

**REPORT ON PROCEEDINGS BEFORE**

**STANDING COMMITTEE ON SOCIAL ISSUES**

**REVIEW OF THE HERITAGE ACT 1977**

**CORRECTED**

**Virtual hearing via videoconference on Friday 13 August 2021**

**The Committee met at 10:00.**

**PRESENT**

The Hon. Peter Poulos (Chair)  
The Hon. Mark Buttigieg (Deputy Chair)  
The Hon. Ben Franklin  
The Hon. Shayne Mallard  
The Hon. Taylor Martin  
Reverend the Hon. Fred Nile  
The Hon. Peter Primrose  
The Hon. Walt Secord  
Mr David Shoebridge



**The CHAIR:** Welcome to the second virtual hearing of the inquiry into the review of the Heritage Act 1977. Before I commence I acknowledge the Gadigal people of the Eora nation, who are the traditional custodians of this land. I also pay respect to Elders past, present and emerging, and extend that respect to other Aboriginal people present. Today's hearing is being conducted virtually. This enables the work of the Committee to continue during the COVID-19 pandemic without compromising the health and safety of members, witnesses and staff. As we break new ground with the technology, we ask for everyone's patience through any technical difficulties we may encounter today. If participants lose their internet connection and are disconnected from the virtual hearing they are asked to rejoin the hearing by using the same link as provided by the Committee secretariat.

Today we will be hearing from a range of stakeholders, including the Heritage Council of NSW, the National Trust of Australia, professional associations and industry advocacy groups. Before we commence, I will make some brief comments about the procedures for today's hearing. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the virtual hearing. I therefore urge witnesses to be careful about comments you may make to the media or to others after you complete your evidence. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In those circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. Today's proceedings are being streamed live and a transcript will be placed on the Committee's website once it becomes available.

Finally, a few notes on virtual hearing etiquette to minimise disruptions and assist our Hansard reporters. Can I ask Committee members to clearly identify whom questions are directed to and could I ask everyone to please state their name when they begin speaking. Could everyone please mute their microphones when they are not speaking. Please remember to turn your microphones back on when you are getting ready to speak. If you start speaking whilst muted, will you start your question or answer again so it can be recorded in the transcript. Members and witnesses should avoid speaking over each other, so we can all be heard clearly. Also to assist Hansard, I remind members and witnesses to speak directly into the microphone and avoid making comments when your head is turned away.

**FRANK RICHARD HOWARTH**, Chair, Heritage Council of NSW, affirmed and examined

**DILLON KOMBUMERRI**, Chair, Approvals Committee, Heritage Council of NSW, affirmed and examined

**The CHAIR:** Would either of you like to commence by making a short statement?

**Mr HOWARTH:** Thank you, Mr Chair. It is Frank Howarth here and I would like to do so. First, may I acknowledge that I am on the land of the Wodiwodi people of the Dharawal nation on the South Coast and pay my respects to their Elders past, present and emerging. Chair, yesterday we submitted to the secretariat a brief supplementary submission from the Heritage Council. Rather than read that out, I would ask if the Committee would accept that as a supplementary submission and I will just make some brief, less than two-minute remarks about it, if that is acceptable to the Committee.

Thank you, Chair, and thank you, Committee. The first point that the Heritage Council wants to make is that any legislation around heritage in New South Wales should be about three things: It should be about celebration, conservation and protection of heritage. It is most important, I think, that we remember that and that heritage can be tangible and intangible, large and small. The second point is that a number of submissions we note to this hearing of the Committee have suggested that the Heritage Act is adequate and needs no change. The Council's view is it is a little bit like a 1970s car: It will get you around but it is neither as environmentally sustainable nor as safe as something that is currently available, and that there are a number of deficiencies with the current Act, the first and most significant of which is that the Act is effectively silent on Aboriginal cultural heritage and assumes it is managed by provisions of the National Parks and Wildlife Act, in particular.

Most importantly, the Council feels that there are two principles that certainly the Council accepts and believes should be part of any Aboriginal cultural heritage framework, and that is that Aboriginal cultural heritage should be determined by Aboriginal people; they are the primary and should be the determinants of Aboriginal cultural heritage. The second principle is that the people of New South Wales are all part of one framework of heritage that is shared and, in the light of that, the council believes it would be better if there was one legal heritage framework, one Heritage Act, that also embodied that principle of Aboriginal self-determination.

The second key point to make is that the current heritage system works as a fairly blunt instrument. Once something is determined to be of State heritage and a curtilage is drawn around it, the Act assumes that everything inside it is of equal significance unless there is a specific exemption to that. That creates significant problems for heritage owners and the Council believes that it is certainly worth examining the potential of reversing that presumption so that, instead, the presumption is that only those things that are determined to be of significance inside the curtilage are protected and regulated and that other areas are left free for owners to do with as they see reasonably fit and within planning laws.

Composition of the Heritage Council: We believe a mix of experts and community members who share a passion for heritage is the best way to go and, in particular, we believe that there should be at least two Aboriginal members of the Council—one man and one woman—to better reflect the nature of Aboriginal cultural heritage. Council also believes that the current prevention of Council employing its own staff is not working. Council feels that, like other independent regulatory bodies, similar to, say, the Independent Pricing and Regulatory Tribunal [IPART] or even ICAC, the Council should have its own staff to ensure that it is able to provide free and fair advice to the Minister as and when needed. We support a more refined category system with four parts. Most important, the highest level of that—if I can put it that way—the most significant buildings, like in the English, Scottish and Irish heritage systems, should be singled out. Particularly we believe that those few places that would be in that category, such as the Opera House, should not have that significance turned off by other legislation, as is currently the system.

We believe there should be then two other tiers: one that is designed mainly for single dwellings, and the second that is designed for precincts and landscapes. We support a third celebratory type of listing that does not have the regulatory heaviness and overlay of the other categories, and the Government's recently announced blue plaque system would be a good example of that. We recognise that listing is onerous and financially disadvantageous to a number of owners and we believe that there should be an examination of a range of incentives that should offset that. Finally, we believe that there should be a more effective compliance and enforcement framework that goes alongside the carrots, if I can put it that way, and that there are models of this that exist in the environment area, such as the ability to issue penalty infringement notices.

In summary, the Council believes that we do need to update the Heritage Act to better reflect the twenty-first century, particularly around Aboriginal cultural heritage, and to better enable the people of New South Wales to celebrate, conserve and protect their heritage in all its forms. Thank you, Chair.

**The CHAIR:** Thank you, Mr Howarth. Members, I understand that the supplementary submission will be emailed once again if you do not have it before you. Mr Kombumerri, would you like to also make a short statement please?

**Mr KOMBUMERRI:** Thank you, Chair, only that I would like to pay respects also to Aboriginal Elders past, present and emerging and acknowledge that I am sitting on Wangal land today. Thank you, Chair.

**The CHAIR:** Thank you very much. I will now invite our members to commence with questions. I will go first to the Hon. Walt Secord.

**The Hon. WALT SECORD:** Thank you, Mr Chair. For the benefit of Hansard, it is Walt Secord speaking and my first question will go to Mr Frank Howarth. Thank you for your submission and your supplementary submission; they were very forthright and direct, thank you. In your submission on page 6 you refer to your body as having "conflicts of interest" and being the subject of "political priorities". How does that play out in your interaction with the Minister and the Government?

**Mr HOWARTH:** Thank you, Mr Secord. I can better characterise that as the Council believes that the lack of an independent secretariat raises the risk of a perceived conflict of interest and I have to state at this point that in my term as the chair I do not think we have come across a situation of actual conflict of interest. The way it plays out is that in any situation, whether it is the Heritage Council or any other sort of regulatory authority or board, if the same body is advising the Council as is advising, say, a Minister on a particular political priority that relates to that, there could be a perceived conflict of interest. I can use the analogy that if IPART, for instance, which regulates, amongst others, transport fares, was also being serviced by Transport for NSW staff, which has a vested interest in particular outcomes on that, then a perception of conflict of interest could arise. That is our concern—that an independent organisation or an independent regulatory authority such as the Council should have independent staff.

**The Hon. WALT SECORD:** May I ask a follow-up then? How does the Council interact with the heritage Minister? Do you provide unsolicited advice or does he seek advice and opinion from your body?

**Mr HOWARTH:** Thank you, Mr Secord. In effect, both. If the Council feels that there is advice we should give we will give it, either directly to the Minister or through his staff. Again, an example would be the discussions around a potential new Heritage Act, that Council was formally asked by the Minister to provide advice on the green paper, which we did, but there are many occasions when we will advise the Minister of an issue that we believe is emerging that he should be aware of. That is our primary role.

**The Hon. WALT SECORD:** Could I take you to a follow-up to that? Have you provided any evidence to the Minister on Willow Grove at Parramatta?

**Mr HOWARTH:** No, Mr Secord, we have not. Willow Grove has not formally come before the Heritage Council for any particular consideration.

**The Hon. WALT SECORD:** Have you provided any unsolicited advice to the Government on Willow Grove?

**Mr HOWARTH:** No, we have not. As I said, it is not a matter for discussion by or consideration by the Heritage Council.

**The Hon. WALT SECORD:** I thought that in fact it would be something that your organisation, your body, would take an interest in.

**Mr HOWARTH:** There is a number of ways that a place can come before the Heritage Council. The most common way would be a nomination for State heritage listing. To the best of my knowledge, Willow Grove has never been nominated for State heritage listing, so it has not come that way. To the best of my knowledge, the Minister has certainly not formally asked for any advice. There are many locally listed buildings that come and go through local listing that the Council does not see. In fact, the vast bulk of heritage listings in New South Wales are local listings and I believe Willow Grove was locally listed. That would not normally come to the Council.

**The Hon. WALT SECORD:** A follow-up to that: Would you not think that public interest and national coverage and national interest and potential green bans placed on the site would put it in your orbit, so to speak?

**Mr HOWARTH:** Mr Secord, there is nothing in the current Heritage Act that would suggest we should take a particular interest in Willow Grove and, as I said, the Minister has not sought the Council's advice on Willow Grove, to the best of my knowledge.

**The Hon. WALT SECORD:** What is your view on Willow Grove?

**Mr HOWARTH:** I do not have a view on Willow Grove because it is not a matter that has come to the Council. The Council has no particular view.

**The Hon. SHAYNE MALLARD:** Point of order—

**The CHAIR:** There is a point of order from Mr Mallard.

**The Hon. SHAYNE MALLARD:** It is difficult to do points of order in this virtual process, but clearly Mr Secord is well outside the terms of reference of the inquiry by focusing on one particular building. We are reviewing the Act. The witness is an expert on the overall Heritage Act and I think we have given him some scope to explore that, but he is taking the inquiry into an area which we do not need to go into.

**The Hon. WALT SECORD:** I remind the honourable member that the last point of the terms of reference refers to "other matters" and this is clearly an other matter and this is clearly within the purview of this Committee.

**The Hon. SHAYNE MALLARD:** This is not an estimates inquiry, Walt. You save it for estimates and get your media grab that way.

**The CHAIR:** Mr Shoebridge has raised a point of order.

**Mr DAVID SHOEBRIDGE:** Clearly it is open to explore any problems with the current Heritage Act through a case study. I think that is clearly within order. We have got to review how the current Heritage Act is working to see how to reform it. I would have thought unquestionably Mr Secord is in order.

**The Hon. MARK BUTTIGIEG:** I fully agree with Mr Shoebridge. This is a case example which may highlight deficiencies in the current Act.

**The Hon. WALT SECORD:** Mr Chair, may I in fact point out the first paragraph on page 2 of the Council's submission? They talk about the Heritage Act being born "in the era of bulldozers at midnight". That is what we have occurring right now at Willow Grove. So in fact I think this is very, very, very important and I would expect that the Heritage Council, which is striving to be an independent body and be at arm's length from the Government in its submission asked for that, would have a view on Willow Grove.

**The CHAIR:** Thank you, Mr Secord, Mr Shoebridge and Mr Mallard. Could I invite Committee members to be mindful of the terms of reference? We do have limited time. It is useful to have witnesses appearing before the Committee. Mr Howarth has also extended us the courtesy of providing a supplementary submission, so there is scope to focus on those matters separate to one particular issue. Mr Secord, did you have further questions to continue?

**The Hon. WALT SECORD:** If the witness is declining to answer questions about Willow Grove, he talks about the different levels of heritage and in his opening statement and in his submission he referred to, I think, four levels or four tiers. On these areas of heritage, does he see that Willow Grove is a minor heritage level tier matter?

**Mr HOWARTH:** Thank you, Mr Secord. I would not use "minor"; it is your word. My understanding is Willow Grove was at least locally listed. The Council does not believe there is any need to change the sense of local heritage listing—that is heritage determined by local communities. So we do not have a suggested change to that category.

**The Hon. WALT SECORD:** Do you have a view then on dismantling and removing a locally listed heritage item and relocating it to another location?

**Mr HOWARTH:** Mr Secord, you asked me almost the identical question in the Powerhouse Museum hearings, I think, and I will answer it now the way I answered it then. I am not going to talk about specifics, but I will say that in general terms the dismantling and relocating of a heritage building reduces its significance, both of the building and potentially of the place it is located to. That is a general principle of heritage.

**The Hon. WALT SECORD:** Do you not think that if you are seeking an independent statutory body as the Heritage Council having it arm's length of government that you should begin to offer robust opinions on significant matters of heritage like Willow Grove?

**Mr HOWARTH:** It is a value judgement, I guess, Mr Secord, of what significant matters of heritage constitute. The Council believes, for instance, a significant matter of heritage is the fairly woeful state of recognition of Aboriginal cultural heritage. Therefore, we devote quite a substantial amount of time to considering that and have provided advice to the Minister in various ways around that. As I said, the Council does not believe that the local heritage listing system requires substantial change.

**The Hon. WALT SECORD:** I thank you for your submission on Aboriginal heritage and I do take your points and I do agree with your conclusions. Can I take you to another aspect? You refer to, I think on page 4, migrant heritage being the least protected. What were you referring to when you made that submission?

**Mr HOWARTH:** If I can answer that slightly the other way around. The State Heritage Register is dominated by what I might and very generally call an Anglo-Saxon sort of dominant view of heritage—a large number of railway buildings and sandstone churches—and communities that have arrived more recently and their heritage is under-represented. We have started to significantly address that. We advised the Minister a while ago, and he accepted our advice, to list two Sikh temples in Woolgoolga on the North Coast of New South Wales. My point about a 1970s vehicle: We listed two buildings which were really recognising the cultural significance of Sikhism to that community, which is a less tangible sense, and the current Act does not really cope with that. So our best way to achieve that is to list the two Sikh temples. So we have been seeking—sorry, my apologies for the pun—we have been looking to find places of significance to migrant communities and move more listings that way if we possibly can.

**The Hon. WALT SECORD:** I understand recently the Minister actually made reference to a desire to include more migrants in colonial areas, such as the listing of the Goulburn Jewish Cemetery was one that I saw that he referred to.

**The CHAIR:** Mr Secord, we are just mindful of time we have allocated to our crossbench friends.

**The Hon. WALT SECORD:** Thank you, Mr Chair.

**The CHAIR:** Mr Shoebridge or Reverend Nile, do you have a question? I recognise Mr Shoebridge in the first instance.

**Mr DAVID SHOEBRIDGE:** No, let Fred go first. You can go first, Fred.

**Reverend the Hon. FRED NILE:** This issue has been raised with me. Aboriginal communities have asked for a building to be earmarked as an Aboriginal war memorial museum. They need a place where they can exhibit a number of moveable heritage items that relate to the Aboriginal wars and massacres. The Sydney Living Museums has operated the Endangered Houses Fund since 2005. The fund purchases properties, carries out appropriate conservation work and places suitable protections, such as heritage agreements, on the property. Could one of these restored heritage properties become an Aboriginal war memorial museum?

