

Typed copy of
handwritten submission

14 Franklin Street
Leederville 6007

25th July 2005

Jill Irvine
Heritage Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Ms Irvine,

My submission refers to page 22 – Government Lists – Public Sector 3.2.

Effectively, heritage implementation is only as good as those responsible for its administration. And local governments are only as capable as their councillors. The problem with many councillors is that they carry their personal agendas into council affairs with scant regard for objectivity, balance or the hard practical issue of huge costs and hardship to individual homeowners whose homes have been listed.

Some councillors don't take pleas of hardship seriously at all. In their determination to ensure streetscapes are preserved to their taste, they prevent any change to a street or precinct they regard as off limits to demolition or development.

Such councillors simply overlook the issue of costs to the individual property owner. They rationalise loss of property values. Their quest to maintain their vision of a "preserved" and "intact", traditional old style streetscape is paramount. They are intractably committed to enforcing their wishes at the expense of those individuals unlucky enough to be victimised. Individual rights, to these councillors is just a phrase – a notion easily set aside in deference to their overriding consideration for "loss of amenity" to the community. They are never short of town planning words to add the aura of authenticity and nobility to their argument.

Lest there be any doubt, financial losses due to heritage restriction are many and run into hundreds of thousands of dollars. This is tangible hardship.

For example, a neighbour's block of land of some 900 sq mtrs may be worth \$600,000 due to its development value. It is vacant. But my block of identical size has an old home on it and needs major but prohibitively expensive restoration work. It is heritage listed.

Since one may not demolish in order to realise the block's market value and spending perhaps \$250,000 or more in restoration costs isn't practical one is left with two

choices – face living in a dump for a long time or sell at a price that a prospective buyer will accept. Given that the buyer faces the same costs and restrictions, they will adjust their offer to include a deduction covering their anticipated repair costs. They might offer \$350,000 or less – a loss to the vendor of approximately \$250,000. Such losses are crippling especially for retirees with no superannuation facing long years of retirement. If local council will not relent in the face of this type of circumstance then one becomes a victim. There is not other word for it. Calling it unfortunate does not wash away the damage or the injustice.

The Heritage Act of WA has inadvertently give local councils a tool of oppression. The council would prefer to leave that old home boarded up, derelict, rather than permit demolition, lest the “integrity” of the streetscape be “compromised”. They make it their personal mission to ensure that a modern structure be prevented from existing on that street.

Of course if the complexion of the council changes with the numbers of proheritage councillors diminishing, then the numbers on the moderate side may prevail, permitting demolition. We are subject to the whims of councillors. It’s time that legislation took their power away from them.

Stripped of all the jargon, councils are guilty of depriving property owners of the full market value of their property. This cannot be emphasized too often. Their claim is that in “preserving” one’s property by council restriction, the confer a “benefit” on the whole community. As already acknowledged in your “Conservation of Australia’s Historic Heritage Places” paper, it is very difficult to substantiate or quantify such a “benefit”. But for the sake of argument, if we accept that a benefit does accrue to the community, how is that benefit different in nature or substance from other benefits gained for the community? All other benefits are paid for by the community at large and not by a select group of individuals. Why is an exception made when heritage is the issue? This is obviously inconsistent and unjust. What’s more, isn’t this a fundamental breach of individuals rights? Local government, in pursuit of and in name of “heritage” permits this to happen. If the community were to agree by way of a referendum that it would fully and fairly compensate individual homeowners for losses and hardship due to heritage restriction, I imagine most objections would disappear. This is not likely to become a reality.

As things stand, councillors are not obliged to make decisions based on all the evidence, unlike a court of law where a witness can be ordered to answer all questions, councillors are not required to answer any question let alone provide plausible answers supported by evidence. Anything may pass for an answer whether irrelevant, illogical, untruthful, evasive or inane. Ratepayers are not permitted to engage in debate. If a property owner makes a three minute statement at a council meeting (some councils don’t even permit this) councillors can waffle, obfuscate, generalise or pass.

It doesn’t matter how they do it. The fact is there is no adequate system of ensuring that councillors be made accountable for their view. They may indulge their subjectivity as they please. They aren’t accountable, they are not qualified in town planning and they often demonstrate that they are incapable of critical and logical thinking. Furthermore meetings are not monitored for relevance. Decisions are not a

result of pen minded and fair assessment of argument from within and without the council.

