

GENERAL PURPOSE STANDING COMMITTEE NO. 5

Friday, 2 September 2016

Examination of proposed expenditure for the portfolio area

THE ENVIRONMENT, HERITAGE

The Committee met at 14:00

UNCORRECTED PROOF

MEMBERS

The Hon. R. Brown (Chair)

The Hon. R. Colless

Dr M. Faruqi

Mr S. MacDonald

The Hon. G. Pearce

The Hon. M. Pearson

The Hon. P. Sharpe

The Hon. M. Veitch

PRESENT

The Hon. M. Speakman, *Minister for the Environment, Minister for Heritage, and Assistant Minister for Planning*

CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

Corrections should be marked on a photocopy of the proof and forwarded to:

**Budget Estimates secretariat
Room 812
Parliament House
Macquarie Street
SYDNEY NSW 2000**

The CHAIR: Welcome to the public hearing for the inquiry into budget estimates 2016-2017. Before I commence, I acknowledge the Gadigal people who are the traditional custodians of this land and I pay respects to the elders past and present of the Eora nation, and extend that respect to other Aboriginal persons present. I welcome Minister Speakman and accompanying officials to this hearing. Today the Committee will examine the proposed expenditure for the portfolios of Environment and Heritage. Today's hearing is open to the public and is being broadcast live on the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available.

In accordance with the broadcast guidelines, I inform members of the media who are here or who may be joining us that while Committee members and witnesses may be filmed or recorded, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at this hearing. So I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence, as such comments would not be protected by parliamentary privilege if another person decided to take action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could answer only if he or she had more time or with certain documents at hand. In those circumstances witnesses are advised that they can take a question on notice and provide an answer within 21 days. Any messages from advisers or members' staff seated in the public gallery should be delivered through the Committee secretariat. Minister, I remind you and the officers who are accompanying you that you are free to pass notes and refer directly to your advisers seated at the table behind you. Finally, would everyone please turn off their mobile phones or set them to silent for the duration of the hearing. I also request that there be no tweeting from members. All witnesses from departments, statutory bodies or corporations will be sworn prior to giving evidence. Minister, I remind you that you do not need to be sworn as you have already sworn an oath to your office as a member of this Parliament.

TERRY BAILEY, Chief Executive, Office of Environment and Heritage, affirmed and examined

MARK GIFFORD, Acting Chair and Chief Executive Officer, Environment Protection Authority, affirmed and examined

STEPHEN BEAMAN, Executive Director, Waste and Resource Recovery, Environment Protection Authority, sworn and examined

KIM ELLIS, Executive Director, Botanic Gardens and Centennial Parklands, affirmed and examined

MICHAEL WRIGHT, Deputy Chief Executive, National Parks and Wildlife Services, affirmed and examined

The CHAIR: As there is no provision for a Minister to make an opening statement before the Committee commences questioning, we will begin with questions from the Opposition.

The Hon. PENNY SHARPE: Minister, it is estimated that there is just 7 per cent of the original Cooks River/Castlereagh ironbark forest remaining in Sydney. Are you aware that 1.87 hectares of this remnant woodland is set to be cleared for a temporary car park and storage area for machinery working on the WestConnex project?

Mr MARK SPEAKMAN: I am aware that some ironbark woodland is about to be cleared adjacent to the M5 project. I make these observations: Proposed clearing has been in an environmental impact statement that has been on the public record, available to everyone including members of your Committee, since November last year—

The Hon. PENNY SHARPE: Yes, I am aware of that.

Mr MARK SPEAKMAN: I have not finished my answer. The Office of Environment and Heritage [OEH] assessment also has been available on a public website since that time. Also available on the OEH website is information about this woodland. There are estimated to be more than 1,000 hectares of this woodland remaining in the Sydney region. What is proposed to be cleared is approximately 0.14 per cent of that woodland. The woodland is described in the environmental impact statement and in the OEH assessment as having a number of challenges. It is likely to have long-term challenges as to its ultimate viability. There are a lot of edges around it that impact on its viability. What is proposed in the environmental impact statement and what has been basically consented to by OEH, by the consent authority, and signed off by the Commonwealth is a proposal consistent with the Government's major projects biodiversity offset policy. That will see an offset for that clearing. I am informed that Roads and Maritime Services [RMS] intends to offset that clearing with ironbark forest located in the Sydney region and that the long-term—

The Hon. PENNY SHARPE: So not on the Central Coast.

Mr MARK SPEAKMAN: No, not on the Central Coast.

The Hon. PENNY SHARPE: Minister, are you aware that the forest is home to powerful owls, flying foxes and other endangered species?

Mr MARK SPEAKMAN: So I am told. I think in your question you said "a temporary car park". It is proposed to be a permanent clearance for machinery and the operations of the M5.

The Hon. PENNY SHARPE: What work was done at any point to try to find an alternative place rather than clearing this piece of remnant and critically endangered forest?

Mr MARK SPEAKMAN: Under the Government's biodiversity offsets policy you have to avoid, minimise or offset. So the first obligation for a major project like this is to avoid that impact. That is an assessment that has been done and the assessment was that it was not possible to avoid this impact. So far as minimisation is concerned there will be some steps that will minimise the impact—fencing and the collection of seeds and the like, which has already taken place. But the primary way to avoid any net biodiversity loss and probably actually enhance biodiversity is through the major projects offsetting system, which is expected to result in a better offset somewhere else in the Sydney Basin.

The Hon. PENNY SHARPE: Exactly on the matter of biodiversity offsets, are you aware the NSW Scientific Committee has raised a number of concerns about the Government's current policy for biodiversity offsetting, particularly the New South Wales biodiversity offsetting policy for major projects? It has said:

... the proposal that a proponent can provide funds for supplementary that do not involve protecting and managing a site, or by paying into the Fund, is clearly a case of developers being able to buy themselves out of any obligation biodiversity in any meaningful way.

...

The [biodiversity offsetting] Policy introduces additional measures that are likely to accelerate the increased extinction risk for species affected by the Policy. These are the relaxation of the 'like for like' principle; the removal of red flags; the introduction of supplementary measures; and discounting of offsets.

Do you accept this criticism around the biodiversity offsets policy?

Mr MARK SPEAKMAN: The biodiversity offsets policy is a robust policy. As I said before, there is a hierarchy that you have to go through before you ever get to the stage of supplementary measures. It is not a matter of some developer basically paying people off through supplementary measures to get a development through. You first have to avoid wherever possible. If you cannot avoid and you demonstrate you cannot avoid, you have to minimise the impact of what you are proposing to do. To the extent that there are impacts that cannot be avoided or minimised, you then have to find like for like. Only if you demonstrate that you cannot find like for like can you go to a further step and ultimately to supplementary measures. Mr Bailey might want to—

The Hon. PENNY SHARPE: No, that is fine.

Mr MARK SPEAKMAN: I had something else to say about supplementary measures.

The Hon. PENNY SHARPE: No, that is fine. I am happy for you to take the rest of that on notice and provide that as necessary. I do not have a lot of time, Minister, so I want to move on. Even though there have been significant warning signs from the NSW Scientific Committee, are you going to guarantee that those issues are going to be picked up in relation to your draft biodiversity conservation bill?

Mr MARK SPEAKMAN: The draft package has been out for public consultation. I think public consultation closed around the end of June. There was targeted consultation before then with key stakeholders, like conservation groups, the Property Council, the Minerals Council and NSW Farmers.

The Hon. PENNY SHARPE: Yes. I know the environment groups have pulled away from that.

Mr MARK SPEAKMAN: Before the report of the independent panel there was extensive consultation.

The Hon. PENNY SHARPE: I am not asking about consultation; I am asking about your commitment to ensuring that there is not a greater risk or acceleration of extinctions as a result of the policy contained in your bill as flagged as a concern by not only the NSW Scientific Committee but also many other organisations including the Wentworth Group of Concerned Scientists.

Mr MARK SPEAKMAN: Against the background of extensive public and stakeholder consultation that I have outlined, it is the Government's intention to ensure that our package enhances biodiversity and does not detract from it. That is one of the principal purposes of this package. It is why we commissioned an independent panel to write its report. It is why the panel made 43 recommendations. The biodiversity protections in New South Wales were not preventing a long-term increase in the number of threatened species. The whole rationale, purpose and design of our biodiversity package will be to prevent and reverse that increase in the number of threatened species in New South Wales.

The Hon. PENNY SHARPE: Can I clarify that you are the lead Minister in relation to this package that will come into the Parliament sometime this year?

Mr MARK SPEAKMAN: There are three Ministers of which I am the lead.

The Hon. PENNY SHARPE: I want to ask you about the penguins at North Head. As you are aware, it is the only penguin colony on the mainland of New South Wales and penguins are listed as endangered. At last year's estimates hearings we had a long discussion about the fox that had killed 27 of them. I accept that a lot of effort went into getting rid of the fox. I think you subsequently told us it cost around \$370,000 to get rid of said foxes. Have there been any further fox attacks in this area?

Mr MARK SPEAKMAN: I am not aware of any further fox attacks on little penguins. I think there was a fox that was caught a couple of months ago, but there have been no attacks on little penguins this year that I am aware of.

The Hon. PENNY SHARPE: There probably were not there then. Are you aware that in December 2015 the lessee of the quarantine station cleared an area of vegetation—I believe around 20 metres by three metres—near the restaurant?

Mr MARK SPEAKMAN: No, I am not personally aware.

The Hon. PENNY SHARPE: Is anyone from your department aware of this?

Mr BAILEY: Yes.

The Hon. PENNY SHARPE: Was that done with the approval of OEH?

Mr BAILEY: No, and we have been conducting an investigation into that matter.

The Hon. PENNY SHARPE: That investigation has been going for quite a long time. It was December last year. What is the status of that investigation?

Mr BAILEY: Bear with me for a moment, Ms Sharpe. I will find my details on that particular investigation.

The Hon. PENNY SHARPE: While we are there, you can also confirm for me whether, when this clearing occurred, there were juvenile penguins in the nesting boxes or around the site.

Mr BAILEY: That aspect I might have to take on notice, Ms Sharpe. My recollection is that the clearing of the site occurred in December last year. We have carried out the thorough investigations of that, and to inform you, that has concluded. It was conducted by our special investigations unit, which is our most senior set of investigators in the agency. There is no clear evidence in relation to the legality or illegality of the clearing.

The Hon. PENNY SHARPE: I can confirm it was in the critical habitat zone.

Mr BAILEY: The critical habitat zone definition is unclear. One of the actions that we are taking is to ensure that we have better planning around the entire precinct with the property—

The Hon. PENNY SHARPE: Mr Bailey, have you been to the site?

Mr BAILEY: Yes, I have.

The Hon. PENNY SHARPE: You are aware where the penguins walk in behind the restaurant along the wall, which was specifically built because it was recognised that that is where penguins were nesting. It has been known for quite a long time?

Mr BAILEY: Yes. I am just pointing out that our special investigators, who are experts in conducting those investigations, have conducted full and thorough investigations into the matter and concluded the investigation. They have determined that there was a lack of clear evidence to pursue the matters through the courts. A series of mitigation actions are being taken with the lessees to ensure, again, that there are no further risks to that site.

The Hon. PENNY SHARPE: There are no fines?

Mr BAILEY: We are doing a series of mitigation actions—

The Hon. PENNY SHARPE: So the National Parks and Wildlife Service has had to pick it up and revegetate the area, is that correct?

Mr BAILEY: We are working with the lessees of the property to do that work and make sure that we are installing appropriate vegetation to assist in protecting the penguins. That is joint work with the lessees of the property.

The Hon. PENNY SHARPE: Minister, are you concerned that in this area where there is critical penguin habitat and where you in the past years have spent almost \$400,000 trying to protect those penguins, that the lessee on that site has simply cleared critical vegetation?

Mr MARK SPEAKMAN: It is a bit difficult for me to answer that question without getting a brief on what the facts are rather than relying on your report of it, Ms Sharpe.

The Hon. PENNY SHARPE: This is based on information, some of which has been answered in questions on notice, so it would be there. That is all right, we will move on. You will confirm whether there were also juvenile penguins there at the time when the clearing occurred?

Mr BAILEY: I will take that question on notice and reiterate that the full investigation was conducted.

The Hon. PENNY SHARPE: Minister, can you provide information to the Committee about how many section 121 occupier licences, that is permissions to harm native animals, have been applied for in the Sydney Harbour National Park?

