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REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON STATE DEVELOPMENT

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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At Sydney on Monday 9 March 2009

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The Committee met at 9.30 a.m.

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PRESENT

The Hon. A. Catanzariti (Chair)

The Hon. M. R. Mason-Cox
Reverend the Hon. F. J. Nile
The Hon. M. J. Pavey
The Hon. C. M. Robertson
The Hon. M. S. Veitch

CHAIR: Welcome to the first public hearing of the Standing Committee on State Development's inquiry into the New South Wales planning framework. The Committee will be holding its next hearing on 30 March. Witnesses at that hearing will include representatives from the Department of Planning and the Local Government Shires Association. During May the Committee will be holding five public hearings at a number of regional locations within the State. Details of these hearings as they are finalised will be progressively placed on the inquiry's website.

Before we commence I would like to make some comments about procedural matters. In accordance with the Legislation Council's guidelines for the broadcast of proceedings, only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee. The guidelines for the broadcast of proceedings are available on the table by the door. I remind everyone that any message for Committee members or witnesses must be delivered through the Chamber support staff and the Committee clerks. I remind everyone to turn off their mobile phones as they interfere with Hansard's recording of the proceedings.

WILLIAM ALEXANDER MACKAY, Acting Director, Planning and Regulatory Services, City of Sydney Council, sworn and examined, and

MICHAELWILLIAM HARRISON, Director, Strategy and Design, City of Sydney Council, and

ANDREW JOHN THOMAS, Executive Manager, City Plan, City of Sydney Council, affirmed and examined.

CHAIR: Are you appearing in that capacity today?

Mr MACKAY: Yes, I am.

Mr HARRISON: I am here in that capacity.

Mr THOMAS: I am here in that capacity.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice today, the Committee would appreciate it if the response to those questions could be sent to the Committee secretariat within 21 days of the date on which the questions are forwarded to you. Before the Committee commences with questions, would one of you like to make an opening statement?

Mr THOMAS: We are happy to take questions.

The Hon. MELINDA PAVEY: The Department of Planning undertook consultation prior to the introduction of the recent planning reforms. What is the city of Sydney's view on the process and outcomes of that consultation? Do you think your concerns were listed to and adopted in the legislation?

Mr THOMAS: With the number of different reforms that have gone through, I think the city's main concern was trying to put simplicity into the system, and generally we do not think the points we made in our consultation were reflected in the reforms package that came through. We feel that the changes have led to a more complex planning system.

The Hon. MELINDA PAVEY: How would you like to see it simplified? Is it complex because of the different categories of construction, different price tags result in different approval processes?

Mr THOMAS: A number of things lead to the complexity. There is the different layering of the actual planning instruments. You have various levels of State instruments—SEPPs and REPs—as well as local environment plans. The number of the panels and the committees that were formed as well. They also add complexity and uncertainty for both proponents and the community as to under which rules a proposal would be assessed, and the body that would assess that. So in terms of your question about how they could be simplified, reducing the number of instruments. Through City Plan we are collapsing as many instruments at local council level as we can and being clear about what consent authorities are responsible for the assessment of particular types of development.

The Hon. MELINDA PAVEY: The State Plan is something that we are all supposed to be working under in New South Wales. As part of the State Plan there is the State infrastructure strategy and the metropolitan strategy. I take from your answer that while we have from a State Government level the release of the State Plan with those things underneath, it is actually not doing what you need on the ground in terms of projects, that it is still confusing for somebody coming forward wanting to build or do something, depending on what they fall under.

Mr THOMAS: I suppose my question was more relating to planning instruments. The documents that you mentioned there were more strategic based and infrastructure based documentation. While those documents are there and flowing down through to the metropolitan strategy and the subregional strategy, there is further guidance provided there but that is more about the strategic framework rather than the instruments against which a particular proposal would be assessed.

Mr HARRISON: I might add to that. I think the council quite strongly supports the metropolitan strategy and the subregional strategy. There are some issues with the subregional strategy, which the council has made submissions on. We have sort of been lacking that in New South Wales for many years so to have those strategies is excellent. The issue of the planning instruments is that there is probably no need for the regional environmental plans [REP] because they could just be in State environmental planning policies and just have State environmental planning policies at a State level and local environment plans at the local level.

The Hon. MELINDA PAVEY: So you are recommending getting rid of the REPs?

Mr HARRISON: Yes. Being of regional significance is really the same as being of State significance, essentially. I guess they have been useful but if the SEPPS were just published in one document and that document was updated as new information came, I think it would be a lot simpler for everybody. Another thing is that there are fundamental objectives in the Environmental Planning and Assessment Act and it would be good if sustainability was a key objective of the Act, as well as design quality. One issue we have with higher density development is convincing people that higher density can be terrific for people to live. But without higher levels of design quality, it can be a real problem. So those are the two fundamental issues I would like to see addressed at a very high level in the Environmental Planning and Assessment Act.

The Hon. MELINDA PAVEY: So that is sustainability goals within the legislation?

Mr HARRISON: That is right, yes.

The Hon. MELINDA PAVEY: "Goals" is probably the wrong word. Sustainability requirements.

Mr HARRISON: Yes, principles. I mean, looking at greenhouse gas emissions and how that flows.

The Hon. MELINDA PAVEY: The technology is there, is it not?

Mr HARRISON: It is. The city has just gone through preparing what we call an ecologically sustainable development control plan [ESDCP]. There has been some resistance from industry over that because they see it is as increasing in cost. In fact, to be able to achieve the targets, if the designer is thinking about it, the actual increase in cost is either negligible or very small. If you want to exceed the target, then it is a different story. That whole system of ecologically sustainability is changing with Federal and State initiatives right now and we may not proceed with that ESDCP. But the point is if people think about these things early in the design of buildings, a lot can be achieved with negligible cost.

Reverend the Hon. FRED NILE: From your submission it seems you do not see the need for an extensive overhaul of the planning legislation. One of the purposes of this Committee is to see whether there should be future amendments. Are you happy to work within the current legislative framework?

Mr THOMAS: By and large, that is correct. I think the City of Sydney's track record in both policy development and development assessment demonstrates that a local government authority can operate well within the existing framework.

Mr HARRISON: If I can add, the Environmental Planning Assessment Act is well understood across the industry. The Environmental Planning and Assessment Act is well understood across the industry. The best way, we think, of addressing the planning system is to make relevant amendments to the Act as needed, rather than a wholesale overhaul, which I do not think is needed. It is actually very good, the levels of hierarchy required in the Environmental Planning and Assessment Act. You still need State policies, you still need local and environment planning. You still need all those things. So it is more a matter of tuning, rather than a major overhaul, in our view. Some of the panels that have been discussed in the planning system we have in place in the Sydney City Council, such as the Central Sydney Planning Committee, which works very well.

Mr MACKAY: We have a small permits appeals panel for section 82A reviews. That system certainly works very well. It is a fairly informal panel.

The Hon. CHRISTINE ROBERTSON: Does that keep you out of the courts?

Mr MACKAY: Yes. It is a prior step to somebody going to the court. Depending on the decision that comes out of the panel, they may move on to court. That is certainly something that works very well. It is

informal. It effectively meets on demand. It currently meets probably at least once a month. It makes quick reviews of those decisions that have been made essentially under delegation of council. I would foresee probably very few applications that have been to the panel then move on to the court.

The Hon. MICHAEL VEITCH: Most of the members of this Committee are from the country. To hear the City of Sydney telling us it will work fine, I put it in the context that is pretty much for the 100,000-odd people who live in three square kilometres of the city. When you say you want to do away with regional management plans [RMPs], can you take yourself out of the City of Sydney and give a perspective as to how it would apply for, say, the coastal planning issues at Byron Bay, the coalmining issues in the Hunter, or the interface issues between agricultural land use and urban sprawl in Wagga Wagga or Griffith?

Mr HARRISON: Why cannot council work be addressed as a State environmental planning policy because those issues are State issues? I have always had difficulty understanding the difference between what is regionally significant and what is State significant. It is quite a blurring of boundary. So why not wrap it all together? I guess that has been my view. I have been a town planning and urban design consultant for 25 years and have only been with the council for the last 18 months. The Hunter Valley Regional Environmental Plan is a very good plan but equally it could be a State environmental planning policy. There is a significant blurring there.

The Hon. MICHAEL VEITCH: You were talking about the panels, particularly for complaints. There is a mechanism there for communication prior to having to go to court, for instance. Do the new reforms have similar provisions? Do they mirror the City of Sydney's processes?

Mr MACKAY: I suppose they could do. It ultimately depends on what form they take. It does have the provision for an independent arbitrator. From my point of view, it would take the place of the small permits appeals panel. There are possibly a number of differences. That would be an individual and the panel is made up of three representatives. The chair of the planning committee has a local council representative. Normally it would be myself or perhaps the manager of development assessments, but somebody within the planning unit who has not had any role to play in the applications that are being considered. We also have an external consultant, whether that be a planner or an architect or other like person to give that independent view. I suppose we see that as being a good format. It certainly helps to apply consistency in terms of how the controls are viewed and applied. With an independent person, I do not know whether or not it would be the same person for the council every time. If it were, it would probably keep them fairly busy.

Again, if it is different people, it is difficult enough to come to grips with the local controls, in the first instance, and in ensuring consistency. Then two weeks later you may well have a different person considering a number of different proposals or similar proposals but they are getting used to the controls for the first time and applying a different viewpoint. The council representatives help consistency but the external representatives give a fresh view to the matter. I suppose it depends on what form it would take. Certainly if the external panel was more than one person, I suspect it would be more costly. When I am on the panel I suppose I am getting paid for the panel while I am doing something-else in my daily job. It is the same in terms of the council. To get it to be more effective, it would be more costly. As I understand, the council would also be responsible for the administration of the process. I think the way it works enhances the process and it means it can be a lot more informal or a lot more flexible and therefore probably a lot more cost effective than it would otherwise be.

The Hon. MICHAEL VEITCH: In your submission at page 23 you talk about Sydney airport impacting on your local planning arrangements. Airports are one of our terms of reference. Firstly, it seems you are saying in your submission that the airports operate in isolation outside and above all other planning instruments for that part of the State. Is that a fair comment? Secondly, other than your recommendations, do you have any suggestions as to how airport development—which is happening a lot now—can be better integrated with the existing planning framework?

Mr HARRISON: The city has made a number of submissions regarding the development of the airport and so forth. There is one thing with non-aviation related users, about the need to have some sort of coordination between the State and surrounding local governments. I am not quite sure what measures are in place in those terms. It seems to me that as some local governments have independent hearing assessment panels, there ought to be some sort of independent panel that is the review point of non-aviation uses on non-city airport land.

The Hon. MICHAEL VEITCH: This is in relation to commercial activity?

Mr HARRISON: Yes. Inevitably the development happens. For example, if you want to build a large-scale shopping centre, for some time that pressure will always be there. The Metropolitan Strategy does have a sort of a hierarchy of centres. It is an extremely good aspect of the strategy. The airport land is very constrained. They might think the short-term economic benefit is great, but we have to think about the longer-term future. You would think anyone in charge of their own asset would be very cognisant of that. Nevertheless, it is a major long-term issue.

Mr THOMAS: You asked the question whether or not we thought the airport was operating outside that strategic framework. Generally in our experience it is. We feel that the investment that the State and the local government makes in infrastructure in and around the airport has to be consistent with a policy that covers both pieces of land. We feel that the proliferation of non-airport related activities, such as shopping centres, would place some of the city's and the State's proposed infrastructure investment, particularly around the Green Square town centre, at risk and would compete with the primary purpose of the airport, which is essentially a passenger terminal rather than a shopping centre. So there are a number of issues that we have with the development of the airport.

The Hon. MICHAEL VEITCH: How can it be alleviated or integrated?

Mr THOMAS: There needs to be some recognition at the Federal level as to the quantum of ancillary land uses, that is, uses that would support and enhance the primary purpose of an airport. But that would not compete with the investment and the centres policy that the State and local governments signed up to in the areas around there.

The Hon. MELINDA PAVEY: Would changing that ancillary definition be retrospective in terms of what the Federal Government sold the airports? The contract would say "ancillary"?

