

"PRIVATE INITIATIVES TO PROTECT HERITAGE MONUMENTS AND SITES"
(with particular reference to monuments)

P C James and Assoc. Prof. S K McCallum

In both the old world and the new world there are monuments. Whether they be cathedrals, mosques, railway stations, post offices, government buildings or private buildings they are buildings which are monuments. This paper is aimed primarily at monuments but the principles are applicable to sites as well.

Each in itself is a work of man worthy of conservation because each is a work of art in one form or another. Many of these so called monuments were constructed in such a position that they would dominate the surrounding area, providing a focal point for a village, town or city, perhaps for purposes of admiration by, or even to put fear into the hearts of those who saw them.

The former of these two reasons for conservation, namely that it is a monument of importance is dealt with simply by the conservation of the monument itself. The process may not be simple, the cost may be great, the skills to carry out the maintenance and repairs rare and hard to find. But the ultimate task is relatively simple to define. It is a proper conservation of the monument - hopefully in accordance with recognised international principles of conservation.

The latter reason, that of its visual dominance or importance, its aesthetic contribution to the townscape or landscape, is by no means so easy to resolve. The problems are far more complex and in consequence thereof it is harder to find the solutions. But in each and every one of these cases where the monument has been built to be admired, viewed or even worshipped from far as well as near this aspect of its importance should be addressed. In the past it frequently has not.

Until the middle of the nineteenth century this was perhaps not a major problem. Whilst the areas surrounding the monuments were in many cases encroached upon it was by low scale and often low density encroachment. Building techniques and commercial and residential requirements did not require tall buildings. People did not aspire to live 20, 30 or even 50 storeys above the ground and land values allowed for horizontal rather than vertical development.

Not so today. Society has changed, technology has changed, so that monuments which once stood in splendid isolation or which once dominated their neighbourhoods are now in danger of being, (and in some cases already have been), lost to view except for the occasional glimpse. They no longer have their visual curtilage they not only enjoyed but were designed to have.

Of course this problem is not just caused by an increase in the height of surrounding development. It may be suburban sprawl towards the pyramids or curio shops surrounding Borabodur. But so often it is high rise or medium rise buildings - not extravagant by today's standards but sufficient to destroy the monuments visual curtilage and therefore its visual impact and importance. It must also be remembered that it is not only the visual enjoyment of the building that is important but the way in which people can interpret and understand its importance which must be considered. A pyramid surrounded by one and two storey domestic dwellings is going to be very hard

to explain to generations to come. A cathedral high on a hill above a town now surrounded by high rise buildings so that perhaps that not even the top of the spire can be seen is hard to explain to future generations as an example of the social and spiritual importance of the worship of God in the middle ages.

One must look first to establishing which places are monuments. Having done that one must look in each and every case to see the area around that monument which one needs to consider for controls so far as the height, appearance, use etc. of adjacent buildings. Clearly one cannot always go back to the original surroundings but one can make a determined effort to ensure there is no further degradation and that in some cases there is actual improvement.

One can always zone areas as being of importance and thereby arbitrarily impose conditions. This is probably perfectly acceptable (it has been done in France and other countries) and could be done as part of any ordinary planning scheme. But it does not solve the whole problem because there must be a social and economic overlay eg. zoning can be protective but what do people do within the area so zoned? That is to say how do they survive physically, socially and economically so that the area so zoned does not deteriorate into a slum or wasteland.

One way is to make it a conservation control area - and allow for people to continue using their property in what ever way they would like to bearing in mind the conservation controls required. This is dealt with further later in this paper.

Around a European cathedral the control normally required is one of height so that the view of the cathedral will not be lost. In the case of a temple such as Borabodur in Indonesia, strict controls are required to allow the temple its pre-eminence, surrounded by to a large extent by nothing but grass and trees.

In Australia and Canada a "monument" is frequently much smaller, and may still not yet be surrounded by urban development. Here landuse controls are often what is required for example the maintenance of agricultural use around a traditionally agricultural homestead.

So the first step is to define the area requiring protection. If this is called a conservation control area the second step is to prepare the necessary conservation controls.

The third step is to look to see if the community within the area around the monument will be achieving a benefit, an actual financial or other benefit, from such controls within that curtilage. If there is such a benefit then part of that benefit could be made available to the other owners of the property within the curtilage. Here a considerable amount of flexibility in approach and negotiation with property owners will be required. One must then deal with each property owner/user separately - though there should be arbitration or mediation by an independent authority.