Mr MARK SPEAKMAN: I will ask Mr Bailey to answer that.

Mr BAILEY: I do not know that I have that figure with me today, Ms Sharpe.

The Hon. PENNY SHARPE: Would you be able to take that on notice?

Mr BAILEY: I can take that on notice, yes.

The Hon. PENNY SHARPE: Would you be able to take on notice and provide to the Committee the full list of sections 121s in the past 12 months that have been signed off by the Government?

Mr BAILEY: Yes.

The Hon. PENNY SHARPE: Including the name and number of animals and the types of animals?

Mr BAILEY: Yes, those records are held.

The Hon. PENNY SHARPE: Are you aware whether there has been an application, again around North Head, for a section 121 to kill kookaburras?

Mr BAILEY: I am not familiar with that application, no. Sorry.

The Hon. PENNY SHARPE: Mr Wright, are you able to provide some—

Mr WRIGHT: I am not aware of that application either.

The Hon. PENNY SHARPE: Will you take it on notice and come back to me if there has been one?

Mr WRIGHT: I will take it on notice.

The Hon. PENNY SHARPE: Thank you. In the past year we have seen an increasing number of whales going up and down the coast, which makes everyone happy. There is obviously a lot of ongoing interest in the albino humpback whale, Migaloo. Minister, are you aware that the Queensland Minister for Environment and Heritage, Steven Miles, was so concerned by the proximity of vessels, drones and others to Migaloo that he put out a public statement warning people to stay away from the whale?

Mr MARK SPEAKMAN: No, I am not aware of that.

The Hon. PENNY SHARPE: Are you aware that he subsequently launched an investigation into breaches and provided a police guard for Migaloo as he made his way up the Queensland coast?

Mr MARK SPEAKMAN: I am not aware of that.

The Hon. PENNY SHARPE: Minister, has Migaloo been declared a special interest marine mammal in New South Wales under regulation 67 of the National Parks and Wildlife Act?

Mr MARK SPEAKMAN: I will have to defer to Mr Bailey.

The Hon. PENNY SHARPE: Mr Bailey, do you know?

Mr BAILEY: If I am incorrect, I will correct that and take it on notice. My recollection would be no.

The Hon. PENNY SHARPE: There is the ability to do that?

Mr BAILEY: I would have to check those particular prescriptions in the National Parks and Wildlife Act.

The Hon. PENNY SHARPE: It is my understanding that it is clear under regulation 67 that Migaloo would be eligible, as a marine mammal with special significance and, if so, he will be provided with additional buffer zones and those kinds of things. If you can check that it would be good. Can you confirm for the Committee whether a similar provision exists for Migaloo under Commonwealth law?

Mr BAILEY: I would not want to give advice on Commonwealth law, Ms Sharpe.

The Hon. PENNY SHARPE: That is a bit cute. My understanding of the guidelines around these mammals—which do not just hang around in New South Wales; they go up and down the coast—is that there is some joint management relating to caring for these mammals. I seek advice on that.

Mr BAILEY: I am happy to provide it. It will probably be a web link to the national code in respect of the protection of marine mammals and they are a national set of standards.

The Hon. PENNY SHARPE: Minister, would you consider declaring Migaloo a special interest marine mammal in New South Wales?

Mr MARK SPEAKMAN: I will take that on notice.

The Hon. PENNY SHARPE: Would you consider it?

Mr MARK SPEAKMAN: I will consider it.

The Hon. PENNY SHARPE: You are not sure?

Mr MARK SPEAKMAN: I will consider it. What I do, I will let you know.

The CHAIR: Discrimination based on colour.

The Hon. PENNY SHARPE: Minister, have any investigations been undertaken by the Office of Environment and Heritage [OEH] for breaches of exclusion zones and approach protocols relating to whales in this most recent season? Mr Wright might know the answer.

Mr BAILEY: We will take that on notice, Ms Sharpe, but our normal operational practices are that when those matters are reported, we undertake compliance activities.

The Hon. PENNY SHARPE: Okay. I am not trying to be cute about this. I want to know how many complaints have been made and whether there has been any investigations of such. I am aware, particularly, of community concerns around Byron Bay as Migaloo made his way up the coast. There were a number of vessels and individuals who were very close, including a drone basically put over him to capture photos of him. I am seeking to understand whether any action has been taken and how the protocols are operating in New South Wales to protect whales.

Mr BAILEY: I am happy to do that and happy to provide some minor clarification of the protocols that we are talking about today. I suspect that the national protocol does not address drones. It is relatively recent, but we will have a look to see whether we need to have discussions with the Commonwealth.

The Hon. PENNY SHARPE: It may be one of those things that we need to change—the definition of "aircraft".

Mr BAILEY: One thing I point out is that the protocol is that you must keep minimum distances. I do not want to give the distance because I will be corrected, but they are available on the web.

The Hon. PENNY SHARPE: It is 300 metres or 100 metres, depending on the vessel.

Mr BAILEY: You must keep a distance but you are not acting illegally if the whale moves towards you, in accordance with the protocols. A vessel can be close to a mammal, depending on the activity of the mammal. There are some subtleties that I will also send through on that advice.

The Hon. PENNY SHARPE: Thank you. Maybe Mr Wright can provide an answer. If somebody wants to photograph the whales as they are making their way up and down the coast, what are the protocols and permits they need to get from the OEH or the National Parks and Wildlife Service to be able to approach and do that, or do they get captured within the general regulation? Can someone answer that for me?

Mr BAILEY: I can clarify that. We do not regulate for photographic purposes other than on National Parks and Wildlife Services land.

The Hon. PENNY SHARPE: Essentially they are not captured by any special measures?

Mr BAILEY: Not for photographic purposes, no.

Mr ELLIS: The same approach distances would apply to commercial photographers as the general public in respect of marine mammals.

The Hon. PENNY SHARPE: Thank you. Minister, will you consider banning tourist buses from the area near Mrs Macquaries Point and making that part of the Botanic Gardens?

Mr MARK SPEAKMAN: There are no proposals to do that at the moment.

The Hon. PENNY SHARPE: Minister, are you aware that trees have been knocked by buses in that area? What are you doing about that?

The Hon. GREG PEARCE: I have not seen them. I walk there almost every day.

The Hon. PENNY SHARPE: I can show you a picture. I was there last week.

The Hon. MICK VEITCH: You walk it; I run around there, Greg.

The CHAIR: Order!

The Hon. PENNY SHARPE: There is currently a sign on the road that says, "Buses please keep clear", where it is clear buses have hit one of the large trees. Mr Ellis, are you aware of this?

Mr ELLIS: Yes, we are aware of the damage to the trees. We put additional ranger patrols in that area, and the management of that area will be considered next year in the revision of the City Botanic Gardens Master Plan.

The Hon. PENNY SHARPE: Is there an opportunity for it to be considered to be put into the gardens?

Mr MARK SPEAKMAN: I will answer that question. Whenever there is public consultation people like yourself are free to put forward any proposals they wish.

The Hon. PENNY SHARPE: But you are happy for the buses to keep going down there and knocking over the trees?

Mr MARK SPEAKMAN: There is no current proposal to change operations, but if you wish to make a submission in a public consultation phase, we will consider it, like any submission.

The Hon. PENNY SHARPE: There has been ongoing debate around private events at the Royal Botanic Gardens, particularly during the New Year's Eve fireworks. Can you tell me what the plans are for this year, in relation to New Year's Eve, and how much families will have to pay if they want to attend?

Mr MARK SPEAKMAN: I will attempt to answer your question, and I will let Mr Ellis mop up after me if he wishes. This year the gardens will be running the events. I think approximately 14,000 people will be able to visit the gardens free of charge. There will be about 6,000 to 7,000 ticket sales. The price of those tickets will be somewhat less than last year.

The Hon. PENNY SHARPE: Is Mr Ellis able to tell us how much the tickets will cost?

Mr ELLIS: The Minister was correct. There will be 14,000 free attendees on Mrs Macquaries Point. There will be four events in the gardens, three of which are paid events. The pricing of the tickets has not yet been confirmed, but will be in the range of \$300 to \$400.

The Hon. PENNY SHARPE: So there will be three events and between 6,000, and 7,000 people paying between \$300 and \$400. Is that correct?

Mr ELLIS: That is correct. There are also additional free events, including the Lord Mayor's Picnic, which is a charity event, which we also support.

Dr MEHREEN FARUQI: Minister, in relation to the proposed reforms to land management and conservation, are there any areas of the State that will be completely off limits to clearing if this legislation passes?

Mr MARK SPEAKMAN: Without being exhaustive, obviously the National Parks estate would be off limits.

Dr MEHREEN FARUQI: Are there any other parts of the State that will be off limits?

Mr MARK SPEAKMAN: The codes that were put out for consultation will not apply in urban areas. There will be a separate urban State Environmental Planning Policy [SEPP] that will deal with urban vegetation.

Dr MEHREEN FARUQI: They will be dealt with separately.

Mr MARK SPEAKMAN: We have put out a package for consultation. The final settings of what we will introduce into Parliament have not been set. We will be coming to Parliament sooner rather than later with those—some time this year. For example, in the land management codes in regional areas there will be exclusions for littoral rain forest, koala habitat, wetlands—

Dr MEHREEN FARUQI: Under all circumstances?

Mr MARK SPEAKMAN: They are codes. If the package is, as currently exhibited, I will be able to declare areas to be of outstanding biodiversity value. There will also be special restrictions on the ability to clear where there is serious and irreversible impacts. They will not be absolute and complete red flags. There will be red flags for non-major developments, for State significant development and State Significant Infrastructure [SSI]. If the ultimate package is as exhibited there will still be a discretion.

Dr MEHREEN FARUQI: But you did say that where there were areas of outstanding biodiversity they would be completely off limits?

Mr MARK SPEAKMAN: No, they are not completely off limits.

Dr MEHREEN FARUQI: So there will be nothing in the State, other than National Parks that would be off limits for clearing. Is that what you are saying, Minister?

Mr MARK SPEAKMAN: The general approach that the panel recommends is a triple-bottom-line approach, which involves balancing environmental, social and economic factors. That means, in the package currently exhibited, there is nothing that is absolutely 100 per cent beyond any code or Act. That said, there are obviously areas—the area of the Wollemi pine is an extreme example—where, no matter what we put in our code or legislation it would be difficult to conceive of any clearing.

Dr MEHREEN FARUQI: But it would not be protected 100 per cent under this legislation if it passes.

Mr MARK SPEAKMAN: The benefit of this package is that we are investing \$240 million in private land conservation.

Dr MEHREEN FARUQI: I do understand that, Minister.

Mr MARK SPEAKMAN: We are investing \$100 million in Saving our Species. So that \$240 million will, for the first time, be a whopping sum of money that will be invested strategically.

Dr MEHREEN FARUQI: Sure, but if there is no ultimate protection in law aren't you worried that this will lead to increased clearing and increased exacerbation of climate change?

Mr MARK SPEAKMAN: There are three points you have raised there. One is red flags in special areas, one is general rates of land clearing and one is climate change.

Dr MEHREEN FARUQI: They are all interconnected, though.

Mr MARK SPEAKMAN: Yes. The first part of your question goes to what I call quality. The second part goes to quantity. The third part of your question goes to the climate change implications of quantity. With respect to red flags, if something is an area of outstanding biodiversity value, the consultation papers that we have put out indicate that that will be a priority for acquisition by the Biodiversity Conservation Trust. There are two ways that you can deal with biodiversity protection. You can have a carrot and you can have a stick. There has been a lot of stick and not a lot of carrot in the past 20 years. We are trying to recalibrate that so that there is a lot more carrot.

Dr MEHREEN FARUQI: It is all carrot, isn't it, Minister?

Mr MARK SPEAKMAN: No; it is not all carrots, at all. There are \$240 million worth of carrots.

The Hon. RICK COLLESS: Why don't you like carrots?

Dr MEHREEN FARUQI: I am not a rabbit.

Mr MARK SPEAKMAN: That will prioritise investment in critical habitat. Going back to the codes, my recollection about what is exhibited is that habitat for critically endangered species cannot be cleared under a code. If it is habitat for site-managed species, under Saving our Species, it cannot be cleared under a code. It then goes through the planning system and has to be dealt with through the biodiversity assessment method. Then there is a requirement to offset, and the first port of call will be like for like.

