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**TRANSCRIPT  
OF PROCEEDINGS**

**PRODUCTIVITY COMMISSION**

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

**DRAFT REPORT PUBLIC HEARING**

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

**TRANSCRIPT OF PROCEEDINGS**

**AT SYDNEY ON WEDNESDAY, 1 FEBRUARY 2006, AT 9.00 AM**

**Continued from 31/01/06**

**DR BYRON:** We will continue on from where we left off yesterday afternoon. I'm Neil Byron and my fellow commissioner here is Tony Hinton. I don't think I need to go through all the preliminaries that I went through yesterday morning about the background of the inquiry and why we're here.

Without any further ado, I'd like to launch straight into our first presentation this morning, Mr Don Brew. Thank you very much for coming. Would you like to just take a seat anywhere there in front of a microphone. When you're comfortable, if you could just introduce yourself for the transcript and then take us through the main points that you want to make. We've both read your written submission, and thank you very much for that, and thank you for coming here today. There's a few issues that I think you're going to raise that we'd like to discuss with you. Thank you.

**MR BREW:** Good morning, commissioners. My name is Don Brew from Wahroonga in New South Wales. Thanks for this opportunity. I must say I come relatively uncertain as to whether I should labour afresh the points that I made in my submission; not that it was a long one. I rather thought it would be more helpful and productive to assume that you'd read that, rather than hack over it afresh; rather leaving time to explore issues that might be of help to you, rather than things which might seem important to me.

**DR BYRON:** Your written submission is already going to be on the web site as a public document, so there's really no need to read it all in to the transcript as well.

**MR BREW:** No, I would have thought not. I was rather provoked into making a submission by the draft report, and that mistakenly came into the view that the preliminary recommendations had paid heed to the forcibly put views that heritage was a major major impediment to legitimate development, and in particular the draft recommendation which suggested voluntary listing attracted my attention, because I thought - I couldn't really see how that could really serve the interests of productivity of heritage or owners or indeed the system.

**DR BYRON:** If I can just sort of interrupt you at that point. In the written submission you talk about non-binding on future owners, and a number of people made that same point yesterday and I asked all of them where they got that idea from, but it's certainly not something that we'd ever envisaged. We'd envisaged long-term contractually binding arrangements of a fixed duration, whether it was 20 years or 50 years or - - -

**MR BREW:** Yes, which would bind future owners?

**DR BYRON:** Yes. I can't imagine that anybody would think that we would

propose offering a substantial sum of money to somebody to enter into a contract which he could abrogate the day after. I mean that's just too silly to contemplate.

**MR BREW:** I must say that sitting here briefly as I did yesterday, I received a good deal of comfort that my earlier preconceptions were erroneous, at least as far as the intent of the commission was concerned. I must say I didn't receive a great deal of comfort on the practicality of how this would in fact work its way through. So I retain my anxieties, although not about the commission's intent.

**DR BYRON:** Sorry for the interruption.

**MR BREW:** No, no, that's absolutely fine. I rather had the feeling - and again it's perhaps erroneous - a view that I'm perhaps in a position to put may not have been heard by the commission; that is somebody who is generally supportive of heritage - lives in a heritage house - has been a user of the system, a victim of the system if you will, but is not prepared to say we should throw out the baby with the bath water, and I thought therefore that I came from a position where I have a view that might be useful to the commission.

I happen also to have the view that a society's ability to preserve its heritage and its memories of its past is one of the litmus tests of an enlightened society, having just returned from Europe with my kids and sat in villages and enjoyed that very much in a real sense of - I'm even more convicted of that idea. It's also worth saying that when it was first put to me that our house - this is back in 1987 - ought to be listed, my first response was that it ought not to be. All the contemporaneous advice I received from friends and real estate people said, "don't do it; just don't do it". Well, I've done it and I've done it because over the years I've become persuaded to the view that on balance it's worth doing, both for myself and for the community. So that was why I thought that particular perspective that I'd bring might be of interest to you.

Just by way of background, in a previous life I was involved in manufacturing in Australia and off shore. I'm an escapee of the Harvard Business School, so I have some appreciation of the need to be competitive; the need to be productive; the need for a society to have a legitimate place in the world and yet, hopefully at the same time, to preserve the best of our culture, which is really what this commission is about as far as heritage as I understand it.

I'd have to say I thank the commission for the work that's gone on so far. It seems to be a very scholarly document thus far. Certainly the submissions that have been made are impressive. I think they represent a body of knowledge of wisdom which, if it's drawn upon, will serve the community

well. So as far as I can tell, the whole process is commendable.

I was here yesterday when Mr Logan talked about the various aspects of, I suppose, denial of rights that people in heritage properties experience. I broadly found myself agreeing with just about everything he said, particularly the 90 per cent versus the 10 per cent, and where the main problems of denial of property rights, or property development rights apply to the 10 per cent, rather than to the 90 per cent, and I come from the 90 per cent area I have to say. But I'm acutely sympathetic to people whose property cannot be developed where they have legitimate expectations that it could be. There, I think, it falls into a couple of camps. I'm talking here now about the 10 per cent.

In a perfect world in a stable system, people who buy properties with a heritage listing do so with their eyes wide open, and at a price that reflects the development potential, and by and large mostly do not have any legitimate gripe, as things unfold, except in one case and that would be where that heritage property is totally surrounded and obliterated and in fact devalued by the environment and then of course they're in the situation we heard yesterday where David Logan was saying that really, something has to give. They were either going to be compensated or you've got to allow a development of some sort. So I am sympathetic to that. I guess my fear was that some of the submissions derive from folk who either bought their properties after they were heritage listed and then sought to reverse history or bought their properties at a time that there was uncertainty and were active in trying to prevent their listing.

But in any event, came from a position where heritage was an impediment to them realising the maximum possible financial benefit and the plus side of the heritage argument really didn't mention in their submissions and I guess, neither should it. I certainly don't want to suggest that I'm a uniformly delighted user of the heritage system. I think its got many, many misgivings and I've enumerated those. I can touch on them for the sake of the gallery or I can just leave it to you to engage in those issue by issue. I'm perfectly happy to chat about any one of them or address any one of them.

I guess my concerns fell into several areas. The first one was whether or not the voluntary nature of the heritage listing and the conservation agreement was viable, and I remain of the view that it's not and simply would not be adopted by most people. I have anxieties about the effectiveness of a heritage system, particularly with respect to the 90 per cent of heritage items, where I think the incentives for full listing are really quite marginal and really need to be enforced and some of the suggestions that Mr Logan made yesterday such as remission on rates, seemed to me eminently sensible and would have the effect of enhancing heritage in the eyes of the community, giving it the sort of profile that it deserves although I'm conscious of the point you made,

commissioner, about the big house on the hill appearing to get concessions.

I'm sensitive to that also. I can assure you, I don't live in the big house on the hill. I live in the little worker's cottage down on the flat. So it's not nearly as straightforward as that. One of the issues which I raised in my submission which wasn't touched upon yesterday and that really had to do with - for the people who are one of the owners of the 90 per cent of heritage items, there is another cost which is not really visible and I happen to be sensitive to this because my house is over 100 years and has lath and plaster ceilings and a slate roof and when you come to do rehabilitation work on such a place the tradesman are not to be found or at least if you do find them, they're not cheap.

So there is a cost to that and in a little exercise I just went through in replacing a slate roof and doing some joinery work, I think I spent something like \$70,000 to \$80,000. In a straightforward house that would have been maybe 30 or 40. So there is about a \$40,000 differential. You could almost say twice the cost just to maintain the house faithful to its original structure. You can take a cheap shortcut but you would not because by the time you'd done it half a dozen times and the house is 200 years old, well, it's no longer a heritage house. So that's a cost which in other places in the world - the UK is a very good example - there are grants and I mean substantial grants - they come with conditions of course, available to help people refurbish heritage properties in a proper, professional way.

So that's a cost which I think needs to be acknowledged and my suggestion is that mechanisms be found to offset that cost for the community's ultimate benefit. Other issues which I drew to your attention - or anxiety, was that the way in which heritage is managed, at least in New South Wales, in my experience leaves heritage as a very poor cousin to other imperatives, development particularly and I was sensitive to your comments yesterday about the tension and the vision between one group of the community and another and of course it boils down to exactly that.

But my proposition is, that managed in New South Wales, as it is, by the same department which takes care of development and infrastructure, heritage always loses and it's always resolved in a way that heritage loses out big time and I'm not too sure whether ultimately the community interest is served because there's a time horizon here. It's easier to service the needs of the present community and ignore the needs of the future community. We're not really accountable to the future community. So if heritage is not here in 50 years time, who is to know, who is to be blamed. So that's why I think it is subordinated in the normal political hierarchy of preferences.

I don't think I'd care to dwell any more on those points at this stage but rather to see whether if there's some aspect of what I've put before you that you

found of interest or provocative enough to explore further.

**MR HINTON:** Thanks very much, Mr Brew, for your written submission and your attendance this morning. I was pleased to hear your earlier comment and your remarks this morning that our draft report activated your participation. That's one of the objectives of draft reports is to get reactions and participation by interested parties. I baulked a little at one of your early statements as well about - I think if I heard you correctly - your perception that we had reached a judgement that heritage conservation was acting as an impediment to development, and therefore that led to some conclusions and recommendations. I'm a bit uncomfortable with that formulation as to what we really have done in this draft report.

I'd like to think that we were much more seeking a system that brought equity and brought a better focus on the costs of conservation that seems to be neglected in the current system, rather than it being an impediment to development as such. Certainly there is an element of interference or imposing opportunity costs that's associated with lack of development but that was a component of our analysis rather than the driving force but that's an observation rather than a question. My first question really is, your reference to some of the categorisations that occurred yesterday, the 90 and the 10 - I wanted to take another tranche of that and slice it slightly differently and seek your reaction to whether or not there's a differentiation between a property that has been listed after acquisition and a property that is already listed when someone acquires it. Is there an issue there on how the system should be treating individuals, or the owners in this case?

**MR BREW:** I think the quick answer to that is definitely yes, because somebody who buys a property with absolutely no expectation that it is of heritage interest and then finds to his great surprise that it is, and has that frustrated, I think has got to be regarded with a good deal of sympathy. I mean, you can give all sorts of illustrations of that but - it's not always clear of course, but if you take the case which is perfectly clear, and I heard of one such person who had land that was zoned for use as accommodation - a drive-in hotel basically, and went about doing it, only to find that there was some archaeological thing that came to light that surprised everybody and suddenly it's of huge heritage significance and all of his ambitions went out the window. Well, I think there - - -

**MR HINTON:** A bit serendipitous though, that example.

**MR BREW:** Yes, but there - that one, it's absolutely clear but where, because the inadequacies of the surveys that have been done leave some properties undiscovered, so to speak, then the person who is involved in that can feel disadvantaged. I happen actually to have been in one which is exactly that

situation and where the outcome was in fact quite different, quite the reverse of what you might have expected. I happened to be in the Land and Environment Court with this particular owner, both before Christmas and after Christmas and the circumstances were this. There were three houses in a row. House A was a heritage item house, C was a heritage item house and B, in between, was unknown.

As a result of some work that we did with the local historical society we discovered that house B was in fact was in fact designed by the same architect. There was a particular logic to the whole three, such that the discovery of that middle house meant that the whole group became much, much more significant . We happened to be in the court on behalf of house C, but the fact that house B was now a heritage item meant that the group was more important, the preservation of house C became far clearer and the court was very eloquent about the need for conservation areas to protect such important places, the importance of that group and that particular owner who originally started out being very ambivalent about having his house heritage listed because it occurred just about coincident with his buying the property.

He wasn't aware of it, but just about when he bought the property, council announced that it was now an item, so it was just thrust upon him and he was fairly ambivalent about that but now he's just simply delighted because it represents protection to his house which he previously could never have enjoyed. So there's a case where the owner is thrilled to bits about it but you can't always promise that that would be the case.

**MR HINTON:** One of the things behind my question was the thinking that in the future listing pressures will emerge on properties that today would not really be regarded as worthy of being listed.

**MR BREW:** I understand that, yes.

**MR HINTON:** Therefore future owners, buying properties today might be doing it in the knowledge or an expectation that it wouldn't be listed but the nature of history is such that they then subsequently get listed. That suggests to us that the system needs to be able to capably and competently handle that category of circumstance, particularly as we look forward to how the heritage listing process might operate in 10, 15, 20 whatever - 50 years, which is behind my question about the differentiation of acquisition before listing and acquisition with known listing.

**MR BREW:** I do agree with that, that if somebody has a legitimate listing, as it were, thrust upon them on behalf of the community and as a result suffers loss, and I mean suffers loss, then some recognition of that is appropriate. I think I said in my submission, sometimes that notion of loss suffered is more

hypothetical than real, because in order to take advantage of the financial gain which is inherent in development, the person would have had to find the money, do the development and undergo all the commercial rigours and risks in order to realise that profit, which he now says is rightfully his and it's hypothetical.

Having said it's hypothetical because the person may never, ever have been of the mind to actually do it, conceptually, there is the notion that there is an opportunity foregone by that person on behalf of the community and I am sympathetic with the view that if the community values it to that degree then the person who is enduring that lost opportunity could be in somehow acknowledged.

**MR HINTON:** One more question. Here a slightly different focus. Coming back to sort of unilateral listing practices of local governments at the moment and our recommendations about voluntary conservation agreements, you, as an owner of and someone who lives in a heritage listed place - why wouldn't you not take up a voluntary agreement if it were offered to you - in that the resulting effect on you would be at least as good as what you get today in terms of say, unilateral action by the local government that listed. I'm uncertain about your category, why you would not be, in fact, entirely neutral if not positively disposed towards voluntary agreements from your circumstances, not the wider - - -

**MR BREW:** I hear what you say. From my circumstances, I guess I've had enough experience with councils to know that some council officers are experienced and helpful and some are less so and councils themselves by their political nature are capricious in any event. I personally would be very hesitant about signing something which would give these powers to that council. It's easy enough to sign away your powers but - - -

**MR HINTON:** You've signed them away by agreeing to a unilateral listing. The implications of the listing are still exactly the same. It's like an opt in. "Mr Brew, do you agree to have your place listed?" "Yes." End of story, there's your voluntary agreement. What is applying today is exactly what applied yesterday, that is under the single listing. I mean, that's a simplistic case.

**MR BREW:** I hear what you say, but actually getting somebody to put their signature on a piece of paper is something which I think Australians are normally very loath to do especially in a world where the myth overwhelms the reality. I mean, you speak to nine people out of 10, and they'll tell you, if you've got a heritage house you cannot paint your doorknobs, you cannot do this and you cannot do that.

**DR BYRON:** We've heard those stories.

**MR BREW:** The authorities are - the fact that it's all rubbish doesn't seem to trouble them. They haven't been there, they don't really know. They're repeating myth but for most people that myth is the reality and until we get better education and better understanding, then people will, I'm confident, not sign those agreements and that's my feel, that - - -

**MR HINTON:** But you would because you know the council is sympathetic and doesn't do those things.

**MR BREW:** Of 100 people, if five were to do it, I'd be one of the five.

**DR BYRON:** We're trying to compare two scenarios. One is, the council says, "Your house has been assessed as being of local heritage significance, therefore these are the conditions. That's it. You must comply." The other scenario is:

Your house has been assessed as of local heritage significance. We would like you to agree with listing. This is what you can still do, this is what you may need a permit to do, this is what you'll probably be prohibited from doing. Recognising this imposes some constraints on you, there is a quid pro quo in the terms of support for expensive repair and maintenance works. Some concessional rate treatment perhaps or eligibility for financial assistance every five years, or whatever. Do you agree?