Clearly uses compatible and useful to the preservation/conservation of the monument should be encouraged over other uses. Such uses should be settled by agreement between the individual property owner/user and the authority rather by outright rezoning because rezoning is at the same time relatively inflexible when flexibility is required and yet too easy to change when change may not be in the interest of conservation.

It may of course be necessary in some case to look at this in reverse. If for example the owner of the monument is achieving substantial benefit from the ownership of that monument and the surrounding controls then some of the benefit received by that monument's owner may well be passed back to the individual surrounding property owners.

Agreements must be negotiated and negotiable. Changes to agreements must be allowed for in the system. Abandonment of agreements must in some cases be negotiated. And all this is quite reasonable if the property owner is (albeit unwillingly) giving up some rights he may otherwise have had and in being given certain advantages he would not otherwise have had.

Someone or some authority, must be given the power to negotiate and control the overall conservation planning, and the associated agreements and their administration. In most cases it should not be necessary to set up a new authority but to look to the local planning authority - or in some cases even the authority responsible for the ownership and/or administration of the monument. One way of proceeding is for an interim zoning to be introduced and people given a period of time (for example 3 years) to either enter into agreements which will afford them the maximum use of their land as they may require it within the proposed conservation controls, or to risk having controls imposed upon them. Thereafter, at the end of the period, the authority's conservation controls come into effect and the property owner must then abide by them. But even then he should at any time be given the right to enter into an agreement or to vary an existing agreement and therefore exempt himself from the strict conservation controls imposed by the authority. In some cases it will be necessary to look to acquisition of property within the curtilage. This may not be, in certain circumstances, a bad thing provided the authority responsible has the necessary capital to outlay. Where there are existing compatible uses in or for those properties they can continue by way of a lease to another. Where it is open space it may just be a case of maintaining that open space as such.

Having made these general comments about how in principle such conservation can be achieved it is then possible to go to the specific and look at examples in different parts of the world. However for the purposes of presentation of a paper such as this to people from many and diverse countries this is not a very helpful exercise.

Nevertheless the general principles apply in whichever country and in which ever jurisdiction one is operating. It is just a question of achieving general principles which are sufficiently broad to enable you to work within them and at the same time sufficiently precise so that proper use can be made of them. The three principle elements are as follows:-

1. To establish the importance of the monument. Not just its historic and architectural importance but the importance relevant to the surrounding areas and the importance of the surrounding area to the monument.
2. The actual area (the 'curtilage') over which controls are required and the controls which must be applied.
3. The way in which all those involved in the area can be allowed to look to some proper return on their property ie. to ensure that properties do not fall into disrepair and disuse because it is impossible for the owner/occupier to find any economic use for the property.

The first of these is relatively easy to achieve. It only requires persons of knowledge and appreciation to ascertain the required area which fulfills the requirements. It is obviously not possible to set down any hard and fast guidelines for carrying out this activity. It will depend in each and every case on the size, importance and siting of the monument concerned.

Nor is it difficult to ascertain in the first instance, the area over which controls should be imposed because the answer to the first problem will of necessity give the broad answer to this one. However it may be necessary to graduate the controls and accordingly the area to be controlled may itself be divided up into a number of different areas each of which may have to have their own controls.

With the third point one comes to the major problems. Whilst "historic zonings" are popular in many countries (eg. Paddington in Sydney New South Wales to protect a whole Victorian suburb of terrace houses), the intention is usually to protect an entire area for the purposes of protecting that area: ie. the area is in effect the monument. This is now accepted in many countries as all the owners benefit from the controls - they are in fact in place for their benefit.

It is not however common to have such zoning when the purpose of which is primarily to protect only one building. However if one takes the view that other buildings in surrounding areas to a monument do in themselves form part of the curtilage of the monument they take on additional importance and thereby warrant controls and particular attention. If their redevelopment is allowed to go unchecked then gradually the importance of the monument could well be lost and in turn their, the surrounding buildings, importance is consequently diminished.

It is to a large degree a question of education. If the benefits can be manifested to the owners of adjoining properties then this will obviously make it easier to obtain the agreement of those property owners. If actual financial benefit, or at least no financial loss, can be shown then again there should be no real difficulty. However once financial disability is seen opposition will be met from those property owners and remedies must be found. This is where the necessity for agreements and negotiated controls comes in.

