

12/01/06

Productivity Commission
Att: The Chairperson
Re: Australian Built Heritage Inquiry
PO Box 80, BELCONNEN ACT 2616

Two-Part Submission by
Cr Gary Green JP

Part One: My Family's Experience with Heritage Restrictions

Please pause for a moment and imagine a situation where your house was virtually impounded... where you were not allowed to build what your neighbours were... where the council gave you no choice but to continually make costly repairs rather than economically rebuild... where the council did all this to you without ANY compensation... Well stop imagining and wake up to the reality of City of Sydney Council's (COS's) present biased and unethical heritage restrictions/regulations.

Recently, my retired parents had their only investment property "heritage listed" by COS, against their will and without ANY compensation. The forced listing of my parents' property and consequential expropriation of their property rights has cost them their life savings in forgone development revenue. It has also cost them tens of thousands of dollars in DA application fees to be directly lost too.

As such, it is worse than unfair and is actually theft when heritage restrictions are forced upon unwitting owners years after purchase, which is what happened in my elderly parents' case. Unfortunately for my parents, COS's unjust heritage regulations (which are emulated by most councils in NSW) have resulted in my parents having to either sell-out below fair market value, or maintain these rundown terraces (see photos below), riddled with rising damp and concrete cancer, in perpetuity for the sole posterity of the community, but at our family's sole expense. Simply put, COS's and the NSW State Government's present heritage laws are an ass!

To illustrate this point, our family has been given no choice but to continually make costly repairs, rather than economically rebuild (research proves that it is more cost-effective to knock down than to renovate). For example, back in 2002 we were quoted \$233,000.00 to fix the rising damp. This huge problem leads to cement render and paint, internally and externally, continually needing repair. It also results in an unhygienic musty stench within the terraces. These problems have severely impacted the rental income generated by the premises, which have no original heritage features within.

It is fundamentally inequitable and akin to communism, to expect individuals to shoulder the burden alone for the benefit of the community alone. There is no question that most of our genuine heritage items must be preserved... yet if heritage is a community good which justifies an override of private property rights, than surely the cost should be borne by the community.

My parents have been kicked in the teeth with this unfair decision, but adding insult to injury are the inconsistencies within COS's own planning instruments. It is illogical and inequitable to offer some constituents a bonus for retaining heritage listed properties - but not others or my parents. This CrAZY inconsistency is partly responsible for preventing desperately needed renovations to number 44 Church Street, which is untenanted and costing my parents over \$15,000 annually in holding costs.

The inconsistent and impossible nature of COS is further illustrated by the fact that when my parents purchased their property in 1986, there were no height restriction either. This is evident by the clear precedence's set on the same block as my parents with the 9 storey Centra hotel, the 8 storey Bonds building in Church Street and 10 storey building in Brodrick Street - the later two being across the roadway. Reasonable people know that you don't change the rules in the middle of a game, but not COS. Subsequent the heritage listing, my parents have been told that 2 storeys is as high as they can build (in a 3 storey zone with a 4 storey building on the boundary and 9 storey building on the same block). This is downright unreasonable!

Also noteworthy is how COS recently overturned a 78 year old road widening order, to preserve the terraces. Not only has this piece of hodgepodge planning resulted in the streetscape being permanently scared; it has also increased the possibility of pedestrian strike and motor vehicle accidents owing to the narrow guttered roadway. Meanwhile, intensive care ambulances on route to RPA Hospital are often caught in bottlenecked traffic on neighbouring Missenden Road. The irony for my parents is that the road widening order initially prevented them from carrying out renovations to a high standard, as council regulations back then stipulated the use of second hand materials (council intended to purchase part of the property).

Furthermore and abhorrently so, when an application is made to construct buildings near any heritage listed site, consideration must be given to the visual effects such construction will have on the listed site, and "separation" (the distance between the two sites) is the name given to this regulation. What makes this regulation of forcing greater separation between heritage buildings and new buildings ludicrous, is the hypocrisy of "Facadism" (see example below), which ironically can allow a 50 story building to be built one-metre behind a heritage facade, yet demand twenty-metres or more separation in other cases (as with my parents' site).

Interestingly, one doesn't have to look much further than the rear of Sydney Town Hall to see that separation was never an issue for COS's administration tower (obviously one rule for COS and a separate rule for others - heritage hypocrites). The unsightly 'Toaster' that encroaches upon the Sydney Opera House and surrounding heritage foreshore is yet another planning marvel and CrAzY inconsistency.

However, old and new can coexist happily together, as often demonstrated in Europe (see Tower Bridge and modern, glass, egg-shaped building), where genuine heritage sites, often hundreds if not thousands of years old, have ultra modern architecture built alongside them. Beauty is in the eye of the beholder, but it would appear that most heritage hobos can only see the speck in others eyes when it comes to symbiosis between old and new.

