NSW GOVERNMENT | Planning

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Office of the Director General

Ms Madeleine Foley
A/Director - Committees
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Foley

I refer to the Department of Planning's second appearance at the Inquiry into Badgerys Creek land dealings and property decisions on 19 October 2009.

Please find enclosed to this letter, responses to the Questions on Notice issued to the Department on 21 October 2009 and several edits to the transcript.

I believe it important to reiterate to the Committee that as Director General, it is appropriate and essential that I meet from time to time with a variety of stakeholder including proponents and their advisers. This is essential, as without such discussions, it is not possible to obtain an appreciation of the relevant issues associated with development proposals, nor to be properly informed.

Despite discussions with proponents, consultants or lobbyists, in all cases, proposals are assessed by the Department on their merit consistent with Government policy and legislative requirements. To ensure transparency in decision making, all assessment reports and decisions are placed on the Department's website.

Without meetings with stakeholders, including development proponents, (irrespective of their affiliations), I believe exercising the Director General's function would be inefficient and impractical.

Should you require any further information, please do not hesitate contact Donna Rygate, Executive Director Corporate Governance and Policy on 9228 6190.

Yours sincerely

SHaddad

Sam Haddad
Director General 28/10/2009.

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Inquiry into Badgerys Creek Land Dealings and Property Decisions

Department of Planning

Written Questions on Notice from 19 October 2009

#	Question	Response
Questions from the Hon Jenny Gardiner, Chair		
1	On page 31 of your submission it states that Cox Richardson lodged a submission 'in 2005' to have the former CSIRO and University of Sydney lands considered as part of the South West Growth Centre strategic planning process.	No response required.
2	What was the exact date that the submission was lodged?	The letter from Cox Richardson to the Department of Planning was dated 29 September 2005 and is marked as having been received by the Department on 3 October 2005.
3	On page 32 of your submission it states that Cox Richardson forwarded a submission in 'early 2006' requesting that the former CSIRO be designated for employment purposes.	No response required.
4	What was the exact date that the submission was lodged?	The submission prepared by Cox Richardson is undated. It appears from Departmental records that the submission was received in early 2006.
5	On page 33 of your submission it refers to a briefing note from the Department to the Minister which states "The Cox Richardson proposal is considered appropriate in principle as the land is within the Investigation Area".	No response required.
6	What was the exact date of the briefing note?	The Briefing Note was endorsed by Peter Goth, Regional Director Sydney North West on 9 March 2007 and Gail Connolly, Executive Director Metropolitan Planning on 13 March 2007. The Briefing Note on file was not endorsed by either the Director General or the then Minister.
7	On page 35 of your submission it states that a briefing note in 'August 2007' to the former Minister recommended the listing of the entire WSELIA as a potential State Significant Site.	No response required.
8	What was the exact date of the briefing note?	The Briefing note was endorsed by Peter Goth, Regional Director Sydney North West, on 20 August 2007; Gail Connolly, Executive Director Metropolitan Planning, on 23 August 2007; Jason Perica, Executive Director Strategic Sites and Urban Renewal, on 24 August 2007; Sam Haddad, Director