Mr BAILEY: There are a couple of other things that I think should be captured. The areas that are set aside as part of any activity then become areas that are protected in perpetuity. So there will be a number of areas that would be protected in perpetuity. The areas of outstanding biodiversity value would be protected generally. One of the important and significant discussions that has occurred during this—including in-depth with the panel—is the need to balance the economic and social components to these outcomes, particularly in the context of State significant infrastructure. An example was used in those discussions with the panel. If a road needed straightening because there had been a number of deaths you might allow clearing of the area of outstanding biodiversity value. There were significant discussions about that by the panel. By and large, those types of areas would not be cleared except in exceptional circumstances. That was discussed at depth in the panel. The Minister has given a long list of areas that would not be available for clearing.

Dr MEHREEN FARUQI: With all due regard, Mr Bailey, that is already happening—Ms Sharpe gave the example earlier—in the clearing for WestConnex.

Mr MARK SPEAKMAN: Dr Faruqi, that is a classic example of biodiversity protection working, and a triple-bottom-line approach. We are building a major motorway that will unclog congestion, allowing working families to get home to their kids in south-western Sydney earlier.

Dr MEHREEN FARUQI: I disagree with your premise, Minister, that it is unclogging anything.

Mr MARK SPEAKMAN: As well as having that excellent social and economic outcome, there will be no net loss to biodiversity. There may well be an enhancement because we will end up with the preservation of an offset site with ironbark forest that is superior to the remnant site that exists along the M5 at the moment. That is not an illustration of some problem in the system. That is an illustration of the strength of what we are proposing.

Dr MEHREEN FARUQI: In your view. I would like to go back to Mr Bailey. I understand that Professor Possingham, who was part of the panel that did the review, emailed you with his thoughts on self-assessable codes on 14 March. Could you tell the Committee what the content of Professor Possingham's concerns were?

Mr BAILEY: I accept that your date would be accurate, but that matter and correspondence from Professor Possingham was appended to a Cabinet minute. So, at this point in time, given that it is a policy settings document for the Government attached to a Cabinet minute it would be considered as Cabinet in confidence and something that I should not be sharing with the Committee.

Dr MEHREEN FARUQI: Could you confirm that Professor Possingham did convey concerns about self-assessable codes to you?

The Hon. GREG PEARCE: Point of order: The witness has already indicated that the document was Cabinet in confidence. The honourable member obviously has a copy of the document. It is not appropriate for her to put it on the record and to try, surreptitiously, to have the witness confirm details of something that he has already indicated is Cabinet in confidence.

The CHAIR: I will rule on the point of order. The Minister and the panel at the table have demonstrated their cognisance of the rules that apply to Cabinet-in-confidence. I do not see any problem with the member repeating a question. It is her time. If she wishes to use it up, that is her problem. Please continue.

Dr MEHREEN FARUQI: Thank you, Chair. My question requires just a yes or a no answer: Did Professor Possingham convey any concerns about self-assessable codes to you?

Mr BAILEY: Apologies, Dr Faruqi: I cannot give a yes or no answer because the document was appended to Cabinet discussions, so I regard the document as Cabinet-in-confidence.

Dr MEHREEN FARUQI: Are you aware of any concerns, apart from that Cabinet document, that Professor Possingham has raised about the biodiversity reforms?

Mr SCOT MacDONALD: Point of order: I think Dr Faruqi is asking the witness to express an opinion on Government policy.

The CHAIR: I do not uphold the point of order. The question was not related to the witness' opinion on anything. The member's question to the witness was not asking about Government policy; it was asking a straight-out question.

Dr MEHREEN FARUQI: Thank you, Chair. Mr Bailey, I just want to know if you are aware of any concerns that Professor Possingham has raised about the biodiversity reforms?

The Hon. GREG PEARCE: Time is up.

The Hon. MICK VEITCH: Six years and you have not got a point of order up yet.

Mr BAILEY: I would put it this way: That the panel has had a significant number of confidential discussions where they have agreed and disagreed with each other in a range of areas.

The Hon. MARK PEARSON: With regard to brumbies, the Independent Technical Reference Group [ITRG] final report clearly stated: "The ITRG cannot at this stage draw rigorous scientific conclusions about how numbers and population trends are changing over time, or how they may differ in different parts of the park." We are looking at the Kosciuszko National Park. Given this statement in the report, how did the Minister come to the conclusion, which he stated on the ABC *Landline* program on 6 August, "That the numbers now are basically out of control. Best estimate is around 6,000 so business as usual is not working and we need to do something more." Has the Minister read the ITRG report? Does he agree with its conclusion that more research is required to establish accurate data on population numbers and their growth?

Mr MARK SPEAKMAN: Mr Pearson, I have read the report. I have also visited Kosciuszko National Park by flyover and on the ground, probably stopping off at seven or eight locations. I have seen the damage that wild horses are doing in the Kosciuszko National Park. I agree that more research is needed. You can never have enough research. I agree that estimates are not precise, but the best estimates available are around 6,000 wild horses in the Kosciuszko National Park. You cannot draw some precise relationship between the number of horses and the damage that is being done but it is very clear that the wild horses are doing damage to unique alpine and sub-alpine environments in the Kosciuszko National Park, and that level of damage cannot continue. We have put out a plan of management for consultation. That is genuine consultation: We are interested in everyone's feedback on what we should do and how we should do it; but, at the end of the day, in my view, we cannot continue the way we have been going.

The Hon. MARK PEARSON: I think the assessment of that damage is truly in question, despite what you have seen and despite some reports that have come in. But I think the reason that the reference group has written the report in such a way is to indicate, if it is not as robust and as clear as one needs to be, and this is a question to you, Minister—

Mr MARK SPEAKMAN: Yes.

The Hon. MARK PEARSON: —signing off on the killing of animals would otherwise be an offence under the Prevention of Cruelty to Animals Act. I just want to steer you in the direction of whether the Minister and his department have looked at alternative methods that are effective, such as the immune-sterility programs that are used in the Canadian Rocky Mountains to control wild horses. Of course, you can go in with a Rambo operation and kill a whole lot of animals—it was done in the Guy Fawkes National Park and it has been done elsewhere—but eventually the numbers come back up again. What the immune-sterility program has in place is that it slowly reduces the number and they keep a low number in the area, but maintain the area to prevent other horses coming in. Have the Minister and the department turned their minds to the alternative, which is effective and much more humane than rounding up, trapping, transporting and killing and knackerizing these horses, which are really part of our heritage?

Mr MARK SPEAKMAN: Thank you for that question. If you are suggesting that the panel report is not robust, I do not agree. It is robust. It is written by a panel that consists of, among others, the Chief Scientist at the RSPCA, a leading horse expert who was dean of the veterinary school, or held some such qualification, and an ecologist. It is a panel that has had a wide range of scientific expertise. With respect, I think what you are doing is conflating robustness or a lack of robustness with an issue about precision and exactness.

The numbers cannot be estimated exactly but I am satisfied with the robustness of the scientific approach. As to alternative methods, that is a matter about which we are open for consultation. I accept the undesirability; frankly, it is awful trapping horses—trapping them and taking them off, spending hours in transporting them, and then they are put down because they cannot be rehomed. I do not want to do that. I emphasise: I do not want to do that. But the problem is that the expert advice we have had from the panel is that sterilisation is unlikely to be an effective method of herd control while numbers are as high as 6,000. If over time we get the numbers lower, it is likely to be more effective.

That said, I am not ruling anything in or anything out other than we have ruled out aerial culling and we have ruled out brumby running or roping. We are consulting on all possible methods. You have identified part of the unattractiveness of the current method of trapping, trying to rehome, and having a rehoming rate of less than 20 per cent. I understand that that is not something you would want to do. But sterilisation does not appear to be effective. While we want to do everything we can to maximise the welfare of horses, we also have to think about our native species, which are under threat in this national park.

The Hon. MARK PEARSON: I suppose that is a balancing act.

Mr MARK SPEAKMAN: Yes.

The Hon. MARK PEARSON: But if we look at the wild horses in the Rocky Mountains of Canada, the numbers were up around that figure and higher. The immune-sterilisation program, by itself, in time brought the horses down to an acceptable level and it is a matter of balancing up what might be the damage. I welcome the Minister's and the Government's stand on aerial culling and other methods used. Because the Government has a forward thinking and non-lethal shark management program, especially in the face of high public emotion in which its current program of tagging, sonar technology and drum lines is proving successful as a genuine long-term investment strategy and considering that there is this principle of a non-lethal and more humane shark management plan—and here we have what some people would say is an introduced wild animal but really is part of our heritage—and considering the greyness of this area and the concern and how people hold the brumby as an animal which is part of our heritage, and add to that the fact that there are other alternatives to those, how

would you say, more violent and cruel methods, would the Minister consider at least referring the kangaroo management—

Mr MARK SPEAKMAN: That is the next question.

The Hon. MARK PEARSON: It is another chapter we have had! Sorry—would the Minister consider at least referring the brumby management plan to this Committee to consider all of those questions?

The Hon. GREG PEARCE: Was that a question or a speech?

The Hon. MARK PEARSON: I will participate with you.

The CHAIR: Order!

Mr MARK SPEAKMAN: I am not attracted to that proposal. We have had an independent technical reference group set up with a wide range of expertise to give us expert advice. With the greatest respect to your Committee, or to any Committee of members of Parliament, even if it included me—it is not having a go at individuals here—it is more important, I think, to rely upon the scientific advice we get as to what the numbers are, what damage is being done, and the appropriate and humane ways of controlling those. As I said before, on the things that we have ruled out we are genuinely consulting on what to do, because to kill a horse is not something I particularly want to do.

But if that is the only way to protect endangered species and ecological communities in Kosciuszko then, as a last resort, that may be what we have to do. I am not minded to refer it to a committee here. We have to get on with it as well; this has been hanging around for 10, 20 or more years. The crunch has to come and we have to make a decision. But certainly all views—like those you have expressed, the possibility of using sterilisation techniques, the undesirability of using lethal methods—are all views that we will genuinely take into account to reach a position.

The Hon. MARK PEARSON: If you were to be convinced that an immuno-sterolytic program was a program that could be effective enough as the trial pilot for Kosciuszko National Park and if that could be presented in a convincing way by the key people who have been doing it all around the world including with elephants, would the Minister seriously consider that as being part of a pilot trial in Kosciuszko, even though you are saying that it seems to be an urgent matter. People on the ground in Kosciuszko National Park and working there do not necessarily agree that it is urgent.

Mr MARK SPEAKMAN: It is not urgent in the sense that it has to be done next week, but it is urgent in the sense that we need to get on with it. I am open to receiving any delegation of scientists you wish to present to me and hearing what they have to say. In the end, I will have to rely on a scientific evaluation of that—I am not a scientist, but I am more than happy to make sure that the public is satisfied that wherever we end up with this plan we have left no stone unturned in having the least undesirable way possible of reducing the brumby population.

The Hon. MARK PEARSON: There will be a delegation of visitors.

Mr MARK SPEAKMAN: But it would need to be timely.

The Hon. MARK PEARSON: Yes.

The Hon. PENNY SHARPE: Minister, there have been recommendations through a parliamentary inquiry into separating out the role of chair and chief executive officer [CEO] from the Environment Protection Authority [EPA]. Why has this not occurred?

Mr MARK SPEAKMAN: No final position has been reached on that. My view is that the EPA operates a bit differently from an independent commission like the Australian Securities and Investments Commission [ASIC] or the Human Rights Commission, where everything that commission does is independent of ministerial control. The EPA is independent of my control, so far as prosecution is concerned, but in a lot of day-to-day operations and policy it is under my supervision. It is not a body that is directly analogous, in my view, with a commission like ASIC or the Independent Commission Against Corruption [ICAC]. Therefore, I think it would be difficult, if you had a CEO who had two masters, the Minister and a separate chairman. The current arrangements probably work well.

The Hon. PENNY SHARPE: You would accept that the current arrangements around the EPA are pretty unique across government, though, and also compared to other agencies?

Mr MARK SPEAKMAN: I do. I accept that, but as I am saying the way it operates is quite different from other agencies.

The Hon. PENNY SHARPE: I am now going to talk about Williamstown. Obviously, the Williamstown issue came to the attention of this Committee during this meeting, I think, about 12 months ago.