My parents have been robbed and simply cannot afford to build or even renovate now. Heritage laws were never intended to stop the reasonable development of properties, yet here is another example amongst thousands where heritage listing has unreasonably restricted development in a 'mixed use zone'. The contrast between what could once be built prior listing and what can now be built post-listing is stark, and there is ample evidence to prove so.

COS's existing regulations trample on top of property rights and **IRONICALLY**, actually encourage the preemptive or post-listing destruction of genuine heritage items! Additionally, these lopsided regulations are often misused by certain political groups to stop quality development and impede progress. But worst of all, it could happen to your own family house, even if it is an asbestos ridden fibro dump. Interestingly, COS's inconsistent codes conflict between asbestos needing to be disposed of and heritage needing to be retained. They often also turn a blind eye to the Building Code of Australia (BCA), OH&S and disability requirements to preserve heritage.

Presently COS's regulations force properties with perceived heritage value to be listed and preserved without the consent of the owner and without ANY compensation to the owner. They also expect property owners to preserve, repair and maintain their properties (no matter how rundown - and heritage listed buildings usually are) for the sole benefit of the community, but at the sole expense of the property owner - grossly unfair. Our heritage laws need desperate reform.

Part Two: Feedback on Productivity Commission's Draft Report

1. Page XXIV (bullet point number 7): Regrettably, I've found that envy and jealousy are major causes of objections to development, and heritage is just used as an argument to prevent development where no rationale can be found. Objectors often resent their neighbors' success, or sometimes don't want their neighbours to build better than they have. However, what they fail to appreciate is that when their neighbours build something better, it lifts the value of all the properties in the street. In short, it is the Politics of Envy where the **haves** are pitched against the **have nots** (who can often be traced back to the **dids** versus the **did nots**).
2. Points 9 and 10 of the same page: In my family's case, despite our architectural drawings being drafted by an ultra conservative and highly regarded heritage architect, my family has been unable to reach agreement with council in over 4 years of trying! Regrettably, one can't negotiate with a tyrant council that holds all the power and most of us appreciate how ultimate power corrupts ultimately. The power imbalance needs to be redressed before rorted applicants take the law into their own hands and/or council staff are harmed (as often witnessed overseas).
3. This anecdote may be considered for possible inclusion on your page XXVI: Rockdale council voted 12 - 3 to allow a modern development on a property at 39 Dunmore Street, Bexley, only to have the State Government intervene and override, placing an Interim Heritage Order (IHO) on the premises. The owner was forced to wait one year for the ban to be lifted with no compensation or way to appeal the decision of the Minister. The ensuing one year wait financially crippled the owner who was unable to sell without a huge loss. The property was finally released from the unethical order and council's decision restored. As an aside, how a "Californian" Bungalow could ever be considered part of "Australian" heritage concerns me. But it does demonstrate that if you keep anything long enough, it will end up a heritage item...even what is being built *new* and considered *modern* today.
4. I have issue with Ms Vinita Deodhar's submission mentioned on page 132: The small and inadequate sample size suggests that the research may be statistically invalid. Even by the author's own admission, Hedonics requires larger sample sizes. Additionally, the study was taken in an area that mostly comprises and allows only for two story development. Also of significance is Australian Treasury statistics which confirm that in the year of the study (which considered only a tiny time window of data), housing prices in Sydney rose 8%, which is well below average, thus skewing the figures. Furthermore, the properties used in the study had been listed for years, so it was not a clear **before and after** study or one which compared **apples with apples**. Notwithstanding the researchers own criticisms of their research (points 2.3 & 3.3 *Data Quality Issues*), the fact that Ms Deodhar's considers qualitative research (i.e., anecdotal evidence) when endeavoring to find quantitative data (i.e., prices), indicates mismatch of research methods. Finally, to quote from page 3 of the actual research, "While the benefits of owning heritage tend to be **intangible** in nature and flow from the pleasure or enjoyment associated with owning a historic or unique house, the costs are more visible". Profits and losses are tangible.
5. As for Dr Lynne Armitage and Ms Janine Lyons comments on page 132: It is only obvious that a heritage property that has been well maintained, will sell for more than regular property in a poor state of repair (the corollary is also true). At the end of the day, market forces of supply and demand dictate that 'over listing' will bring prices of heritage property down. So it is in the best interests of owners of heritage properties to limit what is listed.

