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TRANSCRIPT OF PROCEEDINGS

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 MELBOURNE ON WEDNESDAY, 15 FEBRUARY 2006, AT 11.31 AM

Continued from 14/2/06

DR BYRON: Thank you very much, ladies and gentlemen. In spite of not being the large crowd that I was hoping for, I think we can begin, now being 11.30. Welcome to the public hearings of the inquiry into the draft report of the Productivity Commission into the conservation of Australia's historic heritage places. Thanks for coming today. I won't go through all the formal preliminaries. I'd like to start by welcoming Nicola Stephens from the City of Port Phillip. Thank you very much for coming, Nicola.

MS STEPHENS: Good morning, commissioners.

DR BYRON: Thank you very much for the written submission. You obviously put a lot of effort into that too, and we look forward to constructive feedback and criticism.

MS STEPHENS: Thank you. My name is Nicola Stephens. I'm from the City of Port Phillip, a strategic planner within the City of Port Phillip and generally the planner that deals with matters of heritage. There is also a heritage adviser at the City of Port Phillip, who also deals with the statutory side of heritage applications and so forth at the City of Port Phillip. I omitted to bring a copy of a map of the City of Port Phillip with me, but just for your information - I'm sure you know where it is - but it encompasses the suburbs of St Kilda, South Melbourne, Port Melbourne, Middle Park, that general area.

My submission today is going to be incredibly brief. I just wanted to highlight a few points that are potentially not raised in our submission, although I'm happy to go over the submission with you as well if you so desire. As we said in both of our submissions, there is a lot of heritage to protect, a lot of places protected by heritage controls in the City of Port Phillip. So this matter is particularly important to us as a municipality.

Just for your information, I did attend the workshop that was held in January, for heritage planners and heritage advisers. So I do understand the time constraints that you are under to produce this report for the Productivity Commission. However, I'm also of the understanding that very few councils have yet submitted an application, and I'm mindful that I may be the only council presenting to you at this inquiry from Melbourne. So having said that, I wouldn't like to think I'm speaking to for all councils. It's just interesting, from the outcomes of that workshop and just for the fact that a lot of councils haven't yet submitted, that the time frames are perhaps a bit tight for councils. So please do take into consideration their written submissions when they do come in.

DR BYRON: Of course.

MS STEPHENS: A plea for other councils.

DR BYRON: They starting to come in, but more slowly than yours.

MS STEPHENS: Yes. Ours was rather rushed unfortunately, but it got in so I could present today so that's good. Just to start with, Port Phillip Council does generally agree with the guts of the report that you've presented. We agree with the need for a set level of criteria across Australia, and particularly in Victoria. We agree with the recommendation for the three-tier level of government. We also do see the value of having a statement of significance for all the heritage places in a planning scheme.

At the City of Port Phillip we do have - Port Phillip Heritage Review is the document that was put together when all of our suburbs amalgamated, all the previous councils amalgamated. This is incorporated into our planning scheme as an incorporated document. So you need to do an amendment every time you need to change this, which has pros and cons. Every time you need to change typos, you need to do an amendment. But at the same time it makes it a very transparent and thorough process, open to community scrutinisation.

We would say that all of our places that are protected within the City of Port Phillip have a statement of significance attached to them, and these are included within the heritage review. Some of statements, having said that, are quite large and cover large areas. Again I didn't bring a copy of - it's on the printer at work - of all of how Port Phillip is protected but I mean, that's just St Kilda. So you can see that just for St Kilda, there's a lot protected in that area. I'll come back to this map.

Just also in terms of the local government perspective, local government planners in particular do implement the planning scheme, and therefore would implement these recommendations should they be adopted. Local government planners especially work with the system daily, and they're there to see the bigger picture. So the picture of how heritage benefits the community as a whole and how it benefits the municipality as a whole and how it will benefit future generations to come.

I guess Port Phillip's point is that when property owners object to a place being listed, either individually or within a heritage overlay area, or even when they object to alterations that we allow or don't allow to heritage properties, they tend to come from a focus on their own patch. So they're looking at a much smaller picture and they're looking at themselves and what they can get out of this particular property, as opposed - they often forget the bigger picture, which local government generally takes into account more often.

The City of Port Phillip does have a vision to ensure that all heritage places receive adequate heritage protection. That's in our municipality strategic statement

within the planning scheme. It's also our vision to ensure that restoration and new development contributes positively to the heritage value and local neighbourhood character, and that the design process fosters outcomes which emphasise the value of heritage places within the City of Port Phillip, and manage development in a way that is environmentally sustainable. So there are all sorts of visions and outcomes that the City of Port Phillip perceive for heritage.

Port Phillip would agree that the report does adequately or rightly identify that there are areas of inadequacy and disadvantages in the system of heritage protection, but we feel that within the City of Port Phillip these are limited, and that there is more advantage and more adequacy within the system than there is inadequacy. We also agree that there are questions of cost and fairness that arise through heritage protection, but we would also like to point out that there's no dual planning process in Victoria for heritage. For instance, if a place is on the Victorian Heritage Register then a permit is required through Heritage Victoria and no planning permit is then required for the City of Port Phillip, unless there are other circumstances, in which case a planning permit would be required anyway.

I think I mentioned in my submission too that most of our land sizes of properties within the City of Port Phillip are less than 500 square metres, so in most instances if you want to do alterations to the exterior of your property you will need a planning permit anyway. So heritage doesn't necessarily increase the need for a planning permit within an area.

It's also important to note that there's a draft inner regional housing statement being prepared at the moment. That's been to council, my understanding is, at the City of Port Phillip and at Melbourne and Yarra and Stonnington, and that draft inner regional housing statement has been adopted by those councils. That housing statement looks at how we can best accommodate 90,000 dwellings under the Melbourne 2030 state government planning blueprint. It recognises that we can fit 90,000 dwellings within the inner region without affecting established areas.

So there are enough strategic sites around Docklands, for example, in old industrial areas that can be converted into residential areas and so forth, without affecting established areas and thereby without affecting heritage places. So we can fit more dwellings, so the urban consolidation argument in Port Phillip is not an argument for the reduction or the abandonment of heritage protection in the City of Port Phillip.

Despite our support for the guts of a lot of the report, we do have a lot of concerns and we would be opposed to the recommendations as proposed, as we feel that that would lead to a loss of much of our heritage or places that would be proposed to be placed on our heritage register.

As I said, over 70 per cent of the City of Port Phillip is protected by heritage controls already, and of those, most of them are really big heritage areas. For instance, one area covers pretty much all of South Melbourne, Middle Park, Albert Park. But in that, there's also a number of places on the Victorian Heritage Register and there are also 227 individual places. That's in our report. Also, some of those individual places are located outside of a heritage area, like way outside, and some of them are located within the heritage area, because they might be significant for a different reason than the general heritage area is.

Our experience at the City of Port Phillip is that very few property owners have allowed their place to fall into disrepair. We would find that that's more of a rare example than a normal example. We couldn't think of any off the top of our head. We're not saying that it hasn't happened or that it won't happen, but it's not a case that we're often finding at the City of Port Phillip. More so, the threat at Port Phillip is demolition for the sake of development. It comes down to property owners' perceived dollar value of their property.

We feel that the Victorian planning provision system is working well for the City of Port Phillip. The concept of voluntary listing, as recommended through your report, would compromise this. In essence, it would be throwing the baby out with the bathwater.

Problems that we perceive - and this is in no particular order. I apologise for the randomness of my submission. But some issues that have been debated around our council and around the council laws that have looked at this document is, what if council was primarily made up of representatives from the developer industry, or real estate industry, and they had, for want of a word, greed on their mind, as opposed to the good of the future generations or the community? The voluntary listing process thereby would potentially fall by the wayside and we would lose of what could potentially be protected in the City of Port Phillip.

We would lose the rigorous process that we have now of identification of heritage places; the community consultation process, including being able to present to the council and being able to present to independent panel hearings and then listing, and that would be lost.

We feel that quantifying costs on the loss of development rights is impossible, and that the ultimate allowable density may not be approved anyway. So a developer might be saying that because they have a heritage listing they can't build a skyscraper on their site. We would be saying, "Well, you couldn't anyway," but then they might be holding council to ransom, as has the quote been tossed around our council, saying, "Well, we demand this amount of money for our place to be heritage protected." It is a concern of our council that they would be held to ransom to protect a heritage property, due to what is perceived as somebody's development

rights. So we question where would the line be drawn.

We feel that the negotiating of a voluntary heritage listing is inappropriate at the listing stage. Council has an obligation to protect the heritage of its municipality, and the identification of the significance of a property should be just that; not swayed by monetary provisions. Negotiation, we feel, would be much more successful and appropriate at the development stage. That way it would be clear what is significant about the property. It would also be clear about what the owners actually want to do with a property; whether it's a single-storey extension or whether they want to demolish it and build something much more grand.

In this instance, as we've outlined in our submission, council's policy would make it quite clear as to what is a reasonable development for that site, and we also have a heritage adviser available to us to assist with that negotiation process. So we would argue that negotiation already exists within the City of Port Phillip. It's just at the development stage, not at the listing stage, which in our mind is a much more fair, equitable and transparent system.

In terms of how does the community contribute towards heritage in the City of Port Phillip, we would argue that through their rates they contribute quite generously towards the appointment of a full-time heritage adviser within the City of Port Phillip. We have also on staff a local historian, who helps people with providing histories of their places and things like that.

We also have an urban history centre, which is funded partly by council, partly privately, which also provide a similar service and help out the local historical societies. Also, there is a lot of strategic heritage work undertaken in the City of Port Phillip, which is often reviewing the heritage areas, reviewing what we provide, reviewing what isn't already protected or identified or assessed. All of that is money that is consumed through the community. So we would argue that the community does contribute towards the protection of heritage in the City of Port Phillip.

The value of properties, as we've explained in both of our submissions, at the City of Port Phillip does reflect that heritage is not always a negative influence. As I have said, there's quite a lot of land protected by heritage controls in the City of Port Phillip. However, over the last five years we've found that the value of property around South Melbourne, Port Melbourne, Middle Park, St Kilda, has skyrocketed in value, as it has around Melbourne. So we would argue that in that case, whether it be an individual listing or within a heritage area, the value of the properties across the City of Port Phillip have actually gone up, and heritage has not been a deterrent in that situation. Just as the City of Port Phillip does not compensate for the loss of development rights, nor does it claim for betterment tax. So that's just another point.

The principles of heritage are to identify, conserve and protect heritage fabric

for future generations. We feel that at the City of Port Phillip that council adequately does this in a fair and equitable manner. I would just like to point out a couple of issues that already affect the City of Port Phillip that we identify are things that need to be rectified - that they're potentially inadequate in the way we work within our system - but that's an ongoing process for any control within the City of Port Phillip. Be it a design and development overlay or a floodway overlay or heritage overlay, you're always reviewing and assessing and refining how it operates within your system.

Just something that could become a product as a result of the draft recommendations as put in this report - it's a really small map and I apologise. I can pass it over. This is a map of heritage overlay number 6, which is the East St Kilda heritage area. I've outlined the area in green. This was put together in the year 2000 as a result of a review that was undertaken in 1998. When HO6 was put together originally, it was a reasonably intact area and it was quite cohesive. Following panel hearings and implementation from property owners et cetera, parts of HO6 were dropped. It resulted in a very skewed heritage area product. There's a big chunk here and a big chunk there, an individual place over there, another chunk here.

It's significant because it is representative of the East St Kilda development in the northern part of East St Kilda, and it shows how the wealthy families lived basically, as opposed to the poor in the lower lying areas of Carlisle Street. What we would see as a result of the recommendations for voluntary listing of individual places - that maybe our heritage overlay areas would just get bigger and bigger and bigger, regardless of where they sit. So it doesn't have to be one big cohesive unit. It could be, as HO6 shows, an individual site set apart from the bigger group that represents that heritage overlay area.

That's just one result that we could foresee happening as a result of voluntary listings, as opposed to the heritage area controls. If it was one process for heritage areas and a separate process for listing, most councils - and certainly Port Phillip - would see that it's a much more preferred system, I suppose, for our purposes, to keep everything in the heritage areas as much as possible.

So we sort of question, what does comprise an area? Is it a single building? Is a single building an individual place, but two or more, suddenly it becomes an area, so you're dropping that voluntary listing? So if we came up with a whole lot of twos rather than ones, maybe we could avoid the voluntary listing process, or we would just keep adding it to areas. So we can see that there would be flaws in the way, potentially, that the recommendations are drafted, and it certainly wouldn't suit our purposes and it's not something that we would be keen to see implemented

It's interesting to note that when City of Port Phillip goes to VCAT over development issues, owners often say, "Oh, but we're just part of an area, we're not

individually listed, we're not as important as that, we're just an area," whereas your report is sort of saying the opposite; saying areas are obviously important as a group and you can see the economic benefit for property owners because you've each got control essentially over the neighbouring properties and individual properties. It's the reverse. But in the minds and the perceptions of the public, those individual properties are so important to the City of Port Phillip that no way could you consider their demolition. At VCAT, in our experience - they are so important to the community that we wouldn't want to lose them, which we would see happening through the proposal as put to us here.

Just jumping again - and I'm sorry about this - in the same vein as HO6, it's a very scattered heritage overlay area. We also have - in heritage overlay number 5 you can see that heritage overlay number 5 is the St Kilda Hill area, I think. Yes, it's the St Kilda Hill area, and within - may I come over?

DR BYRON: Sure.

MR HINTON: Sure.

MS STEPHENS: Within this area you can see that this is the area control here, and within it there are individually listed places. The St Kilda Hill area is significant for its position and the buildings that surround it et cetera, but within that area we have found that there are a few buildings that have significance for different reasons than the area has significance. So we've created them as islands, so to speak, within the heritage overlay area. So therefore they become individual properties that, under the system proposed, would require voluntary listing had we not already done this, and we would potentially lose them. So again we would have probably just made it one big heritage area.

DR BYRON: I really don't want to interrupt but I simply don't recognise, when you use the words "voluntary listing", the same concept as what we were talking about.

MS STEPHENS: Okay.

DR BYRON: I think we may be using the same words with almost opposite meanings, which doesn't actually help effective communication.

MS STEPHENS: Okay.

DR BYRON: So just to clarify, when we talk about negotiated heritage agreements, we're saying that after the assessment of significance as it's done at the moment, rather than just say, "That becomes the statutory list and all the consequences flow from that," insert another step in the process whereby the listing body, in this case the council, goes to the property owners and says, "This property

has been assessed as being highly significant at a local level, we would like to enter into a long-term collaborative partnership with you to ensure that this property is well maintained for the duration of that agreement" - whether it's 10, 20, 50, whatever years, and that's negotiable too.

Then, as well as having a list of a thousand places in the municipality that are of possible heritage interest, 500 places in the municipality that are of confirmed heritage significance, having been assessed by the Burra charter, there is also a list of X - you know, 417 or something - where you've gone the next step and actually negotiated a long-term commitment to the management of those places. Now, if you're talking about a voluntary heritage agreement in the sense of council goes to the owner and says, "We'd like to impose a whole lot of restrictions on you, do you agree, yes or no," that is nothing like what we have in mind.

What we have in mind is where the council negotiates with the owner so that both sides - you know, a win-win outcome - both sides are satisfied. Now, council may have to offer some sweeteners to the deal, but it's not in the sense of offering somebody only regulatory sticks but no carrots.

MS STEPHENS: Yes.

DR BYRON: So you seem to be implying that any place that wasn't listed would be bulldozed immediately. We're not saying that. We're saying that after the process of significance, negotiate with the owner about how it's going to be managed, who's going to do it, how much it's going to cost and who's going to pay for that. Then we can make a list of those places, whose ongoing conservation and good management is ensured, because everywhere we went people said to us that putting things on a list doesn't stop the hole in the roof and it doesn't fix the rising damp.

MS STEPHENS: Okay.

DR BYRON: What we're trying to do is to address that stage. How do you get between the identification and assessment of significance, and the effective long-term ongoing management.

MS STEPHENS: Okay.

DR BYRON: We're saying that that requires a negotiated partnership-type arrangement. We're suggesting that in most cases the amount of sweetener that councils might have to offer is relatively small, whether it's technical advice or a small percentage rebate on rates or eligibility for grants or something. But in other cases if the costs to be imposed on the owner turn out to be very, very large, then the council might have to offer an equally large offset, so that you do negotiate a win-win mutually acceptable - you know, everybody is happy - agreement. Does

that clarify anything at all?

MS STEPHENS: I apologise for my terminology in that instance then. As you've explained it is the way I understood it, so that's good. I suppose the way that we view the system as proposed is that if you have a negotiated conservation agreement on a place that doesn't already have protection - so you've gone through the identification process and you haven't considered monetary issues, as we do now. So you've gone through the process. You've identified, "Yes, this place is significant for these reasons." Then you go to the property owner and try and negotiate a conservation agreement with them, to get it therefore listed into the planning scheme or as an agreement whatever. They say no, then you're sort of stuck. So by default it becomes - - -

DR BYRON: No. They say no, and you say, "Well, what would I have to offer you to get you to say yes?" and then the conversation continues.

MS STEPHENS: Yes, and that's where council feels there's the danger of being held to ransom that, "If you don't give us a million dollars for this piece of land, then we won't agree to the agreement." We might say, "Well, it's not reasonable, how about if we give you a hundred thousand to help you with this?" and they can still say no. They say, "No, 500." They're sort of holding council to ransom, and we're not sure that that's the best use of council rates as a tool.

