



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

**INQUIRY INTO THE CONSERVATION OF AUSTRALIA'S
HISTORIC BUILT HERITAGE PLACES**

**DR N. BYRON, Presiding Commissioner
MR T. HINTON, Commissioner**

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON FRIDAY, 17 FEBRUARY 2006, AT 9.10 AM

Continued from 15/2/06 in Melbourne

DR BYRON: Welcome to the public hearings of the Productivity Commission's inquiry into the conservation of Australia's historic heritage places. Thank you all very much for coming today. My name is Neil Byron and I have been appointed the presiding commissioner for this inquiry, and my fellow commissioner on my right is Tony Hinton. The inquiry stems from terms of reference that the commission received from the Australian Treasurer, with the endorsement of all state and territory governments. It covers the policy framework and incentives in place to encourage the conservation of heritage places, including built heritage.

We released a draft report in early December, which contained a number of draft recommendations and findings. Submissions have been coming in to the inquiry, following the release of our draft report including one about 7 o'clock last night. We now have about 270 submissions. These are all available on our web site, except for those that have come in in the last couple of days and they'll be up soon. The purpose of these hearings is to provide an opportunity for any interested parties to discuss their submissions with the commission and put their views on the commission's draft recommendations onto the public record.

We've already completed hearings earlier this month in Sydney, Brisbane, Adelaide and Melbourne, and so today is actually the last scheduled day of our round of public hearings. The final report will be submitted to the Australian government next April, and under the Commissions Act, the government is expected to table the report within 25 parliamentary sitting days of receipt from us. In the Productivity Commission, we always try to conduct our public hearings in a very informal manner but these hearings are formal public hearings, they are not public meetings.

The Productivity Commission Act provides immunity from civil prosecution for any comments made in the course of making a statement, submission or giving information or a document, so long as those statements are made in good faith. On the other hand, it also provides imprisonment for six months for a person who gives information to the commission, whether orally or in writing that the person knows to be false or misleading in material particular. There's a nice balance of incentives there.

So we are taking the transcript, and the transcript will be available on the web, or hard copy, as soon as it has been checked for accuracy of transcription. To comply with the Australian government occupational health and safety legislation, I have to inform everybody here that in the very unlikely event of an incident, alarms will sound and we troop out around to my right, past the toilets to the emergency exit, which will take us down onto the street. I think that's enough housekeeping.

I would now like to commence our proceedings for the day and welcome the first participants, the representatives from the ACT Heritage Council. Thank you very much for coming today. Thanks for your written submission. If you could just

start by introducing yourselves for the transcript, take us through the main points that you wanted to make, and then Tony and I may have some issues that we'd like to follow up with you.

DR PEARSON: Thank you there. Mike Pearson. I'm chairman of the ACT Heritage Council - and Sandy Blair, who's the manager of the ACT Heritage Unit. We've made a written response to the draft report, which has been tabled. We're certainly happy to expand on that and to discuss that, and I'm sure points within that will come up during the discussion. But I wanted to concentrate first on just a general overview of our perceptions about the report, and highlight some areas where we think the report is based on some misconceptions in relation to the existing circumstances in heritage around Australia, but particularly in relation to the ACT.

One of the key issues - it's probably not at its inception, but it may well be an oversight in the way that the report is couched in a national sense - is that it takes a one-size-fits-all approach, particularly in relation to the issues in relation to local government and state government. In the ACT, of course, we have no local government level. We have a single government process, which deals with both territory and local issues in the one process. So a lot of the rationale behind some of the recommendations in the report do, in fact, not apply to the ACT because we do not have the same separation within the planning system between the territory and the local level. It's all one. Another major misconception - - -

DR BYRON: Sorry: was there any reference in our report that implied that the ACT did have local government?

DR PEARSON: No, I'm just saying that the tenor and the nature of a lot of the recommendations are posited on your finding that there was a mismatch, a disjunct problem between local government planning processes and the heritage components of those, and the state processes.

DR BYRON: But obviously that has no implication on the ACT - - -

DR PEARSON: And that has no implications for the ACT.

DR BYRON: Yes, but we didn't suggest that there would be.

DR PEARSON: No, but it does colour the interpretation of some of the recommendations in relation to the ACT, and recommendations which are based on an assumption which doesn't apply to the ACT. So what we're saying is, a lot of those recommendations in fact have no basis, in fact, when you apply them to the ACT circumstances.

DR BYRON: I'm sorry. I can't imagine where or why you thought that we would

make recommendations that must apply to every jurisdiction, including territories that don't have local government. We didn't imply any template legislation, that every state and territory should have identical legislation, did we?

DR PEARSON: You've made recommendations - - -

DR BYRON: I'm wondering where this one size fits all comes from.

DR PEARSON: Can I answer, please.

DR BYRON: Thank you.

DR PEARSON: You made recommendations that the - your primary recommendation is that the listing of private property is based on voluntary agreement processes up front. The background in the report - part background in the report for making that recommendation is about the problems that you see between local and state planning processes, the duplication of processes, the disjunct between powers within those processes. That's my reading of your report.

Now, the other misconception that I think is a primary one from our point of view, is it seems to be - the key recommendations seem to be posited on a view that the listing is automatically a problem for private owners. Otherwise, why would you need up-front heritage agreements with private owners before you proceeded listing? The reality - certainly in the ACT and, I suspect, in most types of jurisdictions - is that listing in itself has little direct impact on most owners. I support that view by the fact that we have very, very few objections to listing.

Figures, in fact, have been put forward in the Chairs of Heritage Council submission on their submission page 4, which can be misread. It has a table which talks about the ACT heritage listing figures. Places listed between 2002 and 2005 is listed at 49. The numbers of places objected to or appealed to is four. That 49 in fact includes some very large suburb areas, and the figures involved probably approach 16 or 17 hundred individual owners within those 49 listings. Four objections out of 1600 owners would suggest that there is no substantial initial concern by owners to the listing process.

The way that our legislation operates, as indeed it does in most states and territories, is that the heritage process is linked to the planning system - very, very directly. Where the interests of owners come most to the fore, is when owners put forward development applications for works affecting their property. Again, for the majority of DAs received in the ACT, there's in fact no substantial heritage problem with the developments being proposed, and no limits put on those developments by the heritage circumstances.

Where there are heritage concerns and issues, most of those are successfully resolved through amendments to the proposals, but both the heritage council and owners are satisfied of that process. Where there are, in a very, very small number of cases, still outstanding problems relating to DAs, the owners have access to AAT appeal processes, which, probably on the average of two a year, are taken up.

So our perception is that the primary recommendation is posited on, I think, a misunderstanding of the actual circumstances within which the heritage listing and assessment processes take place.

DR BYRON: Could I just ask a question of clarification about the appeals process.

DR PEARSON: Yes.

DR BYRON: In some jurisdictions, the appeal is solely on the basis of whether or not the property is significant. I am not sure whether there are some jurisdictions where one can appeal on the basis of unreasonable cost, or undue hardship, or something like that. Can you - because it's important when you say how many people have appealed that the basis on which you can appeal is very narrow, and not contested.

DR PEARSON: The appeal - well, because of - the appeals are based on the DA process, so the appeal is about decisions made in relation to development application, not about the listing process.

DR BYRON: That's right.

DR PEARSON: They can be made about the listing process, at least at the point of listing, but most appeals that actually go to AAT are in fact about the DA process, not about the listing process.

DR BYRON: But if some - what, you're saying that only a few people have objected to the listing?

DR PEARSON: Yes.

DR BYRON: On what basis can they appeal or object?

DR PEARSON: The primary basis - - -

DR BYRON: Is it purely significance?

DR PEARSON: The primary basis is on the basis of significance of the place, that's true.

DR BYRON: It's just that a number of people have said to us, "Yes, we've never contested for a moment that our 1860s homestead - it's been occupied by prime ministers et cetera - is historically significant, but what we are concerned about is the consequences that arise from that." But if the only basis to object to the listing is whether it's significant, well, that's not in dispute. So I just wanted to clarify whether we're talking about a very small number of appeals.

DR PEARSON: Yes. Sandy wants to make a point.

DR BLAIR: One of those objections to a listing was a place called Guardian House in Woden, and the Heritage Council wished to list that as a significant building. However, they were open to discussions with the owner about whether or not there were prudent and feasible measures to conserve that building. In the AAT case, in fact the tribunal decided that, no, there were not prudent and feasible measures to conserve that building, and therefore they believed the building shouldn't be listed, and it wasn't listed. So those economic factors and whether it is prudent and feasible to conserve can come into some decisions.

DR BYRON: A very helpful clarification. Sorry for the interruption.

DR PEARSON: That's all right. The only, I suppose, primary issue from a heritage perspective, with the proposition of up-front heritage credence as the basis for listing, is the issue of separating assessment from management issues. In the ACT we've had the experience under the previous legislation, which was amended last year - replaced last year - we have a system of listing with specific requirements as part of the listing process. The specific requirements were very, very specific management requirements for the place to conserve the heritage values of the place. They were in effect a mini sort of C and P level - policy statements about the place that was being listed. They were required under the legislation. That system has been abandoned under the new legislation because it was found to be extremely problematic.

The problems include the fact that setting management prescriptions at the start of the process, when you're listing, pre-empts actual, more detailed planning exercises which might take place with the place. We had circumstances where we had a set of specific requirements for a listed place, then conservation management planning took place for a proper conservation management plan in place; and finding that the conservation management plan could be in conflict with the specific requirements. We then had to go through a very, very lengthy process to amend specific requirements because of the way the legislation was written. They had to be sat before the assembly and all those sorts of things. So it was a very cumbersome process and what it meant was you were making management decisions about a place in the absence of the full information necessary to make those management

decisions.

The setting of the specific requirements at the start of the process, at the point of listing, did not or could not foresee all the eventualities that might arise four, five years down the track with a specific place. So we had situations where we had specific requirements which dealt with a situation at the point of listing. When a DA came in four or five years later, the circumstances of the place had changed, or the nature of the proposal had changed quite radically, but the specific requirements didn't cover those issues, and therefore they didn't control those issues. So you had - setting management things, if you like, in place, up-front, which didn't match the actual requirements at the time of change to the place, and it very much limited the extent to which the Heritage Council could influence planning outcomes when the planning proposals did not, in fact, relate to what was in the specific requirements in the first instance.

In the new process, we have gone to a system of straight listing on significance, but having in place guidelines for specific sorts of actions in relation to places. Those guidelines kick into place if anybody is proposing changes - actions to places. They are directed first to the guidelines which give broad general guidance in terms of process and the sorts of constraints that are likely to apply to those sorts of works in listed places. The Heritage Council is bound to consider all applications in relation to those guidelines, but it is not limited solely to those guidelines. So we've put up front a system which gives advice to owners about what the constraints are, but they haven't linked them legislatively to the listing process itself.

It strikes me that the same problems that arose with that specific requirements process is one which would arise out of voluntary agreements at the point of listing, that you are making agreement at a point where you probably have insufficient information on which to base those management decisions, and you are probably then caught with those decisions for the duration of that particular agreement.

DR BYRON: Unless it can be renegotiated.

DR PEARSON: Unless it can be renegotiated.

DR BYRON: Which is what we proposed.

DR PEARSON: Well, yes. Well, it depends on whether the - yes, it's a negotiated agreement. One can't guarantee that that's going to be something that ends up in an acceptable negotiation - acceptable agreement condition by the owner. So we would strongly, on the basis of principle, support the separation of the identification and assessment process from the management process, and to base the listing on what's effectively a management determination up front, we find is problematical.

DR BYRON: I don't want to interrupt, but just to respond to that: we have not suggested anything whatsoever that would change the identification and assessment of significance according to Burra Charter criteria, et cetera. What we're suggesting is, rather than say, "This place has been assessed as significant, therefore it goes on to a statutory list and all sorts of consequences follow from that. Having assessed its significance, now let's go and talk with the owner of that place and discuss how it is going to be managed over the long term, and who is going to do or not do certain things, and if there are serious cost implications that arise, how that cost might be shared."

So I can envisage a situation where there's a list of 1000 properties that have been identified as having possible heritage significance. Of that, you whittle it down and you come up with a list of 500 properties that have been actually rigorously assessed and found to be significant, and then, having spent the next 12 months talking to the owners of those places, we end up with - pick a number - 492 where we have set in place a contractual partnership arrangement for the ongoing good management and conservation of that.

Which list of the 1000, the 500 or 492 is most interesting? Some people find it very interesting that there are 500 places that had been assessed. I would suggest I am also concerned to know how many do we have assured good management, and, unlike the inference that you've made about the reason for negotiating historic heritage agreements, our reason was simply in order to achieve effective management on the ground, because everybody we spoke to, apart from heritage administrators, said that putting something on the list does not guarantee its ongoing conservation and good management.

We were given so many examples of places that were on statutory lists that still were not being well managed, and that's why we thought, well, why not go the extra step, having identified as significant, to now try and lock in good, ongoing long-term conservation and management, and then let's make a list of all the places that we can be sure will be well managed in the longer term under these partnership arrangements.

DR PEARSON: I have sort of two responses to that. First one is, I have no problem whatsoever with the concept of using heritage agreements to achieve good long-term conservation outcomes, and the legislation allows for making heritage agreements, both in relation to listed places and unlisted places.

DR BYRON: Exactly.

DR PEARSON: That's not a problem. The problem is linking the actual legislative protection mechanism to achieving that outcome. My perception is you would put at risk a substantial proportion of the community's heritage asset through that

mechanism, because of the difficulties in achieving agreement with owners who did not wish to achieve an agreement, and - - -

DR BYRON: I interrupted you, but we'll come back to all those issues I'm sure.

DR PEARSON: Yes, and the - from a jurisdiction the size of the ACT and the administrative capacity we have - the very process of entering into and negotiating individual agreements with every private owner of every property before a listing would grind up to a stop point in terms of administrative overhead. The - if you take an example, which I think we've put in our submission, the Melbourne and Sydney buildings, two of our iconic buildings in the centre of the city here - - -

DR BYRON: Know them well.

DR PEARSON: They - the Melbourne building has 18 separately owned blocks; the Sydney building 29 separately owned blocks.

DR BYRON: Heritage overlay.

DR PEARSON: So - well, you've still got to get agreement from each of the owners to that process.

DR BYRON: Why?

DR PEARSON: Or one assumes - well, if you don't have a heritage agreement with the individual owner - my reading of your submission was, you don't list unless you have agreement from the owners under heritage agreement.

DR BYRON: On individual property and individual stand-alone property. But where, with the heritage zone, precinct or overlay, we haven't even mentioned negotiated agreements with regard to those where there are multiple properties.

DR PEARSON: Well, I'm sorry, that wasn't my reading of the specific - - -

DR BYRON: Obviously failed to express ourselves clearly enough.

DR BLAIR: Can I - I mean, if you had general zoning controls in the planning scheme, and relied on those for buildings like the Sydney and Melbourne building, or even our garden city heritage precincts in the ACT, I think they're a very blunt instrument compared to heritage registration which identifies intrinsic features and significance and focuses on protecting those features.

DR BYRON: But we didn't say relying on general land use zoning arrangements. We were talking about having a heritage zone just as there are any number of other

zones under the planning and zoning arrangement.

DR BLAIR: But administered through the planning scheme, not the heritage scheme. In the ACT there is no heritage expertise in the planning department, and in the ACT it would be madness to put heritage experts in two different places in what is a fairly small government. So I think there's a whole lot of other issues with going that way, and it's - as we went through our reforming the legislation process, we did look very closely at those linkages between heritage and planning schemes and how are they best dealt with in the legislation.

MR HINTON: But you say that the ACT heritage is fully integrated into the planning system.

DR BLAIR: The DA process is, but the listing process is under the control of the Heritage Council. They are the decision-maker - - -

MR HINTON: So the heritage is not fully integrated into the planning system.

DR BLAIR: It is where it needs to be, where it counts, which is when an owner wants to develop his property. That's when the land and planning system comes into play. If he doesn't want to develop his property, there's no need. So in the ACT if you want to - if your place is registered, you want to make changes, you put your DA over the counter of the ACT planning body. The planning body refers it to the Heritage Council. It's a mandatory referral.

The Heritage Council provides advice back to the planning body, which they capture up in all the things that they consider, and they give the approval. So from the owner's point of view, they're dealing with one process. It's an integrated process. That's what industry and owners in the ACT told us very firmly they wanted. On listing, they simply want a transparent process where they have rights to object which is fair and transparent, and that's the process that we've put into place, again with the new legislation, but using the right expertise to make those decisions.

DR BYRON: Sorry, I interrupted your train. So if you'd like to resume.

DR PEARSON: That's quite all right. The other issue again for a jurisdiction like the ACT, but presumably for other jurisdictions as well, is entering into an obligatory conservation agreement process without any substantial resources available to actually put up funding support for specific conservation needs would be problematic, to say the least. There is very, very limited government resources available for heritage conservation works.

We would very much welcome some consideration in your final report of the parallels between the way in which historic heritage is not supported by federal

government processes and the way that natural heritage is in a very large way. If we were to receive the same degree of support at all levels of government, that has been forthcoming for natural environment issues in the last few years, the prospect of using heritage agreements much more actively would be a very real one. But at the moment there is very little flexibility to use heritage agreements to address, in those few cases where they do exist, major conservation cost implications of this degree.

DR BYRON: Would you care to speculate on why it is that Commonwealth governments and state and territory governments, and even local governments, seem to have been so reluctant to allocate money in their budgetary processes for historic heritage conservation?

DR PEARSON: Well, it has certainly been an historic process. There had previously been, under previous regimes, much more support for that process through things like the National Estate Grants Program, and there have been, sort of, one-off assistance programs which have been made available by federal government for the process. State governments and the territory government make allocations for grants programs to the level that they can. But the, if you like, green issues have been perhaps politically seen as being environment issues, whereas a lot of the historic environment issues are not necessarily seen in a political sense as being environmental issues. Even though now historic environment under the EPBC Act is defined as part of the environment it is in fact not getting the same support through the federal government support mechanisms that other aspects of the environment are getting.

So I suspect there's a wide range of reasons why there is that disjunct of views between how people view the green environment and the cultural environment.

DR BYRON: It's just that you and many others are suggesting that we should tell the Australian government, all state and territory governments and most local governments that they've systematically made incorrect budget allocation decisions for many years, and they've got it wrong and they have to change it, and you'd rather they took the money out of the environment budget than out of the public health or the private education or the nursing homes budget, for example, or the libraries budget or whatever else. Because it seems to me that, you know, politicians have made decisions about how they're going to allocate taxpayer's funds according to their perception of what their constituencies want, and I feel a little bit embarrassed about going to them and saying, "I'm sorry, you've consistently been wrong," and I'd need to have some fairly strong evidence to be able to tell them that they've been making mistakes all these years, and how they've done their budgets.

DR PEARSON: All I can say is that the Commonwealth, in particular, has not been consistent in providing funding for even its own heritage obligations in relation to Commonwealth heritage places, and that the allocations which have been made in

recent years have often been made on purely political bases, not on the basis of established heritage need or distribution, equitably, of those funds. There have been a number of one-off grant programs in the last couple of years which have been a bit dicey. Other grant programs which have been accessible to general members of the public, general owners, have been extremely limited in their extent. So there is a trickle effect there, but it's not by any means addressing the actual issues.

MR HINTON: But it's open to the ACT government to spend more on heritage if it so decides. There's nothing in our report that precludes that. That is the judgment of the ACT government relative to its other competing demands for its expenditure programs, or, for that matter, the size of its revenue base. What's the problem with that? Isn't that the issue?

DR PEARSON: Well, the ACT government can expend and does expend to the limits of its capacity, but it sees - well, sitting in my seat, I see substantial support going to things like ALPS processes, for example, in a natural environment, some of which is cultural, but most of it is natural, but I see no parallel support for the historic environment coming from the Commonwealth coffers.

MR HINTON: If I understand correctly, the expenditure on health has gone up as well on hospitals. Wouldn't it be rather odd for the Productivity Commission to be making comment on that sort of allocation of scarce resources?

DR PEARSON: Well, in a way the Productivity Commission is making comments on allocations of scarce resources by suggesting that heritage agreements be made up front, in front of listings. That has a major implication for resources for the ACT, for example, if that were an accepted recommendation.

DR BLAIR: We would certainly have to stop listing anything new or assessing anything new, and all our resources would almost be swallowed up by the Sydney and Melbourne buildings, on getting agreements up. We might do nothing else. So the balance of what is protected in the ACT, while you might have two beautifully protected buildings, that would just about be - because of the labour-intensive nature of the process you're suggesting and the--

DR BYRON: Just to be very clear, we have categorically said, not for multiple property zones or heritage areas or precincts, but in the case of individual, orphaned, stand-alone, iconic places, that there be a heritage agreement with the owner, but not for every owner in a whole suburb where there's an overlay or a precinct. It wouldn't be helpful to go off down that track, which bears no resemblance to what we actually said.

MR HINTON: They could be listed.

DR BLAIR: I suppose I would still be very concerned if it was done through a planning overlay, that you would not, in fact, protect what you need to protect. If we're talking about the Sydney and Melbourne buildings, those buildings, for example, that you need a much finer sense of what their intrinsic heritage features are and an ability to protect them through a heritage system, not a more generalised planning/zoning system.

DR BYRON: The contradiction I see - on the one hand, you're saying that very few people whose properties are individually listed have any issues or concerns arising from that listing, and yet to have to go and get their signature on a four-page piece of paper would (a) be administratively impossible, and the compensation or the offset sweetener quid pro quo that we would have to offer them for this inexorable imposition, is so astronomical that it couldn't be afforded.

I mean, either the costs that are imposed on private owners are small and trivial and can and should be ignored, or they're horrendous, in which case we should be asking about, does society really want to impose such costs on individuals? It seems to me that you can't argue both, that the costs on individuals are trivial and that they are so huge that society couldn't afford to compensate a handful of individuals for the costs imposed.

DR PEARSON: I don't think it's as simple as that. The listing process is one step and it fills one spot in an owner's mind - the listing process. If we went to, for example, owners of commercial property, and said, "Okay, look, we want to list, but before we do so we want to come to an agreement with you about the long-term management of the place and we want to discuss the costs involved in that," I suspect we would be tied up in a substantial discussion about what are issues and costs and imposts down the track - five, ten years down the track - which might be in some way related to the heritage requirements. You'd be getting into again a system of second guessing of what is going to happen to that place, what are the costs involved in that and what are the proportion of those costs which are really heritage-related costs.

DR BYRON: All those issues will arise, and my question is, do you deal with them up front or do you let them fester or, you know, deal with them some time later?

DR PEARSON: I'd prefer to deal with them with the back-up of the reality that this place has been assessed as being significant; it is protected under the heritage system; "We now want to come to you and negotiate a heritage agreement." It gives you a basis for negotiation which does not allow for the simple veto of the owner to say, "I'm sorry, I want to walk away from this" - goodbye, building.

DR BYRON: Well, it doesn't necessarily follow that if they decline listing, that the building is automatically demolished at that stage.

DR PEARSON: No, it doesn't--

DR BYRON: Many owners have told us that, "We will, of course, continue to maintain and look after this building that we cherish. We don't want all the additional red tape and expense that comes from being on a list that actually adds nothing at all to its conservation status."

DR PEARSON: I can tell you there are many other situations that you deal with through DAs, where, if the owners, particularly of substantial commercial redevelopment or, indeed, as is happening very much now in Canberra, substantial residential redevelopment - if they had the option to say, "Look, no, we won't have the heritage listing, we don't have to keep that part of the building or that building or that element of the place" - they would leap at it.

DR BYRON: There are some jurisdictions, particularly in North America, where they normally rely on negotiated, voluntary heritage listings. That's all they have. But there is a proviso. In the case of a building that has been assessed as being of exceptional significance, and if the owner is totally pig-headed and recalcitrant and impossible, as you have just described, then involuntary listing can be invoked as a special case. But for 99 per cent of the properties which are listed and conserved, it has been because the owner has been persuaded or offered whatever inducements were necessary - in some cases, trivial inducements - to get them to make a contractual commitment for the long-term good management of the place.

Now, that seems to be another way of achieving the outcome. It may actually involve society putting its hand in its pocket, to share some of the cost being imposed on owners - the incremental costs that result from the additional requirements of being on a heritage list. Is that out of the question?

DR PEARSON: Well, again, the problem, from our point of view, is linking it to a listing process. One of my concerns, too, is if the heritage agreement process is linked directly to listing and if that is a continually revisable process - that is, once an agreement comes to an end, you have to renegotiate an agreement, and if you do not achieve a negotiated agreement, then listing would cease. That's my reading of what you've said in your recommendation. In that situation, it would be recalcitrant of a government process to say, "We will expend public moneys on the conservation of this property, but in five years' time, when the agreement comes up for renegotiation and there's a new owner there who is not sympathetic to the heritage outcomes, you could lose that investment."

DR BYRON: The amount that you would spend on something that was only going to be for five years would be, you know, \$10 - a very small amount. If you were negotiating a 50-year or 100-year contractual agreement or, say, an agreement

between Coles Myer and Westfield about - it might be a 50-year lease with three 25-year options, but with a revision process and an independent arbitrator in the case of disputes and all the rest of it. There are thousands of examples every day where you have very long-term contractual arrangements but with clauses that allow periodic review in exceptional circumstances.

DR PEARSON: But at the other end of the scale, which is much more likely in terms of the resources available to the ACT. The heritage agreements will be with owners in relation to things like rates relief. Small scale, trickle assistance processes - that's the reality.

