

Submission to Productivity Commission Inquiry into Conservation of Australia's Historic Heritage Places

We wish to make the following comments on the Productivity Commission's Draft Report. We refer specifically to page 143 where, in response to comments by the Chairman of the Australian Council of the National Trusts expressing the standard heritage lobby justification for abrogating individual private property rights the Draft Report states:

However, the Commission considers there are significant differences between a regulation which constrains activities which are harmful to others and regulation which coerces an individual to provide benefits for others (possibly at cost to themselves).

Our experience in purchasing an old home at Gordon on Sydney's North Shore aptly demonstrates the Commission's point – particularly the words in parentheses.

Our house at was built in the Federation period around 1905 but was not owner-occupied until we moved there in 1979. Previously it had been let to a variety tenants and used for a period as hostel accommodation and a nursing home.

As a result the house, which was not particularly grandly appointed in the first instance, has suffered periods of damage and serious neglect. At the time of purchase it was derelict having been unoccupied (apart from possums, rats and birds) for the previous 4-5 years.

The house is on over 2000 square metres of land and we believed its size, along with its location close to Gordon shops and transport and in an area likely at some stage to be rezoned for higher density housing, made the property a good long term investment despite the very dilapidated state of the house.

The house has undergone extensive modification. The kitchen and rear living area have been substantially altered over time. The original back veranda and steps have been replaced with decking and a pool. During our time a substantial extension and carport (both visible from the street) have also been added.

We have never had the money to properly “restore” the house, so it has basically been repaired and modernised. The additions were designed to complement the original federation building. Our reward for turning a dilapidated wreck into a habitable and reasonably attractive home sitting on some potentially prime real estate was to have arbitrarily placed on the Ku Ring Gai Council (KMC) heritage list.

In 1987, our home, along with two others in the street, were listed as being of heritage significance. Having moved to Gordon from the Victorian heritage suburb of Paddington we were not immediately aware of the possible ramifications of having a single house or group of houses listed where normal higher density development activity could potentially occur on surrounding properties. However, along with neighbours we did object to the listing soon after only to be told by KMC that our objection was too late and the listing had been gazetted.

We have since (again in conjunction with our neighbours) requested that KMC include our properties in any rezoning of adjoining land for higher density housing.

Until fairly recently we were under the misapprehension that heritage-listing applied only to the “heritage item” – namely the building - but as we now know heritage-listing has effectively quarantined our entire 2004 square meters of land.

In 2004, the rezoning for higher density housing we had anticipated 25 years earlier occurred. Under KMC’s new Local Environment Plan, LEP 194/200 much of the area along the North Shore railway line has been rezoned for medium density development up to five stories. Quite deliberately the planners concentrated the areas zoned for higher density (zone 2d3) in the corridor between the railway line and the Pacific Highway. While that makes sense from planning perspective, this is also the area where the many of municipality’s original federation houses (including ours) are situated, bringing higher density development and heritage considerations into direct conflict.

LEP 194/200 rezoned all the adjoining properties to the rear and on either side of the group of three heritage houses in our street for medium density development up to five storeys. **With all surrounding properties rezoned for high density the only reason the zoning of our house and immediate neighbours in our street remained unchanged is the heritage listing.**

As a result, we have been left as an isolated heritage island in what will progressively become a sea of five storey apartment developments.

The rezoning of properties for high density housing has had a significant impact on property values with 2d3 land in the vicinity of our house changing hands for \$2000 per square meter or more. This is around twice the median price for land zoned for single dwellings.

At the same time, the threat of adjoining five storey development has had a negative impact on the value and marketability of our house as we discovered when we tried to sell it at the end of 2005.

We (and the many other unfortunate owners of similarly affected heritage properties in Ku Ring Gai) would therefore strongly agree with the comment on page 145 of the Draft Report that:

..... where individual properties are heritage-listed, any associated development restrictions will impact on the owner (and on the property’s capital value). Any benefits, however, will accrue to the general community.

Indeed, in supporting a Development Application for the demolition of a single storey house and construction of five story apartment block one door away from our house, KMC’s heritage officer recently argued that the proposed apartment block’s street set back was a plus because it would afford passers by a better view of the adjacent heritage items!

While the community benefits from better view, the capital value of our land is now less than half that of the surrounding land rezoned to 2d3. So we bear the cost.

The Draft Report is thus quite correct to challenge (on page 145) the argument *“...that recognition of heritage status can improve the resale value of a property...”* and to observe that *“...this is generally only the case where the property is part of a heritage precinct or area and where development restrictions are unlikely to impose significant cost.”*

The claim regularly made by the heritage lobby that heritage-listing improves the resale of a property is simply disingenuous misinformation. The reality, as borne out by our experience and that of the many similarly affected owners of heritage-listed properties in Ku Ring Gai, is quite clearly the reverse.

