



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

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

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

TRANSCRIPT OF PROCEEDINGS

AT ADELAIDE ON FRIDAY, 10 FEBRUARY 2006, AT 8.45 AM

Continued from 3/2/06 in Brisbane

DR BYRON: Good morning, ladies and gentlemen. Welcome to the public hearings of the Productivity Commission's inquiry into the conservation of Australia's historic heritage places. Thank you very much for coming today. My name is Neil Byron. I have been appointed the presiding commissioner for this inquiry and my fellow commissioner is Tony Hinton.

This inquiry stems from terms of reference that the commission received from the Australian treasurer with the endorsement of all the state and territory governments. It covers the policy framework and the incentives in place to encourage the conservation of historic heritage places, including built heritage. We released a draft report in early December which contained a number of draft findings and recommendations. Submissions have been coming into the inquiry following the release of our draft report and we now have about 230 submissions, all of which are on our web site except for those that have come in over the last couple of days.

The purpose of these hearings today is to provide an opportunity for any interested parties to discuss their submissions with the commission and put their views on the commission's draft report and recommendations onto the public record. Following these hearings here today, we'll be holding similar hearings in Melbourne and Canberra next week, and that will conclude the public hearings around the country. We are planning to finalise the report and submit it to the Australian government by the due date, 6 April. The Australian government is required under the Productivity Commission Act to publicly release the final report and usually with a response to it, within 25 sitting days of receipt from us.

The Productivity Commission always tries to conduct our public hearings in an informal manner, but we do take a full transcript for the record. I should mention that the Productivity Commission Act grants immunity from civil prosecution for comments made in the course of making a statement, submission or giving information or a document so long as it is made in good faith. These are official hearings and not just a public meeting. We are taking a transcript for the record.

We always provide an opportunity for anyone in the room who wants to come forward and put something on the public record, to do so before the day's proceedings are concluded. The transcripts will be put on the commission's web site as soon as they have been checked for transcription accuracy and they will also be available through libraries around the country or on request from the commission. To comply with the Australian government's Occupational Health and Safety Legislation, I have to inform everybody that in the very unlikely event of an incident alarms will sound and we'll go straight down the steps and out into the laneway through the fire escape. The other little bit of housekeeping is that the toilets are just out the door and to the right, behind the lifts. That's enough housekeeping.

I would now like to commence proceedings for the day with our first participant, Bishop Ian George. Thank you very much for taking the time to come this morning. If you would like to just take a seat, talk us through the main points that you wanted to make and Tony and I may have some questions of elaboration that we would like to follow up.

BISHOP GEORGE: Thank you very much, commissioner. May I express my personal appreciation of your willingness to meet a little early this morning to squeeze me into your very tight schedule. I should clearly state at the beginning that I come to you as an individual. I am not formally representing the Anglican Church, although I was archbishop of Adelaide for 13 years. I have just last year ceased a term of 13 years on the Heritage Authority for South Australia, so I do have some particular concern and interest in this matter.

I would like to thank you formally for the vast amount of work that is summarised in the draft report that you have presented, and its findings and its recommendations. My particular concern, as you would guess, is about what is really a fairly limited number of references to the churches and the many buildings they hold and have responsibility for and of course other nonprofit organisations owning heritage properties.

In the terms of reference on page 6 of your report you list some of the particular concerns that the terms of reference oblige you to consider. One of those is the impacts of regulatory taxation and institutional arrangements and of other impediments and incentives that affect conservation outcomes. This is a particular concern of course for all the churches, because a very significant percentage of Australia's built heritage has in fact been constructed over the years by the various churches in the country and they carry, as you would be well aware, an enormous burden of responsibility both financial and moral for the maintenance of this important part of Australia's heritage.

I would like to urge the commission in its final report to perhaps just give a little more attention to the plight of the churches and in particular to nonprofit organisations who are given absolutely no support at this juncture from government in terms of the restoration or the preservation of heritage buildings of any kind. In fairness, I should say that obviously the government has - as you point out - given a number of ad hoc donations of considerable size to major heritage items like various cathedrals around the country.

I'm a little concerned about the ad hoc process. I think this is probably a little too easily prone to political influence and there ought to be a more transparent and open process in relation to these major heritage items. I know that the government has been generous to St Mary's Catholic Cathedral in Sydney, to St John's Anglican

Cathedral in Brisbane, to St Paul's Anglican Cathedral in Melbourne, but it has all the appearances of being highly selective. In fact there are a myriad of major church buildings of various denominations that all need assistance for restoration around the country.

On page 27 of the report you refer to the National Trust and its role, which is an important one. You mention that the trusts are eligible trust recipients and they are subject to certain conditions - "Donors can claim tax deductions." Now, this is a process which the churches have used over the years for restoration fund-raising programs and it has value, and the National Trust does a good job in this. The one problem with it from our point of view is that of course they charge a fairly significant percentage of the overall receipts for the service they provide. It's not unfair that they should make some sort of charge, but it seems that it's very difficult for the churches to actually set up their own kind of heritage trusts.

I would like to refer you to the passage in the report which I think needs clarification, where you say - and, I'm sorry, I'm just trying to find the page for this. Bear with me for a moment. I will have to find the page later, but the statement is made that:

Certain other types of private sector organisations which own heritage properties, such as churches, are also recognised by the Australian Tax Office as having charitable status.

I think before that goes into the final report form, that really needs much clarification and I think, with respect, that it may well be misleading because there have been numerous attempts by the churches to actually get tax deductibility for - church heritage trusts were set up. In fact we tried to do this in South Australia for the Anglican Church and were told after a long period of negotiation with the Tax Department through our lawyers, that this was not possible; that it didn't come within the provisions of the schedule under the Tax Act. I think that really needs to be further researched, if you don't mind me saying so.

MR HINTON: Thank you.

BISHOP GEORGE: There is no help of course for the churches as charities. I would refer you to a submission which is not recorded in the list of submissions in the draft report. I was given a copy of this, but I'm not sure whether it has actually been presented to you. It comes from the former Justice Roderick Matheson AM, who was formerly a Supreme Court Judge in this state and until recently was chair of the Heritage Authority in South Australia. He addresses particularly the whole question of the definition of "charities" and this is a very helpful submission, I think. If you haven't received it, could I suggest that maybe investigation might be taken

into receiving it. It's not proper of course for me to submit it because it's his document and so I would need to get his permission, which I haven't got, but it's dated 25 May 2005 and so it's obviously in terms of the proceedings of the commission.

With respect, I think that a totally new approach to the problems of nonprofit organisations is needed or a major part of Australia's built heritage with gradually disappear. Commissioners, you have given attention to the problem of redundant churches in rural areas in particular and I agree with all that you've said, but I think the same problem faces in urban areas with the multiplicity of buildings, many of which are of great character and value which are likely to be demolished. I would totally agree with the comments that you make on page 168 of the draft report. Sorry, I think that's the wrong page. My apologies. Let me move on.

In your draft report you've placed a great deal of stress on the potential value of negotiated agreements. There is wisdom in that for the whole community, but could I point out that before any such agreement can be entered into, a professional heritage assessment must be conducted and that this costs money. There would seem to me to be a need for the commission to consider recommending to the government that a specific fund be created to allow grants to be made for that kind of professional heritage assessment because on some occasions of course the heritage assessment will say, "This building is not worth heritage consideration," but somebody has to pay for it, if you understand what I mean.

Where heritage assessments conclude in South Australia, for example, that a building or property is of significant heritage value and subsequently finds itself on the register, of course, all that processing then is subsumed under the activities of the state department. I think this is one of the kinds of practical incentives which could assist nonprofit organisations and help to ensure the kind of compatibility with the interests of owners that you make a strong point of on page 172 of your report.

I have to say that a bad experience with an Adelaide land management plan that I've experienced indicates there is some doubt about whether negotiated agreements can really be adequately supervised and enforced. I can give specific details, which I would not want put on the record, of a way in which a land management agreement was completely ignored by a developer and had it not been for my living next door the variations which had been not approved would never have been noticed. I think this is a problem the commission needs to look at.

The commission is to be commended for its long overdue survey of current heritage matters at all levels of Australian society. Nothing has, of course, been done since the 1970s, as you point out. There's much in common between the states, but also significant differences and some confusion. And so I thank you for that. The

commission seems to suggest - this may be more apparent than real - that the three-tier system absolves the Commonwealth of responsibility for other than government property and a small number are world-class buildings, and natural heritage areas of course.

Now, this is surely inadequate. I would submit that the Commonwealth government should not withdraw from concern for the funding of heritage, at a wide range of levels. It's clear from the report that an increasing number of Australians have significant care for the built and natural heritage of this country. As the Commonwealth acquires ever-increasing tax surpluses a significant percentage of those funds, I submit, should be used to preserve our heritage, either by the Commonwealth directly or by funding of state, territory and local government heritage programs.

As a taxpayer, I believe that is in line with some of your own thinking, as expressed on page 181 of your report, and I quote from that where you say:

The key principle that underlies the commission's development of a mechanism to improve the funding of heritage conservation is that if the general community wishes to conserve more heritage places than would occur voluntarily, and in so doing place obligations and restrictions on owners to achieve this, the community, either directly or through government, should be prepared to pay for the additional cost that such obligations generate.

I totally agree with that, and as a taxpayer I would say, "Well, it is part of government's responsibility." I think we all know, from sad experience, the facts illustrate that owners are not likely to look after heritage properties where there is significant cost to themselves unless there was significant government support and appreciation. Thank you.

DR BYRON: Thank you very much, Bishop George, for those comments.

MR HINTON: I have a couple of questions: one slight clarification regarding your reference to the submission from the Honourable Justice R.G. Matheson, in May 2005. Was that a submission to that inquiry or that investigation or work done by government on the definition of charities?

BISHOP GEORGE: It was. And I notice that the judge refers to a consultant, at the end, and I wondered whether you have consultants who have done some work for you and that this actually came to a consultant and didn't come on directly to the commissioners. It's just a question.

MR HINTON: We can certainly access it, I think. If it's a public document then - - -

DR BYRON: We'll find it.

BISHOP GEORGE: If you need any further research, I could certainly make contact with the judge for you.

MR HINTON: On a more substantive point, we welcome your comments on what's called adaptive re-use, and that seems to be a particularly valid issue for church properties.

BISHOP GEORGE: It does.

MR HINTON: Can you sort of briefly outline to me what your reaction is to adaptive re-use. It's seen by some as a very powerful mechanism to conserve a building, but certainly not conserving it in its original use state.

BISHOP GEORGE: Yes.

MR HINTON: Can you give your views on that?

BISHOP GEORGE: I've spent quite a bit of time in the United Kingdom, actually looking at programs of adaptive re-use of church buildings. Of course, you would know probably better than I do that there are a number of classifications over there. There are some brilliant adaptive re-uses of church buildings. I think of the town of Norwich, for example - I don't know whether you've been there at all? One of the old inner city churches is now a military museum. One is an adult education centre. One is an aged persons' recreation centre. In at least two of those they have managed to keep a small area as a chapel, which can still be used if so desired. I'm all for adaptive re-use and I think we ought to be looking at it a lot more creatively and constructively in this country.

MR HINTON: Thank you for that. My third question is in relation to your comments about the role of governments, particularly with regard to expenditure - and you made some comments about the ongoing importance of the Commonwealth being involved, not just with regard to nationally significant properties. Under the sort of tax-sharing arrangements, the Commonwealth does certainly have revenue sources way beyond its expenditure needs, and the states of course have expenditure needs way beyond their revenue resources.

BISHOP GEORGE: Well put.

MR HINTON: Lo and behold, there are transfers from the Commonwealth to the states, and that system is a very complex but well-established process of revenue sharing. Isn't that the mechanism by which states then have sovereignty as to how they go about undertaking their expenditure programs, rather than having a system of duplication and effort across various tiers of government?

BISHOP GEORGE: Yes. I think there's a good argument to suggest there should be, as much as possible, elimination of overlapping areas. However, I think that the state governments can often be at variance with the federal government on a number of issues and areas; we've all seen that. If the Commonwealth is really concerned about the built heritage of the country, I think the Commonwealth really needs to make funds available with some strings attached. I must say that the state of South Australia has, in the last few years, greatly improved its performance in terms of the support of heritage. That's a great credit to the previous minister, John Hill, and his department.

It's a long way from coming anywhere near the degree of support and incentive provisions which a full and proper concern for the built heritage would demand. And I believe that's true pretty much all around the country, but I couldn't give you facts and figures. I think only the Commonwealth can in fact correct that. There has to be a genuine commitment from the federal level to ensure that there's a common policy around the country and that funds are consistently made available for preserving a heritage which is just over 200 years old but of course will be much, much more valuable and much, much more cherished in a hundred years' time as people realise what they have been losing. Thank you.

DR BYRON: I particularly appreciate the comments that you've made about how the tax deductible status, as we have discussed in the draft report, may not be complete or completely accurate; we'll try and address that. With regard to what I thought was one of your major comments about a totally new approach to the problems of nonprofit organisations, I would suggest that we were particularly cognisant of things like rural churches, where there simply isn't the congregation to pay for the ongoing conservation and good management of places which are cherished as part of the social fabric.

The question is: How is it going to be looked after, who is going to do it and who is going to pay for it, particularly when the owners, if you like - the congregation - are simply not in a position to do so? Hence our suggestion for agreement between the listing body to provide the appropriate set of quid pro quo's to enable an agreed conservation management plan to be achieved. You seem to be suggesting that much more than that is needed.

BISHOP GEORGE: Yes.

DR BYRON: Or are we talking about the mechanisms by which the financing is arranged?

BISHOP GEORGE: I think there's a question of policy, first. So far governments - and I'm not targeting the federal government in this respect; the state governments are just the same. There has been an unwillingness by governments at every level to really address the specific needs of the nonprofit organisations. So I think there's a policy decision that needs to be made first, a recognition, and your report does something of that. With respect, could I say, your focus is good on the rural situation but there's not much mention of the urban difficulties. So that might just be looked at.

If you're going to provide some kind of support and incentives for the nonprofit organisations - and I don't have easy answers to this, I have to say - the only answer, it seems to me, is for there to be some kind of specific fund which is budgeted annually and for which clear, open and transparent submissions can be made to some particular government authority for the preservation and restoration of these particular built heritage items. I can think of no other way of going about it. So you might call that a mechanism, of course.

DR BYRON: Yes, I believe there is such a fund in Victoria but I'm not sure they exist in other states. That's certainly something we can follow up on. I think in view of the time and the length of the program, I'll have to keep moving. I would like to thank you very much for coming today and for the valuable comments that you've made, and the constructive criticism. Thank you.

BISHOP GEORGE: Thank you for having me.

MR HINTON: Thank you very much.

MS LOMAX-SMITH: Good morning. Thank you so much for letting me come.

DR BYRON: Thank you very much for taking the time out of your obviously very busy schedule. If you'd like to take us through the main points that you'd like to make, and then perhaps we can follow up on some issues.

MS LOMAX-SMITH: Thank you. Can I firstly thank you for letting me come and make a presentation to you. You will realise that I am taking the time out of my schedule because I feel very strongly about this matter and I'm driven to do this even during the start of an election campaign. So you'll understand how important I feel this matter is.

I come not as a representative of the government, although our government will make a submission to the commission and I agree with the substance of that. Some of the issues I touch on will be covered by that submission, but I particularly come because I have an interest and some experience in this area. I have been a capital city councillor and a lord mayor and have sat for over a decade on a range of planning committees and heritage advisory committees, but also, most particularly, have been involved in local heritage listing. And it's that experience I want to share with you, because I have to say I was somewhat shocked by the conclusions and recommendations made by the commission in their draft report.

You can imagine the ones that most concerned me were the ones relating to what I'll call voluntary listing, but also compulsory acquisition and the capacity of property owners to change the status of a property when it has previously been listed. Some of those matters may be clarified, I'm sure, in subsequent documents, but I did think it was worth talking about some of the issues I see.

Now, I particularly believe, as many people do, that our heritage has a value that isn't always accessible financially, and I say that it in some ways reflects the value of the natural heritage. One of the issues that I did notice in the history of this commission's report was that initially the matter was raised, I think, after the chairs of heritage councils spoke about tax issues, somewhat related to those discussed by the Reverend Ian George a moment ago. The tax status of heritage buildings is anomalous and highlights the different way that the federal government looks upon the natural heritage and the built heritage.

I think - and it may be perhaps simplistic to suggest - that the natural heritage is almost in two components: there are the sustainability issues about water, air and soil. But it's the biodiversity values of the heritage that perhaps reflect more the built form, and so much more money appears to go into the natural heritage and so much better tax breaks go into the natural heritage than go into the built heritage. I think

there is a misunderstanding of the value of the built form, as well as a lack of incentives for protecting it.

I understand that initially complaints were made by the chairs of the heritage councils about the tax status, and I think that's been covered adequately by the Reverend Ian George so I won't continue with that matter, but I'm particularly concerned about the way the value of heritage buildings was assessed by the Productivity Commission, and I suspect it's part of your brief to look at financial values, but so often the tourism values and the cultural values of the built form can't be assessed financially in the same way any more than I'm sure remnant species or remnant fauna can be protected or valued financially.

One of the problems fundamental to the protection of heritage buildings is that they're protected because they have a value to the community which may not be the same value to the property owner, and one of the irreconcilable issues about, I think, the commission's report is that there's no reflection of the community value of those buildings, particularly what I would call the intergenerational legacy that those buildings have and the fact that they are irreplaceable and they are fragile and each owner is barely more than a custodian for the next generation so that once the building stock is lost it is irrevocable.

One of the perhaps alarming inferences, and it may not have been intentional by the commission, was the idea that there was an imposition on building property owners and reduced property rights and certainly a reduced property value as if planning law didn't already impose those restrictions on property owners. People are never able to do what they wish with their properties because of planning laws. So the suggestion that heritage is a peculiar example of reduced property rights is, I think, in error because there are always values that have to be imposed on property development.

The issue that I particularly wanted to address, as I mentioned, was the recommendation in 8.1, and I'm sure that's the most contentious one for many of the representors before you. I wanted to talk because I think that we have some experience of voluntary listing in this state and it's been a sad and sorry affair, because normally in heritage listing in this state we have a process whereby qualified heritage consultants do a survey.

The survey results are sent with a recommendation to the minister who therefore protects those buildings for a period of 12 months while a public consultation occurs. That interim protection system is a good one, but recently we've seen attempts at voluntary listing in our state and there's been an element of capricious decision-making about how those decisions are made that I think will only become worse if your recommendation is endorsed across the state.

If I could just give an example of North Adelaide. They went through a normal process of employing a heritage consultant, and of the 246 buildings which I understand were recommended for listing, there were 104 objections, and interestingly a second consultant was employed to look at the buildings again and they recommended that about half of them should be listed, but still the council decided to only list two of those recommended ones. Interestingly, while there was no dispute for nearly half of the buildings, the second consultant still rejected some of the recommendations and yet the council recommended three of those rejected by the consultant.

What was interesting about those five buildings, which is the point I'm trying to get to, is that the five buildings that were recommended all had non-individual ownership. So it was the Estonian Hall in Jeffcott Street, the Old Grain Store which is an art centre in Margaret Street, 69 Barnard Street, which was part of Calvary Hospital, 190 Brown Place, which is part of St Ann's residential college, 88 to 100 Strangways Terrace, which is part of Calvary Hospital. The example I'm trying to give you here is that each of those five buildings that were listed were not in private ownership of an individual real person but in an institutional ownership, and one of the risks of the recommendation, I believe, is that there will be a skewing of the heritage stock away from what I might call the vernacular or the personal or the domestic towards institutional buildings where the differentiation has already been set up in the report suggesting there might be a different strategy for listing government-owned properties.

There is already with voluntary listing the capacity for councils to feel less embarrassed and uneasy and politically vulnerable if they list properties that are not owned by individual persons, and I think that risk would be significant in an area where we would want there to be a mixture of types of buildings that were protected and I think that's one of the examples I gave you of North Adelaide and Adelaide where there has been an experiment in voluntary listing. It also produces extraordinary inconsistency.

I'm sure the other representors have made the point; that it's possible to have a row of buildings and even a maisonette where one property owner on one side of a dividing wall welcomes listing and another doesn't and you can have the appalling outcome that has been seen in some parts of Adelaide where a maisonette and a dividing wall is disrupted and a three-storey building is tacked onto a single-storey remnant because one is protected and one isn't, and that is not only an unsightly outcome but is illogical to have a series of buildings with essentially identical appearance which are not protected.

The other aspect of voluntary listing I particularly wanted to address was the

problem of interim listing, and in the North Adelaide example where the council regrettably published the list of buildings before there was interim protection by the minister, some 10 per cent of those properties that were subsequently objected to were the subject of development applications for demolition and that occurred I understand within three months. So the debate around the time of listing and heritage conservation studies is very significant because it's a time of major building stock loss, and the point I would make is that these buildings are remnants already and they're part of the streetscape, and the more that are lost the more we lose the general ambience for a particular suburb.

The problem with listing and the failure to interim list is quite interesting because some councils understand that requirement to interim list and I comment on Victor Harbor, a small rural council which has interim listed and protected its heritage list and Walkerville, which is probably second only to Adelaide in the significance of its heritage stock. It's the suburb that has the most significant remnants of early settlement and significant families and developers and investors and their homes are of a very major significance as are some of the smaller cottages.

I personally have been very keen to have interim protection and indeed moved amendments in the South Australian parliament to compel local governments when they're providing heritage PARs to always have the advice of a heritage expert, because the integrity of their selection of buildings and the quality of the surveys and recommendations, I think, have to be irreproachable, and I think that it was a pity in fact that the need also to give cause for rejecting the advice of an expert which was part of that bill was also rejected by both the Liberals and the Family First representatives in parliament, because I seriously believe that one of the issues about Adelaide was that the deletion and addition of properties was capricious and without the advice of an expert and it could not be substantiated and I think that listing has to be entirely transparent, entirely reproducible and with justification.

The issues that I would also like to raise is the problem of consistency and predictability for developers. One of the worst problems that a heritage regime can have is uncertainty, and I think that uncertainty applies to both those who love heritage and those who dislike it because developers who should have the right to develop property need to know what is listed and to be sure of the future.

I will point out that one of the other issues about the recommendations about heritage and development and losing development potential is the fact that I'm wholly opposed to the recommendation - I think that would be 9.5, 9.6 - those recommendations which relate to the possibility of a new owner having a chance to remove property from the list or perform another survey or study or agreement. The reason I would object to that is that it's quite clear that any property developer who buys land would buy that land with the improvements on it and the value of the land

would be discounted if there were a heritage agreement or a heritage listed building on it, and it would be quite inequitable if someone could then make an application, have the building delisted; they get windfall profits.

Those windfall profits also would discount the investment by the state because South Australia does have heritage incentives at local government level and occasionally there are other incentives available for owners of heritage property, and it would be entirely inappropriate if those investments were then lost by the demolition of a building because a building could become delisted by a subsequent property owner. The issue about the property rights of owners I think respectfully I would like you to look at again. I mentioned it earlier.

I know the Australian Council of National Trusts wrote a submission which I think you have relating to what rights property owners really do have, and I would draw your attention to their comments because it does actually add some strength to the view that everyone has imposes upon their capacity to develop property and nobody has the right untrammelled or unfettered to develop their property in the way they wish. There are always planning laws and requirements in every state and territory in every jurisdiction and whilst most of those protections are about public health and safety and public amenity, they also have very substantial qualitative and quantitative requirements on any development. Developers know this very well and it should not be used as an excuse to remove heritage protection. In fact, relatively in residential areas of course most developers have very few rights to have high-rise developments in most suburbs and their limitations are on plot size in any case.

One of the ironies of the issue of voluntary listing, I think, is that we don't allow voluntary adherence to other laws. It is ironic that so many people believe that heritage listing should be voluntary when no-one believes they have the right to voluntarily evade EPA regulations or voluntarily park illegally outside their homes or voluntarily not adhere to rating accounts or levies for such things as stormwater. The idea of citizens in our country having the right to voluntarily adhere to conditions that they like and ignore those that they don't like is, I think, an anomaly that most citizens would not support.

The comments made by the previous speaker I think were relevant in terms of effort and cost, and one of the other issues that I would draw to the commission's attention is the cost of the regime that they appear to be suggesting, and basically government has got smaller and there's really an intent, I think, or unintended outcome of the recommendations will be a considerable increase in bureaucratic intervention and the need to constantly monitor agreements, heritage agreements. Many councils I think would be hard-pressed and there would be a significant cost impost. I'm particularly concerned about the government effort involved in the compulsory acquisition recommendation 9.4.

I think that 9.4 is one of the areas where there is indeed not only the capacity for cost to government but also conflict. Councils and governments have the right or the capacity to compulsorily acquire property. It's something that's taken very seriously and rarely takes effect, and the cost of compulsorily acquiring large numbers of properties, I think, is really a naive idea. It would be politically inflammatory and is quite unnecessary. Plenty of suburbs in Australia, capital cities included, in places around the world don't require compulsory acquisition to protect heritage and I'm not sure that we should either.

I have mentioned previously the inequity of the system and the loss of taxpayer funded conservation grants should there be a loss of a heritage building. I think there is one area where the commission has made a very clear recommendation that I think is correct. I think there is a need for heritage management processes and agreements, but those processes should be in place where there's a development application and they should be part of an understanding of how the decision is made to list the buildings in the first place. The impost should not be put on the property owner and if these are in place, then clearly there is a need for significant local government and possibly state government support.

One of the other areas that I was concerned about was that the report didn't appear to want to conserve buildings. There was no sense that the outcome was actually conservation rather than having the desire to make it easier for property owners to manage the conservation process. I think one of the outcomes I would like to see from the federal government is a sense that our built form is as important as our natural heritage and that there is leadership in this area. I heard the discussion earlier about this better done at the local level, but it would be encouraging if the federal government had a view that our heritage and history were important for itself rather than just being something that has a dollar value that can be put upon it.

The report I think will have had many submissions that talk about the differences in various states. I believe that South Australia does perform its role in this area very well. I think 42 per cent of local councils have local heritage lists and we don't have some of the issues that are in other states. We have developed mechanisms that have worked for many years and one of the concerns about the recommendations is that we may well go back to the past when there was no proper regime in the 70s for protecting buildings; when there was a push to move towards heritage protection for the cultural values. The recommendations to me appear to be undoing the good and the balanced development of heritage in this state, when in fact the problems are relatively small. A lot of the measures being taken appear to be trying to resolve problems that affect a few property owners rather than the good outcomes that occur for most of them.

The other area that I think I would like to comment on is the separation of heritage management from the planning system. That was recommendation 9.8. This would actually produce tragic outcomes because the planning system is the compliance area where buildings are protected and re-uses are defined. If there were a break in that nexus, then there would be no capacity to manage building developments, redevelopments and re-use in an orderly manner. I would be very keen to see that separation not occur.

The funding issues are complicated. There are tax issues that can be resolved at both federal and state level, but I think the most important issue is that if these recommendations were brought in their entirety, there would be a profound change to the built form of our cities and our suburbs, and irrevocable harm to regional towns. That would have an economic impact that I don't think has been adequately measured in the report. I would encourage you to look at surveys - and I'm happy to give you these - of the desires of international tourists and migrants, and their enthusiasm for built form and cultural heritage.

These areas of economic benefit are very significant and obviously accrue to the community and not necessarily the property owner that they should not be discounted, because the benefits to a community are always those that governments should be dealing with and not always the dis-benefits of an individual, because that's part of a civil society. I think I've covered the issues I wanted to raise. Thank you.

DR BYRON: Thank you very much. You have covered a very wide range of issues there. I must say I'm surprised and very concerned that someone who is clearly as expert and experienced in this area as you, could misread our draft report to such an extent that you attribute to us things that we never ever considered let alone recommended.

MS LOMAX-SMITH: Which was that?

DR BYRON: Well, much of what you were speaking about. I think you would be genuinely stunned to realise the extent to which we are actually in heated agreement and the extent to which we do not assert many of the things that you seem to be reading between the lines that we're asserting. I fear it would take all day to respond to all the issues that you've raised and I'm not sure which ones to start with. For example, we envisage a system within the advice of experts with transparent, consistent, predictable outcomes. There is nothing whatsoever in our report that would change the system for interim protection orders.

When we talk about negotiated agreements, I think you would agree that that's not exactly the same as voluntary listing. Let me give you an example to elaborate.

If the council comes to a property owner and says, "Your property has been assessed as being highly locally significant. We would like to see it conserved and well managed into the future. We recognise that the imposition of certain constraints, requirements to use original materials, perhaps more expensive labour techniques, foregoing options for redevelopment that would otherwise be permitted within the existing zoning rules, that you will be required to seek development consents for activities which a similar property next door, unlisted, wouldn't have to seek and therefore we're going to exempt you from the normal development application fee - would you agree to have your property listed?"

There's a difference between saying, "We are going to list your property. Do you accept it, yes or no," or, "We would like to list your property. What quid pro quo can we discuss to make you as equally committed to the long-term conservation and good management of this property as we are, so that we establish a win-win partnership that will ensure good conservation outcomes?" rather than saying, "This is what we're going to do. Take it or leave it." Our concern with the existing heritage protection system is that almost everybody we've spoken to in every city and on all our field visits has said the current system is not working well. We're trying to develop amendments to this status quo that would achieve better conservation outcomes.

One way that we propose doing that is rather than have a long list of places that we would have liked to have seen protected for prosperity that are in fact degrading before our eyes, let us set up conservation agreements that will establish who is going to do what; if there are additional costs who's going to pay for it and to ensure that the places that we want to pass on to prosperity will in fact be well managed and well conserved. Now, it may be a slightly smaller list, it could be a longer list than the list we have at the moment, but it seems to us that the step that's missing is rather than saying, "Here are lists of properties that have been identified as potentially interesting. Let's assess them. Of those, those which have been assessed by heritage experts as being significant" - rather than going straight from there - therefore they're a statutory listing with a whole series of consequences - let us put another step in between which leads to the negotiation of a partnership to achieve the conservation outcomes.

Now, that's what we're talking about in terms of the negotiated agreements. I don't think the voluntary listing you were talking about in North Adelaide is quite the same thing as what we're talking about. Perhaps we didn't make that clear enough in the draft report.

MS LOMAX-SMITH: I think it was very clear. I think the issue is that a voluntary agreement, a negotiated agreement, a negotiated conservation agreement, whichever way you like to put it, requires two parties to agree to an outcome,

therefore it's voluntary. If one person doesn't want to agree, you have no agreement. It's like marriage. It takes two people to sign on the dotted line. Marriage is voluntary and to pretend that it's not a voluntary act is a peculiar, semantic argument. I believe that in fact if you try to negotiate a conservation agreement with someone who owns a significant property but is hell bent on demolition, they will not sign and therefore they have rejected your voluntary offer.