DR BYRON: But most owners are not concerned - or if the imposition on them is almost trivial, then a 10 per cent rate relief would make them, you know, very happy. They would be on side. They would be willing partners in the venture for the ongoing good management of that place, rather than reluctant and, you know, being compelled by legislation.

DR PEARSON: Which doesn't bind the next owner.

MR HINTON: The submission is wrong in that the statement that:

Further, it is envisaged by the PC that each time the property changes hands when the existing heritage agreement lapsed, the new owner could veto any previous agreement reached.

We don't know where you get that statement from. It's not in our draft report. In fact, longevity of an agreement is the inherent characteristic of the agreement that binds all owners, the current and the future.

DR PEARSON: My reading of your report is that the agreement has a set life. At the end of that set life, the agreement is renegotiable - - -

DR BYRON: Yes, but not by - - -

MR HINTON: If the agreement is for 25 years and two years later the property sold, the new owner buys it, knowing that there is 23 years yet to run on that agreement. So the agreement is binding on all owners for the duration of that agreement. If the agreement was for 50 years, there would be 48 years left to run on it, and the amount that the owner would pay would depend on whether he saw that as a major plus or an imposition and, you know, some would go each way.

DR PEARSON: I prefer to see the place listed, so that there's clear statutory requirements for every owner into the future to deal with the heritage issues, then negotiate a heritage agreement on that basis.

DR BYRON: Because it's cheaper for the state?

DR PEARSON: Not necessarily because it's cheaper for the state. It's a much safer process to achieve the identification and conservation of the community's heritage resources.

DR BLAIR: And in your system, I can see most of my budget would go for legal costs. I mean, we're negotiating an agreement at the moment and everybody has their lawyers. I mean, the process would be so cumbersome to negotiate - - -

DR BYRON: So you'd be surprised to hear that, you know, Ottawa, Washington DC, Seattle, a number of other places, their entire heritage conservation system is based on four-page heritage agreements?

DR BLAIR: There are a number of jurisdictions overseas where they have a system that's very similar to ours as well, with a regulatory system based on listing, and I would - that's by far the trend - - -

DR BYRON: But what you're saying is it's impossible, and the transactions costs would be huge. I'm saying that Ottawa, for example, which is a fairly close substitute for - it's a bit bigger; Washington DC is a bit smaller - but there are a number of other places that find it both practical and affordable.

DR PEARSON: I'd be wanting to go to those places and ask them if they are satisfied that they are in fact achieving conservation of the full range of their heritage resources. They may have a system. I have no evidence to say it's actually working to the point of - actually the outcomes of conservation of the heritage values. I don't know.

DR BYRON: It's interesting that people who are involved in administering the heritage systems around Australia consistently tell us that the system is terrific; all it needs is more money. About half of the remainder of submissions, and people we've met, said the system is failing badly because it fails to protect places that should have been protected. The other half of the submissions are people saying that the system is failing badly because the entire costs of achieving these terrific heritage conservation outcomes for society are falling on a handful of people who happen to be the current owners of those places.

But, you know, the only reason we are looking at how the system works is because people on both sides - but not heritage administrators - have told us that the system is seriously deficient - in different ways, in opposite directions.

DR PEARSON: There will always be a proportion of stakeholders in these

situations who will be unhappy with the outcome. I accept that entirely. We deal with that on a day-to-day basis.

DR BLAIR: And they're the ones you're hearing from; not the majority, who are quite happy with the system, and are owners of registered properties.

DR PEARSON: I'd point out, too, not just the heritage administrators, but the members of heritage councils, who are not the administrators, are happy with the current system but recognise it is an evolving system. All of the legislations have been through revisions; in some cases, two or three revisions over the last two decades, in the exercise of trying to get better outcomes for conservation, but also closer linkages with an equitable planning system.

One of the biggest changes has been the close association between the heritage mechanisms and the planning systems as the major implementation process for those heritage requirements. That process will continue. Many, if not most, of the legislations now have requirements which allow for heritage agreements. I think the reality is, still, in most jurisdictions, that that is underutilised because of the mechanism problems of being able to both administratively address that issue, and also the potential financial issues of being able to fund those issues.

In our own case, it's something that's in our legislation, and we'll be addressing that amongst a raft of other things we've got to address to implement new legislation. But we recognise that the implementation of heritage agreements will be, at the lower end of the scale, in terms of support for owners, than at the top end of the scale.

DR BYRON: But I mean, you're recognising the case for providing some sort of financial incentive or inducement to owners of private property which are statutory listed, and I think you're also in heated agreement with us that if taxpayers' money is going to be handed to private individuals, we want to lock them into some sort of contractual agreement that they will actually do the things that, you know, we're giving them money to do; ie, we've just reinvented negotiated heritage agreements.

DR PEARSON: Yes, but our point is we'd prefer to start from the start point of having a safety net which says, "These places are recognised as heritage and they are protected under the planning scheme, under the planning laws, under the heritage laws and the planning laws." That's the starting point. That's where you start your negotiation on the heritage agreements; not the other way around. The other way around means we will go out with very, very few places which are privately owned on our heritage register, because we not able to arrive at heritage agreements in that sort of time frame that's necessary to protect the heritage values of those places.

We're dealing with areas in Canberra now where there is rampant residential

redevelopment going on. If we reverted to that process, we might achieve heritage agreements after redevelopment has occurred, rather than before redevelopment had occurred, I would predict. On the current system, there is a heritage input into the planning approvals for those redevelopments, and in most cases those outcomes are agreed outcomes which are satisfactory to both parties. It's very, very infrequent that there is a major problem under the current system. Simplistically, my view is, if it ain't broke, don't fix it.

DR BYRON: That's a very good argument.

DR BLAIR: Can I just make one further comment reflecting back on what you said previously about - you know, you would hardly like to go to government and say, "Open your coffers and pour it into the heritage system." I think that's a very simplistic take on what's been put forward in a number of the submissions. I think what we all have been looking for is smart approaches to financial and other incentives.

The example Mike gave of the National Estate Grants Program, I think was a smart funding program. The Commonwealth and the states leveraged off one another. They set priorities together and they directed heritage funding towards needs. I think that's an example of a good program. So I think we're looking for smarter ways. We're not expecting, you know, that we'll have an avalanche of money into heritage, which means we have to be very clever about how we use the limited resources.

I think the areas that have come forward in some of the submissions is that we're all interested in trying to work as hard as we can - like heritage tourism, you know, a great way to recycle heritage buildings, keep them in use, draw in the tourism dollars. I suppose I'm disappointed because I was looking to the commission, not for a simplistic solution about getting more money out of governments when they've got lots of other priorities, but I was looking for smart solutions.

Should we be looking at tax - you know, the Commonwealth used to have tax concessions for heritage? Should we be looking at those sort of schemes? As an administration who's always got more to look after than I've got resources to apply to it, you know, I suppose that's what I was looking for.

DR BYRON: Basically, aren't the options funding from taxpayers - including ratepayers if we're talking local government - the income that a heritage place itself can earn, whether that's through tourism or as a house museum, or Sovereign Hill, or whatever it is; and then philanthropy from individuals, or - - -

DR BLAIR: Yes.

DR BYRON: I think most of the submissions have focused on more of taxpayers' money should come through government mechanisms, whether it's through competitive grants or income tax, or anything else. We've had much less input on the question of philanthropic fundraising to support heritage conservation, or in the sense of how heritage properties can, if you like, pay their own way - one of which is through tourism. Now, from our investigations, we haven't found any impediments to systematically stop heritage properties from paying their own way, earning income as they go.

There are some issues about philanthropy that we can look into, but you know, we're not going to investigate the National Trust, because that's not our business; and then there is basically whatever shape the funds come from, if you're talking about taxpayers' revenue, whether it comes through a competitive grant system or whether it comes through income tax or land tax or, you know, a tax on lotteries or whatever else. It's still all taxpayers' dollars, you're just asking about the delivery mechanism. We have spent a fair bit of time thinking about that, but ultimately, if it's taxpayers' funds, then that's the job of the politicians to do through budgetary processes. Where they act deliberately and explicitly - for example, ruling out any natural heritage money going into historical cultural heritage, I assume that they've done that for a reason, they've done it - it wasn't an oversight, it was deliberate and conscious. I haven't been elected to overrule such decisions, have I.

MR HINTON: Importantly, a number of - - -

DR BLAIR: Yes, the natural environment I think gets much better leverage out of a combination of things. That's, I think, one of the gaps for historic heritage - and it's not just taxpayers' money. It's getting leverage out of, you know, a number of things through Natural Heritage Trust and a myriad of schemes on the ground - sorry, I - - -

DR BYRON: You've got one minute.

MR HINTON: No, let's move on. It's 10 o'clock.

DR BYRON: Sorry. I have found the exchange extremely helpful and useful, and the written submissions. So thank you very much for the time and effort you've put into it. Thanks for coming.

DR PEARSON: Thanks for hearing us.

DR BYRON: Okay, next. Michael?

DR BYRON: The various chairs and officials - sorry, the chairs of the heritage councils. Thanks very much for coming. You know the usual procedure: if you could each introduce yourselves for the transcript, take us through the main points that you wanted to raise from the written submissions and then we'll have a discussion, thanks.

MR COLLINS: Thanks, Neil. Thank you for seeing us this morning. My name is Michael Collins, and I'm here today in my role as the representative of the chairs of the Heritage Councils of Australia. I'm also the chair of the Heritage Council of New South Wales. I've been involved in property economics and real estate valuation and property consultancy and asset management for over 30 years. I currently operate my own property consultancy group in Sydney.

I am on the board of the Sydney Harbour Foreshore Authority, which is the organisation responsible for maintaining the foreshores of Sydney Harbour, particularly The Rocks area. I'm on the board of the Redfern-Waterloo Authority, which is an organisation responsible for developing good management of a very vital part of a very important Sydney suburb. I'm on the board of the Australian Technology Park Precinct Management Ltd, which is a major heritage based business park and a fantastic adaptive re-use of a very significant national and international cultural heritage precinct, the former Eveleigh railway yards.

As I said, I am actually a property consultant, property economist, so I actually come to this table not just with the knowledge of the heritage legislation - I've been involved in the New South Wales Heritage Act for now some nine years - but I also have an understanding of the economics that apply at the coalface when we talk about protection on property, et cetera.

DR BYRON: Excellent.

MR COLLINS: I know that there is a great discussion occurring at the moment about your main recommendation and we will obviously get to that discussion in due course. But what I want to do today is to take you through the submission which we gave you last night and just do a page turn, because I've highlighted some bits which I want to reinforce and put on the public record. I don't want our presentation here this morning to be just on voluntary heritage agreements; although clearly, that's the core of it.

I'm here today because we believe that in our review of the draft report, there are major inadequacies in the preparation, presentation and findings of this draft report across a range of fronts. The Heritage Chairs of Australia and New Zealand - turning to page 1 - are pleased that the Productivity Commission has recognised that,

firstly, historic heritage places are valuable and their conservation is beneficial to the community and to their owners, both private and government, and future generations.

We're pleased with your finding that it's appropriate and necessary that government has a role in historic heritage conservation, that the current three-tier system of government management arrangement is appropriate and consistent with the principle of subsidiarity; that regulation is appropriate for management of heritage conservation; that listing is at the core of the regulatory system; and that it is not necessary to start afresh only to build on the many strengths of the existing system. These statements, I think, because you have made them in observations throughout your reports, would be suitably identified as findings in the commission's final report as they do underpin the commission's findings and recommendations.

Down to 1.1, community support for heritage conservation: the survey of community attitudes commissioned by the Heritage Chairs and Officials clearly demonstrates the community's strong support for more heritage place conservation. This attitude is not explicitly acknowledged by the commission, possibly because of unfounded concerns about the methodology - and I'll talk about that momentarily. But notwithstanding the Productivity Commission's view of the extent of the value identified, the survey outcome clearly identifies Australia's heritage, including local heritage, to be held in high esteem.

In particular, I think the commission has failed to acknowledge that the public's willingness to pay for additional heritage protection through increased government expenditure is considerably higher than existing expenditure levels. This demonstrates that the community values increased public expenditure on heritage conservation. But the Productivity Commission has implicitly argued for public expenditure on heritage to remain static and simply to be redirected in its focus. So my overall response is that the commission should acknowledge the importance that the community places upon heritage place conservation and the community's willingness to contribute finances individually and collectively, through government, to improve heritage outcomes.

I then quickly want to talk about choice modelling. Despite some pessimism about the acceptance of choice modelling as a legitimate technique, it is in fact on our investigation close to being the de facto standard in consumer product analysis, and a broad range indeed of Australian governments and the various departments and agencies use this technique.

Indeed, before commissioning the choice modelling research, the Heritage Chairs considered previous economic valuation methodologies and were unable to identify an alternative approach that provided a value of heritage on a more holistic approach. So it seems to me that it would be ironic if the commission, which is known for advancing the quality of research through the use of modelling, were to

dismiss choice modelling even though it's an accepted analytical tool, and in our view the right one for inquiries into non-use benefits of heritage, and for which the commission itself has failed to quantify through any alternative technique.

So our response on this issue is that the commission should acknowledge that choice modelling is an appropriate method to measure people's willingness to pay for complex outcomes such as heritage conservation.

Now I want to talk about issues related to the integrated planning system of 1.3. Halfway down the page I say, "Given the integrated nature of planning, it's surprising that the commission has advocated a separation between planning, to deal with heritage precincts and zones et cetera, and conservation agreements to govern individually listed places. The commission should acknowledge that heritage protection is part of and should remain part of an integrated planning system, and not as a separate additional regulatory regime, and that heritage conservation produces externalities akin to other environmental and amenity related restrictions.

At 1.4 I want to talk about the scale of the perceived problems. The key heritage conservation issues identified in the Productivity Commission's report focuses on problems mainly associated with private owners of individual heritage places - particularly residences - in local government areas, and especially the inequity of the requirement that private owners provide public good at their own expense; that is, the existence of cross-subsidies - and the risk of demolition or abandonment, especially in rural areas as a result of regulatory restraint on development. I want to talk about these two issues; firstly, the issue of cross-subsidies on page 6.

Cross-subsidies are almost a ubiquitous element of living in the community. For example, Australia has a progressive tax system and more regulatory arrangements impose actual or opportunity costs from third parties and so on. In this case, the problem of cross-subsidies that you've talked about is in our view exaggerated. Firstly, the number of development applications that are refused by state and territory governments because of heritage concerns is actually trivial, and estimated at only to be about 1 or 2 per cent of all development applications. This low figure reinforces the view championed by heritage bodies that adaptive reuse is an appropriate means of heritage conservation, to secure a viable use and thereby sustain a heritage place.

Examination of the last five years of appeals for the New South Wales Land and Environment Court where appeals against local government decisions are heard, identified heritage to be one of the key issues in approximately 1.5 per cent of cases heard. Secondly, the vast majority of property owners subject to heritage listing are not opposed to having their property listed. Where a state or territory government refuses a development application on heritage grounds, only about 1 per cent or

2 per cent of applicants actually appeal that decision. We've provided a table which indicates the relatively low, indeed minor, almost minuscule level of heritage based appeal against trading decisions.

Reinforcing the view that cross-subsidy is not pervasive, is the observation that owners of heritage places use those places because they provide shared experiences, both private and public benefits being generated. Presumably an owner continues to own a heritage place because the owner actually captures sufficient private benefits. In part, the perceived scale of cross-subsidy is exaggerated because of the use, in our view, of selective and unrepresentative examples in the commissioner's draft report. In particular, statements concerning the effect on property values appear to have been accepted uncritically, and given considerable and disproportionate weight in the draft report.

The analysis of the literature regarding the potential impacts of listing is piecemeal advice towards the evidence of negative impacts. Given these problems, it is not surprising the draft report provides a very critical view of Australia's heritage regulatory system, particularly at local government level. Unfortunately in doing so there is inadequate recognition of the positive effects for owners of listing, as distinct from the general potential benefits of conservation.

So in all our response to this is that the current system of heritage conservation involves a degree of cross-subsidy by owners of heritage places to the community at large. There is no evidence that this cross-subsidy is pervasive or large. There is also insufficient recognition of the private use study of heritage in the draft report.

I now want to talk about the second issue, which is demolition by neglect. In a number of instances, the commission's draft report asserts that regulation is the cause of significant instances of demolition by neglect or possibly benign neglect when insufficient resources are devoted to the maintenance of the property. It is difficult to see what evidence the commission has relied upon as the basis for forming this opinion, given its repetitive acknowledgment that it found little information on the condition and integrity of Australia's historic heritage places.

So our overall response on this issue - sorry, there's one other point I want to make on page 9. Notwithstanding the fact that demolition by neglect can occasionally occur, the solution is not with deregulation. Rather, the solution is support, guidance and incentive for owners. The local government has repeatedly requested the same powers of certain state government heritage agencies to manage this problem through the introduction of minimum maintenance standards for listed heritage items.

The Heritage Chairs recognises the Productivity Commission's reluctance to suggest additional regulation at local government, however such places clearly

demonstrates that these owners would be unprepared to enter into a voluntary listing and these properties would also probably be demolished. So the response overall is that there is no evidence to assert that demolition by neglect as caused by heritage listing is in fact a substantive problem.

I want to talk about the level of public expenditure on heritage conservation at 1.5. As the Productivity Commission notes correctly, it is difficult to precisely identify the current level of government expenditure applied to historic heritage conservation. While the commission has been eager to identify alternative arrangements for government protection of heritage places, as discussed in our chapters 2 and 3, the commission has not been forthcoming with any observations in respect of the complementary issues of, firstly, what level of public funding should be allocated to heritage protection, and secondly, from which levels of government such funding should originate.

The Heritage Chairs of Australia and New Zealand consider that heritage conservation in Australia is relatively underfunded by Australian governments - by all Australian governments. In this light, the chairs would welcome any specification as to the required level of government spending, and the source of that spending required to support whatever arrangements the commission recommends.

It is recognised that the Productivity Commission - and you mentioned this in your previous discussions with the ACT - may be unwilling to identify a dollar value or administrative arrangements, however given that one of the inquiry's key aims is to examine the current incentives, it's surprising that there are no recommendations contained in the draft report on this subject. I would simply refer you to the terms of reference number 1, which is all about examining the main pressures on the conservation of heritage.

So our overall response to you on this issue is that the PC needs to comment on the adequacy of the level of public funding for existing and proposed systems of heritage conservation, and to identify whether this is contributing to the identified problems in the current system.

Issues requiring additional research by the commission: in general terms, the chairs are disappointed at the lack of original research beyond the survey of local governments. The absence of such research and the particular issues identified below, which I'll talk about in a moment, undermines in our view the credibility of the commission's one size fits all voluntary agreement model.

Historic sites and archaeological sites: given this acknowledged inquiry scope, it is disappointing the Productivity Commission's draft report is dominated by built heritage issues, and gives inadequate attention to other types of heritage including historic sites and archaeological sites. The analysis, findings and recommendations

of the draft report are dominated indeed by built heritage issues; for example, your chapter 8 discusses heritage in cities and in particular the proposal of purchasing heritage conservation. In this regard, the draft report states that there is clearly a range of types of heritage places and the need for government involvement to get the balance right will vary significantly between them.

Then the report goes on to discuss incentive issues with regard to a number of categories of heritage places, being residential buildings, commercial buildings and industrial buildings. But the discussion involves entirely heritage places that are not buildings. In particular it fails to consider issues relating to non-built heritage, such as garden and stock routes, historic landscapes, archaeological sites and places of historic significance. For these places, the standard assumptions about built heritage related benefits of costs, including regulatory costs, may well not apply. But there's no discussion about this in your draft report. Highlighting the need for analysis, one New South Wales local council we think stated that the current legislation is "geared towards built items and offers no real management solutions for significant landscapes, trees or archaeological sites." We would endorse that.

So our overall response to you on this issue is, as required by the inquiry's terms of reference, the Productivity Commission should provide some guidance as to how current heritage conservation legislation and practices can be adapted to offer enhanced management solutions for historic landscapes, trees and other archaeological sites.

A quick word about heritage-related tourism at the bottom of page 11. The draft report contains very little analysis of the scale of heritage-related tourism and the drivers that shape the costs and benefits associated with such tourism, particularly in view of the fact that heritage based tourism is very prevalent at the local government level and at the rural local government level. So we find it surprising, given the availability of the ABS and other data that was provided in our second submission to you and the associated research reports. Cultural heritage tourism has been identified in various national and state tourism forecasts as an important emerging market.

So our response to you on this issue is that heritage tourism offers considerable opportunities, both in terms of contribution to national wealth and as the mechanism for increased private funding of heritage-placed conservation. The Productivity Commission should provide detailed analysis of the market for heritage tourism and identify any barriers to its development.

I now want to talk about the issue of international practice. The draft report does not include a comprehensive analysis of international law in heritage conservation, in particular the draft report has not fully outlined the requirements of the convention concerning the protection of rural, cultural and natural heritage; in

other words, the World Heritage Convention. This convention requires each state party, including Australia, to recognise the identification, protection, conservation, presentation and transmission to future generation, cultural and national heritage, and to ensure that effective and accurate measures are taken for the protection and conservation and presentation of the cultural and natural heritage situated on its territory. So our response to you on this history is that in order to make a fully-informed judgment, the Productivity Commission needs to have a better understanding of Australia's international heritage obligations and commitment, and of international best practice in government administered heritage protection.

I now want to talk about issues of equity. When we put our submission in we stated that heritage listing needs to remain a mandatory process; that is owners of property should not be provided with discretion as to whether their property should be listed. Ownership is transitory, but the permanent nature of heritage characteristics means that a degree of permanency and compulsion is required and necessary. The permanency is required to ensure that intergenerational equity is maintained. For example, our consulting group notes on our behalf that in each national survey, all groups supported a need to protect heritage "for our children and future generations". However, the concept of government's role in ensuring heritage conservation for future generations is given very little acknowledgment in your draft report and indeed the concept seems to be implicitly questioned. So the commission's support of negotiated agreements as the principal mechanism for government control of heritage conservation is really inconsistent with the principle of inter-generational equity. This is of fundamental concern to the chairs of the Heritage Councils of Australia and New Zealand.

DR BYRON: Sorry, Mike, I'm just terribly confused. A simple question of clarification - and I don't want to interrupt, but in your opening comment you said that one of the things that you were in heated agreement with us was where we said, "It's appropriate and necessary that government has a role in historic heritage conservation." One of the reasons that we cite for that is the inter-generational equity. But you just finished telling us that we totally failed to address that issue and yet I thought that was one of the few things that in your opening comment - - -

MR HINTON: You're suggesting that - - -

MR COLLINS: We're actually challenging it. Sorry, you say in your opening comments that you believe that it is good to have inter-generational equity. That's what we're saying. You make the statement that it is good to have inter-generational equity, but nothing in your draft report subscribes to that aspiration. Indeed, we're challenging you that on your findings there is no perception of delivery of inter-generational equity.

DR BYRON: Go on.

MR COLLINS: The commission is talking further about equity and the commission's approach seeks to enhance equitable outcomes for existing property owners at the expense of future generations. This is inconsistent with the fundamental rationale of heritage-placed protection. So our overall response to you in relation to this issue is that inconsistent with all heritage-placed frameworks, the Productivity Commission places financial equity of the existing property owner significantly above the conservation of historic heritage places of future generations, that is inter-generational equity and the current community.

I now just want to talk quickly about efficiency implications - and there's a lot we could say about that. But I simply want to say that the recommendations of the draft report that are implemented, experience tells us that a large amount of resources will be tied up in negotiating a small number of agreements and we would expect that many of the negotiations for agreements would not be successful. I can say to you from my experience at the coalface in dealing with these issues that most attempts to negotiate private heritage with private owners would fail for a variety of reasons, and we'll talk about those during discussion.

So our overall response is that while negotiated agreements are likely to be a suitable complementary policy instrument, the existence of significant transaction costs and information symmetry suggests that sole reliance on bargained outcomes - because that's what it is, a bargained outcome for heritage is likely to be inefficient as the mechanism for heritage protection and therefore impractical. The more significant issue arising from the draft report's suggested approach is the resultant scale of heritage-placed conservation.

Implicit in the draft report is that the scale of heritage protection - that's the number of places protected - is excessive. I don't know whether we have a misreading on that, but when we do read your draft report we get the impression that you are saying that there is an excessive supply of heritage places in Australia and that the system should be wound back by placing a financial cost on government and reducing cross-subsidies. If there is no substantial increase in public funding associated with the introduction of the Productivity Commission's bargaining model, then the conservation of the number and range of heritage places will be dramatically curtailed.

Of particular concern to us, with an emphasis on conservation agreements, is that the analysis assumes that such agreements will operate in the context of built heritage, the same as they do for natural heritage. The conservation agreements are more likely to be effective in a natural environment or context, than a built environment or context because built heritage usually has non-heritage use benefits in addition to heritage benefits. In addition, natural heritage covenants which have provided the Productivity Commission's model - so I understand - do not replace

regulatory controls but rather they are an adjunct to such controls which are integrated into the planning system.

Existing models for such heritage agreements or covenants also come with incentives to encourage an owner to enter into such an agreement, so such a system would be reliant therefore on the introduction of significant incentives to be effective. The effectiveness of the PC's preferred model is further questionable in that the commission's draft report does not fully acknowledge the limited alternatives for government if owners refused to acknowledge an agreement or to bargain into an agreement. One option suggested is that agencies could seek "the availability of other properties offering similar characteristics". But this comment simplistically ignores the uniqueness and individuality of many heritage places, such as the landmark town hall.

