

The NSW Heritage Act: 30 years on, do we love it or leave it?

The year 2007 marks the 30th anniversary of the NSW Heritage Act. Introduced to provide statutory protection for heritage, it was a landmark initiative in Australia, and the result of intensive lobbying by the National Trust and other groups dedicated to preventing the destruction of the built and natural environment which had characterised earlier decades.

Thirty years on, the Act is undergoing review. Has it achieved what it set out to do? Was it on the right track in the first place? Conservation Director of the National Trust, **Jacqui Goddard**, examines the history and place of the Act in the planning process, and adds a cautionary note regarding change.

Happy 30th Birthday NSW Heritage Act! Now let's see if you are still young, vital and of use, simply old and irrelevant, or perhaps in need of a few nips and tucks.

On 19 July 2007 the Minister for Planning the Hon Frank Sartor MP announced a review of the Heritage Act under State Plan Priority P3: 'Cutting red tape'. A mixture of guarded optimism and fear swept over those of us who deal with the Act on a day to day basis. We all know there are a few problems with it but overall it has served us well over the last 30 years, and 30 years is a mere passing moment in history and should we be so quick to judge?

A panel was announced comprising Chair Gabrielle Kibble, former Director of Planning and now Administrator at Liverpool Council; one of the authors of the Act, John Whitehouse, and Chair of the Heritage Council and member of the Redfern Waterloo Authority and Sydney Harbour Foreshore Authority Boards, Michael Collins.

The panel began its deliberations with a series of 'key stakeholder' meetings. The key stakeholders are the NSW Heritage Council, Australia ICOMOS, the National Trust of Australia (NSW) and the Property Council. This has angered such groups as the Nature Conservation Council which believe that they are not being represented, but wider consultation will occur during the more public phase which was announced a week later.

Submissions are due by close of business 8 October and, like the Productivity Commission this will no doubt bring forth concerns from various groups that heritage legislation has adversely impacted on their properties as well as the 'we need stronger legislation' submissions. It is timely therefore to ponder why we have the Act and why it is the way it is and also to ask ourselves what we are trying to protect and why.

A perspective on the NSW Heritage Act

Compared to other parts of the world we have very young legislation dealing with the past and its protection. Although the Ancient Romans had legislation and Sweden made its Royal Proclamation of 1666, most of what we recognise as Heritage Legislation was introduced largely as a response to the Industrial Revolution: Greece in 1834, France in 1841, Spain in 1860, Italy in 1872, Hungary and Egypt in 1881 and in the UK in 1882.

As a colony in the nineteenth century we were unhampered by the desire to preserve our past except where it related to our British origins. We were not even overly concerned with the manner of the growth of the colony. With Federation came most of our laws but at the time of Federation there was none dealing with the environment or with town planning. The first comprehensive Local

Government Act was passed by the NSW Government in 1906 and it dealt mainly with subdivision and the opening of roads. It was replaced in 1919 and that 1919 legislation continued to provide the legislative structure for local government until 1993.

Building Regulation and Town Planning were introduced in the 1919 Act as parts XI and XII, however in reality the town planning provisions were limited to the same areas as the 1906 Act: subdivision and new roads.

In 1945 the Act was amended and Part XIIa: Town and Country Planning Scheme was introduced. It formed the legislative framework for the County of Cumberland Planning Scheme and other schemes. Part XIIa also introduced the provisions of Section 342G(3) (p) *'the preservation of places or objects of historical or scientific interest or natural beauty or advantage'*. The County Planning Schemes were followed by local planning schemes. The primary responsibility for development control remained with local government councils, subject in many areas to veto by State Government.

Our attitudes to town planning, to growth and preservation were therefore largely formed post WWII. The formation of the National Trust of Australia (NSW) was part of this post war interest in our surroundings, although the idea had been mooted earlier. We were young

enough to crave change and growth and old enough to be worried about what we might lose in the process.

A number of things then happened. A list of important places was prepared for the County of Cumberland planning scheme in 1951 (the first National Trust lists were prepared for this purpose). Other Councils followed suit.