MS: Here, here.

MR: Yes.

DR BYRON: This is not a public meeting, thank you very much.

MS LOMAX-SMITH: I'm sorry, I just can't understand the argument. I respect your view - - -

DR BYRON: A negotiated agreement - - -

MS LOMAX-SMITH: - - - but, I'm sorry, I just don't understand - - -

DR BYRON: - - - voluntarily entered into both sides because both sides are committed to the purpose of the agreement. Now, the nature of the agreement that we envisaged would be long term and binding on not only the original person who signed it, but on future owners for the duration of that agreement, whether it's 10 years, 50 years or perpetual. We didn't envisage a system whereby having identified a place as being of heritage significance, negotiated an agreement for its long-term good management, put a substantial amount of taxpayers' funds into that, that somebody would then unilaterally abrogate it. It would be a binding contract for the duration of that contract.

Enforcing and monitoring that contract is no more or less difficult than enforcing and monitoring compliance with the existing legislation, but the nature of the contract is much more explicit and visible. Rather than having hidden indirect subsidies through the tax system or through rates or whatever to offset the imposition that society wants to put on particular places because of the public benefit that comes from the heritage conservation, let's make it explicit as part of the negotiated agreement: "Society values this heritage place. We would like to see it conserved into the future. We are willing to put our money where our heart is."

The issue of compulsory acquisition was there purely as an emergency measure in the very rare instance where you have an extremely recalcitrant owner. It was not envisaged as something that would be routinely used, but we did recognise that there could well be situations where society felt so strongly that the conservation and

significance of this property was so high and that the owner consistently refused to consider very reasonable offers of incentives and inducements, there was an ultimate sanction that the state could acquire the property, perhaps put a perpetual conservation covenant on it and then sell it back into the market to an owner who does want to manage and look after a heritage property. It was seen as a last resort that could be used in the case of recalcitrant owners who wouldn't listen to reason. It wasn't seen as something that would be done routinely.

MS LOMAX-SMITH: Can I thank you for that explanation. It gives some insight into your thinking. My personal experience is quite different from yours. My knowledge of human nature and understanding of the development industry is somewhat different. My view is that if a property owner doesn't want listing, you could negotiate until the cows come home. If they don't want it, they don't want it.

I could take you now, if you had the time, to some 300 properties within half a mile of here which are not listed and the property owners don't want listed. I can take you to holes in the ground where they've been demolished. I can't imagine that it would change your views, but if the problems were as widespread as you suggest and that everybody you knew was dissatisfied and every property owner were dissatisfied, it wouldn't be such a rare recalcitrant owner that would require compulsory acquisition.

I actually think that the statistics are something like closer - off the top of my head - to about one in six of the first tranche of heritage listings in 1992 and probably 50 per cent of the residual attempts in the City of Adelaide this time. That's quite a significant percentage as time goes on if those properties are bought and the next owner wants to renegotiate those agreements. There will be more dissent. I still believe that we're talking about voluntary listing - I'm sorry, you believe something else, but that's not how I read it.

DR BYRON: The other perhaps semantic issue is that we frequently find that listing and conservation are used as synonyms and yet in all of our work in this inquiry, and from some previous work, we find that there are many places that are not listed, not on any list at all, and yet are still well maintained in good condition by their owners. Conversely, there are many places that are on lists and which are falling apart, suffering degradation. What really upsets me personally is when you get the very perverse outcome where the fear of listing leads to deliberate vandalism, demolition, removing of roofing iron or whatever, people demolishing old shearing sheds before the National Trust or the state heritage agency finds out about them and lists them.

The way the system is worked is, it is seen as imposing such costs on some owners that the owners are taking pre-emptive action to avoid listing. What we were

trying to devise was a system whereby property owners would see being heritage listed, assessed as significant, as a major asset rather than as a liability; as better than winning the lottery rather than as a curse. Now, what would it take to change that mind-set so that people would actually seek to have their property heritage listed rather than fighting desperate rearguard battles, being in the Supreme Court or, you know, damaging their own property in order to degrade it so that it won't be listed?

MS LOMAX-SMITH: I think that's a very interesting argument, and what will it take? I think the issue for a developer is that if a developer sees a piece of land and has a reversionary value in his mind nothing will make any difference, if he can put 15 units on a stately home site. In terms of Adelaide, about which I know more than most suburbs, there are 1600 properties listed, given some protection - 1600 - and there are probably 150 dissident property owners who don't want listing. That's the overall figure, so it would appear to me you're working on a solution for a minority of problems and the impact on the greater bulk of our heritage listing would be profound. I don't believe that we suffer demolition by neglect on the scale that you've experienced, and I'm fearful that the problems that you may have experienced in other places are going to colour your views to the extent that the operations of the listings in other places will be damaged. I really believe that the scenario that you've experienced is a peculiarity of other places.

DR BYRON: Thank you.

MR HINTON: Minister, thank you very much for your comments this morning that particularly focused on our draft report. We welcome this second round of hearings to do that, because this process of consultation is costly not only for us but also for people participating, like yourself. When it's a process that sharply focuses on our draft recommendations, on our draft findings, it's very useful, so thank you very much. A related point: your experience, background and career are very relevant to our inquiry, so we welcome your particular insights into the challenges before us, so thank you. I think the transcript will be a useful reread, certainly for me, with what has occurred this morning.

I had one further question to Neil's, and it touches a little on your comments about not everything has a financial value, that some things are beyond financial valuation. I've probably verbalised you there, put words in your mouth, but let me come at it a slightly different way and raise with you the issue that must have crossed your desk frequently: that is, there is no shortage of demands on government to have expenditure programs across a whole raft of policy initiatives, imperatives and whatever. But even within a heritage conservation objective there's no shortage of opportunities to spend taxpayers' money on particular conservation projects. A prioritised process is essential to public policy.

Governments have to make decisions about where they will spend their money. It can't be meeting everyone's needs, everyone's demands, everyone's preferences. How do you overcome this problem then if you think you can't value something? Maybe something is valued, but it is needed to actually conserve it. Maybe that's the value that needs to be put on it by the public policy process. Can you give me your insights into that sort of public policy challenge?

MS LOMAX-SMITH: It is clearly a problem, because there are challenges in distributing funds, that's obvious, but I think it's clear that where a community has invested in heritage they have reaped dividends. For instance, we have one whole town effectively which is heritage listed, in Burra, which is an exquisitely intact mining community with a range of buildings that have been used for breweries, gaols and shops. That town eats and drinks on the basis of those heritage buildings, as I'm sure Port Arthur does and very many other heritage sites around Australia. Adelaide, perhaps more than any capital city, is rich in heritage and it is one of the selling points for population growth, tourism, cultural activities.

The value that is invested in that is, I would imagine, unfairly small compared to the money that is put into other activities. That's obviously government priorities, but particularly in government ownership of properties we've recently started to audit and develop more conservation plans so that we manage our own property better. It wasn't previously done.

MR HINTON: That was one of our recommendations.

MS LOMAX-SMITH: And we have started to do that. It's particularly true that of course government institutional buildings need to be maintained and they are often the key elements of a community, but it's also true of course of some old police stations, fire stations and schools. We also would, or I would, support the resale and reuse of those properties where they can develop another life, and the Burra charter does allow redevelopment and reuse. There are examples of some stellar conversations, and it should not be believed that an old building can't be used for quite high-tech activities, be used in modern life and be usable. So there are opportunities for use. I think that's particularly true in rural areas as well where many councils have been burdened by the weight of multiple town halls in multiple villages and townships that are now underutilised. They truly struggle to manage that heritage store.

DR BYRON: Particularly in those rural areas where so much of the fabric was perhaps designed and built for a time when there was a larger population there. Where old town halls, banks, churches, the School of Arts, Mechanical Institute, et cetera are important, but there are very few resources to fund them and where the threat to those heritage values comes not from the bulldozer or the property

developer, but simply by neglect, it seems to us that the regulations to prevent demolition and redevelopment, which are obviously very effective in urban metropolitan areas, don't work when the threat to heritage conservation is benign disinterest or neglect in rural areas of declining population.

MS LOMAX-SMITH: I think targeting those issues are very key ones and I urge you to do so, but I would also counsel you to look at the problems and try to solve the problems rather than dismantling the system, which is what I fear will happen if all these recommendations are adhered to.

DR BYRON: I just want to elaborate - sorry, one last point - on Tony's comment about your experience in government. Would you agree that it would be very presumptuous of the commission to tell any government how much it should spend on one activity vis-a-vis other activities, that it should spend more on heritage conservation and less on natural - or more on preschools, hospitals or urban parks or whatever? It seems to me that it would be grossly outside our terms of reference to say, if we could find out how much each government was actually spending on heritage, "We don't think this is enough and you should double it or triple it." That wouldn't be helpful to any government, would it?

MS LOMAX-SMITH: I have to say that I did look at the scope of your inquiry and the terms of reference, and I was quite stunned, I'd say, at the outcomes of your recommendations, because it never occurred to me that you would be making recommendations about heritage listing and mechanisms for listing. I thought that it would be about incentives, taxation and roles of levels of government. So I think that working out what you should do is something that is far beyond my capacity, and far be it from me to criticise the Productivity Commission. I thought that, from reading your documents in the past on other matters, there was often an implied criticism about where the money was spent, or maybe they are just numbers that can be interpreted - I'm not sure. I thought you often had a view about issues.

MR HINTON: We certainly have, on a number of projects, expressed views where we have felt that the use of taxpayers' funds has not been efficient - that is, cost-effective - that the cost of the funds themselves and the alternative uses those funds may be put to were not matched by the benefits that flowed from those expenditures. So the cost-effectiveness of a program is often an area of comment for the Productivity Commission. That is frequently the remit we get: "Is the pharmaceutical industry investment program cost-effective?" We did that project a couple of years ago. We did reach a view that some aspects of that were leading to "misuse" - in quotes - because they are not cost-effective, of taxpayers' funds. But that was a specific remit to evaluate a specific expenditure program as to whether or not it could be improved.

MS LOMAX-SMITH: I believe you will get submissions that will explain that this is going to be a costly set of recommendations and will be more costly to government.

MR HINTON: There is an issue as to the cost of property owners as well that is not explicit, it's not transparent. It's hidden in the current system.

MS LOMAX-SMITH: Thank you.

DR BYRON: I'm afraid we're going to have to move on and let you get back to your other duties.

MS LOMAX-SMITH: Can I thank you, gentlemen. That's very kind.

DR BYRON: I really would like to thank you most sincerely for taking the time to come and we will look very closely at all those matters that you have raised.

MS LOMAX-SMITH: Thank you.

DR BYRON: We will move on to Councillor Moore. Thank you very much for coming. If you would like to take us through the main points of your submission.

MS MOORE: Thank you, commissioners. Commissioners and ladies and gentlemen, it is ironic that we are gathered today on the site of the former South Australian Hotel, an icon of the heritage which Adelaide has lost. I would just like to quote from *Lost Adelaide* by Michael Burden, who provided a photographic record of all the lovely, fine heritage buildings Adelaide had demolished between 1900 and the 1970s. With regard to the South Australian Hotel he says:

One of the most elegant of Australia's great hotels, the South Australian Hotel on North Terrace was to Adelaide what the Bellview was to Brisbane and the Menzies was to Melbourne. Constructed in the 1890s, the wide balconies were used for wedding receptions and afternoon teas, and the public rooms for social events of every description. Its guests included H.G. Wells, many Australian prime ministers, Anna Pavlova and the Beatles. In 1971 the hotel was bought by Ansett Transport Industries and demolished.

I was advised by someone who rang me this morning that this building was actually designed by an accountant, not by an architect. So we are today gathered in a low-ceilinged, ageing 1970s building that has had to be made over three times, instead of an elegant and timeless heritage building with high ceilings and beautiful internal decor. The demolition of the South Australian Hotel was a landmark in heritage conservation in this state, with the public finally waking up to what was happening and, after this, heritage legislation was introduced.

Ladies and gentlemen, I am an elected councillor with a local council here in Adelaide. My council is making a written submission to this inquiry, but I felt so horrified by the commission's draft report that I am making my own personal submission and so I'm not speaking for my council.

I am the owner of a 1920s cottage in an inner suburb. I am delighted that my council has recently declared that my house is in an historic conservation zone and that my dwelling is listed as a contributory heritage place. Contributory heritage listing means that while my dwelling has no individual heritage significance, when it is included in the group of 1900 to 1920s cottages in my part of my street, together these buildings show an historic and architectural coherence and consistency which make up a residential streetscape of historic heritage value. I believe that this listing will, firstly, help to protect my property from future unsympathetic development nearby and also contribute to an increase in my property value over time.

Heritage zoning is an excellent way to protect historic areas, but some

buildings of heritage value sit outside such zones and still deserve heritage protection. Many people who are strongly opposed to compulsory heritage listing of their properties appear to be mostly upset that their properties will fall in value and/or their chances to redevelop their property will be reduced and/or that they will be forced to maintain their property to a high degree. In relation to the last point, there is no legal requirement in this state for heritage property owners to keep their properties in excellent condition.

In relation to property values, it is true that in some cases property values of listed properties may fall, but in other cases prices may rise. For example, in the beautiful residential avenues area of the suburb of St Peters, in which the houses were largely built by the East Adelaide Investment Co in the 1880s, the listing of these avenues as an historic conservation zone by the former St Peters Council in 1993, combined with the individual listing of many local heritage and contributory heritage places, has seen the value of these properties skyrocket in the last 12 years. Well cashed up and discerning home buyers are happy to pay top dollars for properties which they know enjoy protection from out-of-character developments on adjacent land which would detract from the character of their area and reduce their residential amenity.

Where property owners are concerned that a loss in value of their properties due to heritage listing may occur, then I believe that local councils, state governments and the Commonwealth government should offer some compensation through a range of programs. Councils may offer free heritage advice and limited grants for restoration work, as my council does. If councils had more resources they could offer larger grants and even council rate concessions to affected property owners. However, most councils are strapped for cash and council rate concessions are rarely offered in this state. Councils can also offer trade-offs in terms of zoning requirements for new development. Heritage listed commercial buildings can find new uses through this means.

Our state government could, I believe, offer a range of tax concessions such as land tax concessions and even emergency services levy concessions for owners of local heritage listed properties. Other concessions from the state government could be investigated and provided. The Commonwealth government should assist here through grants to local councils to assist with heritage compensation measures or offer compensation through federal tax laws. While I support economic compensation in those cases where heritage listing may reduce property values, I strongly support compulsory heritage listing.

I'm deeply concerned that the commission is recommending to the Australian government the scrapping of compulsory heritage listing. There is simply no evidence that voluntary listing, as the commission recommends, would save

Australia's diminishing collection of heritage buildings. While the present system is not perfect, let's not throw out the baby with the bathwater. Individual property owners will tend to put their own economic interests above the general public interest in conservation. Financial incentives offered by governments may not be sufficient to save many buildings.

Australia took over 180 years, from the time of European settlement, to bring in compulsory legislative controls on the demolition of our built heritage. It is indeed a national tragedy that we stood back for so long and watched so many fine old buildings be demolished, and I refer the commission to "Lost Adelaide: a photographic record" by Michael Burden, which records some of the beautiful heritage buildings demolished in Adelaide over 70 years. I have little doubt that in the future many other fine buildings will be lost should voluntary heritage listing be introduced.

In the UK, ladies and gentlemen, there are houses which are 800 years old. It says something about colonial society such as ours, built as we are on migration waves - something that makes us slow to value our history and our heritage. Thankfully the Australian people now strongly support the conservation of our built heritage. This support should be enshrined in legislative controls, not left to the whim of individual property owners.

Heritage conservation is for the long term. It is part of the past; it is part of the future. We hope to hand it on to future generations and what is lost is lost forever. I submit that heritage buildings have an intrinsic value, as does a work of art. Economics are only one aspect of any consideration of this issue. Social, cultural, aesthetic and environmental considerations also matter. So let us work to improve the present system, but I urge the commission not to support a radical and risky strategy of voluntary heritage listing. Thank you.

DR BYRON: Thank you very much, councillor. Perhaps you would be surprised - your opening comments about owning a contributory heritage cottage in a precinct - there is absolutely nothing in our report that would change any element of that. You may be surprised that we actually have agreed with precisely what you said in terms of the implications of a precinct or a broad heritage zone. The other case, though, of individual properties that are listed outside of heritage precincts or zones: did I hear you correctly saying that if there were substantial or unreasonable costs imposed on the owners of those properties, councils and perhaps other government should assist to offset those costs through those various forms of rates, taxes and grants and so on?

MS MOORE: Yes, I said that if the owner felt aggrieved then a range of compensations could be offered, but I don't expect that level of compensation would be enough to totally make up to that property owner.

DR BYRON: Yes. You said, I think, the financial incentives were not sufficient, which is simply that you can't imagine that councils would be able to offer the property owner enough money to make them happy to have their place listed, rather than - - -

MS MOORE: No, councils haven't got the money to do that, but I thought a range of - you know, up to the Commonwealth government, including the state, might make the property owner more happy, but let's not forget that what we're often talking about listing here is the building, and that doesn't mean that no development may occur on the site.

DR BYRON: Sure, I appreciate that we're talking about controlling the rate and evolution of change in the historic building.

MS MOORE: Yes.

DR BYRON: But I just wanted to explore a little bit further what you thought would be sort of substantial or unreasonable costs or how much or how little a council might be able to offer as an incentive to get the owner of the property to willingly say, "Yes, I agree with you. I recognise this place is significant. I want to protect and manage and conserve this property for the long term, for posterity." How big a sweetener would council have to put into the deal?

MS MOORE: At the moment we're offering free heritage advice to all local heritage listed and contributory. We're also offering \$3000 every five years to the owner of a local heritage place to do renovation work. So you'd probably have to substantially increase that, but I haven't put any quantitative figures on it.

DR BYRON: Thanks. But in a number of the other public hearings and the visits that we've made, people have made the point that legislative controls or putting the place on a statutory list won't fix the hole in the roof, it won't stop the rising damp. So there is still the issue of, having identified a place as being historically significant to community and the local area or the state, there are still questions of who is going to look after that property in the future, who is going to do the management and conservation work and how is it going to be paid for? It seems to us that, up until now, those issues have been swept under the carpet and we'd like to make them explicit.

MS MOORE: We had our heritage hearings last week at our council and I said to one property owner, after the meeting, "We would love to give you \$100,000 to make up for what you perceive to be the loss of value of your property. We would love to give you rate concessions and give you a big chunk of cash, but we haven't

got the money." We've got too big a debt. So probably all levels of government will say, "We haven't got the money," but I think the community of Australia will be quite happy to make a substantial contribution, not in terms of buying up properties - I don't think that is a feasible option - but I certainly think a fairly large compensation package for those owners over time.

Let's face it, some of these properties actually may go up in value over time. Are we going to ask those property owners then to donate back to the taxpayers of Australia the accumulated value of their properties? I don't think you should get swept away on the loud complaints from a minority of property owners, when there is large-scale community support for heritage protection. We just need to work out a range of strategies and compensations that will be satisfactory, but it won't totally make up for sometimes what the perceived loss of value is. But, I mean, some people don't realise that in our council area - I mean, God forbid, I have seen heritage listed properties that have a couple of units crammed in the backyard, so I'm sure that will delight the owners of properties who are moaning that they're going to lose so much value. If they've got a big enough backyard I'm sure our Councils Development Panel will be quite happy for them to cram some units in the back. I mean, I think it's a travesty, actually, because I think gardens are part of a heritage property, but other people have got different opinions.

DR BYRON: But that's also another good example of: having a place on a list doesn't necessarily guarantee that you'll get the right conservation outcomes.

MS MOORE: No, it doesn't, but there is a trend now to say that you must preserve at least the front garden around a large, old house and perhaps the side views as well. So we're just saying it doesn't freeze all development, but I haven't come up with monetary compensation figures in my head. I expect the economists or the Productivity Commission to do that, but I would hope you've got also some heritage architects and people on your panel as well, so it's not all down to economics.

MR HINTON: One question, councillor, and that's almost picking up on the example you just alluded to, which is putting the apartments in the backyard of the heritage listed property or house. Move a similar sort of concept to the CBD area and I would welcome your reaction to the idea that has been practised in a number of cities, where the heritage building has been retained after a fashion, but above the three storeys it's the heritage building. We have now got 25 storeys or whatever of a high-rise office complex. What is your reaction to that sort of creative architecture to achieve the conservation objective but at the same time acknowledge the development capacities of that particular site?

MS MOORE: You're talking about keeping the front facade?

MR HINTON: I was trying not to use the term "facade", because I think that some see that as pejorative, but it's not the only example we've got of retention of sorts of the heritage building. Facade is one at the more extreme edge of the experiences of some CBD areas; others actually retain the building more than just the built front fence, front walls. They go further than that, but still then develop the site for a much more substantive utilisation.

MS MOORE: I would certainly like to see the whole building retained. I think facadism had its day in Adelaide probably in the 80s, and it's nice to see some fine facades but it's also rather sad that in Australia no piece of land can be exempt from development pressure. Look at European cities; look at Paris. I can imagine how much those property owners moaned and whined about how they couldn't develop their sacred rights and knock down some fine old building, but some of those European cities have got whole areas with the fine old buildings. But, no, in Australia we've got to cram a 20-storey-high building behind a facade. Again, it's something about colonial cultures, I think - that we feel that we have no real right to interfere with your God-given right to make as much money out of a piece of dirt as you can.

MR HINTON: Thanks. That's fine.

DR BYRON: I don't have any more questions. Is there anything else that you wanted to say, or is that a pretty good note to finish on?

MS MOORE: I heard you talking about lack of transparency and I can see from the commission's point of view that a lack of transparency and who's subsidising who and where the money flows are going would be a concern. That should be made more transparent and above board. I would certainly support that.

DR BYRON: People have mentioned rate rebates and income tax rebates and so on, but a lot of places where that has been tried it turns out that the ordinary taxpayer is paying for the tax concession for the rich guy who has got the big mansion up on the hill and it's the truck drivers and the schoolteachers that are paying taxes on their cottages to support the subsidy to the rich. So there are issues there about equity and cost to the community.

MS MOORE: Yes, I understand that. Perhaps the big rich guy on the hill - perhaps it could be asset tested or something or other.

DR BYRON: Thank you very much for coming. I suggest that we break and resume with the Australian Council of National Trusts, Mr Simon Molesworth.

DR BYRON: We now continue with the public hearing with the representatives from the Australian Council of National Trusts. Thank you very much for coming, Simon and Marie. You know the ropes, Simon.

MR MOLESWORTH: I certainly do.

DR BYRON: If you would like to take us through the main points of your very substantial submission and then we'll follow up with some issues that you have raised.

MR MOLESWORTH: Thank you very much, commissioners. If I can, for the sake of the record, record that I am Simon Molesworth. I'm chairman of the Australian Council of National Trusts. I have with me Colin Griffiths, the executive officer of the ACNT, and Marie Wood, the national conservation officer. The Australian Council of National Trusts, as you would well appreciate, is the umbrella group of the eight national trusts in this country, which represents a membership of some 90,000 people who are concerned on an everyday basis about the welfare of the cultural and natural heritage of this nation.

We welcome the opportunity to put submissions to the commission again in response to your draft report, and can we say that we congratulate you on embracing such an overwhelmingly challenging task of effectively doing something that no-one else has done before, and that is to traverse the full field of heritage legislation and policy as it relates to our most precious cultural assets of this nation. As you quite rightly said, Commissioner Byron, we have put before you a fairly significant submission, and I'd like to acknowledge my colleagues for the excellent work that they have done in preparing that, and they were assisted by, of course, inputs from all the National Trusts. That document, something like 160 pages in length, traverses more matters than I could probably cover in two days of submissions, and so I have no intention other than taking you to some very key points, if I may.

The very key points I would like to draw out are that, firstly, we would encourage you to retain in the final report the strong endorsement that the contribution of heritage to the wellbeing of Australia as a nation, and the economic wellbeing in particular, the values of heritage - however we might define those values - is a key part of the make-up of our nation and, without a doubt, in your opening confirmation in your draft report you confirm the importance of heritage to the nation. That needs to be shouted from every rooftop and, if there are any ways by which that sort of statement can be expanded in the final report, we would encourage you to do so. That was one of the objectives that we set out as a National Trust movement: to see confirmation from the commission that in fact we were not wrong; that we were right; that after 50 years - in fact, 60 years in New South Wales

- the trusts were right in focusing on the importance of heritage to this nation.

What follows from that is a package of recommendations that you have made, and we find ourselves in agreement with some of them and, as the commissioners would well appreciate, not in agreement with all of them. We all share, I think, without a dissenting voice, that it is essential - as you put forward in recommendation 3.1:

All levels of government should put in place measures for collecting, maintaining and disseminating relevant data series on the conservation of Australia's historic heritage places.

If that had been done better in the past, this inquiry would have been so much easier and, what one might call the differing views as to the rest of the recommendations would not be on the table because we would have hard data which would guide us to what the final recommendation should be.

There are - as we have said in the major submission that you will have seen - a number of other endorsements that we've given as we've gone through your draft report. But what I'd like to do is use our time to focus on some of the issues on which we think there remains some significant debate and, by going straight to those issues with the debate, let me say immediately that we are not dismissing or criticising much of what you find in the report, and I hope you don't take it that what now follows will be negative, entirely negative. It's not meant that way: it's meant to be constructive.

DR BYRON: We're not precious.

MR MOLESWORTH: You haven't heard me yet.

DR BYRON: Good point.

MR MOLESWORTH: The first point is this: the commission has placed enormous reliance on its principal recommendation that:

Privately-owned properties should be included on a national, state, territory or local government statutory heritage list only after a negotiated conservation agreement has been entered into and should remain listed only while an agreement is in force.

The first point we wish to make with respect to that recommendation, standing out as it does as the primary recommendation, is that it ought not be standing out by itself. We have from day one said that the only way by which we can embrace the

proper conservation of cultural heritage in this nation is, to use my own phrase, to have a tool bag filled with many tools, and we would encourage the commission, before you complete your final report, to explore to the fullest extent the myriad of recommendations that have been made by many organisations - not just the National Trust - to explore other options, other tools: look at them and not discard them, because there is no system in law with respect to whatever field one is in that can rely on one tool.

The impression, I believe, that comes from the report is that you put the greatest percentage of reliance upon that essential core tool, and the rest of the report discusses in very short form the other options that we say must remain as viable, actively pursued options to look after our cultural heritage. That's the first point. I will come to those other tools later. If I don't comprehensively cover them, they are set out in our submissions, first and second.

With respect to the conservation agreement approach, we believe that there are some fundamental differences between the conservation of natural environment areas and cultural heritage places. I have deliberately used the words "areas" and "places" to draw a distinction between them, because there is, in our view, a greater degree of choice and flexibility when it comes to preservation of biodiversity or conservation values in natural areas than there is with respect to a place which has cultural heritage values, because more often than not that place is anchored to a single building envelope. It is anchored to its spot and there is not much choice to be able to say, "Well, look, with my 1000-acre property I can choose the hinterland to put a heritage conservation covenant on it and I will maintain active agricultural use of the rest."

That sort of choice, very simplistically described then, is a material difference which gives rise to all sorts of ramifications which I wish to explore. There is no doubt that the concept of willing participants in heritage conservation is a laudable concept that we would call up to be embraced by all Australians. If in fact we had a nation where everyone wanted to do that and willingly came forward to participate in heritage conservation, if they themselves are the custodians of a precious place, then that would be a wonderful situation.

The realities of life are that there is a lack of volunteerism when it comes to impacting upon property when there are options that might be influenced by family considerations or economic considerations or whatever. As a consequence of that the great reliance that is placed upon the conservation agreement approach we say is, with due respect, overstated. We would love the optimism that is embedded in your recommendation to be the reality of our nation, but again, with respect, we don't believe that that optimism fills us with the confidence that we should have.

One of them, firstly, is this: that to rely upon a voluntary process whereby a citizen comes forward and says, "I have a heritage place that I will enter into an agreement about its future management, and as a consequence of that I will agree to have my property placed in a list." What that does is it firstly demonstrates a self-selection process. That is, like the farmer that has land for wildlife or the farmer that participates in any one of the rural sector natural conservation areas is doing is he's coming forward and saying, "I am offering you this opportunity in return for a package of benefits." The benefits, firstly, with respect to that process, are very apparent with respect to the natural environment, and again, with respect to the commissioners, is absent from the recommendation that you have.

The essential requirement for that process to work is to have a long list of benefits that flow from it, such as taxation incentives, economic tools of a range to encourage a party to come forward. That process, with those extra benefits, is necessarily going to be one of cost, yet the cost is not explored in this report. The cost can be very real. I have had the benefit of personally negotiating the first five cultural heritage conservation covenants agreements in Victoria, when the provisions were first placed in the Heritage Act in Victoria and I can advise that there are a number of properties that have conservation covenants.

With respect to those first five - and you might quickly say, "Well, the first five will always be more complex than the next five or the next 50 or the next 10,000, which we might reach once one gets one's act together. The complexity arose out of the subject matter of the covenant. That is - and I should say I've done many conservation covenants with respect to natural environment in my career, but with respect to the cultural environment it more often than not must be led by a conservation study and the conservation study must identify what is of significance and what is not, what needs to be preserved and what can be modified, the way it can be managed into the future, and often it goes to actual subject matter of bricks and mortar. Detailed architectural plans are required. Planning permission needs to be explored. In each instance the involvement of lawyer and planner and architect was required; a surveyor in each instance as well.

The complexity of a conservation covenant in the cultural field, we say, in our submission, is more likely than not to be more complex than is the case for biodiversity of species in a natural environmental setting. Now, there will be exceptions: there will be some very complex areas. I know that the agreements with respect to wetlands are more complex than some simple farmlands are. I have seen the full panoply of conservation agreements in the natural area.

That is one issue. The second issue is this. Normally the trade-off in entering into a conservation covenant arrangement is, as I've said, the financial benefits that will flow. Someone has to pick up the cost of that financial benefit, and that

someone will more often than not have to be a government at one tier or another. Government, at one tier or another, has to have allocated into their budget the funding that's required.

It's very easy, in the natural environment area, to identify significant sources of funding that are available for people who are doing the right thing for the natural environment: the land care payments, there are taxation incentives, there are fundings that flow from a multiplicity of grant programs under the natural environment heritage trust. That fund was boosted with - I think it's 1.5 billion is it up to now? Whatever the sum was it is, over the two allocations by the federal government, a very significant amount of money. Laudable, needed - are we going to get it in the cultural field?

