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Heritage Inquiry
PRODUCTIVITY COMMISSION DRAFT REPORT
A CASE STUDY

A brief account of what has taken place to date between Heritage Victoria and the owner of a private dwelling which was purchased in 1973 and registered on the Victoria Heritage Register approx 18 years after the purchase all details contained herein are supported by evidence

The property: *The Boyd House Camberwell Register No 879 deemed of State Importance described as the first home of Architect Robin Boyd built for his own use
 1959 sold to H. Ferrier
 1972 sold to present owners A. & M Rajendran owners to date 1991
 Registered -No 879 deemed of State importance*

This matter commenced in 1987 when the HBC became involved and remained unresolved forcing the owners to abandon the property and move elsewhere in 1991

This current "battle" commenced in 1999 when the roof of the 52 extension was removed without a permit and continues

Further and better information is found on the Web:

www.robinboyd.com.au/ontro.htm

<http://www.robinboyd.com.au/doc01.htm>

<http://www.robinboyd.com.au/doc02.htm>

It has been described in the press as "A Landmark Case"

The following information is a brief resume of my experience as owner of a private dwelling which was placed on the Victorian Heritage Register, eighteen years after the property was purchased
 Reference is made to the property know as "The Boyd house Camberwell" registered on the Victorian Heritage Register and deem at State importance

The Registration was improper and did not follow due precedence

DESCRIPTION OF THE PLACE

The house was built by Robin Boyd for his own use and comprised of two buildings the first referred to as the original house was built in 1947 referred to as "47 building" the second referred to as the "52 extension" was added in 1952, joined at the front entrance of the 47, connected by a glazed link

The 52 extension according to the architect's widow was built for the purpose of his office use - reception room, drafting area and office

A BRIEF HISTORY

- 1973 registered in the names of A&M Rajendran
purchased for land value, architect unknown at the time of purchase The building
was condemned
- 1975 an addition was built by the owners at the south end of the building, Approved by the Camberwell
Council - architect unknown to both the Council and the owners at the time
- 1991 placed on the Victorian Heritage Register No 879 identified as the first home of Robin Boyd
and having State significance
The registration was improper without due process - based on hearsay did not follow due precedence, no
architectural/engineering investigation, no condition report was undertaken, no historical investigation and no
CMP undertaken. It was done without a full and proper study to determine both heritage significance, the state
of the building and particularly its structural dilapidation even at that time. The extent of changes made by
the present owner between purchase and final registration the place were not recorded. There were no
official records of the place
Note the first and only CMP was commissioned in 2001 by HV and paid for by HV.
The CMP expresses grave concern for the future of the structure of the 1952 extension
particularly of the "floating slab", which is noted in the statement of significance
It should be noted that the CMP was not admitted as evidence, despite the fact that at the time of
litigation instigated by HV the Supreme Court hearing was postponed to allow for the completion of
the CMP which had been commissioned for that very purpose
Importantly the CMP acknowledged that the owner was in no way responsible for the dilapidation of
the structure
- 1991 owner requested many times records of the place and directions from Heritage Victoria in
regard to the urgent condition of the building - request ignored,
HBC (to become HV) ignored constant requests to give direction to allow the urgent repairs to the
building to be undertaken and were aware of the state of the building even at that time
- 1991 Family finally obliged to vacate the house due to being constantly unwell. It was suspected at the
time it was due to damp. This was born out by the later discovery of mould in the solomit . This
suspicion was confirmed by Neil Clerehan's (expert heritage witness for HV) comments in the issue
of "Transition "devoted to Robin Boyd, about the mould that developed in the Solomit
- 1999 The roof of the 52 extension was riddled with vermin, as a result the ceiling had been replaced twice
without success- a contractor was engaged to seek out the points of entry and make good in so
doing because of the construction of the roof in that particular area, in carrying out an inspection
a section of the roof fell to the ground followed by the solomit insulation. The remainder of the roof
was considered dangerous and the contractor advised that the entire roof be removed and proceeded to
remove same
As owner I gave consent as the matter was urgent and I allowed this to happen without
seeking a permit from H/V

As a result of the removal of the roof without a permit

Heritage Victoria proceeded to summons me in the Supreme Court
The Judge did not punish me for the illegal removal of the roof instead required me to replace the roof

"In the originating motion of the plaintiff (alternatively Mr Tonkin) seeks an order under section 168(1):

for the reinstatement of the former Robin Boyd House at 664-666 Riversdale Road Camberwell, being Heritage Place Number 879 on the Victorian Heritage Register In, so far as is possible to the condition it was in before 4 May 1999. etc"

