

experience in relevant matters. The Court will be presided over by a Judge called the Presiding Member. No appointments have yet been made.

The SA Division of NELA has played a significant role in ensuring the establishment of a separate specialist court for speedier and less costly decisions on planning, building and environmental matters. A submission made by NELA recommending the establishment of a separate court was accepted by the Government and the Democrats. The influence of our submission is reflected in the fact that the Shadow Attorney General, speaking in support of the Liberal Party's objection to the establishment of a separate court, dedicated three pages of Hansard to arguing against the submission.

## THE HERITAGE ACT 1993

The *Heritage Act* repeals and replaces the *South Australia Heritage Act* 1978. The legislation concerns itself solely with places of State heritage significance. It must be read in conjunction with the *Development Act* 1993 which establishes the process for identifying and protecting places of local heritage significance.

## NATURAL RESOURCES COUNCIL BILL

A White Paper proposing the formal establishment of the Natural Resources Council and a Natural Resources Forum was released in 1990. The Council will be comprised of the CEOs of relevant Government Departments and will be advised by the Forum, which will be comprised of representative from community and professional groups. One of the groups proposed to be recognised and included in the forum is the NELA SA Division.

Legislation was to be introduced at the next session of Parliament but is now likely to be deferred. A draft Bill has not yet been released for public comment. I understand that if the statute does include NELA-SA in the Forum, it will be the first time NELA has been recognised in a piece of legislation.

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## QUEENSLAND

### APPLICATION OF THE QUEENSLAND HERITAGE ACT 1992

The *Queensland Heritage Act* came into force last year to replace the *Heritage Buildings (Interim Protection) Act* 1989.

The Act sets up the Queensland Heritage Council as the body with primary administrative responsibilities under the Act. Its major function is the maintenance of a Heritage Register, which is the public record of all registered places, heritage agreements, protection areas and orders or permits made or granted under the Act.

### REGISTRATION OF HERITAGE PLACES

#### (i) Provisional entry on register

The Heritage Council may provisionally enter on the register a place of "cultural heritage significance" that satisfied the relevant criteria, either on its own initiative or following an application by any other person. (s24(1)).

*Place* is defined in s4 of the Act to mean a "defined or readily identifiable area of land (which may be comprised in separate titles and in different ownership), and includes -

- (a) a building and such of its immediate surrounds as may be required for its conservation;
- (b) a natural feature of historical significance and such of its immediate surrounds as may be required for its conservation."

*Defined or readily identifiable* does not mean that the listing has to be co-extensive with the boundaries of a real property lot, provided the boundary of the listing can be sensibly and accurately determined.

The Heritage Council has taken the view that personal furniture is not part of the listing of residential buildings and that only in special circumstances where, for instance, some unique furniture or fitting was made for the particular premises would that be part of the listing, and in such cases the furniture or fitting would be specified in the citation and listing.

*Cultural heritage significance* is defined in s4 as:

"Its aesthetic, historic, scientific or social significance, or other special value, to the present community and future generations."

This definition is very wide and could include a place that is quite new but which is of considerable aesthetic value to the community. For example, the Queensland Cultural Centre may fall within the definition, since it is arguably of aesthetic significance, and of social and historic significance to present and future generations.

In order for the Council to list a place under s24, the place must satisfy one or more of the criteria set out in s23. These criteria are similar to those in other Heritage Acts, and include demonstrating the evolution of Queensland's history or some special aspect of Queensland's cultural heritage, providing information that will enhance the understanding of Queensland's history, displaying valued aesthetic qualities, or strong associations with a particular social or cultural group.

The Council is not permitted to exclude a place from the register solely because places with similar characteristics have already been entered on the Register (s22(2)), but is entitled to reject an application for entry if it is clear that there is no chance of the cultural heritage significance of the place being preserved after listing (s22(3)).

At the provisional registration stage, the owner of the place need not consent to, or even know of the initial application. Once the place is placed on the provisional list, however, the Council is required to serve written notice on the owner and the Local Authority (s24(4)) stating:

- (a) that it proposes to enter the place on the Heritage Register on a permanent basis;
  - (b) the reasons for which the proposed listing is being made;
  - (c) the owner's right to object to the proposal;
- The Council is also required to give public notice that it proposes to make a permanent listing.

The obligations created under s24 were the subject of dispute in the Planning and Environment Court recently in *McVicker v The Queensland Heritage Council and the Minister for the Environment and Heritage* (Planning and Environment Appeals Nos.6 and 19 of 1993, 23 April 1993).

In the *McVicker* case, the Heritage Council had proceeded to list provisionally, and later permanently, a residence at Kalbar, south-west of Brisbane, purporting to rely on its powers under s30 of the Act. The permanent listing was opposed on the basis that the mandatory obligations

imposed on the Council by s24 had not been complied with. Specifically, the *McVickers* complained that they had not received notice in writing of the Council's intention to list the property permanently. The *McVickers* appealed as "owners" of the house, having executed a contract to purchase the property, but were discovered never to have become the registered proprietors.

