

**Productivity Commission Inquiry  
Conservation of Australia's Historic Heritage Places**

**Submission by Robert Clark, Mosman NSW 2088**

*Are market failures present in the conservation of-heritage places?*

*Are there impediments to commercial conservation activities (for example perception by owners that conservation costs are prohibitive compared to benefits to them)?*

I believe the example described below answers both these questions in the affirmative.

*How well do Local governments resolve conflicts between protecting private property rights and achieving legitimate heritage conservation objectives? Should governments (at any level) be required to compensate for their actions that infringe on the property rights of individual owners?*

A major problem exists where an earlier building is listed as a heritage item in the midst of an area that has become zoned for higher density. The heritage item represents the low density of a much earlier, perhaps the first, phase of development and is by virtue of a heritage listing denied any chance of obtaining an equitable outcome in terms of the development potential of the site.

In the Sydney CBD, where land values were at a maximum, transferable FSR was introduced to help compensate for the loss of development potential achievable on a site whenever an historic building was to be retained. However no such system exists in suburban areas.

I believe that there is a need to look at the equity implications inherent in special cases such as the example quoted below where Council is most unlikely to agree to or be able to afford proper compensation. In this instance a compromise solution, such as developer funded conservation and relocation of the house to a Council nominated and owned site, may be appropriate.

*An actual case study located at North Steyne, Manly, NSW.*

A freestanding weatherboard cottage built in 1909 at North Steyne, Manly, NSW was endorsed for listing as a heritage item as the last freestanding house on the oceanfront by Manly Council. The Council was in the process of dealing with a Development Application for a 5 level building containing 13 apartments the site that complied with the Development Control Plan for the area (see plan and elevation). This process was terminated when the house was listed during 2003. In the meantime Council had approved a 5 storey apartment block on the northern side of the house removing a pair of single storey semi detached cottages built at about the same time as the weatherboard house thus removing any remaining sense of setting for the house and severely effecting its amenity. This was despite objections from the house owner that if the house were to be listed the adjoining cottages should not be demolished as they formed the only remaining context for the freestanding house (see photos).

The house now stands between a 9 level unit block on its southern side (built in the 1970s) and the newly completed 5 level block to the north (see photos).

The house has not been well maintained over the last few years by its elderly owner who believed it would be developed as soon as she moved out and was no longer able to return. As a result there are considerable costs involved in conserving the property.

No attempt was made by Council to specially modify the development to the north of the house to take account of the heritage aspects of the house, in particular its setting, or to canvass the amalgamation of the sites to allow a reasonable development potential on the combined sites with retention of the house.

The Council voted to contribute \$10,000 to the preparation of a Conservation Management Plan and to consider the relaxation of some conditions of the DCP to help facilitate some development at the rear of the house. The \$10,000 offer was not accepted by the developer acting on behalf of the owner as a team of leading architects with heritage expertise plus a separate firm of heritage consultants had been engaged to cover this matter.

As a result of the listing, a new Development Application has been submitted retaining the external slate roof and weatherboard exterior as currently seen from the oceanfront. The front part of the house is conserved while the back third is demolished to allow for the construction of underground parking, and then rebuilt using the original timber framing weatherboards and slates. Behind the house a six level building of 5 apartments is proposed. The FSR for this proposal is 1.15:1 (including the heritage house floor area) compared to the 1.5:1 allowed under the DCP. It exceeds the height limit allowed under the DCP but fits between the 9 level block on one side and the new 5 level block on the other (see photomontages). Three variations with 2 and 3 storey development have been examined and rejected as simply uneconomic to build and cover the costs of conserving the original house.

The question of who pays for the heritage listing is clear. As it is of local significance it does not attract any funding that would remotely compensate for the loss of development potential caused by the listing. The 5 apartments and the refurbished house do not come near the projected return from the 13 apartments proposed in the original 2002 Development Application.

The second Development Application was lodged in October 2004 and still no report has been put to Council on this matter (as at July 2005).

On the question of who benefits from the heritage listing, it is some residents in the adjoining 9 level apartment block and in houses in the street behind the proposed development who could gain ocean views from first floor extensions to their houses. The latter have orchestrated a determined campaign to oppose development on the site. The main problem is that with the restricted land area available, the proposed 6 level building comes much closer to the rear lane and would appear bulkier. The issues of overlooking and overshadowing have both been addressed in the design

A further issue exists in the great difference between living in a 1909 house on the oceanfront that has no view of the water from the front enclosed verandah if you are

sitting down, except if the front door is open, is dark inside and has its main living and eating area at the rear. This contrasts with all the new apartments that maximise views of the water from the main living area and allow as much light in as possible.

The value of retaining the house is as an example and reminder of the first single story buildings that spread along the Manly oceanfront. As the last example it is the only block to be penalised in this manner. The completely altered setting now makes the house a rather incongruous and forlorn remnant (see photomontages).

This example serves to highlight the importance of Heritage Conservation Areas in retaining the context of buildings with heritage values. In these areas the zoning and DCP combine to protect the scale and appearance of the neighbourhood, giving residents much greater security relating to change and thus giving a firm base to property values in that area.

*How do local government regulations designed to protect historic heritage places relate to more general planning regulations?*

In the above case the discrepancy in the zoning potential for a 5 level apartment building with the retention of a ogle story weatherboard cottage on the site is stark and there is no planning mechanism to redress this imbalance. (Grants would not compensate to any meaningful degree). In addition there is no real benefit to the owner in the retention and conservation of the house and a serious monetary disbenefit.

This case study does not seek to detract hum the importance of retaining our heritage places. It is presented to highlight a real problem with the system where the reasonable expectations for site development cannot be achieved due to heritage restrictions. There is at present in NSW no redress for the owner of such a property who is also expected to bare the costs of conservation. High land values in this case also mean high land tax charges even when the property has been revalued as a result of the heritage listing.

I believe this is an inequitable situation where the private individual is expected to accept the loss of development potential and pay for the conservation of the heritage item. I would be willing to supply further details if contacted. I will however be overseas from 26 August until early October.

Yours faithfully  
Robert E S Clark  
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