Mr MARK SPEAKMAN: It is a year tomorrow, I think.

The Hon. PENNY SHARPE: A lot has happened since then. I want to ask a few questions and Mr Gifford may have to answer some of them. Stage one of the interim review, commonly known as the Taylor review, notes that on 2 May 2012 an email was sent from Defence to the EPA requesting a meeting to discuss recent water-monitoring results that indicated elevated levels of PFOA in stormwater leaving the base and the groundwater in various locations under the base, and to discuss Defence's plans for further investigations. At last year's budget estimates the CEO and chair—I note—of the EPA, Mr Buffier, made the following statement: "Back in May 2012, we had a meeting with Defence at the RAAF base when it notified the EPA of potential contamination issues at the site." Mr Buffier went on to give evidence, "so there was no contamination of the site at that stage". Minister, given the Taylor review clearly shows that the EPA was alerted to PFOS in stormwater leaving the base in 2012, do you concede that the information given to this Committee last year was incorrect?

Mr MARK SPEAKMAN: No. I think what has to be distinguished in that period before the EPA made its announcement on 3 September last year giving health warnings is the difference between knowing that the contamination was offsite in a pathway that posed a risk to human health and offsite in some other way. In that period until the EPA received the Defence report in mid or late August last year—or whenever it was—it has become aware of PFOS in stormwater but not any suggestion that there was PFOS in groundwater in a way that posed a risk to human health. In hindsight, as Professor Taylor observed, the EPA should have acted more vigorously in that period to pursue Defence for information, but it was, on the information available to me, not aware prior to receiving that Defence report in August last year, that the contamination was offsite in a form that posed a risk to human health. I do not know whether Mr Gifford wants to add anything to that.

The Hon. PENNY SHARPE: Can I clarify that? Your distinction is that it was not enough that there was PFOS contaminated stormwater leaving the base. You are not of the view that the EPA should have been concerned or have taken any action in relation to that?

Mr MARK SPEAKMAN: Professor Taylor was of the view that they should have been more diligent, but the EPA formed a view—probably a reasonable view—that contamination in stormwater did not pose a threat to human health. I will let Mr Gifford elaborate.

The Hon. PENNY SHARPE: No, that is okay. Further to your response, Minister, can you explain why the EPA did not begin an investigation in May 2012, once it became aware that there was PFOS contaminated water leaving the base? The point that I am making is that the previous argument has always been that it was contained on the Defence base, it was not going anywhere else and therefore it was not the EPA's problem. There was a lot of concern about that, but that is not the issue I am raising. I am raising the issue that has now come to light, which is that since 2012 the EPA has known that PFOS contaminated water has been leaving the base, yet it chose not to investigate or to take any action. You are saying to me now that that is as a result of PFOS just being in stormwater and the only trigger is a risk to human health that would require further investigation. I am happy for Mr Gifford to comment.

Mr MARK SPEAKMAN: I will make an initial comment and then let Mr Gifford fill in the gaps. It is not the case that Defence from 2012 to 2015 sat by and did nothing with that information.

The Hon. PENNY SHARPE: I am not talking about Defence; I am talking about the EPA.

Mr MARK SPEAKMAN: Sorry if I said "Defence". It is not the case that in that period the EPA sat by and did nothing. It pursued Defence for further information, but in hindsight should have been more vigorous in that pursuit.

Mr GIFFORD: It is absolutely the case that we were continuing to require and request of Defence to act in accordance with the regulations and the legislation that were in place around contaminated land management, of which the EPA is the regulator. Unfortunately, in this case, our regulatory powers are restricted with respect to the Commonwealth. We were continuing to have dialogue with them at officer level and at senior officer level requesting them to take action that was in effect exactly the same sort of action that we would require of anybody through a statutory instrument. Action was occurring between 2012 and 2015.

The Hon. PENNY SHARPE: What was that action?

Mr GIFFORD: Requesting that Defence and the Commonwealth undertake further investigations to confirm the nature of the onsite contamination, to confirm what, if any, offsite contamination had occurred and then what the result or the implications of that might be. We were trying to ascertain not just the nature of the

onsite contamination but whether or not there were any exposure pathways for offsite contamination and therefore what action we could take in warnings and advisories to the public with respect to any offsite contamination. That did not become available to us until August 2015.

The Hon. PENNY SHARPE: At no point did you choose to do any testing yourselves off-site during this period.

Mr GIFFORD: There was no evidence to suggest there was a need to do that.

The Hon. PENNY SHARPE: Even though you had been told in 2012 that there was stormwater leaving the site that had PFOS in it.

Mr GIFFORD: What we requested to occur at that stage was for Defence to undertake further testing to confirm the nature of that contamination.

The Hon. PENNY SHARPE: In the Taylor report there is a lot of information on correspondence going backwards and forwards. Can you confirm to the Committee that it took until 5 August 2016 before the EPA finally wrote to Defence to request that it contain and remediate the contamination coming off the Williamstown RAAF base?

Mr GIFFORD: I would need to look at the documentation to be able to answer that question.

The Hon. PENNY SHARPE: There is a letter from Mr Bouffier on the EPA website that seems to be the first piece of correspondence where the EPA wrote to Defence and said, "Will you contain and remediate the contamination coming off Williamstown RAAF base?"

Mr GIFFORD: I do not have that available to me here. I will need to check the records.

The CHAIR: Just for the record, you are taking that question on notice.

Mr GIFFORD: Yes, I will take the question on notice.

The Hon. PENNY SHARPE: Please correct the record if there was other correspondence where it was clear the EPA actually asked Defence to stop what was happening. Stage one of the Taylor review lists various correspondence over a number of years regarding Williamstown RAAF base, almost all of which is between various Commonwealth and State agencies such as Defence and the EPA and water utilities such as Hunter Water. There is, however, one private company also mentioned in the correspondence claim, and that is Hunter Land Proprietary Limited. The owner of Hunter Land Pty Ltd is Mr Hilton Grugeon, who has donated more than \$440,000 to the Liberal Party and its candidates since 2004, including the former Federal member of Parliament for the area covered by the Williamstown RAAF base and the former Liberal member for Port Stephens. Can you explain why one particular landowner was privy to information long before the rest of the community was?

Mr MARK SPEAKMAN: I am not aware of the correspondence, I am afraid. I cannot answer that question. I will take it on notice.

The Hon. GREG PEARCE: Could the letter perhaps be tabled?

The Hon. PENNY SHARPE: I do not have that letter. It is mentioned in the Taylor report and, as the Minister said, he has access to that information. The review notes that on 20 May 2013 Defence sent a letter to Hunter Land stating that:

... further to correspondence with Hunter Land Pty Ltd ... could provide further information about PFOS and PFOA contamination at Williamstown.

Some details of the contamination were then provided, including a notification that PFOS and PFOA had been found off the base boundary. Minister, does it not concern you that one of the Hunter's biggest property developers with an interest in land being bought and sold in the area immediately surrounding the RAAF base was being notified of the contamination some two years before the EPA saw fit to notify the general public?

Mr MARK SPEAKMAN: The EPA was unaware, as I said, of any pathway to human health risk according to what I was told, prior to August 2015. I would have to see that letter in context before I could offer an opinion.

The Hon. PENNY SHARPE: Stage one of the Taylor review mentions Hunter Land again, because on 26 October 2012 the EPA received a section 60 contaminated land management notification form for 38 Cabbage Tree Road, Williamstown. The notification was by Hunter Land:

... 'due to trade waste infiltrating the sewer effluent ponds that are situated within the easement lands'. Contaminants of concern are listed as lead, mercury and zinc.

I have a copy of the most recent available list of contaminated sites notified to the EPA, dated 21 June 2016, and on page 51 there is a listing for the 38 Cabbage Tree Road site, named Hunter Land. Minister, why is this site still categorised as under assessment some four years from the time the EPA was notified of potential contamination?

Mr MARK SPEAKMAN: It probably does not surprise you, but I do not have personal knowledge of that site. I do not know whether Mr Gifford does.

Mr GIFFORD: No, I do not.

The Hon. PENNY SHARPE: This is a site that is adjacent to Williamstown, so I am surprised by that, Mr Gifford. Perhaps Mr Beaman knows.

Mr MARK SPEAKMAN: No, Mr Beaman does not deal with contamination.

Mr GIFFORD: There is a number of contaminated sites listed on the website. I am not personally aware of the status of every single one of those sites.

The Hon. PENNY SHARPE: But you will confirm that it is still under assessment, it was notified four years ago and 38 Cabbage Tree Road belongs to Hunter Land Pty Ltd?

Mr GIFFORD: We will take that on notice.

The Hon. PENNY SHARPE: Are you also able to confirm why the Williamstown RAAF base and the surrounding land and water is not listed on the list of contaminated sites?

Mr GIFFORD: Because it is not subject to the Contaminated Land Management Act.

The Hon. PENNY SHARPE: I am talking about the relationship between EPA and Defence in the coordination of this matter. As you would be aware, there is significant ongoing community concern and there have been real issues around coordination. Are you able to explain why the EPA letterboxing contradicted advice about the Williamstown Off-site Human Health Risk Assessment the same day that Defence was holding information sessions about that report?

Mr MARK SPEAKMAN: Can you specifically identify what you say the contradiction is?

The Hon. PENNY SHARPE: I can, and I can provide it to you. Do you want to take it on notice? I can do that. I have the information. Essentially I think that Defence believes there is a high risk to human health. It tends to use the American EPA warnings in relation to PFOS, whereas the EPA went to great lengths last year and has a different view about the risks to human health. I am trying to get to the bottom of why the community is getting two different sets of information.

Mr MARK SPEAKMAN: I am not sure that your proposition is accurate. There is a difference of position between the New South Wales Government and Defence about the advice about moderating intake of fruit, vegetables, meat and poultry.

The Hon. PENNY SHARPE: Why is that?

Mr MARK SPEAKMAN: You would have to ask Defence why it has taken its position—

The Hon. PENNY SHARPE: Do you not think it is a problem for the community that two different arms of government are giving two different sets of advice in an area where people are not able to sell their land, not able to eat their eggs and not able to drink their water? Do you not think that you should be trying a bit harder to get people to get their act together around the advice they are providing to the community?

Mr MARK SPEAKMAN: If experts differ, you cannot make them agree. The New South Wales Government makes no apology for taking a precautionary approach to the problems at Williamstown. That is why we took the lead in September last year in issuing precautions. That is why we have taken a precautionary approach on the advice and the best evidence we have available, particularly from NSW Health, and issued precautionary advice about moderating intake of certain foods in the wider investigation area.

Mr GIFFORD: I think you are referring to a difference of a view with respect to the outcomes of the Off-site Human Health Risk Assessment. The difference there is as a result of the EPA, the other agencies and the expert panel that Government has established to assist the EPA and other agencies in determining the particular actions that need to occur. The difference is that the expert panel and the EPA feel that the sampling that was undertaken by Defence was limited in some circumstances, so we have asked Defence to do more. As a result of that our view is that the current investigation area, the current advisories and the current warnings should stay in place until such time as that further information is provided.

The Hon. PENNY SHARPE: Minister, or someone from the EPA, are you considering legal advice and changes to gaining greater regulatory powers over Defence around these sites?

Mr MARK SPEAKMAN: Some people say abolish the States; I guess you could have a kind of reverse of taking over and abolishing the Federation!

The Hon. PENNY SHARPE: If you want to be smart about it, Minister—

Mr MARK SPEAKMAN: Hang on, I have not finished. We are exploring whether the Feds should have their own regulatory authority to deal with pollution of Federal sites. There is a Federal referral power to the States. That general question is being looked at, but we do not have the power to regulate the Williamtown RAAF base. We can look at it any which way we like, but we do not have that power.

The Hon. PENNY SHARPE: The Taylor report recommends that as a matter of priority you should seek advice to resolve the seeming ambiguity in relation to the powers to regulate and manage contaminated lands and to deal with contamination

Mr MARK SPEAKMAN: We have taken legal advice and, having done so and not wishing to wave privilege on that advice, our position is that we cannot regulate the RAAF base. However, State environment Ministers and the Federal Minister are examining the option of having a Federal regulatory body or, alternatively, referral of powers to the States.

The Hon. PENNY SHARPE: How far away from Department of Defence facilities does contamination have to be before New South Wales agencies are able to prosecute the department?