**Mr HOWARTH:** Thank you, Mr Nile. I suspect that is slightly outside the purview of the Heritage Council per se and is probably better addressed to Create NSW and/or the Minister directly. The Council certainly believes that the storage and recognition of Aboriginal cultural heritage materials could and should be done better. I think that it is one of the things that has been a slight anomaly since the 1970s. I believe in that era it was not recognised; it was not even generally accepted that every square centimetre of New South Wales is Aboriginal land and therefore there will be traces of Aboriginal heritage everywhere. Where that heritage should be stored—moveable heritage—and recognised is a significant issue; I think the Council would accept that. But the matter of whether something should be repurposed as a museum probably fits better with the Minister and his role in the arts and Create NSW area.

**The CHAIR:** Reverend Nile, did you have a follow-up question?

**Reverend the Hon. FRED NILE:** Yes. Does the New South Wales Heritage Council have a specific department that oversees Aboriginal heritage listings?

**Mr HOWARTH:** The short answer is no. The Council does not, as I mentioned earlier, have its own staff. Heritage NSW, however, I understand has taken over all of the staff that were formerly within National Parks and Wildlife who deal with Aboriginal cultural heritage matters. My understanding is now there is one part of the Department of Premier and Cabinet, Heritage NSW, that handles all Aboriginal cultural heritage matters, whether they derive from powers in the National Parks and Wildlife Act or, indeed, the Heritage Act.

**Reverend the Hon. FRED NILE:** Thank you. That is all my questions.

**The CHAIR:** Thank you, Reverend Nile. Mr Shoebridge please.

**Mr DAVID SHOEBRIDGE:** Thanks, Chair. Thanks, Mr Howarth, and thanks for the submission from both of you for the Committee. Could I start with asking you do you think there is anything missing from the I think they are described as three key policy themes that the Government has to guide its heritage review? They are: making heritage easy, putting heritage to work and making heritage relevant. I will just be very clear where I am coming from on this: We have had multiple submissions that say, "Why isn't the first guiding theme protecting heritage?" Do you have any views?

**Mr HOWARTH:** There could be a very long answer to that, Mr Shoebridge. I think we, the Heritage Council, would accept there are issues in all three areas. If I can answer that slightly differently. I think the current system and its supporting staff puts a great deal of effort around the regulatory/protecting end, and that protection, as we set out in our submission and I mentioned earlier, is in some senses a fairly blunt instrument but it is also a blunt instrument without adequate penalties, in our view, for people who do not do the right thing with heritage. The other principles around heritage I think is that we believe that any heritage Act, like in some other places, might best start with a recital of principles around heritage, and that is the importance of heritage to communities in so many ways—either directly economically through things like heritage tourism, or the sense of community wellbeing, which is palpable if you go to a place like Tenterfield and walk around and talk to people, you see that there.

**Mr DAVID SHOEBRIDGE:** Could you focus on those three guiding themes that the Government has put forward: making heritage easy, putting heritage to work, making heritage relevant? It does seem to me that most of what you are putting now, which I would firmly agree with, at best fits obliquely into those three themes.

**Mr HOWARTH:** Okay, if I can take it specifically. Making heritage easy, we believe there are ways to simplify the listing process substantially and we believe a process more akin to, that starts with, an expression of interest so that applicants do not have to submit a huge amount of work only to find that something is not significant—or indeed, as happens in a surprisingly large number of cases, is already listed—so that the application process can be simplified. The approvals process whereby something is listed and is worked on, through Mr Kombumerri's leadership we have embarked on a system that is much more about working with proponents to simplify the approvals process rather than a very direct regulatory process.

Making heritage work, I think it is recognising that heritage can be, if done well, a very good economic driver. And relevant, heritage has got to be meaningful to everyone and I think systems that are celebratory, like the blue plaque system, go some way to making heritage more directly relevant to community members.

**Mr DAVID SHOEBRIDGE:** Mr Howarth, you are pushing against an open door that each of these three things probably have importance. But what I am asking you is: Is it missing what should be the central plank—the central pillar—for heritage reforms, which is protecting heritage? It seems extraordinary to me that not one of the guiding themes is about protecting heritage. Does the Heritage Council have a view about this?

**Mr HOWARTH:** The Heritage Council, I guess, has set out its view pretty well in our initial and then supplementary submission. We base our view on those three points: celebrate, conserve and protect—and I emphasise the word "protect", which is the regulatory part of the current Heritage Act, and that regulatory system has got to be there and, in fact, we argue for beefing up the compliance side of the regulatory system. So I am not entirely sure what you are getting at in that respect. The Council is certainly not advocating any lesser approach to protection.

**Mr DAVID SHOEBRIDGE:** Mr Howarth, it would never cross my mind that the Heritage Council would be asking for less protections. What I am suggesting to you is conserve and protect, being two of the three pillars you put forward, are not found expressly in the three pillars the Government puts forward, and I am asking you whether or not you think the three pillars that the Government puts forward are adequate guidance for a review of the Heritage Act, given they do not include two of your three key elements, which is conserve and protect.

**Mr HOWARTH:** Mr Shoebridge, it is not the council's wish nor my role to provide a view on what the Government does or does not put forward. We provide advice to the Government, and we have, and it includes significant protection. As you will have noted, our submission is not framed as a direct response to the Green Paper's questions; it is framed more as a more holistic view, we hope, of how heritage should be treated, which again contains a significant amount of protection. I am sure the Minister, Don Harwin, and the Government will take that on board, or at least consider that.

**Mr DAVID SHOEBRIDGE:** One of the issues you raise in your submission is the conflict of interest you have where you rely upon the same staff for providing you with advice and guidance in terms of protecting heritage and performing your statutory function, as the Government relies upon sometimes for some quite radical changes to heritage items. I put that conflict of interest issue to the Minister and he denied there was a problem there; he rejected the idea that there was a conflict of interest which compromised the work of the Heritage Council. Can you give us any further information about how that works in practice?

**Mr HOWARTH:** The short answer, Mr Shoebridge, is no. As I said in earlier comments to Mr Secord, I think, it is about a perception of conflict of interest and it is not necessarily about even a current government. This current Act has been here since 1977 and I guess the Committee would know even better than us that in designing legislation, not necessarily for here and now but for the future and for a range of circumstances, the Council's view is and remains that there could be a significant perception of conflict of interest when a single



agency is providing advice both to an independent regulatory body like the Council and to a government which has policies that it wishes to put in place. The concern is that potentially puts the agency, not the Council—the Council does not have a conflict of interest—in a position of conflict of interest.

**Mr DAVID SHOEBRIDGE:** Mr Howarth, I will just read from your submission and ask if you want to in any way backtrack from it at all. You say:

... there are situations where the Minister responsible for heritage, or indeed the government in general, are on the one hand seeking independent advice from the Heritage Council on whether a place is of State Heritage significance, while at the same time other agencies may be pursuing projects which impact on places of potential State Heritage significance. In those situations, the staff of Heritage NSW is advising both the Heritage Council in its deliberations, and at the same time advising the Minister and government on how to achieve their policy intentions. This can create a potential conflict of interest for those staff.

If they are in a conflict of interest and you are relying upon their advice, it is inevitable that you have a conflict of interest, isn't it? You do not have some magic solution to that.

**Mr HOWARTH:** Mr Shoebridge, I think maybe yours and my understanding of conflict of interest is slightly different here. The Council feels that conflict of interest could be perceived to reside with Heritage NSW because it is giving supposedly independent advice. My example earlier is in a situation where, like the Independent Pricing and Regulatory Tribunal regulating transport fares, if it was being advised by the department, the relevant transport agency which has a vested interest potentially in a certain level of fares, it would give rise to a perception of conflict of interest. So no, we do not backtrack from our remarks at all. It is a question of if a body is independent, how does it obtain independent advice?

To answer the final part of your question, there have been cases where the Council has said, "We would like independent advice" and then, with the support of Heritage NSW and indeed the funding from it, had independent consultancy advice. So that is one way we manage the current situation. But we believe in setting up any new Act there should be some substantial thought around how an independent advisory body obtains independent advice.

**Mr DAVID SHOEBRIDGE:** An advisory body is only as good as the advice it gets and if the advice you are getting has an inevitable conflict of interest, that inevitably impacts and degrades the independence of, in this case, the Heritage Council, does it not? You have to accept that being dependent upon the advice of government employees for the bulk of your work erodes the independence of the Heritage Council and is something that should be reformed in a reformed Heritage Act.

**Mr HOWARTH:** Yes, that is what we set out in our submission.

**The CHAIR:** Thank you, Mr Howarth, it is the Chair here. I now invite Government members and acknowledge Mr Franklin.

**The Hon. BEN FRANKLIN:** Thank you very much, Mr Chair, and thanks very much for being here, Mr Howarth. Can I just ask a specific question to start with? Your submission refers to developing a heritage investment fund. I wonder if you could talk to us a little about how that might work and contribute to conservation outcomes, achieving conservation outcomes in New South Wales.

**Mr HOWARTH:** Thank you, Mr Franklin. I guess the analogy I would draw is I think it is called the biodiversity conservation fund in another part of government under the Biodiversity Conservation Act, which, in my understanding, was set up to allow deductible gifts to it to create a fund for biodiversity conservation purposes. We believe there is an analogous situation that could apply to heritage. We note in our submission that heritage owners in a number of ways are financially disadvantaged, and that provides perhaps an unintentional disincentive to working on heritage properties.

A heritage conservation fund might be used in a couple of ways: either by direct application by particularly private heritage property owners to enable them to support work that is required to maintain their property; it might also be used to purchase heritage properties. As Mr Nile earlier mentioned, the fund that is managed by Sydney Living Museums is an example—the Endangered Houses Fund, I think. Such a fund could purchase heritage properties, enable their updating, making them suitable for adaptive re-use and then, either through long-term leases or sale, getting them back out into operation again. So we believe such a fund, with a fair degree of flexibility and deductible gift recipient status—if the Commonwealth agreed to that—would be a very good vehicle for heritage conservation.

**The Hon. BEN FRANKLIN:** Thanks, Mr Howarth. A second question, a broader question: Can you talk to us about what your view is of what intangible heritage is and how we could potentially incorporate intangible heritage into the Heritage Act?

**Mr HOWARTH:** Thank you, Mr Franklin. Intangible heritage, I mentioned the example before of the Sikh temples. Intangible heritage is, by its very name, not something that you can touch and feel and pick up. Some examples, I guess the one that is most bleedin' obvious to people would be the sort of heritage, the intangible nature of Anzac Day and the celebrations around that. Another less obvious one that has been cited to us would be the tradition of lifesaving on coastal New South Wales and how that has shaped life in coastal Australia. Then, much more specifically, we use the Heritage Act by slightly bending it to recognise the very significant area of Aboriginal intangible cultural heritage through recognising the women's country near Calga on the Central Coast of New South Wales. That heritage is tangible certainly to those women for whom it is significant, but it is not something you could touch and feel.

Similarly, in the lead-up to World Pride in 2023 we are thinking about how might we recognise LGBTIQ life challenges, intangible life challenges, intangible heritage, in New South Wales. So they are the sort of things we are thinking about. Typically, in other countries that is recognised usually more through a celebratory approach. English Heritage, for instance, has published a number of podcasts, apps and documents that are around aspects of intangible heritage and linked them to, say, buildings and places that might recognise that. For instance, Taylor Square in Sydney is currently listed—although unfortunately primarily for engineering and sanitary reasons rather than LGBTIQ reasons. But if we link that to the tradition of gay and lesbian rights, then we start recognising more intangible heritage.

**The Hon. BEN FRANKLIN:** Thank you, Mr Howarth. I think my colleagues might have a couple of questions as well. I think Mr Mallard is trying—

**The CHAIR:** Mr Mallard, could you identify yourself?

**The Hon. SHAYNE MALLARD:** Shayne Mallard. I am using an iPad, that is why I am having a bit more difficulty trying to log on. Thank you for your submission, Mr Howarth, as always. The Minister in his presentation to us and a number of the submissions talk about the problems with standard exemptions and the complicated approval process. I am very keen about the preservation of curtilages and landscapes around heritage buildings as well, and the Minister talked about those issues. What is the Council's view on the complications of the exemptions process?

**Mr HOWARTH:** If I might begin to answer that and then defer to my colleague Dillon Kombumerri as well because the Approvals Committee—

**The Hon. SHAYNE MALLARD:** I was hoping he would get a question.

**Mr HOWARTH:** —would handle that. From the Council's point of view, we have been going through a process of—well, let me put it the other way. When I took over as chair we had this very strange process, which you as a heritage property owner got a whole set of standard exemptions—you could repaint the house the same colour but you had to apply for permission to exercise the standard exemption, which became a bit of a nonsense. With the very strong support of the Minister, we have changed that; there is now a much more significant range of standard exemptions which do not need any sort of extra permission. On top of that, the Council—working with the Approvals Committee—I think has made a significant philosophical change about what is known in the trade as section 60 approvals, which is significant approvals, work. So if the Committee is happy, can I defer to my colleague Mr Kombumerri to talk about that?

**Mr KOMBUMERRI:** Thanks, Frank. Dillon Kombumerri speaking. The recent approach that we have undertaken under Frank's stewardship and support by the Heritage Council is to appreciate that owners of heritage buildings are looking after important assets for the wider community who have shared connections with those buildings and places. We also accept that buildings need to be modified or owners of properties are seeking to modify their building to suit modern living practices, but also to comply with current regulatory and safety standards. So there is a bit in that and what we try to do is work with applicants, proponents, in a series of workshops to do two things: obviously to protect the heritage values that we think are important for these places, but also to try and find a suitable outcome for the proponents and the objectives that they are wanting to achieve.

If I could maybe give an example of that. An owner has a terrace house; often there are small rooms and they are wanting to join two rooms. There is a wall separating the two rooms, and the Approvals Committee have on several occasions accepted a central opening which leaves part of the wall intact while still defining the two rooms as distinct spaces. So that sort of goodwill, I think, is resonating. We are seeing often similar consultants supporting applicants that are, I suppose, appreciating that we are working with them as opposed to against them, and I think that is bearing some fruit that there seems to be, certainly from my experience, a willingness to really take on the heritage values that we are seeking to support. I think that answers your question.

**The Hon. SHAYNE MALLARD:** To a point. Is there a role for a thorough conservation management plan that has been ticked off by the authorities that gives scope to those sort of activities to occur without having to go backwards and forwards for approval?

**Mr KOMBUMERRI:** The short answer is yes. We do refer to those conservation management plans to help us defend the cultural values of a place or a building. But, as I said, in recent experience there is much more willingness to work with us to support and protect those values, and we in turn—because we accept the building was built in a different time and there are different needs and living requirements of a modern time—are seeking to support the objectives of that as well.

**The Hon. SHAYNE MALLARD:** But would a conservation management plan—a good one, a thorough one that you have signed off on—for a building not give scope for those maintenance and repairs without having to run backwards and forwards for approvals? Would that be a path to go down?

**Mr KOMBUMERRI:** Sure. We work with Heritage NSW and often we defer to them and say, "Look, we think this is something that you have great skill and knowledge about, understanding and working with the applicants". So we often defer to them as well to follow that through.

**Mr HOWARTH:** Mr Mallard, if I might just add some overarching Heritage Council comments to that? The Council has just gone through a very long process, 2½ years, of completely reviewing the conservation management plan system with very extensive consultation with not only heritage property owners but also the heritage advisory industry—if I can put it that way—because I think the Council shares the view that you articulated that a good conservation management plan should be the primary document to guide the future use, whatever, of a heritage property. I think that has been put into practice most obviously now with work around Millers Point, where a large number of properties were sold very quickly by the government of the day, with conservation management plans but many of those plans were prepared in a great deal of haste and there were perhaps inevitable inconsistencies across those.