It must be remembered that there is also the opposite position to be considered. That is the position of a monument or site which is presently in open country, undisturbed and undefiled. Because of potential tourist or

other attractions development is now being encouraged into the area. Here the planning problems are much more easily solved because one is putting controls in place before development occurs (rather than placing controls on existing development) but one must make sure that they are done in time and that the new development is properly planned and properly placed so as not to intrude into the monument's curtilage.

Without going into detail there are an enormous variety of incentives and forms of assistance which can be provided to owners of properties surrounding monuments. Depending upon the local fiscal system taxation benefits can be given. These may take the form of rebates or taxation deductions or deferred payments of taxes whilst certain restoration work is being carried out or they may be reductions in land taxes and municipal or council rates for properties within the area.

A considerable amount of use has been made in some countries particularly in North America and Australia, of the transfer of development rights or floor space ratio transfers. This of course is one of the easier ways to control the size of development in an area surrounding a monument. The surrounding property owners are given the right to either sell those rights out of the area or to use them on another site outside the area. (Whilst yet another set of planning difficulties may arise if a vast amount of floor space suddenly descends upon an unsuspecting site in another area, this can usually be overcome by careful and judicious placing of these rights.)

One of the most important forms of assistance will frequently be a variation of the planning controls to allow for what would otherwise be nonconforming uses. Providing the use is not one which is detrimental to the amenity of the area and is not going to itself cause some damage to the monument or its curtilage then the authority responsible for administering the area should be able to negotiate any use with a property owner which will ensure that either the existing building, if it fits within the guidelines for the area, or the size of a new building if a new building is required, can be tailored to meet the needs of that property owner.

To this end it is vital that agreements entered into can not only override any planning controls but the provision for them to do so should be built into the planning controls themselves. Obviously there will be preferred uses for an area and these should be set down in the planning instrument by the authority.

However the planning instrument should make it quite clear that these controls can be varied by the authority at the request of or with the agreement of the owner of any individual site if such a variation will either ensure the continued protection or improve the protection of the monument and its curtilage.

From a practical point of view it is most important that the authority responsible for the controls around the monuments curtilage is sympathetic to, and prepared to discuss with the owners of the surrounding property, their individual needs and requirements. This authority must have a deep appreciation of the monument and the needs of not only the monument itself but the needs of adjoining property owners. The more that these adjoining owners can be brought together to discuss and to consider their mutual and individual problems the better. What better way to plan the future use and appearance of

an area than to get all the property owners concerned together and work out with them what the controls and uses should be. Whilst this is a far cry from the statutory planning principles which many countries are used to it surely has the essential ingredients which any conservation scheme should have. It has input from and regard to the interests of those who are affected and consequently a great number of problems which would arise from formal statutory planning will be resolved at the outset.

Earlier on we have mentioned that in some cases it will be necessary to purchase property within the curtilage. This will always be a matter of last resort. It is clearly better in most cases to have individual property owners maintaining their properties and either living in them or running them as businesses as the case may be. Public ownership ie. by the controlling authority involves capital expenditure at the outset and continuing administrative costs in running the properties. These all form a drain on the public purse and as well are a less efficient way of administering the property than having individual property owners do so. Obviously in some countries where property ownership is not as we know it in Australia and Canada this problem will not arise.

To the best of the authors' knowledge this proposed combination of planning controls and voluntary agreements with property owners has not been tried before. Certainly not in Australia or Canada with the main objective being the protection of a monuments curtilage. The individual elements exist separately. Planning controls are commonplace and planning controls for historic areas are now well accepted. In certain states of Australia (eg. South Australia, New South Wales) and certain provinces of Canada (eg. British Columbia, Ontario) there are now provisions for agreements between property owners and varying authorities. These agreements have various names - Heritage Agreements, Covenants, Easements etc. What is now needed is an attempt to combine the two principles allowing for the overriding requirement to be the protection of the curtilage of the monument.