Mr GIFFORD: It is not a matter of distance. In terms of regulating under the existing legislative framework, as the Minister said, we do not have the power.

The Hon. PENNY SHARPE: But have you looked at trying to issue notices to the Department of Defence to take action?

Mr GIFFORD: We have certainly taken legal advice about that, and our powers are limited.

The Hon. PENNY SHARPE: I would like to clarify that.

Mr MARK SPEAKMAN: We have taken legal advice on issuing clean-up notices.

The Hon. PENNY SHARPE: Will any action be taken as a result of obtaining that advice?

Mr MARK SPEAKMAN: Having taken legal advice, unfortunately the position is that the Government cannot regulate activities on the Williamtown base.

The Hon. PENNY SHARPE: The Minister for Planning recently referred to Professor Mark Taylor as a friend in a response to a question from the member for Lake Macquarie. Were you aware when you appointed Professor Taylor that he was a friend of the Minister?

Mr MARK SPEAKMAN: No.

The Hon. PENNY SHARPE: Given that it is in the same cluster, do you have any concerns about that?

Mr MARK SPEAKMAN: No. Professor Taylor, who is from Macquarie University, is an independent expert who is well recognised and well regarded. No, I do not have any concerns.

The Hon. PENNY SHARPE: Did his appointment go to Cabinet, or was it a direct appointment by you?

Mr MARK SPEAKMAN: It was a direct appointment made by me. I made it swiftly because given the concern about how much the Environment Protection Authority knew from 2012 to 2015 and whether it should have acted more vigorously, I wanted to ensure that there was public confidence in the regulatory agencies of this State, and that if there were any problems that they were fixed. It was important to appoint Professor Taylor quickly, which is what I did.

Dr MEHREEN FARUQI: Are you aware of the Wentworth Group of Concerned Scientists?

Mr MARK SPEAKMAN: Yes.

Dr MEHREEN FARUQI: Are you also aware that Professor Possingham is a member of that group?

Mr MARK SPEAKMAN: Yes.

Dr MEHREEN FARUQI: You would also be aware that the Wentworth Group of Concerned Scientists is very concerned about the proposed biodiversity laws. They state:

... we believe that key elements will substantially weaken existing protections. These retrograde changes risk returning NSW to an era of unsustainable environmental damage by reinstating broadscale land clearing ...

This is an eminent group of scientists. Do you agree with their statement?

Mr MARK SPEAKMAN: No, I do not. You are correct in saying that the members are eminent, and they have my utmost respect and regard. Whenever momentous legislation like this Government's biodiversity reform legislation is introduced there will be a variety of views. Some groups will say that it does not go far enough, some farmer groups will say that it does not do enough to make farm practices more flexible, and other groups will say that it will cause environmental Armageddon. We are confident, based on the panel's recommendations and the parameters that we are putting in place, that we are designing a package that will both enhance biodiversity outcomes and make our farms more productive.

There are elements of the package that the Wentworth Group of Concerned Scientists supports. For example, I think it supports the Saving our Species initiative, private land conservation, and so on. I understand that the group has a concern about codes, which I think you have called self-assessable. They are not. Standard, routine agricultural activities which are not within the codes but which are within the description of "allowables", such as clearing along a fence line and so on, are self-assessable. Others are notifiable or must be certified. In many instances of land clearing under codes, particularly at the most significant end of clearing, there is generally a requirement for set-asides.

When they go beyond that we have the application of the biodiversity assessments method and offsetting. The final package will contain those set-aside protections and the requirement to have offsetting calculated under a rigorous, peer-reviewed biodiversity assessment method. The Government will also tip \$240 million into private land conservation in the first year and \$70 million the year after. For the first time, instead of having a hit-and-miss, fragmented approach to protecting native vegetation—where the prohibition falls where it lands—we will have a strategic approach. It will more than allow for liberalisation at the farm scale. There will also be strategic investment connecting corridors of remnant vegetation, and stewardship agreements involving farms looking after native vegetation in areas that have been over-cleared. The whole package aims for, and I believe it will deliver, better biodiversity outcomes and enhanced farm productivity.

Dr MEHREEN FARUQI: Are you confident that these reforms will not lead to more land clearing, yes or no?

Mr MARK SPEAKMAN: There is liberalisation on individual farms that will allow farmers to be more flexible with their practices. Any biodiversity consequences of that will be more than overcome by the \$240 million we are putting into private land conservation, and the \$70 million in the year after.

Dr MEHREEN FARUQI: The question was simple: Are you confident that this will not lead to more land clearing?

Mr MARK SPEAKMAN: There will be a different pattern of land clearing. At a site scale there will be some farmers clearing more of their land, but that will be more than compensated for by the set-asides they will be required to provide, the offsets they will have to provide if they are in the planning system, and the private land conservation that will be the subject of the strategic investment of \$240 million.

Dr MEHREEN FARUQI: If you had sole responsibility for drafting these biodiversity laws, would they be any different?

Mr MARK SPEAKMAN: That is a hypothetical question and I cannot answer it. This is a collaborative effort across government. I am one of three Ministers with responsibility for this package. It is my aim to ensure that it liberalises and enhances farm productivity, while also enhancing biodiversity outcomes. That is what I am aiming to do, and I am confident I will deliver.

The CHAIR: One of the other Ministers is obviously the Minister for Primary Industries. Who is the third Minister?

Mr MARK SPEAKMAN: The Minister for Planning.

Dr MEHREEN FARUQI: I have received reports that Office of Environment and Heritage [OEH] compliance officers have been reluctant to conduct field visits following the murder of OEH officer Mr Glen Turner. Is that true?

Mr BAILEY: No, we continue to conduct our compliance programs. However, I should be clear and say that there were periods during which I asked the staff not to be in the field doing compliance checks. That was particularly during the murder trial.

Dr MEHREEN FARUQI: Have any safety improvements been made since then so that staff can do their job safely while enforcing compliance with environmental legislation?

Mr BAILEY: Yes, there have been. In conjunction with the Environment Protection Authority, we had an independent person review all of our compliance practices. My recollection is that that review produced more than 20 recommendations. We then established a number of working groups to deliver on those recommendations. I should note that I report on a quarterly basis to our independent audit and risk committee on the progress of all those activities to improve our compliance practices. I also want to note for the record that the compliance practices were seen as very strong and well managed. I think the team has been doing that very well, but there were certainly areas that we have done some work on improving.

Dr MEHREEN FARUQI: Mr Bailey, I am also really concerned about the safety aspect for the officers. What has been done to improve that? For instance, would the Minister consider police to accompany OEH officers?

Mr BAILEY: I can answer that question because I manage the compliance. We do a risk assessment of every property before we enter a property or contemplate going to a property. That risk assessment includes, through our guidance, talking with the police. If there are areas of concern that arise for us in any of our compliance activities, whether it is native vegetation or other activities, we would and have sought the support of the police and the police have certainly given that support as well.

Dr MEHREEN FARUQI: Minister, if your Government succeeds in repealing the Native Vegetation Act, for how many years will OEH be instructed to investigate historical offences against the Act?

Mr MARK SPEAKMAN: The final settings have not been determined, but I would not presently anticipate any amnesty in relation to past offences.

Dr MEHREEN FARUQI: So you would rule out amnesty.

Mr MARK SPEAKMAN: As I said, the final settings have not been set, but it is certainly not something that I have contemplated.

Dr MEHREEN FARUQI: Could you today rule out amnesty?

Mr MARK SPEAKMAN: These things have to be discussed within whole of government and Cabinet. I have just said that it is not something that I have contemplated, but it has not been determined.

Dr MEHREEN FARUQI: It appears that under the draft land management and conservation laws the role of the Office of Environment and Heritage will be quite limited to perhaps just producing mapping. What is your understanding of the proposed role OEH would play?

Mr MARK SPEAKMAN: We have not finalised all the settings. Obviously there will be a need for a regulator. Whatever settings we finally agree on, we will need a strong environmental regulator so people have confidence that the law is being upheld.

Dr MEHREEN FARUQI: But do you think it is best regulated by OEH because it has the environmental expertise?

Mr MARK SPEAKMAN: My own view is that OEH does a good job of regulation, but the final package is to be determined.

Dr MEHREEN FARUQI: Landowners would obviously still be required to comply with the Commonwealth Environment Protection and Biodiversity Conservation [EPBC] Act.

Mr MARK SPEAKMAN: Yes.

Dr MEHREEN FARUQI: But it seems that now in many cases it may not have much interaction with environmental officers from OEH—for example, if there is some clearing under some of those self-assessable codes. Are you concerned that this could lead to inadvertent clearing of threatened species and the risk of prosecution for landowners?

Mr MARK SPEAKMAN: No, I do not think so. The codes that we have exhibited have among a number of catchall clauses in there that, if a landowner wishes to get certification for clearing under a code and LLS considers that there may be a Commonwealth issue, that certification is not to occur until the landowner has satisfied LLS that there is no Commonwealth issue. So it is not just a matter of LLS handing the landowner

a form and saying, "Here is a pro forma. Read it and go away." On the current proposal as exhibited—and that has not been finalised—it is proposed that LLS would have to be satisfied that there is no Commonwealth issue.

Dr MEHREEN FARUQI: And it— *[Time expired]*

The CHAIR: Thank you, Minister. I am sorry the member's time has expired. I pass over to the Hon. Mark Pearson.

The Hon. MARK PEARSON: If the biodiversity legislation is repealed, together with this package of \$240 million, is there a guarantee that no native flora or fauna will be reduced in number in New South Wales?

Mr MARK SPEAKMAN: Over 200 years we have seen an increase in the number of threatened species. We have got the worst rate of mammal extinction in the world in Australia. The whole idea of our reform package is to arrest that and reverse that decline.

The Hon. MARK PEARSON: How is the \$240 million actually going to do that?

Mr MARK SPEAKMAN: The \$240 million will be invested by a biodiversity conservation trust. It will also have under its control money that private farmers have to pay in as biodiversity offsets, so it will have more than \$240 million and \$70 million a year. It will have an investment strategy that I approve that is likely to focus on investing in stewardship agreements with farmers in strategic holdings—for example, west of the dividing range where there is significant overclearing or areas of land that might provide connectivity between existing remnant native vegetation. Farmers will be paid a stewardship payment. How much and what it is for will depend on the tier of the stewardship agreement, but not just to lock up the land and leave it there but to weed it, clear it of pests and restore and rehabilitate it in many circumstances.

The Hon. MARK PEARSON: Would that include a commitment to contributing to wildlife corridors?

Mr MARK SPEAKMAN: That is part of the investment strategy. Part of the investment strategy would look at appropriate wildlife corridors. On top of that of course there is the \$100 million for Saving our Species, which seeks to secure as many threatened species in the wild as we can for the next 100 years with specific programs hopefully for each of the 1,000 or so threatened species.

The Hon. MARK PEARSON: Do you think that is an improvement on the biodiversity legislation as it is now?

Mr MARK SPEAKMAN: I do because it is a much more strategic approach. Rather than saying, "There happens to be a bit of remnant vegetation here on Farmer Brown's land that will not be able to be cleared, but we are not going to do anything about reversing overclearing in other areas," there is for the first time an overarching strategic approach with an enormous amount of money that approaches biodiversity on a regional scale rather than on a haphazard, farm-specific scale.

The Hon. MARK PEARSON: Thank you. I move on to dingoes. There is growing evidence of the environmental benefits of reintroducing dingoes. There is a strong overlap between areas where marsupials have survived and where there are high-density dingo populations, and there is historical evidence that marsupial declines are followed by dingo suppression. It is a very interesting network of relationships between these animals. The abundance and persistence of threatened species such as the bilby, the yellow-footed rock wallaby and the Mallee fowl are associated positively with dingo abundance even though dingoes also prey upon them. Can the Minister advise whether the Government would consider reintroducing the dingo into selected areas of New South Wales?

Mr MARK SPEAKMAN: To be honest it is not something I have personally considered. We are engaged, as you probably know, in a rewilding program spending about \$40 million with the Australian Wildlife Conservancy and the University of New South Wales getting rid of predators—feral predators, that is—in three national parks in New South Wales. I am aware of the reintroduction of apex predators in the United States in some national parks.

The Hon. MARK PEARSON: It is the wolf, I think, in Yellowstone National Park.

Mr MARK SPEAKMAN: It has been an unrelenting and very busy portfolio in the past 16 months and unfortunately that is an issue that I have not yet reached. Did Mr Bailey wish to say anything?