So the Council, particularly through Mr Kombumerri's committee, the Approvals Committee, has been working with the community in Millers Point—again, both the heritage industry and the property owners—to move towards a much more consistent approach. There is one single conservation management plan for Millers Point but my view is it is probably significantly out of date and again we will work with the community to update that framework. So we avoid situations where one property owner with one plan can put, for instance, an air conditioner on the roof of their property but the place next door has a different plan that says you cannot. That is the sort of inconsistency that through the Approvals Committee and the Council we are working to get rid of.

**The CHAIR:** It is the Chair now speaking. Can I take this opportunity to thank you both, Mr Howarth and Mr Kombumerri, for attending the hearing today and thank you for your participation and patience.

**Mr HOWARTH:** Thank you, Chair.

**Mr KOMBUMERRI:** Thank you, Chair. Thank you, Committee.

**The CHAIR:** I remind Committee members that we are about to go on a brief break until 11.00 a.m. to facilitate the changeover of witnesses. Thank you.

**(The witnesses withdrew.)**

**(Short adjournment)**

**PETER ROMEY**, Past Executive Committee Member, Australia ICOMOS, affirmed and examined

**DAVID BURDON**, Conservation Director, National Trust of Australia (NSW), affirmed and examined

**The CHAIR:** Good morning. Welcome to the review of the Heritage Act 1977. The Committee is now resuming proceedings. I will take this opportunity to welcome Mr Peter Romey and Mr David Burdon.

**Mr ROMEY:** Thank you, Chair. My position today is representing Australia International Council on Monuments and Sites [ICOMOS]. I am also a heritage consultant and director of a company that specialises in cultural heritage work.

**Mr BURDON:** I am the Conservation Director at the National Trust of New South Wales. I am a registered architect in New South Wales. I will also state that I am a member of the approvals committee of which Mr Kombumerri just appeared.

**The CHAIR:** Would you like to both begin by making a short statement addressed to the Committee?

**Mr ROMEY:** Thank you, Chair. I will go first, if that is convenient. I am a longstanding member of Australia ICOMOS. I have been appointed by the President of Australia ICOMOS to appear before your Committee and in doing so I hope I will be able to help you in understanding the matters we have raised in our submission in response to the discussion paper released in April this year. ICOMOS is the International Council on Monuments and Sites, a non-government professional organisation that promotes expertise in the conservation of cultural heritage. ICOMOS is an official advisory body to the World Heritage Committee under the World Heritage Convention. Australia ICOMOS is the national branch of ICOMOS—one of over a hundred national committees throughout the world.

Just, very briefly, to understand a little bit of the background about where we are coming from, our priorities include—I will not read them all, but the relevant ones are to advance and promote national standards and best practice in heritage, to engage with contemporary issues in cultural heritage, and to be an influential voice to government. We have over 750 members in a range of professions and that point is, I think, an important one. I do not have an exact figure but I am confident that a significant majority of our members actually work in the development and mining sectors, providing advice and preparing reports about heritage issues for government, institutional and private clients. These inputs are often sought at a very early stage when reliable due diligence is essential to making good decisions about how and even if a development should proceed. So our organisation could hardly be described as anti-development when so many of our members rely on these projects and clients for a professional livelihood, including myself.

So we welcome the review, notwithstanding that our submission raises what we believe are important concerns about some aspects of the direction outlined in the discussion paper. These concerns are based on what we see as current shortcomings in the way our heritage is currently protected and managed. They certainly do not reflect an ideological belief that best practice heritage management and development are mutually exclusive. Just briefly, our concerns can be summarised as follows. The Heritage Act can be improved but we do not believe it needs major reform. In our submission we suggested some areas where there might be some refinements, however. The Act in its implementation needs to be much better supported and resourced. This resourcing should extend to better support for local government as well, not just Heritage NSW and the Heritage Council. Local governments are responsible for the legislative protection and management of over 35,000 listed heritage places and we believe that a well-resourced and customer-focused support at the State and local government level would be a very effective incentive for the owners of heritage places, making owning a heritage place easier. We do not think that is currently the case.

The high priority for legislative reform should be the long-promised reforms related to Aboriginal heritage and Aboriginal stakeholders must be intimately involved in this process. We do not support the proposed categorisation of heritage places. The one-size-fits-all description is an oversimplification as to what actually is a rigorous basis of heritage management which is entirely consistent the Australia ICOMOS guidelines for managing change to heritage places, which is the Burra Charter. This methodology is generally utilised across all jurisdictions in Australia and is widely used internationally. It is based on a need to understand what is significant about a place before making decisions about appropriate change. That process is the same whether it is a terrace house in Millers Point or the Sydney Opera House. The principle is the same. So one size fits all is not an appropriate way of describing that process. I have nearly finished.

A key reform of the Act should be to ensure a substantial majority of the Heritage Council members have considerable heritage expertise. Furthermore, we believe that listing or possibly even delisting places on the State Heritage Register should be the role of the Heritage Council rather than the Minister. Our final point: We are concerned that the discussion paper does not address what are major problems with current processes related

to State significant development [SSD] applications. If the approval provisions of the Heritage Act are switched off under SSD the inevitable heritage issues are addressed at a late stage of the project, especially for unsolicited developments, which happens. This is a major concern for our State significant heritage places and should be considered as part of the review. Thank you for allowing me to start the proceedings with this presentation. I would be happy to take questions from the Committee with the proviso that, given the breadth of the matters raised in our submission, there may be queries that I would need to take on notice. Thank you.

**The CHAIR:** Thank you, Mr Romey. Similarly, Mr Burdon, would you like to make a short opening statement?

**Mr BURDON:** Yes, I would. Thank you, Chairman. As I have stated, I am the Conservation Director of the National Trust of New South Wales. In the spirit of this inquiry about our heritage, I will just begin by acknowledging the original inhabitants and the custodians of New South Wales. I note that the Bidjigal people of the Eora nation are the original inhabitants and custodians of all the lands and waters in the Georges River area where I am currently speaking from. As I am sure you are aware, the National Trust of Australia is the oldest and largest independent conservation organisation in Australia. We have over 22,000 members across New South Wales. Our register formed the basis of the current State Heritage Register, with the majority of the local environmental plan [LEP] listings as well in New South Wales coming from the original National Trust list. Since 1945 the New South Wales National Trust has been the leading advocate for the protection of the built and natural heritage in our State, and 29 of our 35 properties are listed on the State Heritage Register.

The Heritage Act is of fundamental importance to the identification, protection, promotion and conservation of heritage in New South Wales. Any proposed amendments must result in better heritage outcomes rather than a weakening of heritage protection, and our submission has been framed on that basis. When we found out about this review, after we read the discussion paper, the National Trust immediately recognised that the community needed to be made aware of any proposed changes to this important piece of legislation. Our submission is the result of extensive community and professional feedback and includes the outcomes from a very well attended heritage forum that was run by the National Trust on 9 June 2021, which specifically focused on the Heritage Act review. This was a sold-out free event attended by over 300 people. It was facilitated entirely by the National Trust.

The event was recorded and placed on our website so that people all over New South Wales could be involved and one of our key aims was to ensure there were a lot of submissions to this inquiry. We were delighted to see the 297 submissions that were made. I think that this shows the concern, the passion and the engagement with heritage that exists across New South Wales. For the National Trust's part, I would at first refer you to our detailed submission. But suffice it to say that there are just five key points that I think are worth repeating in my opening statement. Firstly, the Heritage Act by and large is a good piece of legislation but any comments related to its effectiveness must, of necessity, be tied to the resources—in terms of both funding and expertise—of the Heritage Council and, by association, the Heritage Office. The Heritage Act must be resourced properly.

Secondly, the Government must organise and urgently prioritise Aboriginal cultural heritage reform and Aboriginal people need to be involved in this process. Thirdly, there has been a recent trend towards delegating responsibility for our heritage and none more so than with the move towards some more self-assessment. Heritage should be easy but it should not be too easy. Heritage protection must not be given away. Fourthly, the independence of the Heritage Council must be maintained and its membership must be capable of giving the necessary expert heritage advice that the community would expect from such an august body. The Heritage Council must be respected. The Minister has made it clear that no change is intended, but probably the single most important thing that we have long maintained and which our community forum confirmed is that the Heritage Act needs to be applied in order to be effective.

To essentially turn it off in relation to State significant infrastructure and State significant development makes a mockery of the whole planning system. The Heritage Act must be enforced, otherwise we have to question why we are here today. Thank you, Mr Chair.

**The CHAIR:** Thank you very much, Mr Burdon. I will now invite members of the Opposition, if they have any questions.

**The Hon. MARK BUTTIGIEG:** Mr Romey, in your introduction you stated that you thought there was a degree of problems with the Minister making decisions regarding listings and delistings. Could you just enlighten us as to how that process works at the moment? Presumably the Minister is not across every single item that gets listed and delisted, and seeks advice from some quarters. So, maybe just to inform that view, could you just enlighten us as to what the process is at the moment?

**Mr ROMEY:** Yes. Thank you for the question. Under the Heritage Act—I do not have the exact words in front me, although I could get them—the Minister generally makes a decision on whether to list something or not on the advice of the Heritage Council. I think the Minister is able to list things through other means, but primarily whether the Minister adds something to the State Heritage Register or not would be on the advice of the Heritage Council. But that is advice—it can be strong advice but, nevertheless, the Minister has the say.

**The Hon. MARK BUTTIGIEG:** Just in terms of a follow-up to that then, so in terms of the weakness in that current process is the implication from your statement that the Minister may have other countervailing influences which override that advice inappropriately sometimes?

**Mr ROMEY:** Well, I think in a real world situation it is inevitable that the Minister would have other issues or other considerations other than heritage significance that might determine his decision. I suppose that is understandable and that may influence his decision. It is in the political arena, I suspect you would say, whereas in most other State heritage jurisdictions in Australia the Heritage Council itself makes the decision about whether to list something rather than a member of the Government.

**The Hon. MARK BUTTIGIEG:** Mr Romey, I notice that a common theme in a lot of the submissions is this ability of State significant development to come in over the top of recommendations that the Heritage Council might make. What you are saying, presumably, is that model that is practised in other jurisdictions whereby the council gets to make the decision would obviate that problem, would it?

**Mr ROMEY:** No. With respect, I think we are talking about two different issues here. The listing process is quite separate—and so it should be—from the process of making decisions about whether development of a heritage item is appropriate or not. That happens down the track and best practice heritage management insists that those two processes are quite separate. In the first instance, whether a place warrants listing on a heritage register, State or local or national, should be determined primarily on the basis of its value to the community as a heritage place, whereas the issue of a State significant development affecting State listed heritage places—as an example, I would say the Chief Secretary's building at the moment, which is subject to an unsolicited development proposal—that, where SSD is invoked, the approval provisions of the Act are switched off, there is still a heritage approval process but it is a separate approval process.

The Heritage Act, which is really there to protect places of State heritage significance and to consider carefully and go through a rigorous process of assessment whether the development is at odds with the heritage values of the place or not, is switched off. The other problem with SSD is that because so many of these developments are unsolicited they do reach a stage in the process that is usually quite advanced before the heritage issues are looked at properly. So, for instance, if as a result of a concept or an unsolicited development proposal the floor space ratio [FSR] or height controls or both are changed in the immediate vicinity of or even on the same side as a heritage item, that builds a high degree of developmental momentum.

So by the time that the rigorous heritage assessments are made they are dealing with something that is very, very advanced in the process and it is very difficult to turn around and say, if this is the case—it is not necessarily the case, but where it was the case—that the height controls and the FSR controls are inappropriate. It is very difficult to wind that back at an advanced stage of the process. I hope that—the emphasis though there is that the listing and the heritage development process are quite separate.

**The Hon. MARK BUTTIGIEG:** Peter, I do not want to monopolise the questions—did you have any?

**The Hon. PETER PRIMROSE:** Just two, if I may. This is for both witnesses, but particularly to Mr Burdon. If I can just go to pages 25 and 26 of your submission, I was just wondering if you could please talk further about the role of local government and particularly the issue about the adequacy of heritage funding. I notice that your second recommendation is:

Local government must be adequately resourced to care for the over 40,000 items on Local Heritage Lists.

Can you just talk to both of those pages, please?

**Mr BURDON:** Yes. As you are aware, there are essentially two tiers: There are the State Heritage Register listed items, which are on the State Heritage Register and there are the locally listed items, which are under LEPs. There are a lot more locally listed items; as you have just identified there, there are 40,000 of those. The situation at the moment is that they are, as the previous witness has confirmed with you, under the protection of the local councils essentially. The problem is that there has been a decrease in funding of local councils in terms of how they can best manage their heritage items. The National Trust has, in our forum, identified that the number of local heritage advisers is quite stretched amongst quite a large number of councils and some of those councils indeed cover quite large areas. For one heritage adviser to be travelling all over the place, often giving advice to several councils, means that their resources are quite stretched. So the concern is that without properly providing

to local councils the funding to allow for heritage advice to be given a lot of these things will slip through the cracks and that proper assessment will not be undertaken.

**The Hon. PETER PRIMROSE:** Thank you. The other one I just ask if you could please talk a bit more to would be again on page 26 and I suspect it is related to the same issue of resourcing. I am concerned about your comment:

Numerous key guidelines available to assist heritage owners are now out of date, and confusingly refer to legislative requirements that are no longer in force, and approval processes that are no longer in place.

There seem to be already—what you have listed here—a number of those guidelines. Are there also other guidelines and also are there regulations that we need to be looking at as well?

**Mr BURDON:** There are a number of guidelines that are provided by the Heritage Office of New South Wales on their website and I must say that their website has recently undergone some updating. That has occurred after this submission has been made, so I will just make that note. But the point is that there are a number of guidelines and they are quite old. Often the case is that, sometimes, without those guidelines being updated, they might contain advice that actually does not apply any longer. There are particular examples there where you can see that there have been moves towards handing out self-assessment for certain items of repair and maintenance. There are updated standard exemptions. So some of the things that are in the current standard exemptions that were signed off by the current heritage Minister might not necessarily be applicable to the guidelines.

The National Trust itself does get quite a few telephone calls from people trying to work out which piece of legislation or guideline is in fact current. So that is where the problem is there. It can be easily remedied, of course, by just updating the necessary guidelines to reflect any current changes.

**The Hon. PETER PRIMROSE:** Can I just ask then, is it the case that these misleading guidelines could mislead people to actually be in breach of some particular regulation?

**Mr BURDON:** Yes, I think that is the case. It is interesting reading some of the submissions that have been made. I would cite perhaps the Anglican Church Property Trust's one, where there has been an example given of where some work was commenced under what was thought to be an applicable guideline and was then halted—delayed the costs, delayed the time, had to get approval and then the work proceeded as it was going to anyway. So that might be one small example of where something like that could occur, yes.

**The Hon. PETER PRIMROSE:** Okay. Thank you, Mr Chair.

**The CHAIR:** Thank you, Mr Primrose. I will now invite our crossbench colleagues to raise questions. I noticed before that Reverend the Hon. Fred Nile had raised his hand. Reverend Nile, please.

**Reverend the Hon. FRED NILE:** [Inaudible]

**The CHAIR:** Reverend Nile, if you can hear me, you might still be inadvertently on mute.

**Reverend the Hon. FRED NILE:** [Inaudible]

**The CHAIR:** As Reverend the Hon. Fred Nile works through that, I might invite Mr Shoebridge if he has a question.

**Mr DAVID SHOEBRIDGE:** Thanks, Chair. Thanks to both of you for your submissions and your evidence today. Mr Burdon, I suppose I wanted to go back to the fundamental principles that seem to be underpinning the Government's reform agenda. They talk about their three key policy themes in their discussion paper about making heritage easy, putting heritage to work, making heritage relevant. Those three themes are discordant with the three themes put forward by the Heritage Council, which talked about conserving and protecting heritage. I wondered if the National Trust had a view about whether or not those three themes are an adequate reference point for something as critical as a reform of the Heritage Act?