DR BYRON: It's almost certainly not, if it's an outrageous ambit claim, in which case you say, "Well, we'll go and talk to - we'll put our money into something else down the road, into an archaeological site."

MS STEPHENS: That's what I mean though. Essentially by them saying no, it becomes - for those who say yes, they're sort of volunteering their - and I guess that's why I've got the terminology from there. My apologies for using it. But that's where I've come from: is they've said yes, they've virtually volunteered themselves to enter into this conservation agreement. It hasn't been imposed on them, I suppose, as would be the terminology used now.

We would agree that more carrots are necessary, yes. At the City of Port Phillip we don't have a revolving fund, which a lot of other councils do have; say the City of Melbourne. My own personal perspective - this is not a council perspective - is I think there should be more of them. I think they're great. I think that there is inequities and there is a lack of fairness when somebody has, say, a slate roof and it needs to be replaced with Adelaide slate or something like that and it's a huge expense and they could do it cheaper with concrete or something but it would be inappropriate. So yes, maybe we should fund in those circumstances. But things like rising damp and just a normal hole in your normal roof, or you've got electrical wiring issues or your house needs to be repainted or something simple like that as a

maintenance issue, then that applies to everybody.

DR BYRON: We've never suggested that taxpayers' or ratepayers' funds should be used for paying regular normal maintenance.

MS STEPHENS: But you used the words before, "a hole in the roof or rising damp", and I would argue that that's normal maintenance issues that anybody should look after and that it shouldn't be the community's input or shouldn't be in a negotiated - it shouldn't be the community that pays for that. They should be paying for perhaps the tuck pointing that needs to get replaced or something like that, and I do agree with those principles.

DR BYRON: All right, the slate roof rather than the concrete roof.

MS STEPHENS: Exactly.

MR HINTON: Yes, the additional costs to conserve the heritage characteristics might be part of the conservation agreement - might be part of the conservation agreement.

MS STEPHENS: Yes, that's right, and again council doesn't disagree primarily with the concept of a negotiated conservation agreement. We just disagree with it at the identification stage. We believe that we should be able to identify a place and put it in the planning scheme and get it protected, and then enter into a negotiated conservation agreement, or establish a revolving fund or have some other sort of incentive, some more carrots in the system - and we don't disagree with that - so that the community can contribute towards the betterment of these places.

So yes, we would agree with negotiating outcomes, but after the listing stage. It's more at the development stage, so that when someone has got a hole in their roof and the slate needs to be repaired, at that stage you can negotiate an outcome. It might not be through an agreement as such. It might be you establish a revolving fund for instance and that's the recommendation at the end of the day that the report could make: that we need more of them.

DR BYRON: In many jurisdictions, both here and overseas, governments have taken the line that, "We're not going to compensate property owners for restrictions that are placed on them, but they are eligible to request financial assistance in dealing with the consequences of those restrictions." So you know, the statute basically says there is no automatic right to compensation, but there may be a way that - you know, unreasonable hardship or excessive cost or something. I think you mentioned that there are mechanisms in Victoria at least where cases of individual hardship or unreasonable cost can be dealt with.

But I mean, I really like the way you explained in detail the way the system works in Port Phillip, but I have to say they seem to be very, very much at the leading edge, compared to the rest of Australia; possibly even compared to the rest of Victoria.

MS STEPHENS: So we shouldn't suffer for everybody else.

DR BYRON: No, well, as I said, we certainly didn't propose that places of iconic heritage significance should be degraded or demolished. But the question is to make the system work better. Can I ask a couple of follow-up questions on the written submission? There was one thing that I wasn't sure about. You're talking about heritage considerations outside of heritage overlay areas and you refer to - this is on page 2 - clause 22.01. It's the policy to -

> require new development to respect and not detract from the scale, form and setbacks of nearby heritage places in the heritage overlay.

Now, I understand that and you know, that's fine, but it's not very specific. I'd love to know how that is actually interpreted in practice, because things like "respect and not detract from the scale, form and setbacks" and "nearby heritage places" - is nearby across the road or within a hundred metres or a kilometre? So at a broad level I think that statement is terrific, but I'm just curious about how you actually get down - you know, when the rubber hits the road.

MS STEPHENS: Yes. I guess it would be considered on a case-by-case example, obviously. So "nearby" would depend on the area. If it's say Port Melbourne, where it's very closely settled and you've got a row of very intact small cottages, and then your property is nearby as in you can see them or it's going to have an impact on their status in that street, then I guess that's how you would classify "nearby" in that example. In Elwood, where the lot sizes are much larger, then probably next door would be more your parameter. So it would be a case-by-case situation.

DR BYRON: Yes. Some of the other councils that we've spoken to have actually prepared sort of guidelines, with photos and all the rest of it.

MS STEPHENS: Yes.

DR BYRON: In the way that all the other planning, zoning controls tend to lay out all the conditions and anything that complies with that has got a very high probability of being approved. When it comes to heritage, there frequently hasn't been a guidebook. There hasn't been a sort of a default deemed to comply, if you like.

MS STEPHENS: Yes, that's right.

DR BYRON: I think like Parramatta in Sydney for example, they've got all these books with streetscapes and photographs to say, "If you do something and it's like this, that would almost certainly go through; but if you do it like that, that and that, it would almost certainly not work." So they've been trying to give that predicability or - not certainty, but you know, people know where they stand and what you can and can't do - rather than saying everything has to be case by case.

MS STEPHENS: Yes. We have those sort of guidelines for places within a heritage overlay area. Outside of the heritage overlay area we don't have any guidelines like that. We don't have any guidelines like that. It's quite a diverse community. It's quite a diverse range of architecture. So you would have to come up with something for each case example I suppose. We have an urban designer on staff as well, who also provides urban design advice, and that generally happens outside of heritage overlay areas.

DR BYRON: Thanks. You said in the submission and again this morning that the significance of a place cannot be debated at the planning application stage. I was wondering if you could elaborate a bit more on that, because I'm not sure what the message - why you're saying that. You've got the example under there about St Kilda, which I guess is the map here. Did you interpret us as saying that the significance of a place should be debated at the planning application stage?

MS STEPHENS: No.

DR BYRON: What was the point you were trying to make there? I'm just having difficulty following.

MS STEPHENS: Yes, good question. Basically I think council is - we keep saying that the negotiated conservation agreement should happen at development stage, not at listing stage.

DR BYRON: Or perhaps in between?

MS STEPHENS: No, after listing is what we're saying.

DR BYRON: No, between the assessment of significance - - -

MS STEPHENS: Yes.

DR BYRON: "Listing" I think is one of those words that - as I say, you can have lists at various points in the process.

MS STEPHENS: Yes.

DR BYRON: Let's be a bit more specific and say after the assessment of heritage significance, which is where the listing currently occurs, and before subsequent development applications come in and have to refer back to that statement of significance in some way - - -

MS STEPHENS: Yes.

DR BYRON: Now, do you start discussing how the property should be managed for long term the day after you assess it as being significant at a local level, or do you wait two, five, 10 years until somebody puts in a development application and then start to think about what the management should look like?

MS STEPHENS: I guess at the City of Port Phillip we would prefer to see protection - do the assessment and the listing, afford that some protection so that we know it's not going to get demolished overnight, and then do the next step. I guess as far as when you do the negotiated conservation agreement, we would like to see there's protection there to know that if we were to offer some money to any property owner, they couldn't then put it into the property and the property get demolished the next day. So that's part of that negotiated agreement I suppose (indistinct) saying?

DR BYRON: In some places for example, in a place that's assessed as significant, then it immediately goes to say a provisional register, which triggers interim protection orders for 12 months say.

MS STEPHENS: Yes.

DR BYRON: Then during that 12 months the council and the owner sit down and work out who's going to do or not do certain things over the next N decades, and if there are costs involved, who's going to wear them and how is it going to be shared, in a sort of private approach.

MS STEPHENS: I would say it's a very onerous task for councils.

DR BYRON: Well, it's much easier to just tell people, "This is what you have to do, and if you don't do it we'll prosecute you." But we're suggesting that actually getting people onside and committed to a partnership, in the positive sense, might actually give better outcomes sometimes.

MS STEPHENS: Yes, and we don't disagree with that. We would think that that would be a wonderful outcome. How you go about it I suppose is the debate that a lot of councils would be having with the report. My concern with doing it too soon is that some of these places in the City of Port Phillip for instance are blocks of flats, or in Elwood they might be simply a Californian bungalow house that is quite spectacular or for individual properties for instance. Those owners might not ever

want to do anything particularly much with it, except general maintenance to make sure it's still standing in 50 years' time. So where is the point I suppose in doing a conservation agreement, or a conservation management plan as you could also call it, for a place that potentially doesn't need it, so maybe it's a cost and time that's not necessary.

DR BYRON: Well, we've got the templates here that are used in a number of other jurisdictions overseas, and they're a four or five-page form with a name and address and - - -

MS STEPHENS: Just fill it out.

DR BYRON: - - - you know, it seems to be a simple and effective way of doing it. As you say, most people have no intention whatsoever of deliberately damaging the place they live in.

MS STEPHENS: Yes, that's right.

DR BYRON: I mean, that would be crazy. So if it's no imposition at all, it's basically what they were going to do anyway, and if there's a few small sweeteners attached, you know, I don't anticipate that it would be extraordinarily difficult or time-consuming to get lots of people to say, "Yes, that's fine, I can do that."

MS STEPHENS: It depends on who's doing it in council. Town planners are already way overworked as it is. This would just be another thing to add to their plate of things to do. Planners always get lumped with, "Someone has got to do it, so the planner should do it." I just think it's an unnecessary step perhaps in some instances. I agree with the carrot sweeteners or the incentives, but some people would do these anyway. So it's sort of instigating a system where you would only do good if you got paid to. What's the point of doing good just for the - - -

DR BYRON: Yes, the moral hazard problem, which we've referred to in the report: that people who used to do it for nothing would now put their hand out.

MS STEPHENS: Precisely, yes.

DR BYRON: No, we recognise that that is a potential downside.

MS STEPHENS: Yes.

DR BYRON: Tony, were there questions you wanted to ask?

MR HINTON: Thanks, Neil. Nicola, I'll add my thanks to Neil's for your participation here this morning, but also your written submission. Well done for the

City of Port Phillip, ahead of the pack so to speak. I think head of the pack also, picking up Neil's point, applies with regard to your procedures. I appreciated your submission going through how you go about handling these issues. I think there are many local governments around Australia who could learn well from what the City of Port Phillip does.

I think that in part reflects that the state structure here in Victoria - without naming any other state - may be a little better than some other states, and that helps local government practices and behaviour as well. That doesn't mean to say that we think what you're doing is best practice, and that's not surprising, given the nature of our draft report.

But sort of a flow-on question from that comment about local government divergences. You mentioned that the City of Port Phillip of course, like around Australia, is an amalgamation of a number of previous smaller local government areas and local government councils. Were you around then?

MS STEPHENS: Not at the City of Port Phillip, no.

MR HINTON: My question really was whether or not there were divergences within the three that combined - I think there were three, weren't there - combined to create the City of Port Phillip, with regard to the heritage objection or the heritage conservation objection? Was the amalgamation painful when it came to this issue or was it fairly seamless, simply because of commonality of practice?

MS STEPHENS: It depends on what you mean by painful. When the amalgamation process happened in 1998 - 1994, whenever. At amalgamation time, my understanding was - I worked in the country at that stage - but my understanding was the three planning schemes combined quite easily together and it was a reasonably seamless process. However, having said that, in 1998 a review of the municipality occurred, which resulted in the Port Phillip Heritage Review. That amendment was known as amendment C5 to the Port Phillip planning scheme and was finally adopted - it started in 1998 and was finally adopted in the year 2000. So just in that time frame you can see that there was a bit of angst in the process.

But it was also a design and development overlay amendment, as well as a heritage amendment, so there was a lot of argy-bargy over both provisions, not just heritage. So I would say it was a fairly well-accepted document at the time; it was just the fine detail in the policy and things like that that needed to be sorted out. So I would say that they merged quite successfully.

MR HINTON: I've got a follow-up question on page 2 of your written submission, and maybe taking a sentence out of context, but my attention was drawn to the sentence:

The role of the adviser is also to allow discretion as appropriate.

Is that a crack in the system through which you could drive a double-decker bus or is it - - -

MS STEPHENS: No more so than a negotiated conservation agreement. What was the word? "Discretion", yes. It was more to emphasise how the heritage adviser has the ability to negotiate, and that in the City of Port Phillip we believe that we already have negotiated agreements - maybe not conservation - but negotiated agreements at the development stage, through the heritage adviser who has that discretion to be able to negotiate with landowners about how they might be able to do an addition to their property or how they might be able to build behind an existing building or add a dual occupancy at the rear or do whatever. So it's not a flaw in the system and it's not a gap in the system: it's allowing negotiation and more flexible system.

MR HINTON: Okay. Something that you have in your written submission that you also picked up on this morning - about this reference to house prices increasing by 78.3 per cent over the five years to 2004. I am uncomfortable with that sort of statistic that seeks to underpin or substantiate a view that heritage does not - cannot - damage value, in that that is an aggregate number. It also is in circumstances of a five-year period of very substantive escalation of prices across residential real estate in Melbourne, in Victoria, in Australia more generally.

MS STEPHENS: Yes.

MR HINTON: I would have thought that if you're going to test the judgment as to whether or not heritage listing does or does not affect value, then I think you need to do more rigorous analysis than that. I was going to let it go in terms of your written submission but when you repeated it again this morning, I felt I had to question the sort of robustness of that sort of statement in terms of analysis.

DR BYRON: I think particularly, just to add to that, the difference between the effect for an area or a precinct, a whole zone, where I can see how that actually protects everybody's property values and it may actually go up faster than average, as opposed to the situation where there is one orphan - you know, the only listed place in a whole area or a suburb. I think it's much less likely there that the act of listing actually increases a property's value. It would almost certainly increase the value of the adjoining properties.

MS STEPHENS: Essentially, yes.

DR BYRON: I just think we need to be a lot more nuanced about those sorts of

things.

MR HINTON: My other comment was really seeking your coalface experience to sort of throw some light on an issue that a number of parties have put to us, and that is heritage is part of land use, or a consideration regarding land use, just as height restrictions might be. Why should there be some sort of differentiation in how heritage considerations are handled relative to height restrictions for example, a hypothetical?

The counterpoint to that is that height restrictions apply to you, me and your neighbour, all together there in that same street, in that same zone, but heritage only applies to your heritage house, not mine next door, so I can in fact knock down my old house and put up two townhouses but you can't. There is a differentiating factor with regard to heritage that doesn't apply with regard to height. I thought that in itself conceptually does differentiate the two considerations. Do you have a reaction to that debate? It has been going on now for - - -

MS STEPHENS: Yes, and I've been part of that debate.

MR HINTON: - - - for some months, in this public hearing and this inquiry.

MS STEPHENS: Yes. Okay, the debate has been going on, and I probably was part of that debate, especially at the heritage planners workshop in January. Height I suppose in Victoria would be referenced as a design and development overlay. I think I put in my submission, why should you not be compensated for not being able to go to five storeys, not four storeys.

In the City of Port Phillip, I guess conversely, the Esplanade Hotel site for instance is a DDO in its own right, so it's got its own height restrictions but they're particularly tall. They're much higher - there's a hotel being built behind the Esplanade Hotel, on the foreshore of St Kilda, and that goes quite high as opposed to what's around it is quite low. So that is an individual place, but of course they're going to claim compensation because they're higher than everyone else. But it can be applied individually. It generally is not done so, but it can happen.

If you use another example - I'm just trying to think of - see, Port Phillip is probably not a good example. But in other councils, environmentally significant overlay areas may apply to just a patch of dirt somewhere. It might be a native grassland or something.

MR HINTON: Yes.

MS STEPHENS: So it can apply to individual places. It's more particular perhaps for heritage overlay to do so. But getting back to your value comment, I appreciate

in another suburb, say in a - I know of an example in a northern suburb where an individual listing - it might be the only one on a really busy street and they might just want to demolish it and do something to it. Yes, they potentially are detrimentally affected by an individual heritage overlay.

In the City of Port Phillip an individual heritage overlay very rarely affects, in our experience, the value of that property that we've been able to see. We've not done rigorous assessment on economic conditions and nor are we likely to, but we have not experienced a noticeable loss in value of an individually listed place within the City of Port Phillip. It may happen, and I don't deny that it could happen in other parts of the state, but not in Port Phillip.

DR BYRON: It depends what other permitted uses would be. If the area is already zoned, you know, single residential and there's no opportunity for putting in municipal occupancy, then to retain the existing property may not be much of a constraint, unless somebody else wanted to put up another single residential property. But where you've got a place which the owner says it's no longer sort of meeting current standards and expectations as a residence, and it is zoned for municipal occupancy and it's on a busy road or whatever, there could be a serious difference. I mean, it's a question of to what extent the heritage constraint actually bites.

MS STEPHENS: Yes. I mean, in Victoria it's only a residential zone, so you can have any number of houses on a lot in a residential zone, depending on policy. My argument I suppose and the City of Port Phillip's argument always to a property owner is, "Just because you have a heritage overlay on your property does not mean you cannot develop. It just means you need to develop sympathetically in accordance with that property.