The Hon. CHRISTINE ROBERTSON: Can we define the airports we are talking about? Is it Sydney, Melbourne, Brisbane, Canberra?

CHAIR: The capital cities.

The Hon. CHRISTINE ROBERTSON: The local governments run them.

Mr THOMAS: I am not aware of the contractual arrangements, what the private operators of the airport were promised in terms of what they were allowed to develop outside their primary airport purpose. I am not aware of any contractual arrangements. I think it is fair and reasonable for some supporting retail to be ancillary to an airport, just as there is for industrial land and things like that. All three levels of government realise the importance of that infrastructure and that should not be threatened with other land uses.

Mr HARRISON: Another aspect of the airport is that there is probably a natural tension between the airline and what they want and the airport owners and what they want. Some years ago I was involved in a master plan for the Qantas jet base. They were anticipating huge growth. My concern is that the land is so constrained, your really have to be very careful of what other uses you put on the airport land. In fact, what we really need is to expand the land area, if we can. There is plenty of industrial land around the airport for both aviation and non-aviation related uses. The airport is such an important land holding, which we need to focus on fundamentally.

The Hon. CHRISTINE ROBERTSON: Will you outline how you propose to implement your affordable housing issue?

Mr THOMAS: I can talk briefly to that first. We will start with Sydney 2030. The Sydney 2030 strategy was a widely consulted long-term strategic document that the council developed in the past six or so months. Affordability, housing affordability and the importance for the economic and cultural diversity of the city was a very strong theme that came through that. In response, the city developed an affordable housing strategy that looked at how it might achieve the target that was set out in Sydney 2030. The strategy looked at what tools are currently available to us and what tools are not, and how we might go about achieving some change. Two things that we see readily available to us at the moment are, first, a levy. We do have a levy in two places in the city at the moment, one operating in the Ultimo Pyrmont area and another operating in the Greens Square urban renewal area of a fairly small percentage of about a 3 per cent levy on new residential development. That money is then given over to the City West Housing Authority, which is a registered

community housing provider that by legislation is allowed to operate in those two areas. City West invests that money into new housing stock so they build and then they manage and they also manage the tenancies as well. They have a mixture of tenancies depending on income and occupation and things like that.

The Hon. CHRISTINE ROBERTSON: That organisation defines who requires affordable housing?

Mr THOMAS: That is correct. They set up an application framework and applicants might apply for a tenancy within that. They could be the same clients as, say, New South Wales Housing. The two things that we are looking at at the moment, and they are going up to committee tonight, are an expansion of that levy to incorporate commercial land as well. One of the key issues that have come through our research is the provision of housing for key workers in the city. A lot of the usual, I suppose, professions, policemen, nurses have to travel a long way, particularly in the restaurant catering professions as well, and it is about providing stock closer in. We are looking at levying commercial to provide that link for key workers.

The Hon. CHRISTINE ROBERTSON: In a complex city such as Sydney long-term, how is that maintained because a lot of stock in the city related to worker accommodation and now people because of supply and demand issues are paying a phenomenal amount of money for what should be cheap housing places that are very small? How is that maintained in the long term? I am asking for an idea.

Mr HARRISON: First of all it is rental housing. Rental housing is controlled by the City West Housing Development Corporation at the moment and there may be others later on and it has got a charter for the people that they rent the housing to, that is the first thing. The second thing is we need to have a good supply of affordable rental housing. Andrew has indicated that the full housing strategy calls for 15 per cent of all housing in 2030 to be affordable housing and social housing. So it will end up being 7.5 per cent affordable and 7.5 per cent of the total social housing. Social housing is a little bit more than what currently exists because you have got quite a high proportion now and so the main growth is going to be in affordable housing and that is 8,000 dwellings altogether.

In order to achieve that there is about 12 different ways to do it; only one is a levy. The levy will achieve 2,000 units. We are assuming that council with its own land build a joint venture with a private enterprise and the Department of Housing to produce housing projects so we are subsiding the land value. The first project is the one is Glebe at the moment and there will probably be two or three others over the next 20 years. Then through the Federal and State governments in different ways we expect affordable housing to be achieved—universities through student housing and so forth. So there are about 12 different ways and only one is the levy. Now with the downturn in economic times whether that gets implemented now or at a later time or as a reduced version now and stepped up later, that is all part of the discussion and debate. We have had to put affordable housing on the agenda because we have been waiting for the State Government for sometime and that is part of our strategy, part of what council wants to do and so that is why it is coming up now.

The Hon. CHRISTINE ROBERTSON: How do you define environmentally sustainable development in Sydney? What does it mean?

Mr HARRISON: Fundamentally it is reducing greenhouse gas emissions from built development. The basics is reducing energy and water consumption compared to normal practise but then there is all sorts of other ways in encouraging—

The Hon. CHRISTINE ROBERTSON: So greenhouse gas answers?

Mr HARRISON: That is the fundamental driver. If you do that then all sorts of other things follow. Living close to where you work so there is less transport, more walking and cycling. The city has an enormous program in the next four years to really put in a dedicated cycle-way network. Currently less than 1 per cent of people cycle to work. Australians do not really contemplate cycling to work but in Copenhagen with a much worse climate and 2.5 million people 45 per cent of them cycle to work. We believe we can make a substantial change, especially with high-density development around Green Square and so forth all on flat land, we ought to be able to lead the way, hopefully.

The Hon. CHRISTINE ROBERTSON: A lot of submissions talk about the value of the Federal planning structure with the States having the same planning laws and then local bodies. They are not arguing if it should go but do you favour massive change? A lot of submissions say that the States should have the same through the council on the cost of government program.

Mr HARRISON: We ought to be heading in the same direction. We all want to achieve the same thing so you would think that evolution is the way to go rather than wholesale change. I am not really expert in the other planning systems in the other States.

The Hon. CHRISTINE ROBERTSON: The inference is that there is a lack of strategy. There is not a strategic statement about where Australian planning—not just New South Wales and local government—should go.

Mr HARRISON: That has been a major criticism that the lack of interest in urban development and planning at a Federal level and therefore it does leave the States to do their own thing. There has been coordination and all the rest of it between the States but there really does need Federal leadership.

The Hon. CHRISTINE ROBERTSON: What would a strategy statement mean to Sydney City Council? What do you expect of a strategic planning statement?

Mr THOMAS: To take your example of affordable housing, some clear statements about defining what it is actually. Half the battle with a policy area like affordable housing is actually defining the definition. Then actually some guidance around the kind of investigations you need to do to determine how a housing market might operate and serve the most vulnerable people in your community as well as the better off. And then some clear directions about what we should be trying to achieve through an affordable housing policy. Is it a target? If so, is it a progression, an improvement? Is it about trying to preserve stock in effectively public hands because traditionally the affordable housing stock in the inner Sydney area has been lost to market forces, and that has been traditionally the boarding houses. So some of our strategies there have not been effective.

The same could be said for sustainability as well. You asked a question about how does one define sustainable development? There could be some guidance at that federal level that could provide those key definitions, statements and targets about where we are and where we need to go. That could be refined for both regional areas and city areas.

The Hon. CHRISTINE ROBERTSON: Sub-strategies?

Mr THOMAS: For sure. The sustainability strategy for a regional city is going to be much different to Sydney.

Mr HARRISON: There has also been a lot of work done at the Federal level. What do they call it? The Development Assessment Forum to do with consistency and a lot of that is terrific and we really should be implementing. So it happens at a strategic level as well as that sort of detailed operations, understanding what is experienced and getting the practice in place.

CHAIR: Your submission also suggests that any on-line development application system will need to include a quality control function to ensure sub-standard applications are not lodged. Will you elaborate on that?

Mr MACKAY: I have not thought about it in detail. Certainly, council has a fairly rigorous process of accepting development applications, whether it is through the one-stop shop or the neighbourhood service centres where somebody would normally tramp through and ensure that the necessary information is submitted. We do accept applications by post. Obviously we do not have the opportunity to review that up-front. When they come in somebody needs to check to ensure that all the necessary information is there. I suppose the concern about an on-line system is that you end up getting flooded with applications that are substandard. The council deals with upwards of 3,000 applications a year. If an on-line system of development application submission is made too easy as such we may well end up with a large proportion of those applications being considered to be inadequate in the first place. On the one hand, I suppose, in terms of customer service you are offering the customer something that they see as being of value, and the opportunity to easily submit an application. But a lot of those are being rejected early on in the process because of a lack of information then you are sort of taking it away with the other hand.

On-line lodging is definitely something we should aim for but we need to be careful as to how that is made available and how we have put the checks and balances in place to ensure that at least the majority of applications that are received have the necessary information. Consent for an application is sometimes an issue. We cannot determine an application without the owner's consent. How would we avoid the majority of

applications on an on-line system being lodged without the relevant owner's consent for the application? Those kinds of things need to be thought through in terms of how an application could be lodged.

CHAIR: What would happen in relation to the owner's consent?

Mr MACKAY: Again we cannot tell. We can only check an owner's consent, once we get an application, whether the person who signed it and said "I am the owner of the application" is the owner when we receive it. Quite often we do that. Individuals lodge the majority of applications because they come in and pay the fees as well.

We can check that at the time. In terms of owner's consent, from my experience in the United Kingdom, what happens there is that the applicant signs a sworn statement that they have notified the owner of the land that the application is to be submitted. That avoids the need for them to get owner's consent. Sometimes it is quite difficult, with people living on the other side of the world it causes delays. It avoids the need for council to check whether or not the owner's consent is correct. It serves the same sort of purpose but under the current system with owner's consent council can receive an application but cannot determine it. Occasionally we find ourselves in a position where we are hassling people for an owner's consent simply because we can get rid of an application we want to approve or whatever. With online lodgements there is the potential for more applications to come in without the necessary consent or information that is required and that will simply result in more applications being rejected up-front, which is something council would not like to see.

The Hon. CHRISTINE ROBERTSON: Rejected or sent back for more information?

Mr MACKAY: Sent back for more information. You have the provisions that allow council to send things back if the application is not clear.

The Hon. MELINDA PAVEY: Under the Draft City Plan the city intends to exclude bulky goods retailers from most areas. What is the basis of that intention?

Mr THOMAS: Primarily to preserve the industrial land stock within the areas located adjacent to the city and the airport. We have found over the years that the definition of bulky goods, in essentially what broadly speaking the State Government is trying to preserve as industrial, is reducing the capability of industrial to function—

The Hon. MELINDA PAVEY: To become another retail outlet?

Mr THOMAS: That is right.

Mr HARRISON: We have had a comprehensive retail study done and it basically says that bulky goods in the city of Sydney area is pretty much saturated and we should limit the bulky goods area to the area which it currently is in the southern industrial area, but put a line around that, discipline that area to have more sites, but other than that really no more. That was a fairly in-depth study and there are two reasons: the saturation and the impact it has on industrial employment.

Reverend the Hon. FRED NILE: One of the issues raised during debate of the legislation was greater provision for private certifiers. I note that you make use of private certifiers. Have you got any comment on those provisions? I note 81 per cent of your instruction certificates were issued by private certifiers. Have you had any problems with that system?

Mr MACKAY: There have been occasional instances where things have been certified that the council believes should not necessarily have been certified, but I think in general that system works well. I do not think we have any particular concerns about the certification of construction certificates or complying development certificates. I suppose one of the issues of concern we have is a broadening of the complying development provisions. Again, as a matter of principle, I think we are accepting that but we are certainly of the view that there is a need for local variations to be able to be applied where necessary.

The most recent sort of complying development provisions in relation to residential development effectively do not apply to the majority of the city because they exclude conservation areas at this point in time. But I suppose there is a concern, or worry, as to how far that process could go and we would see that there is definitely that place for local variations within council's controls. Certainly, in terms of exempt developments,

the city's exempt development provisions are more generous than the current State exempt provisions. It is not a matter of ensuring that the city retains control, but ensuring that obviously a development application is required where necessary and certainly on other things that would not require a development application. For example, the temporary usage you see in the central business district just about every day under the city's controls they do not require consent but under the State's control a lot of those things would require development application consent.

The Hon. MELINDA PAVEY: There is light industrial in large parts of the city of Sydney and you mentioned the need to have light industrial particularly near the airport. As a country-based member of Parliament I sometimes wonder about the amount of industrial being done in Sydney itself. I accept that there needs to be some around the airport but is there a general view that light industrial use is an expensive land use in the city of Sydney itself, given the competing needs for affordable accommodation and such?