To conclude it is important to remember that in many cases the importance of a monument is not just the monument itself but a surrounding area. What this area is, the area which we call the curtilage and which is needed to ensure the importance of the monument, will vary from one case to another. If one is going to protect that monument one must control the curtilage as well. To do this in most cases will require the cooperation of the property owners within that curtilage. Planning controls can only go a certain way. Actual positive agreement will be necessary in many cases either for financial or practical reasons. It is therefore strongly recommended that wherever the protection of a curtilage is being considered the authority responsible for that area (whether it be the authority responsible for the monument itself or not) should have an almost unlimited power to negotiate uses, densities etc. with the individual property owners within overall conservation controls. These conservation controls should be the "ideal" visual or aesthetic control for the area. With this sort of approach not only will the monuments protection be ensured at a minimal cost to the taxpayer but it will be achieved with the active support and cooperation of a fair proportion of the adjoining property owners.

"PRIVATE INITIATIVES TO PROTECT HERITAGE MONUMENTS AND SITES"

P C James and Assoc. Prof. S K McCallum

An outline of the importance of appropriate curtilages for monuments and the reasons for the need to protect such curtilages for a number of reasons including visual ones. The problems being faced today with intrusive elements around a monument - whether tall buildings in urban areas or uncontrolled sprawl in the country side. The need to accept that in some urban areas the curtilage has already been compromised and that the best that can be achieved is to stabilize that position.

The need to identify the area over which protective measures are required - and there may be different measures required in different parts of the same curtilage.

The necessity to look at the needs of the property owners in that curtilage to ensure that they can continue to use their property in a useful and financially viable way. Recognition of the fact that in a few cases the acquisition may be required.

The establishment of an authority with strict conservation planning controls for the curtilage but with an almost unlimited discretion within those controls to ensure the maximum possible number of options to offer to property owners.

The importance of a flexible system within which to work (subject to always strict conservation controls) and a flexible approach by the authority responsible.

The legal ability for property owners within the curtilage to voluntarily enter into negotiated agreements for the use of their property.

An outline of some of the forms of assistance which could be made available to aid this process including rating and taxation relief, transfer of development rights, planning and zoning assistance.

Provision for an interim period whilst agreements are being negotiated and the deferral of compulsory restrictions until the end of that period.

Consideration of the different issues to be taken into account in urban areas where redevelopment is a threat and non urban areas where new development is opposed.

Discussion of the fact that currently popular planning controls and currently available heritage or voluntary agreements are used in different areas and/or with different purposes but not so far in a complimentary fashion and not to date with a view to protecting the curtilage of monuments.

INITIATIVES PRIVEES POUR LA PROTECTION DES MONUMENTS ET DES SITES HISTORIQUES

P C James and Assoc. Prof. S K McCallum

Un profil sur l'importance des courtils appropriés aux monuments et des raisons de la nécessité de protéger ces courtils -visuel- les ou autres. Les problèmes créés de nos jours par des éléments obstructifs autour d'un monument - que ce soit de hauts bâtiments en zone urbaine ou une végétation incontrôlée à la campagne. Le besoin d'accepter le fait que dans certaines régions urbaines le problème du courtil est en voie d'amélioration et que le mieux qui puisse être fait est de stabiliser cette position.

Le besoin d'identifier la zone pour laquelle ces mesures de protection sont requises - différentes mesures peuvent être possibles à différents endroits d'un même courtil.

La nécessité de reconnaître les besoins du propriétaire de ce courtil et d'assurer la continuation de leur emploi dans un sens utile et viable. Reconnaissance du fait que dans certains cas l'acquisition peut être exigée.

L'établissement d'une autorité ayant strict contrôle sur les projets de conservation du courtil mais ayant aussi une discrétion illimitée pour assurer un maximum d'options possibles à offrir au propriétaire.

L'importance d'un système souple de travaux (sujet à de stricts contrôles de conservation) et d'une approche flexible par l'autorité responsable.

La possibilité légale des propriétaires du courtil d'entrer de plein gré dans les négociations sur l'utilisation de la propriété.

Un profil sur quelques-unes des formes d'assistance qui pourraient être disponibles pour aider ce procédé-aides aux impôts et aux charges communales, transfert des droits du développement, assistance au remembrement...

Mesures prises pour une période interimaire pendant la négociation des arrangements et l'ajournement des restrictions obligatoires jusqu'à la fin de cette période.

Considération des différentes solutions à prendre en compte dans une zone urbaine où le redeveloppement est un danger, et dans les régions rurales où le developpement est antagoniste.

Discussion du fait que les contrôles de projets actuels et les arrangements volontaires reçus à ce jour sont utilisés dans des buts différents, mais encore, d'une façon peu satisfaisante et démodée par rapport à la manière dont la protection de ces courtils a été envisagée.