The other option is that the negotiated agreements are restricted to only certain parts of the property in an attempt to gain agreement with the owners. One example the commission noted was that certain parts of a property could be excluded, such as, "developments at the rear of a property". It would be likely that many owners, as the commission suggests, would walk away from the negotiations and the range of alternative options being purchase or compulsory acquisition would be unavailable to governments simply due to financial constraints. How much funding would be required to compulsorily acquire, as an issue of last resort, a residential property having an average value around Australia of something like 350 or 400 thousand dollars, including the value of rural properties. You won't get much bang for your buck in compulsory acquisition. I'm not talking about overseas experience.

DR BYRON: Revolving funds?

MR COLLINS: Let's talk about those. Heritage chairs and officials have been unable to identify any national heritage protection regime that is totally reliant on individual agreements with owners without a complementary listing regulatory regime. Importantly, there appears to be no international models in existence where individual owner agreements alone have been able to achieve positive heritage protection outcomes. Thus the approach suggested by the commission would see Australian heritage conservation sailing into what we believe are uncharted waters, or returning to the well-worn path of the pre-legislation era of more than 30 years ago, which makes the effectiveness of the preferred model totally untested on a sustained national large scale.

However, the effectiveness of the commission's preferred approach can best be discerned by consideration of a similar compulsory acquisition and compensation model that previously existed in New Zealand, and I'll just draw you to the New Zealand reference rather than take you through it. But in there compulsory acquisition was available, but was actually - it actually led to demolition because of

the cost of compulsory acquisition. So our response to you on this issue is that under a voluntary negotiation model the level of heritage conservation be expected to decline considerably, counter to the majority of the community's wishes.

Then I've just got a couple of final comments to make, and then we can have a discussion, commissioners, if you like. The transaction costs of a voluntary heritage agreement are a dead weight cost to society in that they provide no added benefit to heritage outcomes; instead, only propping a larger public bureaucracy and possibly a private bureaucracy, and a specialised legal and supportive consultancy industry. In addition to the transaction costs there will also be costs associated with the actual payment provided to the owners. Such costs have the potential to dwarf the transaction costs. The biggest cost driver, however, is likely to be that such negotiations will not be one-off exercises. They may have to be undertaken each time a property is transferred, and when agreement slabs or when large developments are negotiated - and I notice the discussion in the previous session on this issue, and you're quite right, you have made - there is no implication in your report that heritage agreements will only survive for the life of an owner.

You do in fact talk about, you know, they might be reviewed every 10 years or so. But the reality is that a heritage owner will default to having a heritage agreement in place only for the life of his tenure, so that he does not in any way, shape or form stifle whatever value, accretion or otherwise may affect the sale of his property. So whilst you talk about heritage agreements being for longer than that, the reality is, because it takes two to tango in this marketplace, you're in a position of bargaining - that it's unlikely that a heritage owner will want to have a heritage agreement survive his ownership, and, of course, the heritage, the local government agency or whoever is at the other end of the bargain in this agreement will be unwilling to enter into such short-term agreements, and so the whole notion of the voluntary heritage agreements fails at step 1. The voluntary negotiated agreement, therefore, does not guarantee an improvement in the system regardless of whether sufficient funds were provided to implement it or not.

It's the funding issue that I'll talk about last. It is indeed the view of the chairs that it would have a severe detrimental impact, as I've already talked about. In view that the commissioners found listing to be an appropriate central tool of the heritage management system, it's therefore surprising the principal recommendation out of your draft report is to make listing a voluntary process.

DR BYRON: That's not what we said, and I'd rather you didn't deliberately misrepresent what we did say.

MR COLLINS: I didn't deliberately - - -

DR BYRON: That is nothing like what we said, and you know it.

MR COLLINS: I didn't deliberately misrepresent. I am reading from your report. So to the extent that I can draw those conclusions I would state to you there is an inadequacy in the report, and indeed you've already acknowledged this morning that if somebody has drawn a conclusion out of your report, then that is a misgiving of the report rather than a misrepresentation of the owner. We can only understand what we are reading, commissioner.

DR BYRON: But we have explained it to you in person on a number of occasions over the last two months, and I find it very offensive that you continue to repeat in a public forum things which you know are not true. Well, thank you.

MR COLLINS: I'm happy to have a discussion. Thank you.

DR BYRON: Tony, would you like to go first?

MR HINTON: Thanks, Neil. Thanks, Michael for your presentation this morning, and the submission that we received last night. I think that you have run through this morning picking out what you judge to be key points, and messages of your latest submission. It was very useful for us given the time constraints that we had. Also, in the context of time constraints this morning, I'm not proposing to debate areas of disagreement or perhaps dispute that's clearly identified in your latest submission. Rather, I want to explore with you some of the points that might be useful elaboration - - -

MR COLLINS: Certainly.

MR HINTON: - - - on some aspects of what I consider to be a very substantive expression of views from an appropriate body to express views; that is, the Chairs of the Heritage Council of Australia and New Zealand. My first area of comment and query is in relation to your statement that you're concerned about, that we don't have findings in the report that match some of our statements in the text, and that you feel that this is a deficiency of the report. I think that you're being a little precious on that.

If we put into our final report the 100 or so findings that synthesised the sorts of the conclusions we reached throughout the analysis in our report, we in fact do a disservice to ourselves and to the readers and to the public policy debate that might then ultimately flow from our final report. It's important that our findings and recommendations be linked. It's important that our findings and recommendations be focused. The fact that we don't have a finding doesn't necessarily mean that we don't have that view, especially if we've expressed that view somewhere else. Don't be too precious on that, please.

MR COLLINS: Okay. I understand the point, Tony.

MR HINTON: And that's not a question, but it's - - -

MR COLLINS: No, I understand the point.

MR HINTON: Moving to some questions. It's about public expenditure, which is I think one of your very early on points on page 1. You talk about the community values heritage. We don't dispute that; in fact we endorse that. You also reach the view that the community is willing to have more spent on heritage conservation than currently spent today. But can I put to you that that sort of question and answer does not enrich public policy debate. If you ask anybody in this room would they like to have more money spent on child care, on health care, on aged care, guess what the answer will be? Yes. In fact, if anything, we're surprised the number wasn't higher in response to the question, "Do you value heritage?" "Would you like money spent on heritage conservation?" Because that's not the nature of how public policy works, and I wanted to put to you, are you really seriously offering up that view as a substantive input into public policy debate?

MR COLLINS: Yes, because I think that - and the previous session was a useful discussion between you and Mike Pearson on this issue. Heritage chairs and officials largely believe that historic heritage conservation is largely unfunded. So the question is, how do you fund it? Sandy was quite right. It would be naive of us to expect you to make a recommendation that there ought to be a three or four or eight-fold attempt at funding. But at least I think what we ought to do is recognise the fact that the community, maybe not to - maybe the politicians aren't aware of this issue - but maybe somebody, an august body like you, needs to actually point out that in fact the conservation of heritage is in fact a very real ambition for most common Australians, and that, therefore - as indeed it's on an equal footing with improvements to health and safety and police and education et cetera.

But to that, the dollar that is being accommodated is absolutely minuscule. There is no budget. There is really no budget in the overall context of Australia's GDP. There is very little, you know, commitment to heritage conservation. So I think that the choice modelling survey is in fact, rather than being naive or self-serving or self-evident - it actually is a reinforcement to the fact that points to - should be allowing you to point to the fact that there is in fact an underlying feeling, good feeling, in the community about historic conservation, and that therefore governments should find ways and means of incentivizing people to get them to participate in it. So I accept the fact; you're quite right about it. I still don't believe that the conclusion you have reached is not something that should turn us away from the argument.

MR THORPE: But can I just - - -

MS MACDONALD: And can I add something too.

MR THORPE: Jeremy Thorpe, the Allen Consulting Group. We did the choice modelling, obviously. I think there's two points I'd like to make about the values that came out of it. It's a little badge of honour, I suppose, when he thought he'd get a bigger number. We did try and do it impartially. It was an honest assessment of the community's values and assets. The two messages that I would take out of it are that the finding is not funding for funding's sake, it's what outcomes was the community willing to purchase and for what value. If you think of it in that way, I think it's very easy to think in terms of just more money and whatever happens, happens. The choice modelling was phrased as for particular outcomes, "What will you be willing to pay?" So that it is not just "throw money at this" as a solution, it needs to be thought about how we achieve those outcomes and that's obviously beyond the survey, but community is willing to pay for that; but it also showed the attributes of the outcomes and I think that's an important thing. You certainly picked up on it in the draft report that there are certain things that a community is willing to pay for more than other things in a heritage context. I think that's one of the advantages of this process, that it's teased that out maybe for the first time. We have seen that this concept of heritage as an amorphous blob actually can be broken down into its constituent parts and the community has a different sense maybe to some Heritage Chairs and Officials and maybe some local governments as to what it actually values.

MS MACDONALD: If I could just add one more point; Susan MacDonald from the New South Wales Heritage Office; I'm the project manager of the joint submission. I think one of the other things that Chairs has said in their report is that even if the Productivity Commission isn't going to be commenting or chooses not to comment on a specific dollar figure, one of the terms of reference as one of the things that was expected was a comment on whether the system is adequately resourced to implement itself and if there's an issue that the resources aren't there to implement the system that we've got, is that contributing to some of the causes of the problems, because one of the things that we've said is that one of the issues that we've raised with the negotiators' agreement is that it's perhaps addressing a symptom, not a cause, and what are the causes underneath? Therefore, what targeted approaches could you use to deal with those causes and what is the role of the funding dollar?

One other point, just to add to the point that Jeremy made, was that when we did look at the attributes of what people might be prepared to put more money to, if there was more money for heritage, what are your priorities? Compensating owners was interestingly the lowest one, which was quite interesting. People were much more keen on having money for education, money for conservation of places, rather than actual compensation for owners, and I think that's quite a telling piece of survey work. That included people who owned heritage places as well.

MR HINTON: Sorry to interrupt, but "compensation of owners" is not the term that we are using singularly. We use "improving incentives" for the conservation objective. If that means there's a transfer from government to the owner, it's not perceived as compensation but ensuring that the incentive exists with regard to the conservation objective.

MR COLLINS: Neil and Tony, could I make a final comment on this because we should move on to other matters, but I actually feel that there was sufficient robustness in the results of the survey on this issue to hopefully have provoked the Productivity Commission into thinking about how that sentiment, that broadly based plus 93 per cent sentiment of the community, could actually be imported into an enhancement of an incentives program, whether it was by way of grants at all levels of government, whether it was a mixture of revolving funds - Neil, you talk about the revolving fund issue - there are a number of taxation based incentives, whether it's rebates or whether it's annual grants or whatever, ways in which private owners can be incentivised to participate in the system at a cost which does not erode the productivity of the system. I think that's our greatest disappointment in this report, in a way, that it doesn't actually explore the new and emerging - which is part of the terms of reference - trends in privately owned heritage conservation and tap into those to assist private owners, in the absence of public funds, to engage in the process. That's what we find is disappointing, that the sentiment expressed in that survey has not actually been picked up and moved forward.

MR HINTON: Mike, I think that the discussion in the last two minutes has been useful, and taking Susan's comment a moment ago and the comments earlier, there is a distinction between funding generically to pursue the conservation objective, and that can come in many forms, and funding necessary to ensure that the system that is in operation is not constrained financially, that means you can't deliver its desired objectives. I think if the funding claims for bigger buckets of money could have made that particular distinction, it would really have helped the understanding of what interested parties would be seeking. We certainly would pursue, as a Productivity Commission, the pursuit of good, effective, efficient administrative structures and processes that deliver outcomes that justify the expense, and if you're doing it badly, then you don't get the outcome and therefore it's important that the system be properly resourced to deliver. If the system is not operating well, you might either change the system or do something about the resourcing.

MR COLLINS: I agree with that.

MR HINTON: We do make comments about the implications for local government, however they go about their business; the implication, that is, that they need to look at how they fund heritage experts, how they fund going about making statements of significance. That is a fundamental - no, too strong; that is clearly a

distinction and is delineated from issues about, "Give me a bigger bucket of money to throw at the conservation objective."

MR COLLINS: We do not sit here naively thinking that the commission was ever going to come out and say to anybody that there ought to be a bigger bucket of money. Clearly, historic conservation in the built heritage environment is well removed from the centre of influence, you know, in the mainstream of the influence of the natural heritage environment where large buckets of money are being - - -

MR HINTON: But frankly, that's not the message we're getting from the submissions in response to our draft report. On the contrary, the message is that, "Yes, we think the Productivity Commission draft report is deficient; it should have put forward explicit proposals" - a pejorative term - "bigger buckets of money." Now, I know that term is not used but that's clearly the message that we're getting.

MR COLLINS: But please don't read into it - and maybe I've drawn fault because I have misread or have put an interpretation on some of the things that you have said and I would hate to think that you had misinterpreted some of the things that we have said - we don't regard bigger buckets of money as simply coming from government. We are - - -

MR HINTON: Which was Neil's point earlier, three tranches of sources of funding.

MR COLLINS: Private philanthropy is the cornerstone of heritage development; always has been, always will be. The notion that a private owner living in a house in Dubbo or Gulargambone, maintaining it, he's doing it because he gets a kick out of it, because there is a private value that he attaches. The public benefit is secondary to him, although I think there is a greater awareness now that people doing this see the public benefit and they actually get a greater joy out of that because they know they are delivering a public benefit. So the bigger buck is what we're talking about; we're not just trying to focus on you making recommendations that all governments of Australia should provide more treasury support for this.

We think that what you need to do is to point to the direction that heritage conservation is not working appropriately, particularly at the local government level at the moment and that therefore a combination of incentives, possibly including moderate levels of support from governments, matched with incentives for private owners - and I would love to have seen some modelling about how expensive - heritage listed property, for example, with an owner undertaking repairs and maintenance or conservation could attract taxation incentives to stimulate him to do that. Those sorts of things have not been captured by the commission. They certainly have a cost and there is a productivity element attaching to that, but it would have been great to have seen that debate occur.

Revolving funds we talked about before, rates and taxes at the local government level; there are probably seven or eight things that we felt that we wanted you to concentrate on and you seem to have come to heard from us this mantra and it's our fault that we've delivered this because you've misread it. We're not expecting the buck to come just from government.

MR HINTON: Certainly in moving from the draft report to the final report we'll be more carefully and more fully analysing what I call the Susan point, which I think we had done in part in the draft report, that is, ensuring that we are appropriately focused on being aware of the implications of any revised systems for the resourcing of delivering the outputs from those systems.

MR COLLINS: Good, okay.

MR HINTON: We'll be looking at that in more detail. But in terms of a bucket of money, we won't be going down that track, as we've made some quite clear today and in some other public hearings. But we have also picked up the point that there are many mechanisms by which governments may pursue delivering incentives directed to the conservation objective. Nothing in our report in fact impedes using those. In fact, we actually go out of our way to identify them so that local governments can be informed around Australia of what is happening in some other local government areas that might better give them a better understanding of what might be available to them. That still doesn't address that third issue, though, in terms of the aggregate competing funds - aggregate funding against competing uses of funds for governments at all three levels.

MR COLLINS: Tony, at the base level, on the way down here today I drew up a little balance sheet, and the balance sheet is a very simple one up here in this little box, and it has got, under Voluntary Heritage Agreements, and I've got, "Issue: Funding." Underneath that, "Transaction costs." Over on this column, on the other side of the balance sheet, I've got The Listing Process, and under that I've got two comments: one is, "Funding," and the other is, "No transaction costs." So the key issue to moving forward under voluntary agreements is really the funding issue. It's the funding issue.

If there is a failure at the moment of the listing process - because, as you have pointed out in your report, you say that the listing process does not lead to conservation, and it doesn't lead to conservation because of lack of funding - that same circumstance will apply under voluntary heritage agreements, because a bureaucracy signing with a local owner a heritage agreement will need to have a funding source available to him so say, "If you sign this heritage agreement and protect this property for the next 25 years I will give you \$25,000 to renovate your home," or whatever. That \$25,000 is just as much missing under the voluntary

heritage agreement as it is under the listing process today. If it was available we would have been giving it to heritage owners today and we wouldn't have this problem. So the balance sheet shows this problem up on either side, whether it's the listing or the VHA.

MS MACDONALD: Can I just add one other thing, and this is related to that.

MR COLLINS: Yes, sure.

MS MACDONALD: I think that the analysis that you've done in the report - and I can't remember the page number - which starts to look at categories of building types and where specific issues arise, we found that quite useful in starting to work out where targeted approaches are needed, where an agreement as an adjunct to listing would be useful, where a particular type of incentive would be useful, where there is clearly an information asymmetry at the moment. I think that that sort of analysis is something that would have great benefit to pursue more, because it really started to match the solution for the specific problem, because that was one of the issues - applying this notion to everything as a replacement to listing - that we've presented to you that we don't think it will take us forward.

But I think that there are some instances where it is a very useful thing. There are some very specific targeted things which are a package. They may be incentives, they may be just other things, other types of management tools or we needed the grab-bag of tools. That was the thing that the chairs presented in their first submission, and I know you've heard from a lot of people including those who weren't happy with the listing system. They've said, "We need some more of these other things to help, not necessarily deregulation completely."

MR HINTON: Okay. Let me move on, and I'm sort of reacting to - - -

MR COLLINS: Sure.

MR HINTON: - - - Michael's presentation and the submission. I'm on to page 6, and you and a number of other participants have talked about the very small number of appeals against listings, and that they're not occurring that often. This arose in the earlier session this morning. The question that has been drawn to our attention over and over again is that, is that gilding the lily a bit?

If the grounds for appeal across all the jurisdictions is essentially about whether or not it is significant from a heritage perspective, then it is not surprising that there aren't many appeals, because usually if that proposed listing is soundly based - though that is not always the case - the opportunity to actually challenge that is fairly limited. It is often a binary approach: is it significant or is it not? It also is one of, well, a lot of things are significant from a cultural heritage perspective. Even though

it might be small, it might be iconic. But to appeal it, you might not have really much opportunity to do it. Hence, it is not surprising that the number of cases that occur are small.

I wanted to put to you the point that maybe if you had other grounds for appeal: for example, that the implications of that statutory listing would produce unreasonable costs on the owner or an appropriate burden or some sort of penalty associated with that, that then can be taken into account. Now, checking my memory here, there is a provision in the Disability Discrimination Act about requirements for owners of buildings to put in certain characteristics of buildings such as access for disabled people. There is a sort of a provisions there that can be taken into account. But this is not done in certain circumstances, if the impost on the owner of the building would be undue hardship.

Can you give me a reaction. Is this occurring in any jurisdiction? We heard this morning from the ACT that in the AAT process, in one case apparently that particular argument was put on the table and was taken into consideration by the tribunal, which in fact sided with the owner.

MR COLLINS: Tony, I'll ask Susan to answer that question.

MR HINTON: Explore that for me, please.

MS MACDONALD: Sure. Various jurisdictions have included in their legislation the ability to consider other issues when they're looking at listings at the state level. In New South Wales, for example, economic considerations are one of the things that we look at. On the chart that we've given you, we've had seven listings opposed out of 104 over the last three-year period, and most of them are on those issues: to do with economic hardship, or they're to do with a development application and people are nervous that they won't be able to achieve that amount of development.

Our heritage council takes great pains to consider those things. We look at economic reports that are presented by people. We look at that whole range of issues, and they are a very serious part of that discussion, and as a result there are a few times where things haven't got listed. Also, because the approach in our jurisdiction at the stage level is that it is very unusual for a listing to be put up when the owner is dead set against it. We haven't - well, you're on that committee. You can comment on that.

MR COLLINS: Well, I mean, I can say to you that under my chairmanship our whole approach is that we will only list properties on the state heritage register that actually have the support of the owner. Every now and again we'll get a nomination for an outstanding property where the issue of the listing becomes bigger than the individual perspective of the owner. But in most cases we engage ardently with the owner. It is just part of the process.

I will never, ever accept a report coming for recommendation to us where we don't have the owner either making a presentation to us, or where we have not engaged in that process very, very thoroughly. As Susan has pointed out, we have listed places where there has been seven people opposed, but as a result of that we have made sure that we have backed it up to the small amount of dollars available, with some level of ongoing support to assist in conservation programs or whatever out of our small grants program.

MS MACDONALD: That might even include a heritage agreement. But the resources involved in doing that are quite significant, I can tell you. We only do about 40 listings a year, and that is because of that, and there is experiences in other jurisdictions. At local government level it varies in different jurisdictions, but some of them do have the ability to consider that, and certainly there is evidence to suggest that most listings that don't go forward are not because they are not significant - because by the time they get to a council and go through the public process they have already been fairly rigorously assessed. Most of them don't go forward because of people's nervousness about, "This is going to fetter my development rights," et cetera.

Now, you have heard from a number of people who have been very nervous about that and who have had a bad time going through the local government system. Some of those people are not listed, and they have never been listed. Their problem comes from the uncertainty in the system: they opted out, but the community still thinks it significant, so they keep getting bashed over the head by the community wanting it to be listed but them saying, "No, I've opted out of the system." You get caught in this difficult problem of having to manage that.

MR COLLINS: Opting out of the system does not remove continuing community concern about the problem, so you will get a situation where on one occasion if somebody opts out or they have been successful at the local government level not to have a property listed on the LEP - - -

MR HINTON: It gets revisited every second year.

MS MACDONALD: It's terrible.

MR COLLINS: The problem - it keeps getting revisited, right, because the community won't let the problem go away.

MS MACDONALD: Yes.

MR COLLINS: I think this problem is very much - I don't think there is an issue certainly at the federal level, and certainly not at the state level in my view. But I

think the issue is, as you've rightly fixed on in your report, at the local government level. This is where - - -

MR HINTON: See, the community might not revisit it if the community was made more aware that perhaps the community might have to pay for that. It is quite easy to pursue that property being listed if there is no cost for the community.

MR COLLINS: But isn't that a bit like the politician telling the community what is good for them.

MS MACDONALD: But our survey said that the community was willing to pay.

MR COLLINS: Not much; not much.

MS MACDONALD: Yes.

DR BYRON: Half a cent per person, per property, per year is not a compellingly large figure. That's the analyst figure.

MR COLLINS: I agree.

DR BYRON: And I'm surprised that he wants to use it. I was shocked, given that choice modelling systematically tends to come up with - if there is a bias - - -

MR COLLINS: They know the valuation, yes.

DR BYRON: They know the valuation. The fact that you've done choice modelling I think we were very reluctant to use that figure precisely because there was such a small - - -

MR COLLINS: All right.

DR BYRON: But if you insist.

MR COLLINS: Can I say to you, I mean, if you feel that is your interpretation of it then we won't be worried that you - - -

MR HINTON: Come back to Susan's point though about - I think she used the term "other factors may be taken into account". But does it list undue hardship as a factor or is it just a generic term "other factors"?

MS MACDONALD: I think there's different jurisdictions have slightly different terminology. I mean, we can provide a list of them from all the different states of how they specifically deal with. But we have lots of instances - - -

MR HINTON: That would be valuable for us - - -

MR COLLINS: I think what our exact words are - the words are along the lines of economic circumstances or any hardship that may be - - -

MS MACDONALD: Economic hardship.

MR COLLINS: Economic hardship or words to that effect.

MR HINTON: Can you flesh that out for us?

MS MACDONALD: Undue economic hardship.

MR COLLINS: I'm sorry, I'm embarrassed that I don't know them verbatim because I should but they're certainly in there as part of our listing tool.

MS MACDONALD: I think it's undue economic hardship is mentioned in our state heritage log but can flesh it out from the local ones. But, look, there are lots of instances in New South Wales where local governments don't proceed with listing - individual ones on their list and groups of them for these reasons. So it's not as if the system at the moment is - every time something is put on a list it automatically goes through. There is quite a lot of negotiation in the process through the public - advertising and appeal - - -

MR COLLINS: Can I say to you that at least three times in the last six months I have personally got involved in looking at the economic circumstances of an owner where the owner has not objected to the listing, he has objected to the extent of protection that the heritage officer might want, versus the ambitions of the owner. So he's not been against the listing process, it's been the extent of the curtilage or the extent of that degree of intrusion, and that's when we've looked at the economic circumstances and I've been happy to do so.

MR HINTON: Well, Neil is kicking me because we're running out of time. But at the risk of being sort of seen as sporadic I'll jump to page 11 - - -

MR COLLINS: Right.

MR HINTON: - - - where the HCANZ response with regard to the heritage tourism, I really sort of - how do I express this - baulked a little at a suggestion that the commission should provide detailed analysis of the market for heritage tourism. You've got to be joking. You want the Productivity Commission to get out there and pick winners in the heritage tourism sector and do something that should be validly done by the business and commercial sector? You're not really suggesting we should

be doing that, are you?

MR COLLINS: Well, maybe the words we've put there are a reaction to the fact that COAG through the Heritage Ministerial Council has actually identified heritage tourism as a core initiative where additional investment should be made. Now, the draft report does not seem to pay due attention to that. It doesn't seem to cross-reference or reference in any way the ambitions of COAG in relation to heritage tourism. What we've said - what we've tried to say - in our response is that if you are talking about incentives for the conservation of privately-owned heritage properties, most tourism heritage is located at the local government level, as I've said before, and most of it is in private ownership and most of it is in regional Australia, and therefore there is a glaring opportunity, we believe, for some cohesive rudimentary analysis to be undertaken of the value of that; in other words, what is the value of tourism, the tourism dollar that is created by this, new tourism dollars that are created, versus the cost of providing incentives for people in regional New South Wales - heritage based tourism in New South Wales - where is the equation there? Is this a good thing to do or not do?