Mr HARRISON: I will answer generally and then I will ask Andrew to respond as well. There is definitely a nexus between locating employment near residential and also industrial usage. A lot of it is service industrial, so it is actually servicing the needs of the inner city area and the needs of the airport and that is worthwhile. On the other hand, with the Green Square renewal area there is a lot of industrial area that is being redeveloped for mixed-use and residential as well. So there is always a balance as to how much we should retain. I think over time it will gradually go to more mixed-use and residential. For example, the Alexandria canal area is currently an industrial area, although we have a mixed-use zoning along part of it on the other side of its banks. But once the contamination issue is dealt with there, and being right next to Sydney Park, it is obvious that it will be a mixed-use and high-density residential area.

In our 2030 vision we have said we are not ready for that yet: firstly, because of the contamination and, secondly, because of the residential area that has been concentrated around Green Square. But towards the end of the 2030 period we would see that area changing to a more high-density residential area. It is really a constant monitoring of the situation. Do you want to add anything?

Mr THOMAS: It is a fundamental question; particularly landowners tell us their highest and best use is not light industrial when you are so close to the city. The city has metropolitan strategy targets to meet both housing and new jobs targets. We are pretty confident that we can reach the employment targets with our current controls. We cannot demonstrate that we can meet our residential targets with our current controls. On those numbers—

Mr HARRISON: These are the metro targets?

Mr THOMAS: Yes. On those numbers if you take the State's guidance—because they are the ones I suppose preserving the industrial zoned land through the subregional strategy and also giving us those targets—we are essentially guided by them but it is obvious to us, with out local knowledge, that there is clearly some land at the State level in the strategy that is being preserved which we can see does not operate technically under a light industrial zone. The uses in those buildings could operate under a myriad of other zones and could also provide an opportunity for suitable housing as well.

CHAIR: Is there anything else you wish to add?

Mr HARRISON: No, but we appreciate the opportunity to be present here today.

(The witnesses withdrew)

LOUISE RACHEL SOUTHALL, Policy Adviser, NSW Business Chamber, sworn and examined:

CHAIR: If you should consider at any stage that any evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee please indicate that fact and the Committee will consider your request. If you take any questions on notice today the Committee would appreciate it if your response could be sent to the Committee secretariat within 21 days of the date on which the questions are forwarded to you. Do you wish to make an opening statement?

Ms SOUTHALL: Yes. Thank you for the opportunity to be in attendance today. I hope the Business Chamber can make a useful contribution to your deliberations. The NSW Business Chamber is a member-based organisation that represents about 30,000 businesses across New South Wales and the Australian Capital Territory. Our members come from all over the State—a lot from regional areas—and from a range of business sizes—predominantly small business but we do have some multinational members—and a range of industries. The chamber was originally the Chamber of Manufacturers but, reflecting changes in the New South Wales economy, we now have a lot of service members now.

The NSW Business Chamber is here to represent this key group of users of the planning community—the business community. We have members who are directly involved in planning: builders, architects or surveyors, and we consult them to give us technical input into some of our submissions and our ideas, but the dominant perspective of our submission is to do with the users of those systems: businesses that use the planning system but are not necessarily part of it. With this in mind, our views about the planning system are really underpinned by two key issues: we think the system needs to increase certainty for business—certainty is very important for people operating a business and any system which can improve certainty gets the support of the NSW Business Chamber—and to improve the competitiveness of New South Wales. Planning is not the only thing that a business considers when it is looking at where it is going to locate but it is certainly part of the raft of things. It might think about taxation, occupational health and safety legislation or the Industrial Relations environment, and planning does contribute to that.

We need to ensure we have a planning system that enhances the State's competitiveness. This is really why the New South Wales Business Chamber has supported the latest round of reforms around the development application process. We believe that when these reforms are fully implemented they will have the potential to increase certainty for business by reducing delays and costs of decisions and simplifying the planning process. We hope that in turn this will improve competitiveness and make New South Wales a more attractive place to do business with, which is our whole reason for being.

Having said that, we recognise there are some areas of the planning system that need more attention. In our submission we talked about the interaction between climate change and planning. This is an area that is dealt with briefly in the Planning Act, but there is still a lot of uncertainty about what applicants need to consider when putting in a plan in terms of its impact on climate change. We also think there is some room for updating of retail zoning to reflect people's changing lifestyle patterns and ensure that planning is just about planning and does not restrict the competitiveness of businesses. Housing affordability is another area. There is no silver bullet solution but we think planning can make a contribution particularly in relation to developer levies, which have had an impact on housing affordability in New South Wales. That is my opening statement. I wanted it to be short, and I am happy to take questions.

CHAIR: The Department of Planning undertook considerable consultation prior to the introduction of the recent planning reforms. What is your view of the process and the outcomes of that consultation?

Ms SOUTHALL: The Business Chamber had a number of opportunities to have input into that process. We formed a group with other industry representatives such as the Property Council, for example, and the Department of Planning came and spoke to us directly about what they were planning to do. They listened to us and we gave just feedback. As the reforms, which are quite complex, have been rolled out the Department of Planning has tried to ensure that the broader community, not our members directly, could have an input into the future of these reforms. For example, when the housing codes were released a draft was put forward and people were able to have input beyond that, and there were changes after that. We have been very comfortable with the consultation process both as an organisation and in that it has given our members opportunities to have direct input.

CHAIR: You argue that there is a need for a period of stability following implementation of the planning reforms and that the effectiveness of the reforms needs to be assessed before any further changes to

legislation are considered. Do you have any view on how long this period of stability should be and on when you expect improvements arising from the reforms to be apparent?

Ms SOUTHALL: I think two to five years would be an appropriate time to allow. What really needs to be measured is whether processes are quicker and more certain. That needs to be balanced against ensuring the community also has had input and is not being locked out, which seems to be a major concern of people who are opposed to the reforms. I think somewhere around two to five years. I hope we will be starting to see improvements in the next 6 to 12 months but some projects, particularly in the current economic climate, are taking a while and have slowed down a bit and that might be impacting on the bulk of projects that are flowing through, particularly at the bigger end.

The Hon. MICHAEL VEITCH: It is not the planning processes that are slowing them down at the moment, it is the economic situation. Is that what you are saying?

Ms SOUTHALL: No, the raft of projects going through—the number—is likely to be smaller at the moment than it was, say, 12 months ago, and that might mean it takes us a little bit longer to assess how effective it has been. You want to make sure that a reasonable number of projects have gone through the whole process before you can make some assessment.

The Hon. MICHAEL VEITCH: I want to spend some time talking about the section 94 contributions and the statements you make in your submission. You have undertaken a survey and provided an analysis, which you articulate in your submission. Has that been broken down into rural, urban and metropolitan councils?

Ms SOUTHALL: It might be useful if I explain how I got those numbers. Every year local councils are required to submit annual reports. As part of that process they need to report to their constituents about the size of the section 94 levies that were collected and also the stock of those levies collected over previous years. The data that was used to get the figures in our submission came directly from the annual reports. It was an incredibly time-consuming process. There are 152 local councils and 31 of those might have had a part of their annual report dealing with this but did not actually report their section 94 contributions.

The Hon. MICHAEL VEITCH: That may be because they do not have one.

Ms SOUTHALL: They probably do not have them. The data that is referred to in the submission relates to 121 councils. I think the requirement is that the annual reports be made publicly available, so perhaps if I had got in my car and driven around the State I might have been able to get them, but I was relying on web-based information. Using that information from 121 councils we found that $879.9 million was held in trust as at June 2007 and that they received about $215 million in contributions during the year, which was earning a sizeable nearly $60 million in interest as well. One of the aspects that I was concerned about in the research was that I did not want to discriminate against very big councils that were engaged in a lot of greenfields development—the councils in the north-west of Sydney, for example—so rather than ranking councils in terms of absolute size I thought about it in terms of years of contributions they had. I took the contribution for that year and compared it to the stock of contributions they had over the last few years. I thought that was probably a fairer way to deal with big councils that were getting a lot of contributions so they would not be discriminated against in the analysis. I found that the average across the State, including rural and urban councils, was about four years worth of levies held in trust. Some councils had up to 20 years and other councils had only one or two years. Looking at the top 10 I thought the results would be skewed towards urban councils, but there were quite a few rural councils included.

The Hon. MICHAEL VEITCH: But the size of the money the rural councils have—

Ms SOUTHALL: The size of the money is—yes.

The Hon. MICHAEL VEITCH: This is an issue local government will have. When you talk about $800 million in reserve, I could probably rattle off about 50 rural councils that would say, "We have none." You are actually unfairly targeting—it is almost a generalisation in your submission that local government has $800 million in reserve. That may be true but in the breakdown where is that centred and who has the most? In relation to the figure of 20 years the rural councils will say it takes them a longer time to accumulate the funds to spend on worthwhile infrastructure projects as opposed to being dictated to and told they have to spend the money within four years, and just spend it on anything.

Ms SOUTHALL: That is why I did the year analysis rather than the dollar analysis. A small rural council may not have much money coming in but when it is collected it is allocated for a certain thing, such as sewerage, so it should be spent on sewerage. Whether a person lives in a rural area or an urban area, if they have a block of land and paid a section 94 contribution they are still entitled to have that sewer or pavement built. I tried to deal with this disparity between urban and rural areas by looking at the years the councils had relative to their usual contributions. I see what you mean about the time it might take to accumulate enough funds to do something, but nevertheless the person buying a block of land is still paying the section 94 contribution and I do not see why someone in a rural area should be expected to wait longer to have the facility they have paid for installed.

The Hon. MICHAEL VEITCH: I do not disagree. You also talk about hoarding of dollars in your submission.

Ms SOUTHALL: That is a term our members use; that is how it is perceived by the business community.

The Hon. MICHAEL VEITCH: Is it not true though that section 94 contributions cannot be used for general revenue expenditure?

Ms SOUTHALL: No, they cannot be, but at the moment there is no time limit, so if a new greenfields development goes ahead and the council gets the section 94 contributions it is not compelled to spend that money within a certain time frame. There is no objection to the concept of section 94 contributions because the idea behind it is that when new greenfields areas open up, the value of those lands will improve by having infrastructure and that improvement will flow through to land values and benefit those who have bought the land, and that is fine. There should be some contribution. The issue is the length of time it is taking from the contribution being paid to actually having something delivered. There is also the fact that there is no recourse for people to say, "I paid this and you told me there would be a sewer here, or a pavement here, and there is not," or whatever.

The Hon. MICHAEL VEITCH: There is recourse. I served on the Young Shire Council and a developer actually took the council to court and the council was made to pay for not spending the section 94 contributions in a timely fashion. That is why I have an issue about what you are saying here.

Ms SOUTHALL: Okay.

The Hon. MICHAEL VEITCH: One last question: In your submission you talk about tightening the section 94 contributions and their use. Does your organisation have a view about what section 94 contributions should be spent on?

Ms SOUTHALL: They would be spent on things that are going to improve the value of land that the person has bought. That is the principle they are trying to capture—an increase in market value. Things like pavements, sewers, lighting—the sorts of things you put into a greenfields area.

The Hon. MICHAEL VEITCH: Just into greenfields?

Ms SOUTHALL: Yes, predominantly greenfields areas.

The Hon. MICHAEL VEITCH: So not libraries or—

Ms SOUTHALL: No.

The Hon. MICHAEL VEITCH: Or a footpath towards a school?

Ms SOUTHALL: A footpath, yes. Pavements and things like that that can be—

The Hon. MICHAEL VEITCH: So, not general infrastructure just infrastructure relating directly to that development?

Ms SOUTHALL: Relating directly to that, yes. There have been changes recently to do that.

The Hon. CHRISTINE ROBERTSON: I have a couple of questions arising from your submission. You talk about depoliticising the planning while allowing for genuine community input and objections. They sound like a contradiction in terms to me.

