Counteracting Anti-Heritage Thinking in Australia’s Planning Policy Frameworks

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Abstract

The ‘Productivity Commission Report of 2006 – Conservation of Australia’s Historic Heritage Places (PC Inquiry)’ constitutes a seminal piece of work with many implications for future policy formation in the cultural heritage sector. It forms the basis of the most comprehensive study of cultural heritage ever undertaken in Australia. The Commission sat in all six states and the two territories over a period of year and took more than 400 submissions from a range of heritage professionals and private owners. The purpose of the inquiry was to investigate the extent to which Australian governments need to be involved in the regulation of privately owned heritage.

This paper examines the changing nature and role of policy in respect of the built heritage environment. It shows that the PC Inquiry, by adopting an economist approach to its appraisal of current regulation in the sector, ignored positive externalities that flow from it. The 2006 PC report discloses that the Commission ignored the advice given to it by heritage professionals (PHA 2006). Whereas heritage professionals were agitating for increased government involvement, the Commission recommended against it. In its draft recommendations the Commission went so far as to suggest that a voluntary negotiation process should replace compulsory listing, but it wound this back in its final report after it met with censorial disapproval by heritage professionals. The position that the PC Inquiry took in its recommendations is perturbing because it undermines the fragile structure of heritage practices and ideology: it points to a weakening of the efficacy of cultural heritage in society, and promotes the supremacy of economic factors over heritage as a public good in Australia’s regulatory framework.

Background trends

Cultural heritage in the form of listed buildings and conservation areas provides a crucible for shared psychological experiences in society. These experiences operate either at the conscious level or constitute subliminal expressions through the agency of memory, community identity, and spiritual connection.

The economic benefits of cultural heritage are manifest in many forms such as tourism, sustained real estate values, and a burgeoning domestic construction and maintenance industry in most of Australia’s historic centres. The value of a heritage property can be assessed in one of two ways. Firstly, its existence value (i.e. by the simple fact that it exists as an historical marker of a previous era) and secondly, its economic value (based on real estate market prices). This duality forms the basis of much debate in society because, although privately owned, there is a ‘public good’ component to all heritage listed buildings and places in society (Nasser 2003; Greffe 2004; Negussie 2006).

Nasser (2003) explains that conservation has three interrelated objectives: physical, spatial, and social. Physically, it is linked to building preservation. Spatially, it is linked to townscape as a holistic entity and socially, it is concerned with users, the local community, and urban population. She argues that the social dimension is the most difficult to define because factors of selection, restriction and expansion, efficient use, and viability are product-focused concerns that treat physical attributes and their commercial potential in higher order that the needs of users, residents, property owners, and those who depend upon conserved heritage environments for their livelihoods.

Greffe (2004) explains that the consumption of cultural heritage in society is based upon four separate dimensions, namely the functional dimension, the economic dimension, the psychological dimension, and the social dimension. Each of these dimensions is based upon individual responses that either reject or embrace the notion of ‘heritage’ as an intangible public good.

Negussie (2006) points out that a key issue in built heritage management is the question of ownership since it determines the balance between public and private both in relation to conservation strategies and access to heritage. She explains that under the neo-liberal agenda, the conversion of ownership from the state to private individuals or companies has resulted in a diminished control over proper care for the built heritage environment.

Today, the debate centres on the extent to which regulatory authorities have a moral right to impose constraints upon the development of privately owned heritage properties and on the other side, what duty of care owners of heritage places have to society at large.

The dual nature of a listed heritage property’s value gave rise in the 1970s to the phenomenon of heritage listing. Conceived as a means of protecting historic places, the lists were drawn up by cultural heritage professionals. However, the lists were not indexed to any cost implications for owners. Instead, the identification of heritage places was required to meet cultural significance benchmarks only – those of historic, aesthetic, associational, technical, and social significance. The schism between a heritage building’s real estate value and its cultural value allowed the heritage lists to grow independently of any information concerning the property’s owner, his financial position, or future costs of maintenance generated by the listing (Allen Consulting Group 2005). Unwittingly, this process engendered a contingent of disaffected owners who express resentment at the double bind of heritage listing which is seen by them as not only limiting future development upon their properties but imposing even more costs as a result of the listing – more costs because of a requirement to maintain the asset.