So even in the situation where you've got a small house on a busy street, it might be a case of - a good architect for instance would be able to retain what is important about the exterior fabric of that building. It's very rare that an interior control would apply. They could gut it and they could do a really nice extension at the back, or even an extension that incorporated two units or three units or whatever. It doesn't freeze what happens on that block. So in our experience, that argument often doesn't work. It's not that you can't develop the property; you can. It just needs to be sympathetic.

DR BYRON: I've just got one very small point. Have you got a copy of the submission with you?

MS STEPHENS: Yes.

DR BYRON: On page 5, just above the heading Pressures on Conservation:

> The proposed conservation agreements would undermine the system as it stands today and would result in the objective of conservation.

I think you might have a word missing.

MS STEPHENS: Thank you.

DR BYRON: I thought you might like us to correct that before we put it on the web site.

MS STEPHENS: That would be great, thanks.

DR BYRON: Just I wasn't sure if it was a typo or if you were trying to make a different point.

MS STEPHENS: No.

DR BYRON: Yes, a little n-o-t word makes a difference when you leave it out.

MS STEPHENS: It does, a big difference, yes. Thank you.

DR BYRON: I'm not trying to put words into your mouth of course.

MS STEPHENS: I appreciate that.

DR BYRON: Okay, thank you very much. Was there anything else you wanted to say in the way of closing remarks? Okay. We're due to resume at 1.15 with Mr Andrew Woodhouse from the Australian Heritage Institute.

(Luncheon adjournment)

DR BYRON: Next we have Mr Andrew Woodhouse from the Australian Heritage Institute. Thank you for coming. If you would just make yourself comfortable there and take us through the main points that you wanted to make on the draft report. We always welcome constructive criticism and feedback. Thank you.

MR WOODHOUSE: Thank you, Mr Commissioners, Dr Byron. My name is Andrew Woodhouse, from the Australian Heritage Institute, an Australia-wide based institute of local heritage societies. I first of all record my appreciation to the secretariat, Mr Wilson and Mr Van Hooft, for slotting me in to the commission's busy schedule at this time. I'd like to address the commission principally in relation to four issues: who looks after heritage, who's going to pay for it and who will benefit, and can those costs be shared.

I would first of all, though, like to comment on some aspects of the draft report and then, when looking at those four issues, address issues in relation to demolition by neglect, the use and abuse of heritage lists, how a house may be affected by heritage listing, the rights to develop, and in the end I'd like to suggest what I call a package of subsidies as a sort of carrot, including federal tax deductibility for additional costs to conserve heritage significance of items. Finally, we'd like to recommend that instead of the commission going to a final report that they should seriously consider another draft report. I'll come to that later.

There are six draft report recommendations I'd like to address, but I'd firstly like to say we agree with the comments by the previous participant from the Port Phillip Council when she said that it's important to have heritage criteria which are common. At the moment we do not.

We have the National Trust with their heritage criteria, which are very broad; the Burra charter, a document to which the federal government has signed up with their criteria, unenforceable; the State Heritage Councils' criteria, which are state legislation based and which are generally recognised in what I'll call loosely the state systems of land and environment courts; and then of course we have individual local heritage societies deciding what they think is important for their community. They're all valid, but we do believe that a common system would be very helpful. One of the recommendations made by the commission is that:

> State governments should remove identification and management of heritage from their legislation.

We don't believe that is a very helpful suggestion. I'm trying to be as constructive as possible in saying that. One of the problems with that suggestion is that we believe there's a constitutional issue that arises in relation to - - -

DR BYRON: Sorry, could you just clarify which recommendation that is?

MR WOODHOUSE: 9.8:

> State governments should remove identification and management of heritage from their legislation.

DR BYRON: That comma should not be there, by the way.

MR WOODHOUSE: Yes.

DR BYRON:

> Heritage zones, precincts, from that heritage legislation and regulations - - -

MR HINTON: The key word there is heritage. The key term is "heritage zones".

DR BYRON:

> - - - from that heritage conservation legislation regulations, leaving these matters to local government planning schemes.

It's not that there should be no legislation dealing with heritage.

MR WOODHOUSE: I see.

DR BYRON: But the management and identification of heritage zones, heritage precincts, similar areas, should be governed by the planning mechanisms, rather than having it in heritage legislation.

MR WOODHOUSE: I understand.

DR BYRON: Sorry, does that clarify?

MR HINTON: And the planning schemes also fall within the ambit of the state government responsibilities as well.

DR BYRON: That's right. It mollifies it to some extent.

MR HINTON: It changes dramatically from your description.

MR WOODHOUSE: Yes. It affects heritage zones, as you suggest, rather than

individual heritage items, although there are a lot of heritage items within a heritage zones. We're not convinced that the commission's recommendation is going to be very practicable in that regard, because our understanding is section 109 of the constitution only allows federal legislation to override the states if it's inconsistent. We don't believe that having something that is state heritage listed is necessarily inconsistent with having something that might be federally heritage listed at all. So we're not quite sure, to put it colloquially, where that recommendation might go.

MR HINTON: It's not impinging upon Commonwealth legislation.

MR WOODHOUSE: Sorry?

MR HINTON: I'm puzzled by your concern that this is a tension between Commonwealth powers and state powers.

MR WOODHOUSE: I thought, Mr Commissioner, that there was a recommendation in the report to alter the federal act.

MR HINTON: In regard to what?

MR WOODHOUSE: The recommendations.

MR HINTON: That recommendation is addressed to state and territory governments.

MR WOODHOUSE: Yes, and we say it's otiose. It's not going to have any effect, because the federal government doesn't have power to institute those recommendations.

MR HINTON: The commission's inquiry under the act is from the Treasurer on behalf of the Commonwealth government, but the inquiry remit has been with support of state and territory governments. The recommendations, by looking at the overall system, at all three levels of government, touch on the responsibilities of all three levels of government. This is not a recommendation that has the Commonwealth overriding the powers of the state. Rather, it's directing a recommendation at the state level of government, with implications for their own local governments.

MR WOODHOUSE: I understand what you're saying, but I understood in the report you specifically recommend changing the federal act.

MR HINTON: But what has that got to do with the particular point you're making?

MR WOODHOUSE: I don't believe that that will have any effect, if that's what

you're - as I read it - - -

MR HINTON: We're not making a recommendation to change the Commonwealth government act to implement recommendation 9.8.

MR WOODHOUSE: You won't? I'm sorry, I misunderstood.

MR HINTON: That's what I keep saying: what's the force of your point.

DR BYRON: Move on, thanks.

MR WOODHOUSE: We don't agree with that suggestion and we don't believe state and federal governments should remove identification and management of heritage zones, precincts or similar areas from their heritage legislation. We believe they are deliberately elected, in their broad environmental planning terms, to address heritage as part of their consideration. So to do so would be an abrogation of their duty. Another recommendation on page 205 at 9.7 is that:

> State governments should modify their legislation to remove any requirement to take heritage considerations into account in relation to an individual property, other than those requirements relating to zoned heritage areas.

I do agree with the previous speaker when she pointed out that the significance of an individual heritage item is not necessarily the significance of a heritage zone. So the relationship between a heritage zone and an individual heritage item is really quite separate.

It's quite possible that an individual heritage item might fall within a heritage zone, but to link those two together or to assume perhaps that because it's in a heritage zone an item therefore has its heritage recognised as such, is not correct in our view. We don't believe the state and territory governments should modify their legislation to remove the requirement to take heritage into account. Heritage is part of our environment and our social culture.

MR HINTON: By the way - excuse me for interrupting - it's important to understand that this recommendation, if it's implemented, in no way removes the obligations under existing legislation for state governments to pursue heritage conservation of individual sites. They would still have their own heritage legislation - specific heritage legislation - as opposed to planning legislation, that gives them powers to pursue the objective of conservation of historic heritage places. That's an important distinction between the two key words, being "planning legislation". That in no way sort of modifies the existing heritage legislation.

MR WOODHOUSE: Thank you, Mr Hinton. I appreciate the distinguishing point. But our overriding thrust of our argument is that heritage is part of planning. In fact heritage many times determines what can stay up, before you start pulling things down. To take heritage - if this is what this recommendation means - out of planning legislation and put it in its separate legislation is not a very good idea in our view.

In relation to recommendation 9.5, you recommend that private owners of property should apply for an agreement and listing that would continue only if an agreement is reached. We agree with the National Trust's position there, that was put to you in Sydney by Mr Justice O'Keefe, when they pointed out that listing shouldn't be linked to an agreement. Listing is not the public panacea that a lot of people might think it might be. Listing itself actually doesn't protect a property, as I'm sure you've recognised. All it does - it's a sort of flagpole or a signpost that indicates or is meant to indicate the type of significance of the property or item concerned.

If this recommendation were implemented, for example, then private owners would be able to opt out of listing by not signing an agreement, which begs the question, to what extent should the golden carrot be lured in front of them to make them sign or encourage them to sign. I'll come back to that shortly. But for that reason we don't think that listing should be linked to an agreement, but we think listing should be more objective. It shouldn't be in the hands of the person that might have a pecuniary interest in the listing process, like the owner - they're going to be receiving money. It should be by preferably a list of registered professional heritage consultations, rather than based on information by the owner, or even just in a few council archives for example. In relation to recommendation 9.3 - - -

MR HINTON: By the way, your description of the implications of recommendation 9.5 bears little resemblance to what we actually said in the report. Please move on to 9.3.

MR WOODHOUSE: Before I leave 9.3, I will say in relation to 9.5 that I'm reading the recommendations just as they are written in the report and recommended. The text accompanying it might have triggered the recommendation, but I'm concerned with the actual recommendation itself. In section 9.3, the recommendation on page 195 is that:

> State governments should require their local governments to add non-government-owned properties to a local heritage conservation list only after an agreement with the owner has been entered into and remains in force.

That has got a number of practical problems, if you consider that even if an agreement is reached, the terms of the agreement may not necessarily be what's required to maintain the heritage significance.

Once the agreement is in force, if this recommendation would take effect, it only lasts as long as it remains in force with the owner. So an owner could hypothetically buy a property today, sign the agreement tomorrow, and by Monday morning sell it. Where does that leave the property? The answer is, right back where it started.

DR BYRON: It leaves the property with a covenant or contract on it for the duration of that contract. We didn't say anywhere that it's only for the duration of the current ownership.

MR WOODHOUSE: When you say covenant on the contract, do you mean covenant on the title?

DR BYRON: There would be a contract or a covenant on the title that would be of lengthy duration, to be negotiated, and that would be binding on subsequent owners for the duration of that period. We're not so stupid that we would recommend that taxpayers' money be given to an individual, to enter into a contract which he could unilaterally abrogate the day after. The contract would be binding on that owner and all subsequent owners for the duration of that period.

MR WOODHOUSE: I'm not making any adverse comment of course on the intelligence of the commissioners, but I merely point out to you that that particular idea is unworkable. The idea of a covenant on title is something that the Supreme Courts of Victoria and New South Wales have considered and have basically rejected. They say - and there's a very important case going through at the moment in relation to Graythwaite, a building in North Sydney, which was left by the premier of New South Wales, Mr Dibbs in 1890, on the condition that it be used for convalescent nursing home after the Boar War.

The fact is the war ended, and so did the First and Second World Wars, and only about one or two people live in this giant mansion, receiving nursing care. The owner wants the condition lifted. The Supreme Court has already said that if they're unfair or unreasonable conditions or do not take into account the context of the current situation, then they're prepared to lift them. So a covenant on a title is not as watertight as we might otherwise first have thought. I ask that you take that into consideration when making your final recommendations.

DR BYRON: Thank you.

MR WOODHOUSE: In relation to recommendation 7.1 - and I'm quoting from page XLIII now, at the front:

The Australian government should phase out the Register of National

Estate for historic heritage purposes, beginning with the closure of the register to any new nominations.

Now, to us the key words there are "historic heritage purposes". We understand that what you're saying is that what I'd call the old register or the former register should be phased out and the new register which has come in should be kept up, if I understand that correctly.

But with the phrase "historic heritage purposes" you've actually given a massive exclusion clause there for anything that's not historic heritage. That recommendation wouldn't apply to archaeological heritage, social heritage for example, technical heritage.

MR HINTON: Correct.

DR BYRON: That's deliberate.

MR WOODHOUSE: So is that deliberate?

DR BYRON: Yes, the reason being that although places of historic heritage significance on the old RNE have largely migrated across to a statutory list - whether that's the national list, a state list or a local government statutory list - there is no comparable system for natural heritage or indigenous heritage to transfer across.

So if we had simply said, "Look, the old register of the National Estate is now redundant, it can be repealed," people said, "But what about all the natural and indigenous places," where there is no other system apart from the RNE. That was why we said, "Well, look, the RNE is redundant as far as heritage goes, because there is other mechanisms that actually confer much stronger legal protection than the RNE ever could." But because there is no comparable system for indigenous and natural, the RNE in total couldn't be abolished. Hence the specific word "historic" in there.

MR WOODHOUSE: I'm sorry, commissioner, I'm not sure that I quite understand the differentiation there. I think what you're saying is that "historic" there refers to environmental and indigenous, does it?

DR BYRON: No. If the RNE at the moment has all sorts of National Estate items - indigenous, natural and historic, broadly - the historic items are progressively migrating across to a statutory list.

MR WOODHOUSE: When you say historic, which group are you including there?

DR BYRON: Those that are not there because of their natural or indigenous

significance.

MR WOODHOUSE: Right. I understand now. Could I make a suggestion to the commission that that word "historic" might be better expressed or replaced with the word "cultural"? The reason I say that is that generally heritage is classified into two groups; environmental and cultural. By that I mean environmental things which are already there and cultural things we've created.

Within the cultural group there is a further classification between indigenous and what you would call an Australian basically post-European, post English settlement generally. So within that last group of cultural and then within that indigenous and post-European - within the post-European there are the five other classifications: social significance connected with important places and people; archaeological significance connected with important underground relics of places; technical significance connected with the use of important materials, the Sydney Harbour Bridge and its rivets for example; architectural significance connected with important designs and designers; and historical significance connected with important events in our past. That's where our confusion arose.

DR BYRON: Good point, thank you.

MR WOODHOUSE: We misunderstood that when you said "historic" you meant in the historic heritage sense, when I think you really might have meant in the broader cultural sense. Anyway, I merely point that out.

DR BYRON: Good, thanks.

MR WOODHOUSE: If I may turn back to page 156, in relation to:

> State governments should remove any references to the Register of the National Estate from their planning legislation and regulations.

We're not convinced this is a very wise move. Basically we would believe that the reason for this is that their decision for their state or heritage listing should be on the basis of their own criteria, and basically it's not wise to mix the pot, if you like, with various criterias in determining heritage significance, whether it be local, state or federal.

But to remove any references for consideration to the register would mean that information contained in the register would not be able to be used, and the Register of the National Estate is a very important educative tool. It doesn't just flag things; it also explains why things are important, and includes enormous numbers of facts, details, figures and places and people, some of whom are of not just federal significance but of local significance as well. So if the planning regulations didn't

allow state governments to take into account any references, either by way of corroboration or information contained in them, that would have a negative effect, in our view. They're our comments on the recommendations.

I would now like to turn to basically looking at answers to the four questions: who looks after our heritage, who is to pay for it and who will benefit, and can those costs be shared. The general thrust of our premise is that if heritage benefits society as a whole, then society as a whole should pay for the upkeep of heritage and any benefits that ensue from it. It's very difficult to put a price on heritage. We know the cost for example of almost everything, but we can't always estimate the true value of a heritage item. It's in many ways an intangible thing. The more you look at heritage, the more the whole heritage layers begin to look very much like skinning the layers off an onion. Each layer often, I'm afraid, produces more tears than solutions.

So our view is that everyone is responsible, not just the individual owner. Local council, state government and federal government are all responsible. The corollary of that is that we all should pay. There should be a contribution from each of those groups. Consequently, those are the four groups that benefit: the individual owner, local communities, states and the federal heritage register.

When I say who looks after it, we're basically putting the onus of the day-to-day management of the property on the owner himself. We're not suggesting that local councils hire a lot of staff to implement management processes for each individual property. To do that would require enormous resources that they currently don't have, and would require enormous legal resources to negotiate an individual contract with each owner. We're not really convinced that that is going to be very workable.

What we suggest is something slightly different but that we hope will be workable, and so we suggest that there should be a system of subsidies, if you like, from local council to the individual owners. But there are dangers here with introducing those subsidies. First of all is that many people who have these large homes are actually quite well off. A lot of them don't actually need the money. So the subsidy should be means tested to some extent.

The second is that a subsidy should relate to the heritage significance of the property. It shouldn't relate to a DA for a modern five-storey development in the front garden for example, which has just recently been rejected by the New South Wales Land and Environment Court in relation to Ashton last week, in Elizabeth Bay. The money should be given for what Mr Hinton called this morning "additional costs to conserve the heritage significance of an item". That we believe is a very important phrase.

So it would be used for what could loosely be termed "essential ongoing maintenance and management", rather than for actual development of the property. Council would then be the one-stop shop, because it's council level that zoning, planning, height, FSR and DAs are all lodged. In some cases DA may be lodged for even maintenance issues, if we're talking about a new roof for example. So we believe that it's a council level from which the money should flow, indirectly. We're not suggesting that suddenly council would be financially responsible for the maintenance of all heritage items.