Ms SOUTHALL: No. I think planning is a balancing act between getting projects under way and the community being able to enjoy the economic benefits that those projects deliver versus ensuring that the community has some say on what a development will look like and what will be in their suburb. We feel that the previous planning system was taking too long. It was getting to the point where businesses were saying that it was not worth their expanding because they did not want the planning hassles. If a system is generating that sort of view it is not a balanced system. This is one of the reasons we are probably more supportive as a first step of the State-based system rather than adopting the national approach that has been put forward by other groups because we think it is really important to take the community along and ensure that local input is still given. That is why we are very encouraged by the fact there will be community representation on planning panels and things like that.

It is really about finding the balance. And there are community objections and then there are objections that are not against that particular development, they are just an objection against development full stop. That is what we want the planning system to remove, and for it to be about that particular proposal. And we think this new system does that.

The Hon. CHRISTINE ROBERTSON: With regard to Redfern Park, which was highly used by the general community around Redfern, development is now occurring on that park and a very small space is being left for community members. Allegedly there was massive community consultation, but a total change of views has occurred.

Ms SOUTHALL: I do not have any insights into that.

The Hon. CHRISTINE ROBERTSON: My next question relates to the amendments and regulations in the planning process now. Your organisation represents the chambers right across New South Wales, which is great. I have just been in western New South Wales and learned that in one particular shire 90 per cent of its land is flood prone and that under the new regulations every single application in that 90 per cent region must have a full development application because the new regulations have removed the standards process that they used to utilise for the flood plain issue. While you are endorsing the regulations, have you had feedback from the shires people or other people who have issues such as this?

Ms SOUTHALL: No, we have not had specific feedback on that specific case.

The Hon. CHRISTINE ROBERTSON: Are most of your chambers regional centres?

Ms SOUTHALL: They can be very small towns.

Reverend the Hon. FRED NILE: In your submission you give strong support to the use of the planning panels, that is the Planning Assessment Commission and the Joint Regional Planning Panels. You say this will help restore the public's faith in the system. Could you elaborate on that?

Ms SOUTHALL: Certainly amongst our members, the planning system was seen as a barrier to doing business in New South Wales, and almost a bit of a lottery in terms of whether a project would get up on not. There was so much uncertainty around—and for it to be seen as the personalities on councils. The planning panels find a good balance between having expert opinion on that particular project and then having local input from elected councillors. So it is really a community confidence issue, to the point where a significant change was really needed to make people look forward and think, "The rules have changed now and this is how it is going to operate in the future. We will give it a go and see how it works."

Reverend the Hon. FRED NILE: In your previous answer you referred to stability. You would be happy for those panels to continue and be assessed in two or five years time?

Ms SOUTHALL: Yes, I think so. I think it is appropriate with any major reform that you do not just—On paper it looks like it will be a positive step forward, but it is important to always keep going back and assessing why the changes were made and whether they actually achieved their aims.

Reverend the Hon. FRED NILE: In another issue you raise the need to comply with development for minor alterations of fit-outs. One would not think you would need to get a development approval for simply changing the inside of a shop.

Ms SOUTHALL: Under the old planning system you did need to, yes.

Reverend the Hon. FRED NILE: Under the old planning system?

Ms SOUTHALL: Yes. But now it will be what is called complying development, in some cases depending on how extensive the change internally will be and the use of that premises. There is the complying development stream for housing and then there is a similar stream for commercial operations. The idea is that if you are a business and there has been a retailer in there and you are taking over that property and you are also a retailer, but you want to lay it out differently, now you will be able to simply do that under a complying development system rather than having to put in a full development application, which has not been the case in the past.

Reverend the Hon. FRED NILE: What would you do—simply notify the council that you have done it?

Ms SOUTHALL: No. There will need to be a certifier, and you would need to go through the same processes that would happen with the housing codes. But the expectation is that it will be a much quicker process than completing a full development application. The other benefit—and this is really why we are interested in the complying development side of it—is that if a lot of the standard development is taken out of that development application process, it gives councils more time to concentrate on the big, more difficult projects, which is really where their attention should be.

Reverend the Hon. FRED NILE: I note that you are on the Planning Minister's Implementation and Advisory Committee.

Ms SOUTHALL: Not me personally, but we do have a representative.

Reverend the Hon. FRED NILE: Your body, the business chamber?

Ms SOUTHALL: Yes.

Reverend the Hon. FRED NILE: Have you had meetings? Is it working effectively in your view?

Ms SOUTHALL: Yes. I was hoping that my colleague would be here this morning, but he unexpectedly got called away. He has been very comfortable with the process to date.

Reverend the Hon. FRED NILE: He has been reporting back to your executive or council?

Ms SOUTHALL: He is a board member, so he would have been reporting to our board. He and I have also been discussing what is happening, and he is very comfortable with the process.

Reverend the Hon. FRED NILE: So the advisory committee is a plus factor?

Ms SOUTHALL: Yes. The thing with planning is that there is the principles level, which I guess is where I sit, but there is also a lot of technical detail underneath. Our representative on that panel is very experienced, someone who has been involved in the industry for a long time. So, when they are implementing the nitty-gritty, he is able to give advice on how likely it is and what the impacts are going to be. Obviously, from the example of the flood plains, some issues have been missed, and I am certainly happy to get more information about that and take that up, if necessary, to feed it into the advisory panel.

The Hon. MELINDA PAVEY: In relation to the zoning restrictions relating to retail developments, you argue that they need to be updated to ensure that they are competitive. Exactly what do you mean by that, and can you expand on it?

Ms SOUTHALL: Traditionally zoning has been: retail will be here, residential will be here, and commercial will be here. That does not really reflect how people live now, on one level, particularly in terms of the climate change impact. You want people to be able to go to the shop on the way home from work, pick up their stuff and go home. I guess it is also a lifestyle point of view. From the competitive point of view, what has happened in the past is that you have a strip of shops in a town. Someone has a coffee shop. Somebody else three shops down puts in an application to open a coffee shop. The way the planning system has worked in the past is that the existing coffee shop owner can hold it up with objections—not based on planning, and not to do with the quality of the building that is being added, but just because they do not want a competitor to open. That is why we were particularly positive about the changes around who can object, and that you have to live within one kilometre of the new building. Planning then focuses on the building. Then we have the Trade Practices Act to deal with anti-competitive or predatory behaviour and those sorts of things.

The Hon. MICHAEL VEITCH: One of the issues raised in rural areas relates to this one kilometre aspect. In a place like Young, which is within the upper Lachlan catchment, there are a large number of intensive feedlots, including piggeries and chicken hatcheries. People further downstream are now saying that that issue is affecting the quality of the water, for instance. How does that one kilometre zone affect that? Also, do you have a view about planning being undertaken on catchment areas, as opposed to the current planning process?

Ms SOUTHALL: Rather than having it based on local government areas?

The Hon. MICHAEL VEITCH: As opposed to catchment areas?

Ms SOUTHALL: No, the business chamber has not really looked into that, so I would not like to comment on it. With regard to piggeries, I have not come across that one before.

The Hon. MICHAEL VEITCH: Trust me, every piggery has a proboscis committee, as I call it: they want to oppose it because it stinks.

Ms SOUTHALL: Yes. I probably prefer not to comment.

The Hon. MICHAEL VEITCH: This morning the witnesses from the City of Sydney spoke about online development application processes and the risk of substandard development applications. Do you have a view about e-lodgement?

Ms SOUTHALL: All business is moving in that direction. The issue of quality is not just about online lodgement. I would imagine that, even in the current system where there is not online lodgement, quality is still an issue. I do not work for a council so I do not know that for sure, but I would imagine that that is the case. So really the issue is not unique to whether it is online lodgement. I see it not really being any different to the current situation.

CHAIR: Do you not see it as being an issue in the future, though, with more online submissions or applications?

Ms SOUTHALL: Most people who lodge development applications—I would have thought that they did not write them themselves and that they would have expert input. If you are a business and you want your development application to get through—which is ultimately what you do want—you are going to do everything you can to ensure that you have professional advice in putting that development application together. Maybe it is different for the mum and dad side of things. But certainly for business applicants the current situation is that they would get professional advice and ensure that the development application is lodged well. It is not in their interests to lodge a poor development application; you do not really need the hold-up. If instead of walking into the office they can now press enter on their computer, it is still not going to affect the quality of submissions.

CHAIR: What is your membership of rural councils?

Ms SOUTHALL: We do have some rural councils themselves who are members. I do not have those figures now, but I am happy to take that on notice and get them for you.

CHAIR: With regard to individual applications, do you have much of a membership?

Ms SOUTHALL: We do have some, but the vast majority of our members would be users of the planning system, outside the planning system rather than participants in the planning system.

The Hon. MICHAEL VEITCH: The end users?

Ms SOUTHALL: Yes, the end users.

CHAIR: Do you have anything you would like to add?

Ms SOUTHALL: No, other than to thank you for your time today.

CHAIR: There may be additional questions from members of the Committee. It would be appreciated if you could provide the responses to any such questions within 21 days.

Ms SOUTHALL: Certainly.

(The witness withdrew)

(Short adjournment)

JEFF SMITH, Director, Environmental Defender's Office of New South Wales, Level 1, 89 York Street, Sydney, affirmed and examined, and

ROBERT GHANEM, Environmental Defender's Office of New South Wales, Level 1, 89 York Street, Sydney, sworn and examined:

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you do take any questions on notice today, the Committee would appreciate if the response to those questions could be sent to the Committee secretariat within 21 days of the date from which the questions are forwarded to you. Before we start with questions, would either of you like to make an opening statement?

Mr GHANEM: Yes. The Environmental Defender's Office [EDO] is a community legal centre specialising in public interest environmental law. We welcome the opportunity to address the Committee in its inquiry into the New South Wales planning framework. The EDO has been heavily involved in planning processes in New South Wales over 20 years. We currently hold a position on the Ministers Implementation Advisory Committee.

As an opening statement I would like to briefly summarise our main recommendations. Regarding term of reference (a), we believe that further development of the planning legislation in New South Wales is needed in the next five years and beyond. On its inception, the Environmental Planning and Assessment Act was one of the most progressive in the world. However, in the last five years or so, amendments to the Act have shifted it away from the foundational principles upon which it was built—genuine public participation in plan making and development assessment and the comprehensive environmental assessment of all proposed developments.

This is most apparent in part 3A, which introduced an assessment regime for major projects. It is an ad hoc and discretionary scheme of assessment, which has limited public consultation and appeal rights in relation to major projects. In addition, the recent reforms to plan making, development assessment and exempt and complying development in 2008 have whittled away public participation and environmental protections even further. In light of the above, we submit that future development of the planning system should return the planning framework to its core principles—genuine community involvement and comprehensive environmental assessment.

To facilitate this, amendments are needed to introduce a new framework for major projects, strengthen public participation provisions to ensure broad community participation, limit exempt and complying development and strengthen environmental impact provisions. Furthermore, ecologically sustainable development, which requires the integration of environmental, economic and social considerations and the adoption of a precautionary approach, should be made the overriding objective of the Act to bind decisions made under it. This will ensure that the planning system protects the right of future and current generations to a healthy and productive environment while at the same time promoting economic and social prosperity.

Regarding term of reference (b), although we support a coordinated national approach to planning, the EDO is concerned with plans to expedite infrastructure projects across New South Wales in line with the Council of Australian Governments reform agenda. Whilst the EDO acknowledges the social necessity for critical infrastructure, such as hospitals and railway infrastructure, there is a danger that any alternate assessment process for these projects will not incorporate environmental protections and appropriate assessment processes.

Regarding term of reference (c), the EDO does not believe there is any inappropriate duplication in approval processes between New South Wales and the Commonwealth Environment Protection and Biodiversity Conservation Act. We do not support any further attempts to reduce duplication between the schemes. Separate approval processes must be maintained to ensure that there are two levels of scrutiny and accountability and to allow the Commonwealth to protect matters of national environmental significance, not necessarily protected at a State level.

Regarding term of reference (d), the current planning framework does not adequately incorporate climate change in a systematic manner. Reform is needed to introduce a detailed process of assessment for high emitting projects and the introduction of adaptation measures and guidance for developing in coastal areas. Furthermore, natural resource considerations should be better integrated with the planning system. Approvals

and concurrences from natural resource agencies should be required, regardless of the consent authority or category of development to ensure that relevant government expertise informs decision making and to achieve a coordinated approach to natural resource management.

