

Answers to questions on notice - NSW Planning | Department of Planning and Environment

Public Hearing - Select Committee on the Proposal to Raise the Warragamba Dam Wall – 21 February 2022

Question 1

The CHAIR: Well, yes. Now that we have seen the public submissions, including IUCN's review, obviously you have sent advice back to WaterNSW. They will respond. But there will be this ongoing interaction with the Commonwealth around both World Heritage issues and, ultimately, EPBC. Is any of that advice, back and forwards, going to be made public as it gets to the point of determination or is that, largely, just correspondence that is in between the planning department and the Commonwealth agency?

DAVID GAINSFORD: I would characterise it as largely being correspondence, part of the usual correspondence and discussions that we have with the Commonwealth. So, yes, I guess at this point in time we would normally publish that material but I am happy to take some of the detail on notice there.

The CHAIR: If you could, that would be great. The reason I ask this question is because this Committee has made quite a lot of effort, and also some individual members through Parliament, and other Freedom of Information processes, to get access to information around this project. Much of it has been considered Cabinet-in-confidence and not provided. I guess my second question is: would you consider that correspondence to be Cabinet-in-confidence, given it is really not about the consideration of Cabinet but rather about the consideration of the planning assessment process?

DAVID GAINSFORD: Oh, Chair, I mean, if it is part of the usual course of conversations that we are having to do with our assessment, there would not be Cabinet-in-confidence protections on that, I would not have thought.

The CHAIR: If you could come back to the Committee and confirm the status of that, that would be useful, because I am sure that there might be some efforts to try to see some of that information through the process.

DAVID GAINSFORD: I am happy to take that on notice.

Response

The Department of Planning and Environment (the Department) would not routinely publish correspondence with the Department of Agriculture, Water and Environment (DAWE). NSW is assessing matters under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) on behalf of Commonwealth to make a recommendation to the Commonwealth decision maker. DAWE does not provide the Department advice on assessment issues, as the Department is undertaking this assessment on behalf of the Commonwealth. If the Commonwealth provides formal advice regarding assessment issues, that correspondence may be made publicly available as is the case for other advice received by the Department, in line with the Department's practice on State Significant Infrastructure. When the Department makes a recommendation for consideration by the Commonwealth decision maker, this recommendation is published by the Department. It would not be expected that correspondence between DAWE and the Department would be considered Cabinet-in-confidence.

Question 2

The CHAIR: Can you clarify, Ms Van den Honert, which Aboriginal parties have been engaged by your consultant at this point?

ERICA van den HONERT: I will have to take the detail of all the names of the RAFs on notice and come back to you. I will get back to you on that one.

Response

The Department sought the details of all Registered Aboriginal Parties (RAP) from the proponent, who provided the contact details for all 23 RAPs. The Department's consultants engaged with all RAPs on the register provided.

Question 3

The CHAIR: That would be great. We are now quite some time since the EIS was published. Submissions have obviously closed. So, I am just checking that they were all engaged in a timely fashion. I guess to the question that I had originally asked Mr Gainsford, what is the relationship in the mind of the planning department between the Indigenous Land Use Agreement and the assessment process for this project? How do you see those two things interacting?

ERICA van den HONERT: I might ask-

DAVID GAINSFORD: Ms van den Honert might answer that.

ERICA van den HONERT: I might take that on notice and refer to my colleagues at Heritage NSW for their advice unless Mr Gainsford has got anything to add.

Response

The Secretary's Environmental Assessment Requirements (SEARs) issued under the *Environmental Planning & Assessment Act 1979* (the Act) for the proposal require the assessment considers the Indigenous Land Use Agreement (ILUA). The Department will consider WaterNSW's response to the SEARs and proposed approach to the ILUA as part of its consideration when reaching a determination decision regarding the proposal.

Question 4

The CHAIR: How many submissions do you think engaging that consultant ultimately led to being made by various Aboriginal parties?

ERICA van den HONERT: I do have the numbers. I just do not have them right at my fingertips, but I will try and get them and report back to you shortly.

Response

The Department has identified that at least 10 people (parties) who were engaged made submissions on the Environmental Impact Statement (EIS).