We're suggesting that the carrot, if you like, would be not the golden carrot that some people might think is coming, but more of a snowpea actually. It's going to be small amounts. It should be small amounts and it should not be an amount which would encourage people to lodge an application for funds, receive it and then onsell the property at a profit, having if you like updated it. So if someone bought a run-down heritage property, applied to council for funds, got them, fixed it up and then onsold it at a profit, that to us would be rather nullifying the spirit of intent of that subsidy program. So somehow there have to be rules and regulations that are tight enough to prohibit that.

DR BYRON: Can I just pick up on that point, because that's very similar to the way we were thinking: that if there is going to be a payment from the community to the owners, it should be very clear what that payment is for - you know, what they're getting and why they're getting it - and precisely to avoid that somebody would get the money and then go. That's why we suggested, "Okay, let's make it very explicit, with a long-term, binding contract, which says that council on behalf of wider society is willing to offer X amount of dollars on the condition that you continue to maintain this, this and this, and that you don't damage those items of significance over the next, you know, 25 years or whatever."

Now, it was precisely because we didn't want to hand over payments from the taxpayers without that protection that we looked at the idea of binding contractual agreements. Now, isn't that where you're heading with what you've just told us?

MR WOODHOUSE: Yes, in part. The distinguishing difference is first of all we say the binding contractual agreement should not be linked to listing. Listing should be separate. Secondly, we say that if this system that I've described just broadly was in place, there would seem to be little need for a binding contractual agreement. There would be an open opportunity for anyone whose property they thought was heritage value to have an assessment made, listed, and then apply for funds, or for those that are already listed and recognised, to just lodge the application. It would actually cut out a lot of paperwork.

The other thing to consider is that the assessment of the amount of money given is going to impose a lot of additional time and resources on council staff. Only

one council I can think of has a system like this and that's Mosman Council, which by coincidence is the same council which the president of the National Trust, Mr Justice O'Keefe, was mayor of for many years. Basically this is what I would call the Mosman model. It's the same model that is to be adopted in the Sydney City Council later this year. The model is basically that, as I've described, council will provide funds up to some sort of limit - it's got to be capped somewhere - for people to maintain their heritage properties to retain the significance.

In Mosman there are large amounts of very large and beautiful federation or Queen Anne style buildings overlooking the water. They're either in heritage conservation zones or heritage listed. You can go to council and say, "We've been told that all the tiles are cracked, leaking water. We're going to have to get it fixed." Mosman Council will say, "Okay, we will help you. We won't provide all the cost. We'll provide a subsidy of 50 or 60 per cent of $10,000 that it will cost to replace this bit of the roof. But we will not allow it to be corrugated iron. It was - and the rest of the house is - in the traditional French Marseille tile that was used in that period, from France. You can still get them."

So we would say that it's a conditional subsidy or grant on the basis that this is the work to be done, and no other work. "Don't come to us with your application for a new three-storey granny flat and double garage, for example. We're not going to be looking at that as part of your heritage management." But I would say, additionally to that subsidy program, there's a very good case to be made out for tax deductibility generally, for works done to heritage items; something that the federal Treasurer should really consider.

Income tax, as you know, was only a temporary measure introduced during the war, to pay for unforeseen expenses really, and it could quite well be argued that the age of income tax per se is over. Federal government has plenty of funds. If income tax was reduced, by giving these tax deductibilities, there would be no significant loss of income to the federal government. So we would recommend tax deductibility for heritage maintenance, if you like.

DR BYRON: Is that along the lines that existed a few years ago?

MR WOODHOUSE: I'm not quite sure what those lines were, commissioner, I'm sorry.

DR BYRON: It was tried for a couple of years and then there was a very scathing review by the National Audit Office, I believe, which led to it being removed.

MR WOODHOUSE: It might have been mishandled or perhaps the criteria weren't strict enough. But as you suggested previously, just dangling a golden carrot in front of people is not going to be enough per se. It has to be strictly controlled.

I would also like, having dealt with that - having talked about who looks after it, who's going to pay and how, and who will benefit. There's been general discussion amongst participants in the commission in relation to the heritage value of a home before and after listing. I don't know whether the commission is aware, but there actually have been some studies done. The Ashfield City Council in Sydney did a study of its Haberfield Conservation Area, which is one of Australia's first garden suburbs. The upshot of it is that taking everything else out of account - the upturn in the economy, increasing house values generally - the best they could come up with was that the heritage values had increased by about 15 per cent over - I think it was a 10 or 15-year period. But even that was only partly anecdotal and partly based on real estate agents' and valuers' actual valuations.

The other study was by the New South Wales State Heritage Office, which was only released about November last year. Their study shows that the heritage value of a property after listing increased by about 5 per cent over a 10-year period. That was a much broader based study. The other study was by the Karingai Council, which looked at a heritage conservation area. That's on the North Shore of Sydney. They found that the heritage value of houses, in that particular conservation area only, had increased by the same amount roughly as the Haberfield Conservation Area.

The fourth one was a study I was involved in when I was employed by the National Trust of New South Wales in the early 1990s to do basically a survey of properties generally - not just homes but office blocks, warehouses, industrial properties - of the before and after value of heritage properties. It was extremely difficult to find a fiscal amount, both in relation to the current property and then the effects of all the things on a property that affected it over the five-year period.

I mean, I'm sure you realise that heritage listing is just one impact, whether adverse or benign. There are zoning impacts and rezoning impacts. There's the area generally. It may increase in value or go down. There's the use of the building, which may change. There's the quality of the building itself. It may be upkept, it may be left to deteriorate. All those things also had an impact on the building as it continued through that five-year survey period. The upshot of it all was - uncontroversially - was that we found that the heritage impact had no effect. That's the result of that survey. I would just like to bring those surveys to your information.

DR BYRON: Thanks.

MR WOODHOUSE: I would now like to turn to demolition by neglect, and just suggest that there are two types of demolition by neglect: what I call active, and secondly what I call passive. The first one is where a property is deliberately left to deteriorate in the hope that it will fall down and then need demolition, or that the state of the building as it subsequently is can be used as an argument for

development of some other kind which is aggressive and counterproductive to its heritage significance. That's active.

The second one is passive, where it does deteriorate but not through any proactive part of the owner. Basically the owner might have less funds than they might have. They might have been in a position where they were earning income and then they are not earning income. They might now be pensioners. It might be a place they've inherited. There are all sorts of reasons, none of which reflect badly on the owner, as to why a place is currently let down.

We say that actually our subsidy idea, the Mosman model, would help those people in the second group, the passive demolition by neglect, or if it doesn't then it's quite possible that if they've inherited the property they might have to onsell it, or if they've grown out of the property, so to speak, and they have no need for it, they might also have to consider selling it to someone who can look after it.

In terms of the first category, active demolition by neglect, we believe that there are controls currently in place - and I'm only referring to New South Wales at this stage. The state heritage legislation does allow the Heritage Council to go in and order work, and legally enforce the owner to pay for it. It's very rarely used, but it has been used a couple of times in the last few years. I'm thinking of an art deco listed pub in Newcastle, which was state heritage listed, but of course that legislation only applies to state heritage properties. But I can't see any reason why your recommendations couldn't include one that would recommend that local councils also be given that authority. Of course, that would be appealable, to either the Land and Environment Court or perhaps even a local magistrate.

I'd like to comment on something that was raised yesterday while I was in the presence of the commission, and that was a suggestion by one of the commissioners that we may consider altering the heritage assessment criteria for different types of places. The example you used was Raheen as against a fibro cottage somewhere. I'd like just to make a comment why I think that might be not appropriate. That example is a good one, because it highlights the fact that you've got two buildings but with two types of significance.

The Raheen is the historical, social and architectural, undoubtedly, whereas the fibro cottage - for example Paul Keating's fibro cottage in Blacktown has been heritage listed - is not historical and architectural, but social, and is one of a group of the first fibro cottages ever. So you have two buildings at apparently the different ends of the spectrum, but actually which both have heritage significance but of different types. So I do think you need to be very careful before pursuing that recommendation.

DR BYRON: Sorry, that wasn't a recommendation. It was simply a question of

clarification - - -

MR WOODHOUSE: It was, you're quite right, yes.

DR BYRON: - - - of, is there any point in asking the question of whether we should have the same process on a very expensive and very visible and very highly, clearly, unambiguously significant property, as one which is perhaps more marginal. Should the amount of effort that goes into the rigour of assessment - should every place get the Rolls-Royce treatment, or should we have a proportionate amount of effort going into whether it's extraordinarily iconic or of moderate local interest. Now, it was simply a question for clarification. I have no position on that at all. I was asking for input. If you think the process should be the same right across that spectrum, then I'm very interested in your response too, and your reasons for it.

MR WOODHOUSE: Yes, thank you, Dr Byron. I didn't mean to suggest it was a formal recommendation. It was just a sort of line of inquiry that I wanted to pick up on. The reason I do suggest that everyone should get what I call a common denominator approach - every item, a common denominator approach, whether it be called the Rolls-Royce approach or the Holden approach or whatever - is that not to do so may predetermine the outcome. If you automatically assume that Raheen is of high social significance and something else it not, and therefore don't give it the same criteria or the same rigorous test, it doesn't necessarily mean that the second item, the non-Raheen item, is going to be involved in large amounts of expenditure.

To do a title search of Raheen costs just as much as it does to do a title search of a fibro cottage. To do an historical analysis of Raheen costs 10 times the amount that it costs to do a historical analysis of a fibro cottage. There's not going to be much in it, and it could be reduced to a couple of pages. The average cost of a heritage consultant's report is only three and a half thousand dollars. There's not massive amounts of money that makes it prohibitive.

DR BYRON: Apart from the average cost, could you give me an idea of the range?

MR WOODHOUSE: Yes.

DR BYRON: Would it go from sort of 1 to 20, or there's an average of three and a half or - - -

MR WOODHOUSE: I'd call three and a half the median cost. That's where most of them are. I've seen some, only a page. For example, in Maclay Street, Potts Point, there's something called the Yellow House, which attracted a lot of attention. It's basically a house that was painted yellow that was a home for important artists, like Dobell and a few others of that distinguishing group. There were paintings on the wall by them inside, just sort of graffiti-type paintings. The upshot of it all was

that having been classified, the alterations were done.

There was an amended DA put in some years after - sorry, not an amended DA, a further DA - for a minor alteration which would incorporate a whole new undercroft area under the building, with a benign effect on the building. The heritage impact statement was only a page. Because it was state heritage listed and was up for federal heritage listing didn't necessarily mean - even though it was big, expensive work - that it was a massive heritage cost in terms of consultancy in that case.

DR BYRON: Good, thanks.

MR WOODHOUSE: I just point it out because I think there might be a general impression that heritage equals big money, but that's not always the case. I would say that although most of the heritage reports are in the three and a half to four thousand range, I've seen them as low as 1500 and then up to - I haven't seen any higher than eight. The only exceptions that are where heritage consultations are given a caveat or a warning that, "This is the one that may go to court. We want every "i" dotted and "t" crossed. So it means that there's considerable more effort put into it than otherwise would be the case for council, because that's the report that will go from council and be used in evidence against them in court. The highest I've seen is 12.

DR BYRON: That's great, thanks.

MR WOODHOUSE: The other thing I would just like to suggest to you is that there's a general perception that all these property owners who lodge these DAs have what I call a right to develop, and that's because they own the property. But in fact when you look through the rules and regulations, there's no such thing as a right to develop. There's nothing in any council regulation, state heritage law, the constitution or anything about a right to develop. Actually at law it's called a qualified privilege. All the DA system does is actually give you an opportunity to develop.

As Nicola from the Port Phillip Council pointed out this morning, it doesn't therefore necessarily mean that when you lodge a DA on a heritage item that the heritage item is somehow frozen in an ossification process. There is considerable room - and I think it would be fair to say that councils have given themselves big discretionary powers. The word "discretion" appears a lot in council regulations. They like to keep all their options open in relation to approving a development.

So I'd like to turn now to the point about what happens if a property is listed after it's bought or before it's bought. In relation to listing after purchase, it's often felt that this is an iniquitous situation on the owner, because they've had no say in the

listing process. But at least I can say in New South Wales the listing process means that any inquiry that's required to be made for the purchase of sale automatically brings up the fact that it is listed. So the owner should know that it is in fact listed before they purchase.

However, there's still an opportunity to appeal the listing. In New South Wales when you lodge a DA, the issue of the heritage significance is entitled to be reopened. It's not fixed. By corollary, the heritage significance of a property is never fixed. Heritage significance can alter. Some things can become less significant and some things, with new information - perhaps it's where someone important lived - suddenly become much more significant. So the heritage listing is perhaps a little more malleable than you might first have thought.

So we would suggest that you seriously consider the subsidy scheme for additional cost to conserve heritage significance, and that the profit motive in any such scheme be eliminated. We would ask that the federal government allow federal tax deductibility and that the previous scheme - whatever its fault were - that those be eliminated as well, and that considering the complex nature of the heritage situation that you consider another draft report before issuing a final report for general comment. Thank you very much, commissioners.

DR BYRON: Thank you very much, Andrew. Most of the things that I wanted to raise with you we sort of discussed as we went through, so I don't think I've got anything else left on my list. Tony, is there anything you wanted to follow up?

MR HINTON: Neil, you've taken the words out of my mouth as well. That is, I felt we did the ongoing ticktacking as you made your presentation, thank you, Mr Woodhouse.

MR WOODHOUSE: Thank you very much, commissioners. With your permission, we'll make a written submission that you can add to the web site shortly.

MR HINTON: Thank you.

DR BYRON: Okay, and thank you very much for all the thought that's gone into that, and the ideas you've given us to follow up on.

DR BYRON: We have Chris Gallagher. Thanks, Chris, if you would like to just take a seat anywhere.

MS GALLAGHER: Thank you.

DR BYRON: Can I start by welcoming you, and thank you very much for all the effort that's gone into the Heritage Council's submission. It really is extremely valuable to us. There are a few things that I wanted to follow up on that you've raised in here but you know, the usual procedure, if you would like to take us through the main points of your submission and then I'm sure Tony will also have a few things he wanted to follow up.

MS GALLAGHER: Okay. Well, knowing that you've read it, I'll try and just draw your attention I think to what I see as the key points. I'll probably start with our second section here, The Value of Historic Heritage. I think we've been pleased to include the quote by Helen Gibson, who was the chief panellist, whose organisation hears lots of local government planning scheme amendments impacting on heritage and is now the deputy president of VCAT, so presides over a body that hears lots of permit appeals at local government level.

I think she has captured in a nutshell the growing community interest in, and the groundswell for, the proclamation of local heritage controls, particularly for area controls, I would think. People are seeking precincts and whole pockets of their suburbs or country towns as being important. I'm sorry we've sort of been rather laboured in section 3 but we did think there may have been some misunderstandings of the Victorian - - -

DR BYRON: I was just going to say, the way you've talked us through that, you know, really step by step, really helps make clear to me where and why we've come to slightly different assessments, although I think you might be surprised at how much we agree on. But that really detailed elaboration - I think just having it all spelt out there was very, very helpful to us. As you say, much of it we - I'd say that we did understand - but there are subtle differences now and again that only come

out when it's all spelt out so clearly, as you've done.

MS GALLAGHER: Thank you. We're probably at fault for not doing that in our first submission. We possibly made some assumptions. But I think what we really wanted to say is that we think there's a pretty good system in Victoria. It is certainly not without its imperfections. I have got many anecdotes that people bring to me from time to time, about when things are not working well. I think that's the exception rather than the rule.

As the state's key advisory body to the minister on heritage, we from time to time have been successfully able to go to ministers and government and say, "Look, something is not quite right here. Would you mind amending the act?" For example, there was a time limit for people with properties to lodge an appeal against a permit decision on their property. We felt that was too short, and the act has been amended. So it's a process of constant refinement. I think can fairly say, without showing off - because I can't take personal credit for this - that we're the envy in many ways of the other states. When people are reviewing their legislation, they often come to talk to Ray Tonkin, if they want to talk to one of the best bureaucrats who has been involved in the development of listing and management systems. So that's not to say it's perfect but we think it's not a bad system here in Victoria.

Secondly - and this is very pertinent in relation to your key recommendation, if I can call it that, about negotiated agreements attached to listing - the Victorian legislation clearly separates out the question of listing and management, or the question of is this place of any cultural heritage significance at all, yes/no If it is, what does that mean and what can you do with your property. That's not to say that owners don't have rights at the time of debate, about whether the place is of cultural heritage significance or not. Owners typically can make submissions. They might want to come to a hearing if there's a debate about this, and dispute the facts. But it's a pretty pure question: does this place have heritage merit or not.

The second question is, what then follows from that: do you need permits to do things, will the world come to an end, can you get money from somebody and so on. But we're fairly anxious about the concept that you could roll all of those things in together. So this whole question of listing is, does the place have heritage merit.

DR BYRON: Yes. Can I interrupt there, because I don't think we're suggesting rollings things together. In fact we're suggesting a clearer separation. There's the preliminary survey that identifies places of possible significance. There's an assessment of significance according to the Burra charter. Then, having assessed places of significance, there's the question of their ongoing good management and conservation and all the rest of it.

Now, at what point do you make a list? You can have a list of a thousand

places that are of possible interest. You can have a list of 500 places that have been assessed as significant, or you could have a list of 423 places out of those 500 that have not only been assessed as significant but we've also got a collaborative partnership arrangement and a commitment to ongoing good management and conservation. Now, at which - the preliminary identification, the assessment of significance, or the agreement to ongoing management - do you say, "This is a list"?