Mr BAILEY: I was only going to add that that is the largest rewilding program to occur in Australia in that sense. The other bit is around the wild dog management plans for public lands that are listed under schedule 2 of the pest control order for wild dogs, which is issued under the Local Land Services Act. Both wild dog control and dingo conservation are objectives of those plans, so there is a recognition of dingo conservation

and making sure that that is a consideration. We are certainly very aware of that research that has been conducted on apex predators internationally and the benefits of that associated with rewilding and looking at what that means for apex predators.

Dingoes are considered in the current planning framework. In the context that we will be looking at which will be part of the monitoring that will go over the long-term partnerships we have with the Australian Wildlife Conservancy and the University of New South Wales for those large scale rewilding projects, at some point we will look at apex predator work as well. We are not doing that at the moment. We are starting at the base level. But those agreements are for 10 years plus options to go out as far as 40 years, I think. So there will be opportunities in that as well. There are the existing requirements under the Local Land Services planning programs.

The Hon. MARK PEARSON: Okay. I accept that. Thank you. I am done.

The CHAIR: I will pass over to the Opposition.

The Hon. PENNY SHARPE: Minister, what is the efficiency dividend for the OEH in 2016-17 in dollar terms?

Mr BAILEY: I will get that answer. I will have that coming.

The Hon. PENNY SHARPE: For last year's Committee, I was appreciative that in questions on notice you indicated that essentially since 2012-13, \$80 million has been taken out of all of the environment portfolio agencies and that that is an equivalent of \$55 million for the Office of Environment and Heritage. I look forward to getting the figures for 2016-17. You were unable to do so last year, but are you able to provide the figures that apply specifically to National Parks and Wildlife?

Mr BAILEY: In respect of the efficiency dividend, the point I would make about the National Parks and Wildlife budget as it stands in the 2016-17 budget papers, and remembering this is an issue I want to make clear because it causes a lot of confusion, is that that is an analysis where people look at the revised budget for 2015-16 in those papers, and I am looking at page 8-24. If I do a comparison of the forecast 2015-16 on the forecast 2016-17 for the National Parks and Wildlife Service group statement, there is an increase from \$468.393 million to \$503—sorry—

The Hon. PENNY SHARPE: I understand that. I am asking about the amount of money that you have to find through savings. That is the figure I am seeking from you.

Mr BAILEY: For the whole portfolio?

The Hon. PENNY SHARPE: Yes.

Mr BAILEY: For the whole portfolio of OEH this year it is \$4.1 million. The efficiency dividend saving that I have in front of me is \$4.1 million. What I am noting is that the year-on-year forecast figures for 2015-16 versus 2016-17 show an increase for the parks and wildlife group.

The Hon. PENNY SHARPE: That is fine. That is not what I am asking. That is only for National Parks and Wildlife?

Mr BAILEY: No, the Office of Environment and Heritage is \$4.1 million. I confirm that.

The Hon. PENNY SHARPE: You will be able to provide all of the others, Environment Protection Authority, Environmental Trust, Royal Botanic Gardens, et cetera, as you provided last year?

Mr BAILEY: If it is on notice, yes.

The Hon. PENNY SHARPE: Mr Bailey, last year you informed the Committee you were looking to rationalise the asset base of National Parks and Wildlife. Can you provide to the Committee details of what you have rationalised as a result of this process? Basically I want to know what has been sold, what is intended to be sold or leased, and what the value of this is.

Mr BAILEY: I would have to take absolute specificity on that, but the premise of what has been sold is not a premise that we would ordinarily act on within the national parks estate. That is not the basis of the national parks estate, and the movement of land out of the national parks estate would require a revocation through the Parliament for that to occur.

The Hon. PENNY SHARPE: Yes, I am familiar with that.

Mr BAILEY: So separating that out to it being sold, the sole component in its own right. The subsequent point that was made and is continuing to be worked through is work that we have been doing

following amendments to the National Parks and Wildlife Act 2010 that allow for the—what I would describe as a set of opportunities for people to be able to access the park estate, to put those into commercial arrangements in a more simplified version, and that was the tenor of the amendments as they occurred in 2010, and we are continuing to act and look at what we can do in terms of making provision of accommodation, retail outlets, conferencing facilities, cafes and restaurants from the asset base that we hold, but they are consistent with those amendments that were put through in 2010, which require a series of environmental assessments and a series of heritage assessments to occur before we can go to those leased activities.

The Hon. PENNY SHARPE: Would you be able to provide the Committee with a list of those leases that have been let in the past 12 months?

Mr BAILEY: Yes.

The Hon. PENNY SHARPE: Minister, is the National Parks and Wildlife Service currently undertaking an organisational restructure?

Mr MARK SPEAKMAN: I believe so.

The Hon. PENNY SHARPE: Can you inform the Committee about the nature of this restructure?

Mr MARK SPEAKMAN: I would like the head of parks to answer it, if I may.

Mr BAILEY: Like all agencies, we are making sure we are compliant with the Government Sector Employment Act at the moment, so that is something—

The Hon. PENNY SHARPE: Sure. I am not suggesting that you are not. I am interested in the nature of the restructure, in particular: the number of rangers you currently have, the regions in which they operate and whether there will be (a) fewer rangers and (b) whether they have to cover a greater area of the parks?

Mr BAILEY: Let me clarify. We are doing a series of things that we will look at around the organisational structure where, at a management level, we are looking at how we can make it most efficient and effective. When I talk rangers, it is important for us to note in a nomenclature sense that there are rangers—

The Hon. PENNY SHARPE: And there are field officers.

Mr BAILEY: —and there are field officers.

The Hon. PENNY SHARPE: Yes, I am very aware of that, Mr Bailey.

Mr BAILEY: I want to make sure that we are using—

The Hon. PENNY SHARPE: I am happy for you to provide figures on both of those. I was going to ask you about field officers next.

Mr BAILEY: We maintain a long-term average of 725 staff in those two categories, and then I would also acknowledge that many of our other staff have a direct front-line role in responsibility as well. I would be happy to provide those numbers on notice.

The Hon. PENNY SHARPE: I want to know how many fewer in each category you expect to have after this restructure.

Mr BAILEY: I do not expect that our overall full-time position equivalent will reduce. We are looking at ways at the moment of how we might—certainly how we would maintain or potentially increase the number of field staff that are out doing work on a day-to-day basis. Those numbers have not been finalised. I do not expect those numbers to be finalised for some months or into next year, Ms Sharpe.

The Hon. PENNY SHARPE: Can you confirm that you will have at least the same number of rangers and field officers?

Mr BAILEY: Absolutely confirm, no. I cannot give you a confirmation because we have not drawn the structures. We have not placed the positions.

The Hon. PENNY SHARPE: The restructure is being driven by the savings you have to find, is it not?

Mr BAILEY: No.

The Hon. PENNY SHARPE: Partly?

Mr BAILEY: There are some efficiency dividend savings that are already accounted for in the financial year. They were already accounted for. We are then looking at how we establish our staff, particularly

the management levels at which they are most efficient, to ensure we maximise the number of front-line services we deliver.

The Hon. PENNY SHARPE: Will there be the same number of front-line services at the end of this restructure?

Mr BAILEY: We will be delivering the same front-line services or enhanced front-line services.

The Hon. PENNY SHARPE: Will they be permanent positions or temporary positions?

Mr BAILEY: I would run a range of those, depending on the program and the funding source that comes with it. To give you an example of our highly successful enhanced bushfire management program, where we have taken on 94 additional positions, they have been temporary, aligning with the funding source. That funding source is now going through another stage of confirmation with the Government and we will look at—

The Hon. PENNY SHARPE: Do you anticipate that it will remain at the same level?

Mr BAILEY: My expectation is yes.

The Hon. PENNY SHARPE: In answer to questions on notice last year when I asked about some of those issues, you conceded after the hearing in questions on notice—No. 87, if you are referring to it in the future—that basically the savings are being offset by a reduction in staff numbers, so you are losing staff to pay for your efficiency dividend. I know that you do not concede this.

Mr BAILEY: I can clarify that a new award is being negotiated with the Australian Workers Union [AWU], which took effect from 1 July, and that will be influential in the outcomes that we look at for our staffing numbers. That is a significant change that commenced on 1 July 2016.

The Hon. PENNY SHARPE: Are you able to provide to the Committee what the anticipated savings are as part of the restructure? I am happy for you to take it on notice.

Mr BAILEY: Can I just clarify, the savings will be reinvested—the efficiency dividends have already been taken out of our budget.

The Hon. PENNY SHARPE: Yes, \$80 million worth.

Mr BAILEY: The savings will be reinvested into the park service. Those budget numbers, as they stand, any savings that might occur will be reinvested in the parks estate.

The Hon. PENNY SHARPE: But with fewer staff. Okay. I do not want to get bogged down in this.

Mr BAILEY: Ms Sharpe, I need to be clear. I did not say with fewer staff. We have negotiated a new award with the AWU.

The Hon. PENNY SHARPE: We will keep an eye on the numbers. I am not just talking about the AWU.

Mr BAILEY: We are negotiating awards with others at the moment as well.

The Hon. PENNY SHARPE: Thank you. Minister, are you aware that Cadman's Cottage at Circular Quay, one of the oldest and one of the few original buildings that remain from the earliest times of colonial settlement celebrates its 200th anniversary this year?

Mr MARK SPEAKMAN: Yes.

The Hon. PENNY SHARPE: Are you doing anything for that?

Mr MARK SPEAKMAN: I will take that on notice.

The Hon. PENNY SHARPE: Mr Bailey, are you doing anything about the fact that Cadmans Cottage is 200 years old?

Mr BAILEY: I think the Minister has already answered the question.

The Hon. PENNY SHARPE: So you do not know?

Mr BAILEY: The Minister has already answered the question.

The Hon. PENNY SHARPE: Minister, have you visited the site?

Mr MARK SPEAKMAN: I have, yes.

The Hon. PENNY SHARPE: So you would be aware that it has been closed since 2013.

Mr MARK SPEAKMAN: I have been inside it, yes.

The Hon. PENNY SHARPE: It has been closed to the public since 2013.

Mr MARK SPEAKMAN: I do not know whether that is the exact year, but I will take your word for it.

The Hon. PENNY SHARPE: Trust me; it is. If you have been to the site you would be aware that Cadmans Cottage sits right in front of the overseas passenger terminal.

Mr MARK SPEAKMAN: Yes.

The Hon. PENNY SHARPE: Do you not think that there is an opportunity there to have a shopfront or an information centre that would allow passengers getting off the cruise ships to find out about National Parks across Sydney as part of their day journeys?

The CHAIR: You could stick a McDonald's in there.

The Hon. PENNY SHARPE: Anything could happen at this point.

Mr MARK SPEAKMAN: That is an interesting proposal. I can say that I am interested in what could be done to revitalise that site generally.

The Hon. PENNY SHARPE: Why has it been empty for three years? One of the oldest and most important buildings in the State has been boarded up and empty for three years.

Mr MARK SPEAKMAN: We will look at opportunities for revitalisation.

The Hon. PENNY SHARPE: I would like to ask you about a heritage matter. It is difficult, but I think it is important. Are you familiar with the Butterfly Cave?

Mr MARK SPEAKMAN: Yes.

The Hon. PENNY SHARPE: You know that there are very considerable concerns by Aboriginal women across the Hunter in relation to that site and the ongoing preservation of that site?

Mr MARK SPEAKMAN: Yes.

The Hon. PENNY SHARPE: What action have you taken to try to sort out the issues surrounding the Butterfly Cave to ensure that it is appropriately preserved?

Mr MARK SPEAKMAN: Before I became the Minister it was declared an Aboriginal place with a 20-metre curtilage in 2013. I am advised that that curtilage was the result of negotiations between the Aboriginal community at the time, the Office of Environment and Heritage [OEH] and the developer. This year—it may have been last year—I met with the Aboriginal women, with Minister Williams. I have also met the representative of the developer with Minister Williams. I think the member for Cessnock was present at both those meetings.

I have informed—or caused OEH to inform—the developer that even if it is undertaking activity off site, the National Parks and Wildlife Act prohibits damage to the Aboriginal place. So the fact that drilling activity for a new development might be off site does not mean that it would not be a potential offence were it to damage or harm the Aboriginal place. I am aware that Lake Macquarie Council does not propose to give consent to the development nearby until there is a geotechnical report that demonstrates that there will be no damage to the Aboriginal place. I have explored the possibility of a land swap to see whether there is any Crown land that might be available.