#	Question	Response
		General (undated) and Minister Sartor on 29 October 2007.
9	On what exact date in 2008 did the investigation of the WSELIA conclude?	The investigations concluded in May 2009.
10	On what exact date in 2008 did the NSW Government first exhibit the draft State Environmental Planning Policy for the Western Sydney Employment Hub?	The draft State Environmental Planning Policy for the Western Sydney Employment Hub was exhibited from 19 March to 28 April 2008. **Note:** The area exhibited was that referred to as the Western Sydney Employment Hub in the Sydney Metropolitan Strategy (refer Page 62 of the Strategy).
Questions to Mr Sam Haddad		
11	Did Mr Johnston advise you that he was working on any other projects at the same time he was working at the Department of Planning? If so, which projects?	Yes. The Director General was aware that Mr Johnston was undertaking work in Darwin in his capacity as a private consultant. The Director General was not (nor is to this day) aware of the nature of this work other than he was advised by Mr Johnston that his client was the Northern Territory Government. The Department is not aware of the details of Mr Johnston's other activities. This is a matter for him as a private consultant.
12	Did you approve Mr Johnston to work on projects concurrently?	It would not be appropriate for the Director General to comment or otherwise advise Mr Johnston (as a private consultant) what projects outside of the WSELIA project his company should be involved in unless it raised a conflict of interest with the work the Department commissioned him to undertake.
13	What steps did you take to avoid a conflict of interests between Mr Johnston's two roles?	Mr Johnson did not advise of any conflicts of interest.
14	Did Mr Johnston advise you of the details and content of his meeting with Graham Richardson and Lang Walker?	No.
15	Did you advise Mr Johnston not to contact Graham Richardson?	The Director General advised Mr Johnston that he considered it inappropriate for him to discuss matters with Mr Richardson and that Mr Richardson should make representations to the Department through normal channels.
16	When did you become aware that Mr Johnston and Mr Richardson had subsequently had a number of telephone conversations?	Subsequent to the meeting of 11 February 2008.
17	Did you advise Mr Johnston that these phone conversations were inappropriate?	Refer Response to Question 15.

#	Question	Response
Questions to Mr Norman Johnston:		
18	What was the Darwin Project?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
19	What was your role on the Darwin Project?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
20	Were you paid in that role?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
21	Did you work in that role concurrently with your role with the Department of Planning?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
22	What discussions or meetings did you have with Graham Richardson about the project?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
23	Did you discuss with Lang Walker about Mr Walker becoming involved in the project? What was Mr Walker's proposed involvement? How many discussions did you have with Mr Walker?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
24	In your discussions with Mr Walker, were matters relating to the NSW Planning Department, NSW planning system or NSW Government ever raised? If so, what was raised?	No.
25	Did you have any other discussions with any other developers, or investors about their potential involvement in the Darwin Project while you were working for the Department of Planning? If so, who?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
26	Did you advise Mr Sam Haddad of your involvement in the Darwin Project? Did you advise any other official in the Department of Planning about involvement in the Darwin Project?	Yes. No.
27	Were there ever concerns raised by you, or anyone else, regarding a conflict of interest between your role in the Department of Planning and your role on the Darwin Project?	No.
28	Did Mr Haddad, or any other Planning Official approve your involvement in both projects concurrently?	Mr Johnston informed the Director General of the project being undertaken in Darwin. It is not the responsibility of the Director General to approve or comment in any way on projects unrelated

#	Question	Response
		to the Department.
29	How many times did you meet or contact, the Federal Parliamentary Secretary, Mr Gary Gray? What was the purpose of these discussions? Who else was present in these discussions?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
30	Did you discuss the Darwin Project with any other Australian Government Minister or official? If so, who?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
31	Was a lobbyist, PR consultant, or planning consultant ever engaged by the Darwin Project, if so, who?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
32	Did you discuss the Darwin Project with any other NSW Government official?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
33	Did you discuss the Darwin Project with any other Australian Labor Party official or employee?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
34	What is the current status of the Darwin Project?	Mr Johnston considers this question to be beyond the Terms of Reference of this Inquiry.
Questions to Mr Michael Comninos:		
35	How long have you known Graham Richardson?	Approximately two years.
36	How many meetings have you had with Graham Richardson?	Mr Comninos does not have access to records that predate his engagement in his current role with the Department of Planning (since June 2009). As such, meeting information, predating June 2009 is to the best of his recollection. The Committee has received advice of two meetings with Mr Richardson that Mr Comninos has attended. Mr Comninos has attended three other meetings with Mr Richardson over the past two years.
37	How many phone conversations have you had with Graham Richardson?	Aside from conversations seeking a meeting, Mr Comninos has had four phone conversations with Mr Richardson over the past two years.
38	Who requested the meeting with Mr Richardson in December 2008?	Mr Comninos requested the meeting held in December 2008.
39	What was the purpose of the meeting?	The purpose of the meeting was to alert industry stakeholders who had contacted Mr Comninos during that period, to some of the Government's recent planning initiatives. Similar meetings were held with

