

Productivity Commission inquiry into the conservation of Australia's historic heritage places

My submission is concerned with the fundamental conceptual framework which should apply to heritage as an intervention in the economy.

Economic context

State activity in relation to heritage mostly falls within the area of urban development regulation. Urban development regulation is pervasive because the market demands that the state define the property rights of each land parcel and that, typically, the most important economic right is the right to develop the land. Only when the development potential of a land parcel has been delimited can the land be valued, exchanged, used as security, etc. Only after the delimitation of the development potential of all surrounding land parcels, the development of which will generate positive and negative externalities incident on the land parcel in question, can the present value of a major capital investment on the land be estimated. The delimitation of the development potential of a land parcel, and of all surrounding land parcels, is primarily left to the zoning and built form provisions of local planning instruments. These instruments regulate the use, intensity, form and performance of new development as well as the impact of development on existing places, surroundings, infrastructure, nature, activities, etc.

The effects of planning on heritage are unavoidable. A planning instrument which ignores all heritage considerations (few have) is simply setting the value of heritage places below that of all new development: it shapes the market in ways which create an incentive to remove heritage places when it could equally, through exactly the same mechanisms and with exactly the same validity, do the opposite. In this way planning instruments have always regulated the use of heritage places and impacts on heritage places, sometimes explicitly, sometimes by default, sometimes by neglect. There is no question here of legitimacy or due process. The market demands that development potential be defined (not simply maximised) and the value of existing places, like the value of public amenities, environmental assets and patterns of use, will always be affected one way or another.

Terminology and approach

In what follows I shall refer to 'heritage' places as places possessing cultural significance. The term 'heritage' gives the illusion of precision – we use it as if we agree on its meaning – when in fact it is used, unqualified, to mean very different things. Practitioners, whether experts making assessments or politicians/decision makers making value judgements, need to be continually reminded that the issue is always one of significance, that is, one of degree, to be established not intuitively or emotionally but systematically and empirically.

The Australian and state governments make lists of relatively few places for their cultural significance and even fewer privately-owned places. Economic impact or personal hardship is relatively minor and is addressed through existing mechanisms. I shall focus mainly on the widespread use of 'heritage' as a category or consideration in local land use regulation, and secondarily on what this means for the role of state heritage agencies.

The problem

Nothing about heritage is absolute. The assessment of the nature and degree of cultural significance of a place requires technical expertise but is never absolute, being a function of the information available to, and the perspective of, the assessor. There are always other values competing with and/or reinforcing cultural values. The relative significance of cultural values compared to economic and environmental values is ultimately a political decision and is a function of the information available to, and the politics of, the decision maker.

The degree of cultural significance of a place, like its environmental, economic, functional and other values, lies on a continuum. The notion of cut-offs and thresholds may be necessary in drawing up lists of places of cultural significance but they are an artefact of particular administrative processes. A list of heritage places is perverse (even if expedient) since it seems to declare that the places not listed, and not assessed, have little or no cultural significance. Similarly, a list of isolated places denies the cultural setting of places and can be counterproductive in attempts to conserve the cultural significance of precincts and areas, which typically mean more to people than single buildings and sites.

Every place and thing possesses cultural significance. This is not a trivial point. Old places and new places alike embody technical, scientific, aesthetic, historic and social values in some form and to some degree. It is possible to describe the cultural significance of all places and things, even if it is only worth doing so, in most cases, when competing values need to be weighed against cultural significance to enable decisions to be made.

The assessment of the cultural significance of a place or area does not in itself imply any action to be taken. The nature and degree of the cultural significance of a place becomes one of many considerations in the development of policies and rules for managing urban change. Even in relation to places with a high degree of cultural significance, urban management may or may not include various forms or degrees of conservation.