**Mr BURDON:** Look, I think that those—making heritage easy, putting it to work, making it relevant, they are a bit, if I put it bluntly, sort of marketing speak. I do agree with the Heritage Council's three key objectives, if you like that, that you have referred to there about celebrating, conserving and protecting. I think that those three principles are far better guidelines for the sort of review that we are talking about here. Certainly conservation and protection of heritage are the first steps towards celebrating it. We cannot do one without the other, of course.

**Mr DAVID SHOEBRIDGE:** Mr Romey, did you have any views about that?

**Mr ROMEY:** Well, very similar to the National Trust's view and the Heritage Council's view. I do think that the protection and best practice management of heritage places has to be at the forefront of everything that we do. We did comment in our paper that even in the Heritage Act, notwithstanding the fact that we do not think

it needs much revision, that the Act is there to actually achieve those ends needs to be more strongly put within the objectives of the Act. It is unfortunate that they are not more strongly put in the discussion paper as well.

**Mr DAVID SHOEBRIDGE:** Thanks, Mr Romey, for that. "More strongly put" is an interesting construction because, as I read the discussion paper, apart from a reference to the existing objects in the foreword, there is nowhere in this discussion paper where it is prioritising conservation and protection of heritage. Now, Mr Burdon, that seems to me to require a fundamental rethink if those two critical elements are not found in the three key policy themes. Do you think this should go back to first principles on that?

**Mr BURDON:** Thank you, Mr Shoebridge. I would point the Committee to the actual objects of the Heritage Act in section 3, right at the beginning of the Act. That sort of comes to the core of it. It is to encourage the conservation of our State's heritage. It is to identify our State's heritage. The points to be made there are—it sort of goes back to an earlier question that was raised—one is the identification of our State's heritage, so making the register and putting things on the list, and then the second part is that management of it. That is the conservation part. So we are identifying and conserving. One of the shortcomings, perhaps, of the way that things are at the moment is the first point of the Heritage Act—(a) the objective is "to promote an understanding of the State's heritage". I think that is the part where we can start to talk about celebrating, getting wider community awareness, all of that sort of thing. I think that certainly could be improved, but it is certainly just one of the objectives—not that one has primacy over the other.

**Mr DAVID SHOEBRIDGE:** Thanks, Mr Burdon. But surely protection and conservation needs to come first? If you are not protecting it and conserving it then it is pretty bloody hard to celebrate it, isn't it?

**Mr BURDON:** As per my previous comment, yes, of course we need to conserve our heritage items in order to have them and in order to enjoy them. None more so than, for example, the current state with Central station. You are all aware there are significant concerns there that we are not going to be able to celebrate the heritage values of Central station quite as much in the future because we are not protecting it as much as we should be at present.

**Mr DAVID SHOEBRIDGE:** Well actually, I was going to go on to Central station and ask you both to very briefly articulate your concerns there. Particularly, Mr Burdon, if you might start with how the Heritage Council has largely been sidelined through the unsolicited proposals process and then State significant development—how together that really just makes the Heritage Council almost irrelevant in that process. Could you talk to that?

**Mr BURDON:** I will let the Heritage Council provide you with a proper response on that, but they have been involved and I do note that they have made comment on it. So I will just put that out there. What I would say though is that this is an unsolicited proposal for the Atlassian tower in particular, I think, as far as I am aware. That has gone through as a State significant development and then, under section I think it is 4.47 of the Environmental Planning and Assessment [EP&A] Act, that of course means that the Heritage Act is able to be switched off. So we have a situation where something that is deemed a State significant development by its very nature on a State Heritage Register listed property is not accorded the benefit of the Heritage Council's proper and independent review of the heritage impact of that development and that the State Heritage Act that we are talking about here is not applicable.

It is this perverse situation where the bigger the impact, the more State significant it is, the less the State's protection seems to matter. The proposals for the western gateway at Central station are particularly disturbing in that they involve the destruction of quite a large amount of fabric. They are building within the State Heritage Register curtilage and on top of State Heritage Register listed items. So there is a problem there and, as Mr Romey just pointed out, once things get so far down the track it is proving very hard to unwind.

**Mr DAVID SHOEBRIDGE:** Mr Romey?

**Mr ROMEY:** If I can just add to that, we are not talking about the development of Central railway itself where it is part of the metro project, which I have to disclose I actually worked on myself. We are talking about the development on three sites fronting Railway Square, which I think entirely are public land and involve a number of State heritage listed buildings. Australia ICOMOS made a very strong submission about this. Basically the focus of our submission was that the process that led to the approval or to stage projects of this development was flawed and it was flawed for a number of reasons, one of which was the Heritage Act was switched off. But, as I said before, the other issue is that the process is such that serious heritage considerations into the appropriateness of the development are not being brought into the process until very late, so—

**Mr DAVID SHOEBRIDGE:** By which time, as you point out—I am sorry, we just have a very short amount of time. You would reiterate your point that once a project has a head of steam up it can be very hard to stop, is that right?



**Mr ROMEY:** Well, if you agree to what is called a planning proposal that allows the existing height controls of, say, around 35 metres to be varied to 200 metres and you allow an envelope to overhang a State significant development, which is the Parcels Post Office, which is a very, very important building—

**Mr DAVID SHOEBRIDGE:** Mr Romey, I do not wish to stop you there but I think I have the thrust of your point and, for myself, it is well made. I have one final question to both of you. At the moment the Government's—the impetus in here is to largely do non-Aboriginal heritage, non-First Nations heritage. It seems an odd timing to bring that before statewide Aboriginal heritage reform, given the protections for Aboriginal heritage are found, first of all, in a way that is offensive for First Nations peoples in the National Parks and Wildlife Act and, secondly, Aboriginal heritage is so badly protected in New South Wales. Do you think that the Government should reprioritise and work first on protecting First Nations heritage?

**Mr ROMEY:** Is that directed to me, Mr Shoebridge?

**Mr DAVID SHOEBRIDGE:** It is for both of you.

**Mr ROMEY:** Okay. The short answer to that is yes and that is a recurring theme in many of the submissions. It is not an area that I have particular expertise in, so if you want a detailed response I would have to get back to you on that. But definitely yes. There is a supposition in the discussion paper that Aboriginal heritage be brought into the Heritage Act, but that may or may not be in the long term the right approach. It is jumping ahead a little bit to say that, I think, at this stage.

**Mr BURDON:** I would just quickly comment there. To be honest, before this review came out we thought that was the priority. This review that we are in at the moment has come about rather quickly, whereas we know that Aboriginal cultural heritage legislation reform has been something that has been discussed for quite some time. So it would seem logical to progress those discussions before the other ones. That is not to say that the outcomes of this inquiry could not and should not be linked together with that and that the two could work in harmony or whatever is determined by Aboriginal people.

**The CHAIR:** Thank you, Mr Burdon. I will invite Government members to raise any questions and if by chance Reverend the Hon. Fred Nile is able to come off mute I will also revert back to him. In the interim, Mr Martin has a question.

**The Hon. TAYLOR MARTIN:** Thank you, Chair. If I could just ask, what does the National Trust use its properties for and are all properties in use?

**Mr BURDON:** Thank you, Mr Martin. The National Trust has a number of properties. They range from houses for individuals—some of those are actually leased out, just on a tenanted basis, but we retain the ownership. Of course we have other properties that are operated as museums. Some of those are run by the National Trust directly, such as Old Government House, with paid staff and the like. Others are run by our volunteer groups, such as at Berrima, Harper's Mansion. There are other properties that the National Trust has, such as the Bargo site that we own, which is currently leased to the Australian Wildlife Sanctuary. There is a wildlife sanctuary, if you like, and the dingo sanctuary down at that location. So we have a number of them. But our main purpose is to try and open them to the public, where that is available, and the intention is to increase people's awareness of our heritage in doing so and visiting.

**The Hon. TAYLOR MARTIN:** Can I just ask one further follow-up on that? It is really in relation to the comparison between the condition of properties that are in use compared to the properties that are not currently in use. What would you say to that?

**Mr BURDON:** Sorry, Mr Martin, can you just clarify: Are you talking about properties generally or National Trust properties?

**The Hon. TAYLOR MARTIN:** National Trust properties.

**Mr BURDON:** All of our properties basically do have a use, whether that be as a tenanted place or as a house museum. There is only one that comes to mind, which is the current site up at the Hunter Valley called Dalwood House, which is currently, if you like, described as a slight ruin out there. But that itself has a group of volunteers that look after the property and maintain that for us.

**The Hon. TAYLOR MARTIN:** Okay. Good to hear. Thank you. Thanks, Chair.

**The CHAIR:** Any other Government members?

**The Hon. SHAYNE MALLARD:** [Inaudible]

**The Hon. TAYLOR MARTIN:** Mr Mallard is trying to come off mute by the look of it.

**The CHAIR:** I will gently remind members to take themselves off mute and clearly identify themselves and who the question will be directed toward.

**The Hon. SHAYNE MALLARD:** I have taken myself off mute. I am Shayne Mallard. My question is to the National Trust, but perhaps both might have an opinion. What incentives would the National Trust support to encourage and enable better heritage conservation and heritage outcomes? What incentives do you think we should be talking?

**Mr BURDON:** Thank you, Mr Mallard. Look, any incentive is welcome. They can come in a number of forms and they do not necessarily need to be financial—I would point that out. My earlier comment about having adequate guidelines and resources are certainly very helpful to owners and managers of properties. There are a number of financial incentives that have been put forward and I note those. One that was omitted from the discussion paper, however, was the National Trust's own tax deductible restoration appeals scheme. That is a very large scheme. We currently have, I think, 68 properties that are involved with that. It has been running for nearly 30-odd years and has allowed nearly \$40 million worth of repairs and maintenance works to be undertaken to a number of properties through tax deductibility and donations. We just had one this morning talking about the replacement of a slate roof on a church and that is going to go through our appeal.

So that is quite a big incentive. I would not speak for individual homeowners. But the National Trust, we do apply for and are grateful for a number of grants that we apply for as well to help us manage our properties, not just for their maintenance but also to run events so that people can come and enjoy them. That is part of that celebrating heritage.

**The Hon. SHAYNE MALLARD:** I perhaps put a similar question to ICOMOS in regards to what measures would you support that would encourage heritage conservation? What measures do you think are appropriate to support heritage?

**Mr ROMEY:** As I said in my introductory remarks, I think the most effective incentive there is is an efficient system that helps people, that is customer focused, so that the owner of a heritage property that wants to make changes to the property is assisted to make good decisions about how to do that rather than at times to hit what can be a brick wall in terms of just that customer focused attitude to helping that person. That comes down to resourcing not only at the State level but at the local government level as well. There are good systems out there. There are private heritage advisers that are partially funded by local government or the State government, but there are not enough resources for them to do their job properly. So having people feel—because heritage is a little bit more challenging than a new build—that there are resources there to help you, not just to hinder you, is a really important incentive.

Grants and loans schemes—as Mr Burdon mentioned, a grant or a loan to re-roof a house or a property or something like that—there is a number of those. They can be quite effective. In the past, in my previous experience in different roles, we have learnt that there is a significant multiplier effect with those. When an owner is given a grant or a loan, that generates a whole lot more economic activity than just the amount of that grant or loan. I will just finish off with FSR. Transferable floor space is an incentive that works very well in the CBD situation. It relies on a high degree of development pressure to generate the demand for heritage transferable floor space. It does not really work in a suburban or a rural situation—you have to look to other means there.

**The Hon. SHAYNE MALLARD:** Thank you.

**Mr BURDON:** Mr Chair, if I just might elaborate, just one quick point on what Mr Romey stated. Incentives that help with the maintenance of a heritage item can be much smaller but their longer-term effect can be much greater. So rather than wait for the whole roof to disintegrate and the building to become a ruin, a small amount of incentive to repair it initially certainly has a better effect.

**The CHAIR:** Thank you, Mr Burdon. Mr Franklin indicated he would like to raise a question.

**The Hon. BEN FRANKLIN:** Thanks, Chair. Thank you both very much for being here. My question is to Mr Romey. Your submission actually talks about a culture within Heritage NSW that does not support sympathetic change to heritage properties. I was wondering if you could elaborate on this a little bit and basically talk about your view about what impact this has on the long-term sustainability of these properties?

**Mr ROMEY:** Thank you for the question. I just need to be careful with my language, but this is an issue that has arisen in quite a few of the submissions across the board and it gets back to the point I was making a minute ago where the owner of a heritage item should feel that there are people out there willing to help, to assist with advice if not incentives. That is not always the case, particularly at the State level. There are some resourcing and expertise issues in Heritage NSW that are not what you would call customer focused. That needs to be addressed. It is not just Australia ICOMOS saying this. There are quite a lot of people who actually work in the

area—owners—that can give examples of that. There needs to be some adjustment there, as well as better resourcing. It just comes down to making people feel that there is someone out there to help them rather than hinder them. I cannot go into details.

**The Hon. BEN FRANKLIN:** No, that is okay. I guess it is more about the impact that culture has on the long-term sustainability of the properties that we all want to protect, if you had any comments around that?

**Mr ROMEY:** I think that is right. If owners are not encouraged to avail themselves of readily available resources and support, they will do nothing or they will go and do something else that is not appropriate, and they actually reduce the economic and other viability of the property in the long term.

**The Hon. BEN FRANKLIN:** Thank you very much.

**The CHAIR:** Thank you for that. I will take this opportunity now to thank both the witnesses for attending this hearing. Thank you both to Mr Romey and Mr Burdon. I think, Mr Romey, you may have volunteered to take a question on notice following a question from Mr Shoebridge. Is that correct?

**Mr ROMEY:** I am not sure about that. It was in regard to Aboriginal heritage. I think I answered the question in principle. But if Mr Shoebridge, I think it was, requires more information I would be happy—if he could be more specific, I will—

**The CHAIR:** We will certainly take that offline and the secretariat will be in contact in relation to that.

**Mr ROMEY:** Okay.

**The CHAIR:** As a result of the technical issues that Reverend the Hon. Fred Nile was subject to, I will remind him that he can submit a written supplementary question. I remind members that we will have a lunch break. We will resume at 2.00 p.m. Once again, thank you to the witnesses for their input and participation during this session this morning.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

**TOM FORREST**, Chief Executive, Urban Taskforce Australia, affirmed and examined

**ANDREW MARGAN**, Hunter Valley Wine and Tourism Association, affirmed and examined

**The CHAIR:** Mr Forrest and Mr Margan, could I ask you to do a very quick sound check please, starting with Mr Forrest?

**Mr FORREST:** Tom Forrest, Urban Taskforce.

**Mr MARGAN:** Andrew Margan from Margan Wines.

**The CHAIR:** Good afternoon and welcome to the review of the Heritage Act 1977. The Committee is resuming proceedings. I now welcome our next witnesses, Mr Tom Forrest and Mr Andrew Margan. Would either of you like to make a short statement at this stage?

**Mr FORREST:** I would, if I may. Notwithstanding the serious concerns that the Urban Taskforce has with the Heritage Act and the decision-making framework that has evolved to this point, we very much welcome the opportunity to contribute to this forum and thank the Minister and the Government for bringing on an opportunity to review the Act. We think that is timely and we appreciate the opportunity to participate in that. As we outlined in a fair degree of detail in our submission to the work of the Committee, we fear that in some respects heritage has become a weapon used against development. That is to say it has been used by some groups sometimes as if you cannot find any other way to stop a development happening, try to find a way to find a heritage item that might stop that development progressing. We do not think that that is helpful. We do not think it is helpful for heritage and the preservation of heritage items to have a conflict between development and the preservation of heritage.