- (i) Works listed as sought as per Originating motion (23.4.02)
- (ii) works listed as per judgement (16.5.'02)

In Court the expert heritage witness Neil Clerehan in evidence in Court - (taken from the Court Transcripts ref page 336) said that he had been instructed verbally by H/V

Quote:

"In an ideal conservation job, you would get hardwood and use it"

When asked whether or not it should be restored to the original replied

"The whole theme of this is to stet the building fixed and do a very low cost conservation job"

At no time was I consulted if I would agree to a "low level conservation job" on my property bearing in mind that the property was listed on the Heritage Register at State level of importance

Heritage Victoria successfully instigated two further summons in the Supreme Court viz..

- Failure to carry out the work as per the time frame - caused by the impediments of H/V resulting in my inability to undertake the works as H/V dismissed all proposals put before them (Court appointed supervisor also author of the CMP) without explanation - noting in the Court orders "approval should not be unreasonably withheld"
- An application to take over the works to be carried out by Heritage Victoria the court required my approval of the plans submitted by H/V BEFORE h/v could commence the project I was unable to consent because the plans, eliminating all heritage matters, differed from the Court Order and the Work Orders

The Court Order became the Work Orders which, it should be noted were compiled on evidence of the expert witness appearing for HV. The Work Orders were wrong, in many respects much of that evidence to replace it (52 extension) as it had been before its removal was factually incorrect As it stands now, the roof is visibly different from the roof on the remainder building, it not the roof as it was in 1999 and not the roof as required by the Court Order hence for students of architecture it is not possible to make a proper and correct reading f this important designer's intentions Apart from this major error the Orders eliminated all heritage items for which the building was noted both in the use of materials and the manner of construction The tenants of the Burra Charter was ignored in the process

Section 73 of the Heritage Act has been ignored throughout
Judge Bamford failed to use the discretion allowed HN denied all
dialogue to put the matter right

Heritage proceeded with the project and denied me knowledge of the contract and ordered me from the site
The project now completed has been approved by H/V with disastrous result
In spite of the forgoing and poor workmanship the project now completed has been approved and signed
off by HV

As a result I (the owner) is left with a building which cannot be lived in its present form - perished floor tiles
containing asbestos, diagonally cracked and domed slab, walls leaning out allowing access to vermin and
weather, no services connected - to reconnect the electrics will require removal of the ceiling and/or roof,
wall cracks which have reappeared and new cracks - in short a failed building
Since 1999 I have been denied the use of the property (7 years) and this will continue until the matter is resolved

Heritage Victoria is held responsible for the diminution of the heritage value of the place
HV, in lacking transparency, in refusing to acknowledge from the outset, failed to admit that there are no records of
the place other than what has been supplied by my architect and myself. There were no records on which to rely,
and in the replacement of the roof, even without knowledge of the original any simple investigation carried
out would have put matters to right. The required information could be found in a simple investigation of the
existing roof on the 47 building notwithstanding the demolition material, cleaned and stored on site for that
purpose

H/V in constantly refusing dialogue, instigated the three unnecessary Supreme Court actions which have
resulted in demolition of the heritage factor of the a section (52 Extension) of the building and in refusing to
acknowledge that this section was a failed building, built on unconsolidated tip fill have replaced the roof
over an area (4.5x11 metres) at a cost of \$140,000 on a failed building, leaving a slab which has domed and walls
which rotate and continue to crack, failed to connect the services, and to remove the asbestos tiles leaving the
remnants of a failed malthoid roof which has contaminated the land

Both the Burra Charter and the Court Order have been ignored in the process HV changed the orders
without referring to the Court

An appeal in writing to the CEO of the Heritage Council in answer to her correspondence which contained
evidence which was blatantly wrong, based on information supplied by H/V, evidence which is
contained and recorded in the records, in response informed me that she did not hold her position at the time.