When conservation measures are adopted, 'heritage' merges with 'character', 'townscape', 'amenity' and other factors in the protection of property values. The owners of houses in a leafy suburban street invariably oppose changes to the rules which produced the street in the first place. The residents of such a street have a very clear view of the effect of a house allowed to become derelict, or house allowed to be used for, say, the servicing of vehicles. This management of externalities is not often seen as a heritage issue but it involves exactly the same kinds of regulatory measures. Maintaining the residential character of the leafy suburban street protects the amenity of the street and increases the value of every property in it. Preventing the demolition of a 'heritage' building in a fine intact street, in Haberfield, Yackandandah or Fremantle, does the same thing and is unquestionably in the interests of the owners as a group (if not in the interests of potential free riders).

It is often the case that the conservation of places of cultural significance is just as positive – for property values, for business, for the local economy – as the normal

planning activities concerned with amenity, land use structure, land availability, infrastructure provision, etc, and there is no clear distinction between them. Just as rules about traffic generation or landscaping or overshadowing shape the property market in various ways, so do rules about conserving places of cultural significance. They can all be consistent with perceived values and 'highest and best use' or they can put different values in conflict.

Planners have generally failed to see the planning system as the foundation of, and precondition for, the urban property market and have failed to use planning instruments to work with the market and to give appropriate signals. In the worst cases, rules which provide an incentive for redevelopment may co-exist with rules which preclude demolition. The separation of planning and heritage creates a contradiction which is frustrating for owners and is likely to be inequitable as well as irrational.

[Paragraph added following the hearings in Perth.] The experience at **Battery Point**, Hobart, was referred to. Unusually, a research project in 1996 evaluated the effects of the Battery Point planning scheme over the previous ten years. Despite there having been over 950 individual development projects, the fine grain, diversity and attractive complexity of the area was strengthened rather than undermined. No buildings of any consequence had been demolished in that time – not because they were heritage listed but because the scheme was based on an understanding of the land economics of the area: value and appeal came from continuing small increments of change governed not by an official style but by individual taste and choice. The baseline for development potential – a plot ratio of 35% – applied to land cleared for redevelopment. Adaptation, addition and infill could have increasing levels of development, and all owners elected to work with existing houses, modernising and extending them. This was the best possible way to guide the market towards the conservation of the area's outstanding qualities and thus **to enhance collective property rights** – and it worked very well.

The tradition of seeing heritage as a distinct parameter separate from other planning considerations and therefore in some sense outside the market, of seeing it as something absolute (a place either is or is not a heritage place) and then seeing only one consequence (preservation) has threatened the legitimacy of urban conservation, diminished the effectiveness of planning and greatly confused the debate.

The solution

The Chairman of the Productivity Commission has suggested that heritage regulation may be an example of an 'off-budget mechanism for achieving a range of policy objectives', in this case making owners conserve buildings which would otherwise be a cost to the state (Banks 2005, p 5). The above analysis suggests something very different: that a land use regulatory instrument is a precondition for the operation of an urban property market and that rules about existing buildings will form an unavoidable component of the instrument, whether the buildings are protected or condemned. Like land use rules and traffic management, rules impacting on existing places are built into the planning and urban property system. Nevertheless this class of intervention should be subject to the same principles proposed for regulation generally (Banks 2005).

While heritage regulation is clearly one of those areas where 'rising income levels have brought increased expectations or demands on governments to meet a range of social

and environmental goals that may previously have not been seen as priorities' there needs to be continual effort to reduce the growth of regulation, through such approaches as 'one-in-one-out' or 'new for old' (Banks 2005, p.3). Heritage is an area where it may be possible to reduce the number of regulators. And it is also an area where the processes should be more rigorous, with a reduction in the extent to which decisions are based on the exercise of discretion. Five principles would help lead in these directions.