I want to make clear we very much support a proper process for the identification of heritage items and for their protection. We welcome the fact that there is now consideration being given to a tradable heritage bonus scheme, for example, that exists in the City of Sydney at the moment and that has been applied judicially and successfully within the City of Sydney. We would very much welcome the expansion of that into other areas, perhaps North Sydney, Parramatta, the Hawkesbury, Penrith, Campbelltown—areas where there are items of heritage that should be preserved. In fact, the more areas you have participating in a tradable bonus credit system, or however it might work, the more areas that get involved the more it is able to effectively work to reward the development community for the protection of genuine heritage items—so encouraging the protection of those heritage items while giving them an opportunity to not lose value elsewhere.

We are a little concerned about the way interim heritage orders have been applied: that suddenly a person who has bought a piece of real estate in good faith with certain planning development controls all in place can be hit with an interim heritage order, which they might not have expected or even anticipated, at the last minute that has significant impact on the value of their property. In every other area where a government decides to compulsorily acquire or build a motorway next door to your property, there are mechanisms to ensure that the downward impact on the value of that property is compensated. That is not the case in heritage and, except for some areas of the City of Sydney where that heritage bonus scheme does apply. We think that in a system where there is no financial benefit to the preservation of heritage, where that situation applies it is in the interests of the development communities to run down the heritage asset as happened, for example, in Ryde with the Ryde Civic Centre. The council ran down the heritage asset. The Heritage Council decided it was too expensive to preserve, so they allowed it to be knocked over—a terrible situation, which I do not think should be encouraged.

But you can see that if that happens with a council, of course it also happens in the private sector. It is inevitable that the system is not enabling a reward or an encouragement. Ideally, we would like it to be the case that if a heritage order resulted in downward capacities to develop that you were fully compensated, but I recognise that Don Harwin is unlikely to get a massive cheque from the Treasurer of New South Wales to be able to fully fund that. I am practical and sensible about that. That is why things like a tradable bonus system, which is able to reward developers for the act of preservation of genuine heritage items, that could be used flexibly in different areas where there might be development opportunity—and also there are heritage items worthy of protection—that sounds like a very sensible pathway forward. Thank you to those who wrote the discussion paper for raising that as a possibility. There is a range of other things that we have raised in our submission, but I will leave that to the members of the Committee to peruse and ask questions about as they see fit. Thank you.

**The CHAIR:** Similarly, Mr Margan, would you like to make a short opening statement?

**Mr MARGAN:** Yes, if I can, thanks. I am working on a project on behalf of the Hunter Valley Wine and Tourism Association, which is a peak industry body here in the Hunter Valley. I have been working in this space for about five years, which is trying to get the heritage value of the Hunter Valley vineyards recognised. As

the birthplace of the Australian wine industry, we actually have some of the oldest existing vine stocks in the world because, of course, Europe was wiped out with phylloxera. Those original vine cuttings that came out of Europe are still existing here in the Hunter Valley, or direct lineage to. Going through the process, we undertook a study using independent experts. They determined that these vineyards were of enormous, significant heritage value, not just to the State, not just to Australia, but to the world. Within that, we have also recognised that the landscape—the agricultural landscape, the cultural landscape and the natural landscape that these vineyards all exist in are worthy of protection and have got significant heritage value. They met all seven criteria in relation to the State nomination list.

Where we have hit the brick wall is that under the current rules and regulations to get to nomination stage we need every single landholder to be signing off on it. There are some 600 landholders. Around the world there are some 14 vineyard areas that are listed on UNESCO as heritage sites. There is no European agricultural landscape listed as a heritage item in Australia yet. What we are doing in this State, by the look of it—this review—is the potential to be able to have a process that recognises heritage value of agricultural landscapes and the social landscape that goes with them would be significant I think. It would be a great thing for this State that the Hunter Valley would be recognised for its heritage value through its vineyards.

**The CHAIR:** At this stage I invite members of the Opposition to raise any questions.

**The Hon. MARK BUTTIGIEG:** Mr Margan, that brick wall you alluded to where it requires a multiplicity of landowners to sign on, is that a product of the Act not allowing enough flexibility? I imagine if there are 600 landowners, could you not have a situation where if a vast majority were willing to sign on then that portion would become listed? Could you elaborate on what the issues are there?

**Mr MARGAN:** You cannot what you call "Swiss cheese" the area. The area has a boundary. The boundary is recognised under a Federal Act, which is related to its geographical indication, which is a wine industry concept, but it protects the name of the Hunter Valley. That boundary has then been recognised by the State Government through its planning, through its strategic rural land use planning process. Within that boundary is what we call the Hunter Valley vineyards, and the preservation of that whole area is necessary for all the reasons of—apart from preservation of the vine stocks, it also relates to the visual aspect, which is obviously important in terms of the regional tourism side of things. Hence to do it block by block is just not going to be possible. At the end of the day what we are looking to preserve is the visual amenity of the area and the actual vineyards themselves, so there has got to be some rules and regulations in relation to preservation of the heritage value of specific vineyards. That is one thing, but then the actual visual amenity of the whole area has to be preserved; otherwise the whole area loses its appeal, if you like.

**The Hon. MARK BUTTIGIEG:** Is that just a function of individual property rights? In other words, I might have bought a plot 20 years ago that happens to have those vines on them but I want to retain my right to develop it down the track and therefore not sign on. Is it as simple as that?

**Mr MARGAN:** Is it as simple as that? That is a good question. Where we are stuck is trying to do a landscape management plan in relation to it, and that is an expensive exercise. Unfortunately there is no funding available unless you actually are on the heritage list for that process, so we are stuck there a bit. But reality is at the moment there is nothing to protect and preserve these heritage vineyards. If you were to buy that block of land and pull those vines out, and all of the blocks of land in the Hunter Valley that have these amazing old vineyards on them were bought by people such as yourself and you just ripped all those vines out, then that resource, which has got significant heritage value, would be lost to the State and the world. That is what we are wanting to try to stop happening. At the moment there is nothing to stop that happening and the heritage planning Act could possibly help us to stop that.

**The Hon. MARK BUTTIGIEG:** Just to tie up that line of questioning, in order to fix that particular issue—I have a lot of sympathy for the arguments you put; that area is very significant for the State—you would need to change the Act to cater for the natural environment.

**Mr MARGAN:** Correct.

**The Hon. MARK BUTTIGIEG:** But also, presumably, you would have to put some sort of compensation scheme in place to make it economically viable for those landowners.

**Mr MARGAN:** Again, I think that would all come out of a landscape management plan, which is where we are up to. I am not sure—there are some issues around it that would have to be resolved. There is no doubt about that, but at the end of the day we have proven the value of the heritage of these items and we have to find a way of making sure that they are preserved. That is where we are up to.

**The CHAIR:** Mr Primrose has a question.

**The Hon. PETER PRIMROSE:** I actually had prepared my questions for David Borger from Business Western Sydney, but I will leave the bulk of those and just ask the other two witnesses if they could comment on something that was in that particular submission. I will read it out. David Borger's submission states:

The interaction between the Heritage Act and EP&A Act needs to be streamlined and greater clarification of which Act should be accorded precedence is needed.

It goes on to state:

Clarifying the respective roles of each Act and articulating who is responsible for what would go a long way to resolving many of the concerns and fears private owners of state heritage items have.

Would either of you would like to comment on that?

**Mr FORREST:** Thank you for the question, Mr Primrose. That is a very salient point. The matter that I raised and I alluded to in my opening statement in relation to interim heritage orders is germane to the matters that were raised by you just now. It is a situation where you can be compliant with the local environment plan controls, you can buy a piece of property and have an expectation of setbacks, of maximum heights, of maximum floor space ratio and you can have no hint of a heritage order being applied to a property, and then halfway through a process of the preparation of a development application proposal sometimes it is the case that a local group might get a hold of this and identify a heritage item out of the blue. Suddenly then an application for an interim heritage order is made and through the process the landowner, who has bought the land in good faith with no expectation of a heritage curtilage being applied to them, suddenly has to deal with a heritage matter.

The value of the land that they bought is potentially suddenly stripped significantly and with no opportunity for any compensation for that stripping. That is where we say we would like to see prospective orders made, where there was an expectation that perhaps every five years, in conjunction with the preparation of local environment plans or local strategic planning statements, at that time looking forward councils could clearly identify areas where they think that there might be a heritage curtilage—items that they may want to protect—and where that is the case there could be a mechanism put in place for some form of compensation for those if that heritage order was to go forward. But at the moment, with this interim heritage order arrangement, there is this conflict inherent between the planning Act—and the controls set up within the planning system to determine the value of the land—and the heritage process, which can come in over the top and suddenly strip all of that value away. So, you raised a very good point.

**The Hon. PETER PRIMROSE:** Mr Margan, do you have any comments on that?

**Mr MARGAN:** I would only suggest that at the moment there is nothing that protects the heritage value of agriculture in this State.

**The CHAIR:** Mr Buttigieg has a question.

**The Hon. MARK BUTTIGIEG:** Are we out of time? If the Opposition is out of time I am happy to move on.

**The CHAIR:** No, you are fine. Please proceed.

**The Hon. MARK BUTTIGIEG:** Mr Forrest, on that point, is there a process around when that interim heritage order is put on? Is there any mechanism for consulting the landowner on the process in moving forward? Are you saying there is no mechanism for compensation?

**Mr FORREST:** What you have said is correct. Once an interim heritage order is applied for by any group—and I know this because I sought it myself to try to protect the Ryde Civic Centre—you are consulted and invited to make submissions. The landowner—in that particular case Ryde council was the owner—they get an opportunity to say why it is that they believe that that order should or should not be complied with, and then the Heritage Council staff make a recommendation to the Minister and the Minister determines to either place an interim heritage order, which can then be made permanent, or not. There is no mechanism for compensation at all, and the difficulty comes where if you apply for an interim heritage order that is done almost as a last-minute—sometimes a process has gone through council, the matter has been determined, everything is sorted, you are just about to go and demolish and, "Oh, I've got my approval but there's an interim heritage order in place. The Minister has stopped me from progressing."

That is where it is this sort of gotcha moment, caught by surprise. That is the process that we think undermines the value of property. It is almost sovereign risk. You think you have got something that is worth a certain thing and suddenly, swoosh, the Government takes it away from you. As I said, we do not oppose heritage items being preserved. We do not oppose a sensible process, a logical and clear understandable process, to protect those items. What we are concerned about is the sort of last-minute "gotchas" that whip value from under you and

then the confusion between the EP&A Act and the Heritage Act as to responsibilities, and indeed all of this without any propensity for compensation at all.

**The Hon. MARK BUTTIGIEG:** You are saying that is an exception in terms of the New South Wales jurisdiction. Do other jurisdictions all have a compensatory mechanism, or not necessarily?

**Mr FORREST:** No, in Australia it is fair to say that while we are getting to the stage of understanding value for most things, and now even under the bio-conservation trust there are mechanisms through which you can put money into the conservation of key environmental assets, that is not the case at this point in most jurisdictions in relation to heritage. There are funds available in Queensland. They are probably the most advanced at having funds available for the compensation of private sector landowners and private sector property holders for the purpose of the preservation of heritage. As I have said, we have the capacity here in the City of Sydney to have some bonuses associated with the protection of heritage, so I think Macquarie Street and the very building that you are sitting in now and its surrounds are covered by a form of heritage curtilage.

By not developing, not so much your building but adjacent buildings and across the road, the owners of that property were given a bonus to develop elsewhere in the City of Sydney, so they could get an extra floor on—an extra piece of height—provided it does not cast a shadow over a public park or breach any other condition. That is an example of the sort of thing we are talking about. If it could be expanded beyond just the City of Sydney—because there are not too many areas in the City of Sydney where you can actually put an extra floor on without creating a problem—if it could be expanded to, say, Parramatta, Penrith, Campbelltown or elsewhere, if you had a sort of tradable system whereby a person got a bonus and then could sell that to somebody who needs a bonus, then that is the way that you could actively have a system to preserve the heritage moving forward.

**The CHAIR:** Thank you, Mr Forrest. I invite our crossbench members if they have any questions.

**Reverend the Hon. FRED NILE:** Just going through some of the submissions that have come into the inquiry, Dr Peter Watts in submission No. 232 said:

I do not support the proposed division of four categories as outlined on page 14 of the Discussion Paper. This adds unnecessary confusion and ‘ranking’ means there are places of less significance. A similar system of ‘Classification’ and ‘Recording’ operated by the National Trust ... was abandoned many years ago for ... good reasons.

Why is it included now as a proposal, I assume, from the Minister?

**The CHAIR:** Do either of the witnesses wish to respond? Mr Forrest, you are raising your hand.

**Mr FORREST:** It is the case that we have a difficult situation here in New South Wales where there is confusion between local heritage items that can range from a fountain or a small asset in a local community park all the way through to the preservation of the Sydney Harbour Bridge and the Sydney Opera House. It is a little bit confusing where the same rules apply and the same considerations need to be applied by the Heritage Council. For example, a proposal to build a building that might be 40 metres away from an electrical power substation and there is a local heritage order placed on that local heritage-listed power substation. You cannot then build a building that casts a shadow over that building, over that substation, as if it were the same as if you were building a building that cast a shadow over the middle of Hyde Park, which is obviously an area of public community open space and community interest.

In this regard, not having a system that separates the typology or the different categories of heritage asset causes difficulty and confusion. I think that the proposal, to be honest, that is in the discussion paper is actually a fairly sensible one, but I think it is a very important question worth raising, Mr Nile, thank you.

**The CHAIR:** Mr Margan, do you have any observations to share?

**Mr MARGAN:** No, I have nothing.

**The CHAIR:** Do you have any other questions, Reverend Nile?

**Reverend the Hon. FRED NILE:** Yes. Sheridan Burke's submission, No. 229, states:

**Commit to a separate Indigenous Heritage Act to provide** appropriate protection supportive management requires full consultation. Integrate indigenous values in everything the Heritage Act does- e.g., name all sites with their indigenous countries

Would any of the witnesses like to comment on the value of a separate Indigenous heritage Act?

**Mr FORREST:** My understanding, Mr Chair, is that matters of Indigenous cultural heritage are being considered separately to this particular inquiry's terms of reference, but of course the Urban Taskforce is fully on board, Mr Nile, with ensuring that Indigenous and cultural heritage is something that we do protect and that we work actively towards any system that was put in place to protect physical or environmental assets, if that ends up being the case, should also of course be applied to Indigenous heritage. That said—and I will put the other side

of the coin—if that involves the removal of value from those lands, there should be some form of mechanism for compensation so that the private sector, where they are affected, are also encouraged to support the protection of those assets, be they cultural assets, physical assets or they be environmental assets. All are important, worthy of protection, but they are only as valuable as the State mandates a price to be paid for them.

**Reverend the Hon. FRED NILE:** Thank you, and I—

**Mr DAVID SHOEBRIDGE:** Is that seriously your position, Mr Forrest, that the cultural heritage of the longest continuous culture on the planet is only valued at the price that the State Government puts on it? That is the Urban Taskforce position?

**Mr FORREST:** No, I apologise if that came—and I would like to rephrase. We would say that where there has been value stripped away because of the discovery of an asset of course the private sector should be encouraged to preserve that. But I refer back to the Ryde Civic Centre. If there is no compensation at all contemplated—there is not even any encouragement, not even a system whereby you can preserve that asset that potentially has a tradable bonus that you might be able to apply elsewhere. In the absence of any form of encouragement, unfortunately it is the case that inevitably people have an incentive not to preserve, and I do not want that to be the case. I want to see incentives put in place so that we absolutely do preserve those assets.

