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Submission of Judy Jack and Fred Schmidt  
to the Productivity Commission  
on the  
Draft Report on the Conservation of Historic Heritage Places

22 February 2006

Dear members of the Inquiry,

Thank you for the opportunity to comment on your Draft Report.

We would have liked to present a more detailed and documented submission to the original Inquiry. However we were unaware of it until a local paper mentioned the Report in January.

This has come at a time when we are finalising a complaint to the South Australian Ombudsman about the wrongful Local Heritage listing of our place by the Onkaparinga Council.

I have spent large slabs of my life on this, over the last 2 years - since we were first listed in December 2003, under the device called Interim Authorisation ( section 28 of the SA Development Act 1993 ). This stealthy measure, which the Council and the Planning Minister have called "legitimate" and "appropriate", allowed Council to formally list us without prior notice, and to put the Plan Amendment Report (PAR) out for consultation with the public and the owners simultaneously. This sham was passed off as direct consultation with owners. In actual fact, interim authorisation had the opposite effect on consultation. It nullified it. Every submission was ignored or rudely dismissed - except one, due to confused property identification.

We have experienced first hand all of the worst aspects of the listing of private properties after they have been purchased, that you have so clearly described and analysed in your Draft Report. Your Report has been the first ray of hope for us in this stressful period of our lives. The first time anyone in authority has examined the issues with fairness and commonsense.

So we have delayed the submission of our complaint to the Ombudsman for a short time - in order to respond to your Draft Report by the due date.

Our comments are purely about the findings and recommendations related to the local heritage listing of private properties, especially those listed after purchase (or where purchasers did not have heritage status disclosed to them prior to purchase) i.e. the people who had no choice in the matter.

This is of course the largest category of properties, and the most problematic, for the owners.

Therefore Recommendations 9.3 and 9.5 are the key ones for us, and for the majority of owners of the majority of the properties. We fully support those Recommendations.

The following is a list of issues which our Council refused to address, and which your Draft Report does address:

- Owner consent
- Recognition of the problems caused by mandatory listing
- Significance of private ownership
- Recognition of the primacy of ownership
- Recognition of owner's efforts - work, maintenance, commitment, expenses, red-tape burden
- Property devaluation and reduced re-salability (especially of private residences of marginal heritage value ) - due to excessive restrictions on use and re-development
- Recognition of the ( increased ) cost burden being solely on owners
- And that the community must decide how much it is willing to pay for the heritage conservation it is currently getting for free.  
(We really like the term you use -"heritage services" )
- And that owners must be compensated
- Discussion of the costs and benefits of heritage listing - is really good We are bearing all of those types of costs you described - maintenance, regulatory burden, implicit opportunity costs, etc
- Lack of clear statement of regulations.  
Our `controlled activities' appear to be extensive, covering everything across the entire property (5/8ths acre) except painting and gardening (See attached Sheet of examples of controlled activities) However Onkaparinga Council will not provide owners with a full list, no matter how many times we ask them.
- So we know that your point about the unviability of forcible listing and controls is absolutely correct. It is wrong in principle and it doesn't work in practice
- Counter-productivity of this approach

Your point, made on page 167 of the Draft Report, that one of the potential consequences of the listing process is that:

"regulation of privately-owned heritage properties essentially asserts public ownership of heritage characteristics, with the owner then expected to manage the property"

is the crux of the matter for us.

It precisely expresses and encapsulates what we have been struggling with all this time.

It is an unacceptable public intrusion into our private home. Not only is it an "inefficiency consequence", it makes us very upset and angry. It has caused many sleepless nights, and taken a toll on my health.

Heritage listing our place is of no benefit to the community - they will not be getting anything they did not already have - due to our faithful efforts to maintain the property and share its real history ( as distinct from the false history and heritage value we have been listed with).

Making our life more difficult, imposing greater costs on us, and justifying all this by saying that owners - current and future - are a risk to our own homes spoils all our efforts.

Our good faith, goodwill, resources and energy have been squandered. We have already spent thousands of dollars on this ( not to mention the \$100,000 devaluation of our property, our son's inheritance ) - not one cent of that being put towards the house or good heritage purposes. If it costs us so heavily, there will inevitably be a reduced benefit to the community as well.

We can't afford to be heritage listed.

Before concluding our submission to you, we must make some comments about the submission by the City of Onkaparinga, dated 8.2.2006, under the signature of Mayor Ray Gilbert.

1. Council destroys its own argument when it claims "overwhelming landowner support for their properties to be listed", but opposes the proposal to allow "negotiated voluntary 'Conservation Agreements' ..... as it would lead to the potential de-listing of hundreds of properties currently on the Local Heritage list regardless of their heritage value". Which is it ? overwhelming support, or owners leaving the list in droves ?

2. Council makes a huge leap in logic when it claims that the number of people who did not formally object during public (not landowner) consultation indicates "overwhelming landowner support". Why isn't the pitiful number of owners who wrote in support of the listing being used as the measure of owner support. ( By my count that number on the larger of the 2 PARs, the Willunga PAR, was 2, with 23 against)

Add to that that the unknown, and unreported number of people who did what was later called an "informal" objection - i.e. sent in a feedback sheet, or wrote to the Council before the formal consultation period had begun strongly objecting to listing, and we see that council is misrepresenting support. The people who did this were assured by the Policy Planner that their views would be taken into account and "used in the shaping of the PAR". They had no reason to suspect that Mayor Gilbert would be claiming, in a submission to the Productivity Commission, and in the local paper (see attached article) that their strong objection is part of the "overwhelming support".

3. Council is misrepresenting its so-called heavy investment in heritage conservation. Absolutely nothing has been offered to owners. Not even the waiving of the extra permit fees that compliance with the excessive controls will cause.

They have not offered a discount on rates.

And they have never told the public or the owners that the amount of the Heritage Fund is a miserable \$30,000 doubled from \$15,000, 6 months after we were listed. This is to be spread over 400 or 500 places - that's an average of approximately one per place of the extra permit fees we have to pay for the privilege of doing one of the many running repairs in this place to keep it going.

The heritage advisory service is conducted by the Council's Heritage Adviser who is a private consultant Heritage Architect, who is also the same person who approves the permits, and who assessed our objections to listing. There are obvious anomalies, accountability issues and direct pecuniary interest issues there.

4. With reference to the last point it should be noted that there is no-one on Council staff with relevant professional expertise to run a heritage scheme or to conduct so-called "merit-based assessments" of heritage value. There was no historian involved in the listing process. The Heritage survey was conducted in 1997 by a local historian. She was not involved in all the arguments owners had over the incorrect and unsubstantiated histories and descriptions of their places. The heritage architect was. We have been arguing heritage value with bureaucrats and a consultant architect. When we took our case to the State Local Heritage Advisory Committee - which does have proper professional heritage expertise, they recommended that our place be removed from the PAR. It was unexplained Ministerial intervention/discretion that retained us on the list, against advice.

In concluding our submission, we re-iterate that we are fully supportive of the findings and the recommendations of the Draft Report.

We thank you for doing such a forensic investigation of the real situation. We believe it is high time the bias and imbalance of the heritage debate is redressed.

In view of our experience with the listing process, we would suggest that Recommendation 9.5 be strengthened to:

"Private owners of already listed properties, where the listing occurred after purchase of that property, must be fully informed and automatically, offered a negotiated conservation agreement and for listing to continue only if an agreement is reached"

We are very appreciative of the opportunity to give you our point of view, and wish you well in the progress of your Report to Parliament.

Yours sincerely

Judy Jack and Fred Schmidt

attachments