The impact of economic rationalism

Various cultural theorists have tried to reconcile the non-interdependency of the two separate value systems – economic versus cultural. Throsby (2001), De La Torre (2002) and Strange and Whitney (2003) maintain that cultural values cannot be captured by mainstream economic modelling. They stress that
cultural values are characterised by community concerns and their public good nature whereas economic values are based on individual responses to market forces.

A fact not widely known prior to the Commission's sitting is that privately owned heritage accounts for slightly more than 90 per cent of the entire listed stock nationwide (PC 2006). This implies that 135,000 properties in Australia out of the approximate 150,000 listed heritage places across all national, state, and local jurisdictions, rest in the hands of private owners.

In the age of neo-liberalism, governments in developed countries have moved progressively away from the 'welfare state model' towards more economic rationalist approaches (Avrami, Mason & De La Torre 2000). This shift embodies a corporatised view of the world – one in which governments no longer deliver services and infrastructure directly. Instead, they rely upon their delivery via partnerships with corporate entities through public tender processes. Thus, the role of governments is no longer to provide infrastructure and services so much as to facilitate their delivery through corporate entities. This phenomenon has resulted in a dependency by government upon developers to cost-effectively deliver those services. Cost effectiveness implies that governments have the task of removing any obstacles that may stand in the way of prompt and efficient service. Certainly, this is the trend in both the UK and Australia. It has become known as PPPs (public private partnerships), a system that works almost to perfection because it has the ability to stamp out inefficiencies and cost distortions as well as giving governments control over public service and infrastructure provisioning. In the case of Australia' development model, virtually all services and infrastructure such as housing, roads, rail, and maintenance are delivered in this fashion.

However, in one crucial respect, the system excludes the public realm from its view. The economic shift as discussed above has placed Australian governments in a defenceless position. Heritage provides a sharp focus on the extent to which the corporate model begins to break down. The bottom line (i.e. the need for companies to deliver profits and dividends to shareholders) competes with public goods expectations in society. Clean air and water, quality education, activation of the performing arts, climate change, and cultural heritage represent some aspects of the conundrum: who pays? Whilst under the welfare state model public sector provisioning was perforce the function of control over public service and infrastructure provisioning. In the case of Australia' development model, virtually all services and infrastructure such as housing, roads, rail, and maintenance are delivered in this fashion.

The sharp contrast between the recommendations made to the Commission by heritage professionals in 2005 and the recommendations of the PC Inquiry in 2006 emphasises the dichotomy. As if ships passing in the night, the one side believes that it is government that needs to manage and coordinate arrangements such as conservation agreements. The previous owners can be seen in the context of intergenerational equity (i.e. in a long line of previous and future owners). The previous owners can be said collectively to have delivered the cultural heritage asset to the present owner whose custodial role it is to hand that asset on to the next generation and so on. Under this scenario, the present owner’s predicament is irrelevant. The Commission took a neo-liberal stance on this issue which is not surprising given that most governments in the developed world today adopt such approaches to public goods. Yet when it comes to the built heritage environment, what is lost can never be regained. The short-sighted nature of the PC 2006 report thus constitutes an unreasonable position in respect of future policy direction in the heritage sector.

The method of listing proposed by the Commission runs against the grain of received cultural heritage wisdom. Firstly, Australian heritage lists have not generally factored in the plight of private owners vis-a-vis their preparedness to accept and pay for the maintenance of listed properties and, secondly, the designation of cultural heritage values is divorced from such matters as ownership and financial hardship (Marshall 2010). It is proposed that current owners and their financial predicaments need to be seen in the context of intergenerational equity (i.e. in a long line of previous and future owners). The previous owners can be said collectively to have delivered the cultural heritage asset to the present owner whose custodial role it is to hand that asset on to the next generation and so on. Under this scenario, the present owner’s predicament is irrelevant. The Commission took a neo-liberal stance on this issue which is not surprising given that most governments in the developed world today adopt such approaches to public goods. Yet when it comes to the built heritage environment, what is lost can never be regained. The short-sighted nature of the PC 2006 report thus constitutes an unreasonable position in respect of future policy direction in the heritage sector.