Given the above circumstances it is clear that councillors have licence to use whatever tag, slogan, cliché or notion to dress up their views with the trappings of credibility in order to promote and justify their views and decisions.

Unless parliament changes the WA Heritage Act to prevent local councils from restricting the demolition or development of private property or heritage or defacto heritage grounds*, there will be no sure way to feel safe.

*Defacto heritage grounds – A house which is not actually on a heritage list is still treated as though it were listed and referred to as having “heritage value”. Also an old home can be refused demolition on the grounds that its removal would affect the “amenity” of the street, meaning that in the opinion of councillors only this old house can confer a benefit to residents and not a newly built dwelling even if the proposed replacement home generally conforms to the architectural feel of the street. The purpose of such a refusal is to “preserve” another old home, prevent change and maintain the status quo. The use of the term “loss of amenity” is simply a substitute phrase for heritage – heritage by the back door.

I believe all heritage matters should be removed from local councils entirely as they have shown their tendency to misuse their powers and pervert their role as described by the WA Heritage Act.

The word “heritage” and “historical heritage” are terms which are freely applied to any dwelling the council wishes to “preserve”. The term “historic” has come to mean just about anything they want it to mean. A building can be “historic” because it “reflects” a historic period. But every period is a part of history and therefore historic and all architecture is deemed “historic” by association.

Also a dwelling may have been lived in by a person of a particular ethnic background and this is historic because the house is seen as typical of the style of home favoured by that ethnic group.

Or the reason given may be based on the fact that the past occupant may have been an early carpenter, builder, market gardener, dairyman, surveyor, lawyer, cleric, government official etc none of whom did anything notable or remarkable to warrant a place in our history books – They were simply living and working as we do today.

Reinforced by the professional briefs created by council appointed heritage officers, these unremarkable former occupants appear to achieve an elevated status simply because their story has been diligently researched and recorded with lengthy descriptions, must detail, comments etc. The same approach is applied to architectural features. But after all the rhetoric can we truly say these homes are “historic” unless an actual historic event took place in that home? And if some event of marginal importance has occurred, does preserving that home help the community to appreciate that event when history books, photographs and displays of relevant artefacts would be more effective.

When heritage officers prepare a heritage report, that paper becomes, ipso facto, an official document bearing the seeming stamp of authority and councillors do use this to support their cause. Why? Because these reports come from officialdom and therefore must be respected, honoured and heeded – at least that is the general perception of most people. It is difficult for most people to say “so what”.

I wonder if heritage officers ever state that although a home may represent art deco, colonial, federation, Tudor, Edwardian, housing commission, depression, gold boom, workers cottage or transitional characteristics it is identical to many other homes and contains nothing unique or historic to warrant intervention.

Unless heritage is voluntary then financial losses must be compensated. In most cases it is highly unlikely a private home would be placed on the state register. My main concern is with the overwhelming majority of homes either on local government lists or treated as though they were listed.

Each case involves someone's life. They are not part of a statistical average. They are individuals – real people. Heritage is an intangible concept, an aspiration, a vision but mainly about appearances. People's lives are governed by economic constraints and market force. To impose a regime of taste requirements over embattled citizens with limited resources is medieval in its insensitivity. We don't serve people by insisting on adopting an expensive luxury which is punitive in its unaffordability. This is not productive because it damages people. Heritage has been divisive, unsettling and creates an atmosphere of mistrust.

Surely all decisions must be based on principle. What value is being placed on the principle of individual property rights? How easily we are ignored by the unchecked power of council.

The consequences of heritage listing and the lack of adequate mechanisms for protest are extremely serious issues which have not been adequately addressed. The present system permits victimisation without recompense.

Heritage is a highly questionable concept. Its practical application and consequences have not been properly thought through. Passing the cost of heritage on to the relative few is patently unconscionable and totally inconsistent with our traditional concepts of justice and democracy. How is it possible that this injustice has not been identified and eliminated?

Councils exceed the requirements of the WA Heritage Act in not confining their role to the preparation of lists. They use these lists as tools to service their own agendas. Out of this misuse comes all the problems I have raised. Isn't it time an assessment were made of the total losses to the community due to council imperatives and a review of the effectiveness of heritage given the human cost in achieving that effectiveness. It is time heritage advocates stopped getting a free ride.

Thank you.

Sincerely

Vincent Sammut