Now, I think if you compare package 1, where it says "Here's a bunch of regulations of what you can't do, full stop, but you're in" and package 2, which says "This is what it means" and recognising there are some constraints, there are also some sweeteners to the deal, the second is a negotiated heritage agreement, the first one is simply regulation that says "You have to because we say so". I think that option B is a more attractive to me than option A.

**MR BREW:** Undoubtedly it is, and as I said, of 10 people if one were to sign I might be that one person. The reason I would not do so or may not do so is this; one I've mentioned - well, there's a couple of reasons. The first one I've already mentioned, which is the capricious nature of councils and the predictability of whether they'll actually deliver on that. The other one is that I will have entered into an agreement, which if it's got a long time horizon, would presumably bind the next owner and therein lies one of the reasons that people hate heritage listing because they think that the people out there think that heritage listing is an inhibitor to development and a depressor of price. I believe differently.

**MR HINTON:** But the effect of those set of conditions is exactly the same, whether it's agreed or imposed.

**MR BREW:** No, no, but in people's mind will be the belief that if I have that agreement which I've entered into happily but which binds a future owner, then when I try to come and sell that property, I am dealing with - I've got to find a buyer who - - -

**DR BYRON:** Who wants a heritage property.

**MR BREW:** And is as prepared to have signed that agreement as I was notwithstanding whatever misgivings he might have, in a world full of myth.

**DR BYRON:** But the counter-effect is, it's listed. He's going to have to stick with that anyway. That is under the current system, he's buying a property that's listed that has those constraints on it. That's the comparison.

**MR HINTON:** The house has the same sets of constraints on it, whether it is was entered into voluntarily or involuntarily and so the effect on subsequent sale of the property is no different. The effect depends upon the conditions, not on whether you went into it willingly or unwillingly.

**MR BREW:** I can hear what you say and agree with what you're saying, and even do it myself, but I'm suggesting to you that the great majority of people run a mile before they'd sign such an agreement.

**DR BYRON:** We're aware of a few cases in the heritage conservation area and thousands of cases in the nature conservation area where people willingly, anxious, eagerly, sign perpetual conservation covenants because they want to bind the hands of future owners of the property to make sure that nobody can undo the work that they've done.

**MR BREW:** You've just mentioned the magic words. Heritage conservation areas. Ku-ring-gai - and I happen to come from Ku-ring-gai, in case you haven't guessed - has a wonderful legacy of heritage, which, somehow to previous generations, they thought it was so self-evident that it would be self-protecting. There are no conservation areas and we've got to the ridiculous situation where our state government have said "You're not going to have conservation areas either. We won't let you have them until such time as we've got our medium density objectives finalised".

So in a world where conservation areas were in place and where there was a corporate understanding of the virtues of preserving that particular place and all the amenity and ambience and heritage which is implicit in that, then I can well understand - in fact I'd be one of the most vociferous advocates for

that, for people to sign up and be part of that because I'm very aware that in places like Haberfield, people actually fall over themselves to buy in, to take advantage of the advantages of being in the conservation area because it offers all sorts of protections, not least the protection from inappropriate development that other folk don't have.

**DR BYRON:** Yes, the protection of knowing that the house next door can't be knocked down and replaced by a block of flats.

**MR BREW:** One of my great frustrations is that in Ku-ring-gai, that has been swept off the table as a consideration for all practical - I actually have a couple of things here which I thought I might hand up to you which actually illustrate that very point. It was some of the material which was given to the heritage office. I'll hand up two sets and I'll hang onto one for the moment, if you wouldn't mind, just to illustrate. I don't want to dwell on it but if you are having trouble getting to bed on a night and have got a few minutes and you want to get to sleep quickly, well, this might be a bit of reading.

**MR HINTON:** When the cricket is boring.

**MR BREW:** The first couple of maps represent the conservation areas which have been identified by the National Trust and have been in place for about 15 years, and they each have their locality and there's - I've got the documents at home. They're about this thick, and that's all the underpinnings for why they are important and they're numbered 1 through 28. The next couple of sheets list all the heritage items in those areas which were at risk - or not at risk - they were about to be materially affected by high rises, a five-storey either adjacent or across the road from, as a result of the five-storey development which is about to take place in Ku-ring-gai.

There are at least over 100 that you can see and this is individual items and in some cases the items are items which are absolutely surrounded by five-storeys and effectively are doomed. The coloured map is something which was created by residents, not by council and it's something you tend not to get ordinarily, but it's an integrated map which pulls together a number of things. The areas which are bounded by black lines are the conservation areas as defined by the National Trust. You can see the Pacific Highway running through that and you can see the orange areas which are the areas which have been identified as being for five-storey development. Anywhere where there is an orange area will have high rise development.

Sprinkled through there are little green squares which are individual heritage items and it simply illustrates - and the pink areas, by the way, is the area where general medium density will apply. It's the study area which coincides with the transport spine. It illustrates really how you have this

overlap of ambition for medium density on the transport spine as one objective and yet the placement of heritage items and the two don't comfortably co-exist, as we can see and the state government's solution to that is, well, let's not worry too much about conservation areas until we've got the medium density finalised.

Because it falls within the one portfolio in the state government, heritage is, as it were, swept off to one side as a genuine impediment to high rise in Ku-ring-gai. So that's why I said in my submission that I think we are knowingly setting up to diminish that inventory of heritage in Ku-ring-gai over a 10 to 15 year period, to the point indeed, where by the time we do get around to urban conservation areas, there will be no point. There's a second set if you'd care to have them.

**DR BYRON:** There was just one last thing I wanted to draw you out upon, and that's your conclusions in the written submission and the first point, acceptance by government at every level, of the obligation to future generations to preserve places of cultural and historic importance. I'm just wondering if there's a word missing. Whether it's to preserve all places, some places, the best places, representative samples of. Can you tell me what the missing word is?

**MR BREW:** I appreciate that. It's a nice question.

**DR BYRON:** I mean, it's a serious question.

**MR BREW:** No, I quite accept that.

**DR BYRON:** From the people that we've met, there seems to be a division even within - you know, people who are very passionate about heritage and whether you want to preserve everything of, or a representative sample of, or the best 10, 20 or 50 per cent or you know - it's a very difficult, contentious issue and whether you want to prioritise and say, "Well, you know, we've already got a lot of grand mansions and a lot of sandstone banks but we haven't got enough lighthouses or worker's cottages" - you know, to get a balanced portfolio that represents the full historic and cultural heritage. Most people concede that in the past we probably tried to collect every grand mansion but only you know, .1 per cent of the miner's cottages or worker's cottages. So how do we - if we think of assembling a portfolio of significant heritage assets to pass on to posterity, are we trying to save everything or are we just trying to save the best or a cross-section, so it's - - -

**MR BREW:** It's a nice question. I congratulate you on the question. I have some sympathy with the fact that very few people seem to be particularly anxious about, say, Aboriginal heritage, but that's very much a part of our

story. I guess I find myself in the position where - two things; the rate of attrition is so alarming. There's a temptation to put your foot on everything that's going but that really isn't realistic and you do have to discriminate. I've not been around for the 30 odd years that the heritage has really been evolving in Australia, but I'm certainly persuaded by seeing some of the work that was done 30 years ago and 20 years ago and examining the Burra Charter and the like, that there is an increasing professionalism and means of discriminating in a thoughtful, scholarly way now, that once there was not.

Far from heritage listing being careless and indiscriminate, I find the reverse of it, that it's painfully slow and perhaps overly cautious and I think I said in my submission, I actually have made submissions which are sitting on shelves gathering dust instead of being gazetted, but that doesn't really address your question.

**DR BYRON:** You might have been here yesterday afternoon when I was trying to explain that after the assessment of significance, you can simply say, "Well, places that pass the significance test should go on the list and then we'll worry about the consequences afterwards" or you can say, "After we've assessed the significance, we'll then try and think through the consequences and come to an agreement about who is going to do what and who is going to pay for it and then put those on the list" and the reason for us going in that direction is that we've seen so many examples and been told so repeatedly that the current process ends up with a long, long list of places that we would have liked to have kept but many of them are deteriorating because there's no resources to look after them.

So we're trying to put another step in that process that says, "Let's make sure that these places are going to be well looked after in posterity and then list those." In a sense, some people might call it a triage or a prioritisation but it doesn't seem to help the cause of heritage conservation to have, as I say, a long list of places that we wish we would have been able to keep but instead we're just watching them fall apart because you know, it's not clear who is supposed to do what and that's why we're trying to get that management step in there as part of the process.

**MR BREW:** And of course you've got the tension between today's community, which is encouraged to look on their private homes as their sole source of wealth and to have it now as distinct from the interests of the community in 50 years time. The other issue here is, one illustration could be, in Ku-ring-gai for instance, there's something like 2 per cent of the original bluegum high forest remains. One view which they will - you know, what's the point, just let's it all go. Another view would say well, "It's such an important fragment that it's worth preserving." I really don't have a good answer as to how you decide, yes, that is the 2 per cent that we will fight tooth and nail for.

**DR BYRON:** But even having decided that, there's also the question of how you achieve it because just as putting something on a list doesn't fix the hole in the roof or stop the rising damp, you now, colouring a part of the map green and saying "That's a nature conservation area" you know, doesn't keep the bushfires and weeds and feral animals and termites and weeds and everything else out of it, so even having identified it, there's still the question of who is going to do it and how is it going to be paid for and those are questions that aren't resolved simply by regulation.

**MR BREW:** I'd be certainly alarmed if the matter of listing was optional. I think the matter of listing is a matter of merit that can be assessed by the scholarly approach that is now emerging from our heritage professionals. Having listed it, maybe that's the point at which you can go to owners who are listed and say "Now that it is listed, we have a mechanism here by which we can support you in the protection of that item."

**DR BYRON:** I think we're talking about two different sort of lists. There's a list A, of all the places that have been assessed as significant and a list B, which is a subset of those, you know, 90 per cent or 50 per cent - I don't know, of the ones which have also - agreement has been reached about their long-term management and conservation.

**MR BREW:** I can certainly see merit in that possibility because you would hopefully move to the point where the people who signed on were the people who were sufficiently convinced of the integrity of the system and the merits of the system to sign on and you certainly wouldn't do it overnight but if the B list grew through its general utility and people began to embrace again and were enthusiastic about it and more and more people came to use it.

**DR BYRON:** You might end up with all of the ones that have been assessed as significant - - -

**MR BREW:** Indeed you may and I can see merit in that.

**DR BYRON:** - - - having management agreements, which I think would give much more secure, predictable and reliable conservation outcomes because the responsibility and accountability is explicit.

**MR BREW:** Sure. I can certainly see merit in that but it would have to be funded and it would have to be, as I've said, incentives which are meaningful rather than trivial or token but I - - -

**DR BYRON:** It's more likely to occur in the 90 per cent category rather than the 10 per cent category.

**MR BREW:** Indeed, that's true, but I think you could visualise it as a methodology which would grow in favour in the community, grow in favour in the community, grow in credibility. But to try and do it overnight and to sacrifice the listing process to me, would be very dangerous, but maybe as an evolutionary thing. I think that's - I think I even used words in my submission, evolution as distinct from revolution.

**DR BYRON:** Do you have any more? Is there any sort of final words that you'd like to add?

**MR BREW:** Perhaps only something in passing. I was reflecting on the terms of reference or the scope, I think, of this commission and I think it was item 4 says that "The scope of the inquiry has to do with" - I'm sorry, yes, it's item 4. "The positive and or negative impacts of regulatory taxation and institutional arrangements on the conservation of historic places." It's simply an observation that as long as our tax regime identified our private dwelling as being a tax preferred investment, we are automatically turned into investors where our greatest source of personal is our private dwelling and I think that has huge - I don't see a change in being the political realist I am, but I think it has many, many undesirable consequences, not least of which is a whole tranche of investment, national investment goes into houses which are essentially unproductive and I think that would be of interest to the Productivity Commission to wonder, if that same investment was deployed in goods and services, whether there was a notion we wouldn't be more competitive,

**DR BYRON:** An interesting lateral thought. Thank you very much for that.

**MR BREW:** May I step down?

**MR HINTON:** Please. Thank you.

**DR BYRON:** Thanks very much.

**DR BYRON:** Thank you very much, Mr Boyd. Nice to see you again. Let me guess. This has probably got something to do with Ku-ring-gai again, has it?

**MR BOYD:** I suppose it has. Yes.

**DR BYRON:** There must be other heritage places in New South Wales. If you could just take us through the main points in your written submission. Thanks for coming.

**MR BOYD:** My name is John Boyd. My wife, Jan, and I are joint owners of a home, 400 Mona Vale Road, St Ives. Our home is one of the homes built in the first Pettit and Sevitt Display Village in Ku-ring-gai in the early 1960s. I made a presentation to your earlier inquiry in August of last year, detailing the four encounters we have had with heritage over the past 18 or 19 years. At this time, our house remains unlisted but I believe that, unless things change, the threat of listing still hangs over our head like the proverbial sword and all the downsides that listing would bring to us including a loss in value of \$120,000, all sorts of restrictions on any future alterations and the increased difficulty in selling our home should we wish to.

I thank you for the opportunity to make another presentation today. We have studied your draft report on the conservation of historic heritage places with great interest and are heartened by your findings and proposals for changes to existing rules and regulations. It is good to see that at last there is some official recognition of the almost indiscriminate way that many homes have been listed and of the negative effect that listing can have on private homes. Your step-by-step examination of the current method of identifying heritage has revealed so many thoughts, that we cannot help but wonder if many of the houses which had been listed at local government level should ever have appeared on heritage lists.

For example, in New South Wales, as you point out, a house would only need to achieve a moderate rating in one of seven criteria to achieve local listing, after which its legal status is identified to one which raises exception in six or seven criteria. On this basis, it is a wonder that half of Sydney has not already been heritage listed. I'd like to speak for a moment about architects and heritage. On 17 June of last year, the Royal Australian Institute of Architects wrote to the New South Wales Heritage Office setting out details and rankings of significance of postwar project home centres and estates.

The Pettit and Sevitt Display Village where we live was given first ranking. A later Pettit and Sevitt Display Village at Staddon Close, St Ives was given second. In all, the architects nominated a total of 14 display villages involving about 145 homes, and it appears that the New South Wales Heritage Office is currently assessing their significance. We understand that all of these homes were designed by architects.

We can only assume that these 145 homes comprise a wish list for future heritage listing and under the present arrangements, why not? Every one of those houses could be heritage listed at no cost to the community or to the local councils and it is likely that every one of those homes would suffer a loss in market value, which under present arrangements would be borne by the owner.

