

## Select Committee on Floodplain Harvesting - Post-hearing responses

---

### Questions on notice

1. Page 11 of transcript:

**The Hon. ADAM SEARLE:** That is okay. Could I ask you to open that bundle of documents. I have some questions that relate to them. The first page is an email from Dan O'Connor at DPIE to Jim Bentley at DPIE and others. I understand that you are not the author of this document or indeed, it seems, the recipient, but nevertheless the tone of the email suggests a great degree of closeness between DPIE Water and NRAR. It talks about NRAR exercising its discretion and then it says, "We (DPIE Water/NRAR) will need to have a clear position on this as soon as possible." That does suggest a great degree of synchronicity at a policy level between your organisation and DPIE Water. How do you explain that if, as you say on your evidence, you are a fully independent body?

**Mr BARNES:** Clearly I am not the author.

**The Hon. ADAM SEARLE:** No.

**Mr BARNES:** I am identified, along with a number of others, as a cc.

**The Hon. ADAM SEARLE:** Yes, you are.

**Mr BARNES:** Jim Bentley is the primary author. It was sent rather late at night, wasn't it?

Answer:

On analysis of the email in the annexure to which The Hon. Adam Searle referred and in concert with an examination of Mr Barnes email records, it has been determined that Mr Barnes was not a recipient of this email – either directly or by cc. Also, Jim Bentley is not the author, it is Dan Connor.

This being the case, none of the questions from The Hon. Adam Searle in relation to the email on the first page of the 'bundle of documents' (referred to as the 'NRAR Annexures' in the material provided by the Secretariat in the supplementary questions package) can be answered by Mr Barnes. The incorrect statements of both Mr Barnes and The Hon. Adam Searle recorded in the transcript as to the author and recipients of the email may require noting or correction - should the Secretariat deem it warrants such.

2. Page 11 of transcript:

**The Hon. ADAM SEARLE:** I am just interested to know whether you challenged that supposition on the part of DPIE Water. Perhaps we can move on to page 3. It refers at page 3 to two cases where this has occurred. Is that a reference to floodplain harvesting breaches? Can you provide us any details of that or do you just simply not know? Do you need to take that on notice as well?

**Mr BARNES:** I will take that on notice. I see it is reference to a *Sydney Morning Herald* article so that would require me to do a bit of investigating.

**The Hon. ADAM SEARLE:** If you could come back to us on notice as to what those two matters were and where they are up to.

**Mr BARNES:** Certainly—happy to.

Answer:

The two matters referred to in this email were in relation to floodplain harvesting. However, it was later confirmed the alleged conduct took place when the *Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020* was in effect. The investigations were subsequently closed.

3. Page 11/12 of transcript:

**The Hon. ADAM SEARLE:** Page 4 refers to an early draft of the board papers to be discussed at the executive. Page 6 sets out the problem issue, which is the Minister's office, water users and broader community asking NRAR to make its position clear in response to the disallowance of the exemption by the upper House. Page 7 outlines a number of options for the board. Page 8 has an analysis—a sort of pros and cons—of those three options. Can you tell the Committee which option the board adopted and why?

**Mr BARNES:** I would have to take that on notice because it will be in the minutes of that meeting. What I certainly can say on the record now is that the board expects me and my officers to provide them with free and frank advice. We have done so, I believe, in this instance. It came at a time immediately after the disallowance when there was considerable and numerous requests to NRAR for it to communicate what it was going to do as a result of the disallowance. The board sought advice. That advice was provided in a written form, some of which you have presented back to me now. As I say, I can give you the answer to what option was progressed when I check the minutes. I will take that on notice.

Answer:

The question is answered in the publicly available 30 September Board meeting minute ([https://www.dpie.nsw.gov.au/data/assets/pdf\\_file/0007/367216/NRAR-Board-Minutes-30-September-2020.pdf](https://www.dpie.nsw.gov.au/data/assets/pdf_file/0007/367216/NRAR-Board-Minutes-30-September-2020.pdf)) that details the decision of the NRAR Board:

- Mr White provided the Board with proposed options as per the paper provided.
- The Board commented that NRAR has been committed to a pathway for licensing and approvals for the take to flood plain harvesting to commence on 1 July 2021 for Floodplain harvesting in the 5 Northern valleys of NSW. We have been involved in the development of the monitoring policy and look forward to its implementation. We have been focussed on ensuring we are ready to enforce the rules at this time.
- The current situation is a result of the actions of the Legislative Council of NSW Parliament. The disallowance of the exemption will mean that this activity is not exempt under the Water Management Act 2000.
- NRAR will as an independent regulator continue to enforce the law. We will do this reasonably and this will be no different to any other matter that we deal with.
- NRAR will respond to suspicious activity reports received using its current risk-based processes, and where a breach is confirmed, take proportionate compliance action in accordance with NRAR's published regulatory policy (i.e. take seriousness of the offence, impact on the environment and other water users, culpability, community interest and willingness to cooperate into account).