You can have three lists, for all I care, but we're actually trying to unbundle, so that you don't just say, "Is it significant, yes or no. If yes, then a whole lot of statutory process and consequence follows." We're trying to not merge listing and management. We're saying, okay, having assessed significance, now ask the question of who's going to do what, how, when; who's going to pay for it, how will the cost be shared.

MS GALLAGHER: I will tell you that that is often the question - the second question is often separated very much in time from the first. It can happen immediately, but very often we would never see people whose places are listed, ever, or for five years or for 10 years, because they simply don't know what they want to do. They may wish to do nothing for some time, except live in the place, care for it at their own expense or whatever.

But we would assert fairly strongly that there is a fundamental primary question that's not interim, it's not linked with the next set of decisions. It is, is this place of heritage merit or not. Does it meet the test for state heritage listing? Does it meet the test for local government listing? Third parties have the right to engage themselves in those discussions.

DR BYRON: There's not one word in our draft report that suggests changing one word of that, as it is now. It's the question of what happens after that question of significance has been answered, and whether the process virtually stops there and says, "It's significant, therefore it's listed, you know, it's all done," or do we say, having assessed it as significant, in many jurisdictions they'll put an interim protection order on it for 12 months and during that 12 months the listing body and the owner will come to a long-term management agreement that clarifies what may or may not - or you know, whether there are major consequences.

We were suggesting that for two reasons. One is the question of redundant or obsolete heritage assets - where the threat is demolition by neglect, where the owner has basically no interest or perhaps no capacity to pay for the ongoing maintenance of that place - then engaging early would be good for the ongoing conservation of the identified place, rather than listing it and then watching it continue to deteriorate before our eyes.

MS GALLAGHER: Can I deal with that first, and then I'll go back to the general

question, where I do believe there's usually a time gap, and that being on a list doesn't mean civilisation as we know it is going to come to an end in respect of your property. I think demolition by neglect, certainly under our act - we've got the capacity to issue repair orders, if something is falling into disrepair. We're usually alerted to that by somebody in the community. Very often a repair order actually gets people around the table thinking about what can be done, what's the most cost-effective way of doing it, who might fund a study to help achieve some outcomes.

So we've got a capacity to actually issue repair orders or to say that we're contemplating - "Can we have a talk about what seems to be the problem here?" I don't think many places on the State Heritage Register are meeting a death by neglect. There's also a capacity to make funding applications to government. There's also a capacity to come and invoke the permit provisions under our act. As under the local government planning scheme, you can apply for anything. You can apply to demolish the whole place.

I mean, I think some of what you found highlights to us that there are strong misconceptions out and about, about what listing means. It doesn't mean your place is frozen in time. As I say, you can literally apply for anything, from minor tinkering through to demolition. At that point you are able to advance arguments about financial hardship, economic disadvantage and so on. So there's a capacity, if you're thinking, "I can do nothing except let this place just dissolve in front of everybody's eyes," to actually take another course - grant funding, permits or whatever.

But we don't hear - and I should say there's only about 2000 properties on the State Heritage Register - I can't speak for local government, although even then I can think of some celebrated cases where people have observed what they believe are significant buildings in planning schemes falling apart and have had community fundraising or whatever.

DR BYRON: Most of the examples that we've been given, now that you mention it, would be locally significant, whether it's the old shearing shed, the old Cobb and Co staging post, the old timber bridge, pipe organ, Mechanics Institute hall, you know, two-bedroom fibro cottages or whatever, where the owner basically says, "I have no interest in looking after this any more."

MS GALLAGHER: Yes.

DR BYRON: "It's of no use to me. It's not that I want to bulldoze it and reuse the site for something else. It's simply, I no longer want to spend any more time and effort maintaining this place, because it's redundant and obsolete."

MS GALLAGHER: Yes. It's not to say that offering money would change that

circumstance either. If they're not interested, they're not interested, in many cases, I would suggest.

DR BYRON: It's possible that an approach from the Heritage Council or from a heritage adviser at the local level, with the offer of some financial support, might get people interested when they weren't otherwise interested - perhaps. Well, it's an empirical question.

MS GALLAGHER: We're all conjecturing here about what may or may not - - -

DR BYRON: Yes, you're right.

MR HINTON: That's why I decided to remain silent.

DR BYRON: It's entirely an empirical question and they're both conjectures, yes. Sorry, I interrupted. Please carry on.

MS GALLAGHER: I think I was then moving on to say that owners have rights to get involved in the discussion of heritage merit, when a planning scheme amendment or an application for registration is being considered.

The next step is you can then apply for a permit, as I say, to do a whole range of things. Under our act, what we have the capacity to also do is to make it very clear that there are a whole lot of things you needn't get a permit for. We can list permit exemptions and we usually do. I think the examples of reports that we've considered, that we've sent to you via mail which I hope you received, actually do go down that road of saying, "You're not living in a museum here, you can keep rewiring, doing routine maintenance and all those sorts of things, and possibly quite a lot of other things as well."

So I must say we're really firm advocates for separating those two questions: is the place significant, yes or no. It's a pretty pure question. Is there a sufficient assemblage of material and history to help us reach that decision? Okay, what then follows? What then follows is a lot of people just get on with their normal life. We can look out the window here. Large swathes of land out here would be covered by heritage overlays. Much of inner Melbourne is. Most people simply get on with maintaining, repairing, living in, applying for permits to adapt their places of residency.

MR HINTON: But, Chris, to repeat Neil, what we're proposing in the draft report in no way challenges, erodes or in any way compromises that identification process. What we're seeking to do is determine when the statutory list starts to take effect. That is, you have all sorts of lists of identification, but once you put it on the statutory list at the Australian government level or state level or through the local

government, it's then that there are implications that then flow from that statutory listing. We don't mind having all sorts of processes occurring prior to that, that seeks to properly identify. In fact we strongly endorse a system of proper identification. It's the implications of statutory listing that we're seeking to redress.

MS GALLAGHER: Look, I would assert - and I probably take issue and the Heritage Council takes issue with you in the report on this too - that is no different to lots of other planning provisions. There is no betterment tax, if you live on the rural fringe and you're lucky enough to have your land rezoned in a growth area. There is no compensation if you are in a floodway overlay, which again lots of places out here would be, and you are restricted from building on parts of your property, which are often residential, that might impede overland flows and make people up the street flood.

MR HINTON: But you usually know about that, don't you?

MS GALLAGHER: When the overlay is applied? I mean, the overlay gets applied in the same way, with the same appeal rights, independent panels and so on. There are all sorts of - and I think there's a general community acceptance, and I think we're not hearing from the silent majority here - that this is part and parcel of the planning system.

MR HINTON: Well, I had one question about that, so I'm interrupting you, I apologise. Do you want me to - - -

MS GALLAGHER: Just keep interrupting me.

MR HINTON: Do you want me to keep interrupting or do you want to continue?

MS GALLAGHER: Look, whatever you think is most fruitful. We're here to help you, so - - -

MR HINTON: Well, we have interrupted you, so I'll continue with the question. That is, you in fact make an explicit statement that it's no different from any other form of land use or development control, and you just reiterated that. I think that is an issue that we would like to have you use your coalface experience to sort of help us understand that issue better.

One view would be expressed that in fact it's not the same: that heritage listing is occurring after acquisition of property, such that it's a surprise to the owner. In some cases, particularly a number of local government areas - not your good local government areas of course - but in some local government areas, listing is lacking in rigour and does not follow robust processes. So the statutory implications is occurring after acquisition and is not soundly based. It therefore follows that there's

a real concern that the system is not working well overall for Australia, and that that is occurring because heritage characteristics are different from, say, a flood plain or a height restriction for example, which was another example discussed this morning, because generally speaking - put aside for one moment zone changes - they are known when the property is acquired by the owner, as opposed to the differentiation, if not discrimination, of your place relative to my place, relative to Neil's place, all on the same street.

MS GALLAGHER: Tony, I'll have to draw a really deep breath here, because planning controls are evolutionary. There's no static, known set of height controls for Melbourne, for example. There will be height controls on exhibition now, as we speak, applying to properties that people have bought. Not all of the metropolitan area has the new floodway overlays on them yet. So planning is quite evolutionary. There will be places changing from rural to urban at the urban fringe.

MR HINTON: Yes.

MS GALLAGHER: It happens to property owners all the time - you could have a design and development overlay. It's evolutionary. Not only is planning evolutionary, but so is our knowledge of history, which might mean that new overlays are applied and so on. But it's not as though this is something absolutely and fundamentally different to most other aspects of the planning system. I go back to the flipside of it. You're thinking of compensation. There is no compensation if you happen to be in a commercial zone at the time you bought a property and it is back-zoned for some reason - - -

MR HINTON: We'd rather use the word "incentive" rather than compensation - incentive for the conservation objective, rather than "compensation" because that's pejorative.

DR BYRON: And we haven't used that anywhere, when talking about zones, areas, precincts. We're talking about individual, isolated - you know, specifically listed special places for their iconic significance. There's very little in our report that would change how zones or historic areas or precincts are managed at all. We're certainly not suggesting that there should be financial payments to every property that's in a heritage area.

Just as an amenity or aesthetic or a parking or overshadowing, overlooking zoning control benefits everybody in that area equally, so a heritage overlay is likely to benefit everybody in that area equally. But if one place is the only one in a suburb or a district or a country town or whatever, that is heritage listed, it's not the same mutual benefit as applies to zones that cover large areas.

MS GALLAGHER: Look, in a metropolitan setting, for example, a lot of those

individually listed place are in fact embedded. They're like a cookie cutter has been applied to the overlay. So for much of metropolitan Melbourne certainly - which is where most of the properties are covered by local planning schemes - - -

DR BYRON: And Victoria has a - - -

MS GALLAGHER: - - - it's a fine a distinction, because they're not usually in an isolated setting.

DR BYRON: But Victoria is the only jurisdiction, as far as I know, that treats an area of a hundred, 500 or whatever properties, and a single property as exactly the same. Most other jurisdictions' planning controls have zoning planning issues and then they have the heritage apparatus that deals with the individual place, and can also deal with it if it's part of the zone. It's a particular quirk of the way the Victorian system works; is that a heritage overlay can be three suburbs of Port Melbourne, Albert Park and whatever, or it can be one little miner's cottage. They're all treated as if they're just an overlay. But that's certainly not the case in most other parts of Australia, as I understand it.

MS GALLAGHER: To go back to the first point, I'm not sure of the difference you're trying to draw between Victoria and the use of overlays. I think you're implying that there is no underlying zones. The overlays sit on top of zones. You could be in a commercial zone, you could be in a rural zone, you could be - - -

DR BYRON: Yes, aware of all that.

MS GALLAGHER: Yes. So I'm not sure why you say Victoria is different to other places and saying it's not part of planning. I mean, it's fully integrated into planning considerations really.

MR HINTON: Neil was trying to make a distinction I think, putting words in his mouth - he can kick me if I'm wrong - that the application of overlays is probably consistent with and similar in concept with regard to planning controls and land use requirements. But when it comes to the treatment of an individual property, within a zone or outside a zone, then it is quite distinguishable from the application of planning controls and land use controls. Have I verballed you?

DR BYRON: No, that's what I was trying to say I think, because if it's an overlay or a zoning or planning issue that covers a hundred properties and everybody benefits from the restrictions that are imposed on their neighbours as much as on themself, there is a mutuality. From all the research that we've done, where a whole precinct or heritage area - property values may well rise faster than average. But that's a very different situation to where one iconic property is an orphan. It's only in Victoria where you say, "Oh, well, that's just a tiny little heritage overlay," and treat it as if it

was any other zoning issue. It is not a normal zoning planning consideration, when the rules apply to nobody else in the state except you. That is different from something that applies to all the neighbours or everybody in your suburb or town.

MS GALLAGHER: I think you've fallen into the trap of assuming that you are then frozen in time: there's a whole lot of things you can't do, there's a whole lot of things you're going to be forced to do, that highest and best use was always an option, and you're now unable to do anything. I mean, you can apply for anything.

DR BYRON: I'm not assuming any of those things, but simply in the sense that, "I will now be subjected to a great deal of red tape that neither of my neighbours are subjected to. I will have to apply for permits that they don't have to apply for. I will have to use more expensive materials or more expensive labour."

If this whole area is zoned as an area suitable for medium density and my neighbours who aren't heritage listed can put up a townhouse or something but I can't because my building is heritage listed, then that does affect me differently than my neighbours, whereas if it's something that applies equally across hundreds of properties, then it's to me conceptually different to something that - now, those types of imposition, if I can use the word, in terms of foregone opportunity, more red tape, having to seek more permits more often and more expensive permits because they have to be backed up by consultant's reports and possibly having to use more expensive materials and labour than I would have used otherwise - those three costs in some cases will be trivial. The owner of the individual heritage listed property would say, "Fine, I'm perfectly happy, I have no problems with being listed." But there are some cases where those three types of costs do become significant and that creates a reaction from the owner.

MS GALLAGHER: What we then say is, you can apply to do all sorts of things with that property. Particularly if you're on the State Heritage Register, you can then bring in arguments about financial hardship and reasonable economic use and so on. It may not be at the end of the day that those arguments are always persuasive, but that is the point at which you can bring in those arguments.

Look, I think we still really assert that these are just part and parcel of an accepted system. It is like someone who's sitting on the boundary between a residential zone and the commercial zone. Someone has put a line there. There has been panels and public hearings and so on. Great things for the property values potentially for people who have fallen on one side of the line; implications for those who have remained in a residential zone. The planning system is full of those sorts of lines, that mean on one side people can do something, on another side they can't.

DR BYRON: But the two distinguishing features in most cases of rezoning, or a change of a line on the map, tend to increase the value of the subject property rather

than decrease it, and in just about all cases there are accessible, affordable appeals mechanisms. Now, I agree that in Victoria we've got VCAT, but in most of the other states that we're also writing about there isn't that same affordable, readily accessible appeals mechanism.

As you've said, in Victoria there is the special feature that they can go to an independent panel and talk about economic use and unreasonable cost and financial hardship and so on. But in other jurisdictions the only basis on which someone can contest is whether or not it's significant. So we've had evidence from people who have said, "Yes, I know, I agree that the property I own is highly significant. However, the consequences of these things may cost me hundreds of thousands of dollars." The option of unreasonable cost isn't available in most of the other jurisdictions.

MS GALLAGHER: Well, can I go back to where I came in, which is to say I think we've got a pretty good system in Victoria, and I actually don't see the case in Victoria for radical overhaul. There are all sorts of protections for people who find themselves subject to listing processes, permit processes and so on. As I say, it's something that's evolved and refined. We've alluded to the work we're doing with local government, in the area in which I must say we receive the most complaints and that is in the precincts.

I mean, people - if I can actually say, the greatest degree of clarity about what you might be able to do and what needs to be done probably applies if you're on the state register. We've got relatively fewer places, we've got relatively better resourcing, to write good statements of significance, good permit exemption policies and so on. To become an individually listed place in a planning scheme, these days you would expect to have a statement of significance prepared, and again you've got some pretty good pointers as to what might be the degrees of tolerance for change.

In a precinct it's my strong view - and again it's anecdotal evidence - that that is where what you call transaction costs tend to be the highest. There is much more ambiguity about, you know, how your property cuts the mustard in all these other good things in an area. What if you are a petrol filling station, surrounded by the rest of the precinct. What does that mean? The rules are far less clear in area overlays. Frankly, that is where we as a Heritage Council are directing our support now to local government.

We're not hearing that the individual listings are the problem. We're hearing that there is a need for greater certainty, lower transaction costs, more pointers to what degrees of tolerance there are for change in precincts; not at the level of individual buildings. As I say, it's a sort of a cascade down from certainty to more and more ambiguity.

MR HINTON: Chris, I quite liked your statement on section 4.4 about some initiatives to improve the Victorian system, including undertaking a number of projects, including the development of local government heritage guidelines. You will probably be quoted on that, by the way - not seen as criticism of Victoria but rather as an indication of how a particular state government is looking at initiatives to improve the existing system. Wider application of that approach could be useful.

MS GALLAGHER: Believe me, if I look exhausted, it's because I've spent four hours working on this this morning, and it is actually quite difficult to send those confident signals about what might or might not be done in a precinct. It's much easier to do it when the place is individually listed, it's one place, it's not a mix, it's not a mix of styles, eras, old, new et cetera.

DR BYRON: We were talking about that earlier with the City of Port Phillip. With all the other type of zoning overlays, whether it's floods or height restrictions and so on, there's a very clear sort of template of, "These are what the rules are." But when it comes to a heritage overlay there hasn't been the same sort of concrete guidance. We've seen a couple of examples, which happen to be from Sydney, where they've produced big books with lots of photos of streetscapes and so on and say, "In an overlay like this, you know, A, B and C would almost certainly be approved but X, Y and Z are really out of the question for the following reasons." It's all part of that giving, you know, not certainty but predicability: people having a clear idea of what evolution within those heritage zones is likely to be accepted or frowned upon.

MS GALLAGHER: And it's really important work, I agree.

DR BYRON: I understand why you're saying that that's one of the areas that probably gives rise to a great deal of confusion, particularly when we talk to a lot of - many of the local governments that we surveyed said that once a place is on a local heritage list, for whatever reason, they all get the same treatment. So a moderately interesting place that's part of an aggregation of a hundred others, which is part of a zone which is significant because of the aggregation, there may be controls over the interior of that, which really bear no connection to the significance of the streetscape. It seems to me that that's sort of a breakdown of practice - that the degree of controls should be proportionate and connected to the reasons for the listing - and yet what some local governments seem to be doing is to say, "Well, once you're in the system, for whatever reason, then everybody gets the same treatment." Is that a breakdown?