So when we talk about asking you to do this sort of thing, I think what we had an expectation of is that you would identify in conformity with COAG, the need, the opportunity, the striking opportunity that's available for heritage tourism, but you don't seem to have hitched that onto your wagon as a part of your brief. We think because of that, this not having been investigated, there's a flaw in the draft report.

MR HINTON: But it's open to businesses to pursue heritage tourism as they see fit. Examples are given to us of government involvement and funding and support for particular projects. It's been a rather salutary lesson for government in many ways. If anything the evidence being presented to us, or the views being presented to us in anecdotal support rather than evidence, is one that governments should be very cautious about, throwing scarce taxpayers' funds at the pursuit of the development of heritage sites with the objective of having tourism.

MR THORPE: Recommendation or observation doesn't actually ask you to pick winners.

MR COLLINS: No, it doesn't.

MR HINTON: I'm being inflammatory.

MR THORPE: There's more about, are there any barriers.

MR HINTON: No, the barriers is an - - -

MR THORPE: And is the private sector missing the mark.

DR BYRON: Is there any evidence that there are barriers at all?

MR THORPE: You're running around doing the national tour.

MS MACDONALD: Or opportunity.

MR HINTON: No-one has said to us though, the fact the government is not providing money, which is not a barrier. Is there a regulatory structure out there that stops you pursuing heritage tourism? Well, perhaps where development applications constrain making some site open to community public access. So there is some sort of barrier in that but that's the objective that's pursued with regard to heritage conservation. So we haven't really touched on that one. No-one is drawing to our attention particular regulatory structures that's stopping Michael Collins or Neil Byron pursuing the opportunity of a heritage site for heritage tourism.

DR BYRON: The only submission I can think of is from a shire in Western Australia that was complaining about the costs imposed on them of heritage tourists coming all the time, spending nothing at all in the town and just leaving waste and using the toilets and making a mess.

MR COLLINS: We've got an instance of that argument in New South Wales as well, Neil.

DR BYRON: They said, "Why do we have to have spent all this money from a very small number of relatively poor ratepayers in this municipality in a country area to maintain magnificent old buildings so that bus loads of people from Perth, the eastern states and overseas can come, make a mess, take photos, leave their litter, mess up the toilets and go away without spending a dollar in the town?"

MR COLLINS: I understand the point and I don't disagree with it at all. Maybe I was searching at a higher level for a discussion to occur between - is there a productive relationship between investment in tourism property, not necessarily funded by, you know, capital P public, in increasing investment in heritage tourism and the addition to the economy that would accrete as a result of that. As I say, that to me was the higher level ambition that I had in wanting to get your focus on heritage tourism.

DR BYRON: But if, for example, I was Canberra based and running a bus company and I saw an opportunity to run tourists out to Gundaroo, for example, and I thought, "If I splash some of my private money around with the property owners in Gundaroo to get this place looking really fantastic, I'm going to make a motser out of taking Japanese tourists out to see Gundaroo" - hypothetically. Now, there's no impediment that I can think of that prevents somebody who wants to run a tourism

business from putting his own money into helping support - - -

MR COLLINS: Correct. The only impediment is market force.

MR THORPE: It's basically a level of understanding about - I mean, it varies - it's different because it's often subsidiary component of why you go to a place but once you're there you might take in more heritage issues. Is there an information problem here that maybe the community doesn't understand the potential value of greater heritage tourism?

MS MACDONALD: Our survey indicated that very few people have made the leap between heritage tourism - tourism and cultural heritage in some places. I guess the point that we were raising is term of reference number 6 is about looking at potential policy and program and practice for emerging issues. Are there specific targeted programs or incentives that could help address that issue I've just mentioned there to help achieve greater conservation outcomes? We see that there is some potential there and we thought it was an issue that could potentially have been addressed under that particular reference and we'd expected it. That's what that expectation was.

MR HINTON: I've got one more question and I notice it's after 5 past 11, Neil, and that's - it's coming out of page 25 of your submission. In fact it's sort of almost a helicopter question because this is in the first part of your list as - well, "We should reiterate recommendations," I think you introduce it as, and you talk about "A national heritage framework should be reinvigorated," and you list a number of things this framework should include, such as agreed listing criteria nationally, national guidelines, whatever. My question immediately becomes why isn't HCANZ pursuing those matters as a matter of course?

MR COLLINS: We are, and we are through COAG, and in fact I'm sure that that information would be available to the Productivity Commission. I think what we're trying to do here is to link the development of policy through the national heritage framework via the auspices of COAG into the outcomes of the Productivity Commission so the Productivity Commission is actually informed by this, understands it and is reacting in its recommendations positively to it, rather than perhaps by ignoring it. So the issue of all of these things, agreed roles and responsibilities, nationally agreed listing criteria, et cetera - for example, the nationally agreed listing criteria, thresholds fall, three levels of government, get very much to the core of your own recommendations.

So the reason why we have put them in here is to reinforce the fact that COAG are actually agreeing that the development of a national heritage framework is in fact a very highly important policy that the Heritage Chairs and Officials have been charged with the responsibility for participating in the development of, so there is a

connection. We believe the national heritage framework linkage to your core concern, which I think is the most legitimately core concern about the way in which heritage conservation works at the local government level, is a direct link into policy platform development with all of the governments in Australia.

DR BYRON: You've touched on many of the things that I wrote down but I'll restrict myself to just one or two. We were asked to look at the threats to conservation of historic heritage places and at the risk of being overly crude and simplistic, I think there are two broad categories and the one that particularly occurs in metropolitan areas is where somebody wants to demolish or radically change a place because they want to get at the site for redevelopment, because it's a highly valuable site. At the opposite end of the spectrum, and it typically occurs in rural areas, whether it's an old woolshed or an old timber bridge, an old redundant piece of industrial technology, it's the demolition by passive benign neglect. Nobody wants to knock it down. In fact, the reason it's still there is because nobody can be bothered knocking it down. Nobody wants to do anything else to the land, they just don't want to maintain it any more. Now, it seemed to me that the system that we have, dealing with the first class of the problem - which I'll call the metropolitan one - is we have regulations that require permits for redevelopment and I think it is quite effective in controlling that issue, but it's simply irrelevant when it comes to what do you do about the old woolshed, the old timber bridge, the old mechanics institute hall, stock routes and all the rest of it. So the reason that we arrived at negotiated heritage agreements, partnership arrangements, whatever, contracts, about who was going to look after these places in the long term was because we couldn't see a regulatory mechanism that was going to work to conserve all those places that were threatened not by demolition but simply by apathy and disinterest.

You said in your opening remarks that we didn't say much about historic and archaeological sites, the historic landscapes, stock routes, gardens and all the rest of it. I'd like to follow up that issue, and the question is: to what extent do those types of conservation challenges require a completely different type of instrument? Just quickly, reading the box on the New Zealand experience, it does actually say that there are 86 heritage covenants in New Zealand, covering a wide range of historic heritage, including buildings, archaeological sites, a hydro village, a rock art site, a kiln and factory complex. Now, that seems to me to be reinforcing our idea that a heritage covenant, an agreement about who's going to manage and protect and look after the place and how the cost of doing it is going to be shared by the public and whoever happens to be the owner - whether it's in private or whatever - well, the New Zealand experience, it's the way that they deal with those non-building things.

Are there other instruments that we haven't thought of? I know you said that "we, the non-heritage specialists" should develop and enhance management options. Nobody has suggested in any of our hearings or submissions what the best way of dealing with these historically important - but basically unloved by their

owners/managers - places. Whether it's a timber bridge or an old meatworks or gasometer or anything else, a redundant church in a small town where the congregation is a tenth of what it used to be, we thought that a negotiated agreement with the appropriate amount of external funding support was likely to be the best way of achieving good conservation outcomes for that class of problem.

MR COLLINS: Can I respond. I'll respond on two fronts: firstly, I want to talk about urban versus rural heritage. The issue of demolition by neglect, heritage in urban environments - and Sydney is a very typical example of this - there is an underlying economic reuse value of the land which brings pressure to bear on everybody. It makes them - if it's state owned or local government owned - look up and say, "If this wasn't here, what can we do for it, and by the way, there's a lot of land value sitting in here, so let's secrete 90 per cent of that land value and use the final 10 per cent by selling the land off," but putting a covenant on, so they can't demolish the thing that might be falling down, or whatever. But that economic regime does not apply in rural New South Wales by and large, where the demand for land, and particularly the demand for special use land, which might have a heritage item on it, are really quite difficult.

In urban Australia, I think that there is not so much the requirement to move towards voluntary heritage agreements because of the underlying adaptive reuse, economic potential of the land, which can be used as a lever for conservation. There's a different story in rural New South Wales where you can actually have - and I don't know even if you're aware of the RAAF base at Dubbo which is a huge establishment, World War II - and Richard Mackay over here can tell you more about it than I can - but a wonderful facility full of historic aircraft huts et cetera on a massive block of land of 30 or 40 hectares or whatever, sold by the Commonwealth into private ownership. Of course it's not as if the owners of that particular property could turn around and sell it tomorrow. It's a very significant property and of course we've now listed that property and we're heading towards a heritage agreement with the owner et cetera.

So I believe that the way in which you preserve them - we're not saying that voluntary heritage agreements don't work. There are cases where they do work and we've actually hopefully gone out of our way to say that there will always be circumstances where voluntary heritage agreements or heritage agreements matched with a listing will work and there will be a handsome outcome. The issue is a bit more simple in my view in relation to the non-built items because there will always be non-built items that are in private ownership but I rather suspect that most non-built items, whether they're churches, whether they're bridges, whether they're an old coalface, whether there's some type of industrial heritage, generally are in public ownership rather than private ownership. That's my intuition. I can't say that it isn't; to the extent that it is, there is less pressure on the demolition by neglect philosophy but it doesn't lead you to the certainty of outcome, I agree with you.

DR BYRON: The two things that I guess I've personally dwelt on were the observations that you've got in a number of places where there are old Cobb and Co staging posts on private farmland. The owner of the property knows what it is but he is afraid that if the government finds out about it, there will be - he doesn't know, it might be totally false, but he's reacting to his perception of what will happen if this part of his property is heritage - - -

MR COLLINS: Yes.

DR BYRON: The other one, Jane Lennon has a beautiful paper about the problems of historic homesteads in Queensland.

MR COLLINS: Yes.

DR BYRON: I've been to quite a few of the ones that she talks about and they're magnificent. But it's not that anybody wants to knock them down and put up a high-rise office building and a McDonalds. It is simply that the current owners can no longer maintain them. Now, I think there is a real challenge. If society agrees that these places are of real, very substantial cultural and historic significance, what are we going to do to shoulder our share of the burden of looking after them? It just seems obvious to me that we need to have some sort of negotiated agreement. Otherwise, if we simply list them we then sit back and watch things that we wanted to keep fall apart before our eyes.

MR COLLINS: Okay. I don't believe that a lack of a heritage agreement in those circumstances will actually allow the demolition to occur, because I think that in the great bulk of places our community has a reasonably sophisticated view and a sense of value about our built heritage, particularly rural homesteads and the like, and the Cobb and Co staging - most people are pretty intrinsically aware of what the value is that they've got. Those things only ever come under pressure when the homestead owner or the property owner will want to use the location of that for another use, and therefore they want to demolish it or whatever.

So that the issue to me is more of how you actually work with the owner to list the property, and a heritage agreement will not necessarily deliver that. One of the great faults with the model is the fact that the heritage agreement will only last for a period of time. Indeed, I think in your report somewhere you say that - if I can just refer to it - it actually does require the land owner and the property owner and government to agree upon the heritage value of the property. But that is the fundamental flaw, because if the property is valuable to the community then the community's aspirations for the property should default to being superior to that of the property owner.

So the fundamental flaw with the voluntary heritage agreement is actually in this notion that governments and property owners agree on the heritage value. Now, you actually made a different point I think in the previous session that in fact the voluntary agreement process would actually come out of a general listing process where there has in fact been an identification. Then we would come knocking on the door of the owner to say, "Look, your house has in fact been recognised as being significant, and we want to do something with you." But if you've actually created that list in the first place to actually even identify that you need to knock on that door rather than that door, you've actually already created the list.

DR BYRON: Yes.

MR COLLINS: You've already created the list.

DR BYRON: A list.

MR COLLINS: Yes, a list, okay.

MS MACDONALD: The community, yes. Just to comment on your point, Neil, the discussion we've just had is really interesting because what it highlights is the need for different tools for different scenarios.

MR COLLINS: Exactly.

MS MACDONALD: The issue of an urban area, where you had said - in Sydney I remember you said it, and you just said it again then - listing is a really effective tool where there is pressure and where there is development. But when an owner is going through a process of development they are never going to agree to deal with a listing at the same time. Hence, the heritage people have said to you, "It's good to have these things separated." But it is a very different scenario to the one you were just talking about and those properties. There has been a conference organised by the Historic Houses Trust a few years ago called Bush Lives, Bush Futures; a wonderful thing which examined this issue very specifically. Our own heritage council archaeology panel is looking at these things: what happens to these buildings which are just slowly being ruined and falling into the ground in rural areas, and how do we deal with them? But they need a different solution to that urban one, and I think that bit of discussion is really useful for pointing that out.

MR COLLINS: Correct. Can I say to you that, in reacting to this particular issue, I think that the professional heritage industry around Australia would say that to the extent that - well, we would say that this problem is an exaggerated problem. It is not as big as possibly what you think it is. I mean, there are issues of demolition by neglect and tensions between owners and the heritage list. There is no question about that. But the issue of the enormity or the quantity of that disassociation, of that

tension, is much less than what you would think from reading this report.

So I actually believe that there has been a fundamental exaggeration of that which has had you running around. I mean, if your perception was correct then it may well be that we would have given greater support for the voluntary heritage agreement model. But I actually believe, I think we all believe, that fundamentally it is a problem which has been over-exaggerated in your report. It is a lot smaller than that, and therefore because it is a lot smaller than that you don't need VHAs to solve the problem.

DR BYRON: Thank you very much, Michael.

MR COLLINS: Thank you.

DR BYRON: I think in view of the time we are going to have to unfortunately and reluctantly draw it to a close. But thank you. We will certainly be thinking very carefully about all of the issues you have raised as we make our revisions.

MR COLLINS: I just want to say in closing, Neil, I didn't mean to offend you. I wasn't trying to deliberately misrepresent you in any shape or form, and to the extent that you have taken offence I unreservedly apologise, and I appreciate your indulgence today.

DR BYRON: Likewise if I seemed overly agitated. But thanks very much, Michael.

MR COLLINS: A pleasure. Thank you.

DR BYRON: We can take perhaps a truncated break for a cup of coffee and we'll resume at 11.30. Thank you very much, ladies and gentlemen.

DR BYRON: If you could each introduce yourselves in your own voice for the transcript so that they will recognise who is saying what later on. Thanks very much for coming, thanks for the written submissions, and we really do appreciate constructive and robustly critical feedback.

PROF MACKAY: Thank you, commissioners, and good morning. I am Prof Richard Mackay. I was part of the delegation that presented the previous Australia ICOMOS submission. By way of quick background I teach heritage management at Latrobe University in Melbourne. I am the CEO of Australia's largest private sector heritage consultancy business. I think relevantly for this inquiry I am also the author of what is colloquially known as the Mackay Report on the historic cultural heritage management system in Tasmania last year. As you would be aware, since the previous hearings the presidency of Australia ICOMOS has passed from Kristal Buckley to Peter Phillips, who will now introduce himself.

MR PHILLIPS: Peter Phillips. I am a conservation architect in private practice for about 25 years. I have been a member of the Heritage Council. I still sit on a Heritage Council committee: one which, incidentally, deals with problems of fire access and services in heritage buildings. So I have some experience of the Disability Discrimination Act. So as well as being a private consultant I have acted as a heritage adviser for Sydney City Council, and therefore seen the other side of the implementation of the City of Sydney Heritage Local Environmental Plan. That's probably enough for now.

MR MARSHALL: My name is Duncan Marshall. I am the CEO of perhaps one of Australia's smallest heritage consultant practices. By way of background, I am an architect by training and I have specialised in heritage for all of my professional life, and I have actually had the privilege of working in most of the sectors dealing with Australia's historic heritage. I have worked in the private sector, where I am at the moment; I have worked for the non-government sector; and I have also worked for government. I in particular assist Australia ICOMOS in its relations with the Commonwealth government, and have done so for the best part of 20 years.

PROF MACKAY: Commissioners, after a few introductory remarks from me there will be short presentations from both Peter and Duncan. We understand we have until about half past 12 available. We are endeavouring to get through the presentations in about 20 minutes' time and then have a large amount of time for interactive discussion with yourselves.

MR BYRON: Excellent. Thank you.

PROF MACKAY: Australia ICOMOS as you are aware is a peak body for those involved in professional practice in cultural heritage management in Australia, and Australia ICOMOS has been very pleased to have the opportunity to participate in a

Productivity Commission process for this inquiry, and I would imagine that it is easily seen from the scope and substance of our initial submission that we have put an enormous amount of volunteer effort into doing so because we believe that we have a fundamentally effective and appropriate system which has significant opportunities to be improved, and we would like to be part of a process that leads to some of those improvements being made.

In our initial submission and in the submission in response to the draft report there are a large number of areas covered, and we realise that it is not practical to run through each of those and discuss them today. So we simply wanted to make three broad points today: one that I'll just touch on, and one that Peter and Duncan will each speak about at some length.

The first point is that we wanted to convey a clear overriding message that we believe the current historic cultural heritage management system is fundamentally okay. It is not that it is without its problems. It is not that there isn't scope to do more, but it is not a system that requires major amounts of intervention of change or abandonment. It works well with the planning system. There are occasionally individual cases which, with the benefit of hindsight, should have been and could have been handled differently, but when you consider that there are in the order of 100,000 listed places in this country on the various statutory lists, the number of squeaky wheels and loud gripes is relatively small and the positive good news case studies and overall achievement far outweighs the problem. We're aware that a number of other parties making submissions to this round of hearings have covered that in some detail, so we're not proposing to talk about that but are happy to take more questions and interact about it.

Our second point, and it will come as no surprise obviously, relates to the whole question of voluntary agreements. Australia ICOMOS's position is supportive, very supportive, of the notion of voluntary agreements but very concerned, indeed fundamentally opposed, to the manner in which the draft report appears to link them to the listing process. I'm happy to talk later about the specifics and Peter is going to talk about this in some detail. ICOMOS's position is broadly that voluntary conservation agreements are useful as part of the system but will be completely dysfunctional if they become a prerequisite for listing.

Our third major point is really a grab bag, in that in order to achieve the improvements that we seek, there seem to be a number of other measures, some of which are taken up in the text of the draft report but not carried through to recommendations, some of which were included in the recommendations of ICOMOS's submission in chief, and we would hope that in moving between the draft and the final report, there could be more opportunity taken to incorporate additional recommendations which will improve the system, so that's the broad framework. So the three points: we think the system, though working, needs improvement; that we

have concerns about the manner in which the draft report proposes to link voluntary conservation agreements and statutory listing and that there are opportunities not yet taken up where the commission's report could recommend some of the improvements to make the system work more effectively. I shall hand to Peter who will deal with the first of those two more substantive discussions.

MR PHILLIPS: What I wanted to do, because the arguments in the report focus very much on economics and economic terminology and ideas, and as a non-economist, I wanted to be sure that I had the principles of your underlying recommendation straight, so what I wanted to do, if you like, was just to sort of tell you what I'm reading from the report and just make sure that the message has got across correctly. Message 1 seems to be that property owners have an unfettered right to use or change their properties as long as they don't harm their neighbours. No?

DR BYRON: Neither stated nor implied.

MR PHILLIPS: All right. The next one then was it's equitable for governments to place negative restrictions on property, to restrict the use or develop of them in order to prevent harm.

DR BYRON: Yes.

MR PHILLIPS: And it's also equitable for governments to place positive restrictions - that is to say, create a public benefit - - -

MR HINTON: I'm a bit worried about the use of the word "equitable" here. They didn't make any powers to do it and they may actually do it, but how they do it determines whether equity occurs.

MR PHILLIPS: Okay, yes, but what I'm saying is it's equitable for governments to place the negative restriction without compensation - - -

MR HINTON: It may be equitable or it may not be.

MR PHILLIPS: - - - if it's preventing a public harm. That's the message I got from somewhere in the report. I can take you to the page reference but what you're discussing there is the difference between regulations that prevent harm and regulations that promote public benefit.

DR BYRON: There's a long tradition of using regulation to prevent one person from causing harm to the neighbours - - -

MR PHILLIPS: Yes, and that doesn't involve the compensation.

DR BYRON: It goes back to the common law.

MR PHILLIPS: Yes, precisely.

DR BYRON: We can find very few examples in regulations, anywhere in the British legal system, where regulation is used to require someone at their own expense to provide a benefit to someone else, so - - -

MR PHILLIPS: Okay, so I'm getting that point correctly. The next point I take though is that where a number of adjoining properties are, if you like, listed together, there's little need for compensation for the regulation which promotes public benefit because there's an implied cross-benefit between the properties; in other words, each one gets the benefit of the restriction because - - -

DR BYRON: A mutuality.

MR PHILLIPS: A mutuality, okay. That leads on to the third point which is it's inherently inequitable to place a restriction on a private property for a public benefit without some form of compensation. Is that the logic of the argument?

DR BYRON: No, the last step doesn't follow. A regulation that prevents everybody in the town or the suburb from having a smoking incinerator benefits everybody in that area.

MR PHILLIPS: Yes, but that's a prevention of harm.

DR BYRON: Yes, exactly. So the law doesn't apply just to you but not to your neighbours.

MR PHILLIPS: No, but what I'm saying is if you're creating a public benefit as distinct from preventing a public harm and you're applying it to an individual and not to a whole group of people or to a group of neighbouring people, then that is in principle inequitable without some form of compensation.

DR BYRON: We've had legal reviews of this. In most Australian and state legislation and in most parts of the British Commonwealth, they don't use the word "compensation" but they do use the word "we will have some financial assistance measures" in recognition that you have an imposition that isn't placed on any of your neighbours. So they're very reluctant to use the "c" word.

MR PHILLIPS: Yes.

DR BYRON: This applies to all sorts of things, whether it's environmental or

heritage. There are dozens of examples. But there are often mechanisms where the state, in recognising that only particular individuals are going to have to provide what is in fact a benefit to a much wider society, that the state frequently, but not always, offers some sort of quid pro quo.

MR PHILLIPS: Okay, all right.

DR BYRON: But very rarely - in fact they deliberately avoid the use of the "c" word.

MR PHILLIPS: No, I can understand that. Now, the next thing is that statutory heritage listing is one form of, if you like, imposition on individual owners for public benefit and it always gives rise to extra costs for owners of individual property in the form of additional red tape, extra maintenance costs and loss of property value.

DR BYRON: We didn't say "always". We said it may; some combination of both.

MR PHILLIPS: Yes. There seemed to be an implication that "almost always" or "in the majority of cases" or things like that - - -

MR HINTON: Unnecessary to make that conclusion.

MR PHILLIPS: No, okay. The next one was that statutory heritage listings are placed on properties arbitrarily without regard to the costs that their owners would subsequently incur.

DR BYRON: We didn't say "arbitrarily".

MR PHILLIPS: Right. But you did say "without regard".

MR HINTON: But where is this leading us? I find that this testing by words that may or may not be in the report is a little frustrating.

MR PHILLIPS: Okay, but what I'm trying to do is to understand where the recommendations come from, you see, so I'm trying to follow the argument through because it seems to me that - - -

DR BYRON: In that case, I can tell you you're heading down the wrong path because you won't find it going down that path.

MR PHILLIPS: Going down that path, all right, okay.

DR BYRON: That's taking you into a cul-de-sac that we don't - - -

MR PHILLIPS: All right. But then, you see, if it's not based on a principle that's espoused in the report, the recommendation for the voluntary conservation agreement as the sole mechanism for listing, it seemed to me that that recommendation, that a voluntary conservation agreement be the sole basis for listing of individual heritage properties, must derive from the principle of economics rather than from the submissions that were received, because it seemed to me when reading those submissions that there wasn't, if you like, a general push in that direction. So that's why I'm seeking to ask - - -

MR HINTON: There's a couple of complications there; one is there are different types of lists, there's identification lists, there are statutory lists, so you've got to be careful about using the word "listing".

MR PHILLIPS: Yes.

MR HINTON: There was a second point, but please continue. It will come back to me in a minute.

MR PHILLIPS: The next thing is that a statutory heritage listing requires a property owner to conserve their property to a high standard.

DR BYRON: An agreed negotiated heritage agreement, the terms of that agreement would be between the listing body - - -

MR PHILLIPS: No, but any statutory listing implies conservation to a high standard.

DR BYRON: Well, no, the reason that we started thinking about negotiated heritage agreements was because we were given so many examples of places that were on statutory lists but were still not being maintained to anybody's expectations, and that seemed to be a failure of the current process. I'm sure you've heard when I went through all this, this morning. If you start with the heritage survey and you identify places potentially, you then go and apply to the Burra Charter criteria and rigorously assess how significant, and you come down to a smaller list. Does the process simply stop there and say, "All these places that have been assessed as significant go onto a statutory list full stop and then we'll deal with permits and applications as they come up later," or would it deliver better heritage conservation if there was another step in the process whereby we said, "Having assessed these places and they pass the significance test by professionals, Burra Charter thresholds of criteria et cetera and then let us go and speak with the owners and negotiate arrangements that will ensure that these places that we've so laboriously and rigorously identified will indeed be well looked after in the long term in order to achieve good conservation outcomes."