Let us assume for a moment that the average decrease in market value is \$100,000. That would amount to a total of 14 and a half million dollars for the 145 homes and for the 145 owners. How different it would be if your proposals are adopted. What a scurry there would be if the various local government locals had to find that 14 and a half million and what an outcry from the ratepayers that their money was being spent in that way. I put it to you that there would be a sudden change in priorities and an urgent reappraisal of just what was worth listing and what was not. But there is something else that needs to be said about architects and their wish list and the influence these architect-designed project homes are supposed to have had on the so-called Sydney school of architecture.

The simple fact is that these homes do not represent the majority of homes built in the 1960s. In the *Australian Home Beautiful* in October 1965, Mr Robin Boyd, a highly respected architect, stated that these architect-designed project homes represented perhaps only 1 per cent of the total number of homes being built. So is the move to heritage list our six, sad, lonely homes on Richmond Avenue, St Ives, and all of those other 139 homes nominated in the architect's list because of their overwhelming influence on the development of Sydney housing? We think not. More likely to honour the names of their architects and the project home firms that built them.

Virtual recording. You mentioned this in your report but are inclined to think that it is not likely to be an acceptable substitute for physical conservation of historical heritage places. But nevertheless, it has a number of advantages. It would cost a great deal less to record the details and history of a group of houses or indeed of a single home than it would to actually heritage list them if the owners are to be paid full compensation for the loss in value and virtual records would be subject to damage or loss by bushfire, white ants, rust or general deterioration, nor would they prevent the owner getting on with their lives and making whatever alterations or additions they wish to.

Your key recommendation was 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. This recommendation is hardly likely to be welcomed by the National Trust, the Royal Australian Institute of Architects, Docomomo Australia, and any others pushing for heritage listing. Up until now, they have had an almost open slather. Suddenly, they and the local government

bodies that are used as their instruments would have to actually consider the real cost of their proposals and meet them.

I suspect in our own case, if Ku-ring-gai Council itself had to meet the \$120,000 that heritage listing would take off the value of my home, there would be a sudden reappraisal of the need to list it and serious consideration as to whether council would be getting value for its money, especially in the face of a possible outcry from ratepayers at the waste of their money. Negotiated conservation agreements; let me say that from a property owner's point of view, such a negotiated conservation should not be lightly entered into. As well as loss in property value, heritage listing does mean all sorts of restrictions on what changes may or may not be permitted in the future and it is made worse by the fact that there doesn't seem to be any definitive set of rules that sets out what would or would not be acceptable.

For example, one of our neighbours, Gail, whose house is already heritage listed, and when she purchased the place it had a double carport erected to the side of it. It was heritage listed when she purchased it but she approached council for approval to fit a tiltadour to the double carport. Permission was refused. When she asked why, the council inspecting officer replied, "Because I don't like it" and that was the end of the story. So any conservation agreement entered into by a property owner would need to spell out clearly what future alterations would or would not be acceptable.

In conclusion, we must congratulate you and your team for the comprehensive, detailed and exhaustive examination you have conducted on all aspects of heritage and its implementation at Federal, state and local government levels. We agree completely with your proposed new methodology in determining what should and should not be heritage listed. The idea of a contract system negotiated prior to a property being placed on the register is excellent and renegotiation of the agreement from time will allow for changes in community values. In addition, the need for councils to pay compensation in many instances will add an air of reality to the whole heritage process. I thank you for allowing me to speak.

**DR BYRON:** Thank you very much, Mr Boyd. If I could just follow up on one point. You mentioned the documentation that the Royal Australian Institute of Architects sent to the Heritage Office about the cluster of homes in the former display village. Was there any sort of detailed documentation of your house in that material, or did the RAIA come and inspect your house and the changes that happened over the years, attach photographs, or anything like that?

**MR BOYD:** Well, no. The council and the councillors - five of the councillors inspected the house and the heritage planner for Ku-ring-gai Council came and inspected the house and then six members of the New South Wales Heritage Office came and inspected the house but we've had no-one from the Royal Australian

Institute of Architects. We've had no-one from Docomomo, we've had no-one from the National Trust. I must say that the cultural and significant statement provided by the New South Wales Heritage Office and copied, word for word, by the Ku-ring-gai Council was very detailed and very accurate, in fact, and I cannot fault that New South Wales Heritage Office work.

Although the Royal Australian Institute of Architects has put us as number 1 on the list, no-one from the royal Australian Institute of Architects has ever come and set foot within our property. I might say - just this thought crossed my mind, it could have been that one of the people that were on the state heritage inspection, one of those could have been a member of the Royal Australian Institute - we've got no way of knowing, but that is a possibility and I don't want to say something that's not true.

**DR BYRON:** Thanks.

**MR HINTON:** Mr Boyd, thank you again for your appearance here this morning and your follow-up written submission. Clearly, you and your wife have contributed significantly to our process of wide consultation as part of our public inquiry so thank you very much for your time and efforts in detailing your experiences with regard to your own property. As we've said on a number of occasions, us getting a number of important cases illustrating how different local governments, state governments operate in this area is quite important, so that we can have a proper understanding of the coal face for the administration of this very important objective, conservation of heritage places.

I think you are very well aware that our processes will not address your particular case in terms of outcomes, but to the extent that our processes bring to light certain treatment of individual cases, that may enrich decision-making, but I'm not in a position to make that call and I know that you understand that, and I know that your wife understands that. As Neil has said, Ku-ring-gai has had a particular focus. I don't think I wish to seek further focus on that this morning. It's been covered quite extensively with a range of views being expressed and that's very important too and I think that your follow-up submission elaborates further on your earlier very well such that I don't have any particular detailed questions I'd like to pursue you this morning on, but you may, Neil.

**DR BYRON:** Just one. In your opening remarks, you said about "the almost indiscriminate way that many homes have been listed". Now, immediately before us, Mr Brew was arguing that the system is professional, it's serious, it's rigorous - there are, you know, qualified heritage experts who prepare statements of significance and I don't want to put words into his mouth, but I think he's saying that it is not indiscriminate, that it's actually deliberate, careful, slow and thorough. Now, you are telling us the opposite. I was interested to just have a quick look through some of those documents that you extracted from the Ku-ring-gai heritage study.

**MR BOYD:** If I could just answer that first part of the question, if you wouldn't mind.

**DR BYRON:** Please.

**MR BOYD:** I call it indiscriminate because it started in 1988, and we were - purchased the home two years before and we simply got a letter through from the council to say that our house was to be heritage listed and it subsequently turned out that they'd done a complete survey of the municipality and that they had listed 900 homes within the municipality, or proposed listing for 900 homes. I mentioned this at the previous hearing, that I took a day off work - Jan and I took a day off work. We went to the council, we got the heritage expert that they had. We sat him down and we said "Tell us all about heritage and what it involves" and so on. He gave us a great heap of paper and we sat in the council and we read all of those details.

Then we called him back a couple of hours later and said "No, we're not interested. Thank you very much for the offer. We feel honoured that you think our house is to be heritage listed but we don't want any part of it" and he said "Well, I'm not too sure whether we can just cross you off the list like that" and so I engaged an architect, I engaged a solicitor. I subsequently engaged a barrister and the barrister started writing letters to the council and the moment that he did, we got notification that he did, we got notification through that no, your house is not heritage listed. But the other five houses that went on down the street were all listed and the reason that they were listed was that they didn't say a word about it.

So I subsequently found out that 170 house owners within the municipality complained about heritage listing and that then brings me onto this next piece that I want to flow onto. I decided to try and find out what information was available about heritage houses within the municipality. So I went to Ku-ring-gai Council and I asked for a list of properties that were on the heritage list. The council staff had a black book and inside there were loose pages and typed out, and they called the book the Planning Scheme Ordinance. I said "Can I take it over here and have a look at it?" and they said "Yes, by all means" and so I opened it up and it had street names in alphabetical order right the way through the whole of the municipality.

Against each street name were house numbers and then it appeared that those house numbers were the heritage listed houses within those particular streets. So I sat there and counted the house numbers and there are 691 of them. So I then thought, well, the thing to do is to try and find out something about some of these houses. So I picked out three streets within the municipality; one at Lindfield, one at Killara and the other one at Warrawee. So three streets in three suburbs. I then picked out three house numbers off the list and then asked for the details of those

particular three houses to be - could I have the information relating to those.

The staff were very good. They said "Yes, no trouble" and so they pushed the computer and out came two sheets for each house and those are the nine sheets that I gave you this morning.

**MR HINTON:** Did they charge you for that, Mr Boyd?

**MR BOYD:** Well, they didn't charge me at the desk but I subsequently went over to the library where - I was holding up the desk no end and with people queued up and God knows what, and so they said "Go over to the library and you can do it over at the library". Well, you can do it over at the library but here's the library, and here's a workstation and the staff within the work station and there's two computers in the workstation and those are the only two computers in the library that are connected to the council's web and so to actually get some information you have to go into the workstation and work within the workstation itself.

Anyway, that's by the by and it's 20 cents a copy, per page over at the library. The point I was wanting to make was that there's only two of those nine houses have any details of cultural significance onto the worksheet. All the other seven are listed as of architectural or municipal significance. I fully realise that a sample of nine houses out of 691 is not a representative sample and I'm suggesting that that's the case. I'd need to do probably 100 or 200 to get some indication of the number that have got cultural significant details on them and the ones that have just got architectural or municipal details.

Your draft finding, on page 84 of your report states "The absence of a full statement of significance seriously impairs decision-making about listed properties" and I can understand that. Jan and I got in the car, we drove round the three suburbs, we found the nine houses. We got out of the car and we stood in front of them and looked at them and certainly, they are imposing buildings - most of them but it doesn't do anything for you. I mean, you look at the building and is it architecturally significant? Well, it could be and I could say that we have difficulty in suggesting that architectural - I think it's debatable whether a house should be listed because of its sole architectural situation or - we don't know what municipal significance means.

I rang the planning department of the council and asked the person there - a young man I think - and he said "Well, it means that it played some significant part within the birth and growth and so on of the municipality" but if it is of significance and it does represent something that's gone on within the thing, then surely to goodness it needs to be placed onto the information that you'd get from the council about the place in itself.

**DR BYRON:** But what the heritage professionals have told us is that, you know,

everything begins from the statement of significance, and that that will guide and inform all future consideration by council of any development applications that come in. From this admittedly very limited sample of nine, all of them say "cultural, architectural and municipal significance" - every one of them. One of them says "fine house, magnificent garden" but presumably - what would happen if the garden was damaged, and then there's one of the nine that has what I would say is a pretty thorough description.

**MR BOYD:** Well, there's two in fact. If we have a sort through, there's a second one.

**DR BYRON:** But, I mean, some of them have (recording fault)

**MR BOYD:** I feel exactly the same, and to say that the house was possibly built between 1900 and 1920 doesn't really tell me anything, and that sort of thing.

**DR BYRON:** Well, it may mean more to other people, but thanks for bringing that to our attention. It's - - -

**MR BOYD:** Yesterday I sat here and listened to what was said, and just about every speaker that's in favour of heritage listing, and we're in favour of heritage listing, talked about the need for education of the general public, talked about that. I think National Trust said there was a need for strong focus on education of the general public. There's no plaques on the front gate of any of the nine houses that we visited, no shields to say this is a heritage-listed house.

We actually had to go and check the house number to find out which one it was. There's no printed information, because I asked at the council, "Do you have any printed information?" "Yes, we've got these two sheets we can give you." The information itself that you've got there in your hand now is not on the Internet. It's simply within the council records, so I can't go home and call it up and scroll through it and have a look.

There's no incentive for people to follow up on heritage-listed - people around our area, I see every morning there's dozens of people out walking and doing exercise before breakfast and so on, and walking past houses. There's no indication that the houses that they're walking past, they're heritage-listed in any way. So there's no incentive for them to find out more about the house, about the community, about Ku-ring-gai, and the birth and Ku-ring-gai and how it all came together.

So I just wonder how many of Ku-ring-gai's one and a half - 1000 - 100,000 residents know anything about the 691 homes that we've got on this magical list, and - I'm not for one minute suggesting that the list is faulty; I'm just saying that if there's a great scope for people to be educated, then the council needs to lift its game

and start telling people about what the heritage thing is. It's no good of having 691 homes listed and all the information in a computer somewhere in the council, and the people in the planning department are all geared up and say, "It's great, and we're doing a wonderful job." Who are they doing the job for, themselves or for the community? So often, and this is a council itself at the meetings that we've attended, where we've fought heritage, that they talk about, that there's a great demand from the community to heritage-list places and to look after places.

I'm sorry shouting at you now and I apologise to you, but I just feel so strongly that we're going through this whole what almost seems a farce situation because we're doing it all but we're not gaining anything from it at all. I'll shut up.

**DR BYRON:** All of the grief but not much of the joy and celebration.

**MR BOYD:** Right.

**DR BYRON:** Thank you very much for elaborating on those handouts; an interesting research exercise that you've undertaken at your own initiative.

**MR BOYD:** I've got plenty - it's nine out of 691 - - -

**DR BYRON:** We understand the - - -

**MR BOYD:** I'm quite sure I'm going to be shot down in flames and have the biggest heap of - that you've ever seen because I don't - - -

**DR BYRON:** It's quite clear to us that the practices across local government areas varies enormously, and that includes the degree of or extent of recording of significance, and that varies significantly from local government to local government as well, so we have to be careful that we don't make generalisations inappropriately - - -

**MR BOYD:** No.

**DR BYRON:** - - - but nevertheless the system needs to operate with rigour across Australia, and that's certainly underpinning our analysis as we move from a draft report to a final report.

**MR HINTON:** Thank you very much, Mr Boyd.

**MR BOYD:** Thank you.

**DR BYRON:** I'll give you the - I think we can now take a brief 10 minute coffee break, and then resume with Ms Mailing.

**MR HINTON:** Ms Mailing is here - if she's here.

**MS .....**: Ms Jennifer Mailing; she's here (indistinct)

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**DR BYRON:** Thank you very much, Ms Mailing.

**MRS MAILING:** Good morning.

**DR BYRON:** You've seen the procedure. If you'd like to talk us through the main points in your submission.

**MRS MAILING:** Fine.

**DR BYRON:** Thank you.

**MRS MAILING:** Thank you very much, gentlemen, for this opportunity. As you will know from my submission, I don't represent any organisation. I do not own a heritage house that is a problem, and I do not live in Sydney. As a matter of interesting aside, I grew up in Ku-ring-gai.

**DR BYRON:** I knew it would have to get in there somewhere.

**MRS MAILING:** I particularly want to speak about the preservation of heritage for all those people just like me who are members of their local community. I believe we are the silent majority and where I live we're very fearful that heritage is under attack. I live in a rural area where there is considerable heritage and history from our early colonial days - the early 1800s is what I'm talking about.

I do live in a heritage zone in the town in which I live, and I know and talk with members of my community where I live, and I work as a volunteer for local community groups who are trying to preserve our heritage. I also have the opportunity to interact with a lot of people locally, particularly the local councillors - my local council staff, who are very, very open and welcoming; I talk to historians; I talk to architects; I talk to builders; I talk to many others; and they all have problems with the current system and the way it works. I also speak to home owners who feel disadvantaged by the system, by the red tape, the onerous requirements placed on them, when many of these people are in fact willing and want to be part of heritage preservation. Many of these people feel the demands made on them are totally unreasonable, particularly as willing supporters of heritage.