- Conserving places of cultural significance is an integral component of the planning system and is the same type of activity as managing places of natural heritage value, maintaining the viability of commercial centres, enhancing amenity, providing for effective infrastructure, etc. 'Heritage' should be part of planning, not a separate system, and should be regulated through the normal planning processes.
- Assessing the cultural significance of a place should be done as independently, objectively and rigorously as possible (as appropriate to the nature of the decision to be made) so that the decision maker has the best possible information prior to making a decision. The core component of the heritage conservation process should be a statement of the cultural significance of the place. The degree of cultural significance leads to no specific outcome until an integrated assessment is made through the planning system.
- Planning decisions should be based on explicit rules developed with the community and adopted by the local government. The rules may be complex and may require to be administered by experts but should lead to consistent and predictable outcomes. The rules should govern the way in which competing (and aligned) values, including economic potential, environmental significance and cultural significance, are weighed to deliver an outcome.
- Planning decisions routinely involve trade-offs and offsets. Most people accept that a range of goals and interests may mean that an optimal outcome may involve less than perfect results in specific areas, such as environmental conservation, impact on neighbours, contribution to the streetscape, etc. The same should apply to conserving the cultural significance of the place: the best is achieved consistent with securing the other values at stake. This will only be accepted when the many values of the place are rigorously assessed and are recognised in an open decision making process.
- Australian and state heritage councils should not be regulators and should not have development control powers. Their role should be to make exemplary assessments of the places and areas they list and, above all, help build the capacity of local government to make (or commission) independent, objective and rigorous assessments, to become inputs to a single, integrated decision making process.

Perhaps current thinking about sustainability provides some kind of model. Economic, environmental and social values are at stake in all decisions. Good information about all of them needs to be available to the decision maker. The latter seeks to make a decision which allows for simultaneous improvement in each dimension. The cultural significance of a place always needs to be taken into account and to be reflected in the outcome.

Banks, G. 2005. 'Regulation-making in Australia: Is it broke? How do we fix it?' ACORE, Canberra, 7 July 2005

Jeremy Dawkins 29 July 2005

The conservation of Australia's historic heritage places

Jeremy Dawkins

Notes for presentation to hearings

Perth, 1 August 2005

My submission is concerned with the fundamental conceptual framework which should apply to heritage as an intervention in the economy.

I shall refer to 'heritage' places as places possessing cultural significance and focus mainly on local land use regulation, and secondarily on what this means for the role of state heritage agencies.

- Urban development regulation is pervasive because the market demands that the state define the property rights of each land parcel. Typically, the most important economic right is the right to develop the land.
- The market demands that development potential be defined (not simply maximised) and the value of existing places, like the value of public amenities, environmental assets and patterns of use, will always be affected one way or another.
- Nothing about heritage is absolute.
- The degree of cultural significance of a place, like the environmental, economic, functional and other values of the place, lies on a continuum.
- Every place and thing possesses cultural significance.
- The assessment of the cultural significance of a place or area does not in itself imply any action to be taken.
- When conservation measures are adopted, 'heritage' merges with 'character', 'townscape', 'amenity' and other aspects of the urban environment.
- It is often the case that the conservation of places of cultural significance is just as positive – for property values, for business, for the local economy – as the normal planning activities concerned with amenity, land use structure, land availability, infrastructure provision, etc, and there is no clear distinction between them.

- Planners have generally failed to see the planning system as the foundation of, and precondition for, the urban property market and have failed to use planning instruments to work with the market and to give appropriate signals.
- The result: a tradition of seeing heritage as a distinct parameter separate from other planning considerations and therefore in some sense outside the market, of seeing it as something absolute (a place either is or is not a heritage place) and then seeing only one consequence (preservation).
- ‘Heritage’ should be part of planning, not a separate system, and should be regulated through the normal planning processes.
- The core component of the heritage conservation process should be a statement of the cultural significance of the place. The degree of cultural significance leads to no specific outcome until an integrated assessment is made through the planning system.
- Planning decisions should be based on explicit rules developed with the community and adopted by the local government. The rules should govern the way in which competing (and aligned) values are weighed to deliver an outcome.
- Planning decisions routinely involve trade-offs and offsets. This will only be accepted when the many values of the place are rigorously assessed and are recognised in an open decision making process.
- Australian and state heritage councils should make exemplary assessments of the places and areas they list and, above all, help build the capacity of local government to make independent, objective and rigorous assessments.

Perhaps current thinking about sustainability provides some kind of model. Economic, environmental and social values are at stake in all decisions. Good information about all of them needs to be available to the decision maker. The latter seeks to make a decision which allows for simultaneous improvement in each dimension. The cultural significance of a place always needs to be taken into account and to be reflected in the outcome.