MS GALLAGHER: I think it's the term "breakdown in practice" is an excellent one, because internal controls under local government schemes apply to relatively few - very few properties in fact.

DR BYRON: Prime Ministers' cottages.

MS GALLAGHER: That's not a question of throwing out the system and starting again. It's really a question of better education, greater use of heritage advisers. You know, the same thing can happen in another zone, where somebody heavies you over something, which is not actually the primary purpose of the zone either. But I should assure you that internal controls have to be explicitly stated as applying to individual properties in the scheme. If you're in an overlay - in a precinct overlay - there are not internal controls on the redevelopment or conservation of your property.

MR HINTON: Where are we up to?

MS GALLAGHER: We're up to about page 1, I think. Where was I up to. Look, yes, perhaps I will just go back to - page 4 it is, I suppose, and I won't keep reciting that difference between listing and permit applications - but just to draw your attention to data we've been able to provide you with about the relatively small levels of objection to the inclusion of people's properties in overlays or on the heritage register, and the rights they then have to go and have that independently heard if they do.

DR BYRON: But you also say at the bottom of page 4:

> In recent years, relatively few privately owned residential places have been added to the Victorian Heritage Register.

I was wondering if that was part of the reason why there had been a very low number of objections, which you have at the top of page 3: two out of 56, three out of 82, and then seven out of 65. If hypothetically only seven of the 65 properties were privately owned, and all seven private owners objected, then that's a bit different from saying that all of them were privately owned and only seven out of 65 rejected. So I was just wondering if you could elaborate a little bit further on what proportion of the new listings are private, as opposed to owned by governments, institutions, companies or whatever.

MS GALLAGHER: Look, I can't give you that information.

DR BYRON: No, I didn't expect you to have it off the top of your head of course.

MS GALLAGHER: I can give it to you in the morning.

DR BYRON: Well, it's not that urgent, Chris.

MS GALLAGHER: I should also say that "private" doesn't just mean houses either.

DR BYRON: Yes.

MS GALLAGHER: It can mean factories, it can mean commercial premises of all types, carparks for example. There's lots of commercial premises that are on the register.

MR HINTON: Shearing sheds.

DR BYRON: Yes, excellent, thanks. Have we finished page 4?

MS GALLAGHER: I probably should also say too that often when there are objections, it's about fear of the unknown. "My goodness, this is going to cost me a lot of money, I will not be able to do anything, we'll have to live in a museum." Often people can be talked through that. As I said earlier, I think there is a really big job still to be done - although there are a hundred thousand places in overlays in Victorian planning schemes, there are 2000 places on the register. The job of explaining what that means I think is a job that still needs to be done.

I think too, it often boils down to an argument about property rights. You know, "I'm an individual. We shouldn't have any planning controls. We shouldn't have - you know, this is a nanny state." It often gets caught up in quite pejorative language. So people who don't want parking officers - you know, don't want speed limits, don't want controls over their property. So I think it's often a little bit of a case - and I've certainly got no data to back this up - but there are people who are opposed to regulation, full stop.

We've talked about our initiatives on page 6. I'll go back again to what I said I think about the time lapse that often occurs between listing and the wish to do something. As I said, we would often never see people again, ever. We would see people sometimes five or six years later, when they want to do something. That's the time I think when you start to talk about what they want to do, do they need financial support and so on. We have granting and loan schemes. We don't have enough money, just in the same way there is not enough money for schools and hospitals and everything else. We'd like a perfect heritage system. We'd like a perfect health system. We have to make decisions. But we do promote fairly widely that applications can be made for funding. They're always oversubscribed, but we do let people know that there's a capacity to apply for funding.

I guess some of our fears about bringing listing and funding and other considerations together at the same time is - and I've said this to you before - I think you will get people asking for money for the hypothetical. They're the people we might have seen five or six years later who think, "Oh, good, I can get a bit of money here." It might not have even been in contention.

There's the fear of also giving people money for something that they may then

onsell to somebody else, who says, "I'm not interested in voluntary listing, I'm not interested." You lose the whole place. You lose the money that has been sunk into that. I think local government will have told you about - - -

DR BYRON: Tony is asking me why I didn't interrupt you to say that the agreements would be binding on all future owners for the duration of the agreement.

MR HINTON: It's not negated by a sale.

DR BYRON: Yes.

MS GALLAGHER: Well, can I just say, I find that slightly ambiguous in your report.

MR HINTON: Yes, we need to be clearer, Chris, you're right on that.

DR BYRON: We're really not silly enough to propose that substantial amounts of taxpayers' or ratepayers' money be handed over to somebody who could abrogate the agreement the day after. There would be a clear contractual agreement that would binding on - - -

MS GALLAGHER: It will also elicit people who didn't need the money in the first place, coming to get it. It will have people who have poor language skills, uncertain about what's going on and not wanting properties listed. I mean, I could go on and on. It will be - - -

DR BYRON: That already happens, doesn't it?

MS GALLAGHER: Not when you've got to actually sign something. I think the fact that to get on a list you've actually got to sign something and you're not sure what you're doing and you may not speak strong English or whatever, you may feel you need to get a lawyer - I think it's a minefield for the creation around heritage of a whole lot of new work for lawyers and cost consultations and others, which needn't be invoked. As I say, we often don't see people for years, if at all, after their place is listed.

MR HINTON: On page 8 you talk about:

> The council submits that it's not possible for a voluntary negotiated agreement to foresee every possible permutation or potential development proposal that an owner may propose.

I'm puzzled by that statement in that I think you're right, but I'm not sure how you would see that a voluntary conservation agreement requires every foreseeable

possibility to be known at the time of entering into the agreement. We would envisage a conservation agreement actually identifying what the objective is for the conservation, not whether or not you might want to put a sunroom on the back down the track because your kids are now 14 instead of two. That would be picked up in due process down the track, and be assessed against the conservation agreement. That is, "don't knock down the front wall" might be the conservation agreement. That is, you don't have to foresee every possible development application that might come down for that property, to enter into a conservation agreement.

MS GALLAGHER: What you then shut out if do that too is the prospect of third parties, who may have some interest in this, having a - I mean, normally if someone wants to knock down something beyond the front wall, others can have a say about that. I mean, third party rights in Victoria are a pretty entrenched part of our planning system.

MR HINTON: Isn't that caught up under the development application?

MS GALLAGHER: That's right. What you're suggesting would be said at the outset, like, "You must keep this, you could let that go," and so on.

MR HINTON: No. It's constraining. It says what you have to do, not what you can't do. Anything that you want to do down the track would still go through a development application process. If it's consistent with the conservation agreement and therefore consistent with the conservation objective - what is historic and what is heritage - - -

DR BYRON: And all the other zoning - - -

MR HINTON: - - - and all the other zoning requirements, including what the neighbours think of the sunroom - would be assessed.

MS GALLAGHER: I must say I'm getting increasingly confused about these negotiated agreements, because I read your report as saying "and then all considerations would be taken out of the planning scheme, they would be dealt with in the negotiated agreement". I don't think I'm the only one who's reached that conclusion.

MR HINTON: Then we need to look at our language very carefully because - - -

MS GALLAGHER: It talks about taking individual properties out of the planning scheme and dealing with them through negotiated agreements.

MR HINTON: Yes, the wording of that particular recommendation has caused some uncertainty. If it causes uncertainty in your mind, we need to look at it. But it

doesn't mean that you don't have to go through a development application process to have works done on that property that has been subject to a conservation agreement. On the contrary, they would continue in spades, those requirements.

MS GALLAGHER: Well, I think what I'd like to see, before I can really say a lot more about the negotiated agreements, is just to have a conversation really more about what is contemplated by them, because it's not what I'm getting from the words on the paper.

DR BYRON: Yes, okay. We obviously have communicated very poorly what we had in mind. But I mean, we've also got copies of the sorts of covenants that are used in various parts of North America and the US and Canada and so on, some of which are two or three pages. They're the basis on which payments are made and properties are conserved in the long term - you know, sometimes known as covenants or easements, but they're basically mutually beneficial, mutually agreed long-term contracts.

Nobody has ever said that you have to anticipate every conceivable eventuality that could ever happen to make this work. They've been working for the last hundred years in North America, and they're not expensive to negotiate. So you know, it's not only property owners who are sometimes startled by ghosts and who see things that aren't actually intended that were there.

MS GALLAGHER: Well, I think you've hit the nail on the head there, saying it has been happening for a hundred years, people are used to it. They probably wouldn't like our kind of system imposed on them either. If you've got something that's working well in your jurisdiction - and I go back to say that's what we - - -

MR HINTON: I'd like to clarify what is behind recommendation 9.7, and in fact I can see how you could read it as having very wide application. In fact it has very narrow application. I think this is the one that you're referring to. What we were concerned about is that a property that's not listed is subject to a development application, and then in the process of considering that development application someone raises the issue that this property is heritage, and therefore consideration of that development application then becomes open to challenge and something that has never been part and parcel of that property previously.

We're saying that is not appropriate. We think that if it's not heritage listed then you shouldn't be able to play the heritage card to block a development application. You may want to block it for other reasons, like land use and planning requirements and whatever, including height restrictions - even flood plains - but it shouldn't be capable of using the heritage card at that stage of the process. That's what behind 9.7 draft report.

MS GALLAGHER: Well, it's certainly open to other interpretations, I'd have to say. Look, I think - - -

MR HINTON: We will look at those wordings then.

MS GALLAGHER: - - - we've canvassed practice across the jurisdictions on whether introducing heritage arguments holds water or not. You're saying it does in some jurisdictions, it doesn't in others. I don't appear at VCAT regularly so I can't really help you on whether that's the case. I would say, however, that there is often something that's contemplated by a form of development that will wake a sleeping community to the fact that something they may have thought was protected or suddenly think might be about to disappear from their community is special and they should be able to have a say about that.

MR HINTON: Sure. That's part of consultation for development applications. But we're also finding that in some local government areas the protection of amenity is being pursued under the guise of heritage conservation, inappropriately.

MS GALLAGHER: Can I take you to - and I'd be very happy to send you a copy of this. We have very successfully lobbied the minister to change the Victorian planning scheme to specific - we had a situation where you could actually invoke something called ResCode on residential properties that were in the heritage overlay. So suddenly you're wanting to do a bit of painting or something, you need a permit, and you have to do a full assessment - and at great expense, more expense than what you would have if you were just dealing with a heritage application.

We've had the minister knock it out and go back to the National Trust principle of saying that you can only consider heritage controls for the purpose that they were put into the planning scheme in the first place. So that's what I mean about progressive refinement, and that's been a huge change. It's taking a workload off a lot of planners who were wasting time, where people were using the heritage overlay to deal with other things.

DR BYRON: But it's even more specific when we've had examples of properties that are not heritage listed, are not part of the heritage zone or precinct, just ordinary houses in a suburb, and when somebody wants to change the windows at the front of the house, the council staff say, "You can't do that because of heritage." Now, that introduces a whole new element that wasn't there before. From the ones that we followed up, when it's gone to VCAT, of course you can.

MR HINTON: But in the meantime it has cost the owner $20,000 in legal fees, to fight - - -

DR BYRON: And consultancy.

MR HINTON: - - - and there were fees - - -

MS GALLAGHER: If that sort of thing is genuinely happening, there is a pretty simple - - -

MR HINTON: That's a concrete case.

MS GALLAGHER: - - - one-off way of dealing with that, and that is to amend the planning scheme, introduce a clause which just says you can or you can't do that.

MR HINTON: Well, that's what that recommendation was meant to be saying. We will clearly look at those words.

DR BYRON: Sorry, carry on.

MS GALLAGHER: Look, I'll jump across to 6, if you like, and that's how we think funding support should be triggered; not at the time of listing but at the time when some works are actually being contemplated and can be costed. I want to take you quickly to 7 as well, and I'll just skip through what I think are the key things. I'm mindful of time now.

The fact that we do have a covenanting power - we do use that for exceptional circumstances under our act. We've given you the example of the Victoria Brewery and the obligation of the now body corporate to provide a small museum, for want of a better word. It may be that a heritage building is subdivided for apartments or whatever. You may need a covenant about the collective responsibility of owners to contribute to the heritage garden or the conservation of the building or whatever. We use them as a bolster to the permit system, and not instead of the permit system.

Conservation covenants - I think what we've said there is pretty straightforward, and you're both very familiar with that. I would make the point, though, that there are vegetation removal and vegetation protection controls in the planning system as well. So it really goes back to what I said. A lot of what we're talking about in the context of historic heritage is not a lot different to other parts of the planning system. The voluntary conservation agreements are not a substitute for planning controls; they're very often an adjunct to planning controls.

We've talked about and acknowledged the need for more incentives. I've talked about information and education, so people don't misunderstand what the potential impacts of listing might be. We've canvassed a whole lot of things we do - if we had more money we'd do more of them - but supporting heritage advisers, publications, the guidelines we're working on for local government, granting and loaning within our resource constraints capacity, advising the government on what

kind of funding schemes might come up and so on.

We're always going to be in a situation, though, where we always want more money. We're never going to get the perfect amount. That really raises an issue for me of how you would set funding priorities, in the context of negotiated agreements. It may be first in first served, rather than where real need is required. We've spoken about heritage controls and property rights. We really assert this is just a part of the planning system. It's no different to many other controls.

I should also say - and we've given you an example from the Property Council's magazine, our peak property body in Victoria, extolling the virtues of the process for the GPO redevelopment - a listed building for which permits were issued. What we haven't put in here, which I've thought of subsequently, is the Property Council's policy platform which it submits to government annually at the time of lobbying for budget funding and so on. It really supports the Victorian Heritage Council systems and processes, and usually says "and why don't you give them some more money". But they have no issue with us about our processes and systems. I think that's quite significant in Victoria, from a peak property body.

In fact one of the positions on the Heritage Council under the act has to be somebody from a property or property-related discipline. The member and alternate occupying those positions in Victoria are in fact, as it has turned out, nominees of the Property Council. So we don't get a lot of complaint from property people about our system. I suspect, as with all things, you're not hearing from the silent majority, who are just getting on with life out there, who are not anti-regulation, who are not assuming that having to apply for permits is rather odd or whatever.

Look, I should also say, you're not Robinson Crusoe in that regard. When planning controls go on exhibition, people who like them don't show up and say, "We've come to tell you these are great." It's the people who have got a whinge who come along. So I would like to tell you there is a silent majority out there as well.

Look, we were really I think hopeful that you might turn to some things that we would love to be working on and that we've done a little bit of work on, and that is in areas like the capacity to enter into the same kind of fundraising foundations and trust in the build heritage area. I know the National Trust can do this. But it's available to people who are wishing to grant into and bequest into and so on, the green conservation area, if I can call it that. So we'd really like to take you back to some of the things that we raised in our first submission, that we don't think you've picked up, and that the heritage chairs are certainly trying to lobby federal Treasurers and others about. We're not in the right schedule to the right act which makes it easy

to do community tax deductible fundraising for the big projects that need big money. So look, I think I'll stop there.

DR BYRON: On the subject of money, I was really interested by the footnotes on page 10, where you're actually taking us through the various programs that existed since 94, 99. The GHRP - it looks like it works out at an average of 3.2 million a year. The one that replaced that, the PHP, 2.8 million a year; the next one, 2.25 million a year; and the current one, 2 m

permit exemptions; that is matters you're not require to seek approval for at the state level. You can negotiate a whole range of things. You can negotiate what is of primary significance, what is of non-significance in terms of fabric, through conservation management plans. However, at the local level what has been happening is that councils do their conservation studies, they're strapped for funds, therefore it's more a windscreen survey than a detailed investigation. For the UCA that often means that it's a drive by their properties and if the conservation architect or whoever is doing the study likes the look of it, then it gets on the list, and if they don't then it doesn't get on the list or it doesn't get included in an area.

So what we say is that for the Uniting Church, in terms of that process, it is lazy, it is prone to deficiencies. It is often inaccurate. As a result of that, we believe that that this inquiry should also be investigating those particular matters in - - -

DR BYRON: We're in heated agreement with you.

MS HANSEN: Well, yes, I appreciate that, commissioner, but the report is not actually giving us a great deal of direction as to how we're going to address those issues, because all of those issues have cost implications, be it for the council or for the Uniting Church. So whilst we might acknowledge that there's an issue there, we're not convinced that this draft report actually is moving us forward in terms of actually resolving those particular concerns.

On the issue of cost-benefit analysis, look, you could apply many different ways of doing a cost-benefit analysis or a socially optimal analysis or call it what you like. What we say is that for the Uniting Church it isn't necessarily one size fits all. That is, no one analysis is actually going to give us the sorts of answers or give us the sort of balancing act in terms of determining whether in fact the cost of intervention is less than the opportunity costs that are as a result of giving assistance or providing a better system for those particular property owners.

So for the Uniting Church, for us it's not so much a cost-benefit analysis: it's simply, we don't have the money. That is the fundamental issue: that our congregations do not have the money to fund the work. We've got diminishing congregations. Sometimes we don't even have a congregation there because we've closed the property.

DR BYRON: That's exactly why I've used the example in all our hearings in everywhere we've been - and you know, particularly because of the union of the three former denominations - that you've got assets, often in the same street, and with the combined congregation it's not even enough to support one of them.