One of our recommendations here is that it is absolutely that whatever package of tools goes forward in the recommendations in your final report, be it the conservation agreement approach plus many others that we would encourage, there has to be a recommendation that there ought to be a parallel fund set up for funding to make whatever other recommendations work, because there will need to be that sort of money. One of the issues that we have with the conservation covenant or conservation agreement proposition is the last words of the recommendation - is that: "would remain only while an agreement is in force".

I understand, in the submissions that have gone before in other places and in the discussions that have been had with the commissioners, that there is in fact a possibility that we are perhaps misreading that recommendation.

DR BYRON: It's a certainty, I'd say.

MR MOLESWORTH: Let me then say that in your final recommendation, Commissioner Byron, if you could categorically confirm that on change of ownership or the lodging of a development application the conservation agreement does not lapse or is not on the table for renegotiation, that once a negotiated conservation agreement is in place it is in perpetuity, which is the case with the Trust for Nature program in Victoria and with a number of parallels in other places.

MR HINTON: Its longevity would be part of the contract. It would not necessarily be in perpetuity.

MR MOLESWORTH: Yes. Longevity is the first requirement; in perpetuity would be the fairest. In fact it has always been the case in our systems of taxation - taxation of the arts, for instance - when you donate a painting to the National Gallery and get a significant taxation benefit as a consequence of that you've given it away forever. You don't take the painting back in 20 years' time and say, "I now want to

hand it on to my kids."

MR HINTON: I don't wish to interrupt you, Simon, but the point is that whatever the contract says - the agreement says - would be binding on the new owner.

MR MOLESWORTH: Correct, and it must be. And that must be - - -

MR HINTON: And that is not prescriptive as to what the agreement actually says, that's the statement of the underlying condition of the conservation agreement. If that's your mindset then you'll understand what we're actually saying in the draft report.

MR MOLESWORTH: The ambiguity, with respect, I think it has been deemed to be ambiguous and it needs to be categorically dealt with. Let me say, going back to this self-selecting flaw which we say is a fundamental issue with respect to that recommendation - that is, internationally, in every system of heritage that we can study the determination of significance is an exercise that must precede a decision on how one then deals with the place.

DR BYRON: Sorry, Simon, I don't understand where you're going with that because there's absolutely nothing in our report that would change the assessment of significance as it's done at the moment by heritage professionals and there is nothing in our report that talks about it being self-selective. We are talking about the negotiated agreements, when the heritage listing body approaches the owner and says, "Congratulations, your property has been assessed as being of extremely high local heritage significance. We would like to negotiate an agreement with you for its long-term, if not perpetual, conservation and good management." I don't see why you are taking the self-selection angle because it's not there.

MR MOLESWORTH: So the mechanics will be the heritage agency approaching the owner of a selected property and saying to that owner, "Your property ought to be the subject of a conservation agreement in order to - - -"

MR HINTON: It has been identified.

DR BYRON: Sorry, I really don't want to interrupt you, but just to elaborate on that point.

MR MOLESWORTH: I see that distinction that you draw.

DR BYRON: The word "listing" is used and I think we may actually be talking about a variety of different lists - so if you imagine that a heritage survey is undertaken and 2000 properties are identified as being possibly of interest.

MR MOLESWORTH: Yes.

DR BYRON: There is then a detailed follow-up by heritage professionals to say, "How significant is this property?" And I would prefer, rather than a yes/no, if there were some sort of great list. But there is an assessment by heritage professionals of the significance of those identified properties, exactly as happens today.

MR MOLESWORTH: Yes.

DR BYRON: What we are proposing is another step after that. Rather than just saying, "This has been assessed as significant, therefore it's on a statutory list and all these controls will apply," we go through one more step that says, "Okay, having assessed this as a significant place, let's go and discuss and negotiate with the owner how it will be looked after, who is going to do it and who is going to pay for it." Then, having agreed that, have a list. It may be 2000, or 1952, or it might be - whatever. The idea is: do we want to list the possibles, the ones who have been assessed as significant, or the ones that have not only been assessed as significant but have a commitment from both parties to the long-term good management? That, I think, would solve the problem of places being listed but then not being well looked after. So we are trying to put that additional step in the process but it's certainly not instead of all those things that happen. There would still be heritage surveys; there would still be assessment of significance by competent professionals. Is that clarification?

MR MOLESWORTH: That does clarify an aspect of the direction upon which the request occurs but are you not saying in your recommendation that there won't be a listing unless the owner, having been approached, agrees.

DR BYRON: It depends on which of those lists. Do you want a list of 2000 places that have been assessed as being possibly of interest? Do you have a list of 1000 places that have been rigorously assessed by professionals and have passed the significance test? Or do you want another list of places which are not only significant, but have a commitment to good management? We're suggesting that that third list is actually a far more useful and valuable list to have than the second. It avoids the problem of places that are listed and then continue to deteriorate before our very eyes.

MR MOLESWORTH: Yes, I understand - - -

MR HINTON: But the first two lists continue to exist in sorts. The statutory list is the third one. The identification process has produced the first one, the research has done the second one, but the statutory list is the third one. We in fact in no way wish

to challenge the creation of that identification process in accordance with the Burra Charter.

MR MOLESWORTH: That is a very important statement, but the third list would be joyously welcomed by everyone, because that means all participants are extremely happy that there's a meeting of minds and we want that place kept; but it's that second circumstance that is of concern, because the significance has been determined, as you've described. We've then gone to the owner and said, "You've got a significant place. We would like you now to agree for that to be protected."

The report effectively indicates two ways that can happen. They agree to an agreement and then they get listed and there's protection or, if that fails and the authorities still believe it is of such significance that it ought to be protected, it then gets acquired or some other step be taken; but at the moment we have a situation where the middle list and the middle process, as we have just described it, exists, whereby owners of property have their properties listed and it hasn't been acquired, and it has got protection and we say that will still be required because those that are enlisted into the third category will either be not enough or be too few or, alternatively, although the objectives are there, it won't happen until the recommendations say to government, "You have to put in a fund as big as the National Heritage Fund."

MR HINTON: There's a clarification though in that the fact you don't move from the second category into the third category doesn't necessarily mean it's not conserved. On the contrary, there are still incentives for property owners to maintain and use that particular building with heritage characteristics even though they haven't entered into a conservation agreement with the local government.

MR MOLESWORTH: So you would confirm then that all those other current systems which would assist people to conserve their property would remain with the second - the middle category?

MR HINTON: No, it applies to the third category. The incentive systems and assistance that various local governments are using around Australia can be drawn on by the local government to use with regard to moving from the second list to the third list - the second category to the list.

MR MOLESWORTH: What do we do with the rogue? What do we do in that category of person that has had their place identified as significant that hasn't agreed to go down the path of the voluntary agreement? Do we say, "All right, we will let that person see the light next year when they can get a taxation incentive or they can get a grant?"

MR HINTON: Well, many in North Adelaide, even though they objected to listing, aren't listed but they're still living in their house in North Adelaide.

DR BYRON: And they're still maintaining it.

MR HINTON: And they're still maintaining it. If they're a rogue - and your definition of rogue is someone who's not going to conserve it, not going to retain it and they want to develop it, they then would have capacity to submit a development application in accordance with the zoned land use requirements of that particular local region.

MR MOLESWORTH: Is not the challenge for the commissioners to assure us all that that category of person I've just described is not going to demolish - significantly identify a property which doesn't have protection?

MR HINTON: Well, then it becomes a degree of significance. How valuable is this property from a heritage perspective? If that local government says that really is an essential ingredient of our list of identified properties that we really can't do without, we'll compulsorily acquire it. We'll whack a covenant on it and we'll then put it back into the market with that covenant. The rogue extreme does exist, can exist, but it tests the local government's capacity to value it.

MR MOLESWORTH: And the necessary additional recommendation that is then required for that acquisition acknowledgment, is a recommendation that there be a kitty of money available, because if one looks at the budgets of local government across this country - in fact you look at the state government and the federal government - acquisition is not part of the history of this nation.

MR HINTON: Correct, and it's certainly not part of the practices of local governments and we take some pain to say that this process, this last resort process, would be under the guise, control, supervision of the relevant state government. Just as local governments are creations of state governments, this part of activity of a local government would be under the due processes of the state government that varies slightly from state to state.

MR MOLESWORTH: Would you agree then that it is absolutely essential that there be an unambiguous recommendation that funding be available to deal with those circumstances, because otherwise how can we be assured that the coffers of the relevant departments - the three tiers of government - will have a fund of money available? I'll give an example. I have sat on the National Cultural Heritage Committee overseeing the Cultural Heritage Act for 10 years now. When that legislation was first set up, a fund for acquisition of works was described in the legislation.

It wasn't until three years ago did a government finally make an allocation of money. I didn't join it at the beginning, but for the first decade or more that fund had a zero allocation. The recommendation was basically you can get a permit to deal with this export of the item or refusal so that the street - it did or did not leave the country or did not leave the country, and if they got a refusal, then this fund of money would be made available. It was a moribund system until that fund had money allocated to it, despite the report originally that said, "Well, that should have money allocated to it."

DR BYRON: But we have concluded so far that it is not our role or within our competence to tell each government and local government how much that fund should be. Under the principle of subsidiarity that's in the three-tier structure we have at the moment, each responsible level of government can assess all the other claims on its funds and work out how much it wants to spend in conservation of historic heritage, vis-a-vis how much it spends on conservation of natural heritage vis-a-vis, you know, parks, gardens, health, schools, police, education, day care, nursing homes, whatever.

MR MOLESWORTH: Of course.

DR BYRON: It would be very presumptuous of us to try and prescribe how big a pool of funds any state, federal or local government should set aside for this particular purpose.

MR MOLESWORTH: But don't your terms of reference specific focus on benefits and costs of the conservation of historic heritage places? One of them would be the foreshadowed costs that might come from your recommendations. No-one is saying that there can be as precise identification of what that might be, but in the hypothetical you can certainly say, "There should be a significant sum of money available, so we recommend it will work," because if you make a recommendation that doesn't actually foreshadow that there is going to be a cost that flows from it - - -

MR HINTON: We may be playing with words here, but at the risk of being seen to be playing with words, there's a distinction between "funding" and "costs". I know that's not a treasury definition, but there is an issue here of when you look at costs of something, who bears those costs of conservation? One key cost to the owner of that property is an opportunity cost, for example, if they're precluded from developing. There may be a cost with regard to constraints on the use of the property. You're not allowed to put an extra bathroom in or whatever, associated with the protection and conservation of the heritage characteristics of that building. There are also the costs of just running - your local government, a state government or a federal government -

a system of regulation or a system of policy, administration or whatever. They're all costs.

MR MOLESWORTH: They are.

MR HINTON: To actually implement a program of providing incentives such as tax deductions and whatever, they are funding arrangements that meet the conservation objective. We're not getting into, in this report, the funding options available that governments may wish to use at the federal level, state level or local government level.

MR MOLESWORTH: But you would agree with me, would you not, that with respect to the conservation agreement approach, there are funding obligations which will flow as a consequence of costs that will be incurred. Costs, firstly, of implementing the system - because it does cost and it does vary. I do agree - - -

MR HINTON: Yes, and that's why we take some pain in the draft report to bring into the consideration of a statutory listing which carries with it - and decisions to a statutory list - implications that that decision should be cognisant of the costs involved in accordance with our terms of reference.

DR BYRON: As well as the benefits.

MR HINTON: As well as the benefits.

MR MOLESWORTH: Yes.

MR HINTON: There can be significant benefits to the community from the conservation of historic heritage places, we acknowledge that, but at the moment the process of listing statutorily with flow-on implications of that, are done without cognisance of the costs of that and, rightly so, our terms of reference are to flag that and we did flag that in - - -

MR MOLESWORTH: But would it not be so that we are also not cognisant of the real benefits - the economic benefits - of it, because if we're focusing on the negative costs of the current heritage system, whatever they might be - and I'll move onto a point about that in a moment - - -

MR HINTON: We apologise for interrupting you.

MR MOLESWORTH: No - - -

MR HINTON: We're having an exchange here - - -

MR MOLESWORTH: A survival debate. It's far more interesting to put it this way and hopefully far more useful for you to focus on the issues. One fundamental concern we actually have - and again we say that because we know that all you have written is predicated on the basis that we all have to acknowledge there's an absence of data. This has been going on for 50 years or more of heritage conservation and we don't have the data.

The perspective that we have formed is that there is a heavy focus on the cost of the current system and there's acknowledgment that there are benefits of heritage to the nation, but the economic equation is not there. Now, you might immediately say, "Well, it can't be there, because we don't know what the figures are," but there is a weighting in your criticism of the current system and the recommendations which follow which we say don't balance evenly the fact that there must be a myriad of economic and financial benefits to people - - -

MR HINTON: I'm sorry you say that, because I thought we up-front identify, recognise, acknowledge, in fact say in spades, that there is the potential for significant benefits from conservation in historic heritage places. What we then go on to say is, "But there are costs."

MR MOLESWORTH: Yes.

MR HINTON: We need a system that allocates the sharing of that burden. Who will bear the burden of the costs associated with that conservation? At the moment we're saying that the burden is not only being looked at properly because the costs have not even been identified, so we say to look at the marginal case. Is that one worth saving? Yes. Why? Because there are significant benefits to it. There will be costs. What are the costs? Maybe an opportunity cost, maybe other things. Maybe maintenance costs. What would it take to have that conservation objective achieved and who should bear the burden?

If the benefits are going to go to the community, then maybe the community should pay, not the property owner, but also the owner gets some benefits. It is therefore fair and equitable that the owner, accruing benefits, will also contribute in part to the burden of the costs associated with the conservation.

MR MOLESWORTH: And that's a very important - - -

MR HINTON: Those sorts of formulations are really easy for Neil and I to put that forward in a draft report and say, "This is how it should be done."

MR MOLESWORTH: Right.

MR HINTON: Delivering that at the coal face at local government level is a challenge, but at the moment we are getting not good rigorous systems of listing, we're not getting good systems of listing - rigorous systems of listing linked to identification of the costs. Then we can think about systems of how the burden might be shared. At the moment the burden is not even being looked at. The costs are not being looked at. We've just got listing implications that have been done under a statutory process. That's where the deficiency of the system arises.

I know that's a simplification and the analysis of that equation around the world has always been the most difficult. Some jurisdictions, as we well know - there's one in Australia - looks at betterment tax. If in fact there is a betterment to the owner as a consequence of a heritage listing, then that ought be taken into account. Now, that's going so much further into trying to get some definition of what's happening, but can I step back from this debate one moment and just - - -

MR MOLESWORTH: Please. We would like it to go back to you rather than us.

MR HINTON: Because there is this issue: it seems to us that this recommendation and the criticism that comes at various parts and various ways within the report - and you've said overregulation, overlisting, I think not so much in words here, but in other discussions - the words "rampart heritage mafia" have been described, and such phrases like that. I think you've verbalised us on that one.

MR MOLESWORTH: Let me say others.

MR HINTON: Others might have used it. I don't think my esteemed colleague would use it. I certainly wouldn't use it.

MR MOLESWORTH: I won't identify when the conversation occurred. But let's assume that hypothetically there is a view that the current system is unfair, it's overrestrictive, there is too much regulation, there is a lot of hurt out there. The trust, from its observation - and of course I will say, and I hope you will accept, that we speak with some expertise and authority from longevity and hands-on experience in all those years - the instances of hurt of people saying, "I have been badly done by," are minimal in the context of the acceptance, and often happy acceptance, of the systems that we have at the moment.

Now, there will always be, with every process of law, someone that will grumble. I think I said when I was last in front of you in Melbourne the person that wants to always speed at 70 will grumble when they have been caught by the speed camera, when they have gone over 60. There's always an instance of an individual that doesn't want to be part of the system. We say that we think that there is a

possibility that you have you received submissions and given great weight to submissions of a few instances of people who have been probably entitled to gripe about their experience.

Let me give an example. Can I take you to your own survey of local government. The survey which you have involved going to all local government to ask them about their process. Do they heritage list? How do they do it? What is the information that is available? The first point that I wish to draw out is this: in your table analysing the responses, you set out the information of, "How many applications dealing with a heritage place have been refused, or rejected by local government?"

To take the middle one, which is useful - and I'll give the extreme one as well - the middle one is Victoria, where 1.9 per cent of those applications have been refused. Now, the negative perspective is to say, "Well, 1.9 per cent have been refused." The positive is that 98.1 per cent of customers were happy because they got what they wanted. They got an approval and they didn't have to go to an appeal and they didn't have to employ a lawyer to go and fight it. So 98.1 per cent are happy. The worst case was South Australia; 4.3 per cent were rejected which means 95.7 per cent were approved. Now, of those 1.9 per cent in Victoria that were refused, about a third appealed - 33.5 per cent. Of that third that appealed, a third were successful.

Now, one would say that that process of appeal is an unfortunate one and I notice that one of my colleagues at the Victorian bar, from his experience said, "It's so costly for the participants." But the perspective of someone who says that is the perspective of seeing the rough end - in other words, the one-third of the 1.9 per cent. I would have said that the more persuasive statistic - and we all know about statistics; lies, lies and damned statistics, or whatever the phrase is I'm misquoting - but 98.1 per cent of a system working without problems is pretty good.

Now, let's do another analysis. The survey also asked questions about the delving-in nature of the listing process of local government. It's often been said - and I've heard people say it, and they must be part of that 1.9 per cent - "The mafia even want to restrain what I can do inside my house with the interiors." Now, it was interesting when one looked at your statistical analysis here, the survey, that we get a figure of 25 per cent of local governments go down to inquire and seek information about the interiors - 25 per cent - in other words, 75 per cent of local government in Victoria don't look behind the front door.

It might be said, "Well, that's 25 per cent they delve into such things," but in actual fact the more significant issue is: what is the consequence of that initial inquiry when setting up the heritage register? I did this exercise last night. I happen

to have my computer and I subscribe to and update all the planning schemes in Victoria. I get my replacement disk every four weeks and I got one just before I left for Adelaide, and last night I sat up and I put that disk in and I checked, and I decided I'd go to three hot areas; three heritage hot areas. So I went to Boroondara which, for those who know Melbourne, includes the heritage suburbs of Hawthorn and Camberwell; I went to Bayside, which includes the heritage suburbs of Brighton and Sandringham; and I went to Moonee Valley, which includes the heritage suburbs of Essendon and the famous Moonee Ponds. I thought they were three pretty good representative ones. I didn't go to Cardinia or the outer suburbs where there might be less, a few remnant farmhouses. I went to the heart.

My planning scheme reveals that at the beginning of this week, the following is the situation: there are 257 places listed in the Boroondara scheme; there are 744 places listed in the Bayside scheme and there are 326 places listed in the Moonee Valley scheme. In Boroondara, how many affected interiors - zero. In Bayside how many affected interiors? This is a category where this is actually in the schedule - there is an option to look at interiors. This isn't one of the 75 per cent of councils that doesn't have that in the schedule, the column. These are three councils that look into it. Bayside, zero. Moonee Valley, two.

Now, the reason I highlight that is to say that, from one perspective, one would think that the nosy heritage inspector is getting right in there behind the door, in a troublesome way too frequently. The statement in the submission we make is that it is easy to get a perspective which exaggerates the problem far beyond the reality. Now, I am not pretending that I have looked at the 76 schemes in Victoria. I didn't do that. I took a representative sample of three hot heritage areas. When I say "hot", where there are heritage issues. I thought it was instructive to find that, to the extent of those three significant municipalities, only two places actually took account of the interiors.

I ask this question to extend the analogy: why is the whisker at the end of the tail of the dog wagging the dog? because it is a mere whisker, yet the amount of times one reads about it in the press, and the amount of submissions - and I've seen the submissions - of what people complain about, "I can't change my doorknob," or "I won't be able to put a new toilet in the bathroom," are totally exaggerated. I think those statistics confirm that from your own report.

DR BYRON: I'd just like to clarify one thing on that point before we move on, because I know you've still got a long list of things. On this very issue, one of the things that struck me was an apparent contradiction. All the heritage professionals that we've spoken to said, "It all stems from the statement of significance and that is the gold standard by which all subsequent development applications will be assessed. If the property has been heritage listed statutorily because of X, then that guides what

will and will not be permitted subsequently."

It seems, from the information we've got from the local governments, that even though most of them have not looked at the inside of the property, most of them have not looked at the back of the property or the rear garden, once the property is on a statutory list - even if only because of the front from the streetscape - they then exercise control over everything that happens in that property. The little terrace house in Elizabeth or something gets exactly the same treatment as if it was Como House in Melbourne or Vaucluse House in Sydney - and it's clearly not. There seems to be a disconnect there when the place that is on a heritage list because of its appearance from the street, the owner is being told, "No, you can't put double glazing in the rear windows." According to the way the system has been explained to us, that should not happen, because the rear windows had nothing to do with the statement of significance. Am I missing something there, Simon?

MR MOLESWORTH: There are two possibilities there: the first possibility is that if we were to step out of heritage and look at the full panoply of controls in planning, you would find that double glazing - to take your example - is regularly recommended for acoustic purposes, because in the inner suburbs one's rear new family room at the back is probably going to be pretty close to the next-door neighbour's new family room at the back. I am starting a case on Monday and one of the issues is, should we rear glaze all windows with double glaze? Coincidentally that's precisely the issue. But that's not because of heritage. It happens to be in a heritage area but it's because of this array of other controls.

Now, there is absolute confusion often amongst the players in the planning systems across this country because the layperson and often, unfortunately, the new officer behind the council, really don't understand that there is a distinction between say, acoustic control or visual control or amenity. If you look at any planning scheme in this country, there are a whole range of issues - and heritage is but one - and yet I suspect that if you have heard someone say that, more often than not it will be because they've merged what the restraints were and they have said, "Well, the restraint upon our double glazing was because it was a heritage constraint," but it was more likely than not an amenity clause somewhere else in the planning scheme. That then triggers a second response - and I got to that - and that is that this misinformation is a product of the failure of the system to properly educate. It is then a matter of enormous angst to the National Trust, throughout the time I have been involved, for half a century - quarter of a century, sorry; I'm not that old - I didn't start when I was - - -

DR BYRON: I was going to say, you're wearing your years well.

MR MOLESWORTH: I started very young. But the quarter of a century - with

our paint guide. We produced a very good technical bulletin years ago about what acceptable paints were in heritage precincts, and we based it on years of study by experts. We produced a technical bulletin and it was a best seller and it appeared in every council in the country on their counter, or underneath their counter, or in the hands of the new trainee heritage officer or planner. How that then got applied was the difficulty because there is a kaleidoscopic range of colours available for heritage houses in the Victorian era and in the Federation era, yet we always see Indian Red, Brunswick Green and Mission Brown. That wasn't the product of the heritage control being appropriately applied; that was the product of a misunderstanding, lack of education and, at the root cause of all that, funding.

That's why we have said from day one throughout the time, you need useful information that explains it, such as conservation covenants for bush areas. There's a wealth of wonderful material in what I might call the other sector of the environment, yet there has never been the funding. You look at the amount of money that has funded the material in the natural environmental area for conservation covenant. I've got magazine boxes of alluring brochures from around this country that would naturally convince me to covenant my land. Where is the equivalent material that would apply in the cultural heritage area? It doesn't exist.

More to the point, where is the experienced officer that really knows fully the full way by which you can in fact celebrate the sort of controls that apply, because they are not the restraints. I come back to the starting point if I may: that there may be these instances which are sorry stories, but your own statistics reveal that it is minimal instances in the whole operation of heritage. But the story is the better in the telling, if you have someone here saying, "I've been hard done by." The instances of people who have been hard done by, if we did that statistical analysis, if the hard data was on the table, is minimal compared to those who have had no problems.

DR BYRON: The happy acceptance of the current regulations is certainly not the experience that we've got through submissions - - -

MR MOLESWORTH: But can I suggest you probably have a representative sample, in Victoria's case, of the 1.9 per cent who were refused or had difficulty.

DR BYRON: Yes.

MR MOLESWORTH: And you didn't actually hear from the 98.1 per cent who don't have a concern.

DR BYRON: In Sydney it was suggested that it might be more like 80:20, but we obviously don't know what the figures are.

MR MOLESWORTH: Well, we can actually look at the table, because the worst case in the country is 4.3 for South Australia. So Sydney is somewhere between 1.9 and 4.3 in that table.

DR BYRON: No, that does not tell us that everybody else is in happy acceptance of the current regulations.

MR MOLESWORTH: It tells you who has been refused.

DR BYRON: One of the systems that we looked at was the system, which I believe applies in British Columbia in Canada - they still have statutory involuntary listing - where those who feel aggrieved can then go to an independent tribunal if there is unreasonable cost imposed as a result of that statutory listing. Now, on your figures, it would be one or two in 100. For the people in Sydney it might be 10 in 100 that we would see. That is one process which, on the one hand, lets the majority who are willing to accept whatever impositions, and whatever quid pro quos may come with those impositions, and just let it go through on the nod. But it does provide redress, because even if it's only one person in 1000 who is having their life savings taken from them, I'm not sure that I want that done in my name. I think that society does need to consider how it treats all its members, not just the average.

MR MOLESWORTH: But if you adopt that principle, where do we draw the line? Do we say that - going back to the speeding driver - when you get the fine in the mail, which I have had one - - -

MR HINTON: But the rule applies to all. The rule applies to everybody. It just doesn't apply to drivers of BMWs or whatever. It applies to everybody and, if you break it, no matter what you're driving, no matter what your characteristics, no matter what your date of birth, no matter where you live, it applies to you. That doesn't apply in heritage.

MR MOLESWORTH: But you can tick the box, you can challenge it or you cannot. It may apply to everyone, but you've still got the option of going somewhere to find redress. The point we're talking about now is the fact that there is an avenue by which you can have your concerns aired. Now, it is nothing different than the broader planning system. Every single block of land in urban Australia, with the exception of a few unincorporated zones, such as the unincorporated district of New South Wales, has restrictions upon what you can do in a whole range of ways. That applies, effectively, to everyone. But it doesn't actually apply to everyone, because it depends on what you've got on your land and what you're doing. Planning itself and environmental control itself, which comes back to nothing other than health and consideration of one's neighbour - that's what we're talking about, consideration of

one's neighbour - all have these applications for every one of us, you and you - - -

MR HINTON: That's so, yes.

MR MOLESWORTH: But they don't evenly apply. It depends what we've got in our gardens, it depends what we want to do on our land. So you might say that if I wanted to become a panel beater next week and set up my panel-beating works in some suburb, there's nowhere in this country I can do that without going through a regulatory process of restraint.

MR HINTON: And your neighbour as well, and his neighbour and her neighbour. It applies to all of them.

MR MOLESWORTH: It does, that's right. We say that the distinction isn't really a real one. I know it looks, as it is, that it's because it goes to the home that one owns, but the home that one owns is also the home business on occasion, a home occupation.

DR BYRON: In view of the time I'm going to cut that off. I'm sure you would agree, Simon, that our report deals with many other things apart from the listing of private residential property by local governments where the owner doesn't want to be subject to statutory heritage listing. That's basically the only thing we've talked about so far.

MR MOLESWORTH: Yes, I'm sorry.

DR BYRON: You know, there is much more. I think you may be right: that in terms of the big picture of conservation of historic heritage places in Australia, it's by no means clear to me that private residences in the suburbs being involuntarily listed is the most important issue that we should be worrying about. But it does seem to be the most controversial, and I emphasise the difference between important and ensuring that the real guts of Australia's important historic fabric is maintained and well looked after, and I fear that we may be spending all our time worrying about a couple of marginal places - somebody's little two-bedroom fibro house with a dunny down the back in the suburbs is not the Royal Exhibition Building, the Rocks in Sydney, or North Adelaide terraces or whatever.

We may be spending a disproportionate amount of time on a relatively small part of the total significant heritage assets of Australia out of proportion to their significance, but I guess we have drawn particular attention to that because of the controversy and because we see serious defects in the way the process is working at the moment. But I would like to ask you if you would like to comment on other parts of the big picture, apart from houses and suburbs.

MR MOLESWORTH: Let me quickly dive into a number of other areas. Let's go to rural Australia.

DR BYRON: I would like to thank you for reminding us of Jane Lennon's excellent paper as an appendix. It was great to reread that.

MR MOLESWORTH: That's exactly where I wanted to take you. The question I will rhetorically ask is, how would your recommendation resolve the situation in rural Australia, where you say that by neglect we are losing heritage homesteads, or by deliberate action - which was one I cited and quoted at the last hearing - where people will demolish an old structure? Since the last hearing I've had another example.

DR BYRON: We've had dozens.

MR MOLESWORTH: Since the last hearing, and other examples, it confirmed the very issue that I say is at the heart of it. That is that there is - and I will be critical of them openly, publicly - a rampant industry and it's called the insurance industry. The insurance industry are generally uninformed of the impact of heritage and the flow-on difficulties of historic property becoming what you might call tired and risky. Again, the instance I've had is of a farmer being, for occupational health and safety reasons, advised by the insurer that the old woolshed might have to go. Now, if the farmer is given the option of entering into conservation covenant to protect the old woolshed, he might only do that if there's a flow-on of financial benefits to preserve that woolshed, make it safe and then make it a workable building.

There are lots of instances around the world of rural heritage being at risk. In fact, I was in the States a couple of months ago and one of their most successful heritage programs over the last decade has been - there's a catchphrase, but I'll call it "save the barn". There are a number of publications, which are readily available, about how to save the barn, the old US farm barn, because they were losing too many. My concern is that it is evident to us that the root cause of problems in rural Australia, with heritage places, is more a concern of liability, of the shearer slipping through the floor of the woolshed - - -

DR BYRON: Or the organist slipping through the floor of the church.

MR MOLESWORTH: - - - and as a consequence of that there is a clear indication of deliberate action being taken to remove rural heritage. Now, I don't believe that the answer, as we've said, is with voluntary covenant in those circumstances, because you may have voluntary covenant, but if it doesn't come with money to make the building safe - - -

DR BYRON: Okay, now I see - - -

MR MOLESWORTH: - - - you won't have the building saved, because the occupational health and safety issues still apply. The insurance company will still be saying, "You can't let the shearers come into this 1880 woolshed."

DR BYRON: Negotiated agreement, to me and in the report, means an agreement not only for its ongoing continuing management, but, as necessary, an agreement with the financing of that. So you're talking about a covenant, which has no financial support built into it, and we're saying that negotiated heritage agreements do have all the necessary financial support built into them; hence a certain amount of cross-purposes, I think.