There's a lot of money being made out of heritage too, because as a result of these requirements there's a whole industry out there of service providers who now produce documents on behalf of others, often at considerable cost to the individual.

There's a real need to simplify heritage listing requirements; education, as has said so often in how the system works and what is expected of the individual. Maybe we could just have ordinary, plain forms that you could get at your council where you filled in, in answer to questions about significance of your property and why the

listing should take place or should not take place. It could then be calculated against a series of criteria so that it could be easily recognised without having to have all these very expensive documents put forward. The ordinary home owner and the ordinary resident, under the current heritage system, is really at a disadvantage.

The other people that I am very concerned about are those people who wish to make money out of development and have the ability to challenge the system, and I mean the financial ability. They can pay others to put a good case and disregard heritage. I feel that possibly the time that I've spent interacting with a lot of people where I live may be useful to this inquiry.

As you know, gentlemen, I've raised a lot of issues, particularly in comment about certain recommendations in the draft report and I feel that there is a serious problem with negotiated conservation agreements because there is a real potential that these could be easily negated, corrupted, damaged. I mean, you've only got to sell the property on for the potential for this heritage-negotiated agreement to have to be renegotiated, according to what I read in the draft recommendations. No?

**DR BYRON:** That's certainly not in there any time I read them. We - - -

**MRS MAILING:** Well, it says that privately owned properties should be included on a - registered after a negotiated conservation agreement has been reached. Then it says, "Where listing occurred prior to the purchase of that property, this would remain covered by the existing arrangements. These arrangements would be reassessed at the time of any substantive development application."

**DR BYRON:** That's as a transition measure between the current system and the proposed new system, but under the system that we were proposing, there would be long-term mutually-binding contractual agreements on both sides and - there would be binding consideration of that agreement, whether it was 20, 30, 50 years or perpetual, and - registered on the title and binding on all successive owners.

**MRS MAILING:** Would those agreements at any time be able to be renegotiated by application?

**DR BYRON:** By mutual consent, I think the contracts could be changed, by mutual - - -

**MR HINTON:** But not by unilateral action.

**DR BYRON:** By mutual - - -

**MRS MAILING:** So even individual developers? Say, somebody decided that their heritage property suddenly was valuable and a developer - I mean, it happens

where I live. There are lots of large homes that are heritage-listed on acreage. The current system that applies in the New South Wales Planning Office is that they in fact can become the consent authority over our local council, particularly when acreage is involved.

People who have heritage-listed properties with a negotiated agreements - a lot of these developers that I'm aware of can throw a lot of money at it. They can argue in courts. I've sat in courts and watched it happen. So, you know, I'm not naïve enough to really believe that a negotiated agreement, if it isn't really strengthened in some way, wouldn't be able to be nullified by somebody that could use a very good argument.

**DR BYRON:** I think involuntary agreements could be equally negated by exactly the same process.

**MRS MAILING:** Fortunately where I live with the current system that they have with my council is that new heritage listings when they apply, as opposed to in other places, people are sent out a formal notification that the council is considering putting their property on a heritage list, and the person is able to say, are they willing or do they wish to put a case against it, and they are given the option before the property is actually put on a council list. Now, I think that that is a most amicable way to do it.

**DR BYRON:** If somebody says, "I have no objection," then that falls into my definition of a negotiated heritage agreement.

**MRS MAILING:** Right.

**DR BYRON:** Somebody proposes; the other says, "Yes, that's fine." That is an agreement. If somebody says, "Well, I have reservations, but if the constraints on what would or would not be allowed were eased a bit or if a positive inducement was attached, then the person might say, "Okay, now I can accept that agreement," and enter into that, but what we're concerned about is getting the owners of the properties on side and actively engaged for heritage rather than being very reluctant and digging their heels in, as hostile conscripts rather than willing volunteers. Sorry, I've interrupted you.

**MRS MAILING:** No, that's all right. No. It's something though that is - Sydney and the Sydney suburban area and, like, Melbourne or Perth or Adelaide or anywhere else has a series of overlays now where, in the suburban areas there are token areas or sections of those various cities, where heritage does exist. Where I live, these overlays are only starting to move in, because people are moving out of the suburban areas and they're moving into the nearby rural areas and we are really feeling a major impact.

Where I live, my council is, as a result of the population, I suppose, able to benefit from the increase in rates, but immediately adjacent another council that I know of is a very poor council, and they just don't have the resources, the ability. They don't - like a lot of small councils wouldn't want to take on the responsibility of trying to deal with the heritage issues, yet their heritage is just as rich as it is in many other country areas. I see a major problem with this and, since this draft report came out, I've spoken to my contacts in my local council whom I say these staff that are currently employed there are very willing to discuss this.

I have the opportunity, as a local community representative, to be on a council heritage advisory committee, and I interact with staff a lot. They are very, very concerned about the recommendations of bringing all the responsibility into the council environment and doing away with the responsibility of being able to use state or other government bodies. The draft agreement, as I see - - -

**DR BYRON:** You've lost me there too.

**MRS MAILING:** I've read the draft report, but in my comments, I make a remark about the fact that I think councils, while they are perfectly placed for interaction with residents in their immediate community because it's the easiest point of contact - most councils don't have the resources to expand, which I think they would have to do under the recommendations.

**DR BYRON:** This comes - I'm sorry. I apologise for interrupting you - - -

**MRS MAILING:** No, no, no.

**DR BYRON:** - - -but it does come back directly to something in your note to us that says, "While the draft recommendations are that all heritage planning issues should be dealt with at a local government level, I do have reservations about the implementation of this." I think that's a bit of a misreading of our report. We're not saying, "All matters should be handled at the local government level." On the contrary, we reinforce the importance of the three-tiered structure of the approach - that is, three tiers of government approach - to the heritage conservation objective with a role for the federal government, a role for the state government, and a role for local governments. We certainly make recommendations that change the nature of how those governments operate, or would operate - I beg your pardon - the recommendations, but it's not saying it all should be done at the local government level, and I'm a bit uncomfortable that you seem to have that reading of our draft report.

**MRS MAILING:** With the draft report, one of the things that I found a little bit confusing was that the body of the report and the text included in all the particular

points that were made - and given that it's a very lengthy document, didn't always marry up with the recommendations. I found it somewhat confusing that the body of the text and the recommendations - it just didn't sort of gel all the time and sometimes the recommendations said one thing when I thought I'd read the body of the report that said something different.

**DR BYRON:** We'd like to go through the arguments about an issue, putting both pros and cons and then also quoting interested parties who might have written submissions to us that might take different views on that issue as well. We then try and analyse the issue ourselves and reach a conclusion, and make a recommendation. To the extent that we cover both sides of the argument is, I think, a strength of our draft report, not a weakness, but we do come out and try and reach a view, and express the view in the draft report to show where we're heading; and that is a very important part of the draft report.

**MRS MAILING:** Yes, because some of them are findings and some of them are recommendations, yes.

**DR BYRON:** But anywhere where you think it's unclear or ambiguous or inconsistent, we'd love to get your - we're grateful for that feedback, where we haven't explained ourselves properly, and it seems to me that there are probably a few cases where we haven't communicated precisely enough what we were thinking, because a number of people seem to have got a completely meaning from what we intended.

**MRS MAILING:** Well, that's the feedback that I got from my local council too, was that they felt that they were going to have to take on a greater burden of responsibility for the management of heritage-listed properties, the burden being that if they don't have a statement of significance for every property that it was going to be beholden on them to obtain one, and at the moment where I live there are a significant number of listings and I've seen the documents sitting in the council computer that are void of particular data. I mean a bit like what was spoken about in Ku-ring-gai.

**DR BYRON:** But that seems to be the case - - -

**MRS MAILING:** They don't have the resources.

**DR BYRON:** - - - in so many municipalities throughout Australia, and yet all the heritage professionals we speak to say that the whole process hinges on having a clear articulation of the significance and the values that are to be protected, and everything else derives from that; and if - - -

**MRS MAILING:** Yes.

**DR BYRON:** - - - that's correct, that this is the pillar - you know, the most central thing - and yet in our day-to-day practice it seems to be missing or seriously defective, then how on earth is the rest of the process going to work seriously and effectively and fairly to deliver good conservation outcomes if the pillar is missing.

**MRS MAILING:** Yes, I do understand and I'm very aware of that because I've been in courts where in fact the applicant has dismissed the council's requirement that certain issues not be pursued because they say that the documentation that is held on that particular property is not significant enough. In my local council and talking to the heritage officer, who is a contractor who works part-time, he has in fact spoken to me and he said, "Can you help us, please. We need - we'll have to get a team of volunteers out there to get some work done to back up all the documentation that we currently have, and thereby, as you know from the notes that I sent along, I have another issue, because a lot of the information that is currently available is erroneous, and I'm fully aware of it because I've done a lot of historic research myself on properties in my particular area.

I currently hold a collection of some five documents that was done for my council and those particular documents, if I go back to the very first document, the most recent document is dated 20 years after the first document: it virtually says the same thing. And they've all been bought and paid for at some expense, and I know where the original material came from, and I know why it's erroneous, and it's erroneous because some 30-odd years ago when this sort of documentation became, not a requirement, but it became a good object to have, to back up heritage listing, a lot of it was taken from hearsay, apocryphal stories. There were well-intentioned local community organisations who'd collected literature, probably written as newspaper articles or magazine articles. This was not primary-source material, and a lot of it is seriously flawed. The difficulty you have is that if that's got to all be redone, then it's got to be done at some expense - - -

**DR BYRON:** And it's not going to be done overnight.

**MRS MAILING:** - - - and talking to my local council, they don't know how to deal with the need to back up their listings with good statements of significance because they don't have the resources.

**DR BYRON:** Then that would take you to a conclusion, though, that the implications of that listing need to be looked at very seriously because, if it's erroneously based, that has direct impact on the property owner, both financially and opportunity-costwise and that's a serious misuse of government resources.

**MRS MAILING:** I don't know that it particularly is because the properties that I am talking about probably are significant because they were (a) built in a particular

era and representative of a particular time and place, or they were built by a particular person who was significant in the local community. (b) data that is missing is the data about who was the architect, who was the builder, what was the cultural style necessarily of the building, all that back-up material that fleshes it out, that makes it a document that is not challengeable in a court situation. I don't see that having apocryphal information about a particular place and time is necessarily bad. It just needs to be supplemented with that that is factual.

**DR BYRON:** In so many other local government jurisdictions, even some state registers, the reason for listing is left blank, and when we're told that the statement of significance and so on is what's going to inform consideration of any development application, and if it's blank then the whole process seems to be a house of cards from there on.

**MRS MAILING:** Yes.

**DR BYRON:** So I think you're absolutely right, that if the system is going to be highly credible and rigorous, then more resources have to go into the documentation establishing what are the values that led to particular properties being listed. But then the question is whether the limited amount of heritage budget should be spent on doing the research and documentation or doing more actual fabric maintenance or physical conservation, or doing more in education and public celebration and awareness-raising about heritage.

**MRS MAILING:** I think all those three.

**DR BYRON:** Yes, and it's not an either/or, but there's obviously lots of demands for more heritage dollars in each of those three areas, and yet the governments and local governments have many, many other demands on their budgets, for preschools and nursing homes and so on. So, yes, hence the dilemma.

**MRS MAILING:** Where does the money come from and where is the money going to be available, and will the outcome of this inquiry be able to pinpoint where those resources might be gained?

**DR BYRON:** Our position at this stage is that it would be very presumptuous of us to tell any or every local government or state and territory government how much of their budget should go into heritage, or however much they're spending at the moment - and we can't find out how much that is - they should double it, triple it, or 10 times it, or halve it, if we don't actually know what they're spending, and we don't know what results they're achieving through that expenditure,. It's very difficult to make a case for doubling it.

**MRS MAILING:** One of the things that is - actually I picked up today which is - as

I was leaving home this morning, early - a document that came in the mail to me, and I made some notes about it, and it's particularly about issues that affect my local council area, and there were two - it's a newsletter that goes out to the community, and it particularly talked about things like "native species conservation". Now, there is a thing called Native Species Conservation Act, and while I know that that has got nothing to do with heritage, it is a requirement that people in my area have to abide by. You are not allowed to remove native vegetation without approval from your local council because there is an act to maintain wildlife corridors.

Sometime ago my council put a levy on our rates and they called it an environmental levy to revegetate areas across the council, particularly those rural places where there had been felling for farms, to build wildlife corridors. This levy that went on our council rates, there was a certain - well, you know, "I live in the town and it's not going to affect me; I don't think I really agree with that," but generally speaking people were quite agreeable to it. I wonder if, in fact, .1 per cent of an increase in rate levies would not be a better option to recommend right across the country for the way to deal with heritage.

**DR BYRON:** But is there any impediment at the moment to any local government doing that tomorrow?

**MRS MAILING:** Not that I know, but I think if it was a recommendation possibly, it - - -

**MR HINTON:** There are some limits imposed by states on their local governments - - -

**MRS MAILING:** Yes, what they can do.

**MR HINTON:** - - - as to the rating practices, and it varies from state to state.

**MRS MAILING:** Yes, and I think that maybe it would have to be a recommendation that came from another body that council could do this.

**DR BYRON:** Believe me there would be a long list of other proposed levies, whether it was for preschools or nursing homes or more parks, or better roads and rubbish removal and so on.

**MRS MAILING:** I do understand. The other thing that was interesting in this very same newsletter that came to me which I picked up early this morning - and it just has a little bit on the back page, and it says, "19 heritage grants awarded for local projects". My local council has made a decision that they will take applications from people that wish to do work on heritage programs on heritage properties, either a heritage-listed property or even, like me, in a heritage zone, and this is to do minor

repairs. There is also biennially a heritage award which is given to people who do outstanding work to restore heritage properties, and one of the categories is sensitive infill development, which is for a new home.

So there is definite - an endeavour by my local council to look at heritage in a very positive way, but still when I talk to the council staff, they say, you know, "We don't have money. We can't go any further than this."

**DR BYRON:** A lot of municipalities in New South Wales and other states have those sorts of grant programs so that tenders, and I think you might find that half the funding comes from the State Heritage Office.

**MRS MAILING:** It does. It does. It does. I know for a fact, and it's on a dollar-for-dollar basis, and the council have to put in dollar-for-dollar, and then the home owner has to put in dollar-for-dollar, so it's sort of watered down as it goes along. But still it's a case of encouraging people to show sensitivity about an issue that sometimes can cause aggravation.

**DR BYRON:** Sorry, I feel I'm interrupting again.

**MRS MAILING:** No, no.

**DR BYRON:** I really wanted to come back to the point that you made right at the beginning about the onerous red tape that's put on people who are actually willing, and one of the things that I find just so extraordinarily perverse is that when there are people who are really interested in heritage, they really want to contribute and participate and "do the right thing", and yet local governments tie them up in so much red tape that it alienates them. I would have thought we should be facilitating rather than obstructing.