#	Question	Response
		industry groups including the Urban Development Institute of Australia.
40	Have you met with other registered lobbyists in the past 18 months? If so when? How many times have you met each of the lobbyists?	Based on his recollections, Mr Comninos attended meetings with the following registered lobbyists. He met with them between one and five times over the past 18 months and has noted which years meetings took place. - CPR (2008) - Enhance Corporate (2008) - Government Relations Australia (2008 & 2009) - Hawker Britton (2008) - Kreab Gavin Anderson (Australaia) Ltd (2008) - Neatcorp Pty Ltd (2008 & 2009) - Peter Anderson & Co Pty Ltd (2009) - Property Council of Australia (as an industry group not, a lobbyist) - Repute Communications (2008 & 2009) - TITFA Consultancy Pty Ltd (as a project manager, not a lobbyist) - Transurban Limited (2008 & 2009)
Questions from Ms Sylvia Hale		
Questions to Mr Sam Haddad:		
41	You and the Minister met with Mr Anthony Medich on 15 August 2007. Anthony Medich requested to discuss not only the Badgerys Creek lands but also 2 Lyn Parade Prestons, a hardware retail outlet, in relation to "Possibility of Office Equipment' as permissible future use". Did you consider it appropriate for Mr Anthony Medich to talk to the Director General and to the Minister for Planning about what he is would or would not be permitted to sell in a retail shop?	The Director General did not attend this meeting and is therefore unable to comment on what was discussed. The Departmental Officer present at this meeting was Gail Connolly in her capacity as Executive Director Metropolitan Planning.
42	Mr Anthony Medich also indicated in his email that he wanted to discuss the Schofields town centre. The Department's briefing note indicated that the Medich's had entered into an agreement to purchase land at the corner of Railway Parade and Burdekin Road, Schofields. Did they receive	Not applicable - refer Response to Question 41

#	Question	Response
	any information from you about the location of a future train station and new town centre for Schofields?	
43	Mr Medich also indicated he wished to discuss Singleton subdivisions that Medich Group had an interest in? According to the Department briefing note, there had been an earlier meeting with the Belford Group and the regional DoP officers and Singleton Council was involved. What was the justification for Mr Medich being able to lobby the senior echelons of the Department when the matters were being dealt with by other officers of the Department?	Not applicable - refer Response to Question 41
44	You are reported to have met with former Federal Labor minister Gary Punch on four occasions about other projects. Is that correct? If so, would you please provide details of the date and content of those meetings?	Mr Punch is currently Special Counsel, Herbert Geer. Herbert Geer is included on the NSW Government Lobbyist Register. At no time did Mr Punch raise with the Director General any issue or matter related to the Badgerys Creek Inquiry (neither the former CSIRO site nor the Western Sydney Employment Lands Investigation Area). Mr Punch's representations to the Department (Director General and staff) were not entirely of a lobbying nature but represented clients / proponents on legal planning matters. In 2008, there were four meetings with Mr Punch and his clients and officers of the Department - in April, June, November and December 2008; and two meetings in 2009 held in April and May. Details of meetings are provided at *Attachment A.*
45	Have you met with former State Labor Minister Carl Scully in relation to any developments in the past three years? If so, would you please provide details of the date and content of those meetings?	Mr Scully is currently a Principal at the consultancy Evans and Peck Pty Ltd. Neither the Director General nor Departmental officers met with Mr Scully as a former State Member nor as a Registered Lobbyist. Evans and Peck is an established consultancy firm and Mr Scully's dealings with the Department was on the basis of him project

