

22nd January 2006

Submission on the Draft Report into the Conservation of Australia's Historic Heritage Places

Introduction

My name is Max Scott. I am fully retired. My entire working career was as a Professional Civil Engineer with a NSW State Government Department, involved in the planning, design, and construction of major civil engineering works.

For the last several years of my career I was actively involved in identifying and cataloguing items connected with the Department's heritage, and I chaired and was active on its heritage committee.

I attended a number of meetings of Ku-ring-gai Council last year concerning the then proposed heritage listing of two homes of the original Pettit and Sevitt display village in St. Ives. (One of the homes was owned by a Mr. John Boyd, who made a submission to your enquiry last year)

I also attended some sessions of your previous public hearing in Sydney last year, and you have been good enough to send me copies of the transcripts of those hearings and your Draft Report on the Conservation of Australia's Historic Heritage Places. Thank you.

Unfortunately a prior commitment will take me out of Sydney during the next public hearings in Sydney. I should very much like to have been there, and look forward to reading the transcripts, which I hope you will send me in due course.

General comments

May I say at the outset that I thoroughly agree with your proposals as a way to bring some justice and fairness into the entire heritage process.

But I would like to make the following comments about the issues involved in the heritage listing of privately owned properties.

The User Pays Principal

Much has been made in the last twenty years or so of the need for the costs of any public service to be met largely by those who benefit.

For years now the heritage lobby has sought to convince us that Australia's heritage is worth preserving. And many local government bodies have been swayed by their arguments and have tended to heritage list properties on their recommendation. However in my view their credibility has been largely undermined by their unwillingness to bear any significant part of the costs to the owners.

I remember reading many years ago in a photographic journal that "if a professional charges you two guineas for a portrait, it is generally worth it. If an amateur charges you nothing for a portrait it is generally worth it".

In essence the heritage lobby, and those councilors in favour of listing a private property without fair compensation to the owners, are sending conflicting messages. On the one hand they say that the listing would be of great ongoing value to the community. On the other hand they are saying that it is not of sufficient value for the community to actually pay anything for it.

As a result, when something is being considered for listing, the main issue at contention is often not whether that particular property, or group of properties, is worth heritage listing. The sixty-four dollar question is who is going to bear the cost of the resulting drop in property value? Unfortunately, that has usually been the owner.

Surely the issue is simple. If something is worth preserving for community values, it is appropriate for the community to bear the costs involved. If preservation of something would cost more than the community is prepared to pay, then the item should not be preserved. There is no valid reason why those costs should be born by the owners.

Effect of listing on property values

There is clear evidence that the heritage listing of non-remarkable houses can result in a decrease in the market value of the property.

* An independent valuer estimated losses of \$120,000 and \$170,000 for the two Pettit and Sevitt homes being considered for heritage listing by Ku-ring-gai Council last year.

* A similar case was reported in the North Shore Times of 16th December 2005. (This is a local newspaper circulated on Sydney's North Shore). In this instance a 1940s home in Victoria Avenue Chatswood was estimated to drop in value by some \$60,000 to \$80,000 if it were listed. (Copy attached)

* Another case was reported in the Sydney Morning Herald on 5th October 2005. In this case heritage listing was deemed to have knocked \$300,000 off the value of a property. The Valuer General had valued this home in Hunter's Hill at \$950,000, "even though it was heritage listed and could not be extended or extensively renovated". The owner (a Mr. Philip Jenkyn) appealed to the Land and Environment court which "eventually ruled that the Valuer General should take into account the heritage aspect of the house. An independent valuation said the property was worth \$650,000, a figure the Valuer General accepted". (Copy attached)

Ku-ring-gai Council and the first St. Ives Pettit and Sevitt Display Village

As I said above, I attended the Council meetings last year when the heritage listing of the two Pettit and Sevitt homes was so heatedly debated.

There were some ten councilors, no doubt all decent citizens and no doubt all trying to do the best for Ku-ring-gai and its people, and all one assumes concerned about its heritage.

Four homes of the original Pettit and Sevitt Display Village had already been listed, and there was a strong push from the heritage lobby to list these remaining two. Those pushing for listing were some Council staff, the National Trust, the Royal Australian Institute of Architects, and the French-based Docomomo Australia.