**Reverend the Hon. FRED NILE:** I completely agree with that.

**Mr DAVID SHOEBRIDGE:** Mr Forrest, you repeatedly referenced the Ryde Civic Centre, and I assume that you recognised that it had substantial heritage value and you thought it should be protected. Is that right?

**Mr FORREST:** That is the case.

**Mr DAVID SHOEBRIDGE:** To that end you put in an interim protection order application seeking to protect it as the only way you could do that. Is that right?

**Mr FORREST:** It is.

**Mr DAVID SHOEBRIDGE:** Now you come to this Committee and you ask for all the interim heritage protection measures to be statutorily removed and abolished from the Act.

**Mr FORREST:** Well, not quite.

**Mr DAVID SHOEBRIDGE:** I have read your submission. That seems to me to be a bizarre and damaging proposition.

**Mr FORREST:** I understand the point that you make, as you have put it. What we have put is two things. On a constructive basis we have a prospective mechanism for the listing of heritage items so that we are not in a situation and Ryde council would not be in a situation where suddenly it becomes the case. So, if you like, we were using a mechanism, and it was a discovery process for us as well. As we went through the process, frankly we were surprised at the way that that was the only prospect available to us. Unfortunately it is the case that because Ryde council did not list it as a heritage item—there had been some debate to and fro as to whether or not it should be—but because they chose [audio malfunction] the State Government had no mechanism to identify the significant cultural heritage asset and had done nothing to ensure prospectively that it might be available.

What we are saying is through a new mechanism, which looks forward in terms of the identification of possible assets, through that mechanism you remove the need for these interim heritage orders. So, if you have a sensible system I believe you do not need those because I do believe, actually, when it comes to private property they are very dangerous. I am disappointed in the actions of Ryde council as a government agency as having behaved in the way that it did on that occasion, but it is what it is. Democracy does strange things sometimes.

**Mr DAVID SHOEBRIDGE:** Mr Forrest, you believe that there should be no capacity to have interim heritage orders issued in relation to heritage or culture that is found on private property because you prize private property interests over the collective and public interests in protecting the heritage. That is your position, is it not, and you are pretty bald about it.

**Mr FORREST:** It is not that we prize it. We believe that where private property value has been stripped away there should be some mechanism to preserve that. At the moment, unfortunately, because there is not any mechanism, in that circumstance we oppose its being stripped away.

**Mr DAVID SHOEBRIDGE:** Mr Margan, I might go to some questions to you, but first of all I would just like to note I have a potential conflict of interest. I had a former boss who was much in love with your wines, and I have carried that love on myself, so I come to this with some bias and prejudice in your favour. I will be clear about it.



**Mr MARGAN:** No worries, that is fine.

**Mr DAVID SHOEBRIDGE:** When you are talking about a landscape protection, you are talking about a system that is going to, on balance, represent the interests of that community, but inevitably you are going to have some people who live in that community—landowners in that community—who are against it. But as I understand it you are talking about the on-balance protection for the cultural and historical values in a landscape. Is that right?

**Mr MARGAN:** That is correct. There has got to be a level of planning that reflects the heritage value of any specific lot within the area, and there is lots of area that has not got heritage value. At the end of the day, as I say, we need to protect the amenity of the area. I will give you an example—coal seam gas. We fought it for eight years. It was going to be an industrial landscape applied to one of the most beautiful natural landscapes that we have. We are 200 years old, coming up, as an industry. So, there are a number of layers to this—whether it is the agricultural landscape, the natural landscape, we are talking about, Indigenous preservation. There is nothing more important to the Indigenous than the preservation of the natural landscape, and that is part of what we are trying to achieve. The pressures of conflicts of land use are just getting more and more in our area, and we do not have anything that protects the natural landscape or the agricultural landscape.

**Mr DAVID SHOEBRIDGE:** Indeed, there may be one or two listings about cultural landscapes that may reference Indigenous heritage, but I am not aware of a landscape listing for an area like, say, the Scenic Hills in the south-west of Sydney or the Hunter Valley because there is not really a mechanism to list and protect a landscape. That is what you are asking to be included in any reform, is that right?

**Mr MARGAN:** That is correct, yes.

**Mr DAVID SHOEBRIDGE:** When it comes to the Hunter Valley and the importance for your industry of preserving some of that old root stock and the old vines—perhaps some of the oldest, as you point out, on the planet—how important is it to the future of the industry that we protect those, particularly the old vines?

**Mr MARGAN:** As time goes on, more and more important. The world, as it is getting better at plant DNA—I will not bore you with the details around it, but at the end of the day what they are recognising is that we have some of the oldest, say, syrah vine root stock in the world, as I said. It came from the hill of Hermitage in France and that was all lost to phylloxera, and we have still got it existing here on its own roots in the Hunter Valley. So, that is really important to the world, but I also think that to the State and to this country the preservation of the Hunter Valley, as the oldest winegrowing area, should be important. I think it is important.

**Mr DAVID SHOEBRIDGE:** Have you had discussions with, say, the Wonnarua people and others, who I know at the moment have applications to protect their landscape under Federal Aboriginal heritage laws?

**Mr MARGAN:** No, we have not engaged with the Indigenous people. At the end of the day I am pretty sensitive to the fact that European agriculture came along and did not necessarily work in conjunction with the Indigenous people when it happened. We are sensitive to that. At the end of the day European agriculture is what we are trying to have recognised, and I am not sure how closely that works in with what the Indigenous people think.

**The CHAIR:** Thank you, Mr Margan. I invite Government members to raise a question.

**The Hon. BEN FRANKLIN:** I might follow up on that with Mr Margan, if that is okay, and the line of questioning from Mr Shoebridge. You identified a number of particularly pertinent challenges concerning the listing of landscapes. Are there any others that you would like to raise in this forum and particularly any suggestions about how they might be overcome?

**Mr MARGAN:** It requires the planning department to be involved, for sure. We, as the Hunter Valley, are probably the first of maybe a number of agricultural landscape that may be seeking heritage recognition. Ideally there would be something in place in terms of planning that anyone wanting to do this could have a look at what it means, as I say. At the moment we need to hire a consultant to do a landscape management plan to actually tell all the landholders what it means to have this heritage recognition. So, ideally, yes, there would be something put in place by Planning that would go, "Okay, if you as an area want to be listed on the heritage list in this State, this is what it means for all the landholders."

**The Hon. BEN FRANKLIN:** So, a codified set of rules and structures that organisations or communities would go through if they wanted them listed, yes?

**Mr MARGAN:** Yes, exactly, because it is—we are concurrently going through the process for national listing, which of course does not require any planning instruments attached to it, whereas, obviously at the State

level, without planning and without that landscape management plan to say what is happening we cannot go to all the landholders definitively and say, "This is exactly what will happen if we get this heritage listing."

**The Hon. BEN FRANKLIN:** My second question is to Mr Forrest. In your submission you raised the issue that some government projects are dealt with expeditiously and positively, like the Sirius building, for example, but sometimes private developments are put through a torturous process that is quite different. Could you talk about the difference between those two and what needs to be done to rationalise it so that those two can be streamlined better perhaps?

**Mr FORREST:** I guess this goes to the priority that the Government has historically and continues to place on heritage assets more generally—that because there are not comprehensive systems, support and funding associated with the protection of heritage assets, they focus on what they can focus on. That means that if the Government's priority of the day is the protection or non-protection of the Sirius building it gets dealt with really quickly and expeditiously while some private-sector developments sit for months, months, months and months, waiting for whether or not the whole site should be protected or just potentially the structure and the internal walls or just potentially certain pieces of flora and fauna on the outside perhaps, the gate and the fence—relatively simple questions that could be answered but it is a matter of resources.

If the Heritage Council is not resourced to be able to deal with that, does not have templates and rules to follow, then it becomes difficult, it becomes complicated, it becomes contested and it takes time. I guess from our perspective that also equals money. When you have got consultants sitting by, they are continuing to draw funds from you—finance is not so much an interest these days while interest rates are very, very low, but if you have got borrowings at a higher interest rate then that needs to be taken into account as well. All of these things suck up money, suck up time. Every time you have to change your architectural plans that requires a whole series of additional planners, architects, engineering design. It only takes a small modification to lead to changes in all of those things. All of that takes time and money and can be very frustrating for private-sector developers. We would like to see everything resourced equally and fairly.

**The CHAIR:** Is there another Government member with a question? I have just noticed the Hon Shayne Mallard raising his hand. Could you unmute yourself and ask your question?

**The Hon. SHAYNE MALLARD:** Yes, I am trying. Mr Forrest, I congratulate you on your campaign to try to save that building at Ryde. I think it is a loss to our heritage. International Style, I think it is called—modern buildings. Everyone seems to think it is all about sandstone, so thank you for your efforts there. But it does highlight the issue of neglect of heritage properties, and it is shameful that it was the Government that neglected that one. What incentives would you suggest are needed to encourage the preservation of a property like that, so not demolition by neglect? What suggestion did you have for that?

**Mr FORREST:** I suspect I am realistic enough to realise that the Government is unlikely to be in the position financially to be funding the private sector to be actively managing and protecting heritage assets, but there are other ways of doing the same things. Some of those have been canvassed in the discussion paper, and I have already talked about the possibility of heritage bonuses that might be able to be then traded between different council areas so that you have an active system, which would mean that if you do not preserve the asset to a reasonable quality then you do not get that asset made available to you for the purposes of trading. It creates a value but it does not do it at the cost of the State Government purse, which I realise from a Treasurer's perspective at least is not going to be a favourable outcome. Nonetheless, it gives an opportunity for the private sector to be effectively encouraged to preserve and protect that asset.

Let me give you a practical example just across the road from Parliament House here in New South Wales: 60 Martin Place development. You may be familiar with the curve that goes out across the next-door church. That was effectively recognising that that church could not develop upward because it was a heritage asset and they were unable to change it, but they used the floor space ratio that was available to the church and in return sought to preserve and improve the amenity of that church as well as provide funding for the lifelong preservation of that heritage asset. So, both were a winner. You got a really good building, which has wonderful views out to the harbour and will be an iconic asset and way better than the old Westpac one that it replaced. Nonetheless, it speaks to the Reserve Bank building across the road in terms of its architectural design. You have preserved a heritage asset, but also the funding that came out of that arrangement resulted in money going into the church next door to preserve that asset as well. So, win-win for all of the communities involved. It is a tremendous example.

**The Hon. SHAYNE MALLARD:** Elizabeth Farrelly does not agree with you. She thinks it is a thuggish building leaning bullishly over the top of the church, but I agree with you. I was a councillor for 12 years at the City of Sydney and I had a lot of workings with the heritage floor space scheme. We will have to get some evidence about this, but my understanding was—because I wanted to expand it to the whole of the south Sydney area when it was amalgamated into the city—it only applies to the old Frank Sartor core city and it is quite a

fragile market mechanism. The supply and demand is very carefully managed. That is one point, and I would ask you to comment on that.

The second point I want to make is I think what is really important to the community would be that if floor space ratio was purchased to build it the money went back into the local government area. You talk about Penrith or Campbelltown. I know there are some towers being proposed for Penrith at the moment—quite big towers. If that involves some floor space bonuses, it goes into preserving some of the heritage villas around Penrith. Would you agree with that?

**Mr FORREST:** I do agree with that, but I think that that highlights why the system has to be set up by the State Government: to ensure that a particular area is not bombarded with a whole stack of additional tall buildings and yet have none of their heritage assets preserved. That would be anathema to the very thing that we are talking about. For the record, Elizabeth Farrelly and I have an ongoing professional debate but with respect for each other's views.

**The Hon. SHAYNE MALLARD:** She loves to debate—a former councillor as well. Do you know anything in regards to the fragility or the delicacy of the floor space ratio market?

**Mr FORREST:** That is a very good point, Mr Mallard, and, yes, it is the case. That is the problem with the situation at the moment because it is so fragile. There is such a small amount of developable opportunity within the small confines of the CBD of Sydney. It means that while there is a market in place it can sometimes take years to realise that market and to find an opportunity to actually use your bonus heritage opportunity. A lot of work has to be done to identify both the heritage asset and a space in which it might be able to be used. That is why expanding that opportunity more broadly under State government controls would make that market more robust.

**The Hon. SHAYNE MALLARD:** Is it your understanding that you are entitled to a bonus on your property for a tower but council has a short list of heritage properties that are on the market for floor space and then it is a matchmaker? That is how it works, is it not?

**Mr FORREST:** Essentially.

**The Hon. SHAYNE MALLARD:** I might direct a comment or question to the gentleman from the Hunter. Sorry, I have not got your name here.

**The CHAIR:** That will be a question to Mr Margan, and it will be the final question.

**The Hon. SHAYNE MALLARD:** I am working from my phone. It was just an observation. The proposal for categories in this discussion paper would in fact address some of the concerns your landholders have in the region about listing the whole landscape. From my experience, I think people would be very concerned around different elements of their businesses being heritage listed, like the winery bottling sheds or the structures. Would you agree that addressing that blanket, one-size-fits-all would be a way forward for you?

**Mr MARGAN:** The thing with structures is that they have generally been captured by the LEPs out of the councils, so any heritage structure has got a recognition. What has not been recognised is the agricultural part of it, but notwithstanding that I certainly agree with what you are saying: recognition of whatever it is that has got heritage value and being classified depending on—and we have vineyards that are 150 years old, we have got vineyards that are 100 years old, we have got vineyards that are 50 years old. These are all considered to be of heritage value but of different heritage value. Of course, a 150-year-old vineyard has got more heritage value than a 50-year-old vineyard. So, the opportunity is to have categories to recognise you have a difference of value. Of course, as time goes on we are going to have more and more 50-year-old vineyards, we are going to have 200-year-old vineyards et cetera, so there needs to be some ability to have some fluidity, if you like.

**The Hon. SHAYNE MALLARD:** There needs to be a recognition of working vineyards too. Some vineyards take grapes out every five or 10 years, do they not, to get the latest grapes.

**Mr MARGAN:** Correct. There is a number of aspects to it. One is a particular site that has been growing grapes for a long time. If I can use, say, Barolo in Italy. It is UNESCO listed as a vineyard area. They pull their grapes out every 25 years. Having said that, each of those blocks is famous by name. They use the names of their blocks. We are starting to do that here in the Hunter too. The commercial reality of it is that those vineyards should be becoming, actually, much more valuable. Recognition of heritage in a viticultural sense should make their land more valuable, not less valued, and should make the need to preserve or to have continuity of supply out of those particular vineyards even more important to the people who are growing those grapes for making that wine. That is what will end up happening.

But what we need to do is if someone pulls a vineyard out that is of historic value, that we can preserve that stock—number one—so we do not lose the stock, and ideally if that site has been in continuous production for over 50 years that it can be kept in production. One of the sustainable aspects of what I am talking about is the fact is if a vineyard has lasted for 50 years up to this point it has got to be sustainable anyway. There is no way that anyone would be growing grapes on one site for that long unless it was making very, very good wine.

**Mr DAVID SHOEBRIDGE:** Mr Chair, could I ask if Mr Margan could take on notice if he had any further developed thoughts about the specific way in which vineyards and vineyard blocks should be listed and protected? I know there is the Italian example but there is also the French example in many of the regions. If Mr Margan had any further thoughts on it, could he give us that on notice?

**The CHAIR:** Mr Margan, would you be comfortable with taking that on notice and coming back to us?

**Mr MARGAN:** Yes, absolutely.

**The CHAIR:** On that basis I would like to take this opportunity to thank both Mr Forrest and Mr Margan for attending this hearing and for their participation. Mr Margan, on the basis of your response to provide answers to questions taken on notice, you will have a time frame of 21 days to do so and the secretariat will be in contact with you in relation to that in due course. I remind Committee members that we will take a short break until 3.00 p.m. today. I invite you all to mute your microphones and, similarly, to switch your respective videos off until that time. We will resume at 3.00 p.m.