**MRS MAILING:** Yes. Somewhere in my submission, yes, I've - on page 6, "Preparation of heritage studies or statements of significance documents can be quite costly for the property owner," and I have very strong personal knowledge of this because I've recently been contacted by a concerned resident in my area to talk about this issue, because his comment to me was that, in order to prepare all the documentation necessary, it was going to cost him approximately \$6000. He's a hard-working family man, his wife works very hard, and he's got four young children, and he said \$6000 is, you know, just outside his budget, way outside his budget.

When we're talking governments and we're talking councils and things like that, \$6000 is a drop in the bucket, but to a family man with four children, it's a big thing, and I in fact got in touch with somebody I know personally locally who is an historian. I discussed this with them and I said, "Look, the heritage professionals are

really seeking to make too much money of this, and I don't believe that they have good local knowledge anyway," and she said, "Get him to ring me. I'll do it for \$50." She has got a doctorate of history, and she is a local person and she knows what she's talking about, but she just feels that there's this whole bandwagon out there jumping around saying, "We can make money out of this."

**DR BYRON:** Apart from that motivation, do you think that it's a system defect that basically the processes and the requirements were designed for major icon sites, very - - -

**MRS MAILING:** Possibly.

**DR BYRON:** - - - significant public buildings. They weren't - and yet we impose exactly the same requirements when we're talking about John Smith's little house.

**MRS MAILING:** Yes.

**DR BYRON:** If you're talking about the Sydney Opera House, to spend \$6000 on consultants is trivial; if you're talking about Mr Smith's house, then it's a serious imposition. So maybe the requirements of documentation need to be proportionate to what we're talking about.

**MRS MAILING:** But how do the professionals deal with this, because they will say, "Well, I have to make a visit to the property and I've got to go to the same sources and do the same amount of research"? The particular building that I'm talking about is a two-bedroom settlers' cottage, a two-roomed settlers' cottage. Sorry, it's not even got bedrooms. It's a two-roomed settlers' cottage with a stone wall at one end, and vertically cut beautiful tree trunks, and it's a magnificent little building. He doesn't live in it. He has another house on the property. That's where he falls in a hole, because the local council say, "You can't have two homes on the one property." As he said, why did he do this jolly place up, because now it's habitable, it's become a home? He wished he'd let it fall down.

**DR BYRON:** It's another example of where the system is having perverse results.

**MR HINTON:** It might fall down now.

**MRS MAILING:** In fact, it won't, because he's done a lot of work, and in fact, he won a heritage award for the work he did to restore this cottage from the council. He got this award which is in the post, and now that council are saying, "You have to provide all this documentation," and it's because it's part of the system. The council, themselves, regret that this man finds himself in this difficulty. They wish it would be otherwise. They don't know how to work round it either.

**DR BYRON:** Demolish the house he lives in.

**MR HINTON:** Thank you , commissioner.

**DR BYRON:** Sorry, I should not be flippant.

**MRS MAILING:** This is a very real problem. It's a totally different problem than you find in city environments, because one of the issues that actually got me first involved with council many years ago, was the fact that I was aware that a lot of the original settlers cottages on rural properties were being demolished. A lot of the rural properties were being subdivided and sold as 100-acre lots. The original settlers cottage was not agreeable to the new owner, so they built a new house. You're not allowed to have two houses on the one property, so what happens? The old house gets mown down. It's happening all across Australia - I know, from talking to people in other states.

The other issue, too, that I noticed in the document - and maybe I misread it, and I would be interested on clarification - was that local councils would primarily be the consent authority for heritage listings. Somewhere in the documents I read, and maybe I read it erroneously, that it would be a case of the council being actually responsible for keeping heritage lists, and that state government would no longer hold those lists for all across states. Is that not so? Is that not what you're recommending?

**DR BYRON:** No, probably - a sort of continuation of national, state and local government lists.

**MRS MAILING:** I've got here an extract which I've taken as:

State and territory governments should modify their planning legislation and regulations to remove any requirements to take heritage considerations into account, in relation to any individual property, other than those requirements relating to zoned heritage areas.

What does that mean then? Its recommendation 9 7.

**DR BYRON:** We had some discussion about this yesterday. It's about their modifying state government planning legislation and regulations to take the - if you're thinking about a heritage area precinct zone, then, how to explain this. Do you want to carry on while I look this up?

**MR HINTON:** It's a question of where the actual application of zones would be administered, whether it be at the state government planning system, or whether it be done at the local government. We're looking to have that done at local government

identification area. It's removed from the planning legislation with regard to individual properties, but that those requirements relating to heritage areas, would be part of the state's overall land use plan.

**MRS MAILING:** It would be.

**DR BYRON:** Basically, we saw a confusion between the planning regulations and the heritage regulations, in the sense that they intersect. They make different requirements, and so on. So, for the reasons that were spelt out on page 204, we come to the conclusion that clearly separating what's a planning land use issue, and what's a heritage conservation management issue, and then using the right tool for the right job, rather than confusing - using the wrong instrument for the wrong objection.

**MRS MAILING:** Don't you feel that taking the heritage issues out of the equation from the state planning point of view, actually reduces the strength of what's in that zone. I'm particularly talking about New South Wales, because that's what I know about, but I also have particular knowledge about another state, because I know somebody who does some planning in another state. When they're planning main roads, for instance, they take to have in to account the heritage issues when they approach, say, small towns, villages - even suburban areas. They have to make sure that they don't go through heritage zones or affect a heritage-listed property. Nobody wants to have a listed heritage property, and suddenly have a main road go past it.

If you take one away from the other, are you weakening that? Is it possible then that state government could come and say, "Well, it's only a heritage zone. It's not of particular significance. We'll just go past it." It might actually, on the edge of it, have the most significant property within that zone.

**DR BYRON:** We'll have another look at that. Thank you for bringing that to our attention.

**MRS MAILING:** Because I happen to know somebody in Western Australia who's involved in planning roads. I've emailed him about this. I know that he's very much into planning roads. He writes books about it. I said, "What are the issues that you have to address?" They are twofold. One is, there can be a heritage zone, but if there is a heritage significant edifice property - something, building, structure, whatever, even if there is an environmental site, an aboriginal site - something like that, they have to be aware of it. If the detail is not in the documentation that's available to a state government, how were they going to know?

**DR BYRON:** What we're trying to deal with there - - -

**MRS MAILING:** Simplify the system.

**DR BYRON:** - - - where there were cases where heritage appears as an issue, even when they're aren't heritage listed or heritage-identified properties, so that clearly if we're talking about a property of major heritage significance and the proposal to put a freeway past its front door, there's the intersection of the listing of the individual place, and the planning regime. What we were particularly talking about there was when heritage was being invoked, even where there was no listing, or even proposed listing - and that sort of clouding the planning issue. We'll look at that section again.

**MRS MAILING:** I don't know whether it's relevant to refer to it, and I know that you need to get on, but I did attach a document which was not for publication, about a local issue, because where I live there is a very significant heritage situation with a small town. That particular issue is being challenged currently. There is a planning application to do major structural changes within that town, and yet that town is listed by the council, the state, and the federal government, and the National Trust, and everybody else. Yet still, these people will challenge it. How can it be strengthened because there are four applications to make changes within this heritage town, backed up waiting for the one wealthy developer to take the issue to court.

That is something that people that live in that town, are absolutely crying tears about. They are beside themselves about. This has the potential that you can have all this listing protection, and still it's able to be challenged in court.

**DR BYRON:** We'll read that very carefully. Thank you very much for the time and effort of coming all this way.

**DR BYRON:** Thank you very much. Representatives from the Local Government Association. Good afternoon. It's been a long one. Thank you all very much for coming. Just begin by each introducing yourselves to the transcript, in your own voice, so they can recognise later who's speaking. Thanks for the summary of your notes, which we've had a quick look at. If you'd like to take us through the main points that you wanted to make, and then we can have a discussion. I realise that you've got a time constraint, so we'll try and stick to the point.

**MS McCAFFERY:** I'm Genia McCaffery. I'm president of the Local Government Association.

**MR SULLIVAN:** Paul Sullivan. I'm president of the Shires Association in New South Wales.

**MS GREGORY:** Carina Gregory. I'm the senior policy officer of planning at the Local Government and Shires Association.

**MS BURNE:** Melissa Burne, policy officer, the Local Government and Shires Association.

**MR FLETCHER:** Ryan Fletcher. I'm the director of policy and research at the Association.

**MS McCAFFERY:** I'm going to start off. Firstly, thank you for giving us this opportunity. Heritage conservation is of great concern to our member councils. I know there's some confusion. There's the Shires Association in New South Wales and the Local Government Association, and Col and I represent each of those associations. Together, our councils - we represent 152 general purpose councils in New South Wales, and regional Aboriginal land councils are also our members. I guess our role - just to give you a bit of a background of our role, we present councils' views to central government, both state and federal. We provide industrial relations and corporate services to our council members. We also promote local government to the community and other stakeholders.

At the outset, it's critical to note that we do support the three levels of government involved in the conservation of heritage. That's been recognised in the draft report. In our view, the ongoing involvement in heritage conservation is critical, given the development pressures - extreme development pressures our communities face. It's really councils that are mainly dealing with the development consent process in New South Wales. We made a comprehensive submission to the inquiries issue paper released in May 2005. We chose not to attend the initial round of hearings, but we instead sought that the commission rely on our submission.

We appreciate our opportunity to speak with you. We'd also advise the

commission that we are preparing a final written submission to your draft report.

**DR BYRON:** Thank you very much.

**MS McCAFFERY:** We also encourage the inquiry to look at submissions by our individual council members. We also note that the ALGA - our Australian body is also responding to your report. Today, we want to look at three - the main points of our submission, our main aims are really to briefly show the extent of involvement of local government in New South Wales in the conservation of historic heritage places, and the issues currently facing local government in the area of heritage conservation. We want to respond to your draft recommendations. We want to provide some recommendations on what we think the inquiry should do. I'll hand over now just to Col. Then, I'll speak later.

**MR SULLIVAN:** All local councils in New South Wales are involved in the conservation of historic heritage places - to some extent, as either owners, or managers of the heritage items. The heritage items which council are responsible for represent the vast majority of listed heritage items. The fact that they are statutory listings, not only reflects the statutory framework of planning and heritage regulation in New South Wales, but also represents years of work and considerable resources employed in the process of identifying, listing, protecting and managing these heritage items. There are a number of issues faced by local government with respect to heritage conservation. These issues include heritage conservation is not one of the core responsibilities of the local government in New South Wales. However, it consumes significant council resources.

Heritage conservation is a subjective and expensive area of work for council, as it particularly involves engagement of heritage consultants, and resource-intensive community consultation. The New South Wales local government has limited resources to apply to heritage conservation work. The Heritage Incentive Program, run by the New South Wales Heritage Office, has provided a kick-start to heritage conservation in many local councils. It has a proven track record. However, total funding available through the program is inadequate. There are councils which have not benefited from the Heritage Incentive Program to date.

Heritage training is costly, as it involves specialist input. The overwhelming majority of historic heritage places in New South Wales are listed at local government level. However, local government has no powers available to it to enforce acceptable minimum standards of maintenance and repairs on any items on its local government list. New South Wales local government owns a significant proportion of the large numbers of historic heritage places under local government listings, including buildings, bridges, monuments, parks and streetscapes. In many places, publicly-owned heritage places are ageing, resulting in increased burden on maintenance costs for local government, and associated resource implications.

Local government listings include items of state and national significance. Many locally-listed items have potentially broader significance. However, local government does not have the resources to prepare the application required for assessment for state and national listings. The above comments are discussed in more detail when relevant and in the body of our initial submission to the inquiry. Further to these issues, it is the limited financial capacity of local government. Above all, these issues are fundamentally related to the high costs of heritage conservation, and the extremely limited resources of local government. Of particular note are the following issues: councils have limited avenues for raising revenue. The primary sources of revenues are rates, user fees and charges, and developer contribution.

Financial assisted grants remains static in real terms, and have declined as a proportion of the Commonwealth tax revenue. State grants to the local government have declined in real terms. Rate pegging places a major constraint on the ability of councils to respond to the infrastructure and service needs of their communities. Rate pegging is a constraint on councils' general revenue imposed by the state government of New South Wales. It is the only state in Australia that has rate pegging. Revenue raising capacity is also impacted by factors such as ageing populations with low or fixed income, non-resident owners and seasonal population variation. Cost shifting onto local government by other spheres of government is also placing increasing pressures on councils' financial resources.

The incidence of cost shifting has been acknowledged by the Commonwealth Grants Commission in the Hawker Report on cost shifting onto local government. The example included a decline in state funding of public libraries, the transfer of crown, regional and state roads to council, and fire services funding levies on councils. Developer contributions, for example, section 94 contributions, made a significant contribution towards the infrastructure requirements of new developments. However, they do not address the infrastructure backlog of adequately provided - provide for infrastructure augmentation and rural needs. They had limited applications in relation to the heritage. Back to you, Genia.

**MS McCAFFERY:** Thank you, Col. I'd now like to provide you some details on our response to the draft findings, and the recommendations - where they're relevant to local government. We note there's 15 draft recommendations, but we really only want to respond to nine of those. The first one is 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 when an agreement is in force. We really are very concerned by this recommendation. We think it will really undermine the heritage conservation efforts of all levels of government, but particularly local government.

We believe the recommendation will require substantial changes to the operation of local government's role in both heritage planning and conservation. It will impact the skills required of professional staff, the legislative framework, and the up-front resources needed to enter into and negotiate these conservation agreements. As the commission states itself in its draft report on page 194, implementing the inquiry's recommendations at the local government level, would raise significant resourcing issues for councils in areas with many properties of local - heritage properties of local significance. We also consider that it works against the long-term conservation of heritage in Australia for future generations if a conservation of heritage items is only upon the agreement of individual owners.

We note that the commission intends that this recommendation applies to individual listed properties not heritage conservation areas, but we want to point out to you that its implications for many cases of where individually listed items are contained within, and inextricably linked to, heritage conservation areas. We would like you to note that in your suggesting an approach similar to the current practice for items of national significance, there really are great differences between heritage items at all levels of national, state and then local - in particular, heritage properties likely to be dealt with at a national level are obviously the icons; the Harbour Bridges, the Luna Parks, but we also - most likely to be protected already on a statutory list, either at state or local level.

In some situations, local government may have been the source of information identifying items of national significance. In fact, it may have been local government making those recommendations. But also ensuring that these items are protected - but I'd like to point out that there's been considerably greater access to funding at the national level for resources required to negotiate conservation agreements. There simply aren't those sorts of resources at the local level. Furthermore, it's not a process that's been properly tested, whereas the process in New South Wales has evolved over many years.

In chapter 4 on page 25 of your draft report, you identify that the extent of the Australian government's commitment to conservation by agreement is yet to be fully implemented. Only one voluntary conservation agreement exists at the national level, and it's also been identified in your draft report that this agreement is yet to be finalised. It's also noted that none of the four non-Government owned properties on the national heritage lists have conservation agreements attached to them. We really question why you want to change a system that in New South Wales has evolved over many years, and is working. Local government doesn't have the resources to provide specialist advice on every individual property in its locality, nor would local communities generally expect such extensive application of resources.