The Federal Government undertook the National Estate Report in 1974 and established the Australian Heritage Commission in 1975. In 1976 a Bill was tabled in the NSW Parliament for new planning legislation, including heritage provisions. The Government changed, the Bill collapsed and the Heritage Act was passed as a stand-alone Bill in 1977, effectively as cross party agreement. The Environmental Planning and Assessment Act followed but never quite came to grips with its forerunner, the NSW Heritage Act.

Amendments to the Act in 1998 introduced the State Heritage Register but did not alter the provisions for listing by local councils and in 2004 the Federal Government introduced the National Heritage List.

The current situation

Although the terms of reference for the 2005/06 'Productivity Commission Inquiry into Historic Heritage' were quite broad the submissions dealt largely with difficulties relating to legislation and development at local government level. While the final report by the Commissioners is disappointing it cannot be denied that there is a perceived, if not actual, problem with heritage legislation and its application in Australia.

Listing was seen as one of the most vexatious issues with tremendous criticism of the so-called 'windscreen surveys' that were popular in the 1980s and which formed the basis for many a local council list. It must be remembered, however, that what was once merely a 'list' as the name suggests, became much more than that in a short time.

Suddenly, because entries on the lists were being contested, the listing was expected to be a fully comprehensive historical study and analysis of a place, defensible in Court from every angle: curtilage, restrictions, the effect on neighbours – or on the neighbourhood.

We, as a community, wanted to know everything about everything and of course those opposed to a listing wanted to be able to challenge it. Pressure fell on experts to argue the minutiae of each listing, lest it be subject to claims of invalidity. The heritage 'industry' jumped into action trying to cross every 't' when in reality that is an impossible task. No list can ever be finished and no listing can be absolutely definitive for all time. Our values change and our available information also changes.

Many people talk wistfully of heritage regimes in other countries, of the comprehensive grant schemes and the Heritage Lottery in the UK for example, but there is a fundamental difference in Australia – and it is one that we either have to live with or change our culture. The difference is our attitude to heritage and the value we place on it.

Listing in the United Kingdom is very much a part of daily life (although some consternation is occurring as the recent past is being considered for listing), and the British have a tradition over many centuries of passing on stately homes and castles with universally recognised heritage value. Given the relative recentness of our European heritage in this country, there is not the same core community support for heritage, or the same model of 'inheritance'.

In Australia, there are also conflicting views about where the responsibility lies for conservation management: government says it is up to the individual and many sectors of the community say it is a common good and therefore should be publicly supported.

Moreover, a core problem is that our legislation lumps together the identification of importance and cultural value with management issues, and then we confuse that further by the 'tiers' of listing, each of which has different emphases and rules.

One way of navigating this mire would be to introduce a common listing regime across the state with designation of local, regional and state significance, and then have the management of those categories handled by the different levels of government. Why should it be necessary to 'de-list', thereby indicating the place is no longer of importance, if there is no other choice but to demolish? Why should a resident in one municipality

have completely different restrictions than a resident in another?

Listing should be an early warning system, a degree of certainty in an uncertain world, that a place is considered important. From there decisions need to be made based on a huge variety of external influences and circumstances which can be directed by the management aspects of the Act. But please don't let us throw the baby out with the bathwater. The Act does need some tweaking but in general it has played an important role in the development of our maturity as a nation. It is still healthy and relevant and needs to be supported.

Other viewpoints



Cr Genia McCaffery, President of the Local Government Association of NSW, looks at the issues from the perspective of local government councils and their communities

The Heritage Act 1977 is important to local communities because it has helped preserve local heritage and distinctive urban environments. Heritage is about protecting places local communities 'want to keep'. These places provide local identity, unique urban forms, iconic places, and diverse streetscapes. They retain community memory and cultural identity.

Determining what is a 'place of local heritage significance' worthy of preservation is based on professional opinion, and not always immediately recognised by the community. Identifying heritage values outside current architectural trends or narrowly focused on aesthetic values requires good heritage education and rigorous local heritage studies, to identify and justify places that require local listing. These studies form the basis of Local Environmental Plans, which are extensively advertised and give communities the opportunity to comment.

opinion

Although there are diverse opinions on what the benchmarks should be to determine what is listed (at national, state or local level), the debate has moved on in 30 years.