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Bogaards (2007) points out that costs imposition upon private owners includes the value of development opportunities forgone, a decrease in capital value of the land, consequences of foregone options to improve liveability and usability, and the additional maintenance and repair costs. On the strength of these negative implications for private owners, the Commission foreshadowed a general weakening of lists by recommending additional disqualifiers and the use of independently struck arrangements such as conservation agreements.

The approach adopted by the Commission is consistent
with neo-liberal thinking. In an earlier public inquiry, House of Representatives Standing Committee on Environment & Heritage, (2001: 15), the commissioner of that inquiry asserts that ‘the notion of a public good in conservation terms is not unnatural, but it is important not to be driven too heavily by public good theory’ because it is a concept developed for a previous milieu and may not have a contemporary application.

Indeed, the majority of the Commission’s reasoning centres on the issue of government’s relationship to public good provision. It contemplates the extent to which private markets are capable of meeting conservation costs without government involvement and speculates that even market failure would be insufficient need for it to act. In Chapter Six of the PC Inquiry, it is pointed out that ‘a useful reminder of the role that markets play in catering for the needs of future generations albeit at a less than optimal level, is the fact that the overwhelming majority of historic heritage places existed prior to explicit government involvement in historic heritage conservation and were therefore conserved through private initiative’ (2006: 122).

This observation has little application to the status quo. Today, the heritage building stock in Australia’s historic centres is exposed to a much higher level of threat than it was prior to the introduction of protective legislation in the mid-1970s such as the Australian Heritage Commission Act 1975, the NSW Heritage Act 1977, and many similar enactments in other states around that time. The corollary of the argument is that those legislations were introduced precisely to address such threats.

The Commission observed that the case for government involvement needs to be based on a rigorous assessment of the relevant benefits and costs including social benefits and the costs imposed on private owners by government intervention. It reasoned that the ‘divergence between social and private benefits does not in itself; establish a case for government involvement’ (2006: 123).

An extrapolation of this reasoning brings us back to the conundrum. How does one properly measure the tangible and intangible benefits compared with the costs? What is the net worth of cultural heritage in society? Can one quantify historic heritage significance? Can one effectively put a price on society’s relation to it? Alternatively, should one simply accept that cultural heritage is priceless – beyond measurement in economic terms?

In ‘Assessing the Values of Cultural Heritage’ (2002), De La Torre notices that as conservation professionals we have become familiar with the assessment methods used to determine cultural significance. However, in order to identify social values we need to contemplate a wider group of stakeholders including members of the public who have not traditionally participated in the heritage designation process or who have had their opinions factored into the decisions made by such experts. Negussie (2006) explains that notwithstanding the exclusive nature of the heritage professional’s methodology, there has been a progressive shift over the last 40 years from state owned and regulated public goods toward the private sector. Under a general programme of privatisation, owners and developers commission their own professional expertise to support development approvals. Typically, the expertise involves a tendentious leaning by the professional towards his or her client’s needs and this, she explains, has resulted in a weakening of heritage controls.

Canvassing alternative models for the regulatory framework

Against this backdrop, certainty in cultural heritage designation, the listing of heritage properties is fraught with doubt. Nevertheless, there is an assumption in society that public goods such as heritage need to be protected by governments or otherwise, left purely to private market forces, such goods would simply perish.

Ultimately, all heritage funding is derived from private individuals. This gives rise to the notion of consumer sovereignty (Peacock 1998). Good governance is a measure of the extent to which the aspirations of citizens are either taken up or ignored by governments. Peacock proposes a ‘voucher scheme’ offered to households or associations of households through the medium of public financing. He argues that ultimately spending on heritage will follow market oriented models including national lotteries to support expenditure on public goods.