In New South Wales we'd suggest that from many years of conservation practice and expertise and experience, negotiation is better once properties are

identified and listed. Councils are in a much better position to inform the public of heritage and what it means. The New South Wales system of identifying and listing properties necessarily involves considerable community consultation. Strategies have been adopted to assist individuals in their entire process, and in particular the state government's heritage advisory service assists in filling the gap of providing individuals with advice on individually listed properties at no cost to the owners of these properties.

I guess I'd like to strenuously say to you that with development pressures in places like metropolitan Sydney, if a process as you're suggesting is adopted, you might as well start demolishing Sydney now - because there's no way local government will have the resources to enter into these sorts of agreements; it's unlikely every property owner would enter into the agreements; and you'll never have the Paddingtons, you'll never have the Woolloomooloos, you'll never have the Glebes. It's been the activity of local government that has protected those areas, and now I don't think there'd be many Sydneysiders who would say they'd want Paddington demolished.

Your next recommendation, 9.3:

State governments should require their local governments to add non-Government owned properties to a local heritage conservation list, only with a conservation agreement in force.

In response, we don't agree with this recommendation for all the reasons I've already said. 9.5:

Private owners of already listed properties where the listing occurred after purchase of that property should be able to apply for a negotiated conservation agreement, and for listing to continue only if an agreement is reached.

We really say to you that this recommendation has huge implications to the extensive listing work already carried out in New South Wales. We refer you to the sheer number of locally listed items - a significant proportion of these are privately owned. Again, I would emphasize that there is significant community good that comes out of heritage conservation listing, and there seems to be an overemphasis in the report on individual good, with no recognition of the community good that comes out of heritage conservation. While the number of properties which fall into the category of being listed after purchase of the property is unknown, it could be assumed that really they number in the hundreds. Some council areas might be inundated with requests by owners, and it really is questioned why local government - which has already put considerable resources into heritage conservation for the good of their communities - would then be required to individually question all the groundwork, at the whim of an individual owner who may well have contributed to

the community consultation process in the support of heritage conservation.

Recommendation 9.6 says that:

Private owners of already listed properties, where the listing occurred prior to the purchase of that property, would remain covered by the existing package of restrictions and concessions, if any. These arrangements would be assessed at the time of any substantive development application, when negotiations for a new conservation agreement would occur, and listing would continue only if an agreement is reached.

In New South Wales, through the heritage advisory service employed by the majority of our councils, private owners have access to free heritage specialist advice particular to their property. This system has evolved over many years, and is referred to in the conservation agreement suggested by the commission. We really would suggest that conservation agreements at development application stage might be actually adding yet another layer, and we think unnecessary, to the development process already operating in New South Wales.

Recommendation 9.4 states that:

State governments should put in place systems for their local governments to request compulsory acquisition in cases where this becomes the only way to ensure cost-effective conservation of places of local significance.

In response, we point out that there are cases where local government in New South Wales has purchased heritage properties. However, this has been primarily by choice. We would support the implementation of an opportunity for councils, as a last resort, to acquire properties should they wish to pursue this avenue. We'd emphasise, however, that this should be at the choice of the council, not a requirement - the reason for this being, again, that the extremely limited financial capacity of local government, for not only the acquisition of property but for the ongoing repair and maintenance of places of local significance.

7.5 - the recommendations state:

Territory and local governments should produce, firstly, adequate conservation management plans for government owned statutory listed properties, and then implement reporting systems that require government agencies and local government responsibility for heritage places, to document and publicly report on heritage listed costs associated with their conservation.

We really think this is very onerous on local government, this recommendation. I will firstly respond to the first bullet point. I'd remind the commission that local government in New South Wales owns and manages thousands of statutory listed properties. Local government is not suggesting that conservation management plans are not useful tools, but we do say that we want you to be aware that the preparation of such would require considerable funds and resources. It's our understanding that the preparation of conservation and management plans can easily cost a minimum of \$6000, which obviously necessitates the work of a specialist.

They also require considerable resources to both prepare, check and extensive liaison then adoption by the council and the New South Wales Heritage Office. The Heritage Office provides some financial assistance for the preparation of these plans, but these are capped at 2 and a half thousand dollars per item, and they only apply - this applies to items of state heritage significance. Really, the vast majority of statutory listed properties in New South Wales owned by local government would not qualify for that assistance, because they're locally significant. We really question why the commission would require local government to do this, unless you can show us how we can access the funding and the resources to implement that recommendation.

In the second bullet point, the suggestion that local government should implement reporting systems that require us, with the responsibility for locally heritage places, effectively all the councils in New South Wales, to document and publicly report on heritage-listed costs associated with their conservation. We agree in principle that it's good; that to identify all the costs associated with heritage conservation to date, indeed with all the work carried out by local government. Local government - we want to be transparent and accountable in all our operations, and this recommendation we think can assist with that goal.

But we really question the practicality of that approach. Heritage items are many and varied, particularly at the local level, and they're really varied a lot in their size and their significance, and local government's not only involved in the costs associated with the identification listing (recording fault)

And that's critically the important thing for us to be putting resources into. Implementing reporting systems, as suggested, might be practical for a small number of very significant items, but to do separate reporting on each one of these items really involves an enormous cost and we really question whether it's necessary. By comparison, the costs of major reconstruction and renovation of a significant building would vary greatly from the costs of say, pruning a heritage listed tree.

The next recommendation is 9.7, that state and territory governments should

modify their planning legislation and regulations to remove any requirement to take heritage considerations into account in relation to any individual property, other than those requirements related to zoned heritage areas. We really don't support the management of heritage by conservation agreements, as suggested by the commission, and therefore we really don't support this change to the legislation supported by that recommendation.

Recommendation 9.8 states that state and territory governments should remove the identification and management of heritage zones, precincts or similar areas from the heritage conservation legislation and regulations, leaving these matters to local government planning schemes. It's noted that the commission's key recommendation and the majority of the other draft recommendations focus on the treatment of individual properties.

We agree that the proposed arrangements suggested for individual properties entering into those agreements would not be practical for areas involving a large number of properties which have heritage significance as a group, rather than individually. We'd be very reluctant to agree to be responsible for all heritage zones, precincts or similar areas, on the basis that not all areas are purely of local significance.

We'd make the following points; that heritage items are many and varied. A single item might actually be a small group of highly intact properties, each on separate ownership. But then, how would you define such an area? As you note in your own report on page 204, heritage areas may or may not contain individually listed properties. We would suggest that in many cases where heritage items are contained within heritage conservation areas, the item is highly likely to be of considerable significance to that area, and we'd question the use of very different approaches to heritage management to the item and to its surrounding area.

The recommendation assumes that all heritage zones, precincts and similar areas are of local significance. There are examples of such areas which are of state significance or potentially even of national significance, which in each, of the three tiered system, would not be the responsibility of local government.

Recommendation 3.1 states that 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. Now, we agree that a comprehensive database of information on conservation of Australia's heritage would be very valuable to both, to inform and improve all levels of governments accountability and enhance the policy making for heritage conservation, but we really would submit that this would be a mammoth task and the cost really, we think, would be prohibitive. There really needs to be an agreed set of standards of reporting, and then report formats established.

Then, how are we going to fund the considerable costs that this would involve? Once we establish these systems, there would also be the further cost of maintaining the database, at which stage it would mean greater costs for local governments. So I think we really need to start identifying how are we going to fund these sorts of recommendations.

We emphasise that the establishment and implementation of such reporting would be beyond local government to implement. We really think this is the realm of state and federal governments. We really have to question, is the information valuable at this level of cost? We have to measure cost with the results. Thank you.

**MR SULLIVAN:** If I could just sum up and say thank you very much for listening to us and giving us the opportunity. Our recommendations are: that the commission seriously reconsider its draft recommendations that will undermine the years of community and public resources put towards the process of identifying, community consultation, protecting and managing heritage items, and conservation and use of files; that the existing commitment, responsibility and achievements in the heritage conservation by local government be acknowledged; greater funding and power be allocated to local government to assist its role in the conservation of historic heritage places. It be recognised there is a need to improve inter governmental involvement in heritage conservation.

In particular, we'd like to recommend that there be increased funding to assist all levels of government in addressing the lag in listings; there be increased funding from state and federal government to assist local government with the cost of heritage studies and study reviews and training; that there be recognition that changes are required to New South Wales state government legislation to enable councils to enforce the maintenance of heritage listed buildings to an acceptable minimum standard, and that associated financial assistance for enforcing such powers be allocated to local government. There be agreement at all levels of government as to the terminology to apply to historic heritage places, to assist and sow greater education in the community about heritage.

It is suggested that more consideration to the definition of "heritage" should come from the inquiry. There should be consistency in the understanding of terms and approaches to the use of the terms "historic" and "heritage". There be a review of the heritage funding structure and existing portfolios to better reflect the burden of responsibilities carried out by each level of government. There be a comprehensive survey of existing heritage studies by state and federal government and reform by local government. I would just thank you again, on behalf of Genia and I, for the opportunity to present our case to you today and for listening. Thank you.

**DR BYRON:** Thank you very much for that. You've raised a tremendous set of

issues. Can I just clarify - you have a time constraint, don't you?

**MS McCAFFERY:** We'd need to be back by one-ish.

**DR BYRON:** Okay. Have you got time for just one or two things?

**MS McCAFFERY:** Yes, absolutely.

**DR BYRON:** Did you want to go first, Tony?

**MR FLETCHER:** Commissioner, if I could just foreshadow that if yourself or the secretary have any questions that we're not able to answer here, we'd be happy to take them on notice.

**DR BYRON:** Thanks. That was going to be my next point, because they are a number of things there that I'd really like to follow up and some where I think we may actually be in heated agreement with each other, but using slightly different words.

**MR HINTON:** I'd add my thanks to Neil's for your participation today, but also, in particular, your foreshadowed written submission and your associated parties' written submissions, both in terms of the Australian Association as well as, of course, local governments in their own right will be writing to us. And we welcome that. It's a very important part of our consultation process.

In the limited time available, let me just flag two questions, until Neil kicks me. I'm a bit uncomfortable with your conclusions, in that one could reach the view that you as an association think the system is working well, and that puzzles me. We get a range of views from a range of interested parties expressing concern about the deficiencies of the current system, but having heard your presentation this afternoon I get the feeling that you wouldn't sign up to that view. Is that misreading you or misrepresenting you or what?

**MS McCAFFERY:** No, I think - I'm also mayor of North Sydney and we, as a council, probably over 20 to 30 years, have been, I guess, one of the leading local government areas in terms of heritage conservation of North Sydney. I'd have to say in the 10 years that I've been mayor heritage in our area - the processes we go through in both listing and protecting heritage in North Sydney works. I guess that's why I emphasise to you that there's a community group view and there's an individual property owner view.

**MR HINTON:** It's just that so many people told us, in so many different jurisdictions, at national, state and local government level - and maybe it was just in the first round of hearings that almost everybody told us this system is not working,

there are so many flaws in it - some people because it didn't protect enough, and some people complaining that it protected too much or too strongly. But the one thing that almost everybody else, except you, said was the system has serious flaws in it. That's why we were challenged to try and think of a system that would be more effective, more cost-effective and more equitable.

**MS McCAFFERY:** I guess just the fact that you've been told that there are some people saying you're not protecting enough and there are some saying we're protecting too much to me says that's probably a system that's taking the mean path and it's probably a system that's working. I think if you look across New South Wales and see how much of our heritage areas are now protected in a way they were not, say, even in the 1980s, we do have a system now that is starting to ensure that we will have built heritage, in particular, that will be able to be passed on to future generations.

**MR HINTON:** Well, let me give you one area of concern that a number of people have mentioned to us, and that is that those categories of property owners, particularly residential buildings where they live, that have been listed post-acquisition - they have acquired the property, they're living in it and then it's been listed - that particular listing has had an impact that they thereby are precluded from a demolition and then redeveloping that site for, say, medium density occupation, whereby that erosion of property rights has incurred a very substantial financial cost to that owner, even though the development would be consistent with the land use/zoning requirements as applied through development applications.

That particular treatment of that particular category of individual is seen as a fundamental deficiency of the system. It's a fundamental erosion of property rights of which the property owner bears the cost, not the community, even though it's the community value that's being conserved, that is, the heritage characteristics of the property. Maybe you don't see that as a deficiency, but I'd welcome your reaction.

**MS McCAFFERY:** Well, I guess I'd have to - when I mentioned about the Paddingtons, the Glebes, as a community, if we focus on individual property rights and not place enough value on community, the community value of preserving heritage, and if we follow the recommendations in your report that we'd have to get the agreement of every owner before their property could be listed, I said to you, with the property values in Sydney and the development pressures in Sydney, you might as well get the jackhammers out now and start demolishing the houses, because you are effectively, through that sort of recommendation, condemning Sydney, in particular.

**DR BYRON:** But we very explicitly say that this is in regard to individual property listings. The system as it applies to Paddington, Glebe, et cetera, would stay exactly as it is at the moment. I think you might have verballed - - -

**MS McCAFFERY:** But Paddington never would have been preserved. If we followed the system that you are recommending, Paddington - we would never have kept the Paddington houses, because South Sydney Council at the time - and I was involved in it, because I worked with the National Trust - South Sydney Council at the time followed the system that we've exactly got now, which was listing individual houses because they had heritage significance, and I can tell you at that time Paddington was listed for large-scale demolition.

**DR BYRON:** But we now have zonings and heritage precincts, and would still have zones and heritage precincts that would still have protection.

**MS McCAFFERY:** I wonder whether you have been actually advised appropriately by people who have given you submissions, because I can tell you in our own case - in my own experience in North Sydney - where we listed houses contrary to the zoning, and where applicants then appealed to the Land and Environment Court, the Land and Environment Court said if the listing of that house is contrary to the zoning they approve demolition. And they approved demolition of many houses that we had listed, and that's why we changed the zonings.

**MR HINTON:** Let me move on slightly and say that I know that local governments - and importantly we need local government input, because in our draft report we identify that as the area where we've got most of the creaky wheels - or that's probably the wrong analogy - the most concern about the actual implementation of the conservation objective and its application or intersection with development approvals. So I realise that your input is valuable, but your membership also is very diverse, and a survey of local governments also illustrates to us in fairly clear terms widespread - that's probably too strong - significant proportion of local governments across Australia are expressing concern about the existing system, which is also one reason why I asked that overriding question about your overall assessment of the system.

I just mention that to you in passing, that the survey itself seems to say that a key proportion - a significant proportion of your own membership - looking Australia wide, though I appreciate you're New South Wales only - - -

**MS McCAFFERY:** I don't think we've got that concern in New South Wales amongst our members.

**MR HINTON:** Well, it's identified in the appendix. But, moving on further, there are some local governments that actually do implement voluntary conservation agreements that are actually working in some jurisdictions, and shock, horror, the world hasn't collapsed. There is conservation going on. I'm therefore a little concerned that you seem to be perhaps overstating the implication of our proposal in

the sense that it would end up with nothing being conserved. That also made me uneasy in terms of your presentation this morning.

**MS McCAFFERY:** Well, I'm looking at people who have been involved in local government for many years and, you know, myself in particular in an area which is under great development pressure, and I don't believe that you would have got - you would see the North Sydney you have now if for the last 15 years we had a system that you're recommending.