Finally, regarding term of reference (e), the EDO does not support any further attempts to implement competition policy into the planning assessment and approval process. Any anti-competitive provisions in the planning framework are justified in the public interest and must be maintained.

CHAIR: The Department of Planning undertook considerable consultation prior to the introduction of the recent planning reforms. What is your view on the process and outcomes of that consultation?

Mr GHANEM: There was a planning assessment forum for the community where over 600 members of the community attended but it was largely members of the development industry and other experts in the field. I would not say there was quite an extensive process of consultation. Another thing is through the reforms that were introduced, a lot of the detail was relegated to regulations that have yet to come out which the public has not had a chance to comment on, so although there was some community consultation, we submit it could have been a lot better.

The Hon. CHRISTINE ROBERTSON: Was there just the one forum?

Mr GHANEM: There was one major forum where the Minister attended and addressed the community. There might have been others that I am not aware of.

Mr SMITH: The consultation under the most recent round of reforms was much, much better than the consultation around the introduction of part 3A, which was a piece of amending legislation which concerned us greatly and has concerned the community greatly. I think we are seeing the value of that change of approach from the department. The EDO has spoken about community consultation and I am sure that the inquiry is aware of the value of that. There is a greater buy-in of the most recent round of reforms as opposed to part 3A, where it was simply introduced without consultation.

The Hon. CHRISTINE ROBERTSON: When was part 3A introduced?

Mr SMITH: It was 2005, I think, and the first we heard of it was when departmental officers called us in. It was not a decision made by the department obviously but that was introduced and that kind of got the community offside from the start really. You want to consult as widely as possible on these things and, with credit, the latest round of reform was a much more rigorous process.

CHAIR: Your submission recommends repeal of part 3A. You also recommend increasing the checks and balances of the Planning Assessment Commission to ensure clarification of its role and independence. Could not part 3A and its intent remain if the Planning Assessment Commission considered all projects caught under part 3A.

Mr SMITH: The short answer is yes. Our position on part 3A is to repeal it and let us start again. I do not think we want to go back to simply having a planning system with only part 4 and part 5—a planning system that only deals with private development under part 4 and generally public developments under part 5. I think we do need a regime in New South Wales that deals with government infrastructure projects; there needs to be something in place there to deal with that. We do need infrastructure in New South Wales; we need for that to happen. I do not think there is any debate about that. There are numerous ways that you can go about doing that. A suggestion from yourself was that the Planning Assessment Commission—correct me if I am wrong—could be given the determining power over those, was that the suggestion?

CHAIR: Yes.

Mr SMITH: That would be one model and that would be an attractive one. The issues are so complex about how you deal with this, but we would certainly support the creation of a regime that breaks down the different types of major development. There is a fundamental distinction between a major development undertaken by government and a major development undertaken by private developers and I think there should be different pathways around that and different ways of getting there. In short, our position is: Let us rethink the approach to these things and make sure that we go back to those principles where we have rules around what the environmental assessment procedures are and that we get the community involved, just for the reasons that I

spoke about before, so that we get better decisions and that we get more legitimate decisions and the community feels that they have been involved.

The Hon. MATTHEW MASON-COX: I wanted to take up a couple of points you made. In terms of the Planning Assessment Commission, you suggest that we need to clarify its role and its independence. How would you go about doing that?

Mr SMITH: The short answer is you would do it under legislation. At the moment a lot of the provisions around the PAC are delegated to regulation. I know that is not quite the answer you were after, but I think that is the first step.

The Hon. MATTHEW MASON-COX: You can work out how. What are the problems? What do you see as the problems in there?

Mr SMITH: At the moment the problem is that the roles and functions of the Planning Assessment Commission can ebb and flow according to who the Minister was, for example. Under the previous planning Minister, the Hon. Frank Sartor, he very much had a vision, as I understand it, whereby he did not want to deal with major projects and the idea would be to have State environmental planning policy in place which would deal with, say, 80 per cent of matters by the Planning Assessment Commission and he would deal with the so-called critical infrastructure type matters. He wanted to give that body the role. What we are seeing now under the current Minister is a much different role for that Planning Assessment Commission but there has been no change of laws or regulations, as I understand it.

The Hon. MATTHEW MASON-COX: How would you characterise the current role as you see it that the current Minister is using PAC for?

Mr SMITH: I would have thought that the model under the previous Minister was a more effective model, where you have that distance between the Minister and the determinative authority over major projects. At present the current Minister intends to deal with everything—again, as I understand it—apart from matters which occur in her electorate and also matters where donations have been made, however that is defined. So I think that arms length approached advocated by the previous Minister is a much better approach.

The Hon. MATTHEW MASON-COX: Are you concerned for the perception of the integrity of the system because a change of Minister means a different style and perhaps different outcomes?

Mr GHANEM: I think that is a symptom of the way the legislation is framed at the moment, which outlines the roles of the PAC—I cannot remember what provision it is; it has now commenced. It allows the Minister, if he or she is of the opinion or if he or she directs the PAC to review a certain matter or adopt a determinant role, that is largely discretionary. So what we would be looking for is a provision that requires there to be, for example, a State environmental planning policy that sets out what projects the PAC will either determine or assess, and in that way that is a more transparent process.

Mr SMITH: You are right in terms of your point about perceptions. Perceptions are important in these type of decisions, so I think that would be a good way where you have it set up front what the rules are, what matters go to the PAC and what matters may or may not go to the Minister. That would be a much better framework.

The Hon. MATTHEW MASON-COX: It is that culture—not culture, but there is that donations-for-decisions perception that haunts all planning processes when you do not have a clear guideline. Is that at the heart of what you are concerned about?

Mr SMITH: Partly, although the present system envisages that those matters will be dealt with by the PAC anyway. The two matters which are excluded from the Minister are matters where donations are made and matters within her electorate. I just think if you have a body that in its own right is fully independent of Government—we would go further than the present model as well; we think it should have its own small secretariat and so on—that as a right is independent and has legitimacy in the public's eyes.

The Hon. MATTHEW MASON-COX: Can I ask you about a perceived conflict I have in relation to part of your submission which states that you are all for streamlining approval processes, getting good outcomes in a timely fashion, but you also state that everybody must have their say, we have to ensure that public

confidence in the system is there and that every regulatory body that might be affected in any way, shape or form has a say and that we end up with a process that is comprehensive? Do you see tension between those two outcomes or objectives, particularly in circumstances where the Government needs to move quickly, à la the critical infrastructure funding that is being proposed by the Federal Government?

Mr SMITH: It is a real question how you negotiate that balance between moving things along and moving infrastructure along on the one hand and making sure that the community has a say on the other. One answer would be that I think if those matters are truly critical then they will be caught by those provisions under the Act and they are fast-tracked. There is nothing we can do about it.

The Hon. MATTHEW MASON-COX: And you are happy with that?

Mr SMITH: No, I do not think we should have a regime that takes away everyone's right to do that. You should not have that critical infrastructure. I was just saying that I think that is the reality of the position.

The Hon. MATTHEW MASON-COX: So it is a reality that you can accept as a pragmatic way of dealing with a conflict here.

Mr SMITH: Sorry, maybe I did not express myself correctly. The reality is that with those matters the Minister at the moment, if he or she is of the opinion that they are critical for economic, social and environmental reasons, may designate those matters as critical infrastructure and they go to an entirely new regime. There is also the changes with the infrastructure coordinator general, and I am not sure what they will look like because I do not think we have been given the details of those but presumably they will have their own specific pathway as well. In an ideal world I do not think you would have that kind of fast-tracking approach. What you would have is a system which does not unnecessarily bureaucratise the system but involves the community up front with a view to getting their proper input and consultation at that end, and we have seen—and as many good developers know—if you get that buy in, if you work with the community and get those kind of outcomes, then you do not have problems further down the track. That is when clients are coming to us further down the track saying they are opposed to this, there are problems with it, and so on, and they have not felt that they have had an opportunity to be involved. Just like strategic planning, I guess, if everyone in the community is involved up front then you reduce, you filter all along the way the possibilities emerging at the other end.

One model that you could go down, which has worked successfully in the past for infrastructure, would be something like what was adopted around the Olympics. I personally was not involved in that process but I know a number of people who were. There were good obviously infrastructure outcomes out of that process. The Olympics went on, we were ready and so on, and it was great, but it was also done with the buy in of a number of community and environment groups because there were a number of bottom lines, I guess, that the Government was prepared to meet. It was a legitimate process where you had that and you got the outcomes that the New South Wales Government, the community and the developers wanted. It is a long answer, sorry.

The Hon. MATTHEW MASON-COX: It is a perplexing problem.

Mr SMITH: Indeed.

Reverend the Hon. FRED NILE: Thank you for assisting our inquiry. In your submission you have questioned the objects of the Act . You have suggested there should be one overriding objective of the Act, and you have quoted the New Zealand Act as an example, which says "to promote the sustainable management of natural and physical resources". Yet you are critical of the Environmental Planning and Assessment Act, which has as one of its objects the promotion of ecologically sustainable development. So the word "promotion" is in the New Zealand Act, and you are critical of the word "promotion". You want to change it to a requirement rather than simply promotion.

Mr SMITH: We are simply suggesting that we elevate and integrate ESD into the Act a little more. At the moment one of the objectives, amongst others, is to promote ESD, and we do not have a problem with that as such. What we are saying is that decisions made under the Act, given that ecologically sustainable development has been recognised at an international level and endorsed by national and State Governments over the years, that should be an overriding objective of our planning system. It is not about stopping development. What it is saying is that you can develop as long as you meet some of those environmental bottom lines, and that

is the way the New Zealand system operates, as I understand it. The decisions have been be bound by the terms so that any developments that go ahead have to be sustainable in those terms.

Mr GHANEM: The problem with the Act at present is that ESD is simply one of a number of unweighted considerations. For example, under part 4, as long as it is considered, the weight given to it is within the discretion of the decision maker. With a concept that is supposed to be an overarching sustainability paradigm we submit that it must be better integrated into planning decisions, plan making and, indeed, all steps in the development process.

Reverend the Hon. FRED NILE: Do you agree though that there can be a problem? If it became the overriding objective it might stop many developments if that was the overriding objective.

Mr GHANEM: That is not necessarily the case. Under ESD, the environment is one of the three pillars. Economic and social considerations are also vital to the concept. Although it is a difficult process, the point is trying to integrate all those considerations into one decision. There may be situations where the environmental impacts, for example, are so prohibitive that the development cannot go ahead, but in most other circumstances it is a matter of building in environmental protections in conditions for approval for example or ensuring that the social impacts of a development are integrated as well. It is a very difficult process but it is just a matter of setting the framework to allow that sort of discussion to happen.

Reverend the Hon. FRED NILE: Could it lead to some of the problems we have been in some of the developments involving coalmines where one person raises the objection and goes to court, which is their democratic right? If that was the overriding objective, would there be then more objects by individuals or class actions against the project that is approved?

Mr GHANEM: I think that is a question about the appeal mechanisms in the Act, but it is probably true that if ESD was the overriding objective and it could be shown that it was not considered or had been disregarded, then that would open up the doors for judicial review proceedings. But that is the same with any process under the Act, where any person can take action to enforce a breach of the Act. Under section 123, anyone can go to court to enforce a procedural requirement in the Act. I do not think that is a problem with ESD itself.

CHAIR: Would that not be a question of time? How long will that take before you get an outcome?

Mr GHANEM: Under the Act, I think the limitations period is three months. After three months it is almost impossible to launch judicial review proceedings. After those three months there is certainty in the outcome.

CHAIR: But once it goes to a judicial review it could take longer. If it was a stalling tactic, I am talking about.

Mr SMITH: Obviously the judicial review process takes some time, there is no doubt about that. But from our position we see it all the time. People come to us with concerns, but you are not allowed and we are not allowed to commence proceedings unless there are reasonable prospects, and it is not something you do lightly. It is incredibly time consuming and stressful for clients to take that kind of legal action. The whole point about what we are saying about ESD is not trying to talk about the rights or otherwise of having those judicial challenges. It is just about making sure that the decision-making framework is correct in the first instance so that these things are all taken into account up front.

