

An International Conference to explore approaches to the preservation of urban built heritage, with a focus on Melbourne

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From environmental citizenship to heritage citizenship – learning lessons from the Windsor Hotel redevelopment

The Victorian Environment Protection Authority's embrace of the notion and principles of 'environmental citizenship' points towards a principled attempt to begin the process for redistributing power and reprioritising community concerns regarding environmental laws in the state. Lightly grounded in scholarship, particularly the work of [Andrew Dobson](#), Victoria's [Environmental Citizenship Strategy](#) positions the community as having a role in environmental regulation and asserts that the authority's function is to enforce environmental standards and be responsive to community concerns about environmental harms. The enthusiasm for a novel form of citizenship-based policy development, notwithstanding that the policy is part of the broader State government Environmental Partnerships program, has not, however, migrated to heritage laws. There is no policy support for an idea of 'heritage citizenship', for instance. I argue that there should be; that we need to reflect on the purpose and function of heritage laws with concepts of citizenship in mind.

My paper relies on two place-based controversies connected by time, by government mishandling, and - most significantly for the paper - by the critique of the Victorian Ombudsman. The environmental citizenship concept can be traced to the Ombudsman's report into the Brookland Greens Estate gas leak saga in Cranbourne, while the other Ombudsman report, about the redevelopment of the heritage-protected Windsor Hotel, has led us to nowhere in particular. This is despite the nature and topic of the Ombudsman's critiques being comparable. The paper distills the similarities in the Ombudsman's critique and offers some preliminary thoughts about what a notion of 'heritage citizenship' would mean in our existing legal landscape.

The Ombudsman's report into the [Brookland Greens Estate gas leak](#) concluded that the Victorian Environment Protection Authority particularly had mishandled regulatory oversight and made poor administrative decisions about the estate development and regulatory control over the adjacent landfill from where the gas emanated. Specifically, the authority:

- had poorly enforced the laws it was charged to administer. It prioritised relationships with organisations it was supposed to regulate instead of prioritising the welfare of the people it was supposed to protect.
- did not compel compliance with the law. It did not adequately respond to improved standards and environmental knowledge and failed to escalate enforcement when there was a clear need to do so.
- lost sight of its overarching environmental protection objectives.
- had consolidated decision making within a bureaucratic elite, making the organisation unresponsive and rendering itself functionally hamstrung.
- did not take a formal or influential role in court proceedings when it had the opportunity to do so and the knowledge to influence.

Sixteen months later, the Victorian Ombudsman was directed to inquire into the events that led to the planning and heritage approval of the highly contested [Hotel Windsor redevelopment](#). The Victorian government approved the redevelopment through the Minister for Planning in his role as responsible authority: a role he had because of the proposed size of the redevelopment. His decision was supported by an advisory committee recommendation. The project had the support of the City of Melbourne. Heritage Victoria also promptly granted a heritage permit under the *Heritage Act 1995*.

The focus of the Ombudsman's report was a plan hatched within the Minister for Planning's office to generate community opposition to the project upon the release of the advisory committee recommendation report. This was intended to curate a political imperative to reject the project, but the plan was inadvertently disclosed and the

rejection of the redevelopment became a political impossibility (and potentially a legal minefield). From the Ombudsman's report it can be deduced that:

- an appointee to the advisory panel was implicated in conflict, having previously worked on the site with a member of the development team, bringing into focus the small and interconnected community working on the Windsor Hotel.
- key decisions, recommendations and strategies were devised by Ministerial staffers with insufficient oversight, accountability, expertise and management.
- the community was seen as something to use for political purposes rather than as contributing meaningfully to decisions about heritage.
- the Department of Planning, through its then Secretary, asserted that decisions made under the *Heritage Act* can be reached by a decision-maker giving equal weight to impacts on heritage of development and to the impacts of economic use of a heritage place arising from non-development. This dispelled any idea that the administration of the *Heritage Act* ought to achieve its main statutory goal: 'to provide for the protection and conservation of places and objects of cultural heritage significance and the registration of such places and objects'.

Across both Ombudsman reports there were findings or suggestions about inappropriate administrative conduct, power resting in an exclusive elite, a failure to prioritise community concerns and expectations and a sidelining of the community in decision-making. Still, the inquiry into the Windsor Hotel has not led to a policy response comparable to the *Environmental Citizenship Strategy*, which was triggered by the report of the Ombudsman and others prepared for and by the Environment Protection Authority about the Brookland Greens Estate.

However, there is a breadth of scholarship on urban citizenship and justice that could – or may still – provide a starting point for reconsidering legal and policy frameworks and encounters with heritage and planning laws. A notion of 'heritage citizenship' could be extracted from this scholarship. Selectively and notably, [Susan Fainstein](#) has argued that a just city is one that is diverse, democratic, and equitable; where the community and its collective "quality of life", rather than politics, is the central figure. Her work draws upon justice theories and philosophy as well as social geographers, prime among them [David Harvey](#), whose work articulates a right of city dwellers to urban identity, citizenship and belonging; a right not to be dispossessed. Of particular relevance to heritage, [Bronislaw Szerszynski](#) has argued that urban citizenry includes the right to be of the visual and includes a responsibility to the visual. [Michael Peter Smith and Michael McQuarrie](#) argue that urban citizenship is not only about belonging within the city, but also belonging within the law of the city, where 'belonging' is different from simply 'being heard' in law. Finally, legal scholar, [John Henry Merryman](#) has argued that the basis for heritage conservation is the public interest. So the public should be central in decisions about heritage.

Under the existing planning and heritage law regime, however, the experience that many in the community have, including those opposing the Windsor Hotel redevelopment, is that they are kept on the periphery. Planning and heritage laws restructured around a concept of heritage citizenship would, however, bring community into the framework more explicitly. Community rights and interests and their position in the city as dwellers and responsibility bearers should mean that heritage laws are primarily and unashamedly about heritage protection for them; rather than their interests merely being a factor to balance against proprietary and capital interests. Heritage citizenship would see also a dispersal of power within the administrative system for heritage protection, with less dependence on a professionalised and hierarchical bureaucracy, power reallocated away from the Minister, and a more purposeful role for all of us urban citizens.