I am living under the threat of litigation for the recovery of costs for the works undertaken by H/V for the
amount of \$140,000 approximately. Works which relate to the replacement of a roof over an area (4.5 x 11
metres)

The Victorian Government Solicitor has informed my lawyer that the details of the contractual costs
will not be available to me until the matter goes to court

The contract was signed by the Department of Sustainability and Environment, not put to tender and a request from this department for a copy of the contract has been refused, so to the reasons why a government contract was not tendered

The engineer employed by H/V quoted between \$30,000 and \$40,000 for the roof replacement and the works to be undertaken as per the Work Order

My registered builder (who could if required build the mechanics of a swiss watch) quoted the roof replacement using the existing demolition materials of which 75% are in good order at \$10,000 and the remainder works not included, however he informed me that he would not contemplate re roofing a building which had failed and was dangerous

An FO 1 has been requested

As at 2003 H/V had incurred costs to the amount of 2 million of taxpayers monies in the course of the proceedings

My costs are in excess of \$500,000

There is a serious need for an inquiry as to how H/V carries out their duties

This matter is in the public domain hence my permission is herewith given to use this material as you so wish noting that all information herein is on record

Maria Rajendran

10th February 2006

Heritage Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

Subject - private dwelling identified as

The Boyd House Cammerwell registered in 1991 NO 879 deemed of State Importance

Included with this fax

- a case study of what has eventuated between my self as owner and Heritage Victoria over the years - 1991 to date - (5 pages - i - v)
- This letter to you which is very emotional is somewhat repetitive of the above but serves to illustrate how I have been the victim of Heritage Victoria and the ensuing distress to my family and myself leaving me now nowhere to go in my own defence other than further litigation which I can no longer afford
- The main problem was the inefficiency and ignorance of the people who called the tune
- The intangible force of the draconian power given to Heritage Victoria by an Act of parliament
- Heritage Victoria with consistence arrogance, has at all times refused to involve me, even by way of explanation of questions I have asked in matters which should under normal circumstances have been dealt with by simple co operation and denied me the opportunity to clarify important heritage issues of which H/V appeared ignorant in order to give H/V a better understanding of the heritage value of my place in particular as H/V no records and no architectural assessment of the place upon which to rely . I am in fact the owner and remain the owner, having experienced the building far longer than the owner architect himself, And I possess a wealth of knowledge of the place
- At all times there was an area of malice and my name has been impugned

I The main pressures on the conservation of my property

- The result of three unnecessary IPO's issued in 1987 approx in my absence from the country without notice or explanation eroded my property rights resulting in considerable and detrimental effects on myself and my family
- The place was Registered in 1991 without due procedure based on hearsay
 - Without historical investigation
 - Without architectural assessment, engineering reports and a condition report
 - No records of the original content of the place
 - No CMP (conservation management plan) was undertaken No negotiation was allowed
 - The Burra Charter ignored

The registration was predetermined, the meeting for determining was held on 9.04.91 and results were circulated on the following morning (10.04.1991) but denied to myself until three weeks later despite numerous requests to Heritage Buildings Commission (HBC) to become Heritage Victoria Unknown to HBC the same documents were handed to me via the architect's widow on 10.04.1991

Information of the records and direction regarding the urgent repairs to the building was constantly sought from the director of HBC during the period immediate to the registration All requests verbally and in writing were ignored and as a result I vacated the place in 1991

There was no official conservation agreement undertaken, as owner of the property I was ignored and am now left with a property which lacked the normal requirements of modern day living and is in a state of decay As owner of the place I was ignored - I was left without rights - my rights as a citizen and my property rights

The National Trust nominated the place for listing but several searches of the files of the NT reveal that no investigations or records are on file - like wise in the files of H/V The local council has informed me that there is no file on the property - even matters relating to my ownership since 1973

Before the Registration a request to the RAlA from Heritage Victoria to participate in the proceeding was refused, the excuse given RATA considered that the property had been so altered that it was impossible to determine the original content of the building

Similarly the Royal Historic Society (Dr Leonie Foster) advised - no wish to make a submission

Refer to www.robinboyd.com.au

Heritage Victoria in dealing with this matter and the resulting legal procedures culminating in H/V undertaking the roof replacement, have failed in all accounts, - have ignored the Court Orders, the Burra Charter , disregarded section 73 of the Heritage Act, lacked transparency at all times illustrating The lack of knowledge of 20 Century homes, failed in the duty of care of this heritage place of State significance resulting in diminution of the heritage factors of the place and leaving a property which is uninhabitable, ongoing distress to the owners and severe financial loss in excess of \$500,000 meanwhile the cost to the taxpayer stood in 1993 at 2 million dollars

I have owned the place since 1973 and denied the use of my property to date

In the power given to H/V by the Act of parliament I can now be forced to make good the property

Meanwhile I have been denied the use of my property

The only solution being further litigation which I cannot afford

H/ V can continue to wield the power in this matter which has been referred to as "A Landmark easel" An inquiry should be made into H/V the manner in which *they* operate and the financial costs involved incurred in the use of private donations and the use of taxpayers' monies