That was my rationale for raising that issue, simply because so many people told us - as I said this morning - if it's the, what I call the rural problem, having a requirement to get a permit to make changes simply doesn't work. The other example in a metropolitan area where people have said, "Even though this place is on statutory lists, a piece of legislation doesn't necessarily repair the slate or stop the rising damp," and all the rest of it. Everywhere we went, people pointed to places that were on statutory lists. They had notional official legal protection but in practice they were seriously degrading. That was why we thought maybe, having done the assessment of significance, we need to go an extra step and actually talk about who is going to do what, and what costs will be involved and how those costs will be shared. That is what we've called a negotiated heritage agreement.

MR MARSHALL: I wonder if I might join the conversation because I suppose - - -

MR HINTON: Before you do, let me bring up the second point that I was going to mention first, and that is you've got to be careful about taking reactions of interested parties to our proposals in the draft report because some of them did not fully understand what we really were proposing to go into appropriate agreements. So we did go down some tracks inappropriately because of a wrong starting point.

MR PHILLIPS: Effectively, what I'm trying to tease out here is exactly what is meant by a voluntary conservation agreement and - - -

DR BYRON: The caricature of one that had been offered in many public hearings up to now - I'm sure you were not about to do this - is to say, "We the listing body have identified your property as being significant. We are therefore going to impose the following raft of requirements on you that don't apply to your next-door neighbour. Do you accept this - yes or no." That is not a negotiated agreement.

MR PHILLIPS: No, okay.

MR MARSHALL: Can I join the conversation at this point. I suppose I was very interested to hear the previous presentations, in particular the last one with the Heritage Chairs and Officials. Neil, the comment you're making which you've just referred to again about, if you like, the problem children in heritage, the places - you referred to the rural buildings. The places that are neglected, that are not being looked after, the regulatory mechanisms that exist perhaps aren't well designed to address that neglect and achieve good conservation outcomes, although they may be good mechanisms to deal with development applications and the like.

I suppose the thought that was flashing through my mind was that if we are focusing on the problems and trying to solve and address the problems, Michael Pearson and myself have done some work for the Commonwealth on several occasions over the last decade or so as part of the Commonwealth state of the

environment reporting, where we have done a sample survey of national estate places which are of historic heritage value. In that process on I think two occasions we have physically visited something like 1200 places on two occasions to assess their - in an abbreviated way but nonetheless there's some method to the process, to assess the condition of those places, see how they're travelling, the idea being that you'll get five-year snapshots of how Australia's historic heritage is going.

Now, the number of problem children across those 1200 places, 10 per cent of the RNE, is very small. It's a few per cent. I can't remember because there are slightly different categories relating to both condition and integrity and you can sometimes lump those two things together. But we're talking about a few per cent of those places. Now, I know that there has been other work looking at the condition and trying to get a handle on the condition of historic heritage places in Australia. In my view, some of those other processes have been more or less robust, but nonetheless what we're looking at are a few per cent of places having problems.

I wonder - Australia ICOMOS have no problems with the idea of voluntary conservation agreements as one of the tools of trying to achieve good heritage conservation. The problem is that everybody is looking at the draft report - perhaps rightly or wrongly - as seeing that voluntary conservation agreements are being more or less put forward as the only solution. So what you're doing is designing a mechanism to solve the problems of a few per cent - a couple, three, five whatever it is. 3 to 5 per cent of heritage places have problems. You're designing a mechanism to address the problems of those places but it is impacting on the 95 per cent of places and there is a burden for the system to all of a sudden have to put in place quite a different approach for heritage for those 95 per cent of places which aren't, on the evidence, experiencing the problems you're trying to address. I suppose one of the strong recommendations we would make to the commission is, you've come up with one model, might there be some other models such as targeting the use of voluntary conservation agreements with additional grant funding or some sort of assistance to achieve better conservation for the problem children?

DR BYRON: Yes, there are. You see, we don't know, and we don't have a mechanism for finding out, whether it's 99, 95, 90, 80, 60 per cent that are working fine under the status quo. All of those numbers have been offered to us.

MR MARSHALL: The state of the environment report, I mean, it's not perfect by any means but insofar as there is some rigour and some method behind that process, I would strongly suggest that that provides some basis for designing mechanisms to address the problems that are perceived, surely.

PROF MACKAY: If I might add to that, commissioners, I think a lot of the heat that a casual reader of the transcripts might observe in the second round of hearings is created by that one word in recommendation 8.1, the only word. In the discussion

that you had with the representatives of the Heritage Chairs and Officials this morning, there were two different examples cited - the metropolitan one and the rural one. The discussion then moved across to the rural one, and it's quite clear that in that sort of case a funded voluntary conservation agreement would be an effective and an appropriate measure. I think it is equally clear that with respect to the urban context and the site that is significant and under development fresh for change, the simple listing and attached regulation is more likely to be effective and more likely to achieve the desired outcome. I suspect - and it's certainly Australia ICOMOS's position that the simplicity in the single approach only VCA link to listing is what's creating a lot of the concern in the community that is actively involved in heritage management.

Can I just add one thought at the end of that, that certainly as far as ICOMOS would seek that if that group of recommendations are retained in the final report that they be augmented by a suite of, if you like, cascading options because I think it won't be too hard to guess that if the recommendation stayed as it is, there is a groundswell of concern that will be communicated to government in terms of what it does with the recommendations. I would think it would be very tragic if after all this work from the commission, because of a groundswell of discontent, then nothing happened. So what about option B or option C or option D - and options C and D we heard a little bit about this morning. I think a better COAG-sponsored consistency in grounds for objection to listing, which included at a national level things like undue economic hardship or impracticality, may actually be more easily implemented in the short-term, because I certainly for one think that this model with a blank sheet of paper if we were starting the listing process tomorrow might prove to be very effective. I can't see it working if it is commencing now.

MR BYRON: Okay. No, that's very, very helpful. Just sort of thinking out loud, I understand that in British Columbia the system is that they have statutory listing, they go through the same sorts of process of identification and assessment with similar criteria and thresholds, and they do have statutory listing. But there is a process whereby any private owner of a property who feels that this will impose unreasonable costs can go to some tribunal - and this may occur in 1 per cent or one in 1000, I don't know. But there is a tribunal there that they can argue that the imposition, whatever it is, would in their particular case be unreasonable, rather than appealing whether it is significant or not.

Over time, the listing body has looked at the decisions of the appeals tribunal - of what they have considered reasonable or unreasonable - and so they have now tailored their approach. So they say, "Look, if we were to list so-and-so's place, they might go and argue that this is unreasonable cost. But if we offered them this, then either the cost wouldn't be unreasonable and the person would happily accept and forego the appeal process, or the appeal tribunal would find given the quid pro quo that we've offered that there was no unreasonable cost." So over time there is a

feedback loop from the appeals decision that actually informs - - -

MR MARSHALL: Well, I think we were hearing that with regard to New South Wales just before the break, that in fact their system is a lot more responsive to those issues and tries to achieve a good outcome for the owner as well as heritage.

MR PHILLIPS: Yes, and I think really that goes to another if you like misunderstanding that maybe the draft report created certainly in my mind about what the cost of a negotiated agreement would be, because it seemed to me that the cost of a negotiated agreement was going to be based on the calculated cost to the owner of his problems with a listing, whether it might be loss in his value of land or extra cost of maintenance or loss of development opportunity or any of those things. Now, a number of those don't fall into the category of what has been called undue economic hardship. So what it does is affect the price that the negotiated agreement comes at. If you're looking at a test of undue economic hardship it is a very different test from, if you like, compensation for all of the costs that I have suffered including this \$120,000 loss in property value overnight.

MR MARSHALL: Alleged.

MR PHILLIPS: Alleged, yes, that's right.

MR BYRON: But if the owner of the property says, "This is not going to inhibit anything I do, there may be an occasional extra \$50 on a development application once every decade but that is trivial, and besides, I'm thrilled to have my place heritage listed," they wouldn't even think of arguing - - -

PROF MACKAY: No, commissioner, you make a very important point there. I mean, if you look at the process for example in Tasmania when their heritage legislation was introduced in the late 90s and there was a blanket listing as a lot of National Trust listings came straight across onto the Tasmanian Heritage Register, problematic as it is, the objection rate was tiny. It was certainly less than 5 per cent. So a model where there is a cascading system of options if you like, where you say, "Look, if the owner doesn't object yes, it's listed. If the owner does object let us look at these criteria. If it is an economic hardship issue or a rural passive neglect issue then we've got a policy measure and funding to address is through a voluntary conservation agreement." Or alternatively, there may be other policy positions in a central business district context. You may simply allocate some transferable floor space rights that otherwise deal with that issue.

MR BYRON: Exactly.

PROF MACKAY: So that series of cascading options is likely to be a more accepted and implementable model, I think, that what we understood was coming

forth.

MR BYRON: Okay.

PROF MACKAY: Can I make one last point about this issue - it is not an ICOMOS's submission, it has come up in our discussions in preparing for today - that whatever you recommend, we would urge the commission to recommend that it be trialed in one or two local government areas, and preferably ones that have a history of not listing places where there is an objection, because that is as good as you'll get to a sort of zero base, as a trial prior to implementing it through a COAG process of across the nation, as there are lots of worries about the untested waters.

MR BYRON: That's a good point.

MR HINTON: We've been interrupting you all the way through, so we're not sure where you're up to.

PROF MACKAY: No, no, look, and we've been interrupting things too.

MR BYRON: Please continue.

MR PHILLIPS: No, I don't think that matters. I think in fact that the toing and froing has brought out more of the points that I wanted to raise. It was particularly this one of, if you like, the price that you pay for a voluntary conservation agreement, because it wasn't clear to me from reading the report that the test was one of undue economic hardship rather than if you like the alleged losses to an owner as a direct result of a listing. I had an experience in the City of Sydney where in the first round there were people whose properties were on the list, and like every list it was published as a draft and opportunities were given for objections. So I'm not aware that there is any statutory list that has occurred without that objection process happening. Whether in fact there was a test of factors other than significance is another matter.

MR HINTON: Yes, it is an issue.

MR PHILLIPS: It is an issue, that's right. Now, but there has always been public comment on it, and in a number of cases the significance was not the only issue that determined whether a property was listed or not. In the City of Sydney people would say, "If you list my property, I have been given a property valuation that will take, say, \$3 million off the value. Now, our business is funded by a bank loan, and the bank loan is secured against a mortgage on our property, and if the value of our property falls by this much we won't have a business." Those were the kind of exaggerated claims that were being put about, and a lot of them arose through if you like myths, ignorance, fear of the unknown, and there was a certain amount of

hysteria whipped up, possibly on both sides I suspect.

MR BYRON: Which is always unhelpful.

MR PHILLIPS: Which is unhelpful. I mean, the great myth for example - as anyone from the National Trust will tell you - is that if my property is on the National Trust I can't touch it. Not only is that not true now, it was never true. But it is a persistent myth to this day. So that is a non-statutory list. The same problem comes up, "If you list my property I won't be able to get insurance for it, because the insurance person tells me that you will make me put it back exactly the way it was if it burns down." That's not true either, and I don't think it has ever been true, but because of unknowns in the future these are the kinds of things if you like that may affect the price that you pay for a negotiated agreement. That is why I think we're very nervous about them, because if these are the public expectations or at least the private owner expectations of the price that somebody has to pay me in return for me agreeing - - -

MR BYRON: To induce you into willing compliance.

MR PHILLIPS: - - - to agree to the - - -

MR HINTON: An incentive payment.

MR PHILLIPS: Yes - then I am going to set a very high price on it, and therefore I will keep saying no.

MR BYRON: But if those expectations and perceptions are misplaced - and I agree they frequently are - then part of the negotiation process is to explain to the owner that that is not what the implication of this listing will be. "You will still be able to put a sun room on the back if you want to, et cetera."

MR PHILLIPS: Yes.

MR BYRON: "The reason your property is being listed is because of this, this and this. You will of course still be able to do X, Y and Z."

MR PHILLIPS: Yes.

MR BYRON: Now, I would suspect that talking through that with the owner actually will alleviate a lot of those perceptions and the hostility, because one of the things that seems to characterise a lot of private owners engaged in the heritage system at local significance level is an extraordinary amount of confusion and misunderstanding which has given rise to fear and in some cases hostility.

MR PHILLIPS: Yes.

MR BYRON: Now, that is very bad for good heritage outcomes, and it is bad for good public policy.

MR PHILLIPS: Yes, no question.

MR BYRON: People have talked a lot at this inquiry about the need to educate the public, but not only about the values of heritage conservation but to explain to them how the system works, what it does and what it doesn't do, the different tiers of - the people that we had in the hearings in Adelaide who had one of the old buildings in South Australia which they still live in, they said when it was classified by the National Trust in 1980, they said, "Terrific, they'll pay to fix the roof. We won't have to pay anything." But those people who have lived in the properties for six generations or whatever actually would like the statutory listing removed because they find that it has added absolutely nothing to the good conservation and management of the property and it has simply created headaches and roadblocks and unnecessary stress and bureaucracy and red tape. They wouldn't be so anxious to get out of the system if the system actually had a quid pro quo in it. We're talking about one exceptional case perhaps.

PROF MACKAY: I think that's probably a useful fulcrum, bearing in mind the time, for us to switch away from the conservation agreements and ask Duncan to just say a few words about some of the recommendations that are not in the draft report.

MR MARSHALL: I will be very brief, although that very matter that we were talking about there I suppose demonstrates how we think some of the good material in the draft report and indeed in our own initial submission can be picked up and made more of in the final report. At page 7 of our second submission, we identify, amongst a range of other issues, problems at the local government level which is a lift-out view of your draft report. We've just copied out from pages 152 and 172 of your own text a whole series of problems that you've identified at the local government level, including as the first dot point of that text from page 172, the imposition of unclear and uncertain restrictions on property owners, which is the very point that you were making.

What we would strongly encourage the final report to do is to pick up those sorts of comments which we've tried to identify for you and to bring them forward as recommendations for some sort of action because while we're in general happy with the way in which the Australian heritage system is working, we can identify a range of areas where improvements can be made, and these are the sorts of things that we've tried to do here. Now, I'd just like to pick up on a comment that took place in one of the earlier - - -

PROF MACKAY: Can I just interject and say I don't think this is one of those precious things that Commissioner Hinton mentioned earlier. I think this is very fundamental, that if there can be a better public sector policy providing better information to owners and prospective owners, it will make a huge difference to the efficiency of the system.

DR BYRON: That's a serious one, not a statement of the bleeding obvious.

MR MARSHALL: I'm actually happy to be precious because I've watched lots of government inquiries and reports come and go and if they aren't razor clear in their outcomes, it just gets lost in the archives. I appreciate the point about you having to, if you like, highlight your key recommendations and give prominence to the major thrust of your report and that's fine, but that can be done at the same time as picking up the raft of other measures that perhaps need to be recommended as part of the overall report.

Just one other comment by way of example that came up in earlier conversation, there was discussion about government funding and buckets of money and those sorts of things, whether people are arguing for a bigger bucket of money or whether we shouldn't argue for a bigger bucket of money; I'm very happy to argue for a bigger bucket of money, but one of the problems that you identify in your report is that there is very little transparency and accountability with regard to the funding provided for historic heritage in Australia. We've had this conversation before about trying to work out where the money is going and it is very hard, very hard indeed. Now, you've got some recommendations with regard to trying to tease out funding for specific aspects of historic heritage funding but our suggestion is that could be a much broader recommendation about getting a total snapshot of the sum of money being spent by governments on historic heritage in Australia because the current recommendations focus on government-owned properties, and from the community sector, they're interested in knowing how much money is being spent in a way that might assist them in their conservation activities, so that's another component of government activity. So that's just an example, but it's an important example because the accountability of the whole process depends on knowing how the government is travelling in terms of the money it devotes and the money it doesn't devote.

DR BYRON: Could I just add to that that it might be useful to see the proportion of the total heritage conservation expenditure that actually comes from government because again, you might find that - it would be interesting to know whether it's 20 per cent of the total effort that's going into it or whether it's 80 per cent.

MR MARSHALL: Yes.

DR BYRON: I suspect that there are an awful lot of places being beautifully conserved with no input from government whatsoever.

MR MARSHALL: Out of the private purse, yes, exactly. But insofar as we expect governments to pick up the market failures, deal with the market failures, deal with the problem children, if we don't actually have a clear idea about whether governments are spending 1 million, 5 million or 100 million dollars from year to year in these areas, then we don't have a way of telling how we're travelling in that particular aspect of the activity. That was all I wanted to say. We have identified a range of issues from your draft report which we think should be brought forward as recommendations. We have 70 recommendations of our own, most of which I'm not sure have been picked up. Some may just fall out because time passes by, but we think there's a strong body of recommendations there which could achieve - if picked up, recommended and taken forward, could substantially improve the overall operation of Australia's heritage system. That's our strong clear recommendation to you on that score. That's all we wish to say by way of introduction, I think, so your 20 questions or 50 questions.

DR BYRON: No, just one or two, I think. We've spent what seems like an extraordinary amount of time dealing with the issue that arises with involuntary listing of private property at local government level, but in fact that's not the sum total of our report. It probably gives rise to the most tension and contention, disputation and so on in the overall Australian heritage big picture, but it may not be the most urgent or the greatest potential contribution to improving heritage outcomes in total.

In terms of sort of standing back and looking, the challenges of heritage conservation in total or at large, if, for example, the Australian government or all state and territory governments and all or at least most local governments were to commit themselves to walking the talk - they all say, "Yes, we're very keen on heritage, we're going to be model owners of heritage places" - if every property that was in Commonwealth, state or local ownership that had been assessed under the Burra Charter as being significant was well managed, I submit that that would be a damn good start. I think there is an argument that could be made that governments should not impose on individual citizens requirements that they're not willing to impose on themselves, on their own agencies and subsidiaries.

MR MARSHALL: And in fact they can be exemplars, model citizens and - - -

DR BYRON: Yes, and demonstrate and also provide the basis for retention of skills, both of historical analysis and of - - -

MR MARSHALL: I don't think you'll get much argument from us on that point.

DR BYRON: But what we have at the moment is lots of examples from all around the country where local governments have said, "Yes, we are very, very interested in

heritage conservation," but in practice, being very cognisant of the limitations it will impose, in the sense of being able to flog off some land and get some money out of it, or in the commitment to good management and maintenance, they seem to be reluctant to walk the talk. Is there something that we could or should say or do with regard to heritage conservation for assets owned by the crown?

PROF MACKAY: The crown's role in leadership - and the need for that is self-evident - I think if we're talking the crown, in the sense of local government rather than state or national government who are increasingly better in managing their own heritage assets through EPBCs and through state processes, I think Tasmania and New South Wales give two examples at different stages of the process. In Tasmania, depending on what happens with the outcome of last year's review, there is a strong commitment towards division of state and local heritage management responsibilities, but part and parcel of that is a collaborative working through with local government and a resourcing that is to come from the state government to provide skills and, if necessary, financial resources to assist that.

I think you see an example of that further down the track, in the case of New South Wales, particularly with the regional heritage adviser system. That is primarily set up to provide advice to private owners who have to interface with local government, but by putting the heritage expertise in the regional and local levels, that has the collateral benefit of providing the skills and the understanding at local government that help it with its own heritage management. So it has got to be an incremental process. It's not going to happen overnight, and public sector budgetary processes being what they are, it's going to happen gradually. I think those two examples I guess point a direction rather than saying, "Here is the outcome."

DR BYRON: If those expenditures were clearly on budget, outside analysts and the public at large could see the state of X last year spent \$742 million on maintaining the heritage properties it owns and manages and, "Look at the results, aren't they terrific. Maybe next year it should be more," or some people would say, "That seemed like a lot of money for the three windmills and a lighthouse." So, yes, at the moment, as we said in the draft report, it's hard to tell how much is being spent, what it's being spent on and how much public benefit - - -

MR MARSHALL: If I could just reflect on EPBC, I mean, the Commonwealth has just put in place - after a very long gestation period - a series of new measures for Commonwealth heritage places. So those measures include heritage strategies for agencies which own or control places of heritage value, they've got to do surveys of their own properties to see where there are - heritage values in New South Wales has had section 170 registers which are very similar for a long time.

DR BYRON: But no other state has something similar.

MR MARSHALL: The third component is management planning has got to be undertaken for those places which are deemed to be of a certain heritage value. Now, I think the ACT is picking up some of these measures as well. Now, I wonder whether - I mean, it's early days for the Commonwealth system, and whether it's going to quite work in the way in which it's intended is yet to be seen. But in a way the option is open for the Productivity Commission for your inquiry to look at or look for potentially good practice, bundle all those things together and say, "Perhaps this should be the model for everybody." Perhaps this should be the mechanisms rolled out in all jurisdictions at all levels for dealing with heritage places and, as you have already recommended, tied into that recommendation about teasing out the sums of money which are actually being spent so that it's all more transparent and accountable. I don't know that we've yet got the ideal answer to everything.

I mean, you could add the notion that in the past, governments have had - at state government levels and at the Commonwealth government level - a certain heritage expertise in, if you like, the public works component of government operations. Now, some governments have let that wane and sent it off the private sector and it has not been replaced; other governments I think have retained that, although it may have changed slightly. Now, perhaps having public works heritage poor is another component of the freedom measures that perhaps needs to be available in all jurisdictions.

PROF MACKAY: There is an interesting section in the Department of Defence's heritage asset management strategy document which I would imagine has been provided to the commission as part of the defence submission and it states overtly - because heritage management is a new invention for many defence estate managements. It states overtly that, "Look, there are a series of reasons we have to do this. Yes, it is government policy, yes, we're a hierarchical organisation and we're telling you you have to do it." But it then says, "Look, it's actually good asset management of itself," and concludes by saying, "It's good business for defence because when we look after and celebrate our heritage it has a direct benefit in terms of morale." That's not a bad model that could be applied all across the Australian public sector.

MR PHILLIPS: Could I also add that there are exemplar programs in some states, for example, in New South Wales there's the state government stonework program which sources stone, trains masons, works on both public and private properties. So it is actually making a genuine contribution, and that is an exemplar that can be picked up and used in other places.

DR BYRON: Tony?

MR HINTON: Thanks, Neil. A lot of my questions have been picked up already in our rolling exchanges, to coin a phrase. But I did have a couple of questions that

were quite specific matters that came out of your submission. Page 8 is my first one, it's the concept of subsidiarity. You expressed concern that the concept of subsidiarity if applied in some ways could actually endanger an integrated approach to heritage and this problem is not identified or addressed. Can you elaborate for me what your concern is here? How is the concept of subsidiarity - in what circumstances would it have that effect?

MR MARSHALL: I think what we're partly reflecting on is the role out of the new Commonwealth heritage system which has this national heritage focus. A sort of crude reading of the way in which the COAG agreement has divided up the world with national government looking after national heritage, state government looking after state heritage, and local government looking after local heritage. In a particular place you might actually find that there are values at all of those levels. So, for example, old Parliament House has undoubtedly national heritage value. It is also significant to the state local community of the ACT in a whole variety of ways. What you don't want to end up with though, particularly picking up on the idea of VCAs and listing is a sort of division of the one place into its tranches. So we still want to manage the whole place. We still want to manage all the values together. We don't want the Commonwealth just being interested in the national heritage values and having a VCA which deals with just the national values and then, you know, a state level coming in and dealing with just the state values. I mean, it would just be a nightmare, and I'm sure you don't intend that.

DR BYRON: Precisely.

MR MARSHALL: But, I mean, I think it is possible to look at the way in which heritage is operating. I don't think people have sorted out the way in which all of this is going to work.

MR HINTON: Well, I think it's useful that you flag the potential for that to occur. I would hope that commonsense would prevail and that extreme circumstance is not the outcome.

PROF MACKAY: I think this actually harks back to one of the recommendations in our initial submission and the previous ICOMOS presentation that the new national heritage system in the way it sets up the roles of Commonwealth, state and local government has a good model, but absent a lot of the building blocks, such as the agreements about delegation between Commonwealth and state. You do in fact expose places to exactly that sort of confusion. The Port Arthur historic site, on the national heritage list - therefore subject to a whole series of section 15B controls under the national legislation - is concurrently subject to a whole lot of state heritage controls and they're not necessarily working in alignment because there is no - - -

DR BYRON: Conservation agreement - - -

PROF MACKAY: - - - alignment between the practice of the Commonwealth and state governments as was envisaged in all of the lead-up to reading speeches and the like with the new Commonwealth heritage system. I think that's a good example of a strong ICOMOS recommendation in our initial submission that really is not carried through. We would like to see that in the final report.

DR BYRON: I was just going to say, you don't have to answer but having raised the issue of the bilateral, would it be unfair to say that places like Port Arthur are no more secure in their legal protection than they were two years ago?

PROF MACKAY: I think in the case of Port Arthur it is very much more secure. Look, I don't want to delve into it but I'm a consultant to the Port Arthur historic site, with another hat on, but I think it is healthy to have the section 15B controls. I think it is unhelpful and inefficient to have duplication and inconsistency between those controls instead of state controls.

DR BYRON: Thanks very much.