**(The witnesses withdrew.)**

**(Short adjournment)**

**IAIN STUART**, Member, Australian Archaeological Association, sworn and examined

**ANITA YOUSIF**, President, Australasian Society for Historical Archaeology, affirmed and examined

**NEIL HOGG**, Member, Engineers Australia, sworn and examined

**The CHAIR:** Good afternoon and welcome to the review of the Heritage Act 1977. The Committee is resuming proceedings. I now welcome each of our witnesses, Dr Iain Stuart, Ms Anita Yousif and Mr Neil Hogg. Would you now like to take the opportunity to commence by making a short statement, starting off with Dr Stuart?

**Dr STUART:** Thank you very much. I have been asked to represent the views of the Australian Archaeological Association [AAA], a society of which I have been a member since 1978. I would like to acknowledge the Gadigal of the Eora nation, the traditional custodians of the land on which we meet, and pay my respects to the Elders both past, present and emerging. AAA is the largest archaeological association in Australia, representing a diverse membership of professionals, researchers, Aboriginal traditional owners, students and others with an interest in archaeology. We take a very broad view of archaeology, including historical, maritime, industrial and Aboriginal, as well as archaeological programs undertaken overseas. The AAA National Executive Committee has worked closely with a range of stakeholders and colleagues, including private consultants and university academics, and strongly endorses the constructive work on the bill by our members. Also, we have reviewed quite a lot of the submissions made by affiliate associations, and we support many of the points made in those. A summary of our views follows.

The review of the Act is timely, given the changing understanding of what is considered to be heritage from when the Act was first passed in the 1970s. The terms of reference for the review, however, are narrowly focused, with particular emphasis on legislation, rather than on the totality of the system for heritage conservation and management in New South Wales. We note that Aboriginal heritage legislation reforms should have had much higher priority for New South Wales than changes to the Heritage Act; particularly, we note the long duration of the proposed new heritage Act to cover Aboriginal heritage, which has been going on for at least 10 years. There are specific concerns related to archaeology, such as the need to clarify aspects of the relics provisions and arrangements for post-excavation conservation and duration of archaeological material.

We need to consider how places with both historical and Aboriginal heritage values and Aboriginal heritage values where traditional activity occurred during the period of time after initial contact and how these would be managed under legislation. It would be helpful also if the review considered benchmarking against best practice in other Australian or international jurisdictions. I now conclude my initial observations and obviously will be able to talk to the points in our submission as we go along. Thank you very much.

**The CHAIR:** Thank you, Dr Stuart. Ms Yousif, would you like to make a short statement to the Committee?

**Ms YOUSIF:** Thank you very much. I also acknowledge the traditional owners of the land that this meeting is held on today, the Gadigal people of the Eora nation, and pay my respects to the Elders past, present and emerging. As the president of the Australasian Society for Historical Archaeology, or ASHA in short, I thank you for this opportunity from the standing committee and Heritage NSW to provide my comments and represent my organisation. ASHA is a not-for-profit organisation that was founded in the 1970s by the lecturers and professionals of Sydney university. ASHA encourages scientific research and the exchange of knowledge on all matters archaeological. We also facilitate publication of the results of this scientific research and studies in our annual journal and various monographs. We organise annual conferences, workshops and other forums. On average we have about 300-plus members, who include heritage professionals, academics, students and heritage or archaeology enthusiasts.

As part of this review we have identified several key points, as follows. The discussion paper is silent on archaeology and therefore it is not clear if any amendments would contribute to the protection and management of archaeological resources. In its current form the Act is generally satisfactory. We consider that completing the reform of Aboriginal cultural heritage in legislation has priority over any amendments to the Heritage Act at this point in time. The issue with the New South Wales heritage management system lies with its interpretation and implementation, which is mainly generated by the lack of adequate resourcing and funding and also because of various shortcomings. Heritage listing should not be viewed as a hindrance. Also, we do not support the proposed listing categories because the current listing system, in our opinion, already allows great flexibility. Thank you.

**The CHAIR:** Thank you very much, Ms Yousif. Mr Hogg, would you like to make a short statement, please?

**Mr HOGG:** Engineers Australia is the professional organisation representing 100,000 engineers throughout Australia, and 30,000 in New South Wales. I am the past chair of the Engineers Australia national heritage committee and I live in Sydney. Engineers have a strong interest in conserving Australia's significant cultural heritage, as engineers were very often involved in creating it, operating it, and are still involved in conserving it. You will see from our submission that our general comments and many of our detailed suggestions align very closely with other submissions. For example, we believe that the Act itself is fundamentally sound and that its application and resourcing can be significantly improved. I would just like to highlight some of the areas of potential improvement which have not been covered in detail by other submissions. Firstly, if we look at the application of the Act and what it has given us over the last 40 years, we can see an extremely unbalanced representation of heritage.

People have mentioned the lack of Aboriginal heritage. Buildings, structures and landscapes have been relatively well served. In fact, over 98 per cent of all items on the State Heritage Register are buildings and structures, mainly pre-1900, mainly current or former government assets and mainly focused on aesthetic significance. The discussion paper itself is a classic example of this imbalance. It mentions movable heritage twice in the entire document—once in the glossary and once in a quote from the Heritage Act—and intangible heritage is not mentioned at all. This is a good indication of the attention that they receive in practice. One of the guiding themes that is mentioned is "putting heritage to work", which makes me think that I should be doing more to make sure my grandmother earns her keep. We prefer to talk of activating or enlivening heritage. Around New South Wales there are over 100,000 people who care for items of movable technological heritage in operating condition as individuals or as members of organisations.

They spend \$700 million each year conserving heritage motor vehicles, trains, boats, trams, planes and all sorts of other machinery. They raise almost all of that money themselves but, most importantly, they spend it within local communities and as part of their communities. They share their passion and welcome close to a million visitors each year. Not only do they preserve the artefacts, they also preserve the knowledge and skills required to restore, operate and maintain the items. By operating them, they allow visitors to learn and create their own experiences. That is intangible heritage. I will give an example. The Urana Vintage Machinery Club, in a town of 300 people, runs regular rallies for their old tractors, steam engines, cars and whatever. The whole district gets involved and visitors come from all over. They raise enough money to support the local football club, the hospital auxiliary and the local Rural Fire Service, and they do all of this with no official support.

At the other extreme, a good example of what can be achieved with professional support is Puffing Billy in Victoria, which attracts over half a million visitors a year. Engineers Australia and its members are actively involved in the conservation of all forms of cultural heritage—movable and immovable, tangible and intangible—and we urge the continuation of a strong Heritage Act, a more balanced recognition of New South Wales' cultural heritage and support for heritage at the grassroots level. Thanks.

**The CHAIR:** Thank you very much, Mr Hogg. In the context of this virtual hearing, I take this opportunity to gently remind members of the Committee, as a result of having three witnesses this session, to indicate who your question is directed to, to assist Hansard. At this point I will invite members of the Opposition, if they have any questions. The Hon. Mark Buttigieg?

**The Hon. MARK BUTTIGIEG:** Thank you, Chair. I just wanted to zero in on a couple of things I picked up there, particularly in respect of the opening statements from Dr Stuart and Ms Yousif regarding the silence in the Act on archaeological value. I am just reading the sub from the Australian Archaeological Association; I think that is your organisation, is it not, Dr Stuart?

**Dr STUART:** Yes.

**The Hon. MARK BUTTIGIEG:** It says that it does not necessarily need to involve legislative change but more the emphasis on the application of the Act. That does not seem to square with the statements that you both made regarding the silence on archaeological value in the Act. Did you just want to tease that out?

**Dr STUART:** If I may go first, I think we were more talking—well, there were two elements to this. The first one is that we felt that the issue to do with Aboriginal archaeology was a significant issue that was actually broader than simple archaeology; there are also quite a large number of other issues packed in with that. There has been a long process of attempting to separate out the protection of Aboriginal objects and archaeology from the National Parks and Wildlife Act into a separate Act, which has not actually come to fruition yet. Our society felt that it was important to have that prioritised, firstly. Secondly, I do not think our submission actually said that archaeology was silent in the Act. It was silent in the review. The Act has provisions to do with archaeology which—archaeology comes into two areas.

Firstly, a State Heritage registered site could contain archaeology of all forms. Secondly, there are provisions in the Act to deal with archaeology—the so-called relics provisions—which are really there as a way of dealing with the unexpected nature of archaeological finds, largely because we cannot see through the ground, so we do not know really what is there until we come across it. So we need to have a slightly different form of protection. But the actual problem is that some of the definitions and some of the issues around the definitions have gone out of whack and they need to be sort of massaged a little bit to fit in with the broader thrust of heritage. I think that covers the point. I will cede the floor to Ms Yousif.

**Ms YOUSIF:** Thank you. I also agree with Dr Stuart, who says that the Heritage Act does cover archaeology but the discussion paper does not. It was silent in the discussion paper. This is the main issue with archaeology in general where in the current heritage atmosphere it is always that buildings are considered and archaeology is always secondary or neglected. It is dealt with by professionals who are not archaeologists and many times—regularly almost—we have to deal with statements that are not adequate for archaeology, they do not address archaeology properly and there is a significant gap because we cannot extract or obtain the scientific information that archaeology may provide as part of the entire site. Whether it is landscaping, whether it is building, whether it has historical archaeological evidence or Aboriginal evidence, we want sites or items to be considered holistically and as one item with multiple facets, inclusive of archaeology.

**The Hon. MARK BUTTIGIEG:** Thank you for that. Just to follow on from that, do I interpret from that that the Act as currently configured is probably a forward enough scope for protection and conservation of archaeological heritage but there is a lack of emphasis in terms of expertise to be able to give it the weight and significance that the Act considers?

**Dr STUART:** I think you are right. I think that there are firstly some marginal definitional issues that could be altered to make it more effective. And then, in the whole overall process, advice to government on archaeological matters is given by a group of, I think, three people in Heritage NSW. The department of planning, for example, which oversees a vast number of infrastructure projects that are excluded specifically from the Heritage Act, has no professional advice on heritage, let alone archaeological heritage. That causes a lot of problems because they have to deal with complex projects, complex impacts on them, archaeological consultants wandering around doing things that the Department of Planning, Industry, and Environment has no idea whether they are doing the right thing or the wrong thing. That is a sort of limitation and it can lead to chaos and confusion. It can also lead to in some cases where public money is spent on things that it perhaps did not need to be spent on.

**Ms YOUSIF:** We are saying the same from our end. We do believe that there is a lack of expertise. For some reason archaeologists are most of the time overlooked and archaeology in general is just considered as a great hindrance or money spent on people playing with dirt, which is totally wrong. I do not know how that perception has permeated the understanding of heritage, even amongst our heritage colleagues, but it is a fact. Definitely there is a neglect; archaeology is not considered as part of heritage in general terms.

**The Hon. MARK BUTTIGIEG:** Thank you for that. Just one more question and then I might defer to my colleague Peter Primrose, if he has any. You mentioned in your discussion, the submission and the opening statements the separate Act that was being developed to recognise Aboriginal heritage. Did you just want to give your views on the efficacy of that and whether or not it could be recognised and subsumed into the Heritage Act per se? Or do you think it is better off being separate, and why?

**Dr STUART:** I think it is a difficult question. Undoubtedly, as a matter of public policy and social justice, it is important to move the protection of Aboriginal heritage out of the National Parks and Wildlife Act, where it is muddled with flora and fauna. I believe the Act is actually very effective in its terms, but it is an absolutely, terribly bad look to do this, because so often Aboriginal people were treated in textbooks as being part of Australia's flora and fauna, rather than being owners and occupiers of the country for 60,000 years. I believe that it has worked well in other jurisdictions to have Aboriginal archaeology separated out, because there are other issues relating to Aboriginal sites to do with social significance that are perhaps better treated by Aboriginal people.

If they are subsumed into the Heritage Act, there is the issue of the potential for non-Aboriginal people making decisions over Aboriginal sites. But on the other hand, if it is separate it means that the current situation where you have to get a permit for your historical archaeology and a permit for your Aboriginal archaeology seems, to me, to be administratively difficult. You could make it more efficient by a one-stop shop, obviously. I have not got the best answer. I think it is something that is probably best discussed with the Aboriginal community as well and with government as to how this is best managed. It may well be that we have to put up with an inefficiency in obtaining permits to attain broader social justice for Aboriginal people.

**Ms YOUSIF:** There is a definite division between historical archaeology and Aboriginal archaeology. For some reason there is a disconnect with these two archaeologies that are characteristic for Australia, and that

is not the way how it should be. Personally, from my end, I do not agree with the term "non-Aboriginal archaeology". Aboriginal tradition and history does not stop in 1788; it continues, but in a different form. It is one archaeology with different fields. There is a lot of overlap, primarily when we have sites of so-called contact archaeology, where we have overlap between Aboriginal and historical and where we find evidence of various historical objects being worked and used by Aboriginal peoples.

However, in identifying or making a decision that Aboriginal cultural heritage is going to be managed or considered and treated by the Heritage Act, we would really like to see the decision and view of the Aboriginal traditional owners and stakeholders—how they see their legislation. And then after that we would have to have further discussion as to how to incorporate those values into the Heritage Act and how the two pieces of legislation can work together. At the moment they are completely separate, which in a way is fine, because we are all aware of the legislation—consultants and professional practitioners. However, there is a huge discrepancy when you apply for a permit; the determination or issue of an Aboriginal permit takes much, much longer than anything to be issued under the Heritage Act. So that has a great impact on projects, financially and time-wise.

**The CHAIR:** I will now invite members of the crossbench, if they have questions.

**Reverend the Hon. FRED NILE:** Yes, thank you.

**The CHAIR:** Reverend Nile?

**Reverend the Hon. FRED NILE:** I note that in the apologies there was one from the Australian Association of Consulting Archaeologists. Did they make a submission, finally? If not, are any of the witnesses endeavouring to bring their concerns before the inquiry—that particular organisation?

**Dr STUART:** I am not aware of any submission they made, although I believe they were intending to make a submission. Both myself and Anita Yousif are professional consultant archaeologists, so we have some familiarity with the practice of consulting archaeology, but we probably could not speak for—I certainly cannot speak for the Australian Association of Consulting Archaeologists. But if you had any particular questions that you might want to raise about consulting archaeology, I am sure we would endeavour to answer them as best we can.

**Reverend the Hon. FRED NILE:** Thank you.

**Ms YOUSIF:** If I may say, it is my understanding that a submission has been made and the representatives invited, but I do not know why there is no appearance today.

**The CHAIR:** I understand they were an apology.

**Ms YOUSIF:** Thank you.

**Reverend the Hon. FRED NILE:** That is right, they were an apology. I do not think there was a submission, but there may be one hidden away somewhere. If the Government or the secretariat organising the hearings could chase them up for a submission, that would be helpful. The area that I was concerned about from a historical point of view deals with issues that came out of World War I and World War II—the bombing of Darwin, and so on. Is there any provision for archaeological research or material from those events as part of our history?

**Ms YOUSIF:** If I may start, I am not aware of any projects involving that particular site; however, historical archaeology deals with the archaeology and heritage of the Second World War. It is a specific branch, so to speak. It is definitely included, but we do not come across these items as frequently in our research and excavations and field investigations—as frequently as other types of archaeology. But we do have colleagues who deal with the archaeology of the Second World War.