If you look at the way it works now, there is an obligation to consider ESD as one of many factors in the decision-making process. We are simply saying it should be further up the chain. It is a bit like if you are employing someone; the anti-discrimination provisions would say that you just need to consider someone's race or sex as a view to whether you would employ them or not. Under the legislation, of course there is a duty not to discriminate against people.

Reverend the Hon. FRED NILE: Just following up the issue that obviously comes from your point of view about community involvement. We know often where there is a project the local community may object because "not in my backyard". We all want to have a dam but not in my valley but somewhere else. How do you balance that requirement between the local community and what the State needs, what will benefit the whole population of New South Wales? How do you measure that?

Mr SMITH: Again, the "not in my backyard" phenomenon is an issue. We see it as well among our client base where people come to us on a predominately local issue and there are broader State issues. We are not talking here about devising a regime that privileges local issues over State issues. There are enough checks and balances in the present system, and should be in any system, whereby those State interests, if they do rightly trumpet the local interests, should prevail. It is more about working out whether they are genuinely local interests because a lot of people come to us with a local issue that has a State dimension as well. It is very unlikely that people come to you about an issue that is not around their backyard. The issue is whether that issue is simply a local issue that resonates with them and they cannot see that it is not the most important thing in the world or it is something that happens in their backyard that it is genuinely of regional or State significant. That is the assessment. I do not think that anyone would be suggesting that you privilege genuinely local issues in any planning regime over State interests.

The Hon. CHRISTINE ROBERTSON: How do you work out those definitions?

Mr SMITH: You do not have to, in a sense. You do not have to say, "This is just a local issue", "This is just a regional issue", "This is a State issue". You just need a regime that recognises that people have the right to a say and to be involved and to percolate that issue through. Then you have a system whereby, for example, the Planning Assessment Commission, an independent body, and the institute will have the power and so on to say—like the Land and Environment Court does every day making decisions about those things—"We have heard from local objectors and we think there are broader issues at hand here. This issue should go ahead" or "Under these conditions this issue should not go ahead", whatever the decision may be.

The Hon. CHRISTINE ROBERTSON: It should be left in the hands of the judiciary?

Mr SMITH: Left in the hands of an independent body. It may be that the Planning Assessment Commission; it may be the Land and Environment Court. The issue, I guess, for us in terms of who makes these decisions is the system seems to have got more and more complicated over the years. One of the tenets of the last wave of reforms was that we should streamline and simplify the system. But at the decision-making level it is enormously complicated. You have got arbitrators, you have got joint regional planning panels, you have got the planning assessment commission, you have got councils, you have got the Land and Environment Court. We are back to what we had before 1979. You are aware of what happened then, it was a disaster. There were so many bodies that were making decisions about this bit of environmental planning law and that bit of environmental planning law. I thought we had actually come some way in New South Wales towards going down a different path to simplifying the pathways to decision-making. But it seems to have all come back in. Ironically, under the rhetoric of simplifying the system, I think there is more work that needs to be done there.

The Hon. MICHAEL VEITCH: Earlier Reverend the Hon. Fred Nile used the example of coalmines. I have hard the same sort of issues being raised in the reverse. I met some people at Crookwell on Friday who oppose the wind farms at Crookwell. They say if they had known there would be 100-odd towers erected along the ranges, the community would not have accepted the first seven that were built five or six years ago. I spoke to them about the greater environmental good and that someone has to have wind farms somewhere, but they are against it. It was almost the same argument we hear about the coalmines. A balancing act needs to be made between the greater benefit of the State or the country. It is a difficult issue. That leads to my question about climate change. I am keen to hear your suggestions about how climate change and the impacts of climate change can be identified and addressed in the planning framework.

Mr GHANEM: We make the suggestion in our submission that currently climate change is not really required to be considered explicitly under the Act either in section 79C or part 3A. What we would like to see is climate change as an explicit consideration that must be considered. We want to go beyond that as well. We want some sort of legislated guidelines that set out best practice technology requirements for a new plant, for example, or certain environmental protections built into an approval before such a project can be approved. That is from a mitigation perspective. On the other side of the coin there is adaptation, adapting to climate change impacts that are unavoidable—for example, the projected sea level rises on our coast, increased storm surges, et cetera. Currently local councils have very little guidance on how to address that, how to assess development applications, how to build that into new local environmental plans.

Councils came to us about a year ago and asked us to do an audit of legislation to identify where climate change was required to be considered and the responsibilities that placed on local councils. We found there were very little responsibilities placed explicitly under the Act. There is a need for legislative guidance for

local councils on how to address that. We know that the New South Wales Government has started that process. I think that the Department of the Environment and Climate Change recently released a draft sea level rise policy that sets out the benchmarks for councils and the sea level rise scenarios they have to deal with. So the process has started, but that needs to be backed up by amendments in the planning Act that guide councils, amongst others, a bit more in how they make their decisions.

The Hon. MICHAEL VEITCH: In your submission you talk about a conflict between catchment management authorities and their catchment action plans and the local environmental plans of councils. Most of the members of the Committee are from rural areas. What is that conflict and how do you suggest it should be addressed?

Mr GHANEM: Catchment action plans were designed to be more localised, on-the-ground natural resource management tools. Some of them are quite good. But the point is they are not integrated into the Act specifically. For example, in making a new local environmental plan [LEP], under the current process we have under part 3 there is no requirement to consider catchment action plans in the making of an LEP. So you would want a council to consider the catchment action plan and what sort of management is required in certain areas, in setting out your zoning, planning controls, et cetera. It is probably happening in some areas, but it is not coordinated within the legislation.

The Hon. CHRISTINE ROBERTSON: It might happen by accident.

Mr GHANEM: By accident or the will—

Mr SMITH: Or on the part of the local people. Some of the catchment management authorities are working incredibly well—well to incredibly well, if I could put it that way. But there are a couple—this is not my assessment but the assessment of others—I think there are 13 and about eight or nine seem to be working effectively and the others might be more or less functional. Again, try to elevate it up the line and say, "Let's do this properly. Let's make sure that whole regime that was created in 2003-04 around natural resource management actually fits with whatever planning mechanisms we have got." At a legislative level, which is obviously where we come to the table, that is not the case. They kind of operate in parallel and butt up against each other at the borders.

The Hon. MICHAEL VEITCH: That leads me to the next question, which I have asked of previous witnesses in the inquiry, in relation to planning around catchments. The Lachlan catchment has a number of local government areas with their own LEPs. What is your view on planning along catchment lines as opposed to the current local government boundary lines?

Mr SMITH: I am not sure I have the expertise to have a view because I am ultimately a lawyer. It would seem to make a lot more sense that you would take the regional outlook. If you are looking at getting a good outcome, however you may define that, then that regional landscape-style approach is a much better model. Ultimately all borders are arbitrary, but ones that are devised around catchments I would have thought would be a much better foundation for a planning tool than ones around local council borders. Maybe you need to devise a system that tries to integrate that local level of local councils and the input they have into some kind of approach that makes sense across that catchment management.

The Hon. MICHAEL VEITCH: I would like to know who you work with and the size of the organisation. What proportion of rural cases do you have, your clientele from the rural areas, as opposed to urban and metropolitan areas?

Mr SMITH: It has changed. I am not sure whether it has changed. If I could answer it this way, we have a telephone inquiry line, which all our solicitors take calls on. That can be on any matter, any private matter. People ring up to get advice on all sorts of environmental matters. About 65 per cent are from rural and regional areas. What we have done over the past five years is try to reflect that in our practice. It is very difficult as a Sydney-based office to deal with that stuff. We have set up an office in the Northern Rivers at Lismore as part of an endeavour to deal with that. We do somewhere between 15-plus workshops in rural and regional areas around New South Wales and we often dovetail that with advice meetings. We will go along and talk to people about the issues in their area and then the next day or morning we hang around and answer specific issues. There is no magic to the fact that the big environmental issues in New South Wales are happening outside the metropolitan area, and we have tried to reflect that in our work.

The Hon. MICHAEL VEITCH: For example, wind farms at Crookwell.

Mr SMITH: That is right.

Mr GHANEM: We have recently released an updated version of our rural landholders guide to environmental law. That is another way we are trying to engage with the rural community. Often farmers or rural landholders are unsure what regime applies or the myriad laws that apply to their farm or various water use issues, building a dam and all the other aspects of their operations. They need an outlet where they could just see what the laws were and how they inter relate. We have released our latest updated version which is advertised in the *Land* and are getting an influx of request for copies. I think it has been really successful.

The Hon. MELINDA PAVEY: That is a good idea.

Mr SMITH: It is enormously successful. I think the print run that we got was for 80,000. We have divided that up into 40,000 and we have nearly got rid of 40,000.

The Hon. MELINDA PAVEY: So often people go out to buy something and they do not understand that people farm nearby and the more knowledge people have from their solicitor acting on their behalf when they buy a rural lifestyle is smart.

Reverend the Hon. FRED NILE: Did the Department of Planning approve the content of the publication?

Mr GHANEM: It is an independent publication.

Mr SMITH: We got the funding from the Environmental Trust.

Reverend the Hon. FRED NILE: Did the department approve the accuracy of your interpretation of the law.

Mr GHANEM: Not that I know of. I am not sure if the department has even read it, and that is not a criticism.

Mr SMITH: No, it is our assessment of the law. It is an information-based thing. It is nothing more than not. We are not saying whether a law is good or bad.

The Hon. CHRISTINE ROBERTSON: It would go across several departments.

Mr GHANEM: Exactly right.

The Hon. CHRISTINE ROBERTSON: How do you define anti-competitive considerations? Will you provide the committee with some information on that matter to which a number of submissions are on both sides, competitive or anti-competitive considerations?

Mr GHANEM: In the past there have been suggestions that certain aspects of the planning system sort of hinder competition. For example, the suggestion that if someone is building a new shopping centre, other shopping centres might object on the basis he or she does not want competition in their area. There have been suggestions that as a result of that you need to remove those sorts of provisions from the planning system so that they do not block competition in certain areas. But national competition policy itself says that certain provisions like that are justified where it is in the public interest. We submit that the planning system is such an example where you have got very important democratic and public participation principles inbuilt as well as ESD. Those benefits far outweigh, we think, any anti-competitiveness of the process. I am not sure if that answers your question.

The Hon. CHRISTINE ROBERTSON: It makes me more concerned about the definition of "public interest" but we will not go there. You say "social" and then you say "public interest"! In your submission you refer a lot to environmentally sensitive areas. Do you have a definition of those areas? What does it mean?

Mr SMITH: There used to be a definition under the Act—section 76A, from memory—which carried a prohibition against development in certain areas.

Mr GHANEM: It had a prohibition on exempting complying development in environmentally sensitive areas and the provision itself—it was defined. It defined what "environmentally sensitive areas" meant. For example, critical habitat, sensitive coastal locations et cetera. We could provide more information on that but it is found in the old provision.

Mr SMITH: It was a defined term.

Mr GHANEM: It was defined.

The Hon. MICHAEL VEITCH: It has gone?

Mr GHANEM: It has gone.

Reverend the Hon. FRED NILE: Do you say the definition has been dropped from the current legislation?

Mr GHANEM: I am not sure if the definition has gone but the prohibition, that provision, has gone. Now exempt and complying development codes that are being rolled out can apply to environmentally sensitive areas. Although the codes that have been released so far specifically prohibit those sort of developments in those areas, it still leaves the door open in future for complying development in environmentally sensitive areas. I am not sure if the definition has dropped out.

The Hon. CHRISTINE ROBERTSON: So the frog might go?

Mr GHANEM: Potentially.

The Hon. CHRISTINE ROBERTSON: Would the implementation of the plans and structures of the Catchment Management Authority merely provide more complexity to the planning situations in country areas in particular? There are a lot of complaints about complexity.

Mr GHANEM: Yes, I can see that. It is more about what Jeff was speaking about before: it is integrated catchment management and it is accepted scientifically that it is the best level of managing natural resources. It is a matter of having an over-arching plan that applies to a catchment area. We would certainly support reducing complexity. You can do that by integrating caps with local environment plans [LEP], the water processes that are happening at a Federal and State level and sort of factor that into caps as well. It is a matter of getting the process right. Part of that will be to reduce the complexity.