To three of the ten councilors, it was as if God had spoken through these bodies, and they urged councilors to "harden their hearts" (their words) to the significant financial losses the owners would suffer and impose heritage listing on the two unlisted properties without further ado.

The remaining councilors weren't quite so sure. As one councilor said, even if the actual losses were only half the valuer's estimates (i.e. half of \$120,000 and \$170,000 respectively), they were still very significant. And of course some were probably influenced by the fact that these houses were hardly unique - well over three thousand Pettit and Sevitt homes were built, over fifteen hundred just like Mr. Boyd's. (There is even one home of the identical Pettit and Sevitt type to Mr. Boyd's already heritage listed in St. Ives.)

In the event, the proposals to list the two homes were not carried, although there was certainly some vigorous in-fighting along the way. But what were the facts:

Council's planning staff, The National Trust, The Royal Australian Institute of Architects, and Docomomo had everything to gain and nothing whatever to lose by the listing of those two homes. Had listing happened it might well have been a feather in their cap, but it would have been done at no cost to themselves whatsoever.

The two hapless owners, however, had quite a bit to lose had the listing gone ahead. It is not to be wondered at that they opposed it vigorously.

As I said above, the acid test as to whether it is desirable to list a property should be whether it is worth the community's while to pay the costs involved, including compensating the owners for solicitors' and valuers' fees and any loss in market value of their property. Councils might need to set up a special fund or funds to do this, but it would bring the whole heritage process out into the open.

Importantly it would also expose councils to scrutiny by the ratepayers as to whether Council was spending their money wisely in listing a particular property.

In this case, and no doubt in many other similar cases in other Councils, it is likely that the Councilors had no great specific experience in heritage matters to draw on, and there were apparently no clear independent guidelines for them to follow. Certainly there was no completely independent authority to whom the matter could be referred for evaluation.

I therefore see a need to develop some way of educating Councilors to assist them to make informed decisions. It would clearly be very desirable for a set of Guidelines for Determining Authorities to be developed by some impartial referee.

And it would also be very desirable if that same or another impartial referee was able to advise and perhaps arbitrate in cases where there is a dispute, without the contestants incurring the very high costs of taking the matter to say a Land and Environment Court.

Removing uncertainties from the heritage process.

As I understand it, there are no absolute rules for what alterations may, or may not, be permitted to heritage-listed homes. To some extent an owner faced with listing must have concerns, at least in part because of the fear of the unknown. And these same uncertainties must act as a disincentive for any prospective purchaser of a heritage listed property.

For example, can a room be added? If so, must it be at the back, away from the street? Can an owner change the roof type if the present one is giving problems? Can a garage or carport be added? Can fences be built, or changed? Etc.etc.

These uncertainties must have a negative impact on the value of any heritage listed home, even if the home is generally suitable for a prospective buyer's purposes.

So again, I see a need to develop and publish guidelines for councils, and for the information of the public, as to what sorts of alterations will, or will not, be permitted on heritage listed buildings.

And what about a bit of fair play?

From his submission to your earlier public hearing, it seems that Mr. Boyd has successfully withstood no less than four previous attempts to list his home. Surely that should be enough! But I believe that as things stand there is nothing to stop a future council putting him through the whole grueling process again.

And, unless things change, blithely robbing him of a considerable amount of his life savings in the questionable belief that they are doing wonderful things for Ku-ring-gai's heritage.

So I believe that there should be a limitation on the number of times a property can be considered for heritage listing, and a very large interval should have to elapse before it can be reconsidered - if ever.

Properties which were already listed when the present owner bought them

In my opinion there should be some independent review of whether it was appropriate to list them in the first place, and whether there is a real need for them to remain listed.

Taking the first St. Ives Pettit and Sevitt Display Village as an example, I suspect that practically none of Ku-ring-gal's residents are aware of its existence or that some of its homes are heritage listed. And that many would wonder why it was worth preserving in any case.

Certainly there do not seem to be many tourist buses bringing visitors to look at it, and no contingents of eager overseas architects gaping in wonder and awe at this example of 1960s project development.

So even though the present owners of heritage listed properties may have paid fair market value for their homes, it still seems a pity that they should have to live with the constraints that heritage listing has imposed on them unless heritage listing was really appropriate in the first place.

Summary and Suggestions

In summary, I feel that the proposals in your report will go a long way towards sorting out some of the problems that have plagued this whole business of heritage for a very long time. I congratulate you on it.