**Dr STUART:** May I also just add, speaking on behalf of the association, certainly members of the association in the Northern Territory have obviously been quite active in documenting and researching many of the World War II sites. As well, I would say that I have certainly looked at a number of fortifications around Sydney and Newcastle. Some of this comes into industrial and engineering heritage, which I am sure Neil Hogg might have some views on. But we have also looked at some of the other sites that are related, such as munitions factories, warehouses, storage areas and airfields, all of which are located in New South Wales. Recently the Heritage Council of NSW has actually listed a particularly unique aircraft hangar at Tocumwal. That is a matter that is before the Minister to determine, but the Heritage Council has put forward its nomination for the section 60 register. So there is an interest in World War I and World War II heritage. Some of this is archaeology; some of this is engineering heritage. A lot of this is social history, because people have really important memories of things like the Japanese shelling of Newcastle.



**The CHAIR:** Thank you, Dr Stuart. I noticed before that Mr David Shoebridge raised his hand. Do you have a question?

**Mr DAVID SHOEBRIDGE:** Yes, thank you, Chair. Dr Stuart, I think you said that the Aboriginal heritage protections under the National Parks and Wildlife Act are working effectively. Do I understand that you mean that in a very narrow sense, that being in the way in which permits can be obtained by archaeologists to study the sites, or do you mean it in relation to its effectiveness to protect Aboriginal heritage more broadly? How did you mean it was working effectively?

**Dr STUART:** I think that in a narrow sense of sites and physical places, there is a situation where one can apply and obtain permits. There is also a situation where impacts on sites that have not been permitted have been chased up and people have been prosecuted. But generally it is a fairly old piece of legislation and our association is certainly looking forward to a broader piece of legislation. As you are aware, the legislation was brought in 30 or 40 years ago, when there was a different conception of archaeology, particularly at a time when Aboriginal communities were not involved in archaeology. Our society has been active in advocating for a broadening of the understanding of the involvement of Aboriginal people. We think it is absolutely essential that Aboriginal people have control over their own heritage.

Also, I referred earlier to a changing understanding of heritage to do with intangible heritage, as Mr Hogg talked about, and cultural heritage that is of importance to particular groups, such as Aboriginal people. We would be seeking to have the new legislation be broader than just simply dealing with Aboriginal objects.

**Mr DAVID SHOEBRIDGE:** Dr Stuart, you would be aware year after year after year of the applications that are made to destroy or harm Aboriginal heritage that go through the National Parks and Wildlife Act. First of all, those applications are not determined by First Nation peoples. Secondly, they have either a 100 per cent approval rate or a 99 per cent approval rate as far back as I have searched, and that would be at least the last 10 years. You are not suggesting that that is a functional system for protecting First Nation's heritage, are you?

**Dr STUART:** I do not actually know the figures, but I suspect you are probably 100 per cent on the money. It is an issue that we as a society have been advocating for, which is a change in the way the legislation operates. At the moment it is a regulatory system, so that people can apply for permits and they are given permits. I do not know which ones are refused because I do not necessarily work personally in that area. But I think we do need to change. We do need to have a system that is based on conservation, and that is something I think our society would be supporting.

**Mr DAVID SHOEBRIDGE:** I am sorry to interrupt; we are very short on time. I might just ask Ms Yousif, do you think the current Aboriginal heritage protection laws in the National Parks and Wildlife Act are at all fit for purpose? If we were to be urgently reforming one part of the heritage laws, many submissions say that is where we should start, not with European and non-Aboriginal heritage. Do you have views?

**Ms YOUSIF:** The current legislation provides some level of protection. I would like to see a streamlined approach across various States. I would not make a division between the States because there are various legislative paths that provide different levels of protection. But in terms of the current one, I am not an expert on Aboriginal heritage. As I said, to some extent the current legislation provides some protection, but obviously it is not—I would not like to comment on that because I believe that it still requires refinement and update to make the process less onerous and more effective.

**Mr DAVID SHOEBRIDGE:** Could I ask both the archaeologists, if there are to be standalone heritage protections for First Nation's heritage which are primarily determined by First Nation peoples, to the extent that there is any conflict between any reformed Heritage Act and Aboriginal heritage standalone legislation that when it comes to items of Aboriginal culture or heritage the standalone Aboriginal heritage legislation should have primacy. Do you agree with that as a basic structure?

**Dr STUART:** I think our society has the view that First Nation people should determine and manage their own heritage. There should not be a conflict with historic heritage; it should not really be up to something like a heritage council that has no Aboriginal people on it to make determinations on Aboriginal heritage. I think this is a position that the society has held for a long period of time.

**Ms YOUSIF:** I also believe that legislative protection should be a seamless process. I am absolutely sure that whatever First Nation people decide definitely can be incorporated into the current legislation; it just would require more extensive consultation. But when it comes to archaeology, there are no boundaries from our end. We do not separate historical from Aboriginal. We just want to see one seamless, continuous process, because as scientists that is what we are interested in. We are interested in the past. We are not interested in any artificial

divisions made. We just want to follow chronological sequencing and to understand the culture, the changes of the culture and how it evolves.

**Mr DAVID SHOEBRIDGE:** But, Ms Yousif, there is a quite distinct difference where the culture, the archaeological sites and the heritage sites are connected to a current, continuing culture and history that goes back 40,000, 50,000 or 60,000 years. It is quite distinct when you are talking about culture and history that attaches to a continuous culture, which is what we have with First Nation peoples. They are not apples and apples, are they?

**Ms YOUSIF:** No, I did not mean that. There must be some confusion. I am just saying that we do not want to make a division. We want to have this holistic approach. I am speaking from the practical point of view. When we go out to the site, as a historical archaeologist or a specialist in historical archaeology, I will be considering that site holistically, in a stratigraphic way—that before that historical period, there is another level of occupation. That is what my understanding is about this division. We cannot talk about historical heritage without considering Aboriginal heritage; they cannot be divided.

**The CHAIR:** I am just double-checking, Ms Yousif, have you concluded your answer?

**Ms YOUSIF:** Yes, I have, and I just want to say that this is my personal opinion as a practising archaeologist.

**The CHAIR:** Thank you. I will now invite members of the Government, if they wish to raise a question. Mr Mallard has raised his hand.

**The Hon. SHAYNE MALLARD:** Thank you, Mr Chair. Following on that line of discussion on the issues around identifying archaeology, some of the submissions have said that there are issues under the current Act about how archaeology is managed and how relics are identified and defined. Do you want to talk about the problems under the current Act and how we should address them in regards to defining relics and managing archaeology?

**Dr STUART:** The fundamental underpinning of the problem, I think, lies to the formulation of the Act—

**The Hon. SHAYNE MALLARD:** I will just say that it is Dr Stuart answering the question, for Hansard.

**Dr STUART:** Sorry, I apologise for not identifying myself. The Act talks about relics, which are artefacts, in a sense; they are things that you can pick up. But archaeologists manage in terms of sites—places in the landscape. And so the legislation is not particularly well placed to deal with that and the definitions in the Act are somewhat vague, particularly a distinction that has been drawn from legal opinion between "works" and "relics": "works" being things like a well; "relics" might well be an old bottle that has fallen into the well. It is strange that in fact you can protect the bottle in the well but you cannot protect the well if it is empty, if that makes any sense.

Those definitional things have come along as the Act has been used and as things have occurred. So I think that a lot of the discussion is really about tidying this up. The point about the relics provisions is in fact to ensure that unexpected things like the Barangaroo boat, for example, or the historic Aboriginal sites at Randwick can actually have a sort of mechanism for them to be looked at without having to go through the very lengthy process of assessing whether they are of State or local significance and whether they could be listed or not. Because the time frame for that is years rather than weeks—which we need because these things are often found in the context of a development. I hope that elaborates or helps you in understanding those comments.

**The Hon. SHAYNE MALLARD:** The bottom line is that we need to have more clarity around the definition of a "relic"?

**Dr STUART:** I think so.

**The Hon. SHAYNE MALLARD:** That removes the distinction between "works" and "relics", to bring them together. Is that what you are saying?

**Dr STUART:** Yes. Look, I think—fair enough. Sometimes people were saying things were relics when they were really works. The Balls Head Coal Loader is a classic case where it was considered to be a relic, to try and preserve it, and in fact it turned out to be a work. But buried bits of infrastructure are clearly what the framers of the Act back in 1977 were thinking about, rather than this sort of legalistic separation. It would also be helpful if the definition of "relics" clarified whether human remains were included, because it is not 100 per cent clear that human remains are included. Clearly we would want to have some statutory control on human remains from the historic period, bearing in mind that the Coroner's jurisdiction only extends for the last hundred years and we have recently uncovered human remains from Central station, as you are probably all aware, that are a little bit older than that.

**The Hon. SHAYNE MALLARD:** I am familiar with the ones that were uncovered during the light rail construction over at Central, at Devonshire Street. Also at Sydney Town Hall, when they went down to the level where there were about nine graves.

**Dr STUART:** Absolutely. Those ones from the Sydney Town Hall are outside the Coroner's jurisdiction, but we obviously clearly need to have some level of control. It would be helpful to have that clarified so that it gives greater certainty to the people who are actually administering the Act and also people who are contemplating doing work in areas where there may be archaeological relics—there is a reasonable chance that they would be present.

**The Hon. SHAYNE MALLARD:** That crosses over into Aboriginal heritage too—

**Dr STUART:** Absolutely.

**The Hon. SHAYNE MALLARD:** —because human remains were found at the golf course at Rose Bay, in the sand dunes.

**Dr STUART:** Yes. I think the classic case is the site at Randwick, where we now have evidence that Aboriginal people took ballast from the ships that were coming into Sydney and took it away and camped there and turned it into Aboriginal stone tools. There is a lot of other evidence now coming through showing that Aboriginal people were doing that, which gives us this tremendous insight into how Aboriginal people lived in the immediate post-contact era in a different way from the historical accounts, which were looking at them from the point of view of a First Fleet officer or a government official. So those things are really, really important.

**The Hon. SHAYNE MALLARD:** That was an extraordinary find at Randwick, to tell us something about the past that we did not know, wasn't it?

**Dr STUART:** It was.

**The Hon. SHAYNE MALLARD:** Thank you for that information. My next question will go to Mr Hogg. It is an issue that I have always had an interest in, which is mobile or movable heritage and how that is easily lost. In the review of the Act, how would we strengthen the protections for mobile or movable heritage, to preserve and protect it?

**Mr HOGG:** We made detailed comments throughout our submission, but the Act itself is actually quite good. It uses the term "item", for example—which is not used in other States—which specifically makes reference to movable heritage. So it is there; the Act does cover it. Any amendments to the Act have all been about land and buildings and so forth, so all further developments have not taken "movable" into account. If you look at the implementation of the application by heritage practitioners from the Heritage Council down, the results show that it just does not get a look-in. Most industrial buildings, for example, are preserved on the basis of their aesthetic quaintness. All the machinery that they were built to protect has been scrapped.

One of the things that the Act can do, whether it has set out to do it or not—it is interesting to note that at a Federal level there is no protection for movable heritage. The Environment Protection and Biodiversity Conservation Act specifically excludes movable heritage and the Protection of Movable Cultural Heritage Act is only concerned about the import and export. So movable heritage at a Federal level has no protection. To stop something being exported from the country by collectors from Germany, the US, the UK or whatever, one of the things that the Protection of Movable Cultural Heritage Act looks at is whether the object has been recognised as being of State significance. As you can see, there are only 27 items in the whole of New South Wales that have that. Recognising something at a State level provides protection at a national level.

**The Hon. SHAYNE MALLARD:** I will defer the questioning to my colleagues now. Thank you for that.

**The CHAIR:** Thank you, Mr Mallard. Mr Franklin had raised his hand.

**The Hon. BEN FRANKLIN:** Thanks, Chair. Just to pick up on that exact issue, could you elaborate a little on what incentives might be able to be provided in order to ensure the protection of movable objects, in your view?

**Mr HOGG:** A couple of the things that we have mentioned in the submission were that the things that are making it difficult for people are insurance, the preservation of trade skills and knowledge—how to drive a steam engine, how to repair an old car, or whatever. This is intangible heritage that we are talking about. That is becoming increasingly hard to get, so that can be helped by TAFEs and courses and so forth. The other thing is that what the State Government has done with the historic motor vehicle scheme is absolutely fantastic. It is quite a small amount of money that has been forgone by the State in reducing the registration costs, but it has activated a huge number of items that have been brought into the public. One of the expectations is that they must be made

publicly available, which is fantastic. We just ask for consideration of a similar system that might be implemented for other types of movable heritage.

In Victoria the environmental offset biodiversity grants that are made—I think there is a system in New South Wales as well—where landholders are compensated for protecting significant parcels of land and preserving that land. In Victoria it has been extremely successful in actually identifying a lot of really important stuff that people did not know existed, and the landholders are paid to conserve that. It has been really successful, and we are thinking, well, maybe something like that could be applied to movable items. It would not take a lot of money; as I said, these people do not get any support. One thousand dollars would mean a huge amount to them, and you would get a lot of things protected for \$1 million. Something like that that can incentivise people to do it themselves—it is a very efficient way because they are already passionate and they are already spending a lot of money. Just giving them that little bit of a boost, we believe, would make a huge difference.

**The Hon. BEN FRANKLIN:** Thank you. My final question, if I may: In the previous session we heard evidence from a very respected winemaker in the Hunter talking about heritage listing of landscapes, particularly of the wine country around the Hunter. I know that in your submission you had some views about listing of landscapes and so on. I was wondering if you would like to elucidate on those, perhaps, a little?

**Mr HOGG:** Our concern was not about the issue of landscapes. The issue that we had was—

**The Hon. BEN FRANKLIN:** The separate categories.

**Mr HOGG:** —the separate category. We are quite happy with landscapes. In fact, one of the concerns that we have is that under the rehabilitation Acts it is a requirement to obliterate all record of mining history, for example, and we see that as a potential threat to recording our mining history. In some councils, we know they seem to be ashamed of coalmining, but it is part of our history.

**The Hon. SHAYNE MALLARD:** Like at Barangaroo.

**Mr HOGG:** We believe that it should be recognised as a landscape, or whatever. That is fine. All we are saying is that it is just part of the heritage. It should not need to be a separate category.

**The Hon. BEN FRANKLIN:** Understood. Dr Stuart, I think you might have wanted to contribute to this issue.

**Dr STUART:** Yes. I think that working out ways to conserve landscapes is really important because sites do not exist just simply in isolation. Obviously we need to consider larger areas and how we would manage them. The Acts originally were there to create archaeological areas. I think Plumpton Ridge on the western Cumberland Plain was one, where there were a series of Aboriginal quarrying areas identified. The protection for that has gradually been eroded away by development. But also further out, and then perhaps turning more to post-contact, we really do not have very well-preserved landscapes relating to the wheat industry—which is a particular hobbyhorse of mine—and also mining landscapes.

It is a tricky issue. It is really a tricky issue to preserve landscapes, to maintain rights of ownership and things like that. But it does not necessarily mean that we do not try it; we just put our minds to it and see how we can get over the obstacles to come to a result. One of the things I have noticed in Germany in terms of preserving their mining landscapes, which are significant, was actually letting natural forces regrow over the area and just allowing what they call "industrialised nature" to take its course. You go to some areas and there are trees and green everywhere, and yet it is a World Heritage-listed coalmine. So there is some scope for looking overseas, which I guess gets back to the point about benchmarking against overseas practice.

**The Hon. BEN FRANKLIN:** Thanks, Dr Stuart.

**The CHAIR:** On that note, I will take this opportunity to thank our witnesses for attending this hearing. Thank you, Dr Stuart, Ms Yousif and Mr Hogg, for your input, patience and assistance today. Furthermore, I would like to thank the Committee members for their contribution and the manner in which it was conducted, together with extending my thanks to the secretariat and IT support for helping to facilitate this virtual hearing. On that basis I wish everyone a good afternoon. This concludes today's hearing.

**(The witnesses withdrew.)**

**The Committee adjourned at 15:45.**