MR MOLESWORTH: Yes, and I think if that is the ancillary benefit that flows, it has to be absolutely there, hand in glove, and that comes back to this cost side: that government must realise that if that recommendation is to have legs, it will only have legs if there's money to help the farmer make that building sound, because the farmer won't spend the money. The easier thing will be to get a prefabricated new woolshed put up next door and knock down the old one, and he's fully in compliance with occupational health and safety.

That's why, when you go to any of the material, Trust for Nature or this federal government brochure about covenanting of natural land, there is a whole list of specified financial benefits that are available and one immediately knows that has cost. It has cost the government - it has cost someone, but it has cost the government. So we can't have one side of the recommendation. We need both sides. Unless it has that other side, then you will have the occupational health and safety problems overriding a willing farmer wanting to save rural Australia.

DR BYRON: When we were talking about the problem of demolition by neglect of rural heritage and thinking that systems of regulation and planning controls that prohibit redevelopment of the site, it clearly works in metropolitan areas, but it doesn't have any traction in rural areas where nobody wants to redevelop the site. They just no longer wish to maintain a piece of redundant asset, although it's of very high conservation value. It may be more than just an old woolshed. It could be an old timber bridge, for example, which is redundant, expensive to maintain, seen as a liability by its current owner, but seen as an extremely valuable heritage asset by other people.

Again, when we think what system would deal with conservation of those heritage assets, a system whereby the person who is the current owner or responsible and the heritage agency agree on what has to be done, who is going to look after it

and how it's going to be paid for, and that all is part of this negotiated agreement. I haven't seen a better solution to that, and in fact I notice that Jane Lennon's paper talks quite a lot about heritage agreements and covenants as a way of dealing with old homesteads, old shearing sheds; all the rural fabric.

MR MOLESWORTH: And I think in the whole rural area, as Jane's paper clearly shows, it's a work in progress because we still have to find the answer, and part of the answer comes back to this primary recommendation that has been in the trust submission from day one, and that is that if there was more money available to help with the explanation, the understanding, the education, the insurance industry has got it wrong 90 per cent of the time in their description. There's exaggeration of the threat, and there are a very large number of instances where in fact we would still have the place today if the insurance company didn't exaggerate what the problem is. Litigation liability has got out of hand. It has got out of control and unfortunately it's a driver. It can be matched. It can be answered by better information, and it's all part of that package of education that's so important. Can I move on to another issue: National Trust.

DR BYRON: That was the one I was just going to ask you about next.

MR MOLESWORTH: The National Trust. There are two aspects that we would like to highlight here. Firstly, the National Trust in their primary submission to the commission has very much stressed that there were a range of issues which were relevant to the trust. There's a confirmation about our role, and you've confirmed that, and thank you for that. There has been a whole series of propositions put to you about the fact that the National Trust is effectively a player in the public arena, and we say, and we've said it in this response - the responding submission to your draft report - that we don't actually sit like another private citizen. We're a hybrid. And with a great deal of encouragement we would ask you to actually look at your terms and deal with us in greater depth, because we think we are more within your terms than you've dealt with.

You've come up with one recommendation which I'll address in a moment, but the reality is if the trusts in Australia are looking after whatever the precise number is - say, 300 places in the public arena - and we are doing it in essence in partnership with government, performing a role which government would have to perform if we didn't, and if we're performing the educational role that would be performed by a government if we didn't, and if we didn't have our initial lists which have now been effectively taken over by the secondary lists - if we hadn't done that, government would have to have done it from day one.

I highlight all those to say that we would like to draw your attention to our original submission where we made a significant number of recommendations

regarding the role of a trust and the recognition of a trust and the support that we should get, and we say that we stand apart from the rest of the private community, we are effectively a quasi-public body, and that we ought be dealt with in greater detail in relation to the level of support that we all have. It all comes back to again looking for an equivalent of the Natural Heritage Trust in the cultural field and that we would want to be a major player with that, to perform our role better in both education and the holding of properties in an exemplary fashion and doing the best that we can. That's one submission.

The second submission is regarding what has been described in the written word as the decoupling of the trust from legislation. Clearly the legislation in the six jurisdictions where national trusts have been set up with that legislative imprimatur range. They vary. They can be extremely simple and basic, basically creating a corporate entity, such as in Tasmania, or they can be more complex in other jurisdictions, where one is given statutory roles and effectively quasi-government status to get all sorts of benefits.

If you don't have a core National Trust Act dealing with, in the omnibus fashion, the various divisions that should relate to a trust, you then need to have a range of legislation that provides for the same provision. Now, Victoria is a corporate entity under the Corporations Act. It's not under the legislation and the Victorian trust likes it that way, but I can take you to the Heritage Act; I can take you to the Planning Act. I can take you to a number of other acts: the Archaeological and Aboriginal Relics Preservation Act, a number of the natural conservation acts, where the trust is given a special status in that range of legislation, and of course we can go to the federal income tax legislation and we can find the trust specifically. You can go to the stamp duty legislation in the states and land tax legislation and you can find the trust, and you can go to the Local Government Act.

There are various ways you can do it. If holus-bolus you just remove the national trust acts then you're going to have to look at a range of other legislative measures to replace what the provisions might be that we benefit from, and I'm speaking in general terms. From jurisdiction to jurisdiction it varies. Your recommendation, I understand, was driven by a perception that there is confusion, confusion between the heritage councils and the National Trust, and in fact it would be fair to say that the National Trust has benefited for decades by a perception out there in the public that we're effectively government and we've got government powers and we've got clout and we'll hit you around the head if you do the wrong thing.

In actual fact it's never been the case in most jurisdictions and the trust has never had that sort of power but there's been that misconception. But is that misconception so serious that it requires the repeal of those six acts? If you are

determined to make that recommendation, we say there has to then be a flow-on recommendation to ensure that all the benefits that flow to the trust by reason of those six acts are not lost. We actually look. We would like to have also more power. Obviously an organisation like us would, but we don't want to lose the benefits we've got already. So it's not as simple as to say, "There's confusion. Let's get rid of it."

DR BYRON: You don't think that it's simply anachronistic of a time long before state heritage bodies and state heritage councils and statutory lists existed? That's quite apart from the public confusion argument.

MR MOLESWORTH: Yes. Their foundation is back in those days, and if it's pure and simple that it is anachronistic - but it's not. If one goes to each of those acts you'll find that hidden in few words are powers that must not be lost, powers and benefits, and it may be that the primary recommendation of yours is to try and avoid the corporate confusion, the confusion of corporate entities, but if that is it let's make it plain that most trusts are happy with the current status, but apart from that the real concern with the recommendation is the loss of benefits and powers.

MR HINTON: But putting history to one side, Simon, what differentiates the trusts from other NGOs that have very valid, significant partnerships with governments around Australia pursuing all sorts of social - sometimes cultural, but certainly social - objectives? What differentiates the trust that warrants specific statutory recognition that may give some taxation benefits and may even give some sort of special treatment benefits?

MR MOLESWORTH: Insurance benefits.

MR HINTON: Insurance is what I had in mind rather than taxation.

MR MOLESWORTH: WA and New South Wales. Insurance is the key one.

MR HINTON: I meant to say insurance rather than taxation. I apologise. But what makes the trusts different as opposed to this other family of NGOs? That's an important question from my perspective in that the onus should be on the trusts to show cause for their special treatment, not on the commission to show that that special treatment should be removed. That's another way to look at the public policy issue: onus on you to differentiate.

MR MOLESWORTH: Yes, and we would say that because we are such a major player in the public arena with places of public visitation, first and foremost that is a reason why we ought be given that statutory status where it does apply. As time goes by, if one looks at Australian Bush Heritage for instance - - -

MR HINTON: I was going to ask about that, or Australian wildlife conservancy.

MR MOLESWORTH: Yes. Australian Bush Heritage is, what, 14 properties. It's a long way short of 300 but it's getting up there, and the difficulty with Australian Bush Heritage is that - what, they've got three in Queensland, two in the West, five in Tasmania, three in Victoria. To bring in an act to protect them in Queensland for their three properties would probably be a big ask. Historically the trusts - what have we got in South Australia? The trust here has got 140 properties or something like that. Victoria has got 62.

MR HINTON: But that doesn't need statutory recognition to pursue those very valid and, as we acknowledge, important significant activities.

MR MOLESWORTH: It may be that what is required is that the Trust for Nature - not that the Trust for Nature owns many properties. In fact, does it have any left?

MR HINTON: It does. 20 or something.

MR MOLESWORTH: Because there are parts of Victoria, the Dandenong Gardens. Anyway, there are some, but whatever the body may be, whichever jurisdiction they're in, if they are a player in the public arena, it might be that the recommendation ought be back the other way because the questions of liability have got out of hand, haven't they? Parts of Victoria - it's got all the protection it needs in its legislation and it's really not very different to the role that the National Trust plays. So the problem may not lie with the National Trust having statutory status; the problem might be with the new bodies that are now acquiring properties not having statutory status. That might be where the problem lies.

DR BYRON: I still find it a bit odd that a membership based NGO community organisation for any purpose needs to be established by an act of statute when clearly the Victorian National Trust operates apparently quite effectively without it, and it could be argued - we haven't argued but it could be argued that if there are special privileges, special treatment, that comes to the National Trust by virtue of its privileged position, shouldn't that be made explicit rather than buried away somewhere that's not transparent even if it means a change in the giant - - -

MR MOLESWORTH: There's nothing wrong with transparent processes. I should say inadvertently in our exchange of bodies I forgot to point out that the Trust for Nature of course corporately is the Victorian Conservation Trust, which is a creature of statute, founded by statute, and still is.

DR BYRON: It is still very much a hybrid. It purports in circumstances to either

be part of government or a private membership based NGO critical of government, but I guess - - -

MR MOLESWORTH: The trusts are clearly NGOs.

DR BYRON: Yes, but particularly in Tasmania, many people there told us that the National Trust was almost indistinguishable from the rest of the state heritage apparatus and that there is clearly a case of confusion of roles, and it's certainly not our job to try and sort out various problems that particular national trusts may be having, financial or otherwise. But as a gratuitous comment it seems to me that there's not likely to be much private or corporate philanthropy for organisations that are seen as basically just another government department, and there may be merit to the trust itself to actually promote itself as independent of government, that is performing both the conservation management and the education public awareness et cetera roles, without being seen as so closely in bed with the state government that most people can't tell the difference.

MR MOLESWORTH: I think it's fair to say that the trusts do endeavour to promote themselves as being independent from government as best they can. There are two points I would make. Firstly, there is increasingly now a propensity of government agencies to set up hybrid private trusts such as the trust that was set up for the Dandenong Gardens. That is actually managed by Parks Victoria. It was set up by Parks Victoria after it took them from the Victorian Conservation Trust, from the Trust for Nature, and government is now doing this with some enthusiasm to try to themselves set up a trust which is still under the umbrella of the government.

MR HINTON: But it's not an NGO; it's a hybrid.

MR MOLESWORTH: Yes, it's a hybrid. But as for the point that we're talking about, I think if there was a hierarchy of issues that have to be addressed with respect to that recommendation, the top hierarchy issue is not to deprive the trust of the powers and protections it has; it's a lesser status as an issue, whether or not their corporate structure within - to us, is a lesser issue within the corporate framework. It's the benefits - I gather Barry O'Keefe, the president of the New South Wales trust, addressed these issues.

MR HINTON: Yes.

MR MOLESWORTH: No doubt he was probably addressing the issues of insurance and those sorts of issues, first and foremost. As long as we retain those, that's very important.

MR HINTON: I've yet to hear a case as to why it should apply to this particular

category of NGO and not other NGOs. Now, you've turned it around to say, "Let's spread it across everybody." I think that that's untenable.

MR MOLESWORTH: Increasingly, if NGOs are becoming more and more hybrid, because in effect they are not pure and simply a conversation campaigning organisation, they are entering the public arena and saying, "Come forth, members of the public, have trust. You won't fall off our gangplank as you go up to the polywood side. We'll look after you and you can have this public educational experience by visiting the trust." It's nothing different to what the Trust for Nature or Australian Bush Heritage and Nature Conservancy are doing. It might be that the better thing is to apply it to all.

DR BYRON: In view of the time - - -

MR MOLESWORTH: Yes, I think I've had almost an extra half-hour or more.

MR HINTON: I apologise. We did interrupt you all through that process, but I found it very useful to have the exchange, so I hope you could bear with us on that.

DR BYRON: There's just one last very quick thing.

MR MOLESWORTH: Yes.

DR BYRON: The quote from Galbraith at the beginning.

MR MOLESWORTH: Yes, at the very beginning.

DR BYRON: On the cover page.

MR MOLESWORTH: "Perhaps the preservation movement has one great curiosity: there is never retrospective controversy or regret" and "preservationists are the only people in the world who are invariably confirmed in their wisdom after the fact."

DR BYRON: What do you think that means?

MR MOLESWORTH: What I think it means is that the trust type of organisation - heritage conservation organisations - have to be in the vanguard in identifying what is potentially vulnerable. They have to be active players in the heritage movement and say to government, "Communities are inevitably all about economic development and progress and the like, and turning their back on the past is often" - the economic drivers of an economy is that preservationists, when they say, "This is the way to go about looking after the whole panoply of riches in a community. We

ought do that." With the hindsight of time, the trusts have been proved to be correct, and it's this hindsight of time - the time scale.

I think the new term, the new proof of that approach that we all ought to be focusing on, is intergenerational equity. That's the new buzzword. And the trusts, when they were formed 60 years ago - or 50 years ago, depending if you are in Sydney or Adelaide - they were all about looking to the future and saying, "Let's save the past for the present and the future." So he's saying they were proved to be right.

DR BYRON: So the people who wanted to preserve the tram shed at Bennelong Point would have been proven by history to be absolutely right, because the rest of us would never have come across the concept of the Sydney Opera House. You see, I had the privilege of meeting Galbraith, when I lived in Canada, at a Canadian Economics Association meeting. He has got the most wicked sense of humour.

MR MOLESWORTH: He would think that was a joke.

DR BYRON: He's also a somewhat sarcastic person. I read that as being, "Those who believe that they are always right, no matter how high the costs are to society and no matter how marginal the benefits are to society, who are so confident, so certain in their cause" - I think he's taking the mickey. I'm surprised that you chose to put it on the front.

MR MOLESWORTH: Can I say, as a counter to that, that I think what he's saying is that with hindsight, "Thank God the preservation movement had the foresight to say, 'We ought to save these places for the present generation to enjoy.'" He is basically saying that it's the hindsight that's being demonstrated. You may think he's taking the mickey out of it, but I think we know - the next time you see him, ask him what he meant.

DR BYRON: Yes, we might get a clue by going back to the original source. Knowing some of his proclivities, I think you'd be surprised at what he actually meant. The difficulty with hindsight is that one never sees what might have happened otherwise. I can't immediately think of an Adelaide example, but the people of Bendigo can look at their restored city hall and say, "Isn't that a magnificent building? Okay, it cost \$18 million or whatever, but, you know, it's a magnificent building that we use three times a year." They don't get to see what might have happened in the way of libraries or hospitals or nursing homes or preschools or day care centres or civic parks or whatever, with that \$18.3 million. You never see the counterfactual, which is my point with Bennelong Point and the Sydney Opera House. If you preserve something, yes, that is what you've got and you don't know what might have been there otherwise.

MR MOLESWORTH: Can I counter that with this? Singapore is a very interesting case study, and I will endeavour to locate the papers of an international conference I received some years ago. Singapore is the perfect case study. Singapore had no preservation conservation controls and they identified that the way by which they could become the economic hothouse that they are would be to bowl over old Singapore. The bulldozers rolled with great rapidity for years; in fact a couple of decades, until it got to the very walls of Raffles Hotel, where there was a very successful conservation campaign at the very last moment; the demolition permit had been granted, Raffles was to go.

What happened was that they saw in the make-up of the visitors that were coming to Singapore a disappearance of those who actually wanted to spend time, rather than come straight to the business meeting and fly out. And Singapore did a government-funded study and they analysed what had gone wrong and they decided the thing that was missing was that they didn't actually listen to the conservationists about old Singapore and they reconstructed old Chinatown and they reconstructed as much of heritage Singapore as they could; it's all Disneyland.

DR BYRON: Yes, replica.

MR MOLESWORTH: But the reports have revealed that what it has done is have a huge input in the economic health of the people who stayed in Singapore: that incredible five-day visit rather than the two-day one. The reports from the Singapore authorities - and they quite honestly now admit it on public stages around the world that they got it wrong and that they should have listened, and they've had to create the Mickey Mouse copies. So perhaps that is a counter-example for the one that you gave.

DR BYRON: Not at all. The decision to save the Raffles building was almost certainly the right one, but it doesn't follow that every decision to save every building in every instance will invariably always prove to be the right one.

MR MOLESWORTH: But is there a trust anywhere, or a heritage conservationist anywhere, that says every building should be saved? No-one has ever said that, despite the accusations in many quarters that the heritage movement is very selective.

DR BYRON: Thank you. Sorry, Marie, I didn't give you a chance to speak.

MS WOOD: Don't worry, I've had my moment.

DR BYRON: Thank you both so much for coming, but we are going to have to move on.

MR HINTON: Thank you and the council for the substantive written submission and your attendance today.

MR MOLESWORTH: It's our great pleasure. Thank you very much.

DR BYRON: Thank you very much, Mr Richards, Mr Miller. If you could each just introduce yourselves in your own voice and then take us through the issues you wanted to raise, and perhaps we can have some discussion on that afterwards. Thanks for coming.

MR RICHARDS: Thank you very much. My name is Mark Richards. I come from Victor Harbor, South Australia. To my left is David Miller, also from Victor Harbor.

MR MILLER: In my own voice, I am David Miller.

DR BYRON: Thanks, Tony.

MR RICHARDS: Our appearance here today, gentlemen, is that I appear on behalf of a property that I own myself, in Victor Harbor. As a result of reading through the Internet documentation about this Productivity Commission and being aware of some of the issues in a small country town, being Victor Harbor, I contacted David, who represents the RSL Club in Victor Harbor and suggested it may be appropriate also for him to make a presentation to this commission.

I must admit, when I first contacted your officer I wasn't aware at particularly what stage you were up to with this process and had initially thought about the aspect of positioning ourselves, or making comment about ourselves, but I see you are actually at the draft report stage and comment from there.

We've had the pleasure of sitting for about an hour and a half or so, listening to Mr Molesworth from the Australian Council of National Trusts. If possible - there are a few notations that I made as a small property owner that has a local heritage listing on it - just on some of the comments of Mr Molesworth. I was delighted to hear that perhaps the position of the National Trust is that a recognition that there are costs associated with heritage in our aspect - it's a local heritage with it. I did actually note though that the gentleman didn't necessarily overly agree as to who should bear the cost of that heritage with it.

A couple of other comments he made was of the statistical data, that only something like 1.9 per cent of people are the grumblers about heritage. I actually took offence with that comment, to the fact that we've made submissions to state government and also to our local council about heritage issues, from the point of view of trying to work together in a win-win situation about heritage, to achieve the objectives of heritage as well as to achieve our objectives, in relation to commercial property.

I think it's perhaps something that perhaps we - and it's not just the comment of

the gentleman, it's other people I found with a heritage bent tend not to want to engage in a discussion that is win/win. It's almost as if it's a confrontational sort of approach, that we should hear a fife and drums and a tattered flag, that they sort of stand on the top of the hill guarding the bastion of heritage with it. They are not the only people who enjoy heritage. They are not the only people who respect heritage with it. Of that 98 per cent that he quoted, of people who didn't complain about heritage, perhaps some of the recommendations within the draft report about the conservation agreements is a better way of actually going, of actually taking the confrontational process away, taking the uncertainty away.

He also made the comment about planning officers in councils, some of the conflict about heritage as averse to planning regulations. The confusion. I think the statement was used about double-glazed windows - is that again if you've got 98 per cent of the people who are happy about heritage, a conservation agreement process will take that misunderstanding away, and the conflicts. So to a certain degree, I found he was actually arguing positively for the aspect of conservation agreements, but sometimes taking the adverse position with it.

The other thing that I found interesting is that I wasn't aware - and I assume that I'm correct in listening - that the National Trust has something like 300 properties under their control. I stand to be corrected if that was wrong, but that was just how I perceived the conversation. I also kind of got the feeling that the National Trust in the end was endeavouring to position itself as something different; as if saying that, we, myself as an owner of a local heritage property should bear the cost of heritage, but because they're the National Trust and they've got 300 properties under their jurisdiction, they should be treated differently. They have access to funding that I don't; they have hordes of volunteers; they have technical services; they have government agencies they can go to that I as a private owner don't have. I don't mean to be offensive to the gentleman; he did his position with the National Trust well.

Just a few notes that I jotted down in coming to this session: like most Australians, my wife and I really do believe that heritage is important and should be maintained in an appropriate manner. I hope you don't mind if I just read from this. I'm not comfortable in these environments, but it's the first time in four years I've put a tie back on. Unlike the greater number of Australians, though, whose only input into heritage is vocalising their thoughts, we have taken an active role through the ownership of a property which is locally heritage listed. Whilst we've endeavoured to maintain a positive focus, to be quite frank I would never recommend to anyone to take on such a listed property unless there is significant change to the recognition of the rights of the owner, flexibility in planning and adequate financial support available to compensate for the costs associated with heritage.

To this extent, I compliment the extensive work of the commission to date and, in particular, your draft report. Whilst I am still trying to absorb the full details of the report - not being an academic and it's not particularly like bedtime reading - the areas that I have been able to get my head around I have found articulate clearly the broad breadth of difficulties of owning and occupying a commercial property in a country area that is locally heritage listed.

Some of the important facets of the report that come through to me are perhaps the removal of the emotion-driven and borderline aggressive approach to heritage which portrays property owners as unworthy; the balance of putting the property owner back into the picture as a key stakeholder, in particular, the acknowledgment and respect of rights; the understanding that there is cost, sometimes substantial, associated with heritage; the creating of forums leading to required agreement between parties as opposed to the current draconian inflexible approach that I believe is experienced by most local heritage property owners. In fact, while reading the draft report, I constantly found myself nodding. It felt for once like somebody was listening and offering a mature approach, with a willingness to work with us, as against the big-stick threat of compliance.

I would like to share with this commission our experiences relating to heritage. Several years ago at the time of ratifying the heritage list in our community, I undertook a review via the computer and wrote a submission that I understood went to our local council heritage advisory committee. The submission extensively pointed out the same primary issues as raised in your draft report, naturally not so eloquently, and indicated our desire to work positively with the council. It highlighted practices around Australia, including the Sydney GPO redevelopment of achieving heritage sustainability and working with property owners to minimise the negatives of heritage listing.

Unfortunately, as I suspect is the case in most country councils around Australia, the heritage committee lacked the experience and ability to think beyond the model of the total preservation without compromise. The submission, I'm sure, would have had the same impact if I'd written it in ancient Greek. Then, as if to teach us a lesson of daring to rock the boat, our submission was viewed as contesting the local heritage listing, resulting in the relevant state minister's advisory committee entering and examining our premises without extending any courtesy, in a manner as if we were being raided by the major crime squad. Without entering into dialogue, the most restrictive aspects of local heritage were placed upon our building, which extended significantly beyond those aspects initially sought by council.

I was informed shortly after by a senior member of the council's administration that a major planning review process undertaken by council would not be sanctioned by the relevant state authority unless the council agreed to the full terms of our

property's heritage listing. Whilst I raise this with the commission to demonstrate how heritage is implemented and managed, I express my concerns that we will be further targeted and will suffer consequences. Other persons I know who own heritage-listed properties express their fear of making comment on heritage for fear of a greater level of restrictions from State Heritage listing.

Again, I go back to Mr Molesworth's comments: of the 94, I think, properties on local heritage listing in our local community - I know most of the owners and have spoken to them - whilst there may not be statistical data that says that whether or not their applications for change have gone through, the process that they use is that they will speak to the local council, they will speak to the planning officers and, if the planning officers or the local council say, "You have no chance of getting it off the ground," they don't make application. So, as the gentleman mentioned, there are statistics and there are statistics on how they're managed.

How is our property impacted by heritage listing? If we were to put the property on the market and a purchaser was found, the sale price may achieve 24 per cent of its potential value - bearing in mind that it's a commercial property - as measured against similar, not listed, properties. I will in a second ask David to speak about this, because his property, or the RSL property, is within about 800 metres of our property and it has a similar type of listing, and the difficulties that they experience.

The design of the building, being effectively an old meeting hall, significantly reduces practical usage, in particular, because of problems associated with meeting building standards. Only about 26 per cent of the total property comprises the heritage-listed building. The remaining 74 per cent becomes an expensive carpark. The building is constructed of materials and methods not generally used today in construction. These are issues I know you've covered in your report about trades, et cetera. One of the other problems that we have is that we have a ceiling that is 4.8 metres high, which has been part of the local heritage with it.

It's environmentally unfriendly and economically impossible to moderate the internal air temperature. We are a retail environment, so it has to be commercially viable. In recent weeks, we have had to shut the premises, or the business, owing to internal heat exceeding 35 degrees Celsius. During winter, it is not uncommon to have air temperatures of between 10 and 12 degrees Celsius. In our local community, there is a small group of people who seem to believe that how they will be judged in this life is by the number of properties they can get onto the local heritage list. Rumours abound of a further several hundred properties in their scopes in our local community.

Politically, the current model of heritage listing creates an incentive for some

councillors to jump on the bandwagon as they know that they do not have to justify a budget for conservation. I believe it is a generally accepted principle of fairness in our society, if the owners are required to deliver on the community's expectations, that a community who has benefited should bear the burden of responsibility and associated costs. In our local community, when the community wants a new library, a swimming pool or other facilities for enjoyment of the community, the community pays for it through local taxes. The same principle should apply to heritage to ensure the viability and sustainability of heritage into the future in an environment which respects the rights of owners and of working in a win-win situation. The essence of the recommendations of the draft report I believe need to be carried forward. Thank you.

MR MILLER: I represent the RSL, Victor Harbor. We find ourselves in a very difficult situation. I'm not going to read very much, but I think it can be succinctly put in a couple of little paragraphs here and then I'll talk to it. The intention of the Victor Harbor RSL is to set up our clubrooms and service facility in such a way that it becomes a perpetual living memorial to those who trained, those who fought and, particularly, those who died for the community of this country. It must continue to preserve the spirit of the Anzac tradition.

Our vision is that our clubrooms become an asset both for the veteran community and the wider general community and for future generations of our community. Our aim will be to provide a venue for social interaction and the development of ongoing programs and activities addressing the identification and management of lifestyle issues affecting veterans of all conflicts, ex-service personnel, their families and carers following the impact of war and military service, and the wider community. That is what we are trying to do.

We cannot do it in the building in which we are currently based, mainly because the DVA, who was our main source of revenue to support programs, will not support anything in that building because of the dilapidated nature of the building. It has a heritage listing, which was placed on there by the council a couple of years ago. We have had appraisals by two separate land agents in the local town; they have said that the value of the property with the heritage listing in place, as you see it now, is in the vicinity of \$500,000. If we didn't have the heritage listing on there, given that it's on the main boulevard right in front of the seashore, they start talking 1.2, 1.3, 1.4, 1.5 million dollars. In terms of my mathematics, the best-case scenario is \$1 million difference in the value of our property.

We're not going begging to anyone. All we want is the value of our property so that we can go and build a service facility somewhere else. We are currently having two four-storey buildings, apartment blocks, being built within nine metres either side. Currently the best-case scenario is, when they start digging for the

underground parking for these apartments, that our building falls down. That would be the best-case scenario because then it's worth \$1.5 million. As it is now, it's worth \$500,000. We are stuck: we're between a rock and a hard place, and trying to deal with all the Sir Humphrey Applebys and the council regulations and red tape, we don't know where we're going. So we're just stuck between a rock and a hard place, and that, gentlemen, is a grassroots level example of heritage listings. The building is white-ant eaten underneath; it's got salt damp. If the insurance people find out how structurally bad it is and the floor caves in, they won't pay the insurance. I feel really bad about knowing that because, you know, am I culpable?

This is where we're stuck. Where do we go from here? It's taken time, money; we have to get advisers in. It's just crazy. All we're trying to do is relocate to offer the community a decent service facility. Rather than being seen as the whistle of the dog's tail, I'd rather be ascribed a bull's roar. Thank you very much.

DR BYRON: Thank you. Tony, did you have anything?

MR HINTON: Yes, a question to both Mark and David. In Mark's case, this commercial property, was it listed when you acquired it or was it listed after you acquired it?

MR RICHARDS: At the time it was on the local interim heritage list. I made inquiries with the council, having not had experience with these types of properties. I made inquiries with the council, the planning department, as to what can and can't be done. We expressed to them that we took a socially responsible approach to the property in some of its key architectural features. However, the fact that it needed - for it to have viability, there may have been some latitude given as to parts of the building. At that time, if memory serves me correct, I then got on the Internet and the relevant state government in South Australia, I'm sure, had a brochure that was part of their publicity or information about heritage that quite clearly said that heritage doesn't cost properties - doesn't cost owners anything - in about November 2002, which was about the same time that we were looking at acquiring the property.

There was an article in our local paper, attributed to our local mayor, quite clearly again articulating that heritage would not cost owners. So we entered the process, knowing that there was aspects of local heritage with it. We entered, believing that the information that was being provided by the state government and by local government - that there were degrees of flexibility and the fact that it really wouldn't cost us anything, the heritage aspect of it. I don't think necessarily they were malicious. I think that they were using information that was inaccurate at the time.

We have written to the heritage committee and also to council and tried to say,

"Look, are there ways that we can move the whole process of heritage forward?" We still want to take a very positive approach with it. We don't want to demolish the building. We've asked for aspects of key architectural features to be maintained and then some flexibility in the planning process - for an adapted reuse with it.

MR HINTON: That in fact leads into my question of David, in the sense that you've got a site there with commercial value. You've also got a very - I'm not sure of the right adjective - a building suffering pain. Is there scope to retain that building and its heritage characteristics, but still redevelop the site in a manner that can deliver the services that you briefly described in your first two paragraphs?

MR MILLER: The couple of paragraphs I read were from a rather voluminous proposal to council. Amongst that was the proposition that if it's seen as genuine heritage value, then perhaps the council would make up the difference because I don't necessarily want to see it demolished. That's not the aim. The aim is to be able to get the legacy of the past generations who have owned that building. We now have a valuable site, but that value has been taken away from us by the heritage listing. If the council is prepared to pay the million bucks in difference, we're happy. We'll go away and build a building, and then they can redevelop however they like. Does that explain the point - - -

MR HINTON: I was trying to explore with you a middle option, which is rather than you cash out the site, you stay where you are and redevelop the site to provide the services for an RSL site - - -

MR MILLER: We have about \$30,000 which would not be within cooee of - - -

MR HINTON: Of being able to - yes.

