

A Submission by

Janet and John Boyd
400 Mona Vale Road
St Ives NSW 2075

Ph: 02 9488 8934

To

Inquiry into the Policy Framework
and Incentives for the Conservation
of Australia's Historic Built
Heritage Places

Conducted By

The Productivity Commission

Australian Government
Belconnen ACT

Mr J H & Mrs J Boyd
400 Mona Vale Road
St Ives NSW 2075

20th June 2005

The Director
Heritage Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

We are the registered owners of 400 Mona Vale Road St Ives. We purchased the property in September 1986 and have resided here since that date. Our house and the three adjoining houses were built in 1964. A further two houses were constructed in 1965. Each house was a separate design.

The builder was a project home building company called Pettit Sevitt and Partners. The designing architect was Mr Ken Woolley. The landscape architect was Mr Bruce MacKenzie. Photography designed for publicity was taken by Mr Max Dupain.

This group of six houses were used as demonstration homes and were known as "The St Ives Pettit and Sevitt Display Village". They were tastefully furnished. They had white painted exterior brick walls with oiled exposed beams and black concrete tiles. Garden landscaping used native plants and shrubs. All were sold into private ownership in 1966.

Pettit Sevitt and Partners was formed in 1961, sold in 1974, placed into receivership in 1978. The company built 3500 homes throughout Australia - New Zealand and Fiji.

Mr Ken Woolley is an outstanding architect who has been honoured with awards and has many of his projects including domestic housing placed onto the NSW State Heritage Register.

Mr Bruce MacKenzie is a landscape architect who initiated the promotion of a harmonised approach to the natural landscape in suburban housing development. His work has been widely acclaimed.

Mr Max Dupain was an outstanding Australian photographer recognised for his photography of people, portraits, nudes, flowers, landscapes, the beach, the city, street life, the bush and houses.

These four components each involved in the construction, design, landscaping and promotion provided the basis of the Ku-ring-gai Councils

proposal to include the six houses onto their Heritage Conservation Local Environmental Plan No 1 in 1988.

We opposed this listing and in June 1989 received notification from the council town clerk that council had resolved to exclude our property from the L.E.P. No. 1.

(Addendum No 1)

And so the matter rested for the next 15 years during which time we had dealings with the council relating to a development application for a building extension. Plans were approved, work completed and passed by council. The question of heritage was never raised.

In December 2003 we received notification from the NSW Heritage Review Committee advising of their intention to consider listing of our property onto the State Heritage Register. The author/nominator for the listing was the Ku-ring-gai Council and the Royal Australian Institute of Architects (separately).

We again opposed listing and in June 2004 we received notification from the NSW Heritage Office that the Review Committee could not reach a definitive conclusion that the property be included on the State Heritage Register.

(Addendum No 2)

In August 2004 Ku-ring-gai Council resolved to again make representation to have our property included onto their Heritage Conservation Local Environmental Plan No 29.

Again we opposed the listing and in April 2005 we received notification from the manager of Urban Planning that no further action to list our property onto L.E.P. No. 29 ordinance would be made.

(Addendum No 3)

Following this notification we wrote to the council requesting confirmation that our property would be permanently excluded from future heritage listing.

(Addendum No 4)

We received the following written direction Quote "Council Director of Planning and Environment advise that as a result of Councils resolution on this matter council will be taking no further action in respect to the L.E.P. that was recently exhibited".

"However a council does not have the power to pass a resolution that binds, or attempts to bind itself or any future council as to how it will or should make a decision when faced with a situation where, by law, the council is required to exercise its discretion" end of quote.

(Addendum No 5)

So 17 years after Ku-ring-gai Council first endeavoured to heritage list our property and following an exhaustive and detailed examination by the NSW State Heritage Review Committee and a second heritage listing attempt by council we are still no closer to having a definitive answer to this heritage situation.

We have resisted each attempt to heritage list our home on the following grounds.

1. Our contemporary home built in 1964 is a painted brick veneer house with a flat metal deck roof. This particular design has been duplicated throughout Australia, New Zealand and Fiji supposedly 1500 times. It should be noted that our house is not the prototype of this design. All materials and techniques used in its construction are readily available today. It is a 1964 project home which we believe does not warrant heritage listing.

(Addendum No 6 - No 7)

2. In publicity and promotion distributed by the NSW State Heritage office, and verbally ratified by council staff, we were informed that financial assistance was available for the upkeep and maintenance of heritage listed properties through "Heritage Grants".

Our enquiry revealed that an amount of \$250 per year or \$1000 every four years may be applied for following the presentation of detailed quotations and the completion of extensive paperwork to the State or Local Government bureaucracy.

A further claim promoted by both state and local government that heritage listing assists with "Heritage Restricted Valuation" for land tax and local rate purposes.

We asked the question why would the NSW Valuer General reduce the value of a heritage listed property. The answer was that the land once heritage listed could not be put to its highest and best use. Once a property is listed, valuations are made on an existing development basis rather than on the presumption of future development.

From our point of view both of these supposed benefits amounted to nothing. The paltry money available for upkeep and maintenance was laughable while the reduction in rates in no way compensated for the imposition of heritage listing with all its restrictions. We were being asked to accept that the property in its current form be placed into a time warp. Any future development to be in complete harmony with the 1964 structure and implemented under the direction of the State or council heritage department.