#	Question	Response
		managing and providing technical and professional services as a consultant in his capacity as a Principal of Evans and Peck Pty Ltd. At no time did Mr Scully raise any issues associated with the Badgerys Creek site or the Western Sydney Employment Lands Investigation Area, the subject of this Inquiry. During 2009 Mr Scully, his client and the Director General / Departmental officers met on two occasions in 2009, and three occasions in 2008, in relation to development proposals associated with the Demian Property Group. These proposals include potential urban renewal projects at Riverlands and Camelia which did not proceed, and at Lewisham for which Director General's Requirements have been issued and the applicant is currently preparing an environmental assessment which will be publicly available when received and deemed adequate - (details are available on the Department of Planning website). Mr Scully also made submissions including technical information concerning residential rezonings at Lane Cove – these are being considered by Council as part of their comprehensive Local Environmental Plan to go on public exhibition.
46	Have you met with former senior Labor Party official Mr Michael Easson in relation to any developments in the last three years? If so, would you please provide details of the date and content of those meetings?	Mr Easson is currently Chair of EG Funds and Management and his dealings with the Department (Director General and Departmental officers) have been on that basis. Neither Mr Easson nor his company are included on the NSW Government's Lobbyist Register. Mr Easson has a team of professional and technical consultants and he represents his own development or manages projects or operates as a technical consultant for other clients. All meetings between Mr Easson and the Department have been on that basis. At no time did Mr Easson raise with the Director General any aspect of the Badgerys Creek site, the subject of this Inquiry. Mr Easson and his company had an involvement in

#	Question	Response
		the Aldington Proposal (the Aldington proposal comprised land located within the Western Sydney Employment Lands Investigation Area and correspondence including representations made in relation to this proposal has previously been submitted to the Committee). Mr Easson and his technical staff met with the Department (Director General and relevant Departmental officers) on two occasions in 2009 and four occasions in 2008. Details of meetings are provided at *Attachment B.*
47	Mr Norman Johnston was employed as a consultant without the job being subject to public tender. You indicated that it was anticipated that he would be paid less than $30,000 and that therefore there was no need for the job to be publicly advertised. What work did you require Mr Johnston to undertake?	A Project Plan was prepared indicating the various inputs and outputs that would be required to undertake the WSELIA project.
48	Before hiring Mr Johnston did you calculate how long that work was expected to take?	It was not the Director General's role to personally undertake any calculations to determine the expected duration of a project. Advice was that the quantum for the initial phase of the project was not expected to exceed $30,000. Subsequent detailed investigations by Mr Johnston were billed on an hourly basis.
49	How long did it take him to complete that work?	The project plan was completed on 22 January 2008.
50	At any stage was there any review of the cost overruns being incurred as a result of Mr Johnston's employment? If not, why not?	No; this was a serious Departmental oversight. The Department has since adopted a comprehensive, up-to-date Procurement Policy. It provides the Department with a tendering framework which complies with the NSW Government's *Code of Practice for Procurement* and *Tendering Guidelines* and assists the Department to achieve best value for money in the expenditure of public funds, while being fair, ethical and transparent in its tendering processes A dedicated team has also been placed centrally to manage procurement processes across the whole organisation.

Attachment A (Question 44)

Projects discussed included the following:

- Seeking the Department to call-in a proposal for an industrial development at Alexandria – this has not been supported by the Department and has therefore not proceeded.
- Parklea Market – not proceeding.
- Requesting community enhancement for the proposed Marulan Gas Fire Power Station (consistent with Council's Request) – awaiting decision.
- Representation on behalf of the Gandagara Land Council for land rezoning – did not proceed.

In 2007 there were discussions with Mr Punch, his clients and Departmental Officers in relation to:

- Proposal to redevelop a freight distribution terminal at Menangle Park – did not proceed.
- Marulan Local Environmental Plan and rezoning which proceeded consistent with Council's submission to the Department.