MR MILLER: Okay? As I said, the DVA will not supply us with any money in that building.

MR HINTON: Yes.

MR MILLER: They've said that. However, they are keen to - what we propose the DVA thinks is wonderful, but not in that building. They will help us have community facilities as long as we have something that's not about to fall down.

MR HINTON: So the DVA's views are in direct conflict with the heritage conservation objective for say not adaptive re-use or expansion - - -

MR MILLER: In the sense of providing funds, yes. We will not get a red cent out of them for programs in our current building. Also, parking has become a problem.

The council is putting in a one-way street. They are having apartments either side with parking underneath. That takes away all that side parking. We've had the privilege of a vacant block next door, which we've been able to park on the - we're dealing with a generation of 55 or 60-plus. How many times have they - if they come down to the RSL and they can't get a park, they go home again. They only do it once or twice and then they stop coming. The club's dead. It's finished.

DR BYRON: It's probably not much consolation to you, but there are many other instances we've been told around Australia of similar situations, where a place is basically no longer fit for purpose and yet there are some in the community who want to see it maintained as is, but the question is who's going to pay for that?

MR MILLER: That's it. We're not out there - "Demolish the place, demolish the place." Nobody is going to buy it with the amount of capital required to put it back into a serviceable unit. If you go down underneath you can see that all the structural pillars are white ant eaten.

DR BYRON: If I can just come back to you very briefly. There are other owners of heritage places who have said to us, "Yes, we want to look after the place. We want to be good owners and managers, et cetera, but rather than helping us do that and making it easier for us to do the right thing, you know, councils or state governments just put more red tape and" - sorry, I'm trying very hard not to put words in your mouth, but can you give me examples of where the council has tried to positively work with you to encourage you to keep doing the right thing or otherwise?

MR RICHARDS: Perhaps the easiest way of describing it is that there is - and while you say there's a current regard in the community that says heritage is important, the problem is that - and perhaps it's what is coming out of its report, is what actually is heritage? How do you measure it? My reading of the current South Australian act relating to sort of local heritage is that a local McDonalds store could actually become a heritage listed building because it's so broad. You then find that there are political agendas coming through which then relate back into the council environment.

We tend to find that the professional officers try their best, but the council itself - the councillors - really don't want to put money into heritage. As a result of us constantly writing and sort of making suggestions with it, they have come up with a support program. As I said, there are 94 properties, I think, off the top of my head, in our area and they were funded to the tune of \$15,000 per annum based on \$1000 per submission to help with some minor funding processes on heritage. It's almost as if, well, we've come this little bit far. You've got your money process, this \$15,000 for all the properties. Let's move on to other issues like - you know, they're building

a 13-million-dollar library currently, so the focus on council is physical attributes like libraries, swimming pools and whatever. They've done the local heritage listing and they've moved on without actually saying, "Well, how do you actually make it work?"

The council has its own old town hall which sits there. There was a submission to move a library into it and the council's own recommendations came back. I think four or five reasons for not moving it in there were based on local heritage issues, Building Code of Australia issues, the same problems that we have about sort of environmental management. The expertise doesn't lie there within council. They don't know. To a degree I think there is a sense of fear that if they try and do something outside of the narrow bracket, there will be a revolt by some members of the community where the aspect of the covenant agreement processes - and then sort of coming back and saying what are the core architectural features that really are important if this is an important building and then let's sit down together and try and work our way through, you know - is a very positive way of encouraging.

The guys that I talk to, I would hazard a guess that 85 or 95 per cent of them are saying, "Look, we want to do the right thing," but if it's a confrontation environment, which is how it's structured currently - you know, it's almost a conflict - they keep a very low profile.

MR HINTON: Well, both of you have illustrated with two clear cases challenges in some areas with regard to the pursuit of the conservation objective. I know we have lies, damn lies and statistics. I know we have anecdotes for theory and we have anecdotes for generalisations, but thank you very much for sort of adding your story to our information - - -

MR MILLER: Thanks for inviting us.

DR BYRON: It's a very valuable contribution and thank you both very much for your input and for the effort in coming here today.

DR BYRON: Ms Overton, please. Thank you so much for coming.

MS OVERTON: Thank you very much.

DR BYRON: Thank you for being flexible as we juggle the timetable.

MS OVERTON: That's fine.

DR BYRON: We have quite a lot to get through today and we appreciate your flexibility.

MS OVERTON: My name is Gabrielle Overton. I'm a private individual landowner, but I am actually representing a group from Norwood, Payneham and St Peters Council, a committee that has just recently got together. We're calling ourselves the Residents Rights Group and I've been very interested to hear the submissions. I was aware of the report and it has gained a lot of attention here in the media in South Australia, so I think a lot of people are aware of it. Most of it comes under the guise of creating loopholes that bulldozers will be able to walk their way through. We've had some absolutely amazing articles of the Productivity Commission draft recommendation for heritage listed agreements on a voluntary basis.

I'm kind of representing the - well, perhaps it's 4.3 per cent in South Australia, the voice of the public that are getting up in arms, but I think it's a much, much greater percentage. Listening to both Mark and David, this seems to be far more aligned with what I'm finding out in the community. I'm aware of the Productivity Commission inquiry. We recently received - or just at the end of last year - notification from our council and it was a letter indicating that my property had been recognised as contributing to the heritage character of the City of Norwood, Payneham and St Peters, and it has been identified as a contributory item within an historic conservation zone in the council's heritage Payneham Plan Amendment Report, PAR, contributory item list. We didn't really know what it meant and so begins a voyage of discovery.

I'm sure a lot of people today - you could see large groups of people involved with either government or Australian Council of National Trust are people that are in actual fact not volunteers and are here because it is their job to be here. A lot of people can't afford that time. Productivity - a lot of people have to actually get out and work, and produce something and bring home the bacon and maintain their houses which we feel are under attack. I'm representing, I would say, 300 people and so that's probably even more than Simon Molesworth is representing on the 300 heritage listed places of the Heritage Trust.

In our council area there's a bit of controversy about what has been listed, but it goes from something like there are currently 450 registered heritage places in the Norwood, Payneham, St Peters council area and this was reported yesterday in our local paper, and has progressively been these figures. When I spoke to a public meeting recently, I was hailed down by two councillors, one of whom has spoken today. Be that aside, they say that 450 have been listed originally and 250, as well, but also a mention of 2800 homes have been listed as contributory items in a conservation historic character zone.

We're saying this is heritage by stealth. It's an absolute overkill. It is a blanket burden on individuals and it has come with no consultation. All minutes of the agendas of council have been done in camera and have been put - "Not available for the next 12 months and it will be discussed after that 12 months." Down the gurgler goes clarity and communication with people, and consultation. We're not exactly sure what it means, but there have been two meetings at which we were able to go and speak. We could speak for five minutes. We would not be able to ask questions, but we could be required to answer questions.

There were at these meetings obviously the groups representing various council groups; residents' and ratepayers' groups. What we found since is that one residents' and ratepayers' group - and they were given extra time - they were allowed to speak on behalf of their group which has been together for four years and has 38 members of whom only approximately eight or six attend; so it's representative, but not representative and they purport to represent the rest of the people. Another one of the local community groups also spoke on behalf of their large body and because they are an association, they are given more credence than Mrs Joe Bloggs or the farmer Joe Bloggs from Victor Harbour, because they are an association or a professional.

One of the other groups, yes, it is representatives of some people and, yes, you sign in and you say, "I'll pay my \$10 to keep them off my back, so the committee who are avid and fanatic can do what they do and hopefully will keep us informed." Most ordinary people in Australia won't object. We love heritage. Most people desire, admire, but don't want to own it. If you were to say to most of these 3000 people in the Norwood, Payneham and St Peters area, "Do you live in a heritage house?" they would say, "You've got to be joking. It was built in 1934. Yes, it's a cement structure. Yes, it does have a verandah and it's a quasi-bungalow kind of a mix, with a mungalow or whatever," so there are kind of different truncated systems of building houses and that was because of availability of product at the time. We're saying we live in a wonderful area, the Avenues have been mentioned by a councillor this morning, and it is wonderful and the people have kept it wonderful - and it ranges from houses where there would be a smattering that perhaps would be from the 1880s but not a lot; it was large garden areas. There were some subdivisions.

What has happened is that private individuals, not heritage listed, not banged on the head with a bommy knocker, not beaten into submission and kicked when they're down - people who love beautiful places and heritage have kept our avenues, which is a row of ten avenues going between Payneham Road and the River Torrens, where you can't build any more because it's restricted to an area - people and private individuals, like most heritage places throughout Australia, have looked after these properties. We have made the heritage, we have retained the heritage and now we are being penalised because of that. We're saying, "If it's not broken, why do we need to fix it?"

We would agree that a lot of people would like to be heritage listed. Insurance companies are saying, "You might like to be heritage listed, but we're not going to support you in that." We have had quotes and spoken to insurance companies that said, "If you're heritage listed or as a contributory item, you will have higher premiums." On the other hand, we have spoken with valuers who said, "If you are heritage listed, you will be affected to the price of approximately 30 per cent reduction of the estimated value of your home." Other people might say it's just about rich people having an asset and they want to maximise it. Well, someone at one of these meetings quoted the former president of the United States as saying, "It's about the economy, stupid. Don't you understand what I'm saying? I'll say it again" - and he said it again to the council. It is about the economy.

It's a difficult situation, but that is basically a fact of life, that we all have made our way, some from very humble beginnings. We have an asset which is our major investment, whether it's a retail asset or our home, and this is what we feel is being pulled away from beneath us. We are putting out a public letter which is going out to something like 32,000 people in our area. There are 34,000 residents in our council area and it looks as though there are approximately three and a half thousand houses which have been listed, which is amazing. It's more than the city of Adelaide. It sounds as though it might be more than Melbourne. I think we've got a new mayor and he's probably very keen for it to become the highest listed restrictive council in Australia. Possibly that might be the aim. We're not sure.

I've heard people saying that a lot of the heritage people are fanatics and that if you go to the next world you get a place higher up, depending on how many listed properties you've been able to bring along with you. It could be fact. I don't know. But what we know as fact is that in South Australia we settled in a different way. We had a particular means of building our state. We were free settlers. We had rights and opinions and the Torrens Title system, which has gone on throughout the world, was invented here in South Australia. The Burra Charter invented here in South Australia is now recommended throughout the world. We are savvy and canny and we know about heritage - but not according to a gentleman at the meeting

the other night who he said, "I tell a you, you a know nothing about heritage. I have a 2000 years of heritage. This is a shit." That's what his opinion was. He was looking at what we were trying to call heritage.

Some of them are totally run-down, totally neglected. Some of them are 1920s, 1930s - but listen, that's not the end of it. We have all these properties listed and the council in its wisdom has covered this blanketed area and said, "If you happen to have a property that adjoins a conservation interest property in an area that is not historic, we can't do that, but we can sneak it in under cover. We will list you as a contributory item." That is the contributory item. My property is a contributory item. The house next door is not a contributory item. Ha, they don't need to know that your house has been listed, but it stops them from building. They have to keep the same backyard, they have to keep the same fencing. If they want to develop, they have to have a verandah on the front. Funny about that.

I own the house next door, as it happens, so I didn't - I'm waiting for my notice to see why they haven't notified me that my house next door has been notified, and the restrictions that apply to it will - by stealth - apply to my house next door. No message. I asked the neighbours next door. No, they hadn't got a message. I asked the neighbours next door. No, they don't have a message but the house next door to them isn't heritage listed. It's the same age as mine, it's a two-storey Tudor, most unusual in the fact that it also has a double garage underneath which is not really what was done in the times. I would say it's quite different and possibly could be of interest - maybe not heritage interest - but it's a quirk of what was done at the time. The next four have got sandstone - yes, we'll list them. That's pretty good. It's been a drive-by and they've driven by 3000 homes and said, "Yes, yes, no, no, and yes, yes, no," without taking any account of the situation.

So if there are 3500 properties that have been listed, adjoining those properties are neighbours and they are restricted. Any property next door to any heritage listed or conservation item is going to be restricted. Then they go into what you can do and what you can't do on a restricted conservation home, or the block next door. There are characteristics that they desire. They don't like high fences, they don't like masonry, they don't like brush. Their desired outcome is a 1.2-metre fence so that people can look and admire your property. So that's what they are suggesting that everybody will have.

No property will be built in this area unless it has a verandah. What if I don't want a house with a verandah? What if I want a modern house? Do we have to disregard all architects of the future and build phoney finials made of foam? Do we have to have picket fences that are now not what they had in the era that they used to have? They used picket fences then because it was a replica of what was in Britain. It wasn't Australian. What was Australian were galvanised fences with wire mesh;

that actually was Australian. There were some barbed wire fences. They haven't actually said they will approve barbed wire fences. But we're getting away from our history and building something that is not historic. I am involved in design and I love to see things retained if they can be. Restore if you can. Extend, renovate, knock down interiors.

These old buildings were done with what they could. There was a lot of stone in Adelaide and we have beautiful facades. We've got bluestone and sandstone and bullnose and cut face. We've got quoin work and plaster work and red bricks, and it is fascinating. But right next door to it - and there's nothing wrong with it - as our situation has evolved we have also got houses from the mission era, where they were Spanish haciendas. People liked them, people loved them. We've got cream brick Italian 60s and 70s. Hey, people loved them. They wanted to clean up the lines. We've got boomerang shape, we've got U-shaped.

Next that came were boxes, and there were State Bank bungalows. Well, State Bank bungalows were the pits. Sorry, if anyone has got one - but in actual fact they were built by the State Bank and financed because they were like the Trust homes of the future. Now those Trust homes - the kids are saying, "Wow, I just bought myself a State Bank bungalow and it only cost me 500,000." You know, no-one really wants it, but they love it. Who is to say what is going to be historic? Anything that is built now is going to be historic in 100 years' time. Just because it is old doesn't mean that it is historic. Some have value, some don't have value.

In the plan along our main arterial road out of the city along Payneham Road the government previously, in 1962, had a plan called the MATS plan which was their transport plan for the future. They acquired the land which can be done, even though we have Torrens Title and right for the use of our land and the peaceful use of that land - within regulations, of course. The government acquired many, many hundreds of properties. They were going to knock them all down. So you wouldn't be sitting here today and I wouldn't be talking to you because they would have been gone. They actually didn't proceed with that plan. I'm not quite sure why - they probably should have. But some of those properties are still there.

They have been listed as heritage items, or contributory items, or next door to contributory items, next door to heritage items, and this whole phalanx of strange itemisation - these heritage places are still there owned by the government, but they are going to be demolished. They are on the list of the Department of Transport ownership. There is going to be a big turn around to get the traffic away from that road on to an arterial road - and that's a fact. So we've got lots of inconsistencies and a lot of stealth and lack of clarity. People aren't saying what is going on and we're not being told.

Our letter will go out and it will say something like: "Heritage by stealth. Heritage listing - your home may be affected" - because of the 32,000 people who receive the paper most of them don't know that their homes are going to be affected. "Don't sit on the sidelines. The boundaries could shift any minute." Who knows? We thought we bought without a listing. We bought without a zone. We bought without any of the impediments we've now obviously had impacted upon us over the Christmas break when no-one really had time to do anything. I believe from the planning amendment review, for a council to actually make it legal they have to notify the people who have been nominated two days before it goes public. Well, it was released and we were notified - I think it was some weeks after that.

So, in essence, it's illegal in the first place anyhow. It might be a *fait accompli* as far as they're concerned, but I know that we've seen 300 people at these meetings, screaming at councillors. In fact, one historic buff represented to be the owner of a house so that he could have his say - with the owner sitting in the audience and the mayor saying, "Sorry, we will not have interference from the floor." The owner said, "That man is talking about my house." He wasn't speaking as an owner of a house and that was what the meeting was for - for people who had been heritage listed or put on the listing to have their say. So people were purporting to have their say about someone else's house. This is what the big angst is in the community.

Yes, we like heritage. Do you want to pay to look into my front fence? No, you don't want to? Is it valuable to the community? It's big. Is big what is heritage? Just because it's big does it have to be heritage? Then there are other examples. On the middle of a huge intersection the locals would know, the Kmart up at Firle, there is a heritage property. There is a parking ground that takes 600 parks. There is a Target - Kmart or Target whatever - a whole shopping centre there. There is a BP 24 hours, all the way along. There is one house of one little, old Italian lady, sitting there that has been heritage listed. She is saying, "Why me? What have I done wrong? Because I didn't knock it down before why is my heritage for my children being robbed?" It's a house, for goodness' sake. It's been modified, ramified, cementified, terrazzofied. It is totally not what it used to be and I don't think that that is heritage.

We're saying fictitious heritage claims and overlisting is stealing our rights retrospectively. It's restrictive and prescriptive legislation - which is a mouthful. Are you aware of your changes of rights? The Norwood Payneham Council has compulsorily listed over 2000 properties. This is heritage by stealth. Adelaide Council only has around 2000 heritage, and it's less if Jane was accurate today. Don't think heritage doesn't affect you. Neighbours in listed places do not have to be notified. This now reduces and restricts their property rights, too. There are over 1000 adjoining properties that are now subjected to new regulations. It's through the backdoor. The council is spending our money big time to fix something that is not a

problem. It's desirous. We've got one of the highest land values and property values in the state. We've made it desirous. We haven't been battered to make it desirous.

Yes, if you come with a conservation agreement you can't afford to pay me what it costs me to maintain my house. I want to maintain it because I love my property, and that's the feeling of most of the people with heritage properties. We will be your guardians and custodians, but don't force us to do it because we are doing it out of love and out of acknowledgment that it is an investment. Someone else will appreciate that we've invested in it. The facts of the matter are the listing takes away your property rights. Development controls have been implemented immediately under the governor's okay. Banks are predicting a 30 per cent decrease in property values. A Fourth Avenue property a few weeks ago didn't mention it was a contributory item on the sale agreement and the sale was cancelled; it fell through. Don't say it's not having an impact - it is.

Insurance premiums will increase. They have told us. The new controls are retrospective. If you bought it before the attitude is, "Too bad." Council has had heritage advisers - funny that a lot of them seem to be - the ones that did the original report - the ones that are actually going out looking and assessing them, it's the same company that it seems to be, the preferred people that you can go to for assistance, and they're doing the reviews. Also, if you want an addition council is also recommending you go to this same group - wish I could have a share in such a similar group. It's wonderful, but there is no clarification and clarity because you can't get the regulation. This is what is inciting people.

You will now have a 600 square metre setback. It's the new minimum land development area required. The setback will be increased to match the setbacks listed on the neighbouring property or whichever is the greater. Sorry, 600 square metres is the new minimum land development, not the setback. The setback is to match the existing setback. If you're on a corner - and a lot of these big homes were on corners - and one gentleman in case, who I don't think is still here, had a property and he is 30 metres back from the road. It's a house. It's in the middle of a block. Everyone had a house in the middle of a block when it was farmland. Yes, some of it might be heritage, someone might have slept there, but there are four places which this family actually in. They were owned by sons, daughters, et cetera. Life goes on. It's not particularly attractive. It's not particularly anything.

He has been told that if he ever wants to develop his very large block, which he bought perhaps I think 30 years ago, "Sorry, mate, not on. You can't do it. We've let everybody else, but you're at the end of the row." Not good enough for people to buy, not good enough for the state to want. It was built in, say, 1920, but heritage, hey, you're the mug in the middle. What I've put together, and I'll give it to you, is some of the submissions that went into council. I've spoken to the people. They

would like them to be put forward as their submission from the Norwood, Payneham and St Peters Council Residents Rights Group.

We think there needs to be diversity. When the whole thing started our council said, in their brochures and in their annual reports, "Norwood Payneham St Peters is a dynamic mix of housing stock capable of serving the needs in the array of households and family types." What they're now saying is, "Forget that. Rewrite it. We're not looking down that track any more. We tell you what the area is going to be. The fact that it has already got houses on it that may not be heritage, because they're next door we're now going to say what it can have on it." Why should we all have a Federation home? It's absolutely ludicrous. In Federation times it was the poor man's home. Tudors were not desired, because they were lofty, they were big, they were dominating. People didn't like them because they were overshadowing humble bungalows and villas.

History is evolutionary. You can't keep shifting the goalposts. We bought into an area. We knew what the regulations were and now it's changing. We think there should be diversity and we think that in the future there are some marvellous things like the Bennelong Point, Sydney Opera House, like the Paris Eiffel Tower. They built it for the exhibition. Everybody said it had to come down immediately afterwards. It was an eyesore, it was an absolute - it couldn't stay. That has become part of one of the modern day wonders of the world, as has the Sydney Opera House. What are we going to miss out on if we put a blanket ban on things?

We have Frank Lloyd Wright, who is a noted American architect. His history went from 67 to 59. He nearly lived 100 years. He was a wonderful, innovative person that fought councils, fought heritage, fought wowsers, fought everybody and said, "I will become the greatest architect who has yet lived. I fully intend to be the greatest architect who will ever live. Yes, I intend to be the greatest architect of all time." Heritage people would say, "Look, I don't know. Perhaps you could bury him in an attic or a cellar somewhere. We just don't want that type of person interfering with our history." His properties are now highly sought after. They were trendsetting designs of the time then and still are highly sought after. Good design is good design, regardless of the era.

What we're having now is something inflicted on us: mock, blueboard replicas. You do say, yes, you've got modern techniques and technology. Things are changing and evolving. So what is wrong with it? Why do they have to have picket fences? Why do they have to have verandahs on the front? If I choose to have a bunker house, which they're calling them locally - I saw recently on Lake Lugano, in the Swiss-Italian alpine area where the heritage is, let's say, 1000-plus years, next to them bunker houses going up quite appropriately and some like them, some don't. All the heritage buildings - all the modern people going down to Lugano to work,

they've got all new glass double-glazed back areas. It wasn't what happened in the times, but it's a different era.

Not everybody wants a quarter-acre block. My kids spend most of their time having breakfast - they're lucky kids - and a lot of young people do have a lifestyle that's different. They're theatre conscious, they like looking at heritage buildings in cities. They don't like living in heritage, because it's all too hard. They don't want to mow lawns, they don't want to dig in gardens. Why should it be impacted, when we can't forever - Adelaide is a particularly special place, because it's bounded by hills and coast. We have a band that now stretches from something like Sellicks Beach, 60 kilometres out to Gawler - 120 kilometres. I mean, how can we provide the infrastructure for such a diverse settlement. If we keep going out and out we're going to get to Port Augusta. We have to look at something sensible and look at practical usage.

We are saying practical usage is infill. If there are older houses, let them be changed. If I say my 60s cream brick house is special, I keep it. If I say that it's not, well, what value - there were thousands of them. The same as there are thousands of Tudors, the same as there are thousands of bungalows and we, in South Australia, have a wonderful heritage of lots and lots and lots. There's Unley, there's Norwood, there's Walkerville, there's North Adelaide. They were little villages. They were the hub of people. They're still there and they're still desirable, and they are fetching good money. Why muck up the whole thing?

I've got quite a few pages, but we've promoted the intactness - this has only happened since last night, so I'm representing someone else. The claims and the comments at the meeting were things like, "This should be voluntary. You should be asking me, not saying to me why it should be. The lack of opposition doesn't mean acceptance, just lack of consultation." Ordinary people don't sit and talk to Productivity Commissions. I'm an ordinary person who has the capabilities and the time to get off my butt and do it for other people, but we will be circularising, printing as I speak, something like 6000 pamphlets. We will walk those streets, because we are strong enough about it to say, "Don't tell us that we are compulsorily listed or a contributory item, or an item next to a contributory item. It's illegal. It's not on and we don't want it."

We commend the work of the Productivity Commission to date and we demand that our council consider your final report. The mayor said, "Whatever you say from these two meetings, we will not consider. It will have no bearing. The Productivity report will have no bearing on what we decide." So not only is one small council mayor, new to the position, so arrogant that they can command what happens in their council as opposed to the rest of Australia, we're saying we, as a group of concerned Norwood St Peters Council residents commend what you're doing, as do most of the

people in South Australia, not just the bigwiggers and noters that get the media, and we consider that the final report should be considered. Let's not make a farce out of heritage and conservation. Thank you.

DR BYRON: Thank you very much, Gabrielle, for that. It was very clear. I don't think I have any questions for you.

MR HINTON: Your presentation was nonstop, but I followed it all the way through. So I commend you on your articulate presentation, but I also noted that you have emotion, passion and - - -

MS OVERTON: And commonsense, too. Heritage is fantastic.

MR HINTON: And commonsense. You made a very important point, among many other important points, that participation is not costless and not everyone can do it. So I know you're here representing a number of people. I commend you for that, because we do know that not everyone can get here. This process of the Productivity Commission is consultative. We do need to have views from the community. We're not precious. We want to hear views for and against the draft report. We want to pursue a move from a draft report to a final report in a rigorous, robust way. We want to hear views, so thank you very much for participating.

MS OVERTON: Tony, I think that cost effect is really very very important. It is a cost to somebody, whether it is to government, to council or to the individual. To do something like this is just putting a huge impact on people. At the meetings the other night there were people who have saved all their lives, migrant settlers. They had gone to the expense of getting heritage advisers and architects to come along with them, because they're scared. They've come from regimes that tell you what to do. They thought they were in a regime where they could have some impact. They don't know what to do. Then they will say, "We'll go with you," and then they say, "But what if they take our house away?" You know, that's what people think and that's really not Australian.

MR HINTON: Thank you very much.

DR BYRON: Thank you. I think we can now break for lunch and resume at 1.45 with Jillian Hume from the City of Marion. Thank you very much, ladies and gentlemen. We are adjourned.

(Luncheon adjournment)

DR BYRON: Thank you, ladies and gentlemen. If we can resume the public hearings of the Productivity Commission's inquiry into the conservation of Australia's historic heritage places. Next we have Ms Jillian Hume, representing the City of Marion. Thank you very much for coming today. If you'd like to just take a seat in front of any of the microphones and briefly - perhaps in 10 or 15 minutes - take us through the main points that you wanted to make and then Tony or I might like to seek some elaboration on that.

MR HINTON: If each of you could identify yourselves for the benefit of the transcript.

MS HUME: I just want to say it's nothing to do with the City of Marion.

DR BYRON: Okay. Sorry.

MS HUME: I am Jillian Hume.

MR MELLOR: Paul Mellor.

MS HUME: I guess we are concerned about some properties in the Payneham, Norwood and St Peters Council, because they have listed quite a few properties as contributory places and some as local heritage places, of which Paul Mellor owns some of them. I guess we are concerned with the fact that they are listing houses which could be used as residential houses that are actually in industrial and commercial zonings. Of course that reduces the value of the properties considerably. I don't know whether I'm giving you what you wanted. It's just that when I was speaking to someone on the phone they said, "Well, would you like to come along?" So I was presenting what I was discussing on the phone.

We appreciate there needs to be some heritage protection, but not when it's going to reduce individuals' properties by about half in some cases. We can understand that perhaps some residential houses do need to be preserved, but again I think the individuals need to be compensated for it. I guess another concern, seeing the Productivity Commission is bringing out a report - I think it's important that none of the local councils are able to add any more properties to the list until we see what the government does about accepting this report.

The Payneham, Norwood and St Peters Council are adamant that it makes no difference about the report. Well, it certainly does to the owners of the properties that live in that council if the houses are listed before the report comes out, and perhaps there can be a stronger argument for people not having their houses listed. I think it makes a huge difference, because once they have been listed it's going to be very difficult to get them unlisted. I'm just wondering whether some of the local

councils are making a huge push now to get all of these properties listed before the report is finalised.

Our concern is over three particular properties, and I'll just give you a brief summary of them. One of them is a pressed-metal house. It's in a light industrial area and it's supposed to be of significant interest and it's given a local heritage listing for this. It's in the suburb of Stepney, and I did a quick run around the suburb and I couldn't find any other houses like it. I believe part of the reason is it was not typical of the area. Council can't give me information on where there were any other properties like this in the area. Yes, there are lots and lots of them in the western suburbs, getting down towards Semaphore way, and they are typical of that area but they are not typical of this particular council area, so I don't believe it's of any local heritage interest - okay, maybe of Australian heritage interest, but then you'd preserve it in the area that it was typical of.

Of course, this property - it's only a simple cottage. In fact I don't think it has any value on it, or it certainly didn't have any value according to land tax purposes, at one stage; they might have put some value on it now. This block of land also has a drain that goes across it, an open drain, so if you preserve this house it makes it very difficult to develop the land. Yes, you could build across the drain, but it makes it very difficult unless you're given the whole parcel of land to do something on. Being industrial, you know, why preserve a house in an industrial area? It's the only house in this section of the street that has a heritage listing on it, yet a couple of doors down there is an old bluestone house which is typical of the area, is in original condition, and they haven't even bothered to list it. Whoever they are using as their consultant to advise them, what's he doing - listing something that's not typical and not listing something that is typical?

Of course the drain across the property is constantly being graffiti'd and of course if it's left open that will happen too. If the owners of the property aren't going to be doing anything to it because it's not worth doing anything to it, then it will properly get worse. So what advantage is that to the area? That's probably enough on that one. The other two properties I'm talking about, again are houses. They are in a commercial zoning. They are on Payneham Road, which is a main road. There are three houses together. There is a service station on one side and on the other side there is a house that has just been demolished last year, similar to one of these houses, and they are building a warehouse there. Council has decided to put a contributory placing on these three houses that are together; two of these houses are owned by Paul Mellor.

One of these houses was originally a villa. It has been so-called modernised several times along the way. It now has a type of a bungalow front with a closed-in lean-to. I can't see what value that is of the property. It's not in original form. It's no

longer a villa. No-one would want it as a house as such. Why are we preserving it? Next door, yes, there is a villa in original condition, but there are lots and lots of others in the same area that are in the streets behind, which have residential zoning. Why would we need to preserve this one that is commercial zoning? These two properties go together, they make one parcel of land. That's what creates the value of these. I don't believe that the local government can justify putting a listing on these. It's not as if they are an old, original shop or anything like that that was typical. They are just houses and houses belong in residential areas.