The Hon. PENNY SHARPE: Swap?

Mr MARK SPEAKMAN: A swap for the developer. I have been looking at whether there is any possibility, for example, that we could swap land owned by the developer outside the 20-metre curtilage near the Aboriginal place, but I am told that there is none suitable. I think we have approached Lake Macquarie City Council on an informal basis about that; there is none suitable. One possibility is for the Awabakal Land Council to identify land that it might own to swap with the developer.

The Hon. PENNY SHARPE: You are asking the local traditional owners whose very special site is in danger to give up their own land to a developer, as an option?

Mr MARK SPEAKMAN: Here is the difficulty. Before my time—in 2013—an agreement was struck that protected this Aboriginal place. It declared the caves an Aboriginal place with a 20-metre curtilage. The developer is now being asked to revisit that and give up some of its property rights, although it had already

struck a bargain in 2013. There is an element of sovereign risk where we now say to the developer, "Ha, ha, we caught you out. You reached an agreement in 2013. We are going to impose something different upon you." We do not have the funds to buy up nearby land. I know that the member for Cessnock has made a Private Member's Statement about this. I have the greatest respect for him as a terrific advocate for the Aboriginal women on this issues. He has been a very heart-felt advocate.

The cost of acquiring more land nearby, outside this 20-metre curtilage, would probably run into many millions of dollars. Is that a justifiable investment of public money, when it is a condition of consent that there be a construction management plan to make sure that whatever construction activity occurs outside the site does not damage the Aboriginal place? There is a question not only of damage to the Aboriginal place, but of privacy of the Aboriginal women when they visit the place. We have had discussions with the developer about appropriate steps so that if and when the development happens near the Aboriginal place there will be an appropriate plan of management to make sure that visitors can go there as privately as possible.

The Hon. PENNY SHARPE: Do you accept that part of the issue with this is that the legislation really only talks about direct physical damage as opposed to a true understanding of the cultural practice that occurs at the cave and that the importance that that has in relation to Aboriginal women makes it harder to find a solution here?

Mr MARK SPEAKMAN: I accept that it is difficult to find a solution. I certainly accept that. Is it a problem with the legislation? I am not sure that it is. The legislation has allowed us to declare this as an Aboriginal place and make it an offence—

The Hon. PENNY SHARPE: But it may not protect it, Minister. Doesn't that mean it is a problem?

Mr MARK SPEAKMAN: You say that it may not.

The Hon. PENNY SHARPE: The Aboriginal women do not seem to think it is going to.

Mr MARK SPEAKMAN: Their principal concern, as I understand it, is the threat to the cave posed by construction activity near. It is a condition of any development activity there that there be a geotechnical report demonstrating that there will not be damage. In those circumstances where there has been a reasonable elimination of risk the questions are: What more can the State do? What more should the State do? What more should the developer do? If the developer wants to be philanthropic that is fine, but I do not think, in the circumstances where there has been—

The Hon. PENNY SHARPE: I am not asking about that. I am asking about the adequacy of our Aboriginal heritage protection. This is just one of many examples where I would argue that it is inadequate. What I am asking is: where are you at with heritage protection?

Mr MARK SPEAKMAN: Thank you. There has been a lengthy consultation process. That process continues. Minister Williams and I have met the New South Wales Aboriginal Land Council on at least two occasions this year—maybe more. I anticipate having something out for consultation or exhibition late this year or early next year with a view to finalising the issue next year.

The Hon. PENNY SHARPE: Excellent. That is good news. I want to come to the issue of your diary disclosures. I want to understand why it was that you did not declare your meeting at Heathcote or within the timeframe as set down by the Premier's memorandum.

Mr MARK SPEAKMAN: The Premier's memorandum, which is not part of the ministerial code of conduct—

The Hon. PENNY SHARPE: Are you arguing that it is less important than the ministerial code of conduct and that therefore you do not have to follow it?

Mr MARK SPEAKMAN: No, I am in the middle of the sentence and you have interrupted me.

The Hon. PENNY SHARPE: I apologise.

Mr MARK SPEAKMAN: The ministerial diary protocol—which is not part of the ministerial code of conduct—requires a Minister to disclose scheduled meetings, with a number of exceptions. One of those exceptions is a meeting with a local MP. My recollection is that I attended Heathcote hall expecting to meet Mr Evans. When I arrived, there were also other people there. The view I have is that that is not a disclosable meeting. To the extent that it was with Mr Evans it is not disclosable.

The Hon. PENNY SHARPE: So you are arguing—

Mr MARK SPEAKMAN: I have not finished.

The Hon. PENNY SHARPE: Are you arguing that if you have an MP in the room and there is a bunch of other people that happen to be there you do not have to disclose that?

Mr MARK SPEAKMAN: No. If it is a scheduled meeting I have to disclose it. But if it is a non-scheduled meeting—

The Hon. PENNY SHARPE: It sounds like a giant loophole to me. Your local MP can go, "Come on, let's have a meeting, Minister." They can then say, "Look who has come in the door! It's Marjorie; hello."

Mr MARK SPEAKMAN: The form that that protocol should take is ultimately a matter you should ask the Premier about rather than me.

The Hon. PENNY SHARPE: I have asked the Premier about it.

Mr MARK SPEAKMAN: If you want to identify a loophole, how about the loophole that allows shadow Ministers not to have any diary disclosures at all?

The Hon. PENNY SHARPE: You have to be in Opposition before you get to ask questions here, Minister. It is a serious matter.

Mr MARK SPEAKMAN: There has to be a sense of proportionality here.

The Hon. PENNY SHARPE: You are arguing that there is a significant loophole in relation to diary disclosure that you are happy about.

Mr MARK SPEAKMAN: Let us put the meeting in context. I, as heritage Minister, supervise heritage grants. I, as heritage Minister, do not have a statutory role in approving adaptations or developments on State heritage-listed sites. That is a matter for the independent Heritage Council.

The Hon. PENNY SHARPE: You are the Assistant Minister for Planning, are you not?

Mr MARK SPEAKMAN: Well, the planning Minister does not have a role.

The Hon. PENNY SHARPE: Apparently you are.

Mr MARK SPEAKMAN: The planning Minister does not have a role, either. It is a matter for a Joint Regional Planning Panel [JRPP], if there is any development on site.

The Hon. PENNY SHARPE: There is no whoops here at all. This is showing the loopholes that exist in your planning system and the integrity of such. We—

The Hon. GREG PEARCE: Chair, can we just let the Minister answer?

The CHAIR: Order! Are you taking a point of order?

The Hon. GREG PEARCE: He is actually disclosing appropriately.

The Hon. MICK VEITCH: He could be the health Minister soon.

The CHAIR: Are you taking a point of order?

The Hon. PENNY SHARPE: He hopes not.

The CHAIR: I will take it as a point of order; otherwise, it would be an interjection.

The Hon. GREG PEARCE: I thought it was an interjection.

The Hon. PENNY SHARPE: And it would be disorderly.

The CHAIR: If it is an interjection, it is unruly. If it is a point of order, there is no point of order.

The Hon. PENNY SHARPE: There we go. Time is up.

The Hon. MICK VEITCH: Yes, you will be the health Minister in the next estimates.

Dr MEHREEN FARUQI: Minister, in relation to Aboriginal heritage, have any steps been taken to transfer responsibilities on Aboriginal heritage under the National Parks and Wildlife Act from the Office of Environment and Heritage [OEH] to local Aboriginal land councils?

Mr MARK SPEAKMAN: No. But, look, probably the biggest issue to be determined in Aboriginal cultural heritage is who speaks for country—

The CHAIR: Yes, true.

Mr MARK SPEAKMAN: —and the role of traditional owners on the one hand and Aboriginal land councils on the other. We are trying to work through a model which, if we can, will reconcile that tension. But, no, we have not handed over Aboriginal cultural heritage to land councils.

Dr MEHREEN FARUQI: Concerning the former Scout land within the Royal National Park at Spring Gully, Bundeena, does the Minister support the position adopted by the Minister for Planning in his letter to the Nature Conservation Council on 11 April 2016, in which he stated: "Should the owner wish to sell the property, I would be pleased to advocate for its purchase by Government, if reasonable."

Mr MARK SPEAKMAN: There is a piece of land-locked land at Spring Gully.

Dr MEHREEN FARUQI: The planning Minister would support purchasing that property, if it is reasonable. Would you support that position?

Mr MARK SPEAKMAN: Look, there is an acquisition budget every year. It may well be a piece of land worth acquiring, but whether we were to acquire it would depend upon what it is on offer for and whether there are more strategic pieces of land we could acquire elsewhere. But, certainly, that would be an option.

Dr MEHREEN FARUQI: Minister, how many trustees are on the Centennial Park and Moore Park Trust at the moment?

Mr MARK SPEAKMAN: Five?

Mr ELLIS: There are five trustees.

Dr MEHREEN FARUQI: Is it not required by law, by the Act, to have at least eight trustees?

Mr MARK SPEAKMAN: I stand to be corrected; I think it is capable of having more than five, but I understand that five satisfies the statutory minimum.

Dr MEHREEN FARUQI: Part 2 section 7 of the Act states:

7 Appointment and procedure

(1) The Trust is to consist of:

(a) 7 trustees appointed by the Governor ... and

(b) 1 trustee appointed by the Governor on the recommendation of a majority of the members ...

If that is required by the Act, why are there only five trustees? For how long has there been only five trustees?

Mr MARK SPEAKMAN: There have only been five trustees for a least a year or so, I think.

Mr ELLIS: It is about eight months since the last trustee resigned, so the number reduced to 5.

Dr MEHREEN FARUQI: Minister, can you give any justification for only having five trustees for nine months?

Mr MARK SPEAKMAN: If there is a statutory requirement to have more, then I will address that urgently.

Dr MEHREEN FARUQI: There is a statutory requirement, so surely you should, as the Minister for the Environment, be aware of that. How many were there before the five, do you know, like in 2015? How many trustees were there?

Mr ELLIS: I would have to take that on notice, Minister.

Dr MEHREEN FARUQI: Sorry?

Mr ELLIS: I will have to take that on notice.

Dr MEHREEN FARUQI: That would be good.

Mr ELLIS: We can provide a schedule as trustees leave.

Dr MEHREEN FARUQI: I am concerned because there has been a lot of chaos that has occurred during this time—loss of trees due to light rail, the resumption of land from the trust, the Tibby Cotter bridge, and there is an ongoing issue of safety around the wild play area. I am really concerned that all that is going on while the Minister has not kind of really complied with the law. You do not know why you have not done that, Minister?

Mr MARK SPEAKMAN: Well, if there is a shortfall, I will check the Act, and that will be rectified quickly.

Dr MEHREEN FARUQI: Okay, thank you. Just going back to the Q Station for a bit and the clearing of critical habitat—

Mr MARK SPEAKMAN: I am sorry, I was distracted for a moment.

Dr MEHREEN FARUQI: That is all right. I am just going back to the Q Station and the removal of the critical habitat there. Because Mr Bailey responded to the previous questions, Mr Bailey, could you confirm that it has been cleared? Did you say that the critical habitat had been cleared in December 2015?

Mr BAILEY: What we noted and acknowledged was that there was an impact on vegetation in that area and that it was fully investigated, including the investigation being conducted by our special investigations unit.

Dr MEHREEN FARUQI: Sure. You are not clear on whether it was critical habitat that was cleared?

Mr BAILEY: Well, my view would be that if it was critical habitat and our view had been formed that it was within the definitions of the Act, we would have perhaps concluded differently; but the advice that I have through the investigation is that it would be difficult to prove lawfully that it is critical habitat.

Dr MEHREEN FARUQI: But whatever vegetation was cleared, was it cleared by the lessee?

Mr BAILEY: It was an activity by the operator on the property, yes.

Dr MEHREEN FARUQI: Why were they doing the clearing? What were the reasons they were doing the clearing for?

Mr BAILEY: I do not have that information in front of me from the investigation, Dr Faruqi, I am sorry.

Dr MEHREEN FARUQI: Could you take that on notice, please—just why the lessee was clearing that land?

Mr BAILEY: We will look at that, yes.