4. Page 12 of transcript:

**The Hon. ADAM SEARLE:** Of the three options, the first option was that NRAR could indicate that as floodplain harvesting is now not exempt and licences and approvals are not issued, taking water in this matter is potentially a breach of the Water Management Act. The second option was that as a temporary measure NRAR request that those taking floodwater consistent with floodplain harvesting policy identify their intent. The third option was allowing the take of floodplain harvesting by water users with a registration of interest lodged with the department in line with the Government's policy. You see the pros and cons there. Are you saying you do not recall which option NRAR adopted?

**Mr BARNES:** Clearly I do not want to mislead the Committee so, with respect, I will give you an absolute assurance via a question on notice as to what option.

Answer:

Refer to the answer provided to question 3.

5. Page 12 of transcript:

**The Hon. ADAM SEARLE:** Can you look at page 20 of that bundle, which is a letter from you to Ms Baldwin of the Southern Riverina Irrigators, and also look at page 18? There seems to be a discrepancy between the advice you provided Ms Baldwin and your own internal advice about how many storages greater than 1,000 megalitres were being referred to. Can you explain to the Committee why that discrepancy was there? That is, there was a very different number you provided to Ms Baldwin than you appear to have been provided internally by Mr Johnston.

**Mr BARNES:** I am scrolling rapidly; I am reading as quickly as I can. I am going to take that one on notice if I may, sir.

Answer:

The initial numbers provided to assist with drafting the letter were subsequently cross-checked and corrected as part of any normal letter drafting process. The numbers are sourced from DPIE Water as leader of the Healthy Floodplains Project.

6. Page 18 of transcript:

**The CHAIR:** Thank you, Mr Barnes. I actually have one just about the emergency works regulation. How does NRAR ensure water has been returned to the environment that is captured under this regulation?

**Mr BARNES:** The emergency works regulations enable entities to respond immediately to dire situations that have a detrimental impact on life and property. There is an obligation of an entity to inform NRAR in advance of the activity being undertaken to de-water and to do so 14 days later once that activity has concluded. It is expected, at that 14-day period, that the entity describes the volume of water taken and how that water was returned to the environment. It is our expectation that most water that has been removed would be returned to the groundwater source, either through reinjection or infiltration, or released to the stormwater system.

**The CHAIR:** That is a requirement, is it?

**Mr BARNES:** It is an expectation that we have and communicate to those seeking to access the exemption.

**The CHAIR:** Just to be clear, when you say it is an expectation that you have, that is not actually in the regulation? Because that is the first time I think I have heard about that 14-day expectation, as

you say. So, just to be clear, it is not in the regulation but you are saying it is an expectation that that happens?

**Mr BARNES:** I am drawing from information that is on the website, that is structured by way of questions and answers. As to what is in the regulation or not, I would take that on notice. It may be helpful, if I may, just to say since that regulation was put in place we have received 34 notifications. All of those were in the coastal, residential or metro areas. The majority of those were to address failures in the sewerage system and most of those exemptions were sought by water State-owned corporations or local councils.

Answer:

To rely on this exemption, a person must provide certain information to NRAR before or as soon as reasonably possible after commencing the relevant emergency works. A completion report must then be submitted to NRAR within 14 days of completing the emergency works.

Clause 21(7)(b) of the *Water Management (General) Regulation 2018* states the following:

*(7) An exemption conferred by this clause in relation to the taking of groundwater or overland flow water for the purpose specified in Schedule 4, clause 17B (Emergency works) is subject to the condition that the person claiming the exemption must—*

*(a) before or as soon as reasonably possible after commencing the relevant emergency works, give the Natural Resources Access Regulator the following information—*

- (i) the person's name and contact details,*
- (ii) if applicable—the name and contact details of any other person by whom, or body by which, the works are to be carried out,*
- (iii) the address of the site of the works,*
- (iv) the nature of the emergency event resulting in the need to carry out the works,*
- (v) the significant risk to be reduced by the works, and*

*(b) within 14 days after completing the relevant emergency works, give the Natural Resources Access Regulator the following further information—*

- (i) the date of completion of the works,*
- (ii) the volume of groundwater or overland flow water extracted while carrying out the works,*
- (iii) if it is not possible to measure the volume of groundwater or overland flow water extracted while carrying out the works—an estimate of the volume.*