No CMP (Conservation Management Plan) was undertaken at the time of registration

In the course of the first litigation the Court proceedings were put on hold at the request of H/V to undertake a CMP

Heritage Victoria lacking transparency, in refusing to acknowledge from the outset, failed to admit that there are no records of the place other than what has been supplied by my architect and myself

H/V in constantly refusing dialogue, instigated three unnecessary Supreme Court actions which have resulted in demolition of the heritage factor of the a section (52 Extension)of the building and in refusing to acknowledge that this section was a failed building, built on unconsolidated tip fill have replaced the roof over an area (4.5x1 1 metres) at a cost of \$140,000 leaving a slab which has domed and walls which rotate and continue to crack, failed to connect the services, and to remove the asbestos tiles leaving the remnants of a failed malthoid roof which has contaminated the land

Both the Burra Charter and the Court Order have been ignored in the process

The Court Orders became the work orders which differed again and were complied as a result of the wrong information supplied to the Judge Bamford J. by HV

What is more appalling that information recently supplied by H/V to M/s Gallagher CEO Heritage Council is so blatantly wrong that is unbelievable in particular as all the details are on record

Nine pages of correspondence, with supporting evidence in response to correspondence from M/s Gallagher bought the response to my letter – M/s Gallagher stated that she was new to her position and relied on the information given her

The first Supreme Court action

"In the originating motion of the plaintiff (alternatively Mr Tonkin) seeks an order under section 168(1):

for the reinstatement of the former Robin Boyd House at 664-666 Riversdale Road Camberwell, being Heritage Place Number 879 on the Victorian Heritage Register In, so far as is possible to the condition it was in before 4 May 1999. etc"

- the judge did not punish me for allowing the roof frame and decking to be removed without a permit when a section of the roof fell to the ground, ordered me to replace the roof as per the Court Order

Aware of my obligations under the Court and willing at all times to carry out these obligations there were two major obstacles to the roof replacement

- The condition of the failed building which was built on unconsolidated land fill which had caused the building to fail - the fragile concrete slab which had bowed causing the walls to rotate causing a major crack in the internal and external wall
- The plans which HN provided eliminated all the heritage items and the use of materials for which the architect, Robin Boyd, was noted were eliminated.

In Court the expert heritage witness Neil Clerehan in evidence in Court- (taken from the Court Transcripts ref page 336)

Quote:

" In an /deal eonser ation job. You would get hardwood and use it "

When asked whether or not it should be restored to the original replied

"The whole theme of this is to get the building fixed and do a very low cost conservation job

At no time was I consulted if I would agree to a "low level conservation job" on my property bearing in mind that the property was listed on the Heritage Register at State level of importance

I offered to rebuild the entire building to the original content

This offer was rejected

Heritage Victoria have failed

- in the protection of care of this heritage icon deemed at state level of importance
- ignored the Burra Charter
- eliminated all the heritage factors for which it was noted
- to properly carry out a construction project - failed to connect the services etc - yet approved of the works when queried the H/V informed me that the works carried did not include making the place habitable
- failed to tender the project (gov project signed by Department of Sustainability and Environment)
- Denied me access to the Contract, ordered me from site
- Demanded payment of \$140,000, refusing to give details of the contract (the engineer employed by H/V quoted the cost at between \$30,000 TO \$40,000)
- spent in excess of 2 million dollars of 'Tax payer' money on unnecessary litigation

I have spent in excess of \$500,000 dollars in litigation to defend myself

I have been denied the use of my property since 1999 to date

My present concern is that H/V have the power to force me to repair the building, and refused a grant informing me that there are more important matters

Meanwhile I have a property which

- continues to move,
- a cracked and domed slab partially covered with perished asbestos floor tiles which HV have informed me require a Permit to remove
- walls which have rotated outwards leaving open cracks, allowing for access of weather and vermin
- door *which* will not close because the iron frame has rusted,
- Entrance door which leaves a gap at floor level allowing access for vermin
- Electric fitting demolished and removed
- No services reconnected -electric connection will require removal of the roof and ceiling
- HV have sent me a Certificate of Occupancy and have approved of the works
- HV required me to store the demolition materials - the perished malthoid from the original mo was left on the property and covered - the contractor has scattered this material in the garden and as a result the ground is polluted

The building cannot be lived in in its present state nevertheless be lived in and which I will be obliged by law to maintain

It is an ongoing nightmare

I earnestly request that inquiries be made into how Heritage Victoria carries out their duties

I hope that my experience may cause the committee to realize what, at the very worst can happen to an owner of a heritage listed home

Sgd Maria Rajendra