When I did speak to the council heritage advisory department, she thought they might be able to help me with some issues. They couldn't give me any answers. They haven't got back to me with any answers. All they could say was, "This is what the consultants recommended," or "It is of significant interest," or whatever the wording is that they use. I asked them to describe what "significant interest" is and they can't tell me; nothing that you could justify as being of significant interest. So to say something is of significant interest is very vague. Sure, they did tell me the style of the house is significant but, I said, "It has to be significant to the local area" and they couldn't give me any answers to that whatsoever. I do question the advice they have been given on preserving these places. It seems as though it has been fairly ad hoc, the way they've gone about it. I think it would be much better if the listing of houses, to protect our heritage, was done on a national level.

It was interesting sitting, when we went to this council meeting so we could raise our concerns about the houses being listed. We couldn't ask any questions of the councillors, and the majority of the councillors sitting there looked completely disinterested. It looked as though decisions had been made and they were just going through the process of letting people have their say. Now, I might be completely wrong there but that was the impression I got; the impression others got. Someone did say - whether it's true or not, I don't know - apparently Adelaide Council only lists buildings after consultation with owners. I think, you know, that's the way the Productivity Commission thinks it should go and I think that's what should happen as well. So that's a sort of a run-down of what - - -

DR BYRON: Thank you very much. This may not be any consolation to your particular case, but we have heard examples, in all states, of what appears to be a lack of rigour and transparency in the process. The way of listing of particularly private residences by some local governments doesn't seem to follow the procedure as the heritage professionals tell us things are supposed to happen, starting from a statement of the heritage significance - the values of that place. It seems that those sorts of statements haven't been prepared for the three properties you are talking about. You can't get information about - - -

MS HUME: Two are contributory places, so they don't give any information on

contributory places. That's cut and dried. That's easy. They've driven down the streets: "Yeah, we'll have this one, this one and this one." And that's basically what has happened. I might be wrong, but that's the impression I got. The other one, which is significant, well, yes, they have. They've sent us the piece of paper and they've said it's a timber-framed, pressed-metal clad house - if you know the sort I mean - and something about the verandah. What was it? It was a faux - - -

MR MELLOR: Bullnosed.

MS HUME: It was a bullnosed verandah anyway. It was just typical of that style of house. They've said that's why it's significant. In other words, they've designed the style of house and that is a typical house found around - I'm saying Semaphore, I might be wrong, but Semaphore, Ethelton, Port Adelaide type area. So they have described the type of house and they said, "It's significant because of its style." But I believe they've got to say why it's of local significance, because it's not a local style.

MR HINTON: Do you have a feel for whether or not the constraints on a property designated as contributory are different to the constraints on the principle identified - - -

MS HUME: Yes.

MR HINTON: - - - on something that's already listed as heritage? Can you give me a feel for that?

MS HUME: Well, you have to maintain - - -

MR HINTON: With regard to this particular council?

MS HUME: Well, they say, "Yes, you just have to maintain the frontage of the house. It might be the garden area, but I think, actually, it's either the frontage of the house or - - -

MR HINTON: The vista from the street, is that - - -

MS HUME: Sorry?

MR HINTON: The vista from the street has to be conserved, retained.

MS HUME: Yes, that's - I mean, it's one of these places that it's all wrong anyway.

DR BYRON: You mentioned at the beginning about the substantial reduction in value of the individual properties.

MS HUME: Yes.

DR BYRON: Is that effect much less for a place that's listed as contributory, or do they all diminish by the same sort of percentage?

MS HUME: It still prevents you from doing the development that you'd want to do. I mean, basically bulldoze the houses and build commercial or industrial properties on it. I suppose it doesn't reduce it by quite as much but it certainly reduces it. There is one - I believe in Burnside Council - and this is only what someone has said - you are allowed to knock the houses down and rebuild, putting in those features that they want to preserve. That in itself is also difficult when you don't believe it should have to happen, in a commercial area. Yes, you're right, on a heritage listed place it is considerably more loss than it is on an contributory place.

MR HINTON: Have you tested council's resolve and put in a development application?

MS HUME: Have we put one in?

MR HINTON: Yes.

MS HUME: No.

MR HINTON: With the expectation that it would be knocked back anyway, or you just haven't got to that stage yet?

MS HUME: Well, we're not necessarily intending to do that now. I mean, you know, these properties have been owned for some time, but when you come to resell these properties that's where the value is, in what you can do with the land. And that's what you've paid your rates and taxes on in the past, what you can do with the land.

DR BYRON: If I can ask you to sort of look down the road 10 or 20 years, the way you've painted the picture for me is a couple of sort of isolated residences sitting in an area that's industrial/commercial, with all sorts of industrial/commercial developments around it. What do you think would be the situation 10 years from now for those properties? If they are not heritage listed I am assuming that they will be sold to somebody who might want to put in industrial or commercial development.

MS HUME: That's right.

DR BYRON: If they are heritage listed, what do you think they would like 10 years from now? What condition would they be in? Would they be still sort of shining examples of what they were originally or - - -

MS HUME: Older properties don't really age that much, except that white ants can get into the timber-framed ones. What would they be like in 10 years' time?

MR MELLOR: It depends on the owner and what he wants to do, and the demand for the use of that property. These can change and you want to be in a position to be able to take advantage or whatever at the appropriate time. If you've got a heritage listing which prevents or restricts you from doing certain things, you are strung along with that and that is the thing that I don't think we should be - have to handle.

DR BYRON: We heard before lunch of a case where there was a whole street of industrial/commercial buildings and one little old house which was sitting in the middle of it. The owner of one residence in a whole row of industrial properties was sort of thinking, "Well, why am I here when all the other places have become converted?" I guess I'm trying to think of what will be the long-term conservation outcome. Maybe 10 years isn't long enough, but is it 10, 20, 30 years from now that will be used for industrial or commercial properties irrespective, or will we see these little specks of old houses scattered through an industrial landscape? I am just trying to envisage what the people - who want it protected for heritage - see as happening over the longer term. Where do they think it's going?

MS HUME: We don't know. They just want to protect things, don't they? As long as it's not their money being used to protect it.

MR MELLOR: If an area is zoned for a particular use, you'd expect that the owner - no matter when they bought it - could in fact continue, if it's an advantage, to keep that advantage. What we're seeing - and it's happened in my case - is that this metal-clad, timber-frame building is about the only one of its kind, as I can see in the area, in the street itself and they've picked on that one out of, as far as I can see, anything either side for probably several hundred metres anyway, and they have not troubled to - unless it had a particular residential use. I think a number of row houses is one example where you wouldn't expect to use that property for anything else than residential.

There's not enough land to it to warrant anything bigger and the one I've got has a drain - I think you'd call it a council drain which is quite wide - running through the middle of the property. The only use it has at the moment is for graffitiers to get along there and do their thing. As a residential property, if it was to be preserved, as I suspect for that purpose, that would not be an advantage to anybody, whereas if it could be developed in a viable fashion, it could be used

differently anyway.

In the St Peters Norwood Council area my family own four properties. They have all been heritage listed - or in the process of wanting to be heritage listed if they aren't already. I think two of those - no, one of those we wouldn't want to change. It is something perhaps unique for the position and the style of property.

MS HUME: And it's in a residential area, is it?

MR MELLOR: No, that's in a commercial area.

MS HUME: Right. Okay.

MR MELLOR: But they've heritage listed it just the same. Three other properties, as my daughter has just explained, are on a main road and they have different qualities which don't seem to be such that you would expect anyone to want to heritage list them - on the main road - when off the main road there will be hundreds, thousands of properties that could be heritage listed because for residential purposes most of those people would want them to be retained in their present form.

MR HINTON: Mr Mellor, the properties that you're talking about were acquired before they were listed.

MR MELLOR: Required?

MR HINTON: You bought those properties before they were listed?

MR MELLOR: Yes.

MR HINTON: By council. Yes, some time before.

MR MELLOR: Yes, they have been in our ownership for - - -

MR HINTON: In the family for some time.

MR MELLOR: - - - mostly like 30 years or whatever.

MR HINTON: Yes.

DR BYRON: Is there any process you can go through to seek any offset or redress with regard to the significant reduction in the market value of the properties, as you see it? Has anybody suggested any form of compensation or is there a tribunal - - -

MR MELLOR: No, that was brought up at the meeting we had last week - - -

MS HUME: With the council.

MR MELLOR: - - - with the council, but there was nothing forthcoming which suggested that there was anything like that going to happen. The Productivity Commission outlook on the whole thing seemed to differ from what the council wanted to do and I would like to know why there was a difference that can't be reconciled.

MR HINTON: I should respond that the commission's report does not directly constrain any government, any level of government in Australia. Our report follows this consultation process and will be submitted in April to the Australian government. The report and the inquiry was commissioned with the support of the state governments and so there will be a consultation process by the Australian government with the states and territories about what reaction governments will have to our final report. But in the meantime there is no formal constraint on any local governments, state governments or Australian government activity in this area. It is an advisory body. The Productivity Commission is an advisory body advising the Australian government and, indirectly, the state and territory governments. Whether or not a local government seeks to take the draft or final report into account, in the meantime, is for their discretion. So while I therefore can't give you any hope that we will influence directly at this stage what your council may or may not do, longer term governments will react to our final report.

MS HUME: But they won't change things once they have occurred. Obviously once they are permanently listed it is very hard to have them removed.

MR HINTON: In fact our recommendations in the draft report do address this issue of listings that have occurred already, as to whether or not they have been soundly based and rigorously reached, and we've put in hand recommendations - sorry, we've included recommendations that seek to go back on some of those previous listings, particularly in circumstances where these listings occurred after acquisition. We are less sympathetic to those owners who acquired properties in the knowledge that the property was listed. That was behind my question of Mr Mellor as to whether or not the acquisition occurred prior to or after the listing, because we see that as a different category. The process of implementing what we have recommended in the draft report would in fact involve a revisiting of some local government listings that are currently in existence today.

DR BYRON: To check whether they have been soundly and rigorously based on objective evidence.

MS HUME: If owners have to fight to have them removed or whatever else - I mean, at this meeting we went to so many of the people had actually employed someone to do the research for them and everything like that, and that's an added cost to people if they've got to do that.

MR HINTON: We acknowledge that. The process of soundly based listing does require good research and information that can identify the heritage characteristic that is to be conserved. That is the only way that you can then reach the decision-making with regard to what should or should not be approved for that particular property. We think that's very important, but we also think if it is to be listed it should be incumbent upon the local government or the state government to in fact ensure that there is a statement of significance that does enrich the decision-making process that follows and brings not only rigour to it, but brings transparency to the process to show that the decisions that are impacting on owners of properties are soundly based.

DR BYRON: I do thank you both very much for bringing this to our attention. I don't know that - well, I can say categorically that we don't have a remedy at hand that will solve your particular problem today or next week or next month. It will be some time before governments consider our reports, but the fact that you and other people in a similar situation have presented this information we hope will lead to a more soundly based policy process. That is not going to happen overnight, I'm afraid.

MR HINTON: But your experiences help us get a better understanding of what is happening at the coalface for how local governments in particular are operating in administering the current system with regard to the conservation of historic heritage places, and certainly the practices across the 700 or so local governments around Australia - those practices diverge dramatically from local government to local government.

MS HUME: This is it - they're just doing their own thing. They don't even seem to consult with the state heritage branch. Every heritage department or branch or whatever, is all separate and they all do their own thing.

MR HINTON: In some states there is stronger guidance from the state government, of their local governments regarding this area. Not only does it vary from local government to local government, it also varies from state to state. One benefit - I hope one benefit of our report will be to try and identify best practice in this area so that it can spread out across all local government areas, as guided by their own state governments.

MS HUME: And you'd like to think that if the government is paying for this report

to be done, that they would take some notice of it, or otherwise it is just a waste of the taxpayers' money.

MR HINTON: I have to say that we would endorse that concept. We'd hate to be wasting our time just doing inquiries for the sake of inquiries. We hope that we will deliver reports that are read and acted upon.

MS HUME: Thank you very much.

DR BYRON: Thank you very much for coming and thank you for your written submission which Tony and I have read carefully. If you could sort of briefly take us through the main points that you wanted to highlight, then perhaps we can have some discussion of those matters.

MR JENSEN: Okay. Thanks very much. Just I suppose for everybody else, my name is Peter Jensen. I'm a town planning consultant. I suppose I've been working in the area of heritage conservation apart from planning for over 25 years and in fact when I was a student one of my first projects was working in Sydney in the Sydney City Council involved in heritage conservation planning which involved identifying and preparing planning policy to conserve heritage areas and buildings. So as a result of that 25 years, in the last sort of 10 years since I've had my own practice I have tended to specialise with my team in heritage conservation work and I've indicated to the commission that I've been involved in the preparation of a number of heritage plan amendment reports similar to the one that the previous speakers were talking about a moment ago.

Some of those plan amendment reports which is the terminology for, if you like, a rezoning - that's the name in South Australia, plan amendment report - have been done for the town of Gawler, Stirling, the Stirling Council area, the old Stirling Council area, City of Holdfast Bay, the Victor Harbor township, the whole of the City of Playford, the whole of the Council of West Torrens, North Adelaide and Walkerville, which has just been approved for interim operation this week or last week. So as a result of that experience it's fair to say our focus as planning consultants is more in the preparation of policy and working with the heritage consultants who are employed by council to identify buildings and areas.

So there are specialists in South Australia, a handful of them, who tend to do all of this work on behalf of councils. That's always been the case since 1993. I'd like to point out to the commission - I'm sure they're probably aware - but there has been a now statutory process with the Development Act that requires those consultants to identify buildings in the areas in accordance with some criteria that are legislated. I acknowledge that different heritage consultants may apply those slightly differently. Everyone is different, and so when they look at areas and buildings they may apply those differently but, as I said, there's a handful of people who are doing it and they've been doing it now for 20 years and there's more of a consistency now than there has been in the past and I certainly see that as a planner working with them on each of these projects.

We also get involved in assisting in the identification of areas in particular. Not so much buildings but determining whether an area is significant enough to become, for example, a historic conservation zone. So that's enough about that background. I'd like to concentrate on the process that exists for heritage

conservation, and I can only talk about the states. I'll limit my discussions to this state which have evolved over the last 20 or 30 years. I acknowledge also there's a lot of emotion about the issue and we just heard some people directly affected by the situation and people who I hear at, for example, the public hearings that occur as part of the rezoning process.

You hear comments like we have, with respect, about how council lists the properties and that's it; that's all. There's nothing that we can do about it. I'd like to re-emphasise the process that exists in South Australia to reinforce that I believe the process has a number of checks and balances that should ensure that only those places that are worthy of being protected are protected. So the first step in that process is the research and I heard you, commissioners, talking about the need for good research and I acknowledge that particularly in years gone by that research may have been lacking, particularly before 1993 when there was no legislation for that.

So there's the research and that research is undertaken by, as I said, people with particular qualifications. There's only a handful who do it, and unless they've got those qualifications I am unaware of any council that has tried to do one of these PARs to identify buildings that hasn't used somebody with appropriate qualifications. Then a draft is prepared of the places to be listed and the areas to be listed if there are areas. Usually but not always the state government has agreed to put the PAR that lists buildings and areas on interim protection. So it's brought in so that while the consultation period and the discussion and further evaluation takes place the buildings are protected. Then there's the period of consultation. Then a decision is made by the council as to whether to keep all those buildings and areas in as listed places and buildings. So that's a local government decision, and then if somebody is still concerned about that decision by council there is an appeal process to an independent authority in South Australia and that independent authority is a subcommittee of the minister's development policy advisory committee called the Local Heritage Advisory Committee and they listen to people who have objections to their property listed.

DR BYRON: Could I just clarify that the basis of the objection is purely on the question of whether or not the property meets heritage significance thresholds.

MR JENSEN: Yes.

DR BYRON: It's not possible that the owner could argue, "Yes, I know that this place is significant, but this would impose excessive hardship or unreasonable costs or anything like that." It's purely the question of is it or is it not significant.

MR JENSEN: No. I would say that I haven't presented to that committee so I would know the answer to that question. My understanding is that the heritage issue

would be paramount. I don't know whether they take into account other factors.

DR BYRON: Okay. Thanks.

MR JENSEN: I'll get on to the issue of hardship as part of my presentation. Notwithstanding that process I heard the commissioner speaking before about supporting the revisiting of listings. Now I didn't put it in my submission. I support revisiting listings, but I would probably qualify that by saying that I'd support that revisiting for those lists that were prepared and for those buildings that are listed and areas that are listed that have statutory listing that were prepared before the 1993 Development Act which set out the criteria for listing. For example, what we're finding now is that some councils did their original heritage studies back in the 70s and 80s using qualified people to do it, but at that time there was no standard set of criteria.

Those buildings and areas have been listed and they're in the zonings for that council. Some of those councils are now going back and redoing, and have gone back, and redone their lists and updated them in accordance with the 1993 Development Act, and I support that. So if a council hasn't done that, I support revisiting that to bring it up to the same level so that we can have some uniformity in the assessment.

I'd like to talk now about the principle of identifying places and areas of heritage conservation and whether or not that should be some form of voluntary process because that is at the heart, I think, of the Productivity Commission's recommendations; in fact I think it's the key recommendation summarised, and there are a number of recommendations that sought it - basically put an argument that says that an individual property owner should be able to negotiate whether or not the property is listed. I wouldn't mind just confirming that but I think in a nutshell that's the case, isn't it, of the recommendations?

DR BYRON: You would be amazed at how many misinterpretations there are of that. We had quite a lengthy discussion on this same point this morning with the Council of National Trusts and others, but if I can just clarify for a minute before you proceed: in the grand scheme of heritage conservation in Australia, at national, state and local significance and the role of governments and non-governments, private sector, et cetera, in that whole big picture there is one corner which is the question of local governments listing privately-owned residential property as locally significant.

I suspect that that's not the most important part of heritage conservation in Australia, but it's certainly the most contentious and the most disputed, and so, yes, what we've made as the key recommendation is with regard to how a list of identified heritage priority conservation places is arrived at and it starts from the same process

of a heritage survey, inventory, whatever, that looks at potential candidates for heritage listing. There would then be a rigorous assessment process pretty much according to the Burra Charter as it's done now, but then there would be another step in the process whereby rather than the listing body going to the owner and saying, "We have assessed this property and we have decided that it's now going to be statutory listed and it will have these consequences," full stop that there be a negotiation in terms of the nature of the restrictions that would be imposed and the nature of the incentives, inducements, quid pro quo, sweetener - whatever you want to call it - that the listing body would offer to the property owner such that the two parties could agree to a mutually satisfactory arrangement for the ongoing conservation and management making it quite clear what's to be done and not done, who's going to do it or not do it and how any cost that arises as a result of this agreement will be shared.

So that's what we mean by a heritage conservation agreement. Also that these would be of long term - not necessarily perpetual but long term - and the agreement would be binding on future owners for the balance of the life of that agreement. So many people have suggested that we thought that taxpayer's money would be spent offering a lot of money to somebody who the next day could rip up the agreement and carry on. We did not say anything that obviously silly. There is also the transition question of what do we do about the places that are already listed going from the current system to our proposed system with the additional step in it of negotiating an agreement. Rather than just making a list of places that have been assessed as significant, we want a list of places that have both been assessed as significant and have reached agreement for the good management and conservation of them.

MR JENSEN: Okay. That's clear. Just to confirm my understanding, where agreement is not reached, then the property is not listed.

DR BYRON: Where agreement is not reached it's up to the listing body to consider itself how many, what sort of incentives, inducements - whatever - it will offer. How badly does it want to have a property on the statutory list, and if it offers what they see as a very reasonable, dare I say, generous parcel of sticks and carrots and there's a recalcitrant owner who says, "No, I'm not interested in agreeing to being on a statutory list," the listing body can decide, "Well, will we walk away from this and go and talk to another owner of a different property down the road? Will we attempt to acquire this through a compulsory acquisition process? Will we change the set of demands that we are making so that they're not so restrictive on the owner or will we offer more carrots?" There are a number of options.

MR JENSEN: Thank you very much.

DR BYRON: The main one is that the listing body will have to think very carefully about how important it is to have this place on a statutory list with the agreed terms and conditions and so on.

MR JENSEN: Okay. That's provided further information for me. I'll come back to that. My own view, which I'll come on to, is that that's a very impractical situation and unrealistic situation in reality, having dealt with these 10 processes over different councils over the last - - -

DR BYRON: I should also emphasise that this is with regard to individually listed properties - stand-alones. We've made no recommendations at the moment that would change the treatment of heritage zones or precincts. We're talking about individual one-off places which are assessed as being significant.

MR JENSEN: Sure. I would like to talk about the principle then that we're talking about with that key recommendation, which is that for some reason a planning authority - let's call it a planning authority; it's basically state government systems, but councils - has the ability to determine what someone can and can't do with their property, which deals with the concept of development rights, for example. This is the very emotional issue that we hear about as people in dealing with this issue: that we're affecting people's rights to develop their property.

I would just like to discuss the fact that that is what planning is. That's what controls are in the planning area. There's legislation set up which has a purpose, and the purpose is to determine how land should be utilised. That's the same in every state, I'm sure, but certainly this state - - -

DR BYRON: Even though this is not an inquiry into planning and zoning and land use regulation, we are aware of how the planning system works. What we're concerned about is the interface between the planning system and the heritage identification and treatment system, because that's often not seamless.

MR JENSEN: Are you saying that in some cases the heritage planning isn't part of the planning process?

DR BYRON: Yes.

MR JENSEN: I can only talk about South Australia, where the heritage planning process is part of the planning process, because it's all under the one act - the Development Act. The role of planning basically is to determine the appropriate use of land and, as a process, the planning has impacts on property values. Sometimes the things that planners do and recommend through councils and state governments improve property values and sometimes they decrease property values and

sometimes they don't change property values. This is a very common example, and I'd just like to give you some typical examples of the similar situations that occur when a heritage building is listed in a zone where otherwise you could demolish it and build something much more valuable. Another example would be an office building: you could knock down the house and build a six-storey office building.

In our firm's very quick knowledge, before I raced to come here, there were some examples where land that was zoned district commercial - which is a high-level zone - was rezoned to residential because there was a proposal to use the land for a school and have some housing, and it was thought that district commercial would cause too many problems. In that situation, of course, the owner of that land may have objected for any number of reasons, but in particular because of a down-zoning, and there is a process to deal with that. As a process, you can object, but if the planning authority determines that that should happen, then that's what happens.

In South Australia we have a zone called the Hills Face Zone, which protects the hills surrounding Adelaide. Sometimes that boundary is moved and, if it's moved in the wrong direction, you can have your property values affected. You may not be able to build exactly what you wanted to do before. There have been examples where land is zoned deferred urban - in other words, it's future urban, so there's an expectation that it will be urban and then the government has come in and rezoned it back to horticulture or something like that because they've decided to bring in a growth boundary to the metropolitan area. There are any number of these examples.

Height limits would be another one, where a planning authority introduces a height limit that's lower than the previous height limit. This occurs all the time and, in my view, heritage planning is no different - in other words, if the community, represented by the planning authority, determines that the preferred use of land is this, then there will be some winners and some losers and that's the way it goes. I agree that, in order to make these decisions - they are big important decisions and, at the individual level, they are big decisions - they have to be good decisions and they have to be well researched. I think that's where there have been some problems in the past.

DR BYRON: We have gone to some length in the draft report to differentiate between zones, precincts or, in some rural areas, entire towns being subjected to heritage overlay, which affects everybody equally, and the situation where one property is the only one in the street, the block or the suburb which is heritage listed. In your written submission you're basically treating them as just the same.

MR JENSEN: No, because they are different. The heritage areas that you're talking about in South Australia, they have controls that apply to all property but they don't say that all buildings have to be kept. They list the buildings that have to be

kept within that area and, therefore, when you say you are not talking about those areas, you are in the sense to the extent that you're talking about the hundreds of individually listed properties that are in those areas.

DR BYRON: And their neighbours.

MR JENSEN: Yes, and the neighbours who are affected. I agree that a heritage area, if you've got an ordinary house that's not an historic house and it's not near one, then the heritage area controls usually say that if you redevelop it has to be sympathetic to the heritage character. I acknowledge that you're not talking about those areas, but we're talking about - usually all of those areas are full of listed buildings, state and local heritage-listed buildings. So I think it's still relevant. Anyway, I will move along.

With respect to the role of the commission in hearing objections about the anomalies in the system, I'm sure you'll hear submissions saying, "My property is this, this and this, and it shouldn't have been listed. Therefore, there's something wrong with the system." In that situation, if someone has a concern, there is a process that ensures that there is a review of that listing. That's what is happening, for example, in Kensington Norwood and St Peters at the moment. People have objected, saying, "This building shouldn't be listed, or it shouldn't be a contributory place. Have another look at it." So they'll have another look at it. Sometimes they get different heritage consultants to get a second opinion; in fact, usually they get a different heritage consultant to get a different opinion, and re-evaluate it.

DR BYRON: My previous question comes in again. Is that purely on the basis of, "Is it or is it not significant?" or is it on the basis that imposing statutory listing on that place could impose an undue hardship or unreasonable costs on the owners? They're two very very different types of appeal.

MR JENSEN: Yes, they are.

DR BYRON: The interesting thing about zoning, as we were talking about before, is that there's nearly always an accessible, affordable appeals process for those who feel significantly aggrieved as the result of a zoning change. What we're finding, particularly with the local listing for heritage purposes, is that there is very rarely any appeal process and, where there is, it is purely on the basis of, "Is it or is it not significant?" rather than on the basis of, "Is it going to take the life savings of some pensioner away from them?"

MR JENSEN: In terms of the costs of appeal, the costs of appealing against a rezoning are also very significant. You usually have to employ a planning consultant to represent you in council and so on, and that's often what happens with heritage

listings, the difference being that often this is a private individual with heritage listings. I acknowledge that. With respect to your comment about, "Does the council take into account hardship and so on?" my understanding would be that some do and some don't, because in a case where it seems that the building itself might have heritage value but the land uses around suggest that it would be problematic for it to be retained amongst whatever is going to happen, I think in that sense some councils would take a more, let's say, rational overall approach, a broader planning position on it. Other councils might say, "No, we should list it because that's what has been recommended." So I'd say that there would be some councils that do. It's a bit hard to generalise on that one.

In terms of the voluntary listing approach, I would still submit - notwithstanding your comments, commissioner - that at the end of the day the system that you're advocating in that clear recommendation is that through this negotiated system that does involve funds coming from somewhere to help convince somebody to agree to a listing, that rarely - in my view - will that work, and that it will result in itself in a huge number of anomalies. I'll just give you some examples from the current situation. Our current situation is one where there's no clear direction about this voluntary or mandatory approach - in other words, some councils will get the list and then they'll consult, and then if during that consultation period people say they don't want to be listed, then they won't list them. In other councils, which in South Australia is the vast majority of councils, won't do it that way. They'll say, "We'll go by the process. If it's deserving of being listed, we'll list." There is the appeal right through to this other committee, and so on. So I've got experience in both.

DR BYRON: Neither of those is quite what we've suggested.

MR JENSEN: No. They're very different to that, because you've suggested a situation where the planning authority negotiates with and comes up with - develops incentives to come to a mutually agreed position. All I'm saying is that, in my view - which I'm giving to the commission - I don't think that will work. I'll give you some of the reasons.

DR BYRON: But my starting point is that I think that we're likely to get far better heritage conservation outcomes if we have willing volunteers, rather than conscripts who are doing it purely because they have, very literally, a gun held at their head, so to speak. We've been given so many outcomes of perverse outcomes, from people who arrange for a piece of roofing iron to disappear or become loose or something, all the way through to permitting vandalism, simply because the owners see statutory heritage listing imposing a very substantial cost on them for the benefit of the wider community who are not contributing anything towards it. That perceived inequity often leads to really lousy conservation outcomes, and that's the reason that we are suggesting that the system might need to be changed; that if you can get a system

which is a bit more equitable, where the community actually contributes part of the cost of getting what the community wants, we might actually get much better conservation outcomes and a lot less friction and litigation.

MR JENSEN: I'll get onto that point, because I support your push to get greater equity in the system through the wider community contributing to heritage conservation. I acknowledge that the one big weakness - you've mentioned others, and I'm sure there are others - is the lack of community contribution to heritage conservation at the individual level, but I'll get onto that.

DR BYRON: Thanks.

MR JENSEN: On the voluntary listing approach - because that's what will happen - under this proposed approach, there will be some buildings in which the individual buildings will be listed and there'll be some that won't be listed that were recommended for listing. That's my view - that there will. Some people won't want the listing, no matter what you throw at them; even if you had anything to throw at them, they won't agree to it.

DR BYRON: Although they may still continue to maintain and look after the property very well, whether it's listed or not.

MR JENSEN: They may. In the situation in South Australia where we've had voluntary listing, we have situations where we have rows of heritage-listed properties that are of local significance - they're all the same; they all easily meeting the benchmark; there would be no argument about it - and one or two in the row aren't listed because the owners have objected. This is Adelaide City Council being an example. They are semidetached, two dwellings joined down the middle; one half is listed, the other half not; one half can be demolished and the other one can't be. This is common in that voluntary listing approach, to the extent that, as a result of that failure of the voluntary listing approach, the state government here has advocated - it's not in any sort of statutory document yet, but in the latest policy position about it - that the council uses a standard approach. So if it's worthy of being listed and you go through the review process and the appeal process, if it's listed then it stays listed.

I agree with the intention of the commission in getting this equity and greater community contribution, but I would be very concerned if that was just then replaced by (a) fewer buildings being listed, far less buildings being listed, which in my view would definitely occur; secondly, that those anomalies would stay, because those anomalies are what brings the whole issue of historic conservation and heritage protection down a whole level, to the point that everyone says it's a farce.

When you get that situation, everybody loses faith in the system, just as

currently people lose faith in the system when they see something that clearly shouldn't be listed but is listed. They will go, "Oh, God, they don't know what they are talking about," right? You know, there is a process to fix those things up, but there isn't a process to rebuild historic buildings that have been demolished because the owner doesn't want to or refuses to agree to an agreement.

Coming back then on to how do you improve the system, I would prefer the commission to focus on reviewing the system and identifying in Australia where the system is working well and fairly in terms of the process, and concentrate then on that issue of equity and how as a community we can better fund this heritage protection for the people affected. That's if the commission is still focusing on that as a key issue. As I say, there is no process to fund anybody else that loses from the planning system and there's no way to receive income from people who benefit from the system.

I think you've read in my submission about the betterment tax proposals from early planning days, where if you were to benefit from a planning decision, then money goes to the community which is then used to fund people who lose from the system. That system isn't in place anywhere. It would be good if it was, but it's not. You therefore can't just tackle one side of the equation. If you just say the community needs to pay for those who lose, I would say, well, every time I recommend that a piece of land should be zoned up, the person who gets that benefit just keeps the money. That whole issue of funding I support; as a taxpayer paying my council rates I would support because I think it's important.

