiased view of what they say. Their decision should be transparent and public.
5. Council involvement. I am not sure where the role of council lies. In the case of Hobsons Bay we have a council that refuses to make decisions (sends things regularly to VCAT and Heritage Victoria). Also council is often under pressure and threats from lobby groups, and is often beholden to them rather than making good decisions for all ratepayers. I think council officials forget that ratepayers are their employers. If a council does not wish to make decisions, or is not competent to do so then this task can be removed from them and given to another body. It is not ideal, as it is better for local issues to be dealt with locally, but in the long run it may avoid unnecessary conflicts.
6. Council need to understand the rules. It seems that in the planning department the officials are not fully *au fait* with the rules. This is a cause of concern as it generates enormous uncertainty and tension. They need to know their rules and the rules of Heritage Victoria. Then they have to stick to the rules and not make them up as they go along.

7. Guidelines on what is heritage. A major problem is that there may be no rules as to what is heritage, or if there are rules they are ignored. In our circumstance, there was never an objective reason why the house was considered significant, other than personal opinion. That is too subjective and not good enough.
8. Government/individual help of the property owner. If any level of government believes that a building is of heritage value, it should then support the owner to restore and maintain the building. Similarly with a private individual or group. It is all very well to ask to preserve something if you do not have to pay for it. There should be more consultation with owners rather than bullying.
9. Heritage as leverage. We feel that in the first instance that council was blackmailing us into a decision rather than being committed to the house being truly considered of heritage significance. This should not occur. There are 2 arguments. The house is significant or not, and this is judged on its merits; the replacement house is appropriate or not, also judged on its merits. It should not be that the house is not significant if the replacement house looks like this.
10. Heritage is serious. Care needs to be taken that we do not list everything as historically important just because it is old, or someone might have lived there or built it. This approach devalues true historical content. If there are good examples of modern 1903's home, then identify and preserve them, but not all homes built in the 1930's need to be retained.
11. The future is also important. It is true that we must protect and preserve our cultural and historical past, but there also needs to be the acknowledgement that we have a present and look into a future. We cannot stifle our graduates into expressing themselves, and it is not fair to burden them with the past. They should not be asked to mimic what happened in the past. This not only applies to design but also to materials. An argument we had was regarding the type of roof material to use. It is hard to believe that if builders had the options available today they would not use them and would prefer the materials and tools they had. This is called progress.