Cooke (2006: 11) proposes that ‘individuals, communities, non-governmental organisations, regional and local authorities all play a role and share responsibility in protecting heritage. Without the cooperation and active involvement of all concerned, there is little chance of success’. Nahkies (1999) demonstrates that compensation paid to private owners of heritage is positive for the reason that it promotes economic efficiency, reduces reliance upon regulation, and is equitable. Conversely, it is negative for the reason that it encourages rent seeking (non-mutually beneficial transactions) and opportunistic behaviour such as surreptitious betterment, that it is difficult to quantify and administer, and that it amounts to a cost burden upon the community. Overreliance upon heritage regulation without compensation alienates owners and discourages investment in the sector leading ultimately to a decline the stock of heritage buildings.

The notion of ‘cultural capital’ as espoused by Throsby (2007) identifies the need to invest in heritage and contemplates the benefits one might expect to flow from that investment. The theory presupposes that conservation inherently involves trade-offs against other social investments and priorities. The concept of the ‘double public good’ advanced by Sable and Kling (2001) incorporates the full spectrum of values based on a general recognition that cultural assets produce multidimensional non-market social benefits which serve as communicators of social identity, societal change, and cultural continuity. The proposition is premised on the ‘simultaneity of externalities’ calculated to better inform public policy in respect of undesirable and irreversible resource loss.

The future of government involvement in heritage

Already, there is a trend in heritage policy to give supremacy to strategic planning issues over heritage concerns. In New South Wales, there have been a string of recent policies that effectively demote heritage from its erstwhile position of strength and cohesiveness under the Carr government (1995 to 2005). Part 3A, now repealed, of the Environmental and Assessment Act 1979 allowed development considered to be of a state significance to bypass usual assessments of impact. Similarly, the now repealed SEPP 53 (State Environment Planning Policy) allows densification of housing along existing rail corridors to go ahead irrespective of impacts upon the existing heritage-listed
buildings and conservation areas and most recently in 2009, the NSW Heritage Act 1977 has been amended to embrace some of the Commission's recommendations including the right of owners to show economic hardship as an excuse for de-listing and non-listing. In parliamentary discussion leading up to these amendments, Clover Moore MP (2009) pointed out that the Heritage Amendment Bill 2009 amounts to an increase in ministerial powers and facilitates economic considerations as part of the heritage assessment process. The Bill engenders far-reaching and destructive changes to heritage planning policy by delivering powers to developers at the exclusion of democratic decision making processes (Parliament of NSW 2009).

The progressive shift by governments away from the role of provider and protector of public goods such as heritage is not an irreversible trend. This is demonstrated by Schuster, Monchaux and Riley (1997) who suggest using a number of tools, including direct ownership, regulation, incentivising, modifying property rights, and providing information, can reinvigorate the sector. The Historic Houses Trust (HHHT), Sydney Harbour Foreshore Authority (SHFA), and Port Arthur Historic Site Management Authority (PAHMSA) in Tasmania constitute examples of direct ownership by governments of managed heritage areas.

Regulation through heritage listings and local environment plans is already commonplace in Australian jurisdictions. Incentivising is a key failure of current policy and is not assisted by the fact that the PC Inquiry failed to properly integrate its funding model discussion into the recommendations. The modification of property rights incorporates the granting of easements which is a nascent area of heritage policy reform and does have the distinct advantage of pinning owners down to defined conservation commitments in exchange for advantages over and above normal planning controls. In the case of easements, such as façade easements, the idea is to get the community to pay for components of deemed sharing – that is, the listed building may be privately owned but the parts that connect with the communal environment such as facades, gardens, and streetscapes become costs to the community which are directed back to private owners for maintenance works. Another form of this is the so called ‘enabling development’ policy brought in by English Heritage. The policy itself sits within the framework provided by English Heritage’s ‘Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment’ (2008). It promotes a values-based approach to assessing heritage significance by enabling development that would be unacceptable in planning terms but for the fact that it would bring public benefits sufficient to justify it being carried out and which could not otherwise be achieved. Such a policy takes the opposite position to that taken by the PC Inquiry because it has as its primary focus the securing of the long-term future of listed buildings and the key public benefits they generate for society.