All of the above matters were dealt with on their merits and the outcome of each assessment is fully documented.

Attachment B (Question 46)

It appears from Departmental records projects discussed included the following:

- Epping Road Corridor – currently there are no development proposals with the Department on this matter. This is a matter to be considered as part of the comprehensive local environmental plan making process.

- Allied Mills urban renewal – currently under consideration

- Pasminco site – Department approved remediation of site February 2007. Currently there are no development proposals with the Department on this matter. Council is the consent authority for the redevelopment of the site.

- Rosedale – recommendations to approve this proposal were prepared in September 2008 by an External Advisory Panel set up in April 2008 by the then Minister for Planning. The Planning Minister proceeded to approve this proposal in October 2008.

- North Hawks Nest – This is the subject of a draft Great Lakes Local Environmental Plan which was exhibited 2 July to 28 August 2009. Currently there are no development proposals with the Department on this matter.

- Aldington – not proceeding.

Projects which have been determined by the Planning Assessment Commission:

- Riverstone West – approved in August 2009.
- Tempe Tip – approved in April 2009.

Mr Easson and his staff were also involved in a number of projects in 2007 including:

- SOPA Masterplan – approved September 2009
- Terry Street, Rozelle – not proceeding.

LETTER UNDER THE GROWTH CENTRES COMMISSION HEADING

On 19 October 2009, the Committee placed the following questions on notice during the Inquiry into Badgerys Creek Land Dealings and Planning Decisions.

Ms SYLVIA HALE: Mr Haddad, there was a letter under the Growth Centres Commission heading. It is dated 21 December 2007. I assume it came from Angus Dawson but it requires Michael Easson's signature. Both their signatures are there.

Mr HADDAD: Sorry, Michael?

Ms SYLVIA HALE: Michael Easson, chairman of the EG Property Group, and the other signatory is Angus Dawson. That was in the papers that were released, the public papers. Can you explain why half of that letter is blacked out?

Mr HADDAD: I will have to have a look at it in detail. I am sorry, I cannot recall this letter.

Ms SYLVIA HALE: Will you undertake to make that available to the Committee?

Mr HADDAD: I am more than happy to do that.

Answer:

In response to the Standing Order 52 Call for Papers, the Department provided the Committee with a copy of the document in the WSELIA project records maintained by Norman Johnston. Mr Johnson was an external consultant contracted by the Department to manage the WSELIA project. The copy of the letter provided to the Committee was not masked or blacked out by Department of Planning staff or by Mr Johnson. It is presumed that any masking was done for commercial in confidence reasons prior to the letter coming into the possession of Mr Johnston.

BADGERY'S CREEK LAND – DRAFT SEPP

On 19 October 2009, the Committee placed the following questions on notice during the Inquiry into Badgerys Creek Land Dealings and Planning Decisions.

Mr ABBEY: If you want to take me through it I can tell you the name of the staff member who was working on the draft SEPP.

The Hon. GREG PEARCE: The department's staff member?

Mr ABBEY: The department staff member.

The Hon. GREG PEARCE: Maybe you had better take it on notice. What I am after is when exactly did the Badgerys Creek land drop out of the draft SEPP, and why?

Mr ABBEY: Okay.

The Hon. GREG PEARCE: Will you take that on notice?

Mr HADDAD: Yes, with pleasure.

Answer:

The Government commenced detailed planning and infrastructure investigations for the WSELIA in February 2008

At the conclusion of these investigations it was recommended that a regulatory process commence starting with the exhibition of a draft SEPP to provide for land use zoning for employment lands, but to stage the release over 30 years. The exhibition is an early step in the process of rezoning land. This option stipulated that release of precincts could only occur where infrastructure and other relevant matters had been resolved. The Badgerys Creek Consortium lands were identified in Stage 3 which would have been subject to the further investigations around infrastructure and services prior to any release occurring.