The Hon. CHRISTINE ROBERTSON: At a State level we cannot agree on our water distribution, how would you get local government areas and the Catchment Management Authority to agree? They would have to be more closely involved in the process for the development of the catchment management because their LEPs are going to be based on the plan from the Catchment Management Authority, are they not?

Mr GHANEM: We would certainly support that. They need to be involved on other levels as well. Eventually water sharing plans in New South Wales will have to be adjusted to be consistent with the Basin Plan that is being developed at a Federal level.

The Hon. CHRISTINE ROBERTSON: Yes, we are very well versed on it.

Mr GHANEM: You need that local input into the process. Otherwise, you are going to have a mismatch between the strategic planning side, the over-arching number, and the actual on-the-ground implementations. I think we would agree with that.

Mr SMITH: It probably would be difficult to design a scheme around that, I guess. Our starting point is to starting talking about it and make sure that those things are considerations and that we begin to develop a much better approach, apart from one where, in a sense, it reflects the institutions of government. At some point that is always going to be the way. You have got the Department of Planning and then your bodies that have changed over the past five years around natural resource management and those two do not really sit together very well. It is just about an endeavour to say "Let us try to make that happen". We have not really given a great

deal of thought about what that would look like on the ground, but we are just identifying that as an issue that needs to be addressed. How would you go about doing it is a difficult question.

The Hon. CHRISTINE ROBERTSON: They are a bit of an adjunct at the moment.

CHAIR: Do you want to add any further comments?

Mr SMITH: I do not think so. We have had a fair run.

CHAIR: Thank you for attending. The committee may have further questions. If so, would you please provide a reply within 21 days?

Mr SMITH: Okay.

(The witnesses withdrew)

(Luncheon adjournment)

JOHN HAYWARD MANT, Retired lawyer and practising town planner, affirmed and examined:

CHAIR: Mr Mant, if you should consider at any stage that certain evidence you wish to give or documentation you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you do take any questions on notice, the Committee would appreciate it if your response to those questions could be submitted to the secretariat within 21 days of the date on which the questions are forwarded to you. Do you wish to make an opening statement?

Mr MANT: Yes. I will briefly make a few comments. First of all, I would like to describe my qualifications for making my submission. I am qualified in law and town planning and I have worked in the public and private sectors. I was chief of staff to Tom Uren and Gough Whitlam and head of the housing and planning departments in the government of Don Dunstan. The South Australian planning system, which I note the Premier of South Australia recommends for your attention, is largely the product of my views. As was the original form of the current Victorian system, stemming from the extensive work I did as a consultant to the Cain Government. Both the Australian Capital Territory and the Queensland systems also reflect some of my work.

In this State, with Julie Walton, I rewrote the Local Government Act, which resulted in a major simplification of the law. In the 1990s I conducted a Commission of Inquiry into the Department of Housing, leading to significant reform. I have also been an Independent Commission Against Corruption Commissioner and a lawyer for principled and, I regret to say, not so principled developers. I have advised many councils on planning matters and organisational design and I have just finished five years as president of The Paddington Society. I have seen a fair bit of the system from every aspect. I should say that, except for a couple of times when then Minister Knowles was the Minister for Planning, I have never been asked to provide advice on the New South Wales planning system; I therefore cannot claim any responsibility. In my experience the planning department tends to employ advisers who agree with it.

My central thesis is that the New South Wales planning legislation was fatally flawed from the beginning. Refusing to accept this, successive heads of the department have tried to fix the system without fixing the fatal flaws. This has merely lead to greater complexity, with many unintended negative consequences. I note that in its submission to this Committee, the Department of Planning continues in its belief that the Act is fundamentally sound. It is beyond me how it can do so, given the diagram of how it presently operates. I have attached to this paper the first of those diagrams, which is our best effort to work out how post the Sartor reforms the system works—do not rely on it without lawyers' advice. I am sure there are lots of twists and turns that we have missed somewhere along the way.

Because the system has only become more complex and less transparent, in recent years there has been pressure from parts of the development industry to allow favoured developers to largely bypass the system. For example, the Urban Task Force was set up, firstly, to achieve a change in the legislation to give the Minister unparallel powers to approve particular developments, and, then, to provide selected clients with access to the Minister. We have seen the collapse of public confidence in both the system and the Minister since the task force's success in achieving, and then making use of, part 3A of the Act.

I note that, as a result of a similar frustration with the system, the Government has just had Parliament pass legislation allowing stimulus developments to bypass the normal processes. Like parts of the planning legislation now, there are provisions that exempt the Executive from supervision by the courts. That these breaches of the separation of powers doctrine are seen as necessary alone, must demonstrate the fundamental failure of the current system. In addition to these go-around solutions, the department has acceded to developer pressures to allow the producers of what I call "standard urban products"—project homes, fast food premises and the like—to avoid the development assessment system if they comply with one-size-fits- all zones and controls. The department is not interested in sustainable design that fits its particular environment. I would suggest that this is also a high price to pay for its failure to fix the State's planning system.

Although there would be considerable work in transferring the existing mess to the new, the solution itself is simple and in my written submission I have provided a model for your consideration to show what can be achieved by simplification. A couple of simple changes proposed by the Local Government Association led to this result—that is the second diagram. You can see how much simpler it its with just a couple of changes. I ask you to compare that with what exists now. I point out that it would not be that difficult to go back to the beginning, write a new simple piece of legislation and transfer the existing to the new model. Thank you.

The Hon. MATTHEW MASON-COX: It is good to have you here and it is great to have the opportunity to ask a person with your experience and expertise in this area a few questions. You mentioned in your opening statement the fatal flaws. Could you identify what you see as the fatal flaws in the existing system?

Mr MANT: From the beginning the fatal flaw was that we had two ways of approving developments, part 4 and part 5. Part 4 was the traditional town planning administrative law system, which said, "Here is a set of controls, here is an application; does the application fit the set of controls, yes or no?" Part 5 said, "I want to do something. I have had a good look at what will happen if I do it. Here is the documentation of that. Having read it I think I ought to do it." That was the environmental impact approach. "I have really studied the environmental impact and I think it is reasonable for me to proceed." Of course the problem with that was that State Forests, having gone through all the studies said, "I think I'll proceed to cut the logs in this forest." But nobody had actually approved it. There was no third-party approval. They just said, "There's enough paper here to suggest I should proceed." Then people went to court and said, "No, there's not enough paper; you forgot to do a proper study of the silver glider possum", or something. So, four or five years after the process started the decision to proceed would be declared illegal and everyone would have to go back to the beginning. That was the first fatal flaw—two systems—and one very important system, because it dealt with big infrastructure and environmental impact matters—which did not have any certainty until years after the process had been started.

That had to be fixed so they brought in the Minister for Planning to sort of provide a sign-off as a third party to the part 5 matters. That was still very messy. In South Australia we just had one system. If it was a simple little matter it needed a piece of paper this big; if it was very complex it had a piece of paper this big, but it was the same process and at the end you got a sign-off and away you went. After a certain period the courts could not call that decision into question, so there was certainty and simplicity and everyone understood what the process was. So that was the first thing: It was an attempt to keep the old planning system and attach the environmental impact system, but it was not done properly.

It was then decided they had better fix it so they brought in a new system that was more like part 4, the traditional planning system, for dealing with big developments. That is part 3A. Under part 3A you say, "Here is my application" and the Minister considers it and approves it or refuses it. End of story. That is my point. Because no-one is prepared to say the original Act was flawed and should be fixed we just keep layering things on it. We have layered part 3A on top of parts 4 and 5. We have left them all there and there are all these complex connections between them. You skip from here to there and so on.

I remember once writing an article in the local paper about the South Australian system before I fixed it in which I said probably only a dozen people understood the South Australian planning system. After the paper came out the Chief Judge of the planning court rang me and said, "John, we are up to four. Who are the others?" There are probably very few people in New South Wales who actually understand how the system works. Certainly I keep finding new things in it that I never realised.

So it was complex and wrong at the beginning and all we have done is put layer on top of layer.

The Hon. MATTHEW MASON-COX: Correct me if I am wrong but based on that your hypothesis is that we should start again?

Mr MANT: Yes. There are other fatal flaws. The other major fatal flaw is the plan-making system. If you go to India they will say, "Mr John, we have a national plan, a state plan, regional plans and local plans. Everything is planned and they all fit together. Here is our plan for our city." If you say, "Hang on. What is all that?" he will say, "That is undeveloped land. That is open space." If I say, "I just drove through it and it is all developed", the reply is, "Oh yes, it is unauthorised development." There are endless plans but the actual mechanism for controlling development is hopeless. The New South Wales system is like that. We have State environmental plans, regional environmental plans, local environmental plans and development controls. You can have any number of documents in each of those layers. If you add up all the documents for my house extension it is about so high. All I want to know is what are the controls on my block of land. I am not interested in all that planners' waffle and whether there is anything in that document that affects my block of land. In South Australia we have one document on development controls—not plans—because development control is something you do for a planning purpose. It is not the plan.

The Hon. MATTHEW MASON-COX: Give me an example of what you mean.

Mr MANT: If I want to improve accessibility to a place I might spend money on a road and change the development controls to encourage things to come together in the first place. So in order to achieve a strategic purpose I am going to influence the budget and carry out a wide range of activities and I am also probably going to control people's property rights. The only thing you need legislation for is to control people's property rights. Lots of planning is done without legislation saying, "You can plan."

The Hon. MATTHEW MASON-COX: It is a bit like the State Plan we have in New South Wales, I suppose.

The Hon. CHRISTINE ROBERTSON: There is no need for that. We are actually having an inquiry here today.

Mr MANT: The State Plan is a good idea. Whether it is a good State Plan is another issue. You do not need a "State Plan Act" to get some budget money to employ some people to do a plan. What you do need legislation if the State Plan says we should protect more forests or allow more medium density is to find the controls for medium density in the area and change those controls. For that I need legislation, because I am affecting people's private property rights. I have always called a planning Act a "developmental control Act". Lots of people will come to you and say, "we need an Act that provides State control and no regional control and all that stuff", "no planning for this, no planning for that".

The Hon. MATTHEW MASON-COX: "We need a plan for all of these things".

Mr MANT: You just put all that aside and say, "Can we please have a simple bit of legislation imposing and then administering controls over property?"

CHAIR: How do you differentiate between city and country areas?

Mr MANT: It does not matter because all it is is a mechanism. What you are trying to do with it comes from your plans for the country or your plans for the city. The controls are affected by planning or by political decisions. All the Act is doing is saying that once you have made up your mind what you want to achieve through development control there is a mechanism for imposing those controls and considering applications where applications are required under that system. It is a simple concept but it is hard to achieve because of the semantics. People keep talking about planning and planning controls. They are not planning controls; they are just development controls. A lot of government bodies impose development controls, not just the Department of Planning. There are soil conservation controls, Environment Protection Authority controls and all sorts of different control documents.

The Hon. MATTHEW MASON-COX: In relation to the fatal flaws, looking at your proposed alternative model I notice that under part 3A the Minister's role in relation to approving major projects or critical infrastructure projects after the assessment process has been conducted is basically to say yes or no. Can you explain how that works and why it is the best way of doing things?

Mr MANT: This is not the best way of doing things; this is making a couple of changes to the existing system. There is really not much change to what exists under the present system under part 3A. It goes to the department, and the Planning Assessment Commission might deal with it or the Minister might deal with it. I note that the current Minister has decided to deal with almost all the applications under part 3A, whereas Mr Sartor said that he would only be dealing with about 20 per cent of the private sector ones. So there has clearly been a decision somewhere along the way to not use the Planning Assessment Commission, which I favour. It is an exact copy of what I set up in South Australia 20 years ago.

The Hon. MATTHEW MASON-COX: Why do you favour that over the Minister making the decision?

Mr MANT: Because I think that for private developments, both at the local council level and at the State government level, there ought to be a body of people who have not been associated with the assessment, or the leading up to the application being put before government, that reviews it and even makes a decision on it or makes a recommendation on it, that this is a transparent process that adds faith in the system—

The Hon. MATTHEW MASON-COX: Confidence?

Mr MANT:—confidence in the system.

The Hon. MATTHEW MASON-COX: Integrity?

Mr MANT:—and integrity. I have been the one who has been pushing advisory Independent Hearing and Assessment Panels for councils, and a number of councils have set them up on my urging.