(Addendum No 8)

3. Our property is our principle economic asset. Heritage listing would unduly limit its utility as a financial asset by restricting the ability of future purchasers to develop our property to their tastes.

Our 904 sqm block of land is located on a corner fronting a main arterial road. Current NSW Government building regulations permit the construction of medium density housing along this residential corridor.

Demolition of the existing building would allow the construction of two new homes built to today's building regulations and 21st century lifestyle. Heritage listing of course prevents demolition and is a tool used by Kuring-gai Council to resist the NSW State Government regulations relating to medium density development.

This is illustrated with an examination of the council's report card for the period 2003-4.

Outstanding Development Applications close to	1000
An average DA process time	134 days
Legal fees	\$2.23 million

(Addendum No 9 - No 10)

4. To quantify the huge difference in property valuation of an existing development against one of presumption of future development, we engaged the services of an independent, qualified, registered property valuer in October 2004.

We requested two valuations

1. Market Valuation under existing zoning "as is"
2. Market Valuation under existing zoning as a heritage listed property.

His report shows the Fair Market Value of the property

As is	\$720,000
As a heritage listed property	\$600,000
A reduction of	\$120,000

(Addendum No 11)

5. The NSW Heritage Act 1977 details the laws and regulations relating to NSW Heritage.

Section 33 of the Act Clause (d) states.

Quote "A submission that conservation of the item the subject of the proposed recommendation could not be achieved without causing undue financial hardship to the owner, mortgage or lessee" end of quote.

In our submission for exclusion of our property from heritage listing to Ku-ring-gai Council we detail section 33 of the Act clause (d) and detail the huge loss of property value we would experience with a listing.

Their reply "It is of no concern to council".

In January 2005 we forwarded a letter to the General Manager of council stating that if our property is of such historical importance that it must be heritage listed, then let us deal with this matter in a fair and moral manner.

We stated that this could be achieved by seeking a number of expert valuation opinions from qualified registered property valuers. Then taking the most commonly agreed loss of market value figure to be paid to us as compensation.

(Addendum No 12)

We have received no reply to our letter, but have subsequently learned that Section 33 clause (d) of the NSW Heritage Act relates to heritage listings imposed by the NSW State Government and is not binding on Local Government listings. What seems strange to us is that all Local Government listings are subsequently gazetted by the NSW State Government.

We believe that if there is a loss of property value to the owner from either State or Local Government listing of a property that the body proposing the listing should be required to pay compensation. We would hope that this enquiry would closely examine this very important aspect of heritage listing.

6. The three attempts to heritage list our home have necessitated us in engaging the services of solicitors, a barrister, an architect, a heritage architect, a surveyor, a valuer plus extensive printing and paid secretarial work. Costs with all of these services do not come cheaply. We have been excluded from listing on three occasions.

Both the State and Local Government utilise state taxes and rate payers money to present their cases for heritage listing, sometimes using expensive consultants to strengthen their proposal. While of course using a work force paid with public money. We have no such back up.

We live in a house in a municipality with 35,000 dwellings and a resident population of 101,000 people. It is in order for council to

spend rate payers money, to which we contribute, to try and force us to accept heritage listing, but proved unsuccessful on two separate occasions, then we believe the council should have a duty to reimburse our legitimate costs. This aspect of heritage listing should be examined by this enquiry.

Summary

Over the past 18 years we have seen small vocal organisations and groups such as the R.A.I.A. - The Historic Houses Trust - The National Trust- Ku-ring-gal Historical Society - Ku-ring-gai Council Heritage Advisory Committee and of course Heritage Consultants influence some members of council and staff and some councillors by clamouring for more and more properties to be sheltered under the Heritage banner. These groups play an important role but are not representative of the greater community.

Unfortunately there is a discrepancy in the process of Ku-ring-gai Council local heritage listing procedure. There is no consideration of the views of the effected owner of a proposed heritage scheduled property. The owner is really the victim.

Indeed it would appear to us that decisions are sometimes proclaimed with little or no regard to the dramatic impact imposed on the unfortunate and unwilling recipient of the process. In some cases there is no consideration or care of who bears the costs of loss if heritage listing proceeds.

Following notification from council of the possibility of future heritage proposals on our property we are seriously considering placing the house on the market. The worry, stress and frustrating uncertainty that we have experienced over the past two and a half years has not only affected our lives and lifestyle, but also our feelings about the house we used to call "our lovely home". We have suffered enough from Ku-ring-gai Council harassment.

In wishing this inquiry a successful outcome we hope that high on the list of its achievements would be an understanding of how devastating it can be to be confronted and threatened with heritage listing.

Who knows how many other property owners in Ku-ring-gai Municipality or throughout Australia for that matter who have had their lives affected by these vocal minority groups. There are two sides to every story. We are pleased that this inquiry has given us the opportunity to tell ours.

Decisions need to be fair - not one sided. Where property owners experience loss of property value, compensation must be paid. Only then will they feel comfortable with their new heritage classification. Conversely those excluded from listing need certainty of continued exclusion.

It should be noted that we have copies of all submissions, letters, reports produced and received over this 16 year period relating to the heritage listing

of this property. Copies of any or all of the material are available to the inquiry if required.