Few would question the validity of establishing conservation areas in Paddington which protect the unique streetscapes and examples of Victorian terraces and workers cottages, for example. Similarly, protection of Federation subdivisions in Haberfield is valued because of the distinctive garden estate layouts and architectural merit.

Adaptive re-use and other ways of maintaining the economic viability of a listed property are well recognised principles of heritage preservation. The slavish imitation of historic elements when adding to historic properties is not considered best practice.

There is a greater understanding that heritage is not all about 'bricks and mortar', or attractive old buildings. Heritage is about social, scientific and cultural values. It is about the association of places to a range of cultural groups. There is an acceptance that different cultural groups value heritage differently, which in some instances results in tension.

Protecting Aboriginal heritage is complex and requires specialist knowledge, effective communication with Aboriginal groups, and a respect for customs and confidentiality. Many councils have undertaken studies on Aboriginal heritage with the support of the Heritage Council, but the work is uneven across the state.

How effective has the Heritage Act been over 30 years? It has changed the perception and value of heritage to the community. The community now embraces innovative adaptive re-use of buildings, it values the retention of specific places, and it has changed how we view the interrelationship between the old and new.

The Heritage Act has positively impacted on what is considered good urban design.

With the current review of the Act it is important its objectives are not diluted by an overreaction to the process of protecting heritage places.

Yes, improvements can be made to processes. Improving heritage studies which inform listings will reduce debates, and improving educative

programs on restoring, maintaining and developing properties will assist applicants. However, it is essential the importance of the Act in identifying and protecting 'places we want to keep' be retained and 'preserved'!



Ken Morrison is the NSW Executive Director of the Property Council of Australia. His members across the country own and manage heritage properties worth billions of dollars.

The Heritage Act's 30th birthday would seem an appropriate time to ask whether this important piece of legislation has achieved its objectives.

In considering this question, it's worth stating the obvious. Any modern planning system needs mechanisms to identify and manage society's heritage assets. The pitched battles of the 1950s and 60s are long past.

A tremendous amount of work has been undertaken in the last two decades to identify state and local heritage items. The future will not see heritage lists double or triple in length because this is simply not needed.

Also largely a debate of the past is the puritanical view that all heritage must be kept in some kind of time warp, unaffected by current user needs or real world economics. Adaptive reuse is now mainstream heritage thinking for all but a few.

The big challenge facing heritage is the extent to which the legislation – as well as its use and application – has encouraged and accommodated investment in heritage buildings. This must be the central question facing the Minister's expert panel reviewing the Act.

The Property Council believes heritage policies need to be recalibrated to make

investment and ownership of heritage buildings more attractive.

There is no getting away from the fact that the initial listing of a heritage item generally has a significant economic cost for the owner, usually in lost development options, particularly in higher density areas. This lowers the land value, bringing forward the loss of development potential. This can have further financial implications where an owner uses the asset as equity to finance other investments and operations.

While the costs are borne by the owner, the benefits are enjoyed by the community. It is this mismatch which was the central focus of the Productivity Commission's report last year.

There are also usually other costs associated with owning and maintaining a heritage building, such as additional regulatory compliance and higher costs of works, but it is also true that purchasers acquire a heritage asset with this knowledge in mind.

There are some simple policy measures that could make investment in heritage more attractive, and therefore ensure better heritage protection and conservation.

Some of these measures build on the strengths of existing systems and excellent examples of redevelopment of heritage properties.

These could include direct public compensation for any loss of commercial value from a listing, transferable heritage floor space scheme (the current City of Sydney scheme needs improvement), public contributions to the cost of restoration work, tax deductions for restoration costs and the donation of public land that has a heritage building on it.

Measures to address the ongoing costs of ownership could include increased land tax and council rate reductions or exemptions. Investment and ownership could become more attractive through stamp duty and capital gains tax reductions or exemptions and a heritage bonds scheme to provide a tax break on heritage property related borrowings.

We need new approaches to make heritage investment and ownership more attractive. The challenge is to ensure such measures deliver on heritage protection and conservation objectives into the future and provide clarity and certainty for everyone involved.