MS HANSEN: Absolutely.

DR BYRON: So in recognition of precisely that sort of issue, one of the solutions that we thought would be - where the body that considers the church as being of social, cultural, historic importance, would actually negotiate with the owner of the property and an agreement of how it was to be looked after and how the costs of doing that would be shared.

If the owner of the property in this case - you know, a congregation of half a dozen people in a country town simply don't have, and are never likely to have, the financial resources to maintain a big old stone church build in the 19th century, or three of them. Then the obligation is on the wider community, the broader society - as beneficiaries of their retention - to also contribute to the cost of paying for them, and the idea being that if there is a substantial public benefit of retaining them then the public at large should contribute, rather than put all the costs of providing that public service onto the incumbent.

MS HANSEN: We support that approach. The questions that are going to be asked are: who is going to pay; how much is going to be paid to assist in the conservation works or just basic maintenance and repair of that church building, and is the community going to be prepared to pay. Now, what we say is that a lot of those nitty-gritties - which are pretty fundamental, with all due respects, to that system actually working - aren't really explored in the report.

So therefore one has to ask, well, should it just be the local community, should it be the community of that municipality, should it be the State of Victoria, who also benefit in an intangible sense to the existence and continuation of that building being there, or should it be the federal government, who perhaps should have a national agenda in regards to cultural heritage, of which that national agenda is then filtered down to the states as those that are there responsible for implementing that national agenda.

So there's issues here of process and administration, but there's also issues here of how you sell it to the community and what funds would be available to assist the Uniting Church, given that they have many churches of heritage significance, not just one or two. They literally have hundreds of them. So I appreciate that broad concept. I'm concerned and the church is concerned about how is it going to work.

DR BYRON: Okay. We felt certainly in the draft report that it wasn't necessary to go into chapter and verse of all the different ways that the owner of a property and a local government or a heritage listing body would conceive of providing support from the ratepayers and the taxpayers or whoever. If it's calculated that the maintenance of this place is likely to cost, you know, X tens of thousands of dollars over the next 10 years, and people sit around scratching their heads and saying, "Okay, we're the money going to come from," the congregation can put in a couple of thousand and the ratepayers of that municipality can put in X amount, and then

ring up Chris Gallagher and say, "How much can you put in - - -"

MS HANSEN: She hasn't got much money anyway, chairman, I'm afraid.

DR BYRON: I'll give you Peter Costello's phone number. No, I shouldn't say that.

MR HINTON: John Brumby.

DR BYRON: But we didn't feel the need to be prescriptive about the nature of that cost-sharing arrangement would look like; simply that there would be a mechanism whereby if the wider community thinks this place is worth retaining, for its social and cultural and historical values, then let them contribute to the cost, rather than leave all the cost to fall on the incumbent owner. You know, there are hundreds of ways that this can be done. There are examples all around the world. We didn't think it was necessary to say, "Well, you could do rate rebates, you could do deductibility, you could do grants, you could do labour subsidies or free paint or - - -"

MS HANSEN: But look I think, with all due respects, I think that's what people are looking for - is that they're actually looking for the practicalities of how your recommendations are going to work - because unless they can be convinced that the practicalities will work, they will not be convinced of the recommendations having merit. I think that for certainly the Uniting Church, whilst in principle we would support what you're saying - that the wider community should pay - we would also say that in this report there should have been clear statements saying that the federal government, the national government, has a commitment, both at a policy level and at a funding level, a commitment to assist in funding right down to the local level and not just at the national or state.

MR HINTON: Ros, there's a problem with that, in that the Australian government - or for that matter the Victorian government - have a raft of expenditure needs for their communities. They have various sources of revenue. Put revenue to one side. But certainly there's no shortage of demands on governments to have budgets to meet certain community needs, whether it be health care, hospitals, child care, aged care, roads, whatever. They are endless. Governments have a system of determining their priorities across their expenditure patterns within the overall context of budget and fiscal responsibility.

We have not examined the budget processes of the Australian government or the Victorian government or any other level of government as to how they allocate priorities across their competing expenditure demands. That would be presumptuous of the commission to express a view on that, and certainly way beyond our terms of reference. If there are people out there saying that this report by the commission should be saying there should be a large bucket of money for heritage, then they're

living in a dream.

MS HANSEN: Well, at the end of the day, Tony, the problem for the Uniting Church ultimately is about money, as it is for many non-profit organisations, of which many of them are from religious denominations. So for them, we are not going to get to really the heart of the problems for them in terms of basic maintenance - I'm not even talking about conservation work. Conservation work for them is a luxury item, quite frankly. It's basic maintenance and repair which is the thing which keeps the building standing up.

MR HINTON: Well, I don't want to be misunderstood here. Our draft report and our final report will clearly endorse, in very strong terms, an acknowledgment of the benefits to the community, as well as the owner, of the conservation of historic heritage places. We do that in spades in the early chapters of this report, and we'll continue to do that. That's not in doubt.

We also go further and say that in the absence of government involvement that there will probably be inadequate conservation of the benefits of heritage conservation. The benefits will not be adequately provided for. Therefore there is a need for government involvement. We therefore look at the system by which government should be involved, and we think that the current system of involvement has deficiencies. While there are deficiencies, that in fact will be a disincentive for government to expand its financial contribution to the conservation objective. Improving the system is certainly a prerequisite to underpinning stronger financial supports from governments at all levels for the objective of historic heritage conservation.

But in terms of the next step, to say that the amount of financial intervention that should occur should be X dollars or Y dollars, at either the local government level or state government level or national government level, raises other issues of priorities in terms of, as I said earlier, the competing demands on governments for expenditure. That's how we've approached it, and I think that's consistent with our terms of reference.

MS HANSEN: I'm not disputing that. We're not actually saying that we're expecting you to be that specific in terms of prioritisation. What we are saying is that this is an issue which has national implications as well as state and local implications. Because of that, governments at all levels need to be quite up-front, in our opinion, to show a policy commitment - a policy commitment - to cultural heritage, and through that policy commitment to then start examining ways of being able to get funding directed to where it is most needed, based on criteria or needs assessment, we really don't care.

But certainly for not for profit organisations that need is far greater than many

other owners of heritage buildings, who do have an income source or do have a market value on their asset, unlike the many churches that situation around this state and throughout the nation, that have very little market appeal, particularly if they're standing in rural and regional Australia. So we would ask you to look at that, and there needs to be an understanding as to who is going to get a slice of the action and whether the community, the wider community, is going to be prepared to pay. I don't think that the report has convincingly looked at that issue, or we don't believe that that you have.

MR HINTON: There's certainly nothing in our draft report that constrains governments at all levels in participating in financial provisions for the objective of conservation of historic heritage places.

MS HANSEN: Right. We would also like to say that in terms of the tax incentive scheme that was run by the federal government in the 1990s, we would say that that's a scheme that certainly the church, through its property trusts, can provide the level of accountability and transparency that was certainly an issue or a concern raised at our previous discussions on this matter. So we would like to think that this inquiry is not going to rule out the option of tax incentives, but rather perhaps to get rid of the red tape and use agencies like property trusts, that have obviously their own public obligations and legal obligations to deliver within the rigour and transparency and accountability expectations that you as commissioners and the federal government have.

So you know, the low interest loans, the tax incentives, the funds, the grants - whatever it is - we don't believe that this report has really explored the extent of the potential fiscal options that are available for government at all levels to pursue, depending upon which suits what particular owner. There's no one formula for all owners, we don't believe. There are different formulas for different types of owners in different situations. So we would like the report to reflect that.

DR BYRON: Infinitely malleable.

MS HANSEN: Okay. Just in terms of some of the other issues that we have in regards to the report, on the concerns that UCA has at the local level - and particularly with the heritage overlays or precincts - many of our buildings are actually in the net of those heritage overlays, as part of wider heritage precincts. We say that that's where we get our greatest degree of anger and perhaps disappointment and also cost, in the sense that we're dealing with heritage advisers at the local level who tend to be quite inflexible. This is a generality but the majority of heritage advisers that we deal with are quite inflexible in terms of adaptive use of buildings. They want to start introducing controls over the interior of buildings.

You can imagine - we've got a case down in Bayside at the moment. We've got

a terrific church. We took the heritage adviser in. This church has an external control. It has no internal controls. He fell in love with the internal controls and before we know it we're being asked to do a conservation management plan as if the church is of state significance. We're being asked not to convert the inside of the church into anything, not that that's what we wanted to do at that point in time.

So there needs to be a tightening up there in regards to what is the realm of responsibility. If a building is within a heritage overlay, as is that case, it doesn't become an invitation for the local council or the local heritage adviser to then start introducing controls as if it was of state and national significance.

MR HINTON: Is that in the City of Port - - -

MS HANSEN: City of Bayside. We've had it down in Colac.

MR HINTON: Yes, further down.

MS HANSEN: In rural regional Victoria we had another case.

MR PRESTON: Well, there's one in Tasmania, Scott's Memorial, which is - when we went to Heritage Tasmania they said that they don't want to see any change to the box pews in churches. I mean, they are an occupational health and safety risk. If there was a fire, with all the doors open, you can't move down the aisle. We reached I thought a good compromise between Heritage Tasmania and the Uniting Church, the congregation. The congregation have spent significant money on getting proper conservation architectural support, only to be then, when we went to the City of Hobart, to be knocked out by the heritage advisers. They wouldn't give us the permit to do the change.

Now, we're finding that a lot of the heritage bodies don't understand the changing nature of worship patterns within many denominations, and they want to keep us back in the first century in terms of models of Roman classrooms. I mean, that's what we're not on about. So what we're concerned about is that that is where we're constantly - a congregation will spend limited resources dealing with the conservation externally of the building and then trying to make it relevant within, and we're knocked out.

MS HANSEN: The irony of that is at the state level often the state heritage body will be quite flexible in accepting the principle of changing of worship; that how one worships today isn't relevant to how you worshipped 200 years ago. But at the local level there is an absolute mindset that "thou shalt not change". So what we would like to see in this report is to start alerting local government - and we know that that has to then filter down through the state system and through the local planning approach. But here is an opportunity to start focusing on what is happening at the

local level, which is almost an abuse of power by taking the heritage controls to the extreme, to the point where they're creating real problems in terms of certainty and useability of these buildings, especially church buildings.

DR BYRON: What we've said in general in the report is that at the state significance level, even though it varies across states, the system seems to be working reasonably well, because there is a level of professionalism and resources and all the rest of it.

MS HANSEN: Yes.

DR BYRON: But it's at the local government level where there seems to be much less adherence to due process, if I can put it that way: that there are all sorts of aces come out of the sleeve, that the system is not followed. You have places where interior controls don't exist are suddenly put on, or places that have never been mentioned as having a possible heritage significance - suddenly it appears when somebody is proposing to make a change, or there's complete absence of statements of significance in many local governments and therefore there's very little basis on which you can judge a development application, in terms of retaining the significant features et cetera.

So given that the number of places listed at local level is orders of magnitude more than the number of places at state level, it seems to me that at the very least you'd say that's where the process is breaking down; where there isn't the expertise, the competence, and the system is not working the way it was designed to.

MS HANSEN: Look, that's exactly right. I'd have to say that for owners such as the UCA then, you know, it gets into the emotions of the issue so it actually goes beyond the basic technical aspects into a far wider, more emotional circumstance, because of congregational issues that arise as a result of that confrontation.

DR BYRON: But what's the solution to that? Is it simply a question of having more and better trained staff at local government level all around Australia, so that they won't short-cut due process?

MS HANSEN: I think it's about establishing what are the negotiables and the non-negotiables as part of that process. You know, a lot of the non-negotiables aren't actually stated up-front when buildings at the local level are listed. This is partly because the funds that are available for councils to do conservation studies are never enough. I mean, my company has done a number of conservation studies. I have a policy in my company now, we will do not more conservation studies, because the budgets are so small that you cannot do a good job. If you can't do a good job, why do the job at all. That's my view.

So we are riddled with conservation studies that are totally under-resourced. We have situations where we've got hundreds of buildings being given gradings. There are no statements of significance or nothing to actually say that the building is of significance. So therefore it's open slather in terms of interpretation. You know, the UCA faces this problem daily. So I think it's important to establish what are some of the non-negotiables in terms of interference with the future use and development of those properties. Unfortunately the planning system hasn't moved that far forward, and I think it's largely a resourcing problem, Tony. I don't think it's a lack of wanting to do it. It's just that there is insufficient resources to do it well.

DR BYRON: Well, it's partly perhaps the shortage of funds but it's also because the tasks that they're attempting to do may be extremely large. The question is, are they trying to bite off more than they're ever likely to be able to chew in terms of running the heritage identification listing process competently, you know, if the task is so big that even if they had double or triple the resources they have now it would still be too big to manage effectively.

MS HANSEN: It depends on the thresholds that you apply. If you apply thresholds which are sort of loose and low, you're going to put more buildings into the net of heritage control. If you raise the threshold bar and put less buildings, then of course you create less work. I'm not suggesting that we don't need more than one of every example of architecture. That's a really outdated 1960s view of heritage. All I'm saying is that I think there has been a temptation to lower the threshold, maybe because of community pressure - - -

MR HINTON: Ros, can I give you a hypothetical, and it really is a hypothetical and I don't want you to read any view into my question, because I want to explore this issue. If for example, hypothetically, a decision was made that all church properties would not be subject to a statutory list, and therefore the usual development land use controls would continue to apply to those properties but they would not be subject to constraints associated with the conservation of the historic heritage places objective. What do you think the outcome would be for church properties in that hypothetical - I hasten to emphasise - hypothetical environment?

MS HANSEN: Usually I would say it was terrific.

MR HINTON: That's what I thought you were hinting at and that's why I'm exploring it with you hypothetically.

MS HANSEN: Yes, but the reality of that is the public outrage - and it wouldn't matter if it was the UCA or some other owner - - -

MR HINTON: But would you think it's terrific because then the buildings would be conserved, but they would be under less constraints to pursue that conservation

objective? Can you tell me why you would think it would be terrific?

MS HANSEN: Well, certainly from a potential owner of a heritage building it means that they get removed out of a lot of the angst and a lot of the regulation, and a lot of the community pointing the finger, okay, if they could have that option of not having to agree to listing or to be able to do as much as they like.

Realistically - and John and I have talked about this, and from the church's point of view that would help. But look, I realistically think the option of that happening, with a community now nationally that has accepted conservation of built heritage, is now well accepting of conservation of natural heritage. I do think that the pendulum has swung to natural heritage, and the amount of money that goes into national parks and natural environments has outpaced built heritage. That's another fundamental problem that we have as an owner, because we're perhaps not as high up on the priorities in terms of the political votes, but be that as it may.

MR HINTON: But under a system of voluntary conservation agreements, where negotiations are entered into to convince you that, "With these incentives, please accept listing," some then would be listed and some perhaps wouldn't be listed.

MS HANSEN: But what are the incentives to agree?

MR HINTON: Wouldn't that be - - -

MS HANSEN: I'm unclear as to what the incentives - - -

MR HINTON: Wouldn't that be an improvement to - on your criteria, would that be an improved system relative to the one today?

MS HANSEN: I'd like to know what the incentives are. I think the report is quite unclear as to what the incentives are. There is that box, 9.1, which actually indicates some of the ingredients of a conservation agreement. We would say to you, don't identify prohibited uses in that box. The last thing we want is to knock out uses that may well be that appropriate for some church buildings. Keep the use option open, and that's certainly what we do at the state heritage level here. We don't get into use arguments. In fact there are no uses that are prohibited. I wouldn't even go there in terms of that. In terms of financial incentives - - -

MR HINTON: As long as the use was consistent with the land use requirements associated with that area as well.

MS HANSEN: No. Even now, you tick the box in the heritage overlay in our planning schemes in this state and if the box says that you're exempt from any prohibited uses you can apply for a prohibited use that would not be allowed in a

zone. It's terrific. But it only applies to state heritage listed buildings. So there is an absolute anomaly in terms of state and local. But I'd like to know what's the financial package as part of these incentives. We'd like to know, because then we could answer your question.

MR HINTON: Well, then it would be open to each local government to pursue whatever package it would like to. That would be rebates or grants or discounts or whatever.

DR BYRON: Rolling funds.

MR HINTON: We do not tie their hands. We would say, pursue whatever you would wish to pursue, as your local government decides that the principle of subsidiarity should apply.

MS HANSEN: Okay. Well, we would say if that becomes an introduction to accessing financial assistance, that's certainly worth considering in our view. We are concerned that perhaps this approach is not retrospective, in terms of buildings that are already listed, because we already have many buildings that are currently in either state listing or heritage overlay provisions. Is it retrospective or is it only going to occur for new listings - because that's not going to help us with what we've already got.

MR HINTON: No. We pick up in the draft report a system to handle existing listings, because - - -

DR BYRON: There's a transitional - - -

MR HINTON: There's a transitional period, particularly in circumstances where there are some listings that are robustly reached, or have been robustly reached, but there are some other listings that are reached through a deficient process, that when looked at again would not warrant listing. We therefore have this rather challenging circumstance of a transition period of what we've got today relative to what we've reduced in the draft report. There are different categories of buildings and different categories of circumstances that we make some comment on in the draft report.

