CONSERVATION OF HISTORIC HERITAGE PLACES.
SUBMISSION BY MATTHEW B. d'ARCY

I have lived in Heritage houses throughout the 67 years of my life. I have been an owner of a number since 1960 and at present own two, the oldest dating circa 1820. Up until recently, it was my intention never to live in a house that was less then 100 years old.

Unfortunately, with continual changes to legislation in the form of Local Environment Plans, Development Control Plans etc, promulgated by various Councils, the draconian methods of implementation and punishments inflicted by them, it is my intention to sell my existing houses and never ever purchase a property that is or is likely to be deemed a Heritage item.

More and more of these development control measures are assemble without proper thought or understanding by use of *'Cut and Paste'* Legislation taken from various existing publications, resulting in a *'Legal Montage'* of confusing and conflicting rules and regulations. Despite owning and paying full rates apparently, I can do nothing with or to my property without submitting a Development Approval (DA). This gets down even to the placing a nail in the wall to hang a painting. Such a DA would attract full fees and would require a report by an *'Approved Heritage Architect'*. Fees for report by the Councils own Heritage Committee would be required apply.

I would be forced to pay thousands of dollars to put the nail in the wall when my next-door neighbour does not have to make such and application and incur no costs. Is this equitable?

When I complained to Council, I was told that it was my own fault for purchasing a Heritage Item. I replied that when I purchased the item it was not yet listed. They then replied that I should have objected to its listing. The cottage is the oldest in the town and is unique in the area if not the country so my objections would have been over ruled. If I went ahead without the requisite permissions and approvals, a fate worse than a convicted murderer or drug dealer would await me as the full force of the Law would descend.

Recently I had the experience of a three-year battle in the NSW Land and Environment Court over my decision to install some security shutters on the property after it had been broken into for the tenth time in nine years, suffering a cost of $25,000 in loss and damage, to say nothing of some 100 vandal attacks on fencing, external fabric and other items, etc over two years (approx $10,000). The Council took me to Court on two occasions. The first time they withdrew the Rite, when it became obvious that they had made a mistake and would lose, only to represent under a Class 4 action under a slightly different Section of the Act. The Decision went against me only by the Interpretation of the word '*Curtilage*' taken from the Macquarie Dictionary rather than the definition held in all of the other learned tomes. The Development Control Plan differed to the LEP of 2004, which in turn differed from LEP 1997. There was no rules as to which applied or superseded the other.

It was certainly not clear what was permissible and what was not even to the learned experts. The result was that the decision was against me and that the offending shutters did

not have *'Development Consent'* and therefore must be removed even though they had proved effective against the forces of evil that prevail in the isolated spot (nearest residential neighbours 1 Kilometre away but adjacent to a large Licensed Club). The Costs against me are around $40,000.0

I have spent an additional $25,000 in general building maintenance over the past two years but I believe that the Council is planning to write to me ordering me to provide and implement a *'Maintenance Program'* on the property in addition to a *'drainage assessment'*. As well as these, I am supposed to prepare a *'curtilage analysis'* to help define the original boundaries of the property and provide as well as implement a *'Conservation Management Plan'* for the property.

It appears that control of my property has been usurped and that I am an unpaid public servant. There is no offer to waive or reduce Rates; No offer to waive any Development Approval Fees; No offer to pay for the preparation let alone implementation of any such Maintenance Programs. If I fill out all the innumerable forms correctly and am particularly humble and nice (not natural attributes), I may be considered to be eligible for a grant of up to a maximum of $1,500.

The whole process is intolerable and undemocratic. Why should my property be treated differently to another next door? Why should I have to bear the burden of the additional costs and loss of rights to do with my property that have been imposed through its Heritage Listing?

If the Public or the Government deem that a property has Heritage value and should be preserved in a particular style or state, then it is only fair and equitable that they, the Public, who are the beneficiaries of such preservation bear the total costs of such a decision, not an individual owner.

This payment can be an agreed program (between the owners and the relevant authority) of work and maintenance, which is ***paid for by the Authority or the acquisition of the property at the fair market price by the Authority*** who can then freeze the property in *'Aspic'* at any time or period in history it wishes.

Any attempt by the public or Government Instrumentality who attempts to force the property owner to bear the costs of public taste is ***inequitable and unconscionable.***

Should the problems not be addressed then no one either a private or corporate will acquire a heritage item and if they already own one will seek by a variety of means to remove the item from the Heritage list.