**MR HINTON:** Well, one way we've talked about in the last two days is to tranche off different cases and some have put to us the view that 90 per cent of the cases are single residential buildings that are unable to be redeveloped to - for, say, high density occupation, because that would be inconsistent with the land use requirements. 10 per cent of them, in fact, would run up against that problem, and therefore you would have the potential for those 10 per cent cases to be demolished because of the opportunity cost of non-development. But the cases where redevelopment for medium density occupation doesn't arise because that would be inconsistent with land use, then why would then the owner seek to destroy that building.

It would still be subject to the development applications for modification for putting in the sunroom, for putting in the en suite bathroom or whatever, why would the owner knock it down just for the sake of - because the system is not going to have it listed. I don't understand your logic that the lack of listing leads to demolition for that particular case, which some say is the majority of cases.

**MS McCAFFERY:** Well, because there's a lot of pressure in Sydney, and I talk for metropolitan Sydney and probably up and down the coast, not just for medium density, but for redevelopment; you know, the McMansion syndrome, and there's - you will lose a lot of houses which are significant in terms of community benefit if you don't have heritage controls. And a big part of listing in urban areas is not the listing of individual buildings, but the listing of conservation areas, and then the contributory items, and all usually that the council requirements are is that the streetscape contribution of that building be preserved. And your recommendation is that we even have to enter into those kind of voluntary agreements for that kind of listing.

**DR BYRON:** Not just streetscape; absolutely not.

**MR HINTON:** Heaven forbid. I don't know where - - -

**MS McCAFFERY:** No, but it's unclear about contributory items though, because we - for instance, many councils list each house in a conservation area, and we list it either as - - -

**MR HINTON:** I think you make a very - - -

**MS McCAFFERY:** - - - a contributory item or a neutral, or actually identified as one that actually undermines conservation areas.

**MR HINTON:** We really appreciate you drawing that to our attention, because we do need to elaborate in clearer terms how the precinct, the landscape, the streetscape - sorry - process or category would be treated under our system. I think it's a little undercooked in the draft report, and we're going to be developing that further; how precincts, zones, streetscapes operate, and would operate under the processes that we've got. We're going to articulate that in more detail in the final report, so thank you for that. I know that Neil is kicking me, so I better shut up.

**DR BYRON:** No. One quick one to Col. You mentioned the problem of aging public infrastructure, and a lot of people have talked to us about, you know, accumulated maintenance deficits and so on, and I can imagine that aging public infrastructure is seen as a real liability for people who are trying to deliver services. You know, you've got old timer bridges that need to be replaced et cetera. But those are the very same things which are great assets when you look at them through the heritage lens. It just seems to me there's a real tension there that councils are right at the coalface of having to deal with.

On the one hand you've got old public infrastructure that's increasingly, you know, not fit for purpose or very, very expensive to maintain, and people would love to see the back of it. But if you look at it as a heritage item, it's terrific. You need to keep it. So if you could give us some idea of how at the coalface in local government, you actually sort of resolve that tension. That would be really helpful, I think, and maybe too much for you to do just in the remaining 30 seconds.

**MR SULLIVAN:** It probably is. I'd probably sum it up in one word and say "money". You know, you talk about bridges. I've got a neighbouring council to where I live that's got 400 timber bridges.

**MR HINTON:** How many?

**DR BYRON:** 400.

**MR SULLIVAN:** 400, the majority of them built 75, 80 years ago, a lot of them very good heritage items. But they got to be replaced for safety's sake. They've got to be upkept. Nobody can afford it. To force an upkeep on a bridge because it's a heritage item will put those councils well bankrupt. And I represent mainly rural councils, the smaller councils in New South Wales, and that's a real concern we have, and that's why there's so much emphasis on finding us more money.

I want to say to you that local government supports the concept of heritage listings and keeping our heritage the way it was. But we need that help. We need help to be able to do it and to achieve it and to work with you people and the other spheres of government, to achieve it, because without it, they will come but can't go much further ahead than what we've been going. And it's probably why we see some threat to your proposal, is that, good ideas, but not much money.

**DR BYRON:** By the way, we're not proposing that local governments be required to acquire. That's not a part of our recommendation. It will be their decision to acquire. We better let you go. Thank you so much for taking the time to come here and for being so patient.

**MR SULLIVAN:** And we will make the other submission - - -

**MS McCAFFERY:** It's a pleasure.

**DR BYRON:** Yes, we're really looking forward to getting that expanded critique of - yes, don't hold back.

**MR SULLIVAN:** Okay. Thank you.

**MS McCAFFERY:** Thank you.

**DR BYRON:** Thank you very much.

**DR BYRON:** Now, the representatives from Summit Travel, if you'd like to take a seat. Thank you very much for coming today and thank you for patiently waiting until this time.

**MS CHAN:** Thank you.

**DR BYRON:** If you just, when you're comfortable and settled there - and if you'd just like to introduce yourselves for the transcript and take us through the main issues. Thank you.

**MS CHAN:** My name is Angela Chan and I'm a representative.

**MR TEHRANI:** My name is Mosen Tehrani. I am the owner of Summit Air Travel.

**DR BYRON:** Yes.

**MS CHAN:** Thank you very much, commissioners, for the opportunity to address the commission today. I apologise that you don't have a previous submission from us but I do have one to table today, a written submission. I've written it on behalf of Summit Air Travel, who are the owners and proprietors of level 1, 352-358 Kent Street, Sydney, deposited plan number 21187, lot 2. The property was purchased by Mr Tehrani in 2001. We make this submission under point 4 of the scope of the inquiry, which invites submissions on the positive and/or negative impacts of regulatory taxation institutional arrangements on the conservation of historic heritage places and other impediments and incentives that affect outcomes.

We also make the submission on the basis that it recognises the importance and value of conserving heritage buildings in Australia, and in doing so, striking a balance between preserving the heritage significance of properties and the value of utilising these buildings on a commercial basis. The submission strongly supports developing partnership arrangements between the council and the owners of commercial properties to develop regulations and guidelines which will have a positive impact on both the heritage significance and the commercial values of these properties.

If I could just describe the property. It is in a heritage zone. It's AMA House. It's an eight-storey building, which was built in 1911. The building was originally used as a warehouse and comprises face brick and sandstone, timber frame windows, aluminium shopfronts, face brick and arches niches. In 1970, it was converted from a warehouse and it was - to a commercial building; was refurbished in 1985.

What we have at the moment is with a person who - and I don't know. I haven't, unfortunately had the benefit of listening to other people apart from the local

government today, and I'm not sure whether this is just an issue which is so small for your commission. But it goes to the core of regulations of councils and the interests of owners and the commercial properties. We have a situation where currently councils have regulations which prohibit the installation of signs for properties, which are not situated on the ground floor level of heritage buildings, even if they are - or significant owners of the buildings. Summit Air Travel owns one floor of the building in the same way that everyone else owns - individual owners own each floor of their building.

**MR HINTON:** Strata title.

**MS CHAN:** Strata title, yes. But they're individual companies, so that they're eight separate corporations. Mr Tehrani - or Summit Air Travel are in the retail business. They wanted to erect a sign, which would have been installed in the existing holes which were there prior to the warehouse being refurbished in 1985, and it was just to install the sign. Unfortunately, the regulations do not allow any movement in that area. The only people that can put up their signs are the people on the ground floor. The arguments put from the council is that it would take away from the heritage value of the building and - or that it would affect the streetscape, and that there is a public interest issue involved.

Well, our submission today would be that there needs to be a balance between the rights of the owners of the properties and the council regulations and that it would be possible to allow businesses to erect signs which would be in accordance with the heritage building; would not affect the value of the property - a couple of screws in the building is not going to affect it. You could even have a sign which is done - designed by the heritage consultants for the councils and that the businesses must comply with these signs in accordance with, you know, with these designs. Unfortunately, there is just a simple blanket, "Sorry, unavailable".

Now if you have a retail business and you're not on the ground floor and you are on the first floor and you have people coming in to try and use your business, then, you know, they like to see a sign. They like to be able to find - it's much easier for people to locate. Summit Air Travel is involved mainly in specialising in travel throughout the Middle East, through the Emirates, through Asia, Central Asia, so a lot of their clients are looking for that identification and they can't find it.

**MR HINTON:** Is there a directory in the entrance foyer?

**MS CHAN:** Yes, there is but you know - - -

**MR HINTON:** It's small.

**MS CHAN:** It's small and you know, people often, if they don't normally come into

the city they do look for a landmark. We're not saying that signs should be put up in a willy-nilly fashion but we are saying that they can be done in a way that could enhance the commercial interests and at the same time preserve the heritage value of the buildings. Unfortunately, it's just an inflexible regulations of councils which is - prohibits people and I think it's a disincentive for people to invest in heritage building in the city. Unfortunately, Mr Tehrani bought the building thinking that he would be able to put up the sign.

**DR BYRON:** Put up a sign.

**MR HINTON:** But the regulations apply to non-heritage buildings as well, that is, second and higher floors are also precluded even though the building might not be listed?

**MS CHAN:** I can't be certain of that. I'm not sure about that. I could well be but you know, I mean the very fact - - -

**MR HINTON:** I thought there was signage - - -

**MS CHAN:** If you look at the actual - the Notice of Determination from the council it simply all the heritage - - -

**MR HINTON:** It's a heritage driven - - -

**MS CHAN:** Yes, it's all heritage driven and it's totally not negotiable.

**DR BYRON:** I was just going to say, we, of course, don't have the authority or the mandate to resolve individual cases - - -

**MS CHAN:** No, of course not but this is the principle - - -

**DR BYRON:** Yes, in that sense we're interested where heritage regulations do have adverse or even perverse effects on the owners of listed heritage places.

**MS CHAN:** Well, they appear to be a little bit inconsistent when you think about them because, I mean, we've got - there is a number of signs of buildings, on heritage buildings throughout the CBD but the principle that the council uses is that it's just not on; you can't do it. We will not allow it.

**MR HINTON:** Is there any appeal process that you've tried - - -

**MS CHAN:** There is an appeal process - - -

**MR HINTON:** Is there an ombudsman, a sort of a - - -

**MS CHAN:** No, there's no ombudsman process. There is an appeal process within the council and I think that that's where people - unfortunately, you know, we could go to the Land and Environment Court also. It seems like an awfully, awfully difficult task to do when you're considering a sign and a person's right to use their premises and just trying to advertise - have the right to display their company name.

I mean even if you look at the Queen Victoria Building. I came out of Town Hall Station today and in the Queen Victoria Building every single shop has a little heritage sign that says what the shop is - it's a pharmacy or it's a newsagency - they have it. If the argument is that the sign should not be allowed because it detracts from the heritage value of the building, then we should probably take away all the signs on all the buildings and put up some signs which are more attractive in a heritage sense so that there's more uniformity, if that's the general argument.

**DR BYRON:** The regulation could have been written in a different way that said, any signage must comply with certain heritage specifications or must be sympathetic to the appearance of streetscape, et cetera.

**MS CHAN:** That's right.

**DR BYRON:** There are many ways in doing it rather than just saying a blanket prohibition, particularly if the blanket prohibition doesn't seem to be uniformly or consistently applied.

**MS CHAN:** That's right and unfortunately, that's not going to be changed by the councils because they are quite intractable in as far as their interpretation of the regulations and - - -

**MR HINTON:** So it's discretion? It's an individual officer decision?

**MS CHAN:** It is. It is and I think that that actually goes - as I was saying - it really goes to the core of the process of the way that local governments are applying their heritage regulations, and whether it be a sign or whether it be the total refurbishment or demolition or renovation of a heritage building, it's that inflexible approach to the interpretation and the usage of the building - and that then affects a commercial value of the property because, you know, I guess it would have been a lot easier if we could have just gone somewhere else where we could have put out a shingle.

**MR HINTON:** I'm not so sure how I can respond further. I'm a little puzzled by the circumstance which seems to be inconsistent, that is an inequitable arrangement whereby there are many heritage buildings in this wonderful streetscape environment of Sydney that clearly are commercially-based operations that have commercial signage.

**MS CHAN:** That's right.

**MR HINTON:** Some or some may not be empathetic within the heritage nature of the building. That would be judgmental, I suspect, and that's why I'm a little puzzled that on the basis of the information available to you this afternoon it suggests there is some inconsistency in the treatment, which is why I was using the word "discretion" as opposed to categorical.

**DR BYRON:** I don't think there is anything we can or should do to attempt to find an immediate solution for you but it is a very interesting example which you've brought to our attention which we might try and follow up to get more background.

**MR HINTON:** Are you going to table your - - -

**MS CHAN:** Yes, I will. I will table it. We didn't come here today for you to solve the problem for us.

**DR BYRON:** Yes, we can't adjudicate a - - -

**MS CHAN:** But it is a matter of process which needs to be looked at, and I think it goes to the very core of the commercial viability and interests of people investing in heritage buildings.

**MR TEHRANI:** May I add that the owners of the other seven floors all agreed because of the nature of my business, they have agreed that we put a sign out. That was why we filled the application and got the strata manager, the stamp and signature and approval before we submitting to council. Therefore I feel that the owner, that was the case that Ms Chan was explaining, that the owner of the building, heritage building, is agreeable, what because of restriction on the other side some businesses will suffer. That is the way that this cooperation should be there somehow to be of benefit for both businesses and as well as keeping the heritage side of the town.

**DR BYRON:** We've had a few other examples in other cities where businesses trying to operate out of a historical building see themselves as significantly disadvantaged compared to similar businesses who are not operating out of a historic building. That obviously reduces the incentive to own and occupy them.

**MS CHAN:** Absolutely.

**DR BYRON:** And then if the historical buildings are not owned and occupied then who is going to maintain and look after them, pay the rates, et cetera.

**MS CHAN:** Exactly, and the costs that are involved in renovating the actual

offices, you know, Mr Tehrani spent an enormous amount of money, I don't know, a million dollars just on renovating to make sure that it met all the requirements of the heritage characteristics, and that's fine, there was no arguments about that, but it would be very nice if you would be able to put a sign up.

**DR BYRON:** Thank you both very much for taking the time and trouble to come here today.

**MR TEHRANI:** Thank you.

**MS CHAN:** Thank you very much for the opportunity to address.

**DR BYRON:** It's very interesting. We look forward to getting the written documentation.

**MS CHAN:** I will table that now, thank you.

**MR TEHRANI:** Thank you so much.

**DR BYRON:** Ms Clark? Thank you very much for agreeing to participate. If you could just introduce yourself for the transcript and tell us why you're here and how you can help us we'd be very grateful. Thank you.

**MS CLARK:** Thank you very much indeed. My name is Kate Clark. I currently work as a deputy director of policy and research at the Heritage Lottery Fund in England. I grew up in Paddington. I've worked in heritage for the last 20 years in England. I'm not formally representing my own organisation or giving the opinions of my organisation but I don't know if it would be helpful to just share some of the recent experiences that we've had in England with similar sorts of issues and some of the things that have been going on in heritage, drawing probably on my own opinions rather than those of my organisation.