6. Further to comments on page XXX: The cost to comply with excessive heritage restrictions and requirements are abhorred. For example, according to AV Jennings and Clarendon research, per square metre (SQM) it is far cheaper to build afresh than to renovate. However, their research didn't take into account heritage listed premises, which obviously cost far more per SQM to renovate. Properties with perceived heritage significance almost always require a specialist report (Heritage Impact Statement) from so-called heritage experts, which can easily cost over \$9,000.00. Then there is the added delay of waiting for council to consider the report and send out their own supposed expert. And should there be a serious disagreement; the whole process can easily blow out in terms of expense and delay (i.e., tens of thousands of dollars in the Land and Environment Court [LEC], or wasted time as in the example of 39 Dunmore St).
7. With respect to page XXX "Improved incentives for historic heritage conservation": My family and I believe that fair compensation should be provided. The question is; how does one calculate the "*Level of assistance?*" In the absence of a negotiated agreement we propose the following: First it is necessary to calculate the level of assistance (compensation) required. To do this it is necessary to discover the approximate value of the property **with** and **without** heritage restrictions. Fair market value is the price the property would be worth without the heritage listing, which is simply the fully developed estimated value less construction costs. This can easily be determined through Quantity Surveyors and Registered Property Valuers (easy stuff that banks do every day). Council could then pay the applicant the difference (the lost property rights) in cash, or alternatively council could sell increased "air rights" and/or increased FSR's rights (bonuses) in other parts of their municipality, to generate the compensation or raise a 1% Heritage Levy for the purposes of providing compensation to affected property holders. The applicant could then retain or sell the property off at market with heritage restrictions. The Federal Government may need to mandate a 1% Heritage Levy on all council rates. Using this system, the accurate cost can be predetermined by both sides and an evaluation as to the worth of preservation completely quantified. This would bring equity and rigour to the system and is ethically right as it provides fair "choice" for both the community and the applicant.
8. With respect to "Heritage areas": I believe this may present a loophole where councils opposed to development may cunningly create such zones, with a view to restricting development. It has been my experience at numerous council meetings to observe councillors blanketly siding with objectors over applicants. Their decisions usually aren't made with consideration to the merits of a DA, but rather to how they might bolster their reelection chances! There are many more objectors to applicants, and simple arithmetic proves that siding with objector can provide much more votes, electoral funding, media and polling station support, while needlessly costing the community heaps in the LEC and simultaneously persecuting complying applicants (disgraceful behaviour perpetrated by stupid councillors – but when you pay peanuts, you often get monkeys)! I digress, but Professional Development courses should be mandatory for all councillors, as it is with other respected professionals.
9. Page 12, Box 2.2: It states that there are financial benefits to owners of heritage listed properties, yet does not give specific examples of such. I have held numerous discussions with real-estate agents, valuers and vendors which leads me to believe that less than 2% of heritage listed properties increase in value as a direct result of listing. Therefore, it is the exception that proves the rule, which is that **generally properties don't appreciate in value as a direct result of listing**. I feel it would be beneficial for the commission to investigate and debunk the myth that listing increases values. Obviously, any new code that restricts what can be built on a given property, detrimentally and directly affects the value of the property. If this were not the case, then rezonings that ease restrictions (i.e., increase height, FSR, density, usage, etc), would have no appreciable result on the value of the affected properties (the commission acknowledges this fact on page 75 where it states that changed zonings "usually change land values"). Certainly in the case of my parents, their property lost well over 2.5 million dollars in development potential/value, and this can be proven.

10. Page 23 “Virtual Recording”: This section makes no mention of new emergent technology (i.e., DigiCult, Augmented Reality or Holographic 3D Projections). Virtual Heritage Preservation can provide high-resolution 3D reconstructions and guided tours (VRML flythroughs) of heritage sites. At present, most heritage sites are not open to the public, so this technology provides additional advantages over a physical listings.
11. Page 61 “Maintenance and repair orders”: The NSW laws are horrendously unfair. As previously mentioned, my parent’s property has severe rising damp problems which produce musty odors. These constraints drastically reduce the rental income the property generates. Furthermore, to repair the terraces permanently would now cost in excess of \$250,000.00. However, even if this money was spent, the rental income generated by the premises would not increase! Therefore, it is *economically unfeasible* for the repairs to be actioned. In Church Street alone, we are aware of many other owners in the same predicament. Surely if an old property is forcibly being maintained for the good of the community, then the community should pay the costs associated with its maintenance, especially when it is cheaper to rebuild than to renovate.
12. Page 68 states that “governments fail to adequately conserve their own heritage”: A classic example of this would have to be the City of Sydney Council office tower built directly behind the Sydney Town Hall. The same council that allowed an enormously higher structure with no separation from a genuine heritage site is hypocritically employing different planning principle when it comes to my parent’s property in Church Street. There they are, demanding my parents build only to two storeys (in a three story zone), and demanding over 5 metres of separation (where neither would be demanded if the premises were not listed or if they had a façade). Both these constraints greatly affect the size of what can be built on the site. And as buyers pay per SQM, by reducing the SQM the development potential is diminished, and the cost of any future development increases owing to **scales of economy**. Exasperating all this is the additional expense of renovating the terraces and the fact that by retaining them, the site can not be fully excavated. This makes it impossible to achieve other council requirements, such as parking or the mitigation of overshadowing.
13. With respect to point 5 (page 73) “Planning controls and heritage conservation at the local level”: I would like to offer the following observations;
- A) When a property is identified as having heritage significance and is then listed, neighbours are not made aware that the listing of the neighbouring property will affect their property (i.e., page 98, Architects Sydney Pty Limited v Randwick City Council). The fact is that once a neighbouring property is listed, the neighbour may be forced to provide a costly heritage expert’s report setting forth a sound argument that their proposed development (i.e., a pergola) will not impact on the neighbouring heritage esthetics (this can be excessively expensive and sometimes impossible to achieve). It often forces great compromise in architectural design and affects other big things like separation requirements, Bulk and Scale, as well as the smaller things that make a house a home, like choice of paint colour, pavers or even the style of roof covering. The Australian public need to be made aware that every time a property is listed, it not only affects the listed property, but also its many surrounding neighbours (as also exemplified on page 95, by Rahmani v Ku-ring-gai Council or on page 99, Box 5.3).
 - B) Almost every council has different LEP’s and DCP’s. This often causes architects and their clients greater expense as well as time delays. It also provides challenges for councils when recruiting planners, as it is difficult to familiarise new staff with widely varying codes. This may be costing our nation hundreds of millions of dollars in lost productivity, when demanding greater consistency between council codes would not only help applicants more readily by letting them know where they stand, but also remedy the two aforementioned problems.