Dr MEHREEN FARUQI: Thank you. It has now been 10 years since that particular lease began with the current lessee. Have there been any significant issues in that time in terms of payments, let us say, or any other relationship with the national parks, for instance? Have there been any particular issues over the past 10 years with the lessee?

Mr MARK SPEAKMAN: Can you clarify what you mean by "issues"? Do you mean issues in relation to non—

Dr MEHREEN FARUQI: Yes, non-payment of rent. I might be more clear. How much is the lessee paying annually for that lease?

Mr BAILEY: I would have to take that on notice; I do not have that in front of me, and I will clarify the commercial-in-confidence nature. I do recall that we did some questions on notice recently that outlined some of that advice, Dr Faruqi.

Dr MEHREEN FARUQI: Do you know if the lessee has paid the rent on time during this time?

Mr BAILEY: Again, Dr Faruqi, I wish to take the question on notice to get clarifications around those periods of payment.

Dr MEHREEN FARUQI: Minister, are there any new leases of National Parks and Wildlife Service properties that are on the cards in the Sydney Harbour area, to be leased out?

Mr MARK SPEAKMAN: "On the cards"?

Dr MEHREEN FARUQI: Yes, like you in the near future. Are you thinking of leasing out more properties?

Mr MARK SPEAKMAN: Well, proposals at South Head were exhibited and are under consideration. Goat Island?

Mr BAILEY: No. Just to clarify, the main one that we have put to market at this stage is South Head. We continue to look at putting other things to market. My memory is that there is a building in Lane Cove that we have put out to market as well, so there are a number of things that we have put out to market, Dr Faruqi.

Dr MEHREEN FARUQI: Just going back to the vegetation clearing, has the area been revegetated?

Mr BAILEY: There is a series of mitigation steps that we have put in place to look at what could be best done for that area and how that could be best delineated between the penguin colony to maximise the protection of the penguin colony. Yes, there is work, certainly, done on site.

Dr MEHREEN FARUQI: And that is revegetation work?

Mr WRIGHT: That does include some replanting.

Mr BAILEY: And, I think, some stronger definitions through screening and other things as well, Dr Faruqi.

Dr MEHREEN FARUQI: Who has paid for that work?

Mr BAILEY: I would have to take that on notice.

Dr MEHREEN FARUQI: Are you aware that National Parks has paid for that?

Mr BAILEY: I am not aware of who has paid.

Dr MEHREEN FARUQI: If you could take that on notice, that would be great. Minister, based on the annual reports of the OEH, the number of the senior positions within OEH—I think it is band 1 and over and it is people earning more than \$175,000 a year—has jumped quite dramatically from 2011 to now; from 21 to 92. Would you think that OEH is becoming top heavy? What is the reason for this, given that other staff positions have not increased, like field officers or rangers? We have just had that discussion earlier.

Mr MARK SPEAKMAN: Mr Bailey wishes to answer, if he may.

Mr BAILEY: I can clarify. The classification system in the public sector has changed under the Government Sector Employment Act. I will try to explain this very simply. The previous system was that there was a senior executive grading system of 1 to 8. That number you are referring to of about 20 reflected people in the senior executive service grades of 1 to 8. The Government Sector Employment Act has created four bands. The bottom band, band 1, is inclusive of both the senior executive service and the senior officers grades 1, 2 and 3 and EA15s are now in that instance, who were all officers in that pay range. To confirm a couple of things, the number of people in that band was reduced in 2012. The reason it looks disparate at the moment is that the new classification system means those who were senior officers or EA15s in the pay scale, we did not report on in annual reports. We now do because the classification system has changed. It does not reflect a growth at all in those numbers.

Dr MEHREEN FARUQI: So there is no growth.

Mr BAILEY: No, and it is not a disproportionate growth to the other classifications in the agency.

The Hon. PENNY SHARPE: Mr Bailey, you have talked about leasing and market testing in relation to National Parks and Wildlife. Can you confirm that the market testing is for running an expression of interest [EOI] process in relation to running large events in three or four locations within national parks?

Mr WRIGHT: We have put out an expression of interest seeking interest in events, not necessarily large events, in certain national parks.

The Hon. PENNY SHARPE: Where is that up to?

Mr WRIGHT: We are still waiting for responses from the market.

The Hon. PENNY SHARPE: When are they due?

Mr WRIGHT: I cannot give you the date; we can take that on notice.

The Hon. PENNY SHARPE: How many parks are caught up in this EOI?

Mr WRIGHT: Six, from recollection.

Mr BAILEY: Just to clarify, these are sites within the national parks, rather than the national parks.

The Hon. PENNY SHARPE: Yes, I know what they are. I have a final question about the botanic gardens. The capital expenditure for science and programs for the botanic gardens was nearly \$4 million in 2010-11. In 2015-16 it was a similar amount. In 2016-17 it has been slashed by 93 per cent to \$275,000. What are you doing in the science and programs for the botanic gardens that you are no longer doing?

Mr BAILEY: Before we answer could we clarify: that is the capex projects that we have delivered in the last couple of years?

The Hon. PENNY SHARPE: The capex, yes.

Mr ELLIS: That number reflects simply an ending of this series of capital projects related around the plant bank site. That project has now been completed and is operating. The programs we are delivering as an operating budget have continued and there has been no reduction in those programs. All the key programs that were delivered in the prior years continue to be delivered.

The Hon. PENNY SHARPE: Since 2010-11 you have cut 60 staff in the botanic gardens. Is that correct?

Mr ELLIS: As part of the integration, the total number of full-time positions last year in the Botanic Gardens and Centennial Parklands has been 25, with 3.4 of those positions in the science department.

The Hon. PENNY SHARPE: I am asking specifically about the botanic gardens.

Mr ELLIS: I can give you a figure for the botanic gardens.

Mr BAILEY: While Mr Ellis is finding that number, can I clarify that we are also delivering the services but in slightly different ways, which we think is more cost efficient and effective and allows us to invest more money into the gardens. It is a combination of two factors and not just the reduction in the number of staff, because a series of frontline services is now being delivered more efficiently, and we are expending more funds into the botanic gardens and the delivery of the services on the ground.

The Hon. PENNY SHARPE: Are you able to provide a list to the Committee of the new frontline services you are delivering in the gardens?

Mr BAILEY: We are maintaining the same frontline services as we always were. We are now delivering services like the Calyx, the new investment in the botanic gardens. I would go on the record as saying I think the gardens are in the best condition that I have seen them in for a long, long time.

The Hon. GREG PEARCE: You have certainly put a lot of money into those new garbage bins.

The Hon. PENNY SHARPE: Minister, are you aware of the issues around Ginninderra Falls?

Mr MARK SPEAKMAN: No.

The Hon. PENNY SHARPE: Ginninderra Falls is located in New South Wales, but it is only accessible through the Australian Capital Territory [ACT]. A large development is going in on the ACT side of Ginninderra Falls, a very special place. There has been discussion over the years about it becoming a national park. Are you able to provide information to the Committee about the likelihood of that occurring?

Mr MARK SPEAKMAN: I will have to take that on notice.

The Hon. PENNY SHARPE: It is an odd issue because it is to do with the boundary between the ACT and New South Wales. I believe there is a fairly good story about the ACT running out of money when it was drawing the boundary and it drew it straight across rather than following the natural line, which would have had the Ginninderra Falls in the ACT. If a national park is not a serious consideration, do you think it is worth a discussion about transferring that into the ACT?

Mr MARK SPEAKMAN: I am not familiar with the issue, so I will have to look at it.

The Hon. PENNY SHARPE: I know it is a fairly radical idea to change the boundaries of the States.

Dr MEHREEN FARUQI: Minister, the executive team at the OEHL as at 30 June 2015 had only two of the 10 positions held by women. Has that changed in the last year?

The Hon. PENNY SHARPE: It does not look like it.

Dr MEHREEN FARUQI: Exactly, from what we can see, probably not.

Mr BAILEY: The executive for the Office of Environment and Heritage—I am just counting up in my mind as we are talking—there are eight on the executive, two women on the executive for OEHL. Then there is an executive for the EPA.

Mr GIFFORD: There are three women on the executive of the EPA.

Dr MEHREEN FARUQI: Do you think this gender imbalance is a problem? What are you doing about it, Minister?

Mr MARK SPEAKMAN: Looking at ways for us to have more women—that is a worthy aspiration.

Dr MEHREEN FARUQI: Could I ask how? Do you have targets and time lines to have a better balance?

Mr MARK SPEAKMAN: There are reporting mechanisms, so each time an appointment is made to a trust or to a regional advisory committee, for example, we report the gender balance and whether, if at all, we have included Indigenous people. We are conscious of that.

Dr MEHREEN FARUQI: Reporting mechanisms do not generally address the issue. Are there any specific steps being taken to increase the number of women?

Mr MARK SPEAKMAN: Both Mr Bailey and Mr Gifford are busting to say something.

Mr BAILEY: I was about to say something, but I realised Mr Gifford would probably want to say the same thing. One of the things that we would acknowledge—and I must admit our executive director of science, Dr Kate Wilson, and I discuss this regularly—is that it is not that long ago that our gender balance was more gender equal than it is now, as you suggest. Dr Wilson reminds me of that regularly. One of the interesting things for us is that we continue to run what we call the Spokeswomen's Program. It is a joint program between the EPA and OEH. We are very strong supporters of that program as an agency. We have a series of development programs that we are supporting. We identify staff to engage in that program and we invest in that program pretty significantly across both organisations, both in time and financially. We run senior programs. It may be a year or more ago, for example, when Christine Nixon, the former Chief Commissioner of Victorian Police, ran a program with our staff. She is doing great work in supporting women in the workplace now. We have a series of programs that we do.

Dr MEHREEN FARUQI: Sure, but it seems you need to do more because it seems it is not really working.

Mr GIFFORD: If I could add to that—

Dr MEHREEN FARUQI: That is fine. My time is limited. I want to ask one more question of the Minister.

Mr BAILEY: We will continue to do more, but I do not accept the premise that we are failing.

Dr MEHREEN FARUQI: Two out of eight is not that great. Minister, last year in budget estimates on the subject of covering coal wagons, you stated:

The best scientific evidence is what we are getting with commissioning the Chief Scientist to do a thorough review.

In August a year later, and two years after the Government committed to this as part of its response to the inquiry into the EPA, we now have the Final Report on the Independent Review of Rail Coal Dust Emissions Management Practices in the NSW Coal Chain, which has no conclusion other than there should be further studies. Meanwhile, people's health does suffer and is put at risk. You mentioned the precautionary principle earlier on. Why have you not adopted the same precautionary principle and required coal wagons to be covered?

Mr MARK SPEAKMAN: There are a number of answers to that. We do have a reasonable amount of information about regional air quality in the Hunter from a characterisation study that was released earlier this year that suggests, for example, that coal is a minor contributor to PM2.5, particulate matter with a diameter of less than 2½ microns. I think Rail Corporation had done previous studies that suggested that coal dust from wagons was not an issue, but we now have the Chief Scientist's recommendations for further research and study. She suggests a pilot program looking at local air quality issues with local monitors, for example. We have had that report for a few weeks and we will respond as promptly as we can.

Dr MEHREEN FARUQI: Will you implement those recommendations of the Chief Scientist to do a pilot study?

Mr MARK SPEAKMAN: We are considering those recommendations and will respond promptly.

Dr MEHREEN FARUQI: How much time do I have left?

The CHAIR: Thirteen seconds.

Dr MEHREEN FARUQI: I might just leave it at that.

The Hon. PENNY SHARPE: I want to put on record my thanks to Mr Bailey. As he said on the way in, that is 36 estimates committees now completed. I wish to put on record my appreciation of his work for many years in this area. I wish him well in whatever he does next.

The CHAIR: I think we can all say hear, hear!

Mr MARK SPEAKMAN: I also put on record my appreciation of Mr Bailey. I am a new Minister on training wheels, and he has been a terrific mentor and helper—

The Hon. PENNY SHARPE: He has dug you out of a few!

Mr MARK SPEAKMAN: —and I will miss his services very much.

The CHAIR: Minister Speakman, thank you very much to you and your officers for attending the hearing and for your excellent answers to some excellent questions. If there are any questions on notice, you will be given those in writing and the Committee would appreciate replies within 21 days.

(The witnesses withdrew)

The Committee proceeded to deliberate.