Lastly, information in the form of resourced local government offices to deal with heritage issues on a daily basis assists owners, developers, and managers in controlling change to the designated stock. Schuster, Monchaux and Riley (1997) point out that information provided by governments validates, recognises, and promotes heritage in the community. Collectively, they incorporate education, an exchange of information and they facilitate the exhortation of public interest ideals in society.

The PC Inquiry looked closely at the options for funding. At the national level, it considered tax relief, tax deductibility of donations, grants and loans. At the state level, it considered land tax abatement schemes and stamp duty reductions. At the local level, it considered revolving funds, rate rebates, planning incentives, transferrable development rights, advisory services, and the reduction of compliance costs. At the root of all these funding options is the notion that heritage as a ‘public good’ requires financial resources in order to be viable. This implies active involvement by government in the sector. But the Commission did not cast the funding mechanisms in this fashion. In response to its draft recommendations it was criticised for not having investigated any funding mechanisms. Then in its final report in July 2006, it appears to have merely tacked them on to Chapter Ten without proper analysis of how each type might be taken up and applied. In this aspect, the Commission appears to have focused its attention almost exclusively on the ‘disaffected owner’, whereas in a study of such magnitude it ought to have dealt a more even hand. Conspicuously lacking from its recommendations are mechanisms for funding the sector. Chapter Ten of the PC 2006 recommendations entitled ‘Implementing Change for Privately-owned Heritage Places’ focuses entirely upon options for owners in terms of listings and how to escape them or seek compensation as a result of them. It makes no reference to the public good nature of historic heritage in society and therefore recommendations that might have flowed from a premise embodying the social and psychological benefits that individuals (including owners) derive from a conserved heritage environment do not exist. Nor do the recommendations suggest that in order to protect the stock, governments through regulation, the setting of standards, assessment of impacts and the general provision of information (Schuster, Monchaux & Riley 1997) might improve the status quo.

Alarmingly, the recommendations (PC 2006: 236) go so far as to suggest: that requiring a heritage study and comprehensive statement of significance to be undertaken and prepared at the development approval stage is completely inappropriate because it implies that the decision to list was not taken on an informed basis; that the owner does not know what the relevant heritage characteristics are; that the owner is at risk of wasting time and money preparing a development application with potentially limited chance of success and that it is unreasonable to expect the owner to pay for the cost of a study which should be the responsibility of the community on whose behalf the listing was made. Such a suggestion appears to ignore the fact that as listed buildings become adapted to new uses, incremental changes proposed to them need to be assessed – and if not by governments, then by whom?

Conclusion

Thus, policy formation for cultural heritage goods in society is at a crossroads. It must be recognised that funding by governments and the community including incentives conducted through the planning system and the use of modified property rights by way of conservation easements – all constitute available tools for future policy makers. Balanced policy for heritage made in a neo-liberal macro political context needs to guard against a developing trend of anti-heritage thinking.

For the future development of conservation policy in Australia, the PC recommendations are unhelpful in that they promote a reduced level of financial support available to heritage protection. Although it canvassed a wide range of issues, the Commission appears to have narrowed its focus on one small part of the problem, namely the inequitable cost burden that private owners suffer as a result of heritage listings. In doing
so, it ignored many other areas of insufficiency that could have found their way into the recommendations but did not. The PC Inquiry recommendations promote the supremacy of economic concerns over cultural heritage issues and therefore, an irksome re-positioning of priorities is disclosed.

Against this backdrop, radical reform in the cultural heritage sector is required to safeguard the remaining listed stock. The economic plight of private owners does need to be addressed but not through de-listing as suggested by the Commission. Rather, policy makers should turn their attention to the suite of funding and incentive ideas canvassed in this paper. In that way, the incipient rise of anti-heritage policy-making by some Australian governments can be arrested.

References