MR HINTON: Well, at the risk of also taking paragraphs out of your submission, move to page 9. Heritage Controls Over Places Not Listed is the heading. You suggest that we haven't appreciated the reasons why such general provisions have been included in planning schemes in the first place. Can you explain to me what the reasons are to have in planning schemes non heritage listed places?

PROF MACKAY: I could perhaps explain it best, commissioner, by reference to a simple example.

MR HINTON: Please.

PROF MACKAY: The vista of Parliament House from the War Memorial: the War Memorial might be a listed site, Old Parliament House might be a listed site, but if that vista in between were not listed you may nevertheless want to provide an opportunity to make development consent or change management decisions in a planning or heritage statutory context, because the setting is part of the place. Now, that is a very dramatic example. At the state level, as recently as this week I've been involved in a matter in Sydney with Henry Parkes' house, which is at Balmain, where a lot of the constitutional debates took place, and Parkes' diary talks about looking out of the house at the city. The issue before the local council for that place relates to a development on an adjacent site not part of the listed site but which, if approved, would adversely affect a very important part of the associational values of Sir Henry Parkes' house. So it is necessary and desirable to be able to give effect to controls that may not apply only to the listed place.

MR MARSHALL: Ideally, perhaps, you would be able to be specific in all cases about the values involved, and one of the comments I was going to make was that I think because of the evolving nature of heritage and the fact that these provisions perhaps came into play before local government areas actually had heritage surveys and heritage registers, what you are seeing is in some ways the evolution of the heritage system. Now, what I would be careful about is that while some places may well have ended up with heritage registers as the result of surveys, I'm not sure that that provision has necessarily lost some value, as Richard has just outlined. So it had an evolutionary quality to it, an evolutionary role, which perhaps has been replaced by the LEP or the heritage register or whatever it is. But maybe there is a continuing role for such provision, and it is just understanding those various dimensions to the use of such general controls that I think the report perhaps does not - - -

MR HINTON: Thank you for that elaboration. It is very useful, and it helped me a lot. But in some jurisdictions I presume - rightly or wrongly - that this issue is picked up in the use of the concept of taking account of nearby - - -

MR PHILLIPS: "Development in the vicinity of heritage items" is what it is called in New South Wales.

MR HINTON: Exactly. DA's that you take into account because you're near to or could impinge upon. So in some ways it is picked up through a land use process, though you've given a different example with regard to Parliament House and the War Memorial. But my second comment was, do you understand why we alluded to this issue, why we saw a problem with regard to the potential use of playing the heritage card in fact to pursue another objective?

MR PHILLIPS: Well, I think quite frankly that Australia ICOMOS is very concerned that heritage values be correctly assessed and not incorrectly assigned to places for other reasons. One of the core if you like aspects of our business is being very clear and definite about what constitutes cultural significance, and it is not uncommon as a consequence of the fact that heritage listing is one of the few generally applied across Australia if you like positive development controls in the way we were talking about at the very beginning - there are very few development controls on things like urban design or public face or whatever you like to call it, and heritage is sometimes taken to - - -

MR BYRON: As an implicit criticism of architects?

MR PHILLIPS: No, not at all. All I'm saying is that because there is if you like a heritage control in more or less every place, whereas there isn't an urban design control in more or less every place, that very often the heritage card is played where in fact urban amenity is the issue rather than heritage. I think we would - - -

MR BYRON: You share our concerns?

MR PHILLIPS: Yes, we would share your concerns: that is, of heritage being misused for the wrong purpose.

MR BYRON: Yes, it is a powerful card.

MR PHILLIPS: But I guess what we would also say is that seems to me to indicate that there is a growing role for the positive constraint. In other words, the encouragement by either regulation or incentive of positive development, positive controls on development, for the public benefit; because it actually does create better places.

MR MARSHALL: I mean, I think what your comments allude to is the need to raise the standard of heritage practice at the local government level, and insofar as there are a range of concerns identified about activities at the local government level, I would have thought a strong plank in your recommendations should have been that in the variety of ways in which it is operated, local government heritage expertise needs to be lifted up. There needs to be greater expertise, or sometimes it just may need to be applied in the first place.

MR PHILLIPS: Yes, any expertise.

MR BYRON: Well, that is the perfect segue into the question I had on page 7 about, "The commission stresses the need for adequate statements of significance and the use of comparative assessments, but there is no consequential recommendation." Now, we have firmly taken on board what ICOMOS and others have told us, which is that basically everything comes off the statement of significance. So it was something of a surprise to find out how many places on not only the local list but even some state lists don't have any statement of significance, and how many don't have anything that would be considered rigorous and substantial at all.

Now, that leads to a question, that if we have got statutory listing in place in some local government where there has never been any rigorous assessment, there has been no statement of significance, it was a crude drive-by, "Yes, yes, no, no, yes," should we make a consequential recommendation that these local environment plans should be immediately reassessed and done properly, in the sense that if you can't do it well, rigorously, professionally, thoroughly, to everybody's agreed standards, then we have concerns about that.

But there is a Part B question to that: is that, having greatly enjoyed a visit to Burra a couple of years ago, I could understand very clearly how workshopping heritage significance in that environment surrounded by fascinating and significant relics and so on, you end up with a very thorough, exceptionally good system, which is sort of a

gold standard internationally now. But we've got local governments that don't have the skills or the resources or perhaps even the information to do the thorough, rigorous assessment that ICOMOS would have hoped to see. Is there any case for having a - I don't want to say watered down, but a less expensive and less complicated assessment if the object that we're looking at is Mr and Mrs Smith's two-bedroom fibro house in the suburbs rather than a national icon. Now, I don't have a position on this, but I simply seek your expert professional opinion. Is the process so Rolls Royce that there are some people who simply can't afford it and they'd be better off with a bicycle.

PROF MACKAY: Commissioner, I'll have a go at that if I may. I think the process firstly is an evolving one, and it has been evolving for 30 years, and paradoxically some of the listing information relating to some of our most important national sites is the most meagre that there is. But you are absolutely right about the issue of reasonableness and equity. Again I can speak with some knowledge of Tasmania, where there are a lot of places listed without a statement of significance or with one that is done in a particularly cursory manner. The upshot of that for the owner is that when they make an application to change the place, the team at Heritage Tasmania understandably rushes around to do a proper assessment and then says, "Well, no, we can't approve this because it is inconsistent with the values we've just identified." So a very important outcome of this process might be a clear recommendation to government at all times to have a consistent process, consistent thresholds and to apply them because at least the goalposts are clear for those who wish to kick. That is already there in the intergovernmental agreement on the environment. At the risk of wanting to access that bucket or indeed perhaps just a thimble of money, that is something that absolutely warrants increased funding right through to the local level.

I don't hold to the view that there is only the Rolls-Royce. I think there's a lot of room for improvement at the local level in just simply identifying that these are the attributes and values, these are the criteria that are met, this is the threshold at which those criteria are met, because that basic understanding of heritage values needs to be the platform on which any proposals for change or evaluation of those proposals is made. So again it's something that ICOMOS itself was not coming through strongly in the draft report to say, "Look, there is already a commitment at COAG level that this should be done." It is really important to resource doing it and get on with them because it will make a huge on-the-ground difference to both the consent agencies and the owners of listed places.

MR PHILLIPS: Could I just say a very quick word about Burra Charter. It's a process. In its simplest form the process is understand the place, understand why it's important, take into account the other factors that may impinge on what happens to the place and then make a decision about what you were going to do and how you carry that forward. That, if you like, is the Burra Charter process. It's actually the

place itself that determines how thorough and rigorous it has to be and how important it is. But there's no difficulty in principle in applying exactly the same process to something of local significance and, you know, at a very sort of affordable cost. Certainly there is, I guess, a concern that to adopt the Burra Charter process, as it's kind of properly understood - there's another heritage myth for you - involves a Rolls-Royce document that kind of trips you up as you - well, serves to prop the door open. That's not necessarily the case. It should be quite possible - it is the same process to produce an intellectually rigorous report for any place of any kind of any significance.

MR MARSHALL: If I could just tag on to that comment, I mean, you could extend your question about Rolls-Royce versus Holden processes to conservation management planning. There has been within the profession some discussion about - I mean, a criticism has been that conservation management planning is a very expensive process. You produce the doorstep reports, 15 kilo CMPs or whatever at great costs and, you know, how could anybody possibly afford to do these sorts of reports. But the discussion within the profession is recognising that as a possible concern. Are there better ways that we can use our Burra Charter methodology to produce adequate conservation management plans for places which don't involve vast expense and chopping down lots of trees.

Now, part of the problem is that I think Australia ICOMOS would be quite interested to pursue that issue but there is currently no bucket of money available to it to apply for grant funding to undertake a bit of research to actually develop some multiples of whether that's going to work or not, to look at the implications. Ideally the Commonwealth might pick that up as a suggestion but it doesn't seem in a position to advance those methodological questions without some external encouragement.

MR PHILLIPS: Can I also suggest that one example of that is the New South Wales heritage Council's conservation management strategies which they're starting to develop as an alternative to the CMP and that's something that you're finding out about. That's particularly useful in a place such as Millers Point where there's a lot of similarity between properties and effectively you can come up with a general manual and then just a few paragraphs at the end for why this particular place - what the particular values are.

MR MARSHALL: The ACT I believe is developing or looking at developing guidelines which are of a Burra Charter conservation management plan quality which have a broader application without having to go to specific conservation management planning for every place.

DR BYRON: There are a number of other things I'd like to talk to you about but in view of the time and your time constraints, I would just like to conclude by saying

that I would like to go on record as saying that we acknowledge and greatly respect the very high quality, expert input that you have provided as volunteers, both the expertise and the fact that it has been provided on a voluntary basis at your own expense, we're particularly grateful for that. Without input such as yours we might not have got very far at all. We may not have got to the right place yet but you've increased the probability of us getting there. So thank you very much.

MR MACKAY: Commissioners, thank you. In closing, we would simply say if we had one thing to say to you and one thing only, it would be to plead with you to include more options about the use of voluntary conservation agreements in your final report, and thank you very much for your time.

DR BYRON: Thank you, and I hope you don't miss your plane. I think we will adjourn now and resume at 1.30. Thank you, ladies and gentlemen.

(Luncheon adjournment)

DR BYRON: Thank you very much, ladies and gentlemen. If we can resume with the public inquiry. We now have Mr John Mathias from Save Braidwood. John, if you would like to come and take a seat near a microphone. If you would care to introduce yourself and then take us through the main points you wanted to make about your submission. Thanks for the document that we already received.

MR MATHIAS: Thank you very much. I'm John Mathias, and your time is valuable so I won't waste it by speaking off the cuff. So I shall read what I've written, if I may. Thank you for this opportunity to provide comment on the draft report produced by the Productivity Commission into the conservation of Australia's heritage. I represent a community group called Save Braidwood. We now number more than 500 members and about 85 per cent of our members have a residential address in Braidwood.

Braidwood is a small community, about a thousand in the town. So Save Braidwood represents a cross-section of that community and we fully support the recommendations made in the Productivity Commission's draft report. Our experience of the conservation of heritage has been acquired on a needs to know basis from our involvement in the proposal by the New South Wales Heritage Council to list Braidwood and the farmland that surrounds it on the State Heritage Register. This listing was proposed to some of the people of Braidwood early in 2005 when a closing date for comment was given that allowed only a few weeks for the community to consider the ramifications of a first time in Australia proposal using a first time process and with no consideration or plan to consider the economic or social effects of listing it on the town's viability or sustainability.

Following the fourth and last public information session, it took less than 36 hours for almost 50 people to become so concerned about the lack of understanding shown by the Heritage Office that they attended a meeting planned for a few. It is precisely this apparent complete lack of understanding or willingness to learn on behalf of the heritage zealots that has caused the difficulties Braidwood has faced in the last 11 months. It is a credit to the determination of the people of Braidwood to have a say in their future that a decision about the listing of Braidwood has not yet been reached.

Save Braidwood believes that what is happening at Braidwood is of particular relevance to the people of many small country towns in Australia, as it is the first time in Australia that a town and its setting has been proposed for listing. So it is also of great significance to the Productivity Commission in its deliberations on how best to manage Australia's heritage. I propose to comment on a number of the draft recommendations that we see is of particular relevance to Braidwood and describe what has happened to Braidwood and what might have happened if the Productivity Commission's recommendations had already been in place. I believe this will clearly illustrate the flaws in the current process and the importance of the states adopting

the recommendations of this Productivity Commission.

I will deal with recommendation 8.1 first, as we believe it is of immense significance and is most strongly supported by Save Braidwood. Recommendation 8.1 deals with the introduction of individual negotiated conservation agreements for privately-owned buildings of heritage significance. Like most of the owners of buildings proposed for listing in Braidwood, my wife and I were given only a few weeks to consider the proposal that Braidwood and its surrounds be listed on the State Heritage Register.

We were particularly concerned when we received a copy of the nomination documents and realised that the Heritage Council had not only agreed to consider an interim heritage order to stop two developments - one of them an assisted aged care facility, desperately needed by the town - but had also agreed to seek an environmental protection zone of unidentified size around the entire town and its surrounds after the listing was in place. Some Braidwood owners were not notified; in fact several had still not been notified of the proposals nine months later. And individual negotiated agreement would at the very least meant each of us would have been approached about the matter and some sort of dialogue would have been initiated.

The New South Wales Heritage Office service guarantee requires that they consult with the community, but there is no mechanism which ensures that such consultation actually takes place, nor is there a requirement that the heritage restrictions placed on the future alteration, development or use of the property be clearly identified or recorded anywhere. Under the current system, many owners find themselves subject to the whims of the heritage zealot when they seek development approval at some time in the future.

Individual negotiated agreements would require consultation and of necessity be recorded and so eliminate many of these problems. Everyone has different views and different needs, and negotiated agreements would have a better chance of meeting those. For instance, some farmers may wish to be able to cut off a block to live on when they retire and leave the farm to their child or children, but fear that listing will prevent such subdivision. An individual negotiated agreement could put that fear to rest and each succeeding generation could negotiate similar agreements. This would overcome the fear the Heritage Office holds for possible unsympathetic future development but provide assurance to the farmer of being able to provide for the family.

A purpose-built building such as a post office, if listed, may find it difficult to get a change of use approved at some time in the future as the Heritage Act gives the Heritage Office the power to prevent such changes. A negotiated agreement with a caveat for change of use may be able to eliminate such concerns for the life of the

current owner but still see the building preserved. It is difficult to imagine the Heritage Office approaching the owners of 30-year-old brick veneers in Braidwood seeking an individual conservation agreement, but they found it easy to propose a blanket listing that includes those buildings and the other 70 per cent of buildings in Braidwood that have no heritage significance at all.

Individual negotiated agreements would ensure that state Heritage Offices be far more rigorous in the application of the old heritage significance tag. The Productivity Commission has wisely suggested in the event of recalcitrant owners of items of particular heritage significance, the state can compulsorily acquire with compensation, as it does for freeways or other activities that are for the greater good of the community. Save Braidwood believes that individual negotiated agreements are a fair and equitable way of preserving the rights of owners and conserving our heritage for the community, as well as sharing the cost of doing so.

Submission 1A to the Productivity Commission, unsigned but attributed to the National Trust, clearly illustrates the flimsy grasp of reality many of our heritage zealots appear to have, and this has made the task of communicating with them exceedingly difficult. The author of the National Trust submission claims that maintenance to listed properties costs no more than maintenance to non-listed properties. I am truly amazed that such a claim could be made by anyone associated with heritage buildings. For example, old cedar windows can't be replaced by aluminium windows, and cedar windows certainly cost more than their aluminium equivalent. The guttering used on many old buildings is often of the ogee profile which usually costs about twice the replacement cost of more modern gutter profiles.

The New South Wales Heritage Office proposal for Braidwood's DCP required only Australian hardwood weatherboards be used in repairing old weatherboard homes in Braidwood. It specifically excludes the cheaper, more readily available farmed softwood weatherboards. It will be interesting to hear the view of environmentalists and those opposed to logging our native forests of this requirement, given that weatherboards are normally painted which means that only their profile is important.

The National Trust submission also showed a surprising lack of understanding about the so-called public consultation undertaken by the New South Wales Heritage Office at Braidwood. Four meetings were arranged, each for 25 people, and bookings were required, but only those whose property was involved were informed. At the time, these meetings were called public information sessions by the Heritage Office, but later referred to as public consultation. Additional public meetings were not undertaken until some months after the Heritage Office original proposed closing date for comments had passed and were arranged by a private marketing consultancy engaged by the Heritage Office to sell the idea of listing to Braidwood.

The newsletter, Braidwood Matters, was also prepared by the same consultancy and probably cost significantly more than the measly \$20,000 the Heritage Office offered the entire town of more than 400 buildings as the basis of a grant system. This offer and the newsletter and the arranged meetings were only made after the Heritage Office realised there was significant resistance to the listing proposal. As part of the judgment on whether or not there was public consultation in Braidwood, it's worthy of note that in nine months not one change was made to the model initially proposed by the Heritage Office.

Michael Collins, chair of the Heritage Council, and Reece McDougall, director of the Heritage Office, met with Save Braidwood and admitted that they thought they were coming to a town that wanted to be listed. This goes partway to explaining the apparent lack of consideration shown to the Braidwood community. It is unfortunate that the National Trust also appears to have failed to consider the issue in any depth and apparently cannot get past the warm, fuzzy feeling that is immediately felt when the preservation of some heritage item is proposed. This quite startling National Trust submission also demonstrated surprising lack of sensitivity in criticising the somewhat emotional response of Save Braidwood to the proposal; a proposal that they had but a few weeks to respond to; a proposal that is arguably the most significant and far-reaching proposal ever to threaten the town. There had been no consultation prior to that announcement.

The Productivity Commission recommendation that requires face-to-face discussion with owners - in this case the people of Braidwood - would have avoided much of the distress associated with the Heritage Office approach. The National Trust has also accused Save Braidwood in submission 180 again of misinterpretation of the Heritage Act regulations. Save Braidwood has been forced to carefully study the regulations, and although the Heritage Office may not have chosen to apply them in some cases, it does not alter the fact that the Heritage Act gives the minister and hence the Heritage Office an immense power. In fact, it has been precisely this sort of condescending and arrogant attitude exhibited by the New South Wales Heritage Office and now by the author of the National Trust submission that has created the furore in Braidwood that has lasted 11 months, and still there is no apparent change in attitude from the Heritage Office.

Save Braidwood is not alone in this criticism. The RCCC strongly and extensively criticised the approach of the New South Wales Heritage Office to the listing of Braidwood in the RCCC's study into the impacts of listing on Braidwood. The individual negotiated agreements proposed by the Productivity Commission could be expected to eliminate many of these problems. Individual negotiated agreements would be able to take into account possible costs of repairing a heritage building in a fashion that would be in sympathy with its heritage. For example, 50 per cent of the cost of replacing a wooden window could be met by a heritage grant, previously agreed to in the negotiated agreement. 50 per cent of the cost of

putting ogee guttering on, instead of plain guttering, could be met by a heritage grant agreed to in a negotiated agreement.

Recommendation 3.1 deals with the introduction at all levels of government of measures for collecting and collating data on the conservation of Australia's historic heritage places. Save Braidwood strongly supports this recommendation, particularly if it includes funds expended by government instrumentalities to privately-owned items. It is most important that the people of Australia know how much it is costing them to preserve their heritage. This sort of transparency should encourage more rigorous consideration of the use of the term "of heritage significance" and the more careful use of taxpayers' money as it puts the taxpayers in a position to comment on how much or how little is being spent on preserving Australia's heritage; a view they are entitled to express if they are paying the bill.

Recommendation 7.1, 2 and 3 deal with the phasing out of the Register of the National Estate. Save Braidwood supports this initiative and believes that the Register of the National Estate has outlived its usefulness and does not fit into the three-tiered approach to managing Australia's heritage that is now in place. Recommendation 7.4 and 7.5 deal with the need for identification and reporting of the cost of maintaining government-owned statutory listed buildings. Save Braidwood supports the concept of identifying the cost of maintaining Australia's heritage as there may come a time when the heritage-related costs of maintaining an item will outweigh its heritage significance.

At a local council meeting in Braidwood recently a supporter of the listing of Braidwood and its environs informed the council that Braidwood must be listed "at all costs". One of the councillors responded with, "At what cost to you, Mr Whatever?" As the pro listing supporter lives outside the area proposed for listing, the personal cost would be nil, but this is only a reflection of the attitude already displayed by the New South Wales Heritage Office towards the home owners of Braidwood.

The Productivity Commission recommendation that heritage-related costs be identified would mean that more reasoned and more transparent decisions could be made about the retention of items identified as of heritage significance. We may begin to see some form of prioritisation of the level of significance and then be able to make decisions that would see the retention of the more significant at the expense of the less significant unless individual conservation agreements can be successfully negotiated.

Recommendations 9.1 through to 9.5 all continue to deal with the use of conservation agreements with the owners of non-government-owned items and the need for compulsory acquisition. Save Braidwood strongly supports these recommendations for the reasons I've outlined earlier, but I'll summarise again.

Individual agreements would prevent the development of a conservation plan at the Heritage Office in Sydney without the input of the owners of the item, as happens to Braidwood. Compulsory acquisition as a last resort makes clear the government's position and should ensure meaningful talks take place, and should also ensure the preservation of those places where the owner has no reason or no resources to preserve an item.

Individual agreements and their potential cost would require the listing authority to be more rigorous in their assessment of an item and so avoid the blanket listing approach proposed for Braidwood where items of no heritage significance are caught up in the indiscriminately thrown heritage net. The heritage conservation funding arrangements supporting heritage buildings would be less subject to annual variation as a result of changes in emphasis on who is eligible for grants as the ongoing funding arrangements would form part of the negotiated agreement.

Recommendation 9.6 deals with alterations to items already listed and proposes negotiations for a new conservation agreement at that time. Save Braidwood strongly supports this recommendation as it's been our experience that quite trivial alterations are often the source of difficulties with the listing authority and can lead to long, frustrating and sometimes costly delays. It is likely, however, that interpretation of the term "substantive development" may be problematic in this case.

Recommendations 9.7 and 9.8 deal with the amendment of state and territory planning legislation and requirements to further consolidate the three-tiered approach to preserving Australia's heritage. Save Braidwood strongly supports this delineation of responsibility which sees local community government looking after its locally significant heritage. This needs to be accompanied by a similar redistribution of funding to local councils to pay for the conservation of local heritage. The State Heritage body would still be the source of professional advice on heritage matters, but the local council with a closer, broader understanding of the full set of challenges a community faces is better placed to manage the ongoing viability and sustainability of the town, as well as respecting and managing its heritage.

The need for this approach is well illustrated by the restrictions the New South Wales Heritage Office have proposed for Braidwood in the DCP currently being prepared. The Heritage Office proposed controls would restrict the development of tourism-related infrastructure needed to meet the growth in tourism predicted by the New South Wales Heritage Office as a result of listing, so negating the whole process and clearly demonstrating the difficulties of allowing a single-issue government body too much input into local government and the complex problem of managing a small country town sustainably, and I gave one of you gentlemen my copy of the last page.

This deal is also supported by the Minister for Planning in New South Wales,

Minister Sartor, who made it quite clear at a recent meeting with the people of Braidwood that the New South Wales government has neither the desire nor the funding to impose a second layer of control over the small country towns of New South Wales. The Productivity Commission draft report also supports that notion, and the federal government's three-tiered approach to the management of Australia's heritage makes it very clear that the local council should manage the local heritage and that private owners of heritage items deserve the right to be involved in the negotiations as to how best to preserve their item.

In closing, one aspect of this debacle in Braidwood I have not dealt with at length is the possibly irreparable damage to the cause of heritage being done by the New South Wales Heritage Office by their lack of real effective and participative consultation in Braidwood. Their approach has unnecessarily created a large group of disgruntled people whose view of heritage is now of something unpleasant. For this reason alone it would be worthwhile establishing a new, more equitable, more inclusive process for ensuring that all Australians feel an involvement and ownership of the process that is used to conserve our heritage, and so willingly give of their time and resources to assist in the preservation of something they see as important.

The crucial advantages Save Braidwood sees in the draft Productivity Commission report into the preservation of Australia's heritage places are:

- (1) the proposed recommendations would ensure a more transparent and hence less threatening process to owners as their agreement is essential;
- (2) the proposed recommendations would force the community at large to face up to the costs of listing and not just see them passed on to hapless owners;
- (3) the proposed recommendations might remove the huge list of dubiously listed items by requiring a proper assessment using objective guidelines. After all, how many sewer vents do we need to preserve?

Thank you for this opportunity, and we commend you on the well-presented and carefully reasoned draft report. Thank you for your time.

DR BYRON: Thank you, Mr Mathias. First a question of clarification. You referred to the RCCC.

MR MATHIAS: R triple C, yes. I always have trouble with this. It's the Rural Communities Consultation Council - Consultative Council.

DR BYRON: I just wasn't familiar with that one at all.

MR MATHIAS: They exist as a part of the Premier's Department in Orange, and

their function is to help small country towns like Braidwood in struggles with a larger bureaucracy in Sydney, and it was they who agreed to undertake that impact study to see what impact it might have on Braidwood's listing.

DR BYRON: So what's the state of the proposal?

MR MATHIAS: The state of the proposal now is that the local council is working on a development control plan. Minister Sartor said that they could have another month to do that, and then it depends on which side of the fence you sit. We hope that Minister Sartor will be happy that the heritage of Braidwood can be largely looked after by the DCP, and so the involvement of the Heritage Office should not be as great as the blanket listing originally proposed.

