5 August 2005

The Australian Govt. Productivity Commission

The Heritage Enquiry
Productivity Commission
P O Box 80
BELCONNEN, ACT 2616

Att: Ms Jill Irvine

Dear Sir/Madam

The Negative Impact of Heritage Laws in NSW on Individual Householders and Their Property Rights and Living Costs

We would like to make a submission to the Heritage Enquiry in terms of the negative impacts of Heritage Laws at the state level, on individuals and their families.

1. Heritage laws are being used to further political agendas and planning permissions that have nothing to do with Heritage.
2. Homeowners are being victimized by lengthy and absurd enquiries which are conducted on the basis that the "Council knows best" and in the end can always fill in the appropriate form quicker than the householder.
3. There is effectively no appeal process against Council heritage process and decisions. This abrogates all considerations of natural justice or common law. Any resort to the legal appeal process is prohibitively expensive for an individual family and of course opens up the possibility of being liable for costs.
4. The process itself imposes considerable costs on homeowners who are sitting in their homes having committed no offence and asked for nothing. As admitted, these costs include:
   (a) Insurance
   (b) Building or renovation costs
   (c) Planning and professional costs

None of these costs are tax deductible. Perhaps the worst feature of Heritage policy is that Councils refuse to advise victims, or potential victims, that they will be saddled with these detriments. This could amount to misleading conduct under Trade Practices legislation.

5. The Heritage industry has a habit of "inventing" new "architects" who can be deemed to be "heritageable" although previously they were virtually unknown. This tends to make the system a make-work program.

This enables the use of the Heritage laws for political process which victimize the homeowner.

This can become a hydra of costs for the homeowner and a large cost centre for Councils, which in turn increases the cost of building new homes and bringing older homes to a reasonable modern standard. Incredibly the homeowner loses value, has his/her costs increased and yet the impact is to increase the cost of new housing to the community – an incredible net negative on all sides, except for bureaucratic employment.

6. The state heritage laws enable "nationalization" of the family home without compensation and without appeal.
7. In the case of properties zoned 2(b) (for good reason) there is a very substantial loss of value to the owner without compensation or apology.
8. Councils refuse to have enquiries into the extremely negative impact of their policies on the homeowners, whether zoned 2(a) or 2(b), despite the fact that they are prepared to spend large and continuous sums on the Star Chamber like implementation of those policies.
9. Individual decisions are made on a random basis and if it appears that a developer has the wherewithal to challenge the Council legally then a hasty retreat occurs. However, for an individual householder with less means the Star Chamber approach is followed.
10. In the case of the Council area where we are resident, the process has been concentrated on properties zoned 2(b) almost exclusively. This amounts to discrimination even if it is not intended. It also has the negative planning impact of listing "orphan" residential properties in the shadow of high or mid-rise buildings or next door to active commercial properties (pizza parlours, etc.).

In the huge majority of cases these properties have no real architectural or "heritage" value, so the Heritage legislation is being used to allow Council to change zoning without explanation or compensation.

SUGGESTED REMEDIES

(a) There should be a free appeal process with experts appointed pro bono for the appellant victims of Heritage.

(b) If indeed an item is assessed Heritage, there should be an assessment of loss of value on such assessment and that amount should be paid to the homeowner.

We have listed a number of more detailed remedies in the attached correspondence which should also be considered. If the homeowner has in some way become the possessor of a "public good" then the "public" should compensate the owner for his partial or total loss of freehold.

We have attached a copy of a submission made to our Council of our experience in the matter (dated November 2004). We have no doubt that many others have suffered, in different Councils, the same ridiculous process (see various press articles over time), and many more because they have no time, have just submitted to this "force majeure" of bureaucratic violence. We have also attached, by way of information, some extracted letters to Council 2003 – 2005 (correspondence dates back to 1997), which we believe should be treated as "privileged" material, which illuminates some of the points we have made in this submission.

We would also like to note that we were advised of this Enquiry by the Mayor (which shows he has an excellent sense of humour) as we were overseas at the time.

We would be happy to discuss any of the submitted material in more detail should you so desire.

Yours sincerely

Richard Mews