"Owner" is defined in the Act to include the proprietor of the estate in fee simple and the Court interpreted this to mean the registered proprietor. The Court then went on to hold that the failure to serve written notice on the registered owner and on the Local Authority (only oral notice had been given to Boonah Shire Council) was of such significance that it invalidated the permanent registration. The service of written notice was considered to be the step upon which all subsequent rights of objection, assessment and reconsideration were based.

Row DCJ found that the provisional entry of the property on the Heritage Register was valid because there was no obligation to give notice to the owner.

#### (ii) The effect of provisional listing

The Court's validation of the provisional listing in *McVicker* meant that a stop order issued by the Environment and Heritage Minister was also valid. Based on the provisional listing, the Council refused to allow the *McVickers* to relocate the house. The *McVickers* then challenged the Heritage Council's refusal and the matter was mediated by the Community Justice Program.

#### (iii) Permanent listing

Under s26 of the Act, within 30 days of the Heritage Council having given notice under s24(4), the "owner of the place or any other person" may object to the proposal by written notice. The grounds of that objection can only be "on the basis that the place is not of cultural heritage significance or does not satisfy the criteria for entry in the Register."

If no objections are received, the Council may list the place permanently (s26(4)). If an objection is lodged, the Heritage Council must refer the matter to an assessor, who is then required to give the objector reasonable opportunity to make representations about the proposed listing. The Heritage Council considers the assessor's report

and decide whether the proceed with the listing in its original form or varied in light of the assessor's report (s30).

The owner of a place that the Council decides to list permanently may appeal that decision to the Planning and Environment Court on the basis that the place is not of cultural significance or does not satisfy the criteria for entry in the Register.

## **(iv) Summary of Listings under the *Heritage Act* 1992 (Qld)**

Under the transitional provisions contained in the Schedule to the *Heritage Act*, all buildings listed in the Schedule to the repealed *Heritage Buildings Protection Act* 1990 are automatically listed provisionally under the 1992 Act. There were approximately 970 entries under the earlier Act, most of which were buildings. The wording of the transitional provisions would suggest, however, that other places, such as the botanical gardens, would not receive automatic provisional listing because they are not buildings.

Pursuant to the transitional provisions, the owner of a building had 60 days from the commencement of the Act to object to the provisional entry. If there was no objection within that period, the place was automatically entered on the permanent list. Where listing has been objected to, the Minister is required to refer the objection to an assessor.

These transitional provisions have created an enormous workload.

- 141 objections were made to provisional entry pursuant to the transitional provisions.
- 12 objections have been assessed.
- 48 objections are currently being assessed.
- 5 objections have been withdrawn.
- 14 properties have been removed from the Heritage List
- 16 extensions of time have been granted.
- Other objections are the subject of ongoing negotiations.

In addition, over 100 new nominations have been received by the Council since August 1992, none of which have been made by the Council. 25% have come from the National Trust and many have come from local authorities. 6 nominations have proceeded through to permanent listing, 2 have been listed provisionally, and the others are under research.

## **(II) PROHIBITIONS ON DEVELOPMENT IN REGISTERED PLACES**

Section 33 of the *Heritage Act* makes it an offence to carry out unauthorised development in a registered place.

Development is defined in s4 to mean:

- (a) Subdivisions;
- (b) Change of the use;
- (c) Demolition of a building; or
- (d) Erection, construction or relocation of a building; or
- (e) Work (including painting or plastering) that substantially alters the appearance of a building; or
- (f) Renovation, alteration or addition to a building; or
- (g) Excavation, disturbance or change to landscape or natural feature of land that substantially alters the appearance of a place.

It does not include emergency work, maintenance and minor repair work, and other work that involves the replacement of small items, provided such work will not cause any detriment to the cultural heritage significance of the place. (Reg 8, *Queensland Heritage Regulations*).

Development applications are dealt with by the Heritage Council, or the Local Authority, where the Council has delegated responsibility to it.

Applications that are likely to have a substantial effect on the cultural heritage significance of the registered place require public notice and a consideration of any representations made in response to that public notice, although an application is deemed to have been approved if it has not been determined within 60 days of lodgment.

The Council or Local Authority may only approve applications that would destroy or substantially reduce the cultural heritage significance of a place where there is no prudent and feasible alternative (s15.10). Owners dissatisfied with the decision of the Council or Authority may appeal to the review committee of the Council, and then to the Planning and Environment Court.

## **(i) Summary of development applications received to date**

From August 1992 to May 1993, 98 applications for development of a registered place were made by