MR PRESTON: One of the other problems my trust said this morning that they have is that the fact that if you've got one architect doing church buildings, we may have 20 buildings by the one architect pretty much the same. So we've got different councils wanting to say, "Well, we want that one," but we've got other examples and a more superior example of the whole range as well. So the other questions that sit in that - it would be great if we could just have one example of that architect's work, rather than 25. You know, that's the other struggling thing; that we haven't got any way in which we can say, "Well, that same cruciform church is in 20 different

areas - - -"

DR BYRON: But their response is that, "That's the only one in our local government area."

MR PRESTON: That's right.

MS HANSEN: Yes, that's right. So therefore the issue of comparative analysis - which certainly is a process that's adopted at the national and state level - just doesn't get applied at the local level. I think that's one of the problems we have with these vast areas of heritage precincts: is that the comparative analysis has lost its way.

MR HINTON: Yes, but if there is a system that incorporates considerations of cost and who's going to pay the cost at the time that it's statutory listed, then you will get prioritisation occurring, which is not occurring today, because the statutory listing is done irrespective of the cost to be borne and who bears the cost. Under our proposals we're seeking to better align decisions for statutory listing and the cost implications of statutory listing. That does engender some sort of constraint and rigour on the listing process. At the moment it's all one way: list.

MS HANSEN: Yes, we would support any process that introduced greater rigour in the identification and listing process, because we are suffering from an elapsed system in our view in terms of that. Can I just say just on these conservation agreements also too, is it being suggested by yourselves in the draft report that there be negotiation about what portions of a building should remain and what could go? The only reason why I raise that is because to get to that point would require a conservation management plan under the Burra charter. That comes at a considerable cost to a not for profit organisation like the church and one wonders just how far that is then of use and whether in fact we're trying to be too specific and too smart for ourselves, with all due respects, about trying to control and negotiate things out, when in actual fact that sort of level of control might eliminate opportunities for future use.

DR BYRON: Well, the advice that we've had is that it all stems from the statement of significance. So assuming that has been done and done well, that would inform negotiations between the heritage body and the owner of the place about what it was that really had to be conserved and which parts of the fabric might be changeable and when. But also, I mean, this doesn't have to be set in concrete for all time on day 1. We're presuming that there is a mechanism for periodic revisiting of the agreement about - - -

MR HINTON: Not the basic objective of conservation but - - -

DR BYRON: Yes, and an opportunity that neither side had ever envisaged before

emerged, then there's the opportunity to go back and say, "Well, here's a new opportunity that would still preserve these things that need to be protected and would also allow us to generate sufficient revenue to be able to maintain the rest of the building properly as well." You know, those sorts of things would not be ruled out, and nor do they have to be - - -

MR HINTON: Documented in advance.

DR BYRON: - - - documented in advance in bronze.

MS HANSEN: Because the documentation is a very costly process for people to have to go through.

DR BYRON: But if, you know, a detailed conservation management plan was going to be - if it was agreed that that was necessary, then part of the agreement would be who should pay for it. It's not at all obvious that a hundred per cent of the cost of that would have to go onto the owner of the property. Then again, the heritage body says, "Yes, we agree that for the good long-term management of this place it's essential we have an expertly written conservation management plan, that's going to cost $20,000 or whatever, and we're willing to pay three-quarters of that," or whatever. That too is part of what's on the table in terms of, having assessed the place is significant, what happens next.

MS HANSEN: Well, I would just caution you in regards to who makes the decision about whether a conservation management plan is required, because our experience with local heritage advisers is that they would probably want one for every site that the UCA owns, to be quite frank with you.

DR BYRON: Of course they'll want one when they don't have to pay for it and somebody else has to pay for all of it, and that's not really surprising. You know, part of the discipline is the recognition that all these things do have a price tag on them, and yes, it would be nice to have them, but who's going to pay for it. If only one side of the negotiations think it's important, then maybe they should be the one who pays the bulk of the cost.

MR PRESTON: The anxiety for small congregations is that they don't feel competent to be able to negotiate. Therefore they sometimes feel as though the regional council, or whatever it might be that's wanting to classify, has much more expertise and capacity. Therefore they feel totally vulnerable. Therefore, you know, you can say, "We like that building," but there's 15 people at worship trying to maintain their small operation with insurance and just general day-to-day living, and then they're also trying to be serious about all of the other legislative powers, like OH and S and everything else, which is now becoming such a major problem for our organisations that we'll have to close heaps of buildings because we won't be able to

comply. So their anxiety is so high that - - -

DR BYRON: But precisely because of that point, if they're going to be closed as functional churches on a daily or weekly basis, then the question of how are they going to be maintained and who's going to do it and who's going to pay for it becomes even more difficult and contentious.

MS HANSEN: Absolutely.

MR PRESTON: Absolutely.

DR BYRON: That's why we're suggesting an agreement to work with the current owners, managers, users of the property, to develop a plausible, viable long-term strategy for its retention, otherwise we're going to have a list of places that were assessed as significant and then we'll just stand back and watch them all fall down.

MS HANSEN: Well, that's right.

DR BYRON: That doesn't seem to me to be a very smart way of achieving conservation.

MS HANSEN: It's happening now. I mean, it is happening in rural and regional Victoria. There's no doubt about it. There are buildings sitting vacant, subject to vandalisation.

DR BYRON: It seems to me that that's not achieving anybody's conservation objectives.

MS HANSEN: No, I couldn't agree with you more. Just on the OH and S and building regs side of it, again we would have liked to have seen the report perhaps adopt an approach whereby there could be greater discretion given, through the relevant authorities, to heritage buildings. Now, certainly the City of Melbourne, through its Postcode 3000 program that ran in the 90s to promote city living, and particularly adaptive use of C and D graded office buildings adopted really I think a very effective way of saying, "Well, look, we're not going to require you to do that on the fire - we're happy to adopt this sort of approach to the fire regulations in terms of fire protection, we're prepared to exercise discretion here on the parking and so forth."

We would like to see something in the inquiry that opens up that opportunity for local councils across the board to be more flexible in exercising discretion about building regulations and OHS requirements on a one-to-one situation. Obviously there will be some sites that are more encumbered by their current built form than others in terms of delivering those regulations, but something that opened up the

doors that then other authorities - such as the Building Commission here and others - could then start to investigate ways that they might be prepared to loosen up the provisions for specific types of buildings, including heritage listed buildings. That would be of great assistance to the UCA.

DR BYRON: As you told us last time, John, the OH and S doesn't differentiate between the church and any other workplace.

MR PRESTON: No.

MS HANSEN: No.

MR PRESTON: Our experience at Echuca was that members of the community - because our building was about 12 feet off the ground and it had a ramp in there, which was in the 1950s on a 1 to 11 ratio rather than 1 to 14 - the ramp would have gone from 29 to 49 metres. We had a heritage control. We then had to put a lift in. We were significantly disadvantaged, because we were taken to the Equal Opportunities Commission who said, "If you can't deal with this matter, we'll take you to the civil court." So we are then caught in between the heritage requirements, our OH and S requirements, the community attitude. It is a massive minefield.

The capacity of a congregation to deal with that, particularly - take it out of the Uniting Church context, because sometimes we can move in from a state perspective - but if you put it in a diocesan situation it's even worse. So it's becoming a major problem of tension. You well know that in the OH and S Act there is a criminal consequence, and the trust to me this morning is saying, "Well, who's going to go to gaol, or what is the likely implication for that to be addressed?" And it's hundreds of thousands of dollars if we don't comply. So you get volunteers removing asbestos in the tiles, 35,000 fine for failing to deal with it. Volunteers going ahead, somebody raises the question, bang, you're in strife. Then you're taken under the workplace issues. So there's a whole range of rampant regulations that where we've only got volunteers, we're really in the strife - massive costs.

MS HANSEN: So I guess what we're saying is that the filtering down of that, through the regulatory system - if the inquiry can perhaps revisit that issue, and it needs to give some direction along the lines of discretion.

MR HINTON: A sharper focus.

MS HANSEN: Yes, and discretion - actually trying to say, "Well, look, authorities actually should have the capacity to exercise more discretion on these matters." That would certainly assist in the overall protection and conservation of heritage, and its adaptability too.

DR BYRON: I think we did make the point - maybe we could make it more forcefully - that some of the other mechanisms for dealing with adaptable use in terms of transferable development rights et cetera aren't much use for a not for profit organisation.

MS HANSEN: That's right. All right for the big boys in the property development game but not us, I'm afraid - pretty useless.

MR PRESTON: Just to give you one classic example, if I went back to the Hobart situation. What they were saying is we've got to store the box pews - number them and store a hundred box pews. Now, we'll end up with warehouses across Australia to actually comply with a whole range of these issues. So what we're concerned about is that - well, I hope you as commissioners understand this is a massive problem for most denominations, and they haven't got the money or the capacity. We've only joined together as a church to try and get this up, but most of the small denominations can't even present.

DR BYRON: Just on that point, we did have Bishop Ian George in Adelaide last Friday.

MR PRESTON: Good.

DR BYRON: Here - I think the day after you were last here - we had the representative of the Roman Catholic church and their architect.

MR PRESTON: But the problem is that the architect there, may I say with respect, says - when we were talking about artisans, of course you will get it for cathedrals. But who's going to pay the cost of travelling these artisans to most of the rural centres? Yes, you can get them in Melbourne, and that's a premium job.

DR BYRON: Yes.

MR PRESTON: They don't have to move. But carting staff backwards and forwards across the nation is no benefit to us at all.

DR BYRON: And I imagine there's not quite the same kudos for an artisan - - -

MR PRESTON: Absolutely.

DR BYRON: - - - to be working on a little bluestone church in some hamlet - - -

MR PRESTON: Yes, at Clunes.

DR BYRON: Yes. We also had the former state heritage minister from

Queensland, who was representing the National Trust in Queensland, but he's also an ordained Anglican minister who was working for the archdiocese of Grafton, who was complaining about - he was not complaining. He was explaining about the difficulties in closing down country churches, and echoing many of the same points that you had made to us.

MR PRESTON: But we have trouble with the National Trust more than we do with anybody else. Let me lay that right on the line. We can do a decent arrangement with Heritage Victoria, for example, but we can't do it with the other bodies at this time.

MS HANSEN: Not at the moment, we're having great difficulties.

MR PRESTON: Massive problems. So don't talk to us - because they're just, you know, "pow".

MS HANSEN: Neil, can I just say, in your report you asked for some suggestions on the heritage overlays in terms of the precincts and how you might dealt with them. I think that one of the fundamental issues is that because they are blanket controls, it would be good to actually go back and require that each building has to be graded. There is a grading system that has been adopted here. It's A, B and C. It's pretty basic: A of state, B of regional/municipal, and C of local or contributory, okay. Buildings that are not graded just simply shouldn't be subject to things like demolition control, simply because they're in a blanket. They should not be subject to that. It really should come down to the fact that a lot of the controls and a lot of the guidelines should be fairly and squarely on the buildings that have been graded with statements of significance and not the buildings that haven't been graded.

We've had a number of instances where we've been in that net of the heritage overlay, we haven't had a graded building, but we've still had fights over the demolition of a building, even though it's not a graded building. So I think there needs to be just greater clarify and greater definition as to, within those areas, which are the buildings that are actually of significance and which aren't.

DR BYRON: But when looking at the map of the City of Yarra or the City of Port Phillip and so on and seeing that 70 per cent of the whole area is under a heritage overlay, it's not only the places that are under the overlay but also there are controls, aren't there, on places in the vicinity, so across the road or nearby?

MS HANSEN: That's now becoming part of the debate, absolutely. I mean, I'm of the firm view that heritage precincts have been used as a de facto neighbourhood character control, and people in this room know that that's my view. That's exactly what has happened, is that people think that the neighbourhood character is - you know, all of these buildings, regardless of what their cultural significance is. It's the

status quo mentality, "Thou shalt not change." Unfortunately heritage overlays and precincts have been used as the mechanism to deliver that outcome, for all the wrong reasons, which is really unfortunate.

MR PRESTON: It's a pity your commission doesn't go to Japan, because there is an openness to be able to bring together modern and old in a very creative way, but we haven't got that here yet.

MR HINTON: Perhaps the Uniting Church in Australia could fund that trip. I'm sorry, John.

MR PRESTON: Thank you very much for your time today.

DR BYRON: Thank you very much for the thought and consideration that has gone into this. Where we've explained ourselves very poorly, we'll try and do much better next time.

MR PRESTON: Thank you.

MS HANSEN: Okay, thank you.

DR BYRON: Have we got time to take a five-minute break? Well, yes, let's resume in just five minutes.

DR BYRON: Thank you very much, ladies and gentlemen. I think we have one more speaker lined up for today. If you would like to just come forward and introduce yourself for the transcript. I notice you've been sitting patiently most of yesterday and today. Thank you for your interest in the inquiry.

MS RAJENDRAN: Thank you for all your valuable information that your report has afforded us. I'm Maria Rajendran and I'm an owner of a heritage listed home. Now, I've been listening to these very important people who have been discussing their problems. Mine is rather insignificant, because it is really a home, a small home. So we're not involved in a lot of things. But as a person in the situation of dealing with Heritage, there are one or two things that I would like to discuss as a result of skimming through your book - this is from my point of view, my own experience - firstly the registration, the statement of significance, the relationship of the Heritage Council to Heritage Victoria, the role of the National Trust and so forth.

So starting with the process of registration, I think that this begins with a nomination. Someone can just point their finger at the house and say, "Well, we'll put it on the register." Now, this becomes an incredible intrusion to a family. In particular we have experienced this. I feel that there should be some method of nomination that would keep the owners of the property in the distance, without knowledge, until conclusive researchmes an incredible intrusion to a family. In

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like to put a noun to that. So you know, it's just everything against me. Now the house is in such a state, it can't be lived in. It doesn't meet any of the present day requirements. You can't even put a refrigerator in it, there's no space. There's no means of heating it - and that has been highly investigated - except there's one super fireplace. Well, now the laws are going to come in that you can't have a fireplace, it's pollution. So you know, there's nothing that can be done with that house.

I suggested that it should be lifted up brick by brick and put somewhere else, you know, on a heritage bridge or something, where students could look at it, because nobody has shown any interest in it, not even architectural students. I mean, the trust ran some sort of a competition to get interest in the place, but there's nothing that can be done with it. I was prepared with the house. I said, "Well, it can remain there, you know, it can remain there available to the public. I will only use it maybe for a music room or whatever." You know, it can be the idiosyncratic house of Robin Boyd. Boyd, being his own architect, had no - he could do what he liked. He didn't have to follow a client's requirements.

I mean, I've loved it in a way, and in a way - I haven't lived in it either - but I just think, "Well, that's something nice," like a vase. But it's totally impractical. As I'm older now and, you know, I've been doing this - for 33 years I've owned the property, and I still haven't had any satisfaction out of it. I've bought extra land, to enlarge the area, and I've put a lot of money into it. Now, you know, it's covered in trees that volunteers - and they're huge trees. The land was put on the register, but there was no examination made of it. There's one huge tree that was there before Boyd owned the land and before he built it, and the neighbours are complaining and that has to be removed. Now, the cost of removing that is in the vicinity of eight to 10 thousand, it's so huge. It's right in a corner, with neighbours all around and - you know, the risk of damage.

So I'm lumped with it. I've spent about 15,000 removing trees, and there's more trees to go which I've calculated at about another 12,000. I simply can't afford it. I want the property. You know, really, I want it to work. And I'm prepared to accept that if the 47 house is maintained at the cost of the state, it's fine. But I would want to have very expert people involved in the process of restoration, because even with the people I've been involved with - you know, the senior architect said, "Look, I don't know anything about Boyd," but nobody would listen. So it just goes on and on and on, and I don't know what to do.

I'm waiting - 140,000 for the cost of this roof, which normally would have cost 10,000 - no explanation, signed by the Department of Sustainability and Environment. I wrote to them, saying I need a copy of the contract. No way, they said. I need to know why a government contract was not tendered, right. No reply. I go to the council and I say to the council, "I need to look at what has been done to my building. Can I see the plans?" "No, no," they said, "Heritage Victoria have the

control. We cannot give you any input. They have not given us any more." So you know, there are no records. My file is not there - nothing. You know, this takes an awful lot of mental energy, physical energy - and knowledge, which I haven't got.

MR HINTON: I'm sure that's the case. But as you appreciate, the Productivity Commission is not going to become a party to this process that has been going for some years.

MS RAJENDRAN: Yes, and I think there are - - -

MR HINTON: But thank you for drawing our attention to - - -

MS RAJENDRAN: - - - one or two points that - - -

MR HINTON: - - - your experiences, as outlined in your documentation. I suspect that Heritage Victoria has its own views on this topic.

MS RAJENDRAN: Well, it hasn't been put before them and what have you. Everything has quietened now. I've received threatening letters for the past 18 months to pay that 140,000 within 21 days, and suddenly everything is quiet. I don't know why. So that still hangs over me, and it's a threat.

MR HINTON: Threat of litigation to seek reimbursement - - -

MS RAJENDRAN: Yes, and I just can't - and that will be in a different court. They will only be interested in the figures, not the reasons, and that's it. So you know, I've been really victimised, I find. So that's about all. I thank you very much.

DR BYRON: Okay. Thank you very much for telling us your story. I think, in the absence of any other speakers, we can adjourn, to resume on Friday morning in Canberra. Thank you very much, ladies and gentlemen.

AT 4.49 PM THE INQUIRY WAS ADJOURNED UNTIL
FRIDAY, 17 FEBRUARY 2006

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