I therefore strongly support your proposals as far as they go, but also suggest that:

- Clear guidelines be developed for councilors and other decision makers to help them evaluate proposals for heritage listing
- Clear guidelines also be developed as to what alterations are permissible on heritage listed homes, and that these be widely circulated, to at least minimise many of the doubts and fears private owners have, and to save them from over-zealous Council interpretations and decisions
- A limit be set on the number of times a property can be considered for heritage listing
- Consideration be given to setting up some independent referee to arbitrate when agreement cannot be reached between owners and council - costs of referring the matter to say the Land and Environment Court would be prohibitive to many private owners

M, A. Scott, January 2006

Heritage Enquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

NORTH SHORE TIMES 16/12/85

Heritage hangs over homes

KIM CHRISTIAN

AN elderly Middle Cove woman has had to wait more than two years to see if her home would be heritage listed.

On Monday night she and a group of Willoughby, Middle Cove and Castlecrag residents learned that a council proposal to heritage list their homes had failed.

Despite a rescission motion being put forward this week, the council voted to maintain an earlier decision not to heritage list the Eric Nicholls-designed homes.

In 2003 residents received a letter from Willoughby Council saying their home was under examination for heritage listing, subject to a report by architects.

Resident Lou Parke told Willoughby Council his 83-year-old mother-in-law felt her rights had been taken away after her 1942 house was earmarked for listing.

"I think a lot of people have been affected by these arbitrary listings," Mr Parke said.

He said his mother-in-law had lived in the Victoria Ave house for the past 25 years and real estate agents had told him a heritage listing would devalue the property by between \$60,000 and \$80,000.

"Nobody has thought to question the premise on why this



Lillian Anderson stands at the front of her house with her son Ted as her daughter Shirley speaks with councillors Judith Rutherford and Mary Johnston. Picture: JOHN APPELYARD

architecture was selected," he said.

Middle Cove resident Ted Anderson said his mother, Lillian was given only two days to prepare a response to the proposed listing.

"The main issue is about [the

council] imposing it [heritage listing] on people who don't want it," Mr Anderson said.

He said more than a dozen Eric Nicholls-designed public buildings had been placed on a heritage list but no case had been made about the quality of the architec-

ture but Willoughby Mayor Pat Reilly said the council was intent on compiling a heritage register.

"But if there are circumstances where it can be proven that a house should not be listed then we would consider that," Cr Reilly said.

Report calls for consultation

COUNCILS and property owners should negotiate "conservation agreements" to better manage heritage, a report by the Australian Productivity Commission recommends.

The draft report, called Conservation of Australia's Historic Heritage Places, said that if property owners suffered losses as a result of heritage listing they could be discouraged from actively preserving heritage properties or even destroy them.

It recommended that rather than using "prescriptive and intrusive measures" governments should work together with property owners to sign heritage agreements.

Presiding Commissioner Nell Byron said further improvements were needed to make the system more effective, efficient and equitable.

"Owner support for the heritage conservation system is crucial," Dr Byron wrote.

"The most contentious issue is listing by governments of private property."

He said all three levels of government needed to better prioritise heritage.

Old figures to blame for w

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Darren Goodsr
and Bonnie Malkin

The State's property valuers are using outdated sales data to make land calculations and there was "insufficient time and resources" to check their determinations, the Ombudsman's report has concluded.

The eight private firms instructed by the Valuer General's Office to assess properties in the 152 local government areas were charging as little as \$1.77 per valuation and their analysis was often threadbare and cursory.

The "contestable contract" system, introduced in 1996, had reduced the cost of performing valuations in real terms.

But the Ombudsman, Bruce Barbour, said "the productivity savings arising from the deployment of reduced resources has started to impact on the quality of valuations..." This "may have reached the point where the costs cannot be driven down further without seriously undermining the methodology."

Poor valuations had been arrived at because of a gap between the time sales data was received and when calculations were made.

In a sample of 44 districts, the Ombudsman found 44 per cent of sales figures were between two and six months old and 25 per cent were six to 12 months old.

Staff had no training in statistical anomalies or in the potential effect of data fluctuations, and this had compounded the errors.

The report upheld the integrity of the Valuer General's complaints handling process, which it said was "far more thorough than many people believed".

"However, there is still room to make it more transparent, consistent and accountable," the report said.