The South Australian community and I think the Australian community values historic conservation and would hate to see these recommendations enacted if that was to leave far fewer buildings being protected. I know there's one on Main North Road, where the owner of a state heritage listed property has just put a cyclone fence around it, let it fall apart, let the vandals get in and it's now reaching a point where it will probably get bowled over. There are some cases like that. I do say though that heritage protection in South Australia is working particularly well overall.

DR BYRON: Our concern with wanted to get to negotiated heritage agreements is because we have been given a number of examples of places which are on statutory lists, including state lists, that are deteriorating before everybody's eyes because the process has studiously avoided the discussion of who's going to look after it and who's going to pay for it.

MR JENSEN: Sure.

DR BYRON: That's why we're trying to inject that step back into the process, because we think it's essential. To simply say, "Yes, it has been assessed as

significant, therefore it's on a list, therefore end of story," no, it's not, because unless somebody's going to look after that place, it will deteriorate, be vandalised or whatever.

MR JENSEN: Sure.

DR BYRON: That's the reason for us wanting to put that step back into the process that we think is missing.

MR JENSEN: I would support that. I just don't support the idea that if you don't reach agreement, then the risk with all of that is that the property isn't protected. As I said, if you give someone the choice - under this voluntary listing, any council that has tried the voluntary listing approach, if you give the choice half the people will say, "No way," even if it's a residential zone where all you can build is one house. In other words, you're not saying you can't build high rise because you can't build those, anyway. It's just a residential zone where you can only build a house and the people don't want the heritage listing because they feel it's like a - - -

MR HINTON: Yes, but in those circumstances it doesn't necessarily mean that we lose that property. The owner in those circumstances has full interest in maintaining - in fact probably continuing to use that residence. Therefore the fact that it's not listed in itself is not a bad outcome with regard to conservation.

MR JENSEN: If it's not listed?

MR HINTON: Yes.

MR JENSEN: But if it's not listed then that owner might say, "Well, I'll demolish it and build a new house."

MR HINTON: That in itself has costs. There is a disincentive to destroy the house you're in and replace it with a new one. It doesn't necessarily mean that that occurs. That's my point.

MR JENSEN: Not necessarily, but it's happening all the time. Our suburbs at the moment are going through this enormous change, as in all council areas, where older houses - even houses built in the 70s and 80s - are being demolished now and replaced with new houses. If you want to imagine 50 years or 100 years from now, which I think we should be, then I think we should be saying if it's deserving of being listed as a - if it meets the criteria, the benchmark, then it should be listed. Anyway, that's the sort of point I'm making.

Just getting back to the last part of my submission, there are a couple of points.

State government policy trends I've put into my submission. All local governments are involved with the state government at the moment on the major issue of neighbourhood character. This is one of these issues of area protection. While I take that point that you're talking about individual buildings, it's still very relevant to area protection, because these areas of character are only identified when there are - local heritage is often part of that. All I'm saying is that the issue of protection of areas is evolving further. It's not sort of going away, this issue of historic conservation or protection of character. I'm just making the point that the community is still keen to ensure that older buildings and character areas are protected.

I've mentioned that I've supported a number of the other recommendations. There was one at 9.7, if I could just make the qualification - I think in 9.7 you recommended that the state governments should modify their legislation to require any requirement to take heritage considerations into account in relation to any individual property other than those requirements related to zoned heritage areas. I was assuming there that you meant there shouldn't be any reference in state government legislation to lists such as the National Trust list or anything like that, but it sounds like you're saying that the state governments should change the legislation so that you can't list local heritage - - -

DR BYRON: Initially it has arisen with surprising frequency where a property, a private residence, is not on any heritage list, it's not in the heritage precinct when the owner puts in an application to put a rumpus room or a family room or an en suite toilet or something and suddenly, "Oh, no, you can't do that. That's heritage."

MR JENSEN: Refer to some other list.

DR BYRON: No.

MR HINTON: No, unilaterally decide that that planning land use decision will take into account heritage considerations, even though it hasn't been identified as heritage significant.

MR JENSEN: Right, so I support the commission then in requiring that if there are any properties listed, they should only be listed - if there is a planning decision, it should only relate to listed properties. Is that what the - - -

MR HINTON: If a planning decision is going to take heritage considerations into account, it should only be on the basis whereby it has already been identified as heritage significant.

MR JENSEN: Yes, well, I agree.

DR BYRON: I don't know if the situation arises here, but in other state capitals where somebody finds out that the nice old house next door is likely to be demolished and have three or four flats put up instead, when the objection is in terms of the streetscape, the aesthetics, the carparking space, the overshadowing, the overlooking, et cetera - that there aren't powerful provisions to appeal on those bases, then people will play the heritage trump card which trumps all else, when in fact the old place next door had no particular heritage value in itself, but the heritage card trumps all others and it was being used as a proxy for what were the real - - -

MR HINTON: Amenity considerations.

DR BYRON: - - - amenity concerns.

MR JENSEN: Amenities. Yes, I understand, so I support 9.7. I won't go into any others. That would basically be my submission, thank you.

MR HINTON: Thank you very much for your submission. Also it was very useful for us to have this exchange that clarified some of the issues about your reading of our draft report and our reading of our submission, particularly if there were some, I think, nuances there that were worthwhile to clarify.

MR JENSEN: Definitely.

MR HINTON: In fact to the extent that our draft report has been slightly misread or not the right nuance picked up, that's useful guidance for us. That means we look at our expression and how precise are we.

DR BYRON: Express ourselves more clearly in the future.

MR HINTON: And so doing better.

MR JENSEN: I just realised - sorry, this will only take a minute. That is the funding issue. Some councils do have heritage funds. Adelaide City Council has a heritage fund and gives grants. Some others do, as well, but it's only starting. In other words, there is a system in place that provides for it to some extent. Now, at the local government level clearly that's not a lot of money and it needs to build up and grow, and more councils need to do that; but that will require funds to be allocated which would have to come basically from a source.

The state government mainly deals with the funding of state heritage places, as I understand it, and in my understanding funds are inadequate and very small in amount. In other words, the lack of funding should not be used as an excuse for changing a system that is working. The focus should be on the funding of that.

You're acknowledging that a big issue is the funding side of it and making it more equitable so that these buildings that are listed and are worthy of being listed aren't run down. There have been cries - I haven't been part of it, but there have been calls for the state government to spend more on heritage conservation and obviously they don't and they aren't. That doesn't mean the system itself is a problem, because the system being advocated requires funding, as well.

DR BYRON: A system that requires large amounts of money which are unlikely to happen, I would argue is not a sustainable system. Commonwealth governments, state governments, even local governments, have been expressing their commitment or otherwise to heritage conservation through the amount of money that they allocate for it. Now, you, I or anybody else might think that that amount is wrong, but, you know, that's a political decision based on priorities and literally hundreds of competing claims on taxpayers' funds.

MR JENSEN: Sure. I understand.

MR HINTON: But more importantly is the factor that the burden of the current system is being met in part by current property owners. That particular cost is not transparent. That is why many people do accept the current system, because they don't realise that the cost of it is being borne not up front, by many property owners who have opportunity costs for redevelopment of that property. That needs to be looked at in decisions about listing, so that the burden of costs is known and seen transparently.

DR BYRON: The opposite side of the coin about there being insufficient funding is that one could say, well, perhaps the demands on the funds are too high; that maybe there needs to be some triage, some prioritisation, that it is simply not going to be possible to conserve everything everywhere immediately and that we need to find a mechanism for getting a balance into, you know, the supply of funds and the demand for funds for heritage conservation.

We don't attempt to say how much funding should be made available or what number of properties or percentage of properties should be heritage listed; but we're suggesting a process whereby each tier of government will go through and ask itself, "Given the amount of money that has been set aside for heritage conservation and all the other competing claims for money, how much more heritage conservation do we want to acquire and how do we do that in the most cost-effective way"? Again we're looking for a mechanism for prioritisation.

It's simply not an answer to say, "Well, if there was enough money we could go out and save everything that we've ever wanted to save." There is unlikely to ever be that much money, because the list of things being identified is very long and very,

very rapidly growing. At some point the costs have to be borne by someone. Sorry, I don't mean to give you a sermon - - -

MR JENSEN: No.

DR BYRON: Thank you very much for your participation. It's appreciated.

MR JENSEN: But I think your system being advocated will require a lot of money.

DR BYRON: Thank you.

MR HINTON: Thank you.

DR BYRON: Shirley McNamara, please. Thank you very much for coming back today. We met you here last time, didn't we?

MS McNAMARA: Yes, you did.

DR BYRON: Thank you for the written submission that I got by email just a couple of days ago that I have read.

MS McNAMARA: Thank you.

DR BYRON: Would you like to just sort of take us through the main points you want to make and then we can discuss it.

MS McNAMARA: Yes, I would like to say that I have been involved in heritage in South Australia for a number of years now, mostly on the back foot with being a volunteer and with a volunteer organisation who has been challenging government decisions on what we have considered to be not valuing the heritage. So if I could just say that that's the position that I've come from. I'm the chair of the Heritage Preservation Association. However, I've gone through your draft report and the thoughts that I have put down here are my own. I agree with the gentleman who was just speaking. I think that whilst what you are suggesting on the surface has wonderful merit, that if you lead a horse to water you're going to have a better outcome than if you force him.

To take the classification which, with heritage listing, now enjoys a status, to being merely if a person agrees to it, I think it going to create a great deal of problems. Thank you for the opportunity to provide comments to the second round consultation on the above draft report. The terms of reference of the inquiry: the conservation of our built heritage, is important. Places of historic significance reflect the diversity of our communities. They provide a sense of identity and a connection to our past and to our nation. Given the terms of reference and the number and quality of submissions received I'm surprised and dismayed at your key recommendation, although since I've been here I have heard you identify the thoughts behind it a little more clearly.

I believe that it's a bit like saying that cars only need to stop at traffic lights after an agreement has been negotiated with the drivers, or bag limits of fish don't apply with fishermen until after agreement is reached. I believe we need to establish the fact: is Australia's built heritage important or isn't it? If it isn't, we may as well all go home now and stop wasting our time and money, and I've wasted plenty of both. If it is important, and if we consider that we are the custodians, then our heritage should be treated with the respect it deserves and valued as a unique asset, and in some cases priceless with untold tourist potential. The points I wish to make

are: a valued resource must have regulation. Whilst it is desirable for heritage property owners to have voluntary conservation agreements, that should not be the deciding factor on whether the property is listed or not. This would put the wrong emphasis on heritage listing and it would soon be common knowledge that there are ways around it.

Listing would become meaningless, except for a few dedicated souls. I didn't understand that that was just on private properties, so I've also included National Trust buildings and government-owned properties not desired for redevelopment. Already property developers can bulldoze a heritage building and fill the land with Tuscan villas, which adversely affects the historic ambience of the streetscape or area which has been very common and that has been happening here. Heritage must have protection. It would be better to list all heritage properties, as a matter of instant protection, as has been suggested - first do no harm - and then at a later date properties with lesser value, or little value, can be removed. This procedure should not be confused with striking off heritage protection or changing heritage precinct boundaries to cater to property developers, as has been the case in South Australia. Examples, Port Adelaide, Adelaide City and North Adelaide.

Australian heritage is under critical threat and more needs to be done, not less. The concept of heritage property owner's conservation agreements has merit, if you lead a horse to water as I have mentioned. But the responsibility of conserving our heritage should not fall on the shoulders of one sector, nor should heritage be seen as a disadvantage. The quick dollar inappropriate property developments and midnight demolitions must be addressed. Measuring the benefits of historic heritage conservation, your number 6.4: I was disappointed that your draft recommendations had no mention of any form of raising the profile of Australian heritage by education in schools, public awareness campaigns, media guidelines for Australian content, funds for community cultural events and the like.

MR HINTON: Excuse me. I apologise for interrupting, Ms McNamara, but we've got a small difficulty. Your submission is four pages long.

MS McNAMARA: Yes.

MR HINTON: And you've proceeded to read it all in detail. At seven minutes a page, that's half an hour that we've got for the total process and we're running a little bit behind.

MS McNAMARA: Okay.

MR HINTON: While I'm very hesitant about interrupting - - -

MS McNAMARA: No, that's fine.

MR HINTON: Could I encourage you to take on board that we definitely have read it. It goes on our web site. It's available to everybody else.

MS McNAMARA: Okay.

MR HINTON: What I would like you to do is pick out four key points and really hit us with it.

MS McNAMARA: Okay.

MR HINTON: You can certainly refer to your notes, but I would rather you not go through all four detailed pages for obvious reasons.

MS McNAMARA: No, that's fine. The main things are that heritage - and I heard what you said about perhaps the heritage funding that governments give it is because of their priorities. Whilst that may be well and good I don't believe that the tourism factor has been sufficiently addressed. Here, I've got some information about Port Adelaide I would like to give you, which you will see - I'll give it to you now so that perhaps you can look at it. That, if you would even like to show others, is what can happen to a beautiful old heritage area. It is waterfront suburbia, and yet because the media is driven by the real estate industry and by developers, there is very little voice against it. Earlier, we heard about Singapore and how they decided they would bulldoze everything, and yet suddenly they found out about the Raffles Hotel and that's what people wanted to see.

MR HINTON: Ms McNamara, what was here before this development?

MS McNAMARA: That is the picture of what they envisage. It isn't completed - - -

MR HINTON: Sorry, what is this replacing, is a better word.

MS McNAMARA: What it is replacing - this is the ambience of the old Port and this is the emergency heritage list nominations that our group put in for it. That information, and there is quite a bit of it - I believe that the main thing that's wrong with our heritage protection is the state government. They make their own rules, they shift their own boundaries and they say what's going to happen. They give reasons for it and we have what we call a Clayton's consultation, which means that the people can come along and say what they want to say. However, what is unknown to them is that decisions have already been made. There was a public works committee with the bridges, about whether they should be built or not. There

was not one person there from tourism, except me, and I was not permitted to speak, because I was obviously not considered part of the important infrastructure.

However, I don't believe tourism has been addressed as it should be, and the Port Adelaide City Council have had a number of consultations, including one from the South Australian Tourism Commission. They said that the ambience should be retained. It should not be boutiqueised. However, that has since been overruled and now there was a consultant - I went to the meeting - and the message was, "How can we put in little bike paths and other things to fit in with the new development. The new development has priority," and I believe it's Singapore all over again. So that's number 1. The other one is the properties. Of course the whole responsibility of restoring and the different impositions put onto heritage people should be supported. It isn't, and I believe there should be some initiatives put in place. One of them could be a heritage lottery and in my report I've got a few other suggestions. They are the main points that I would like to raise.

MR HINTON: Thank you very much for your written submission and your attendance today, and I apologise again for cutting you off - - -

MS McNAMARA: No, that's fine.

MR HINTON: - - - in the interests of having sufficient time for today's proceedings. But you mentioned that your main concern was the inadequacy of the behaviour of the state government.

MS McNAMARA: Yes, I do.

MR HINTON: Is that in terms of its oversight of land use more generally or are you aiming specifically at the heritage issue itself?

MS McNAMARA: I'm aiming specifically, and with the nomination that I have given you you will see that we challenged - there was shed 5, which was going to be demolished and there was a response, after our submission, from the Department of Environment and Heritage. You will see a report there with their properties, and they challenged us that we said - that we said that the historic precinct was in danger and they sent a list of properties which were protected. However, interestingly, some of the properties on their list had already been bulldozed. So really I believe that that is a concern. The other one is that now the Department of Environment and Heritage isn't. It's now the Department of Environment and Conservation. We had a legal, in a minimal way, way of challenging decisions from the Environmental Defenders Office. Now, they no longer cover built heritage. It just appears that our heritage protection is just becoming less and less.

The other thing is, with our state heritage list, there are a number of places which aren't on and haven't ever been, such as Fernilee Lodge, a beautiful big mansion that went down, because it wasn't on the list. With shed 5, the reason that shed 5 down at Port Adelaide was able to be bulldozed was because the precinct was moved. Now, we have a department called Land Management. It appears to me that their main focus is giving away crown land, which belongs to the people. The other thing is the dedication of the parklands. Probably people here will realise that five acts of parliament needed to be changed to take it under the control of the state government-Adelaide City Council, which then means that dedication is removed, which then means that it doesn't have the world significance that it would have - - -

MR HINTON: This is why I was exploring with you whether or not it was the policy of the state government with regard to land use and changes to land use or whether it's lack of commitment to the heritage conservation objectives, such as non-maintenance of its own buildings, and even knocking down buildings that it owns, but even in circumstances where they're listed. Is it occurring in that extreme? Is that the point you're making?

MS McNAMARA: I think overall heritage is quite a complex thing. Firstly, I don't believe that a lot of people who are making decisions on our behalf for heritage really understand the unique heritage of South Australia. If it's not understood then it isn't appreciated, nor is it addressed in the schools - as it should be - and so with the younger generation there will be less and less appreciation of heritage. I think it does also include not necessarily in knocking down a building, but we did have the instance of one of our most culturally significant buildings, the old Treasury building, was offloaded to developers along with \$2 million of our ratepayers' money as a 99-year loan, and yet there wasn't - there was very little public consultation. I think that we have a layer who just makes decisions without enough education and without enough public consultation. I think then the brunt of it is picked up by the little people, but putting pedantic ridiculous laws in place that then heritage becomes less and less appealing whereas really it should be a status which should raise the profile of owning a heritage property.

DR BYRON: That is one of the things that has come up repeatedly; that to be the owner of a heritage property is very commonly seen as a liability rather than an asset; as a curse rather than good fortune. That seems to be because of the regulations and controls and so on. There's an awful lot of regulatory sticks in the package, but not many sweeteners, not many incentives, positive carrots for property owners. One of the things that we're attempting to redress is the mix of carrot and stick for heritage conservation.

MS McNAMARA: I see the merit in especially some funding being available for people to be restoring - many restore because of the love it and I don't think that it

should be funds given to people who are unwilling to restore. I think that it should be very evenly distributed, and I think that it would be a very worthwhile exercise for you to look at the rules and regulations for what property developers can do versus what small property owners can do.

DR BYRON: Rephrasing what you've said, if state governments of any political persuasion conclude that they have other priorities for how they want to spend taxpayers' money, whether it's nursing homes or day care centres or roads or whatever, rather than putting it into heritage conservation, that's very much a political issue of how they're going to allocate the money that's in consolidated revenue. You don't agree with that.

MS McNAMARA: Firstly, I think there should be some initiatives, and I think the public should be asked for what initiatives they could see for raising money, and then I think that it should be examined as to what governments are spending money on, such as media advisers and so forth. If they tell the truth why do we have to have so much money spent on media advisers? Which may be a different issue to what you're doing, but I think that it's unfair to say money should be spent on important things like hospitals and not on heritage.

DR BYRON: But in a sense the political process is about deciding how much tax revenue to collect and then how much to spend on roads or hospitals or schools or nursing homes or parks or heritage conservation, and it would be extraordinarily presumptuous of us to tell a state government, or any local government, "Hey, you're not spending enough," when already today we cannot find how much they're currently spending and we cannot find what they're spending it on and we cannot find out whether that's good value or not and whether people are happy with the results that are being achieved. We haven't really got any basis to say that they should be spending twice as much, five times as much, 20 times as much, or half as much because we don't even know what they're spending and what they're doing with it - which is the reason for the suggestion that it would be good to have some information.

MS McNAMARA: You can see the position that the public is in then and you can probably see the merit of incorporating tourism in many instances with heritage. With tourism, we all own it. They also spend money on bringing overseas manufacturing here, then they can shut up shop and go home any time. With tourism we own it; it's an asset.

MR HINTON: We really appreciate your participation in this public hearing, both in terms of your written submission and your additional documentation.

DR BYRON: You've given us plenty of homework to do.

MR HINTON: And your comments here this afternoon.

MS McNAMARA: We'll get you some more homework on that, because we have the opportunity which everybody probably knows of bringing a beautiful old cutter ship here which is the oldest in the world.

MR HINTON: We'll look forward to hearing about that. Thank you very much.

MS McNAMARA: Yes, we'll keep you updated. I appreciate it. Thank you for your time.

MR HINTON: Mr Ben Moretti. Thank you very much for coming, Mr Moretti.

MR MORETTI: Thank you.

MR HINTON: If you'd just like to identify yourself.

MR MORETTI: My name is Ben Moretti. I am the president of the Friends of the City of Unley Society Inc. I am here with my colleague, Rosanna Fazzini, who is the secretary of the society.

MR HINTON: Please feel free to join Mr Moretti at the microphone.

MR MORETTI: The information I provided to you is a colour printout of a PowerPoint presentation that we use regularly when we engage in this sort of activity. It contains a few interesting dot points and some photographs of developments and historic character buildings around the area that we have visited.

MR HINTON: May I interrupt you, I apologise.

MR MORETTI: Sorry.

MR HINTON: One difficulty we have with this process is that photographs do not work well with transcripts.

MR MORETTI: That's correct.

MR HINTON: So while we appreciate that it certainly informs both Neil and me with regard to the point you're making, it means that the wider distribution of the points you're making don't really work effectively

MR MORETTI: Sure.

MR HINTON: I have no difficulty proceeding in the way you suggest; it's just that I mention that it's not quite as effective as perhaps other ways of appearing at hearings.

MR MORETTI: Sure, thank you. I am actually not going to be referring to the photographs. They are more for your interest. I can email you electronic copies if you wish.

MR HINTON: Thank you.

MR MORETTI: I've also presented you with a copy of the statement which I am

essentially going to read verbatim, so you may want to read along or not, depending.

The Friends of the City of Unley Society is an incorporated body formed in October 2003 and later incorporated under the relevant act in June 2004. It's by residents of the City of Unley, which is in the inner southern suburbs of Adelaide, who were concerned about preserving the historical character of the City of Unley. We have the aims and objectives of promoting planning policies, initial retention of existing amenity, character, gardens and so forth, influencing development application assessments that insist on rigorous criteria to ensure high quality and sympathetic development. We seek council control over demolition of buildings prior to World War II, and obviously significant trees as part of a consultative, transparent and accountable decision-making process.

We also seek to establish and maintain the society as a force that asserts its views at every opportunity to all levels of government that regulate developments in the Unley area, and also to establish and maintain a society as a force that, as a matter of course, will be consulted with by development authorities such as the council or state government. Since our formation we've had a number of achievements which have mainly been in the area of lobbying to do with regulations involved in developments.

I should state at this point that heritage houses under the council register in the Unley area are of interest to us but we are more broadly interested in the preservation of non-heritage listed private dwellings, public dwellings, but heritage is of very definite interest to us and our experience with the non-heritage character properties, as you will see, will have an impact upon the recommendations that you made in your draft report. We've done such things as organise public meetings, undertake petitioning, present submissions on various bits of legislation and so forth, such as the Development Act amendment bill; had public protests, et cetera; develop web sites and so forth.

I'll go on to make some points about - which is point 3 in my list - character properties and urban infill in Unley. Around 70 per cent of the Unley housing stock can be called character, or historic period buildings, and that ranges from Victorian workers' cottages through Edwardian villas and Federation bungalows. The character of the area contributes greatly to the amenity and is highly valued by the community and that's seen in the price of the properties that we have, but also in the overall value that we hold as part of the culture of the area. Recent years have seen increased pressure for urban infill, and so we see a significant demolition of historic character properties and a two-for-one replacement with modern properties that are generally quite unsympathetic with the surrounding neighbourhood. Actually, I lied slightly - you can have a look in those photographs to see some examples.

The City of Unley has undertaken a number of very interesting studies and they show that between 49 and 59 dwellings of historic value are demolished every year, over the past three years. They estimate that 25 per cent, or over 2000 historic character properties could be at risk for demolition and urban infill and replaced with modern, unsympathetic dwellings based on a lack of adequate planning controls for the preservation of these character properties. This is contained with the Unley Urban Morphological Study that was done in 2005. I can arrange for Unley Council to forward you a copy of that if you so desire.

Much is made of the economic impact of the construction of new dwellings. However, it should be noted that from this study I mentioned, for the year 2004-2005, new dwelling approvals led to \$13.58 million capital investment in the City of Unley, yet alteration and additions to existing dwellings are estimated to have led to a \$72.3 million capital investment. This study also states that the true per square metre replacement cost of these pre-World War II buildings exceeds both the market prices and property valuations given to this building stock - ie, that \$3.6 billion of a total \$4.2 billion replacement value - and these capital costs are built form qualities and materials are not commercially available, quite simply because they're made out of sandstone blocks, terracotta tiles and so forth.

It is clear to us at least that the development industry regards historic and character buildings as simply having land value only and can make significant margins by their demolition and subdivision. The character and historic value, not to mention their sympathetic relationship with the surrounding neighbourhood, are not factored into the market's forces. We've seen that the SA government receives pressure from the building industry to maintain or increase employment, obviously, and thus more payroll tax revenues from new building works. Councils conduct development assessment with one eye to the rate base, knowing that increasing property taxes from an increase in the number of rateable properties.

We also see that South Australian councils' planners act as de facto free of charge planning consultants to advise developers on how to maximise the number of dwellings that can fit on historic heritage places, before the developer lodges an informed development application and then denies information to would-be objectors as we see under existing planning objection arrangements. An examination of the facts that I've outlined in my point (d) above would indicate that the current spate of demolition and urban infill development is not providing an optimum return on investment for the value for the Unley area. Focus believes that a much more intelligent approach would be to address skill shortages, in such areas as stone masonry, decorative plastering, French polishing and the like. And then to add value to the historic character housing stock through sympathetic alterations and additions.

I now provide some comments on the draft report, which was, as well as their

recommendations, a very interesting read on the history of the green bands and the establishment of community involvement and heritage protection. We, FOCUS, accept in principle a number of the draft findings, such as 7.7, which regards the inadequacies of assistance to private owners. We accept that people who do own - private owners of heritage properties, it can be seen as a millstone around their necks.

The finding 6.2, regarding the cost of heritage places to be borne by the private owner. And draft recommendations 3.1, 74 and 75, regarding the collection, management and reporting of information on heritage places, your previous statement and conclusion of the previous speakers' comments indicated that you found it very difficult to obtain that information and we found it very difficult as well.

So we would support any moves that you have to correct those issues. However, FOCUS strongly rejects the majority of the remainder of the recommendations. In part that's because they are based upon the key recommendation at 8.1, which we reject, which essentially states that:

Property can only be listed as a result of being of heritage value, provided that the current owner agrees to it being so; ie, a negotiated conservation agreement has been put in place.

The recommendations also state that: "If a property, already heritage listed, is not desired to be so by the current owner, then it can" - can - "be delisted." In other words, it sees voluntary listing of properties as being of heritage value. It's our opinion that the practical implication of this recommendation - and I'm speaking completely pragmatically here - would be the wholesale delisting of the majority of heritage listed private property.

It is also our opinion, based on our experience in Unley - outlined previously - that the majority of these newly delisted properties, now being free of the market distorting effects of the heritage listing, would have their market value increased, obviously. They could then be regarded as being at risk for sale for development.

As research has shown, we can expect some 25 per cent of these properties in this category at risk for demolition or replacement with urban infill properties such as the ubiquitous Tuscan villa. The housing development industry has been demonstrated to treat these properties as having land value only and they will happily take part in shortsighted cash raising exercises by property owners. FOCUS believes emphatically that this recommendation should not be accepted, as it will lead to an overall loss of heritage properties by their delisting and bulldozing for redevelopment into flats or townhouses.

As demonstrated previously, the capital value growth that could be attributed to sympathetic restoration and additions to historical character and therefore heritage properties could be far in excess of the value of replacement new buildings. Combined with research data showing the replacement costs of such properties massively exceeds the current market value, it would appear that providing the current owner of a property the decision of whether to consign to the bulldozer is quite short-sighted.

FOCUS accepts the draft findings relating to providing support to private owners in the maintenance and upkeep of heritage properties. We believe that support should be provided by local and state governments through a range of novel activities such as arrangements with insurers to indemnify liability, if genuine hardship of the owners of historic heritage places is caused from regulation. Powers of dispensation from development controls; ie, minimum allotment size might be offered to SA councils for the regulation of historic heritage places for, say, urban infill to occur, provided the subject historic heritage place is restored.

There are also a range of other measures, such as 25-year depreciation allowances for refit and restoration of heritage properties. Provision of free or subsidised skilled labour, such as plasterers, stonemasons and other skilled restoration trades. And relief from council rating, as basically council rates give incentives to owners of historic heritage places to run them down, as they pay less as their capital value slides; hence their rates diminish and they are given a bonus when heritage listing is removed and they become commercially unsuitable for restoration and the owner reaps the development potential value of the land.

In conclusion, I would like to just bring two points up. Recently, in North Adelaide, the Adelaide City Council implemented a heritage-listing scheme, whereby the property owners were notified of the impending listing of their properties. I do not have the exact details, but I believe it was voluntary. This resulted in an increase in the demolition of historic and character properties and their substitution with unsympathetic modern buildings of much higher density than the previous building. It was not a good planning outcome by any means and resulted in the net loss of historic stock in the North Adelaide area. It is also a loss to the people of South Australia as these buildings are the embodiment of our history and once gone they are gone for good.

A recent letter to the editor of the Eastern Courier Messenger identified that it is the intrinsic attributes of the property itself that warrants classification as being of heritage value and not the opinion of the current owners. FOCUS supports this comment completely. There are attributes that the Liberal market can and will not factor into its calculations such as a sense of history, character or sympathy with

streetscape, and these are therefore placed into the domain of the community decision-making process.

As has been seen in recent months in Victorian local government elections, the issues of urban infill and destruction of the historic character of suburbs is angering residents into taking action by voting in representatives who oppose this. It would be interesting to see if this occurred at the state and federal level, based on the potential delisting and demolition of 25 per cent of the current heritage listed properties. Thank you.

DR BYRON: Did you want to add anything?

MS FAZZINI: I am being urban consolidated right now; I am being surrounded by new houses. I didn't go to live in an old suburb to be surrounded by townhouses. That's not what I went to live there for. I fell in love with the suburb. I fell in love with the community. Now I see developers building these houses behind fences, behind tall gates. I don't get to see a neighbour any more. What the government has got to think about is the community as well.

MR MORETTI: I think the key point is - the Productivity Commission is obviously examining impediments to the market and involuntary heritage listing of individuals, or private individuals' properties have been identified as well. We actually believe there is, as researched by the Unley Council, evidence to suggest that the market is not taking into account all of the value of these properties and they have demonstrated, through their own economic research, that the work that has been undertaken on existing properties is slightly over 5 per cent more in capital appreciation in the Unley area, which is all that we have asked for, than construction of new properties.