DR BYRON: But what we have said, in effect, in the draft report is that local councils are, under the current system, responsible for local planner controls, development control plans. That is what councillors - that's one of the things they're elected to do and they're accountable for the outcomes to the people who voted for them. We didn't see a case for having a state government department based in Sydney being a de facto overarching planning body, especially, in your terms, I think you said they were single-issue or one-dimensional, really.

MR MATHIAS: Before you leave the DCP, then, that's one of the difficulties. I mean, you hooked onto one of the difficulties that many people who are involved in planning face, and that is you are perfectly correct - the DCP should be owned and managed and developed by the local council. We have a DCP that was written in Sydney and they're given to the local council and said, "Here's your draft DCP," and the council now had to try and make terms with that, and yet that draft DCP was written by people, by a one-dimensional government organisation.

DR BYRON: Now, you used perhaps the rather inflammatory term, the "indiscriminately thrown heritage net". I'm sure the people from the State Heritage Office would argue very, very strongly that it's not indiscriminately thrown, that they have a rigorous process of assessment. I assume you'd contest that?

MR MATHIAS: No, I would agree that they believe they have a rigorous process, but a process that then allows a net to be thrown over an area that contains 75 per cent of buildings that are of no immediate significance, I think, was a very poorly aimed net.

DR BYRON: In the course of these public meetings, consultation, et cetera, has it been explained clearly to the people who attended what the Heritage Office would or would not want to see, what they would approve or not approve, if they became the sort of de facto local planning authority?

MR MATHIAS: No. The third of those meetings that they held they held with the Rural 1A people, and to the Rural 1A people it was really important to know what the exemptions were. At that meeting, Reece McDougall said, "You will know what the exemptions are before the proposal for listing goes to the next stage, goes to the minister." We still do not know what those exemptions are. We're feeding a lot of information, a lot of questions, and the replies that come back are the warm, fuzzy, heartwarming stuff, but nothing specific, nothing you can hang your hat on.

MR HINTON: Mr Mathias, thank you very much for your submission from Save Braidwood Incorporated, and also for your presentation here this afternoon. We know attendance is not costless, so we appreciate your time and effort. I only had one query, because your presentation was very detailed and very substantive, so thank you. My only question was, you said before the proposal goes to the minister. When is that going to occur, do you know?

MR MATHIAS: The proposal is before the minister now. At the December meeting of the Heritage Council, we went and we made a presentation to the Heritage Council. Within one and a half hours of that, they had lunch and also considered our proposal and then recommended to the minister that Braidwood and its setting be listed. Since then, we've met with Minister Sartor, and Minister Sartor has been to Braidwood, and he has said, as you said, that he doesn't want multiple levels of bureaucracy on any of the country towns, like Braidwood. He has said that there are many little country towns like Braidwood, and he doesn't want 100 of them all on his desk being proposed for listing. So that, whatever he does in Braidwood, he has to get it right, because it's going to set a precedent. Then he said to the council, "Go away and work on your DCP." He said, "I'm not going to rush into this." He said, "There needs to be some time," but he said, "There doesn't need to be a lot of time." Then two weeks ago he said that the local council had another month.

The other thing he said in that was would the local landowners be happy with individual negotiated agreements for the land, that Rural 1A land that surrounds Braidwood, and we believe that the Rural 1A landowners would be happy with that, because, as I mentioned, they could negotiate the little things that are important to them. Like, for us, it would mean we would like to negotiate in ours for permission at some time in the future to put up a guest cottage somewhere on our few acres.

MR HINTON: And the aged-persons facility - is that still on hold as well, or has it been blocked forever?

MR MATHIAS: We believe that it will be all right, but our understanding of the Heritage Act is not as good as somebody who's worked with it all their lives, so I wouldn't be putting a lot of money on the aged-care facility going through. The Heritage Office went on record as saying that they didn't want either the aged-care facility or the housing development. They've shown no indication that they've

changed their mind.

DR BYRON: Somebody pointed out to us once before that we tended not to be really harsh on people who were agreeing with us, and so, for balance, I should give you a hard time.

MR MATHIAS: Yes, by all means.

DR BYRON: But I am having some difficulty thinking about how to give you a hard time. Help me, Tony. Well, I'm sure something will occur to me later, but - - -

MR MATHIAS: The advice that was given to me before I left was that if I was approached by the press afterwards, I was to say that Save Braidwood are feeling much more comfortable by the degree of pragmatism that both the Productivity Commission and Minister Sartor are bringing to this heritage argument. So thank you very much.

DR BYRON: Yes, well, as you know, we're not directly involved in negotiating specific disputes anywhere in Australia and whatever we say in our final report may or may not have any influence on your specific issues, but yes, we're trying to look for a good public policy process. Thanks very much for your coming.

MR MATHIAS: Thank you for giving me the time.

DR BYRON: Mr Kershaw? Thanks very much, Mr Kershaw. Welcome. Thanks for coming.

MR KERSHAW: It's a pleasure. My name's Jack Kershaw. I'm, if you like, a heritage campaign survivor, warrior, or whatever you like to use the term - - -

DR BYRON: Veteran?

MR KERSHAW: Veteran. The thrust of my views on what you're proposing is that the proposed negotiated conservation agreements be tempered by public reaction to change of a place and that the public be involved directly to approve up the proposed change, because, after all, places remain in situ in a state of equilibrium until they are changed or proposed to be changed. When that proposal occurs or if the place is going to deteriorate, then I think the public's reaction to that change should be part of the process in a direct way, not through a heavily-burgeoning bureaucracy of so-called heritage planning.

My background is, in 1977, I started the Save the Regent campaign in Brisbane with several friends, which grew to have 40,000 supporters, became a major issue for that town, in an environment with no heritage legislation whatsoever. The Heritage Commission had commenced its listing, I think in 75, but this particular theatre was not listed; and it was a major element in the town with a large public profile, so to speak, in contrast with, say, another place which might be more private, like a house or a suburban precinct. The issue was - briefly, I'll just give you the background of that - that the land was held by the estate of Mayne who had passed this on to the University of Queensland, which was governed by the University of Queensland Act. The lease of the site, the 50-year lease had expired and the buildings would revert to the landowner. The building consisted of a major picture palace style theatre, similar to the State in Sydney and the Regent in Melbourne, and was the only one that Brisbane had of that scale.

We felt that it was fair game for a public campaign to preserve it and put it to good use, compared to that which the trustees of the estate seemed to be following, and that was to simply go with Hoyts and convert it into four mere cinemas. It became a very high-profile campaign. We had many benefits, including a free concert by Warren Mitchell in The Thoughts of Chairman Alf. We've costed alternatives, we had alternative bids for the lease, we went very close to winning without any legislation just through simple hard work and demonstration of public support; which nearly got through to the premier, Joh Bjelke-Petersen, whose director of his party trod the boards, so to speak, as an actor and took part in a rather galling Final Night at the Regent Concert, looked up into the theatre and said, "What the hell are we knocking this building down for?" I think the premier was also looking to increase his heritage standing after having destroyed the magnificent Bellevue Hotel, of which I was also involved in trying to save.

So although there was no heritage legislation - we sort of rued that there wasn't any - but frankly, today, in today's environment, I long for those street fighting days when it was just the public with their point of view and their proven support, up against the other side, together with financial proposals as alternatives. I think this applies to many heritage places; and I notice your brief is essentially built places in Australia.

The next thing I was involved in - not in a similar way - was as an architect on the Old Sydney Inn in The Rocks in Sydney, designing the conversion of two 1920s warehouses into a hotel now called, I think the Old Sydney Park Royal. I came to Canberra to work on New Parliament House, and got involved with an organisation called Canberra Community Action on Acton; and I guess it was in my blood. We were trying to save the Royal Canberra Hospital complex on Acton Peninsula in the city, and that commenced in 1992 and we still exist today. In that case, we also put forward, through lots and lots of hard work and our own money from fundraising, alternative proposals fully costed for the alternative use of the buildings and the complex. I'd like to give you this document in due course which shows the sort of work we did.

What this is all sort of leading to is that, as I say in my brief submission too, when the submissions were called for, if a thing is worth fighting for, people will fight for it. That's not to denigrate the good, learned and academic work of heritage experts. But in my view - in our view - a lot of the legislation that goes with this is proving to have feet of clay, you know; as an example, the minister's veto in the case of the Australian Heritage Commission. If there's no prudent alternative that can be found, then the place can be demolished or changed, or whatever, despite the best efforts and proven work of the public with alternatives and a strong desire to keep the place as part of their environment - something that they look at and use regularly.

So after the late 70s, of course legislation came in and expanded, and in my view - and in some of my friends and colleagues here - heritage planning has become extremely turgid and bogged down, stupid in many cases, under-resourced, almost in some cases unwanted in planning departments, and misunderstood. My suggestion is that, whereas listing a place is desirable, the status of that listing should be virtually zero in terms of the legislation to protect it, and simply an expert and learned statement or citation as to the significance of the place available as a resource, not a control, to people to use when they learn of a change of a place, to refer to; and as an ongoing resource, the people who drafted the listing or citation to consult with those people on both sides - be it the proponent for change or the objectors to change. A difference, in other words, from bureaucratic control to resourceful help for people, the public - the community if you like - who after all are the ones who desire or have driven the idea of heritage.

So I'm saying that the concept of listing a place or citing it should be kept on balance, but with no legislative preservation status. It sounds radical, but when a place is due to be changed or is deteriorating, that resource, that listing resource be available to all parties involved, and that in the next stage of the process, if it can be demonstrated that the objection or the comment to the contrary to the change is clearly strong, organised, expertly based, transparent, above board, and with probity - carried out with probity - that determine the concept of preservation and thereupon the negotiated conservation agreement can be entered into and proceeded with.

If you like, this is a counter to what may have been perceived as a sort of owner's veto or owner's free kick, that might be implied in the concept of negotiated conservation agreement, as mentioned in your draft report - as listed in your draft report. In addition to the objection or comments being complete and above board, they should also provide, in my view, economic alternatives to what is proposed. In other words, a heritage based or non-demolition based proposal, fully costed for the place. This would mean a curtailment of heritage planning as we know it now, and getting back to a more realistic situation where the public was involved. In the case of change, the notification of the change would have to be as clear and as transparent and as timely as possible and that aspect could be incumbent in legislation and this, of course, would also be incumbent upon government to do so with their own properties. I don't necessarily think that a place has to have pure heritage value to be so listed, as I referred to before, thus giving those people that want to list buildings or cite them or carry out studies on them a broad scope.

For instance, the complex at the Royal Canberra Hospital was on the interim list of the ACT Heritage Council, but it had not progressed fully to the national register. But it was clearly regarded as a built environment of great value to the community with many, many references back to the actual planning of Canberra and which was a building different to the proposed hospital on that site. So what I'm saying is that the listing or citing of a place its validity needs to be tested against the public's desire to actually keep it and actually preserve it and that that response from the public needs to be in a certain form to establish its bona fides. Then if there are no such objections coming, then the change to the place can proceed. It's simple. If the people are interested in the place or they want it preserved, they will be given the opportunity to comment and if they don't comment or don't feel the need, well, the change can proceed. Owners of properties will be aware of the listing obviously, they will take it as a positive or whatever they want to do, but that eventually the public's involvement will demonstrate to that person or persons, those owners, be they government or private, where the public stands. The negotiated conservation agreement that might come out of that scenario in my view would have a sunset clause because Heritage perceptions and values do change over time, there's no two ways about it, and it's obviously very political and environments change and Australia as a young country has different perceptions of heritage at different times.

In terms of those people that might be able to object and establish their bona fides or give comment which could trigger this scenario I am thinking they would be of a public nature, that is outside these established decision-making process of heritage within government, even outside the establishment of, say, the National Trust. The National Trust, in my view, does wonderful work with its tours and it has its own lists and it does its best work when it actually puts its money where its mouth is and buys a property and runs it. That term "put your money where your mouth is" is one that's certainly been thrown at me in my colleagues in objecting to something and that's what we've attempted to do. We've always come up with fully costed, fully industry-based alternatives, as we did with the theatre in Brisbane where we actually put in an alternative lease for that theatre and the lack of sophistication, I think, in the city at the time - probably the state at the time, it's my home state - and the nerves that went with looking at an alternative use overwhelmed the decision-makers and we lost.

So a combination of the learned citing of a place and the bona fide objection or comment should be that which leads to preservation and hand in hand with that would be a negotiated conservation agreement with a sunset clause. I believe that would be a better, more real, democratic, productive and competitive methodology for the protection of built heritage in Australia.

DR BYRON: Thank you, Mr Kershaw. I understand now much better the written submission and where you're coming from and where it's going to, the plea for direct community input. I just want to check that I'm understanding properly if I paraphrase in saying instead of experts in public service et cetera deciding what's in the public interest and then acting on the public's behalf in order to protect the public's interest, you're basically saying grass roots public can (a) express themselves, indeed initiate action, if they feel strongly about it.

MR KERSHAW: And have some status.

DR BYRON: Yes, okay.

MR KERSHAW: If I could just clarify also, in terms of what I meant - you used the term "grass roots" that would not exclude an individual expert, say, outside the decision-making government decision - and in my written submission I referred to Prof John Mulvaney, who was a member of our organisation, because this site was chosen, misguidedly in our view, for the siting of a national museum that had been placed to go in a tract of land down the lake at Yarramundi Reach, when he unilaterally, if you like - and he's a bit like that himself - chose to seek the preservation of Recherche Bay in Tasmania. So that would also fit into the category of a public response and that this concept should be somehow embodied in the legislation that deals with heritage.

DR BYRON: I find it a very, very interesting concept, the like of which nobody else has raised with us, and I guess others haven't had your background or experience. Again, a question of clarification, it seems to me that the local community can very well understand what's there now and we are reliant on how much they value that, but they may have some difficulty in appreciating the proposed alternative and a hypothetical I can give you, purely hypothetical: what if there was a historic tram shed on Bennalong Point in Sydney and that people know and love the tram shed and they're passionately saying, "We want the tram shed saved," and somebody comes along and says, "We're going to build an opera house," and they say, "What the hell do we want an opera house for?" What you've got, you know it, you can see it, you can touch it. The alternative is some hypothetical thing that most people probably would never have visualised and never would have understood how it would become an international icon for Sydney et cetera. So is there a possibility - just hypothetically - that in reacting to conserve what we have now people may not fully appreciate what we could have had instead?

MR KERSHAW: I think that change is something which inherently people need time to cope with. Certainly the idea of a sunset clause would give people time in that particular time to digest what was on the go and we find too often, as I think other people have submitted, that a lot of proposals are all worked out before they're even presented for consultation, so-called consultation. So I would think you could still follow the path and it would involve the public earlier and give them time to digest the potential and to weigh up the values of what they're looking at and what could be, so I think it could be dealt with. But it's a change of climate, if you like, in the system so that it moves from a benevolent, if you like, dictatorial bureaucracy to a more involved, giving people the trust.

DR BYRON: It comes under the general heading of community empowerment, doesn't it?

MR KERSHAW: Yes, I think so. I'm a bit wary of the word "community" in dealing with government because it's not acknowledged by some senior politicians. I think Mrs Thatcher once said, "There's no such thing as community, only individuals." I believe that if people come together or individually even move on something then it's a valid expression in democratic societies.

DR BYRON: Tony, did you have any questions?

MR HINTON: No thanks, Neil, that's fine.

MR KERSHAW: I'd like to give you this, which is how we looked at reusing the buildings and had them fully costed by the industry.

DR BYRON: Do you want this returned or - - -

MR KERSHAW: No, you can have that. It's accompanied by information sheets which we prepared on the complex itself. This is the Royal Canberra Hospital. It demonstrates, as I said in the written submission, that in many cases the public really hangs themselves out, you know, they put their lives on the line sometimes to fight and will commit their own time and raise money, and what I forgot to mention was that in the case of groups, part of the control would be that the group is properly constituted under the association's legislation with transparent minutes, financial returns to establish probity.

DR BYRON: Thank you very much. We'll just take a 10-minute break and then resume with the representative from ALGA.

MR FENNER: - - - I'm presenting on behalf of the association, as I said previously. I just thought I'd give you a bit of background on Rolf Fenner. I've recently joined the association started last October. My background: I'm a professional town and regional planner, having worked in local government in New South Wales, Queensland and Victoria. I've also spent considerable time with the New South Wales Department of Planning, predominantly on regional sustainable planning and have also had some experience in the private sector working for a private architectural planning consultancy in Melbourne. So from a personal basis I bring a planning focus to the discussion.

The reason ALGA has decided to present today is essentially to allow the opportunity to interpret or clarify any written documentation that we have forwarded on to the commission. I think we appreciate, as with the draft report, you can read things into the black and white words. Maybe that wasn't what you guys intended and vice-versa. So the presentation that I'm about to provide is very informal. I'm not going to read the submission. I might concentrate on a few key issues that we've raised and hopefully we will allow an opportunity to maybe clarify any of the issues that the association raises with the commission. Are there any questions before I - - -

DR BYRON: Carry on, thank you.

MR FENNER: The association would like to formally thank the commission in actually producing the report. Whilst we don't agree with all the recommendations we nevertheless believe that it is a positive to bring this on to the public policy agenda. Local government is represented right throughout the nation. Local government is a key player in looking after the interests of local and regional communities. The whole issue of our past, in terms of historic places of interest, is fundamentally important in building and maintaining the importance of communities. So local government are very interested in this whole issue of the future of conservation within Australia.

The key concern that the association does have - and when I say "the association" we don't speak for each and every individual council. We respect the diverse regional kind of make-up of councils, but nevertheless we think on a broad basis that local government has major concerns with the key recommendation that the system is such in Australia generally that we require a radical shift in the importance of possibly introducing this conservation agreements before any property is actually protected. I think we go through the reasons for that in quite detailed - again I'll leave that maybe for some of the discussions we can have post my summary.

Why has this occurred? We think possibly it's a case of, with all respect, not a true appreciation of how local government operates in this area and how the planning systems actually include heritage conservation. The feeling that we get when we

read the report was that the individual property owners - and we're essentially focusing on the local issue kind of basis. We get the feeling that there's this impression that people are negatively impacted across the board, that the impact of listing a property for heritage significance is done without thorough investigation or without any opportunity for the community to be actively involved before the listing actually occurs, and given the experience that generally local government and communities have had with conservation in Australia over the last, say, two decades, there's a rigour and transparency and openness that I think the justification for introducing this key recommendation is not justified.

A key aspect of local government and planning systems generally is this idea of community participation. Without going overboard with this, some councils obviously do this better than others, but generally it's a fundamental tenet of local government. This whole issue of when a property is listed, there are normally multiple opportunities for an individual or a business for that matter to be involved in discussing this with professional kind of officers at council and the councillors before any final decision is made. Obviously with those opportunities to consult, the whole question about if you list, "What are the impacts on me? What are the impacts in terms of future development potential?" can be discussed.

Now, maybe in terms of strengthening the statement of significance once a property is listed, that could be strengthened in individual circumstances, but generally the system isn't as broken as the report appears to set out. We also believe that heritage is well recognised in the draft report - and we congratulate the commission on that. We believe that the issue of resources always comes up in any public policy question. We appreciate that there are funding limits, finance limits, to what can be provided. But looking at the importance of heritage for us as Australians in a modern society, I think without question the whole resourcing implications for heritage in Australia can be much, much better than what it is at the moment.

In the submission itself we raise the issue that there's a whole range of policy leaders that need to be looked at, and the question of what other policy incentives or financial incentives might be able to introduced to strengthen the conservation of important places and sites and buildings, and making that financially reasonable, if I can use that word, needs to be taken.

Finally, the challenge that you undertook was a massive challenge. We still believe there is more needed in the area of research and quantification of a lot of the assumptions and arguments raised in the report. I'm aware that you've had submissions from individual councils throughout the country arguing the case that this idea of listing of property is not always a negative; does not always mean that it causes a huge financial burden on the owner; does not mean that the property price of that individual property is reduced. Having said that, the amount of evidence to

support that is I wouldn't say extensive. They're a mixed kind of reports. I think there probably needs to be more quantification of the whole value of heritage for Australian society.

In essence, I think that's the five key points that comes out of our submission in a very brief summary. I'd probably like to take the opportunity now of maybe evaluating on any of the points raised in our submission to you.

DR BYRON: Thanks very much, Rolf. If I can just again for my own clarity attempt to summarise, paraphrase, what you've said, that the system is not as broken as we thought - - -

MR FENNER: Yes.

DR BYRON: - - - and basically there are some anomalies, particularly anomalies that may arise in terms of lately significant, privately-owned properties. Are you then arguing in the written submission particularly that those anomalies arise basically because those particular local governments haven't been sufficiently resourced and funded to enable them to do the job properly, or am I - - -

MR FENNER: No, that's partly - I'm just thinking through what you've said. I think the other issue, the whole education process for the broader Australian community to appreciate what heritage is generally and what kind of protections, in terms of statutory protections, actually means for them. So maybe it's an educational issue as well for the broader community. I myself as a citizen, being a planner and talking to friends and colleagues, you always hear the story - unbelievable. I heard a council list this property that's half demolished and it's only 20 years old anyway. I think a lot of that is ignorance, those kind of comments, so I think it's more of an education thing as well as a resource thing.

DR BYRON: It's a pity you weren't here this morning because I think local government copped a bit of a serve - and you might care to have a look at the transcripts - from the people from ICOMOS and I think the Heritage Chairs of Australia and New Zealand, that, "Yes, we realise there are some problems but they all arise at local government level." Now, we didn't say that. The issue that I was asking various other people about today is, is there a problem that the system and process that we now apply when looking at, for example, a private residence that may be locally significant and local government level, that process is one that was developed over the years with a view of looking at major, very significant, iconic places. So when we're looking at Mr and Mrs Smith's house in the suburbs we're basically using the same tools and the same approaches we use if we're looking at Vacluse, or Como in Melbourne or Ripponlea, or whatever, one of the grand icons.

So I guess the suggestion is, the amount of effort that we put into resourcing,

into assessing, might be proportionate to the expected significance of the place we're looking at. It's worth spending a huge amount of money getting it right if we're looking at something that's terribly important. If we're looking at something that is sort of marginal, maybe we need a cut-down version that enables us to - and when we've got to handle tens of thousands of those, maybe rather than saying, "We have this process and it's going to cost a fortune to apply this process to 100,000 properties. So, okay, if we've got that many properties to do, maybe we need a simpler process or a cut-down version." Can I have a reaction to that. It's not a proposal, it's not in the draft report, but I'm just wondering if you think that local government might need a cut-down version that is simpler, cheaper and easier but robust and transparent enough to do the job well.

MR FENNER: I think the issue of listing properties today and having said that we've had experience for - generally say for two decades; active experience at a local level. There's a rationale, there's a transparency before a property is actually identified. So this question you're raising, needing a separate system for - I think in terms of the Burra Charter there's a process that is actually undertaken that is a foundation before a decision is made. I think that system operates quite well. The idea of iconic buildings - Ripponlea at Elsternwick, a beautiful building. But then you have smaller properties that Mr and Mrs Smith have that are fundamentally important to the urban design of a smaller community. Now, they're both important in kind of different ways.

I think the planning system and the heritage system generally works quite well. There are always exceptions to the rule in terms of how that's actually used. But I think that kind of summarises our position really.

DR BYRON: Okay.

MR HINTON: I want to ask you a question about resourcing. It's not quite in the category of significance and extraordinary implications of the Sophie's Choice question but it has a flavour of that so bear with me for a moment, and that is, resources are scarce at government level. There's no shortage of demands on their resources. You representing local government, if you had this difficult choice between - you've got extra resources. Would you put them into improving the capacities of local governments to deliver efficient admin systems for the delivery of the heritage conservation objective, or would you put it into the actual alternative of trying to actually better preserve, conserve identify building sites or whatever? Tough choice? What would your reaction be?

DR BYRON: Can I have a third option? Putting it into the greater celebration and enjoyment of the places that are both identified and conserved. So now you've got three really tough choices.

MR FENNER: Local government - I'll basically say they're all important but I think we'll fall back again, local government is local communities. There are decisions for local communities to take on board of where they want to put the resources. You can't concentrate only on one of those areas. You can have the most efficient administrative kind of systems but if the strategic work and the celebration hasn't been done, well, it's virtually useless.

Alternatively you can put all your money in terms of promoting what you've got and you're wanting to expand that and then the systems just clog up and then you get the frustration by Mr and Mrs Smith coming to an organisation saying, "Bloody hell, you celebrated but there's no systems in here to actually assist me in terms of bringing this property, if it's downgraded, to its old glory." These are really difficult issues. Local government, fundamentally, when you talk about resourcing constraints, we know what resourcing constraints are because we deal with a whole range of issues. We definitely believe that more resources should be provided. When we say that we specifically are probably arguing at a federal level. We think much more can be done and maybe more of that in the whole promotion or celebration, education component. I'm not going to leave these here but I could.

For example, the New Zealanders, their national government produce some fantastic educational documents to just give a better appreciation when a house is listed. What are the ramifications? What can we do about it? Previously Australian governments have produced amazing documents that I think are very educational and worthwhile, but if you look over the last several years it's been slim pickings basically. So when we're talking about resources, there are implications for local government to be much more efficient with the resources that we use, and communities have a responsibility to pay for some of this. The other levels of government I think could do a better job as well.

MR HINTON: Thank you.