Mr Barbour said the Valuer General failed to give property owners the most relevant comparable sales used to value their property unless requested.

"It is unacceptable that the Valuer General failed to analyse objection trends and outcomes as his own 'health check' of the valuation system and had not implemented standard objection procedures to guide decision making," he said.

SKewed NUMBERS

District	Proportion of sales where values are out by more than 25%	Proportion of sales where values are out by more than 40%	District	Proportion of sales where values are out by more than 25%	Proportion of sales where values are out by more than 40%
Ashfield	15.2	9.1	Leichhardt	30.4	0
Auburn	22.6	3.2	Lithgow	6.7	0
Bankstown	24.2	9.7	Liverpool	3.1	0
Bathurst	22.2	8.6	Marrickville	27.8	9.3
Baulkham Hills	1.5	0	Mosman	53.2	21.3
Bega Valley	33.6	13.1	Muswellbrook	14.7	7.4
Blacktown	6.9	0	North Sydney	44.1	23.5
Blue Mountains	33.6	14.5	Parramatta	2.5	0
Burwood	36.4	9.1	Pittwater	29.8	12.2
Byron	0	0	Rockdale	14.3	0
Camden	6.8	5.9	Shellharbour	22.1	10.6
Canada Bay	28.6	4.8	Shoalhaven	9.5	1.2
City of Sydney	29.5	10.6	Singleton	10.3	3.4
Great Lakes	34.5	17.1	Strathfield	41.7	0
Griffith	11.5	3.8	Sutherland	8.1	0
Hastings	28.8	18.6	Taree	31.3	11.8
Hunters Hill	14.6	0	Wagga Wagga	8.6	2.9
Hurstville	8.7	2.2	Waverley	14.6	1
Kiama	20.2	5.4	Wentworth	0	0
Kogarah	10.3	3.5	Wingecarribee	20.3	4.3
Kur-ring-gai	20.5	6	Woollahara	5.5	1.4
Lane Cove	27.0	2.7			

SOURCE: NSW OMBUDSMEN REPORT

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Philip Jenkyn ... court over-ruled valuation. Photo: Kate Geraghty

The Sydney lawyer whose complaints prompted the Ombudsman's inquiry, David Singer, said the report uncovered such abuses of the system that it demanded a judicial inquiry. He said the "unholy mess" would continue to cause political disquiet.

"This is only the beginning of the huge abuse of proper conduct in the valuation office in this State," he said, adding that the Government would come under

pressure to drop the 1.7 per cent tax on land value or risk being accused of gouging.

Philip Jenkyn was one of more than 20,000 property owners who contested the valuation they were given in 2003.

Mr Jenkyn's three-bedroom house in Hunters Hill was considered to be worth \$950,000, even though it was heritage-listed and could not be extended or extensively renovated.

"The Valuer General valued the property that I own plus some adjoining properties without taking into account the fact that they were heritage-listed properties," Mr Jenkyn said.

"I wrote a letter to the Valuer General saying they should have taken that into account and they had the typical response: get lost."

The Land and Environment Court eventually ruled that the Valuer General should take into account the heritage aspect of the house.

An independent valuation said the property was worth \$650,000, a figure the Valuer General accepted.

SARAH

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5-10-05

s to blame for wonky values

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24.2	9.7	Liverpool	3.1	0
22.2	8.6	Marrickville	27.8	9.3
1.5	0	Mosman	53.2	21.3
33.6	13.1	Muswellbrook	14.7	7.4
6.9	0	North Sydney	44.1	23.5
33.6	14.5	Parramatta	2.5	0
36.4	9.1	Pittwater	29.8	12.2
0	0	Rockdale	14.3	0
6.8	5.9	Shellharbour	22.1	10.6
28.6	4.8	Shoalhaven	9.5	1.2
29.5	10.6	Singleton	10.3	3.4
34.5	17.1	Strathfield	41.7	0
11.5	3.8	Sutherland	8.1	0
28.8	18.6	Taree	31.3	11.8
14.6	0	Wagga Wagga	8.6	2.9
8.7	2.2	Waverley	14.6	1
20.2	5.4	Wentworth	0	0
10.3	3.5	Wingecarribee	20.3	4.3
20.5	6	Woolahara	5.5	1.4
27.0	2.7			

SOURCE: NSW OMBUDSMEN'S REPORT



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