- C) Other inconsistencies occur with implementation of the BCA, which most councils don't apply rigorously to the restoration of heritage listed sites. Also, the removal of contaminated soil or asbestos can be overlooked on a heritage listed site. Additionally, consideration as to amenity or utility go right out the window, as older buildings were built at a time when such concepts never existed. In all these instances, the Malfeasance/Beneficence decision making process is out of balance.
- E) OH&S concerns go wanting, as well as disability provision concerns, such as wheelchair access. In Dungog courthouse for example, the second floor is actually condemned, yet staff work under a roof that is in danger of collapse. Apparently electrical wires are strewn unsafely across the floor as well, because some heritage boffin refused to allow the wiring to be chased into the walls!?! This has led to staff being needlessly injured, yet the madness continues unabated in countless courthouses and historical buildings around the country with historical aesthetics being valued over life and limb!

14. Page 75 states "seeking public comment": In reference to this remark, again there are huge inconsistencies between councils in NSW as to what satisfies the consultation requirements. In my parents' case, few people were advised of council's decision to place my parents' terraces on a heritage list (as identified on page 100, "Typically, the owner is informed only upon seeking development approval") and the consequential ramifications of that decision (more deception than decision). Our neighbour at number 46 Church Street claims she was not advised of her own property being listed, despite her terrace being attached and identical to my parents. Interestingly, one of the listing's ramifications was the consequential lifting of a 79 year old road widening order. Simple logic dictates that the knock-on effect from such a decision would affect everybody in Church Street, and that all effected residents/owners should have been notified of such. However, City of Sydney council did not adequately consult and barely satisfied slack consultation legislation. Greater uniformity/consistency may eliminate this problem.

15. Page 91 "No code assessment for heritage developments": Another problem with the assessment process for heritage effected DA's is 'Tick Box Planners'. Because planners are not paid to find solutions, only deviations from rigidly derived numerical codes, we regrettably don't get enough good outcomes. We need to see greater performance measures introduced that fulfil the spirit of LEP's and DCP's, not wet-behind-the-ears planners that have often never submitted a plan to council themselves.

16. As for the comments from the Chairman of the Australian Council of National Trusts on page 143, about the rights of property owners being evolutionary: Sure, it was inappropriate to tip sewerage on passerby's heads in medieval times, just as it was inappropriate prior the mid-1970s to bulldoze old buildings with historical value, however, the pendulum has now swung too far in the opposite direction. Now neighbours and councils having far too much power over what can be built on private property. A man's home is no longer his castle and sadly, we have a form of communism or entrenched communistic-mindedness operating at the level of local government.

Please visit the following web page to contact or support the Green family in their quest for fairness, equity and justice: <http://www.GaryGreen.org/theft>

Faithfully,

Cr Gary Green JP

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Derelict premises at 44 Church St in limbo due to conflicting codes



Inside derelict premises at 44 Church St which requires extensive work



Looking eastward up Broderick St towards Missenden Rd with 32 Church St pictured right



Only 46 Church St is visible from the south & less than 40% of it is viewable

Looking northward down Church St towards Parramatta Rd



Looking northward down Church St towards Parramatta Rd

Example of a Heritage Facade