DR BYRON: I guess following up on that point I was drawn to the paragraph in your written submission:

Due to the resourcing constraints of local government, it's important that Commonwealth, state and territory governments play stronger roles in both financial and policy assistance for protection, education and celebration of Australian heritage conservation.

That seemed to me to have a flavour of local government is perfectly happy to live with heritage conservation outcomes at the coalface, provided that the Commonwealth and the state and territories provide the resources to do it, or am I reading too much?

MR FENNER: No, no, and probably some of the incentives as well. I think we acknowledge that property owners there is a cost. Potentially sometimes with owning a heritage building, mainly in terms of major renovations if it's a downgraded kind of structure. What other incentives are there on a national basis to maybe provide some of those incentives. Councils - and this is a generalisation, but not every council has a heritage adviser. A lot do. Some provide it on a part-time basis, to provide that free advice. Individual councils - there's a range of policy options that they've got, to maybe assist the individual in bringing back a verandah fence or assisting with painting, there's a whole range of aspects. But on a state level, in the tax and other incentives that they have available, and federal, I think we can do much better than what we are at the moment. So I think that's where we'll be coming from there.

DR BYRON: I'm sure you're even more aware than we are, that there's enormous variation between local governments around Australia - - -

MR FENNER: Yes.

DR BYRON: - - - in both their financial capacities, the affluence of their constituencies, and in the amount of heritage assets, places of significance, that they need to look after. So you've got some places that might have plenty of money and only a few things to spend it on; other places have got an extraordinary number of highly significant places and very little revenue base. So how would you suggest - what is the response to that? We've basically, if we accept the principle of subsidiarity, each local government would work out for itself how much of whatever assets it has it's willing to put into heritage conservation in either of the three tranches we talked about. Do we need more than that?

MR FENNER: Again, if you look on a state level, you're quite right. There's some very affluent, a la New South Wales, for example, one of the smallest councils, Hunters Hill, the amount of effort they put in, quite substantial. The result from that is that a most enjoyable part of Sydney, I think you'd agree, in terms of visiting. Thinking of other councils - - -

DR BYRON: A counter-example? For example, Blayney, with 6,000 ratepayers, and they told us their priorities were jobs, jobs and the third one was jobs.

MR FENNER: Yes. You get into the other extreme. I think that's where the states come on board, appreciating that there are kind of resourcing disparities, and looking for the good of the state to some of these other places to get a bit more resources to assist them with the heritage work that's required. But I think I want to come back to basically saying that the idea of conservation agreements we're not against. It is one policy lever; not the only policy lever. It's up to the individual communities really to work through how they best can look after their heritage properties. But, on a

general basis, better resourcing by the higher levels of government generally can improve the situation.

We're not here giving you specifics in terms of the amounts of money. There is an example raised there - the amount of resources that the Australian government and Australian communities have in the natural heritage wasn't there 10, 20 years ago. Is there a role for the built heritage to maybe be brought up a higher notch than what it is at the moment?

DR BYRON: But if, hypothetically, the government suddenly has a bit of a windfall, like it suddenly decides to sell a hydro-electric scheme or something like that, a few hundred million dollars that we weren't actually expecting, what shall we do with it? Now, what if they were to go to local government in municipality X and say, "We've got X million dollars for you. It's just fallen out from heaven. Would you rather spend it on primary schools, nursing homes, health care, new libraries, more parks or heritage conservation?" I'm not sure that the answer from most or all local governments would necessarily be "Heritage".

If they were to say, "We've got X million dollars that you can have, but only on the condition that you spend it all on heritage," well, they may get - some would probably say, "Thank you very much," but it's basically pre-empting the local council from making their own independent decision about how they choose to allocate the money across priorities. I guess the point is that councils are already prioritising when they decide how much resources to put into any aspect of heritage conservation. I'm not sure that a sudden increase in budget from a fairy godmother would necessarily change the proportions, would it?

MR FENNER: It would definitely help. Resources is a difficult one. It's always a difficult kind of question. We're talking about a contemporary, modern society and the importance of our past, our present and future is fundamentally ingrained as part of that. That's what we're arguing, that heritage is important and a lot of the planning that's actually undertaken for heritage has got a basis, there's a foundation there. The old days are gone. There are studies undertaken, there are community consultations undertaken, there is assistance provided in a whole kind of areas. In short, there's still a resourcing deficiency, but, fundamentally, society is saying, through the council, "Yes, these properties have value for our community. We want to provide some degree of thinking before anyone wants to kind of develop, redevelop or amend that building."

The local significance for a local council does not mean that - I'm trying to use the analogy - when you list a property at a local level for a council, it's like putting a small timber fence for a person before a development application. It stops them, the property is listed, there are some issues I need to take on board, but, essentially, it's not an electrified fence they never can get over, subject to what they want to do and

how that complements the actual property that was listed in the first place. I think that needs to be acknowledged. Heritage listing does not mean that the property is basically electrified fence and it's kept for the next 30 or 40 - - -

DR BYRON: Sealed in a bubble.

MR FENNER: Precisely.

DR BYRON: A number of other people have said to us - I think you also said - that the system is not as broken as we thought, and we may have got that impression because so many people told us everywhere we went what they thought was wrong with the system, and very few people came out to tell us that the system is actually terrific. That's why we came to the conclusion that there might be some improvements that could be made. I was leading up to a question.

MR FENNER: I think the improvements we're saying are the resourcing - and resourcing, we're not just talking about dollars per se, but we throw in the whole education, understanding of what heritage is, the training aspect, the skills base - there is a whole gamut of things that need to be part of that equation. Without question, that can be improved. But the listing process at a local level is not broken or corrupt.

DR BYRON: Okay. If we're sort of talking about the problem children, maybe 90 per cent, 95 per cent, 80 per cent, some percentage, a large percentage of private properties listed at local level the owners are either happy or they're not sufficiently upset to complain or appeal or object or whatever. And so, therefore, if there is a need for a fine tuning of the system, it isn't to deal with a hundred, it's to deal with the anomalies, the exceptions, the 1 in a hundred or the 20 in a hundred where the costs that might result are actually significant for that owner. Do you have any reaction to that sort of idea? Instead of trying to deal with the hundred, let's just - if it's not a problem, let it go on and have just a mechanism for picking up the occasional exceptions.

MR FENNER: I think it's got merit to look at that. It probably goes back to one of the points when I tried to summarise. The whole quantification of what is the true problem, which is a bit rubbery, I think, in terms of the figures there, but generally there are the individual kind of properties that maybe you'd focus your attention on. But, again, like I'm saying, if it's at a local level, that individual has opportunities of liaising with their local councillor, raising the issues, and if the community, a la by the council, can provide some assistance, even if it's lobbying the State Heritage Office, there are those opportunities available.

MR HINTON: That's good. Thank you very much, Neil. Rolf, thank you very much for your submission, which was of course much more detailed than your

summary presentation this afternoon. That is appropriate and that is fine, and certainly it has been fully read.

MR FENNER: Terrific.

MR BYRON: Was there anything else you wanted to say in the way of conclusion?

MR FENNER: No, just that I'm aware that our colleagues in the various state and territory associations have sent something through, and bear in mind that the Australian Local Government Association - our members are the state and territory associations, not the individual councils. But our submission should be read in tandem with the other submissions that come through, not as the overarching voice for all of local government.

MR HINTON: We understand that.

MR BYRON: We're getting a very interesting cross-section of views from individual local governments in different states too.

MR FENNER: It reflects the diversity of Australian communities, and it is healthy.

MR BYRON: That's extremely healthy and helpful to us.

MR FENNER: Terrific. Thank you for your time.

MR BYRON: Thank you. David, thanks for coming back and being patient today.

MR HINTON: That's an incentive system we've got working.

MR YOUNG: Okay, David Young is my name. I'm a heritage consultant. I've been working in heritage conservation for over 20 years, the last 15 of it as a consultant. I am a former member of what is now called the South Australian Heritage Council. I chair the New South Wales Heritage Council's technical advisory group. I'm a convenor of the Australia ICOMOS working group that revised the Burra Charter, and I am the owner of a heritage property.

MR HINTON: Well credentialled, David.

MR YOUNG: Thank you. I made a previous submission and presentations in this place, as you're aware. I guess I'm a little bit disappointed to see my views on the challenge of raising standards of practice not well represented in the draft report, but I'm hoping that that is going to change in the final one. I don't have many things to add to it, other than to reinforce my previous submission, so I am very happy to have this as a rolling discussion rather than a one-way thing from me.

In my previous submission I gave you some case studies of three buildings that I have been involved in working on, in which the standard of work was extremely poor in various ways, both by tradespeople, by specifiers, and arguably by the managers of the properties. I can add a fourth one to that since we last met in this place; a building that is undoubtedly of national significance, a building that is managed by an agency whose core business is heritage, and yet a building that in the last couple of years has had an airconditioning system put into it in such a way that the fabric of the building is now almost certainly being damaged or deteriorating at a much greater rate than it was doing before.

So yet another example of places that are not being well looked after. Hence my theme of the need to raise standards of practice by tradespeople, by specifiers - by whom I mean architects and engineers and anyone else involved in the determining of what should happen - but also by the breed of person which is becoming known as facilities managers: those who look after properties on behalf of their organisations.

Perhaps if we can step back to the immediate last presentation, I think the problem is particularly a challenge for local government, and it is not because there is anything inherently wrong other than that the heritage resources are spread much more thinly. When you look at the heritage agencies in Victoria and New South Wales you see staff of 30, 40, 50; whereas in outer woop woop the heritage staff is one day a month if that. It is not surprising then that the level of skills and information and so forth that can be brought to bear on the heritage problem is very much thinner. Also, and again in relation to Rolf's presentation and following from a point made earlier today, this heritage business is an evolving business, and it is still evolving, and some parts of Australia have come to it later than others. Some much later than others. It is not surprising that some are, shall we say, well behind.

MR HINTON: And still coming.

MR YOUNG: Yes, and I can't say that there is a numerical connection between those who are still coming in the level of problems, but I wonder if that might be part of the story. My solutions to the challenge of raising standards of practice - whereas I said in my first submission about increasing the availability of technical advisory material, about increasing the availability of high-level technical advice, about the challenge of traditional construction being less available, where it is the type of brick which is no longer made or indeed the profile of corrugated iron or guttering material which is less available, or indeed stone from the quarry which has long since closed and had a rifle range put into which therefore makes it rather inaccessible. Then there is the education and training one, which is about upgrading skills of those three categories of people that I mentioned: the tradespeople, the specifiers and the facilities managers.

Ultimately I think this challenge comes back to the question of leadership, and particularly to the question of leadership at the federal level. Other people have made - and I agree - the point that in the last few years there has been a retreat by the Commonwealth government from a former role of engaging with heritage practitioners in developing heritage theory and practice, of providing a lot of publications and information material. Rolf held up the Protecting Local Heritage Places document, which is no longer being printed by the Commonwealth department, and the remaining few copies of which are locked in a vault in the basement - and I kid you not. Because of changes in staff in the organisation there are probably many people who are unaware that it even exists in the vault in the basement.

The result has been that now those providing leadership in heritage are the state agencies rather than the Commonwealth agency, and it is my wish not that the state should not continue to provide any leadership, but that the federal government should regain its position that it had; and that in doing that it could achieve a lot of things. It could provide more of what it was doing, which was a lot of good community education material which would help out Rolf and the Local Government Association. It could be a source of technical advisory material, it could be a national clearinghouse of a lot of technical advice and sources of information that simply doesn't happen at present time. The New South Wales Heritage Council's technical advisory group, a subcommittee of the council which, as I said, I chair, it's the only subcommittee of its type in Australia. I don't think it would be wise for every state and territory agency to go and get one of their own because that would be just again spreading resources too thinly. I think there is a case for some sort of federal coordination here.

It's my wish, as I said before, that the federal government, through the Department of Environment and Heritage would once again regain the position that it

had as providing leadership in the field. I feel that in the last couple of years with the change of legislation there's been a retreat from thinking and leadership to simply administering an act.

DR BYRON: I don't want to interrupt you but just on that point about the group of people with the technical expertise, the advisory that you chair, is there anything that prevents you from making the expertise of that group available to people in South Australia or Tasmania or Queensland or whatever? Could you become a default de facto national centre even though you're officially attached to one state?

MR YOUNG: The assistant director - - -

DR BYRON: She's not in the room.

MR YOUNG: I think in general terms the answer to your question is, no, there shouldn't be any reason. Some of this goes back to cooperation - well, a lot of it goes back to cooperation - amongst the Australian governments and it seems to me that there's no reason why that couldn't happen. There is, for example, agreements between the state agencies to share documents and things that they produce. That's fine. It tends to result, I suspect, in one state doing something and all the rest borrowing from it, whereas a little bit more cooperation could result in a much better product and be better for all of us. Particularly in these days of email and so forth, I see no reason why in principle the advice and information couldn't be made available nationally. I don't see why ideally you would put it in the Commonwealth department.

You would centre it in the Commonwealth department but given that one already exists, maybe the various governments could agree just to support the existing and expand it a little bit perhaps to bring some geographic breadth and that would be fine.

DR BYRON: Sorry to interrupt. So long as they're happy.

MR YOUNG: So long as we kept up the advice to the New South Wales side of things.

DR BYRON: Okay.

MR YOUNG: You interrupted me as I was on my last sentence so I'm very happy to leave it there.

DR BYRON: Okay. I'd like to start with the issue of skills and perhaps dissect that into two broad groups there - technical or vocational, you know, the Australian masons, the people who know glass, repointing and so on, and the second group, the

advisers, the professionals, the architects and the historians. Now, can you just talk us through why you think that special programs are needed for the technical or vocational skills when they don't seem to exist - technical or vocational skills associated with historic and cultural heritage conservation, if they don't exist for a whole raft of other areas - language teachers, maths teachers or whatever.

I don't want to sound like a conventional economist but there are all sorts of things about supplying the labour market that basically lead people to develop skills in areas where they see a skill shortage and an opportunity to make a quid. Just explain to us why that system seems to work through most of or the rest of the economy. It's seriously not working when it comes to those technical skills for historic heritage.

MR YOUNG: Is it working through the rest of the economy? I notice there's lots of complaints about shortage of skilled trades right across trades, but anyway.

DR BYRON: Well, that's another point. Is the shortage of skilled heritage tradesmen significantly worse than it is to just get a plumber or a power drill?

MR YOUNG: I can't answer the question of, is it significantly worse because once again we don't have the numbers to actually answer that. But I think there was something about baking bread in the paper or on the TV in recent days and it's to do with apprenticeships - - -

DR BYRON: Vietnamese bread-makers.

MR YOUNG: Yes, exactly. It was to do with can we shorten the apprenticeship from four years down to two and so on. But we've been making bread for as long as we've been here. There's a change in heritage in building. There's been a significant change from the way we built buildings in the 19th century to the way we build them today, and the person who had the necessary skills to do that, sure, they might have learnt gyprocking in six weeks, but we need the traditional plasterer who can wield a trowel and do solid plastering or wet plastering. That change in building practice has meant that the demand for building tradespeople for normal building work today which is still high and fine and market forces will deal with that, the problem that I see is that we've got to have the need for skills in doing 19th century trades.

Now, the market force issue is partly that, as I see it, we have a major problem with critical mass or lack of it, that if all of Australia was in Victoria in terms of - you know, if our 20 million people were all in Victoria it would work, there would be training courses running and there would be a critical mass of people that have an annual enrolment in heritage repointing and brickwork, say. The critical mass of people may exist but they're actually spread right around Australia and there's no way they can go and do such a course because, you know, they can't all be in the one

place.

I think that is a major problem for us. Now, whether that can be solved in some way by running it every five years and have a series of rolling courses that run different topics, and people anticipate that they're going to go and do this particular course and that they are going to leave home to do it and leave employment which has obviously got cost implications, but I think - there was a significant attempt a couple of years ago by the New South Wales Heritage Office and by the New South Wales Department of Education and Training to set up a heritage trades training program and I think it's fair to say that it has probably failed. I think it has partly failed probably because of a lack of critical mass or demand for any one particular course at any one time which would make the thing happen. If it can't work in Sydney, it's not going to work in Perth or Brisbane or Adelaide.

DR BYRON: But was it a shortage of students to come and do the course because they didn't see what it was going to lead to, or people who did the course and then found that they couldn't get a job where they applied the skills?

MR YOUNG: No, I think it was simply a shortage of intake, enrolment, you know, insufficient enrolment.

DR BYRON: So is it reading too much in your submission - and I don't want to put words in your mouth - to suggest that the Commonwealth Department of Environment and Heritage should have a special fellowship, scholarship program that they would offer X places every two, three years in a variety of different topics? Is that the sort of thing that you have in mind?

MR YOUNG: That would be one way of dealing with it. Whether you'd apply that to trades courses or whether you'd look at a rather more specialised thing like taking somebody with existing trade skills like carpentry and trying to broaden them across a range of other trade skills; in other words, making them not just a better carpenter but a better heritage builder, if you like, across a range of trades - multiskilling, I suppose, at a heritage level.

DR BYRON: I'd like to stay on that one but we'll have to move on to the other type of skill shortages, I guess a bit more white collar, which is a crude way of differentiating but there we haven't been told so much that there is a shortage of architects or historians or people with that sort of expertise, and the sort of breakdowns in the system that we've been told about tend to arise not because people haven't been trained but if anything more about poor administrative procedure or not following due process, that sort of thing. That doesn't seem to me to be a skills or a resourcing issue, it's a due process issue.

MR YOUNG: I guess I'd draw the distinction between a historian or an architect or

an engineer or one or any of those disciplines and all the others who have real heritage expertise. I think it's fair to say that there are plenty who do and who do good work, but on the whole the standard is not where we'd like it. That's reflected in the case studies that I've - - -

DR BYRON: Yes, and I was going to ask you about the poor workmanship or poor outcomes. The way, I guess, those sorts of issues are dealt with normally in economy, one of them is the safeguard of reputation. If word gets around that so-and-so does dodgy work, whether he's an engineer or an architect or a tradesman - - -

MR HINTON: Or an economist.

DR BYRON: An economist, yes - they tend not to get a lot of repeat business. Now, is that discipline coming through in this area too - - -

MR YOUNG: Yes.

DR BYRON: - - - and people know who are the good ones and who are the ordinary ones?

MR YOUNG: Well, yes, but I mean it's like getting a good tradesman or whatever, it's a case that many people have to find out the hard way. I think that discipline is coming through and I think the good ones are getting more work as result. I nevertheless feel that the broad standard across the industry is not where we would like it to be and some people get the work because they say, "I'm a heritage consultant and I can do it," and it takes a while for those people to be weeded out of the system.

DR BYRON: But if I was like you and the proud owner of a heritage place and I was looking for a heritage architect, I think one of the first things I'd say is, "Can I see a portfolio and can I talk to some of your previous clients."

MR YOUNG: Of course. Yes, and you would go and get the list from the heritage agency, you'd maintain a simple list with no guarantees provided about the list, of course, because you can't, and you do all of those things. I'm making a substantial part of my living at present by fixing other people's mistakes.

MR HINTON: I'd like to take up your other second prime focus and that's lack of leadership by the Commonwealth. Seeing that time is running on I'm allowed to be a bit more inflammatory than I'm allowed in the morning, so let me try my question. Some would see, given the nature of our federation, that leadership from the Commonwealth usually means loss of sovereignty for the states, and usually those pursuing the objective of more leadership from "Canberra", in fact is we need to belt

the states. Now, it is probably inflammatory but isn't that where you're going or can't you be accused of going there?

MR YOUNG: No, I'm not seeking to belt the states and I'd be very happy if the COAG process solved all of my problems tomorrow, but I think it needs a little bit of nudging on. I don't think it needs to be those with the bigger stick bashing those with the medium-sized stick in order for them to go and bash the 700 local governments. I don't think it needs to be that. I think it can be a cooperative thing. As we were talking about before about the question of, would you have another technical advisory group? I mean, if everybody agreed that the one that presently exists in New South Wales could be funded better, enlarged a little and become an Australia-wide thing, why not? So long as we have the agreement amongst everybody then it wouldn't be a case of anyone wielding the stick; it would be carrots, I hope.

DR BYRON: The first part of your written submission - - -

MR YOUNG: That's my inflammatory bit.

DR BYRON: There are some very forceful bits on what we said about heritage agreements. I realise you've been sitting here most of the day. Is there anything that you've heard from us today that in any way reduces the concern that you expressed when you wrote this?

MR YOUNG: Yes, and it has come later in the day. I think it's fair to say that it came during Australia ICOMOS's presentation, and you put some of it back to Rolf, I think. As I say in my submission I don't agree with the draft report's key finding about voluntary agreements being used as the basis for listing. I was encouraged to hear your discussion with Australia ICOMOS and the possibility that we can deal with the 5 or 10 per cent problem ones with various mechanisms, one of which might be voluntary agreements, and that might solve a lot of our problems.

DR BYRON: One of the defects that we are quite conscious of in the proposal of negotiated heritage agreements - with everybody whose property was assessed as being significant - is that we may end up then making cash payments or rate rebates or something to people who would have been reasonably happy to do it for nothing. If they find out the guy down the street has been paid \$5000 they will immediately stick their hand up. So it's what you would technically call a moral hazard. You actually invite people - you know, the system of if you start paying for blood donations you're going to get blood donations from heroin addicts who need the cash which is mutually unhelpful.

But the idea of a system where if it is in fact correct that for many people the impositions, if any, that come from a statutory listing are modest or benign or people

are quite happy to just accept that and get on with their life or even be a bit chuffed by it, that's terrific, why do we even want to negotiate or waste their time getting a signature on a full page sheet of paper? But where the individual concerned could make a strong case that there were very profound - and unreasonably so - implications, then we negotiate a heritage agreement with that, dealing with the exceptions.

Now, that also raises the issue - a lot of people have said to us at the hearings - of the transactions costs of having to make an agreement with everybody, just because you need to reach an agreement by 1 per cent, 5 per cent, 20 per cent, whatever it is.

MR YOUNG: So let's do it for the ones that you really need it for, but only those.

DR BYRON: So you're not at all uncomfortable with that ICOMOS suggestion then?

MR YOUNG: No, I'm quite happy with that. I'm very happy with the notion that - which is not to say that the present system is perfect. I think it's a long way from perfect, but I think that the basic structure of it is okay, namely that first you list based on heritage assessment criteria as the primary listing thing, with the odd exception, as has been discussed today, for the undue hardship one. Then for those places where there are particular challenges in their conservation, develop a conservation agreement with the owner that provides the basis for delivery of funds or some certainty about whatever. I think the reality is that they will be the smaller proportion of all listed places, but yes, that's fine.

DR BYRON: I guess one of the things that had concerned us a bit is, for example, in Sydney and Perth, if it's a major high-rise commercial development, then councils have been quite happy to negotiate agreements with the owner of the listed property so that the conversation outcome is achieved but also that the owner gets what they want, whether it's through height restrictions or whatever. So if it's a big-ticket item, there is negotiation to a win-win outcome, but when the council is talking to Mr and Mrs Smith about their two-bedroom house, they're not so willing to negotiate win-win outcomes, they're more inclined to say, "This is the rule; build or else." So the suggestion was if it's good enough to negotiate win-win outcomes, that the big boys, the property developers with lawyers and consultants on big-ticket items - - -

MR YOUNG: Why not smaller ones. I can give you an example of not Mr Smith but Mr Young who owns a heritage property in the city of Adelaide, and I commend the City of Adelaide's financial incentive scheme to you as a model example. When myself and my neighbours - because there's a group of houses - came to do things like repointing chimneys, the City of Adelaide kicked in 40 per cent of the cost and that's terrific from the point of view of the owner. It's also terrific from the heritage

outcome because it means the city, in delivering the funding, also has some say in ensuring that the work is done well and to appropriate standards and so forth, so it's good from both sides. I hesitate to say "for the average Mr Young" but anyway, for the average Mr Smith, that's often all they're going to need. They're not going to need an agreement other than the immediate agreement around the package of works that's being done at the time. There might be other circumstances if Mr Young wanted to build something big out the back but there isn't room in this case, so it doesn't matter.

I think for a lot of people, a good incentives program such as the City of Adelaide run and fund - because the ratepayers keep re-electing people who will vote that million dollars a year - is an excellent way of achieving good heritage outcomes. At the smaller scale, also in the city of Adelaide, they're negotiating with owners of larger substantial city properties to get better heritage outcomes which might involve trade-offs and some sort of an agreement. In many cases - I'm not sure whether it's been brought your attention - but the Beehive Corner, King William Street and Rundle Mall, was about seven or eight owners of individual properties, and the city spent years working on the owners, who were eventually persuaded to do the right thing by the exterior and that demonstrated to the other owners how good it could be if the 1960s aluminium cladding were pulled off and the original was reconstructed. The result now, with a lot of cajoling and a lot of effort and also a lot of patience over I think something like 10 years has produced a fabulous result, but it takes that time.

DR BYRON: Is there anything else you wanted to say by way of - - -

MR YOUNG: Thank you for your hearing.

DR BYRON: Thank you very much for your input on both occasions. We will see if we can reflect some more on it in the final report.

MR YOUNG: That would be nice. Thank you.

DR BYRON: Thank you. I said this morning in my opening comments that there would be an opportunity at the end of the day for anyone else who wanted to come forward to make a statement on the public record to do so, or anyone who has already been up to come back. That being the case, I guess I can declare the public hearings for the inquiry completed and we now go back into digesting all this information that we've been so generously given by all participants and move on to finalising the report. Thank you very much, ladies and gentlemen.

AT 3.36 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY

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