Our house has been a great home for our family for the past 27 years. In that time we have done our best to care for the house and repair the ravages of past neglect. However, the urban planners have now decided that the area in which we live should be redeveloped for higher density housing. Heritage listing imposes major restrictions on development of our property which have severely reduced its capital value.

If the property is to be retained by municipal fiat as a heritage item for the perceived benefit of the community, the very substantial costs arising from the development opportunities foregone should be borne by the community, not by us.

As owners of property heritage-listed after we purchased it, we wholeheartedly endorse the Productivity Commission's Draft Recommendation 9.5:

Private owners of already listed properties, where the listing occurred after purchase of that property, should be able to apply for a negotiated agreement and for listing to continue only if an agreement is reached.

We also support Draft Recommendation 9.6 allowing for reassessment of heritage listing at the time of any substantive development applications.

We note KMC's comments on these recommendations and on the overall Draft Report (Business papers KMC Council Meeting 28 February 2006) that if the Draft Recommendations were adopted the management of heritage would *“become a fragmented system that is focused on the owners' specific demands and concerns”* In other words, a system that gives due consideration to individual property owners rights.

We believe that would be a very positive outcome.

Bill & Helen Frew
March 2006

Dear Sir,

We have just received a letter from the Department for Environment and Heritage in South Australia telling us that they propose to list our property as a State Heritage Place, and have therefore only become aware of these issues in the last week.

In principal we are totally in favour of the care and preservation of heritage places but there are serious financial implications in the South Australian legislation which could destroy our lives and even bankrupt us.

I would like to direct your attention to the following section of the South Australian Heritage Places Act 1993:

Part 7—Miscellaneous

36—Damage or neglect

(1) A person who—

- (a) intentionally or recklessly damages a State Heritage Place; or
- (b) engages in conduct knowing that it will or might, or being recklessly indifferent as to whether it will or might, destroy or reduce the heritage significance of a State Heritage Place,

is guilty of an offence.

Maximum penalty: \$120 000.

(2) A person who undertakes any action that—

- (a) damages a State Heritage Place; or
- (b) destroys or reduces the heritage significance of a State Heritage Place,

is guilty of an offence.

Maximum penalty: \$50 000.

(3) A person who—

- (a) fails to take reasonable care of a State Heritage Place; or
- (b) fails to comply with any prescribed requirement concerning—
 - (i) the protection of a State Heritage Place; or
 - (ii) the state of repair of a State Heritage Place,

is guilty of an offence.

Maximum penalty: \$25 000.

My wife and I are musicians. We have limited means and no prospect of changing that situation. It will always be our aim to maintain our property to the best of our financial ability, and in accordance with heritage principals as far as we can.

Our property has five buildings. Three constitute the main house, which we maintain as well as we can afford to.

The other two buildings are part of a mid 19th century Tannery. They were in a ruinous state when we bought the property and were sold to us on that basis. We always knew that we would never have the money to restore or maintain them. Further, the area on which they stand is subject to flooding and the Tannery is regularly inundated, sometimes as high as the first floor. The river bank adjacent to the smaller building has been eroded by the floods and there is a real possibility that the building will be undermined.

In our view these two buildings cannot be rescued in the long term and any money spent on them will be thrown away.

These are the buildings in which the Department seems to be most interested.

There was never any suggestion from our searches and contacts with the planning authorities at the time we bought the property in 1990 that there would ever be a requirement on us to maintain these buildings.

Now however, under Part 7 36 of the South Australian Heritage Places Act 1993 in Part 7 36 (1) (b), the Department for Environment and Heritage can decide either that we have failed to take reasonable care, or it can instruct us to carry out repairs and if we fail to do so we can be fined \$25,000.

If we knowingly do not undertake work on the Tannery (and there is no prospect that we could ever afford to undertake such work) then under the South Australian Heritage Places Act 1993 Part 7 36 (1) (b) the Department for Environment and Heritage has the power to fine us \$120,000 for engaging in conduct (i.e. failing to maintain) knowing that it will or might reduce the heritage significance of a State Heritage Place.

In effect this section allows the SA Department for Environment and Heritage to make a compulsory acquisition of significant ownership rights over our property without taking on equivalent responsibilities, or providing any measure of compensation such is normal in other compulsory acquisition situations.

I note from various submissions that it is clear that the value of a property diminishes when it is listed. Quite apart from the significance to us – our property represents a life time of savings and investment effort – this clearly shows that there is a general perception that owning a heritage property has financial problems.

This is a double whammy for the private owner. At one stroke the capital value is reduced and the cost of ownership is increased.

We support the principal of protecting the heritage of this country. But if it is not to produce disaster for individual owners and a reluctance in the community to become involved because of the financial implications, these laws need to be changed to ones based on reasonable equity for all concerned.

Yours sincerely,

Nicholas Braithwaite