DR BYRON: Rosanna, when you choose to go and live in a suburb, if you pay more to live in a place, which has this amenity, sense of heritage, cultural features, than you would to buy or rent a similar house in some other suburb, that's the market. You are expressing through the premium that you pay to live in a desirable location all those values that you just said are overlooked.

MR MORETTI: Correct.

DR BYRON: It seems to me that those values clearly are important to people. They clearly pay to get those values.

MR MORETTI: That's correct, yes.

DR BYRON: They feel saddened, deprived, and dare I say impoverished when

those values are taken away from them or diminished.

MR MORETTI: That's correct.

DR BYRON: Which I suspect is part of the rationale - - -

MS FAZZINI: But what about the people who are left behind? Do I have to move out of my home? Where would I go to live if I wanted to live in an old suburb? Seriously, where do I go? I like old homes. That's where I want to live. That's where I chose to live for 10 years now.

MR HINTON: Can I explore that a little bit further, Rosanna, and that's in terms of: This becomes, if I hear the circumstances correctly, a land use issue. I assume that when you bought into, or rented this property, that it already was zoned for potential medium density development. That is, it's - - -

MS FAZZINI: People don't think about choosing an area for the zone. They don't realise. I didn't realise. I fell in love with the home.

MR HINTON: So it is a matter of awareness that is one of the problems here, but it's amenity not heritage as well. That was my second reason for asking the question.

MR MORETTI: That's correct.

MR HINTON: While I have a lot of views about how land use controls operate and don't operate in various local governments around Australia, I think I'm rather pleased to say that that's not in our terms of reference. We'd be here a long, long time if it were.

MR MORETTI: No. We agree with that.

MR HINTON: It may be a useful reference down the track, but we are not doing that. While I understand your source of concern and what focus really does - and focus is much more on land use and land controls and urban amenity, of which you see heritage as one aspect of that.

MR MORETTI: Correct.

MR HINTON: I understand that concern. I wanted to sort of make sure that that nuance was well understood by - - -

MR MORETTI: We understand that. I think the point that - I mean, it is - first of all, it's a very emotive issue. It's also qualitative. Part of the difficult that we've had

is - say you are looking at it through a development plan - it's all quantitative matrix: to have a certain setback and so forth. There is qualitative stuff in there; ie fit in with the streetscape and so forth. Certain councils are introducing qualitative measures - if you can have a qualitative measure.

What we are essentially trying to say is that there is a gap between what the developers are doing, in terms of treating a property with a, say, Victoria bluestone villa on it, they will treat that as land value because they know that they can get it, bulldoze it, put on two properties, sell them and make a very tidy sum. But research has shown that overall you are going to benefit the council's economy, the local economy greater, if you do such things as renovate it appropriately and so on.

DR BYRON: Can I take you back to your particular focus, I think, your very strong rejection of our key recommendations?

MR MORETTI: Yes.

DR BYRON: Your point (h) about accepting the draft finding relating to providing support to private owners for the maintenance and upkeep of heritage properties. It seems to us, in thinking through these issues, if there was going to be support from the community at large, the broader public, the taxpayers, whatever you want to call it, to providing owners with the maintenance and conservation of heritage listed properties, we shouldn't just hand over taxpayers' money willy-nilly; we should try and get some sort of contractual arrangement. We should say that in return for this public support from the community we want to lock in good heritage conservation outcomes, and that's what we've called a Negotiated Heritage Agreement, where the listing body and the owner of the property clearly agree on what can and cannot be done, who is going to do or not do certain things, and how any additional costs that arise to the owner or to society at large are going to be shared between the interested parties.

MR MORETTI: Yes.

DR BYRON: And this would become a long-term, binding, contractual agreement enforceable at law and binding on future owners for the duration of that contract.

MR MORETTI: Yes.

DR BYRON: When you say you support providing support to owners of listed properties, why do you take such exception to our saying, "Provide support in exchange for contractual guarantees that they will actually do what they are being supported to do."

MR MORETTI: Because people will want the cash. People will want to be able to sell the property and to get the money.

DR BYRON: Sorry, I think we've got a fundamental misunderstanding here. My view of a negotiated heritage agreement - and I've said this about five or six times today, and I'm probably repeating myself - is not: "We have decided this place is of heritage significance and therefore we are going to impose a whole set of conditions on you, the owner. Are you happy or not happy about that?" A negotiated heritage agreement would be: "We would like to work with you to see this property well maintained and conserved in the future. This is going to impose some constraints on you. In recognition of that we are willing to offer you the following quid pro quos. What would we have to give you as a sweetener that would make you agree to this partnership project for the next 30, 20, 50, whatever, years, for good conservation management of this property?" That's what we're talking about as a negotiated heritage agreement, which leads to voluntary cooperative working together partnership rather than the heritage listing body simply saying, "You have to do this, otherwise we will take you to court."

MR MORETTI: Sure. What is there to - I mean, sure, you could offer a lot of sweeteners, but I think people at that point in the council and you're a council heritage officer and you approach an individual who owns a property that you want to heritage list and you make a statement such as what you stated, and then they say, "No. We don't want to do that. We want to sell it."

DR BYRON: And the next step is?

MR MORETTI: No, I was going to ask what's the next step then? Is the property heritage listed or not?

DR BYRON: In our scenario, the listing body would then ask itself, "How much would we have to offer these people to get them to agree to retain and look after this property?" Now, if they say, "It's going to be a million dollars," or \$5 million, I as a council heritage officer would have to say, "It's a beautiful building but there's no way I can justify spending \$5 million of ratepayers on that one property, when I could get 100 comparable properties for that much money somewhere else." Alternatively, I might say, "That house is so special that we're going to go to the state government and we're going to arrange for it to be compulsorily acquired. We'll put a perpetual conservation covenant on it and we'll sell it back into the market to someone who wants to own a perpetually listed heritage building and will promise to manage and maintain it," et cetera. "We may sell it back with the covenant on it at 5 per cent more" - 10 per cent more, 5 per cent, I don't know. But there is a recourse for the emergency case where you've got an incredibly high-priority property for conservation and an incredibly recalcitrant owner. But I see that as very very much

the exceptional case.

MR MORETTI: We all know the reality of councils and state government funding. I would see that state government and councils would rather spend money on other things than on purchasing properties from private individuals.

DR BYRON: Or even offering cash payments to offset the impositions they put on them.

MR MORETTI: Mm.

DR BYRON: We had a councillor this morning who said, "There's no way we could offer people enough money to offset the imposition." That's just another way of saying, "We are imposing costs of \$50,000, \$100,000, \$1 million on these people and, at the moment, they're having to wear it in order to deliver public benefits."

MS FAZZINI: Can I just make a comment about infrastructure. We live in an area built above - okay, it's been built above creeks. The engineers years ago decided they were going to allow for a certain percentage above that for future years, so then if there was a flood, to contain it. We're actually having extra infill now and we're being flooded. Why should we as ratepayers have to pay for this infill, the infrastructure? We are at risk now. That's a major problem.

MR MORETTI: Rosanna is saying that the community is bearing the cost that we're seeing from the amount of urban infill - this is not necessarily applicable to heritage, I appreciate that - such as extra electricity consumption, road wear and tear, stormwater run-off, et cetera.

DR BYRON: Isn't that a matter of council's planning priorities?

MR MORETTI: It is.

DR BYRON: They've chosen to have more ratepayers.

MR MORETTI: They are generally appalling, and I would agree with you on that.

MR HINTON: Can I explore with you part of your written submission, item H2 on page 3.

MR MORETTI: Yes.

MR HINTON: I'll read it for the transcript and for those present. You're suggesting that support be provided by local government such as -

powers of dispensation from development controls, eg minimum allotment size might be offered to South Australian councils for the regulation of historic heritage places for, say, urban infill to occur, provided the subject historic heritage place is restored.

MR MORETTI: Yes.

MR HINTON: I'm not sure I fully understand what you're getting at there in terms of where does the infill occur if it's not occurring - is it occurring on the site where the historic place is? Can you elaborate for me, please?

MR MORETTI: Unley has a mixture of different block sizes and housing types. You have some small historic cottages on a small block; you have some large, what are really mansions on very large blocks. This is an inner suburb, by any other definition, on an acre or two. Between having the house bulldozed and the whole area turned into a development plot or for them to sell off, say, a tennis court and to build a property on that, but the house is preserved because they make some funds from the sale of this tennis court and then they can renovate their property, that would be seen as a beneficial outcome.

Going back to your statement, yes, obviously providing funds for buying a property from an individual is one option, but there are a range of other incentives that could be provided, such as free labour by apprentices or various other things that we've put in here, which are really - they're off the top off our head, but there are a range of other incentives and advice that could be provided, not just monetary.

DR BYRON: We envisage that those sorts of non-monetary incentives, in-kind incentives, could all be part of the package that was subject to negotiation to get the property owner to commit to the retention and the conservation of the assessed place.

MR MORETTI: Yes, I accept that, and I think that's great.

DR BYRON: We didn't try and prescribe what should be in that mix of measures. But basically anything that the council can negotiate with the owner that gets him to the position where he is happy to commit to the ongoing conservation and good management of that property is fair game.

MR MORETTI: The current arrangement for heritage listing is a very blunt instrument, and I agree with that fully, but it is an instrument of last resort, and I think that is what councils and public bodies in the community have unfortunately felt that they've had to resort to in order to ensure that properties are saved. It is a very difficult situation and it's not one that I come to with any ready answers.

DR BYRON: Thanks.

MR HINTON: We're very aware it's not an easy issue. That's been aptly illustrated through the course of the public hearing today.

MR MORETTI: I can imagine.

MR HINTON: We do appreciate your written submission and your appearance.

MR MORETTI: Thank you. This is not our written submission - sorry, I should just add. This is just a transcript of my statement. We'll be providing a written submission by the 23rd, I think is the cut-off period.

MR HINTON: Good. Certainly your statement goes into our transcript so it will be on our record. If you've got a lengthier, more substantive written submission we welcome it and thank you for it.

MR MORETTI: Thank you very much.

DR BYRON: Thank you both.

DR BYRON: Next on my program are Wanda and Murray Chesser. Thank you both very much for coming.

MR CHESSER: Thank you very much for giving us this opportunity.

MS CHESSER: My husband Murray will speak for me.

DR BYRON: Thank you.

MR CHESSER: I do the talking in the family.

MR HINTON: Well, in the interests of equity and gender neutral we would welcome comments from both.

MS CHESSER: Thank you.

MR CHESSER: As previous speakers have said, it seems that heritage has gone into overdrive, overkill and "Gracelands, where is thy sting?" but getting on with our particular problem, this lady's great-grandfather came to Australia in 1836. He preceded the governor. The property they took, they bought, was west of Adelaide, known as Fulham. In fact, they came from Fulham in London. The Whites - she was a Miss White - have been on that property ever since 1836. There was originally a home a little bit further down the road. He also built a school and a church, and built the normal village that they did in those days.

We come down now to a much smaller piece of land, probably two acres, with a home on it, which is 128 years old. I always stretch that, she says. It was Weetunga. It's in the district of West Torrens. During her mother's life, hallelujah, everybody was very happy. We had been put onto the National Trust. I believe now we're only in national heritage. That, I don't know. As everybody said, "Well, now you don't pay for anything. They fix the lot. They do this, that and the other," which never was the case and never will be the case.

We built ourselves a nice little retirement home behind Weetunga and my wife kept complaining that she couldn't stand people in the old ancestral home, so one Saturday morning she hijacked me and everything was moved over to Weetunga. We now live in Weetunga. We have been there for three years. We're trying hard to make it comfortable, and that's the way we're proceeding. But going back, with the national heritage, several gentlemen came down and had a look at the place, et cetera, and we did get a small grant to fix a balcony back several years ago.

But then they decided that we needed a new roof, and we said, "Oh, yes, we need a new roof," and that would cost about \$17,000 and they would help out.

Please would we put in an application. So, yes, we put in an application and back it comes: "Sorry, the government didn't give us any money this year. It's not for me to say where it should be spent and it's gone elsewhere." Next year, "Put in your application." Yes, we did. The next year we put in the application: the story is the same. I said, "Look, forget about it. We don't need this sort of thing." So we have, at our own expense, repaired and repainted the roof.

We did, however, think, "Well, this is a good idea to make this place really comfortable." Our little retirement cottage is on a nice block of land. We got out lots of plans and things to knock it down, build two of those horrid things that we don't like, and put quite an amount of the money into Weetunga; we thought about \$400,000. Hence we bump into a guy by the name of Mr Lu Vitale in the State Heritage and he says, "This is very good. Why don't you give us the place?" and I said, "Well, you're about number 10 after the dogs' home."

We needed a small piece of land - and I mean "small"; about five metres by three metres in a triangle - taken off of our block, hers and mine, and put back onto her block. After much procrastinating and what have you, Lu says, "Can't do this." So after spending all this money, et cetera, we thought, "Hell." So we get onto him again. Well, an expert comes down and has a look - "Well, maybe you can do this and maybe you can do that." Toing and froing went on in between the West Torrens Council - the West Torrens Council would have agreed if the Heritage agreed.

So in between all this toing and froing I decided I'd had enough and I said, "Look, just forget about it. Go away. Leave us alone. How do we get out of this trust business?" "Oh, you can't do that." I said, "I sure would like to." I said, "Just go away. Leave us alone. We're getting too old now. I'm nearly 80, my wife is 75. We'll leave it to the kids." We hope that our heritage will go on. We have a son and a grandson. We don't want to sell the place. We could make a lot of money if we did, but we don't want to sell it. We're keeping it. It's a heritage. We'll be one of the few here in South Australia that the original people from 1836 are still living in the house. That's fine, so we've got rid of them and I told them, "Go away. Don't ever come back. Don't want to see you." I would suggest a TAFE course on PR for some of the people who work in the local - - -

MS CHESSER: State heritage.

MR CHESSER: One would think the council would give you a little bit of help. We've had riparian rights since the river was closed down in the early 30s and a pump has been maintained there. We don't use a lot of water, but we have a lawn. I suppose it's a quarter-acre lawn and we've put in pipes, and put in the system so it waters. We get a call from Mr Voigt, isn't it, from the Western Torrens Council. He says, "Bad luck. The new National Resources Act has wiped your pump out. You

cannot have water any more." I said, "Oh, that's bad luck." "Oh, yes, I think it's bad" - but he just couldn't resist, he said, "Now you've got to pay for water like the rest of us." "Oh, thank you, Mr Council."

The front nature strip and the side nature strip, you would think the council for a couple of old people after we asked them whether they would look after it - but, no, I cut it with a Deutsche mower and I spray it with Roundup to try and keep the weeds down, so we don't expect much from there. In fact we went to a meeting and we appealed to the mayor, could we have some help. As part of his speech he went through - I'm sure it was pointed sort of to us - "Well, if you can't really afford to run the property, why don't you sell it? We've got people here that own large properties that are worth a lot of money. Why don't you sell it?" I think our state treasurer said that at one time about all the wealthy people who couldn't pay their rates and taxes, "Of course they can pay their rates and taxes. Sell their assets and pay it." Here we are today and that's - have I missed anything?

MS CHESSER: No.

MR CHESSER: That's our dealing with the heritage people. We hope that you guys are going to be a sweet summer breeze. We thank you and we thank - it was our learned treasurer that started this off, wasn't it, Peter Costello? Was he involved? We hope that, you know, something may come out of it. Perhaps a little bit more compassion. We don't want money. A little bit of help would be okay. We're not one of those, "Please, we want money." No, we've had enough. We'll find enough money of our own to get through in our own thing, but sure as hell can you get out of the heritage?

DR BYRON: I don't know that there's a simple answer for that. You're a very good counter-example to those who tell us that - the only ones who are unhappy with this current system are the people who just want to bulldoze their heritage place. It seems to me that there must be very few houses anywhere in Australia that have been in the same family since 1835 and are likely to continue to be in the same family for another few generations.

MR CHESSER: Yes.

DR BYRON: It seems to me to be profoundly perverse, inequitable and downright dumb if the system is putting road blocks, red tape and obstacles in your way when you're actually trying to manage an historic property in a way that is, you know, good for the long term conservation of that place. I would have thought the system would want to encourage people like you and give you a big pat on the back, and a gold star, and say, "How can we help you to continue to look after this very valuable asset?" rather than giving you a hard time, but maybe I'm - - -

MR HINTON: I'm still recovering from being described as a sweet summer breeze. I really wanted to sort of look at the issue in two tranches. One is, the heritage characteristics and identification of heritage characteristics of your home, has with it constraints on what you can do with it and then there's the second tranche which is things that you're obliged to do to maintain it. I wasn't sure where the main problem was for you. Are the heritage constraints stopping you doing things that you would like to do with the property? That's the first question?

MR CHESSER: No, not really. We got a dilapidation report about 10 years ago and Mr Vitale insisted recently that we get another. I said, "Look, it costs a lot of money. We had to pay for it and we have to pay for the second one."

MR HINTON: But, you see, that's the second half of the problem. That is, things that they oblige you to do as opposed to things they stop you from doing.

MR CHESSER: Yes.

MR HINTON: Okay, so they're clearly obliging you to do things that you think are perhaps unwarranted, eg, this dilapidation report. That gives me a very good example of that second category, thank you. I can see how that is a pain. I don't get requests to get dilapidation reports on my modest residence. Not yet, anyway. The characteristics oblige you to do certain things.

MR CHESSER: Yes.

MR HINTON: Are there any examples you've got that you can give us that constrain you from doing things to your property that you would like to do, but you can't do because of the heritage regulations?

MR CHESSER: Well, the main house itself is in reasonably good condition. As I say, we've just taken it upon ourselves to fix the roof and paint, et cetera, but some of the outer buildings - there are old store rooms, there are old servants' quarters. There's a museum that was built out the back when Wanda's father came back from the Boar War. He brought trophies back, et cetera. Those have been affected by gutters leaking or falling down and there are parts of the museum and parts of some of those rooms in danger of falling down.

The way we looked at it was, well, let them fall down and we will keep the house. We hope the kids can find the money and certainly we intend to leave them everything. I have a couple of investment properties, of which I'm going to earmark that the money goes to the upkeep of Weetunga, to continue the dynasty. As I say, we're doing as much as we possibly can, but - does that answer your question?

MR HINTON: Are there things you would like to do with your house? Say airconditioning or double-glazing, an extra bathroom or - - -

MR CHESSER: Yes, all right.

MR HINTON: And they say, "You can't do that." That's really what I was after. Are there things that heritage is stopping you doing?

MR CHESSER: No, they're not - - -

MS CHESSER: It was the fence that was the big problem; the fence between the two properties, where the fence had to go. It was near an underground tank and the state heritage said that we had to put it out so far from the tank in case the wheels of cars that drove into the units wouldn't be too close to - - -

MR CHESSER: Sort of like shake the tank and it would all fall apart.

MS CHESSER: So that was the beginning of the problem - - -

MR HINTON: For your development proposal.

MR CHESSER: Actually we had rebuilt the top of the tank at our own expense. They kept calling it a well, but it's only an underground tank. There are quite a few places where money could be spent and we'll get around to it, but we've made the house comfortable and all our friends say we're crazy, an 80-year-old and a 75-year-old moving out of a retirement house and going into a mansion, but - - -

MS CHESSER: He complains every day.

MR CHESSER: She who should be obeyed, was obeyed. I was railroaded.

MR HINTON: I don't think the commission has a view on that.

DR BYRON: We made the point a number of times today and in other hearings that not every place that is listed is well conserved. There are a lot of places that are well conserved without being listed. People often make the mental assumption that if it's on a list it's perfectly safe forever. If it's not on a list, it's going to be bulldozed tomorrow. Now, it seems to me that your place is one which is likely to be well cared for going into the future whether it's on a list or not, simply because of the family dynasty, you said; the continuity of that.

MR CHESSER: Yes.

DR BYRON: Putting it on a list doesn't actually constrain you, because you weren't about to bulldoze the thing, anyway.

MR CHESSER: I might add, to the glory of West Torrens Council, they put it in their brochures as one of the places you must see whilst you're in West Torrens and they won't cut the nature strip out the front. The lady over the road complains, "Oh, Murray, will you clean up the strip."

DR BYRON: If your house actually becomes part of the tourist attraction, it's bringing in visitors and presumably income to the area. It's interesting that even then you don't get a lot of support for - - -

MR CHESSER: They don't - they never did.

MR HINTON: Why not set up a franchise perhaps; lemonade. Sorry, I was flippant, I withdraw that. I apologise.

MR CHESSER: Thank you very much for hearing us.

MS CHESSER: Thank you.

MR HINTON: Thank you very much for bringing that to our attention. I must say personally I'm delighted to hear about this house and that it's been in the one family for so long.

DR BYRON: How far away is Weetunga from here?

MR CHESSER: About six kilometres. It's due west of the city, straight down Henley Beach Road. It's about two or three kilometres from the beach. It did have land that faced Henley Beach Road, but that was subdivided years ago and it's now back behind. It's only 10 minutes' drive.

DR BYRON: Thank you. Good luck and thank you once again for your appearance this afternoon.

MR CHESSER: Thank you.

MS CHESSER: Thank you.

DR BYRON: That, I think, gets us through the list of appearances that we have before us. I said in my opening comments this morning that there would be an opportunity for anybody in the room who wanted to come forward and say their piece on the public record to do so. Now is the invitation for anyone who is present. If so, would you please come to the microphone and identify yourself for the transcript.

MR WIGG: Good afternoon. My name is Hugh Wigg. I am a resident of an inner suburb of Adelaide and I won't mention which suburb because my subsequent remarks might be considered inflammatory about the council. First of all, on balance I'll say I'm in favour of compulsory listing; immediate compulsory listing. The disadvantages of your consultative process in the first instance I think are significant and Peter Jensen has made a number of comments. I agree with what he says.

I'm also aware that once listing has occurred, it seems that the property values decrease markedly. I think you, as the commission, should seriously address that aspect more seriously than I think you have. It's not easy how. You could get on your knees to Peter Costello and I'm not sure you would get very far. You could also make recommendations as general guidelines to councils that they be more forgiving in discussions on alterations or modifications that the resident might want to make to his listed property. I'm trying to reduce the negative effect on the value of the property. If it's seen publicly that the listing is not necessarily going to make life extremely difficult for them, then maybe this differential will decrease.

Now, a couple of suggestions. The Sydney Opera House, after the price multiplied by 10, I think the state government financed it by a lottery. Why don't you have a federally run or delegated to the states, lottery on heritage? That will give you a continuous source of income, provided of course all of that money is disbursed in heritage matters. Another way, pokies seem to be a bit on the nose. Why not take 1 per cent tax away from the states and 1 per cent tax away from the owner; there's 2 per cent you've got, again to be used for heritage purposes. Why not? Small amounts, but every year you'll be getting some income.

I would like to make comment that Amsterdam, the central city there on the canals, has all these marvellous old buildings and the council, of course, requires the owners to protect the appearance of those buildings to some degree. I mean, they are very strict. But inside, if you go inside, you'll find that they have been renovated, completely renovated, absolutely modernised. That seems to be not a problem. It shouldn't be a problem here either. Again, the recommendation should be that the councils be more lenient in the way they apply these heritage restrictions.

Now we come to a bit of a problem. You mentioned that only a few - 1 per cent or something of owners - are recalcitrant. I think the owner - - -

DR BYRON: I don't have a number.

MR WIGG: I think the percentage is much higher because you should put into the equation something called "the developer". Now, developers, if they see a property with any sort of land - it doesn't matter whether it's heritage listed or not - can always outbid the private bidder, always - and get that land, that house and they will, as soon as they're able to, demolish it and put up units, Tuscan or whatever. It has happened time and time again. We have examples of these inappropriate Tuscan two-storeys in our suburb - eyesores; very expensive. Airconditioning has to be run virtually all the time in the summer - very bad news.

These developers know the tricks of the trade and it appears to be very easy nowadays to get demolition orders, very easy. So they are in their element. They will not want to take part in your consultative process. You will be faced with quite a number of cases where nothing will be signed and you may have to compulsorily acquire. It's a pity. We really should make the developers aware before they buy. I don't know how, but the developers are savvy and they have a goal. They have been instrumental in, of course, the loss of a lot of heritage around Australia. To give you an example: we have in our suburb a pair of 1841 cottages. That is amongst the oldest in the whole of South Australia. You'd think they would already be on the state heritage list. No. The State Heritage Commission cannot take into account age as a criterion for listing. That act must have been written by a developer. It's absolutely incredible that that situation applies.

These cottages have not been listed for the State, but have been recommended for local listing. Here the problem really starts because the council moved in and bought the cottages seven years ago with the intention of demolition and it has taken concerted action by a large number of people in the council area to have delayed it to this extent, but already they've put in the request for partial demolition and the gain will be six parking lots. Now, when you have a council like that allied with a developer - and I'll come to this - the last remaining area in this suburb is scheduled for a huge development - massive. It is infill development gone mad. Part of this is the demolition of this historic cottage. It's incredible. You have the two entities - the council and the developer - are jointly promoting this development and we've got a lot of problems trying to stop this.

To give you a rough idea: there have been over 800 signatures on various petitions saying, "Don't do this." Ignored. When you have that particular situation protecting heritage is extremely difficult. We haven't given up. Even if you take the council out of the equation and discuss this sort of situation the future owner of that spot, the developer, has the avowed intention of demolishing that heritage, or at least part of it. I guess my point is: why is it so difficult to get such important items of

historic value listed and prevented from demolition? It defies belief. Don't believe what the council says about its survey saying people are in favour of it. The surveys were written by Sir Humphrey, or at least Sir Humphrey was patting them on the back saying, "This is marvellous. You'll get the answer you want."

I think I'd better wind it up there, but just to say that infill development is a flawed concept because the protagonists of it, mainly Planning SA and other groups like that, say that building outlying suburbs is far more expensive than infill development. In fact, they haven't taken the proper costs into account and infill development is quite expensive and the costs are actually overlooked. We, in Adelaide, have had power blackouts because of this. We've had blackouts when we had a recent heatwave when there was 500 megawatts of available electricity but couldn't be distributed because all the transformers were overloading and the fuses were going. So ETSA hasn't done its job in spending the money on the infrastructure required for infill development.

DR BYRON: But, Mr Wigg, I think the question of infill is a much newer question and somewhat - in many ways a different question to the one of conservation of historic heritage places. They do overlap in a way, but - - -

MR WIGG: I've finished that point and I've finished my deposition.

MR HINTON: Thank you very much for your comments this afternoon.

MR WIGG: Thank you.

MR HINTON: Is there anyone else who would like to take the opportunity to speak on transcript? Last offer - going once, going twice. Yes, there is someone.

MR HINTON: If you could just introduce yourself for the transcript.

MS EVANS: My name is Julia Evans. My interest comes from being a volunteer at Mitcham Heritage. My supervisor is Maggie Ragless, who was here earlier this morning. We would like to put in a submission later on. I borrowed the book of the commission from her and as a bit of a jest I suggest that book should be charged by occ health and safety for being overweight. The binder we got was about this thick.

I endeavoured last week to go through it as best I could, as a sheer volunteer and amateur. I left out the administration stuff because that is beyond my scope, but time upon time I kept realising that the general public knows very little generally about heritage. I don't know to whom this may fall to advocate education. By the number of people that are here today I am totally surprised - at such a lack of numbers. People that are dedicated are here today, but what happened to the rest of the people who didn't hear about it? I only heard about it through Maggie. No advertising in local paper.

DR BYRON: (indistinct)

MS EVANS: I don't read the state paper much. Yes, I did, it was on a Monday and I had a comment, "What floor are we on and what time is lunch?" However, trivialities be there, but it still makes up for coming to do it and listen to your presentations and to participate, but my other - my interest was primarily the heritage, but my other was wondering when the heritage will come into it, to the general children, adults, to be informed about the area they're living in. That led me, in my own interests - like my own history. They are all interconnected. One leads to the other. Maggie has a saying that if you know your past you can plan for your future. Heritage is part of that. Thank you.

DR BYRON: Thank you very much, Julia. I think all the evidence that we've collected around the country suggests to me that the way the heritage systems works is very poorly understood. I thought I knew how the system worked before we started this, but I'm still learning, and I suspect your average mum and dad in the suburbs don't really understand what the phrase "heritage listed" really means and that national, state and local lists and government lists and voluntary lists and all this - and quite apart from the heritage system, the point that you were making about educational values and people's awareness of their heritage is perhaps something that we might comment on further. So thank you very much, Julia, for raising that point.

MS McNAMARA: Could I raise a question, please?

DR BYRON: If you'd like to just come up to the microphone, sure.

MS McNAMARA: My understanding was that you said that you didn't know how much the South Australian government spends on heritage and there were several other things regarding information from our South Australian government that you didn't know also. Could you tell me what they are, please?

DR BYRON: We've been trying to find out from all governments, including the South Australian government, how much is currently being spent on heritage under - and part of the problem is that there are so many different government programs. There is not one simple line that says, "This year we are going to spend 400 million, or 500 million." Apparently it's been very difficult for every government to work out how much is going into conservation of historic heritage places under all the various different pockets that it comes out of.

In terms of the number of places that are on lists, on the state heritage list and on the local government heritage lists in South Australia, I think we got a good idea, whereas in other states we haven't. In terms of the condition of the places on those heritage lists, we're consistently told that nobody actually knows that, and so when we're trying to ask: are the public getting good value for money out of spending X hundred million dollars on conservation of heritage places in any particular state - well, you can't answer that question if you don't know how much you're spending and you don't know what the results are.

We're still digging. We're trying to think of a system where in five years' time if we had to do an exercise like this again there would be that information available. You would be able to say, "This is how much we're spending every year. This is what we've achieved. Isn't this terrific? We should be spending more," or whatever. But at the moment nobody has collected that information in the past and so it is just not possible to do that sort of - lay it out on the table to demonstrate that money that a state government or a local government or the federal government is spending is actually delivering good bang for the bucks. That was the point I was trying to make.

MS McNAMARA: Thank you.

DR BYRON: Does that answer your question?

MS McNAMARA: Thank you. My understanding was that nobody wanted to tell you.

DR BYRON: No, I don't think they can tell us. It's not that they're refusing to tell us. Thank you. I'd like to thank all of you who are still here for your patience and stamina and for your presence today. I found today extremely interesting, informative and useful. I hope you have, too. Thank you very much. We will resume the public hearings next Tuesday morning in Melbourne. Thank you, ladies and gentlemen.

AT 4.31 PM THE INQUIRY WAS ADJOURNED UNTIL
TUESDAY, 14 FEBRUARY 2006

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