After further consideration, Government decided to investigate infrastructure issues around Stage 3 before the land was identified for rezoning or release.

The decision by Government was to progress Stage 1 and Stage 2 lands (around 800Ha), and not take any further steps to progress Stage 3.

QUESTION ON NOTICE **INQUIRY INTO BADGERY'S CREEK**

DRAFT CABINET MINUTE/DRAFT BUDGET COMMITTEE MINUTE

On 19 October 2009, the Committee placed the following questions on notice during the Inquiry into Badgerys Creek Land Dealings and Planning Decisions.

The Hon. GREG PEARCE: I wish to clarify one aspect. In relation to the question that I asked you to take on notice, the document to which I was referring was the chronology that you prepared.

Mr ABBEY: Right.

The Hon. GREG PEARCE: If you go to 8 July 2009 in that chronology you will find that there is a reference to a meeting with Treasury. On 21 July and 31 July there are commentaries about changes.

Mr ABBEY: Hopefully, I can clarify that very quickly if that is okay. The meeting with Treasury does not relate to the actual preparation or legal drafting of the State environmental planning policy [SEPP], which is what I took your question to mean. From July onwards I was involved in assisting, as were a number of people in the department, to try to finalise the reporting of the options available for the entire western Sydney employment lands investigation and reporting that, importantly, to Government. As part of that, there were meetings with Treasury. Predominantly the Treasury meetings related to an $80 million piece of transport infrastructure. So that it is clear, I was not a legal draftsperson or instructing on the legal drafting of the SEPP.

The Hon. GREG PEARCE: So that it is totally clear what I asked you to take on notice, on 21 July you state in your note that the draft Cabinet minute at that stage included stage 3, which was the Badgerys Creek
consortium. For 31 July 2007 you state:

In contrast to the previous draft Cabinet minute, the draft budget committee minute recommends stages 1 and 2 immediately be zoned and stage 3 be transferred.

I am trying to get an explanation as to why that occurred.

Mr ABBEY: My only reluctance to answer that question relates explicitly to the Cabinet recommendation. That is my only reluctance to answer that question. I will take that question on notice.

The Hon. GREG PEARCE: You have already taken that question on notice. I was just pointing out where it was.

Mr ABBEY: Okay.

Answer:
The Government commenced detailed planning and infrastructure investigations for the WSELIA in February 2008

At the conclusion of these investigations it was recommended that a regulatory process commence starting with the exhibition of a draft SEPP to provide for land use zoning for employment lands, but to stage the release over 30 years. The exhibition is an early step in the process of rezoning land. This option stipulated that release of precincts could only occur where infrastructure and other relevant matters had been resolved. The Badgerys Creek Consortium lands were identified in Stage 3 which would have been subject to the further investigations around infrastructure and services prior to any release occurring.

After further consideration, Government decided to investigate infrastructure issues around Stage 3 before the land was identified for rezoning or release.

The decision by Government was to progress Stage 1 and Stage 2 lands (around 800Ha), and not take any further steps to progress Stage 3.

CODE OF CONDUCT

On 19 October 2009, the Committee placed the following questions on notice during the Inquiry into Badgerys Creek Land Dealings and Planning Decisions.

CHAIR: Mr Haddad, with respect to the code of conduct—you may care to take this on notice—do you meet with other directors general of planning around Australia and do you know if they have codes of conduct that apply to lobbyists and so on? Is there one that might be better than others?

Mr HADDAD: No, I did not raise it. But I must say independently that I did ask the director of our policy area to give me a brief on that because I am not up to date with what is happening in other jurisdictions. I know that there have been issues there. I do not know whether they went as far as having codes of conduct or not, but certainly it is something that I have asked for a brief on it and I am more than happy to make it available when I get that brief.

CHAIR: That may be helpful to the Committee.

Answer:

Refer to attached paper.