**DR BYRON:** Please, thank you.

**MS CLARK:** Last Wednesday and Thursday I organised a conference in Britain where we talked about the public value of heritage. Something like 400 people came. I had three government ministers there, and what we focussed on is what heritage can bring for the public and why the public care about heritage. It was an important event because I think it reminded heritage professionals that what they're doing is on behalf of the public and because the public values places. But it was also an opportunity for the public to tell us about what they cared about, and we had ordinary members of the public up on stage talking to heritage professionals about the passion and the joy and involvement that they've had in caring for heritage.

So that was quite an important conference, and I think it gave us some important messages for all of us and how we look after heritage. Looking at the range of issues that is on the table here - I probably raise a few points. The first of which is to not forget the breadth of heritage. I know that you're focussing on individual buildings and individual private owners, but heritage is very much part of the public realm. It's part of the public places where we live and work and enjoy ourselves. The decisions that are taken on individual properties are about reflecting that wider public interest. It's quite important not to lose sight of that.

The basis of heritage is the fact that people value it. What makes a building part of the heritage or a pen or an object or a park or a place, it's not whether it's a building, it's the fact that there is a value in that. Australia has actually, I think, taken the lead internationally by putting value at the centre of heritage very explicitly and in a very transparent way. I know that - -

**DR BYRON:** Through the Burra Charter.

**MS CLARK:** Yes. I know that it can feel difficult, it can feel awkward, but it does lead to a degree of transparency that is not always there in other heritage regimes.

By being transparent you will open yourselves to criticism, but I think that's important, especially if as a heritage organisation you're charged with looking after what people value. So for all its difficulties I think you shouldn't lose sight of the benefit of what Australia has set out to achieve and the importance of that, whilst recognising that of course it's difficult.

What we've been doing in England recently is focussing much more on the benefits that heritage conservation can deliver. We've always as professionals been quite good at looking at the significance and value of places but the actual benefits are something that we are beginning to develop a lot more evidence on and becoming more important. We're beginning to look at the economic benefits of heritage regeneration, of regeneration schemes in run-down British towns that are based on looking after heritage buildings. We've shown what they can deliver in terms of additional investment, in terms of additional floor space, in terms of commercial confidence, and also in terms of the confidence that individuals can gain from living in a place. We've done a lot of surveys that have shown that by investing in historic buildings people change the view of the area where they live in.

So the economic benefits of heritage are something that we're looking at, and I think we're also beginning to pick up that heritage preservation can, dollar for dollar, pound for pound, generate more local investment, by using local materials and local employment, than, for example, new construction. This is an evidence base that we're beginning to get together. It's new, but it is actually helpful in making the case for heritage conservation.

We're also beginning to get to grips with some of the social benefits of heritage. In the UK we've put a lot of work into, for example, local historic parks, which generate health benefits, in terms of exercise, social benefits, in terms of places to engage to just enjoy yourself, and we're discovering that these can actually bring a lot to a local community. So it's important not to lose sight of the social benefits of heritage.

And there are, of course, environmental benefits. One of the biggest producers of waste in the UK is new construction and demolition. It's 24 per cent, I think, of the waste produced. Reusing historic buildings is actually quite a significant way of reducing construction waste, as well as the embodied energy and other benefits in actually working with existing buildings.

So we're beginning to get that evidence base together and each year we now produce something called the Heritage Accounts, in England, which is an annual compilation of the data and research that we've got on heritage resources, how they're protected, the condition they're in and the sort of research we're beginning to get on the impact and benefits of what we're doing. It's new, it's difficult, and I won't say that it's perfect, but I notice your recommendations about beginning to look at the

costs of heritage conservation. I would stress that you should also look at the impact and benefits of that as widely as possible.

I work for the Heritage Lottery Fund and what we've been able to do is to refinance an element of lottery funding towards heritage projects. Because we're a fund and not a statutory agency, we've been able to take a fairly radical approach to looking after the heritage. We don't just fund people to fix the roofs on their buildings. We absolutely insist that when public money is given to a heritage project there has got to be access, education and a chance for people to get involved. Now, that's been quite difficult for some heritage people, but we think in doing that we've really revolutionised the whole public attitude to heritage.

We've been able to fund a lot of smaller projects, a lot of community groups, we've been able to fund projects that have had people out involved in archaeological excavations, doing surveys, learning more about places. We've been able to fund projects that have helped increase public access to information and knowledge about the heritage, which I think is doing something to offset the kind of concerns that I've heard expressed here and the lack of understanding of the benefits of what heritage can do.

We've also discovered that a small amount of support for a heritage regeneration scheme in a historic area can generate a disproportionate number of benefits. Quite often, heritage regeneration will start off in an area that's run-down, people have no confidence in. A bit of heritage money changes perceptions and before you know it, actually the private sector is beginning to see the value of the place and beginning to invest in it and a place will turn around. So a small amount of money and a small amount of heritage work can be a catalyst for wider regeneration.

We've also begun to evaluate some of those programs and as part of our evaluation have actually seen the benefits of good heritage conservation standards. They always feel awkward, and people say, well, it costs a little bit more money, but the benefits of quality conservation are something that do make a difference to the long-term outcomes of heritage regeneration.

In relation to what you discussed today, there's a few things over which we've had some experience. We are currently looking at making greater use of management agreements in heritage protection, but we're doing it mainly in the context of large commercial buildings or estates, where there is quite often a string of heritage consent applications and where those agreements might actually reduce the number of applications and the requirement for repeat applications. We're not looking at those on individual private houses because I think the problem of resources will be too great.

There is also in the UK the possibility of a certificate of immunity from listing,

so an individual who is considering perhaps purchasing or acquiring a heritage property can apply for a certificate of immunity. That's another way of providing, say, a commercial developer with that degree of confidence over what's - - -

**DR BYRON:** That exists in one state only in Australia.

**MS CLARK:** Right. Okay. But that's an example which we use. The other thing that we make use of - and I'm not an expert of the system here - is conservation area appraisals, which are designed to give developers and home owners a greater degree of certainty about the value of zones or historic areas, so that they can look at whether applications for development or alteration are in accordance with an area-wide approach, rather than an individual building approach. Those have become, I think, or are about to become, a requirement on local authorities under the best value regime in the UK, because that's seen as a very important way of local authorities ensuring a degree of transparency on what you can and cannot do in an area, when it might be difficult to do that on a building by building basis.

We would very much like to have greater tax incentives for conservation in the UK. There are some for private owners under capital transfer tax. Unfortunately, in the UK there's an inequity in VAT, value added tax, which is charged on the maintenance of historic buildings and not on new construction. That, for us, is a major problem. We've been fighting it in Europe and it's something we would dearly like to see reversed. It would be far better, as far as we're concerned, to put the incentive on maintenance.

The other thing that we've been recently looking at that was raised here was the question of skills in heritage. We've done some research and we have identified that there are significant shortages in heritage skills, not just as we've heard earlier today in the craft skills needed to look after historic buildings, but also amongst local authorities and others, and the skills needed to actually manage the system.

Now, because we have lottery funding, we've been able to put in place a series of heritage bursaries to try and address skills shortages. We're also working with the construction industry training boards and people like that, to try and address maintenance refurbishment skills because almost half of the UK's £56 billion construction industry is based on the repair and care of existing buildings, rather than new build. We feel that by linking up with the construction industry on that, we might be able to generate the understanding of the value of heritage skills, which at the moment is seen as a minority and not a majority interest.

English Heritage have also been looking at the skills that local authorities have in order to help them manage the system because often conservation officers are junior, under-resourced, and don't necessarily carry weight in their own little authorities. Helping local authorities to have the skills to implement the system

consistently is quite important. We've also introduced a system of heritage champions in local authorities amongst council members, to try and rise the profile and understanding of heritage which is often misunderstood within the local authority process.

The other thing that might be of interest to you is we've been working to integrate natural and cultural heritage more closely. They are no longer called agricultural subsidy regimes, but the support systems available for farmers and in rural areas, by slight changes in the rules, funding can also be used for things like dry-stone walls, historic barns, and a lot of the cultural features that are on so many rural properties.

In the annual heritage accounts this year, it quotes an evaluation that's recently been done on the impact of that funding and the benefits of that funding to rural areas. Already it's showing increases in local craft jobs through diverting some of that money into historic buildings. In fact, the countryside agency estimates that in the UK at least, those kind of rural heritage craft skills may well become more important than agriculture in Britain over the next 20 or 30 years because that's in fact what's happening in the countryside.

So those are some of the things that we've been doing. I can answer any specific questions. I know you are running out of time and probably your blood sugar is low, but I think the main point that I'd leave you with is not to lose sight of the wider public benefits of the heritage, and the potential of heritage to engage people to views, to add new confidence to local communities, to deliver environmental, social and economic benefits.

To remind you of what is possibly one of my favourite books, it's produced by an Australian author called Peter Read. It's called *Returning to Nothing - The Meaning of Lost Places*. It's a series of interviews with communities who have lost places through disasters, poor decisions, and it just reminds us that heritage is one of those things that you are awfully inclined to take for granted when you've got it, but once lost it's actually very difficult to replace. Thank you.

**DR BYRON:** Thank you very much. I'm particularly interested in the way the Heritage Lottery Fund operates and what you do because in the first round of public hearings in this inquiry, a number of people said that the only thing wrong with this system is that we need more money, and a lottery would generate a lot more money, so why don't we have a heritage lottery like the UK has and that will just supply a substantial amount of new resources, and all the things that we've wanted to do in terms of the identification of documentation of heritage places; in terms of physical restoration management; in terms of the celebration awareness. We could do all that if only there was a very very large bucket of money.

I guess we're suggesting that given the increasing number of places being identified every day and the likelihood that that's going to grow, even a very large bucket of money wouldn't ease the need to prioritise in some sense about how that money is spent. So could you tell us just a little bit more about how the Heritage Lottery Fund prioritises, in terms of what to fund and how.

**MS CLARK:** Okay. The first thing is that when the Heritage Lottery Fund was set up in 1994, it was very explicitly set up on the basis, as with the other lottery distributors, that this funding was additional to and should not seek to replace existing systems of support. That's been quite an important principle for us. It's a difficult one, but it's important.

The second important point is that our funding cannot make up for a regulatory system that does not function. In other words, lottery funding is an additional bonus, but unless the system of heritage protection and control works, we can't necessarily pay individuals not to demolish their buildings. We have a number of policy directions that are set by government, that govern how we operate. We cannot operate for private gain and therefore most of our funding goes not for profit organisations, voluntary sector organisations, community groups and not private individuals.

We can support private individuals, but only through schemes usually operated by a local authority. In terms of priority, we've done a lot of consultation in what we do and how we operate. We've been through a number of strategic plans, and we are currently consulting through this document on our next strategic plan, which will start from after 2008. We feel very strongly that because our funding comes from individuals who play the lottery, we need to reflect a very wide public engagement in that. We need to spread the money equitably across the country, and we are very conscious of not wanting to focus it, for example, on London and the great museums, but to be very broad in how we spend our money.

We also try to distribute it in areas of deprivation; areas that might not see themselves as having a heritage. Four out of five of our grants go to smaller awards which by us is defined as under £50,000. These are literally community groups with a very light touch. We tend to be very open about what we fund and put the emphasis on the applicant to come to us. We don't define heritage; we don't say what you can and cannot fund. What we fund is what people tell us is important to them.

We are much much tougher with our big awards. We put them through the mill, especially if you're coming to us for £5 million plus. We insist that applicants give us a business plan. Our funding is time-limited, so we've got to be sure that that investment is actually protected in the long run. We also insist that our applicants engage local communities, talk to people about what they're doing, and provide access and learning.

We target some of our funding towards specific areas of need, so we have targeted programs for places of worship, for public parks - which has been perhaps our most successful and popular program, and we also target funding for young people, because young people are really a difficult audience for heritage, and we think that we need to do more about young people. But the rest of our funding goes out through grants of over and under 50K, and we're very, very broad in what we do.

**DR BYRON:** I probably have hundreds more questions but I can't think of them at the moment. Is there any chance that we could give a copy of those or if you can tell us where we can obtain copies of those reports.

**MS CLARK:** Because I've only got one set with me, if it's okay if I organise for some to be posted from the UK for you, would that be helpful?

**DR BYRON:** That would be fabulous. We've tried to access as much as we can through the web - - -

**MS CLARK:** Sure.

**DR BYRON:** - - - and through our own networks, not only in the UK, but in other parts of Europe, and in the US and Canada, and New Zealand and so on, but I don't know that we've seen those yet, so - - -

**MS CLARK:** Okay. Right, this was my selection of the things that I felt might be most useful to you.

**MR HINTON:** Thanks very much.

**MS CLARK:** Thank you very much for hearing me.

**DR BYRON:** I think you're our most travelled visitor so far.

**DR BYRON:** I said at the opening if anybody wanted to add something to the transcript, to the public record, there's an opportunity.

**MR ALLEN:** I wonder if I could - - -

**DR BYRON:** Hang on. We can't hear you because you're not on the microphone.

**MR ALLEN:** Yes, okay. If you could just stick around a sec. I just want to ask a question. Just a simple one, but - Darryl Allen speaking here. It's just a question - I came in today because I was making contact with Jennifer over there about some issues.

I wonder if you addressed the issue of the advantage of tourism in terms of why - contribution heritage makes to tourism because in Australia we've set up a number of tourist bureaux around the countryside. We haven't got the richness of heritage which you have in Europe and England but what we have is what we have, and it's a bit limited, but it's not really promoted as much. It's more promoted about the type of accommodation that's available, the swimming activities and sport, but the heritage has a fairly low key promotion to some extent, and although it's pretty in England, but I'm just wondering if that's a value that you - a social value, but how much value is that contributing.

**DR BYRON:** Why don't you have the conversation outside, Darryl?

**MR ALLEN:** I thought it might be of benefit to the commission, actually, to you people as well to get that insight, but if it's - - -

**DR BYRON:** Yes, well - - -

**MR ALLEN:** It's just, because at a public forum we don't get the opportunity to question the people that are making contributions - - -

**MR HINTON:** It's a public hearing, not a public meeting, and there's - - -

**MR ALLEN:** Yes, I know, and - - -

**MR HINTON:** - - - an important difference.

**MR ALLEN:** - - - it just is a shame because - - -

**MR HINTON:** Otherwise it becomes chaotic.

**MR ALLEN:** I know, but it could expand, because when a lot of people get together and vibrate, things happen.

**MR HINTON:** Yes.

**MR ALLEN:** But I think they're missing that little bit, but anyway - - -

**MR HINTON:** We had a number of submissions on that issue, so - - -

**MR ALLEN:** Have you? I don't want to waste your time then.

**MR HINTON:** - - - it's not as if it's unfocused on, in fact. There is - the issue of tourism has been a serious part of the inquiry as well.

**MR ALLEN:** Thank you very much.

**DR BYRON:** Thank you. Anyone else? Going once, going twice. Thank you very much, ladies and gentlemen, for your participation here today. I can now adjourn these hearings and we'll resume on Friday morning in Brisbane. Thank you very much.

AT 1.41 PM THE INQUIRY WAS ADJOURNED UNTIL  
FRIDAY, 3 FEBRUARY 2006

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