The Hon. CHRISTINE ROBERTSON: The Planning Assessment Commission does not do this?

Mr MANT: The Planning Assessment Commission makes some of the decisions and in other cases they make a recommendation. I do not mind whether they just act as an advisory body or a final decision-making body, but I do think it is important that there be people who have not been involved, who are not part of the political system, the legislative system, able to sit in a more judicial role and assess where we are up to on an application.

I think where councils have had advisory Independent Hearing and Assessment Panels [IHAPs] there has been a very significant improvement in staff morale, because they no longer have come into council and be abused by councillors. Certainly there has been a very significant improvement in the attitude of applicants and objectors, because they feel that they have been properly listened to. And councillors, almost without exception think the IHAPs are terrific, because suddenly the phone stops ringing.

The Hon. MATTHEW MASON-COX: They have some distance between the decision making—

Mr MANT: People ring them up, for and against. They would say, "There is an IHAP hearing in three weeks time. Go along, and you will be properly listened to. The IHAP body has to prepare a proper report, respond to all your concerns, and make a recommendation to us, and we will then make the final decision." Making a development control decision on a particular application is a judicial role; it is not a political role. That is why there is an appeal to the court. So, with respect, councillors might make very good judges but in a council meeting they are behaving like a legislature, and that is not the right place to be considering whether this particular application fits the rules or should be an exception to the rules and so on.

I support the Planning Assessment Commission generally. I am disappointed that the current Minister has decided not to leave most of the private sector applications to the PAC for the decision of at least review and recommendation.

The Hon. MICHAEL VEITCH: In the written submission you have provided to us, on page 18 of the attachment you talk about layers of unintegrated controls. Could you explain what that means?

Mr MANT: It is the State policies, regional policies, local environmental schemes, and development control policies. If I have a block of land, I have at least four layers of documents which might apply to my block of land. Within each layer there might be 50 different documents which apply to my block of land. It is up to me to then go through all of those documents and work out which ones apply and which ones do not. The same with the poor council officer who is doing the assessment. If you read an assessment report in New South Wales, it is 40 to 50 pages long, because they have to comment on every one of those relevant documents. In South Australia, we had a lot of documents. I set up a dozen secretaries in a room—in the days when you had secretaries—and we went through every document and for each area, or parcels occasionally, we took out of those documents anything that applied to that parcel and we rewrote it in a new format. From then on, if anyone wanted to change anything, they actually had to change that centralised document. It is a bit like a title: there is the title of controls for your parcel. So I can go into the South Australian system and type in my parcel number and out will print the controls that apply to that parcel. I can be quite satisfied that those are the controls, that there are no other controls, and that that is the document on which everyone will make a decision as to what I can do and what I cannot do. That is an integrated, parcel-based control system. We have an unintegrated, layered, complex system where everyone is left to try to find their way through.

The Hon. MICHAEL VEITCH: Also in your submission you talk about the fact that State departments are geared for output as opposed to outcome. Can you explain how that impacts upon the planning and assessment processes and how you define an outcome?

Mr MANT: Defining an outcome and outputs can be terribly difficult because people quite often say, "My outcome is actually my output." If you go to the roads department and you say, "What is your outcome?" they will say, "More roads." That is nonsense. That is their output. Their outcome is making things accessible. All of our State departments, without exception, are what I call output departments. They are producing some particular output: road, train, survey, title, and so on.

No-one, in those circumstances, can be responsible for a complex outcome. Part of the planners' problem is that they try to run the State and they keep getting pushed back in their box and told to go away and exercise development control. The other thing is that because each department is a body of experts—surveyors in the survey department, environmental scientists in the EPA, engineers in Roads, and so on—each one of them wants to have their own development control system.

For example, we have a roads Act under which the traffic engineers control development around roads, and we have a planning Act under which the town planners do the same. In an output-based organisation, which is what State governments and local governments are, first of all no-one can be responsible for a complex outcome, and secondly, every one of those output people wants to exercise development control, so you have multiple development control systems. Therefore you have multiple referrals and concurrences to be done: "I have to send this to the roads department because it is on a main road and I have to get them to check it. I cannot do that because I am only a planner; the roads people are there. And I cannot employ a roads person in my planning department because really the only people I am employing here are people who are qualified planners." I mean, you get that in councils. Very much, the planners and engineers never talk to each other.

The Hon. MICHAEL VEITCH: You also make comments about the role of private certifiers. We had witnesses from the City of Sydney here earlier this morning. I think they said that 81 or 84 per cent of their applications are assessed by private certifiers. Yet, in rural areas I would suggest it is the reverse because there simply are not enough private certifiers there.

Mr MANT: I think that is a disastrous system for transparency of the process and for administrative problems. And it is easily fixed. Again, in South Australia it is a much better system because, yes, you can have a private certifier but the role of the private certifiers is to measure compliance with measurable things, like: "Is the setback five metres?" It is either yes or no. "I certify the setback is five metres." You then give that to the council and the council does not have to go out or check that the setback is five metres; they can rely on that certificate. Then they can sign the thing off. Whereas, what we do now in NSW is that the certifier gives that to the person who pays them. It never goes near council.

The problem with that is that as soon as we brought the private certifier system in, the old process of saying, "Here are the sketch plans. Do you like it this high, this colour, and this many bums on seats?" "Yes." "Right, I will go away and design the thing now and I get you to check the design, and then I will proceed." That does not happen any more. What happens now is that the council only gets one bite of the cherry, and they want to know everything. As president of the Paddington Society, I want to know everything in the development application, too. I do not want some private certifier doing the design of a window in a heritage building. I want to see all of that upfront, because I only get one go at it. That is why the development applications have suddenly gone like this, the assessment role has gone like that, and the number of conditions has gone like that.

The old thing of sketch plan approval and building plan approval has gone—let alone what the certifier is actually certifying to compared with what was actually approved, which is a real problem. Again, it is a problem we find in Paddington all the time. We are particular about things like window frames and so on, obviously. Then some certifier from wherever comes along and says, "A window frame is a window frame. There you go. It looks alright to me." You end up with a 1950s window frame, which is not like an 1888 window frame.

The Hon. CHRISTINE ROBERTSON: A couple of witnesses this morning and several submissions have indicated that the individual organisations are happy with the planning process as it is. They have indicated that they feel it perhaps needs a bit of tweaking, and that the changes that have been discussed will resolve any issues with the process. Can you give us your opinion on that? Do you have an idea that it might be because their interests are being served by the complexity of the issue?

Mr MANT: There are some organisations who are obviously benefiting very much from part 3A. I mentioned the Urban Task Force and the members of that. Let me go back. There are some things about part 3A which are okay. In a sense, that is really how the British system works. Everything is subject to consent in

England. There is much greater discretion in the government as to what it approves and what it does not approve, but it has a very well informed inspectorate role under which all major new developments are properly assessed with a full public hearing and then a full and detailed report goes to the Minister. It is a very transparent process.

There are some good things about part 3A in the sense that it allows big developments to be considered on their own merits rather than in accordance with the rules, but the way it has been done of course, as the main person doing the assessment, who is the director general of the department, has no tenure security at all. That person, being the director general, can be dismissed in a nanosecond for no reason and have no comeback.

The Hon. CHRISTINE ROBERTSON: That is the world in the public sector?

Mr MANT: That is how it is now. You can be given your marching orders instantly and yet we rely on that person and his staff to provide a full, fair and transparent assessment of this "there are no rules" application. There is no public hearing; you get a chance to make a submission; you never see what happens to it really. The Minister makes a decision and then you might find out why she made it. It is not a transparent process and it is clearly being rorted by people who have got an "in". If that is not the case, it certainly seems to be the case, which, as far as the public are concerned, means the same thing. Part 3A, in part, was set up to achieve that. I know because I was asked to join the Urban Taskforce before it was formed and it was explained to me that that was the purpose of it. They wanted to get a system where are all the discretion rested with the Minister and that they had a particular "in" to achieve results for their clients.

The Hon. MELINDA PAVEY: Who approached you from the urban task force?

Mr MANT: I would rather not say, but it was certainly one of the main people who set it up and run it.

The Hon. CHRISTINE ROBERTSON: I gather that the metropolitan plan is perceived by many to be a useful planning tool. There are regional plans throughout New South Wales in one form or another. How do you feel about those being based on catchment areas?

Mr MANT: I absolutely agree that they should be catchment-based. I do not know how we finished up with two lots of plans: one a catchment plan and the other a planner's plan. They definitely should be catchment based, and again, they do not need to be statutory. The metropolitan plan is not statutory. I was on the advisory committee for that. One of the few times I have done work for the Planning Department. We could spend a day on why that is not working as well as it should be, but it is not a statutory document although it has all sorts of statutory consequences in the sense that it advises changes to development controls.

The Hon. CHRISTINE ROBERTSON: So it would have judicial consequences?

Mr MANT: Exactly, but when you go to court it is generally not a document that you would put in evidence because really all you are doing is saying, "Here are the development controls. Does it fit or does it not fit?" That is the whole point of my making a distinction between doing planning and a development control document.

CHAIR: How are land parcels identified and defined. If such a system were to be adopted in New South Wales, would you envisage a LGA being single or comprised of a number of parcels?

Mr MANT: The system in South Australia is that each council has its document but the council area is divided into a number of places and those places may be one parcel, 200 parcels or 1,000. The places are determined by the nature of the development there. If it is a general low-density suburb, that might be one place. If it is a city centre with a couple of heritage buildings on this block, six parcels may be a place because you have a specific set of controls for that block. In the register of the plan it is all based on the cadastral plan from the Titles Office. Eventually my dream is that you will go to the Titles Office and you will get your title details, the development controls and anything else that applies to your block of land. That is what I am working to.

CHAIR: In this control document for land parcels, are you advocating that ideally there would be no land use zoning within a control document?

Mr MANT: There would be land use controls but you would not publish a coloured plan. I think the colour plan is an anathema because we say to the public good planning is when you put all the residential in one

area and all the commercial in another area instead of saying, no, good planning is about—what suburb do you come from—

CHAIR: I come from Griffith, a country area?

Mr MANT: Okay, good planning is when the main street of Griffith is a good place, so I have a plan, a set of controls where the main street of Griffith, not a commercial zone, but the main street of Griffith. Within that set of controls I might want to control some land uses but the actual plan is the plan or the controls are the controls for that place. If it is all on a central digital record, I can print out very easily the controls that apply to the main street of Griffith. It is no longer a commercial zone or a business zone or a residential zone. It is just the place.

The Hon. MICHAEL VEITCH: You would be an advocate, then, for a computer-based system where people type in the parcel number of your land anywhere in New South Wales, press the enter button and up would come all the control plans for your parcel?

Mr MANT: Not the control plans, the controls—only one document. You can do that in South Australia. You can go into a parcel anywhere in South Australia, push the button and up will come the controls that apply to your block of land and neither the court, nor council nor the Minister could have regard to anything else other than that document. There are no other bits of paper or vague worded things in the Act. They are the controls. If the control was highly specific saying you could have something that looks like this, you know that is what you can do.

The Hon. MATTHEW MASON-COX: I wanted to pick up your comments about the urban task force. Part 3A, there has been a lot of concern given that developer donations have been linked to developments before the Minister in the past?

Mr MANT: Yes.

The Hon. MICHAEL VEITCH: In the past or the past Minister?

The Hon. MATTHEW MASON-COX: In the past. I do not know what is before the Minister at the moment.

The Hon. CHRISTINE ROBERTSON: We have to make a political point in the middle of an inquiry.

The Hon. MATTHEW MASON-COX: It is an important issue of public confidence in the system. You have sort of made the point here in your statement that the task force was successful in bringing part 3A to serve the interests of its members?

Mr MANT: Yes.

The Hon. MATTHEW MASON-COX: Is part 3A really, in your view, something that we should do away with in its current form in order to ensure that the transparency and integrity of the process is preserved and that any perceived corruption is abolished from the current system?

Mr MANT: No. I think the part 3A process is not a bad process just seen on its own. I do not know why we need three processes in the one Act, but if you were going to have one then you would probably design it around the actual process of part 3A. The transparency problem of part 3A is the decision process or the assessment sign-off and the decision process—the fact that the Director General of Planning has no tenure and is not an independent person; the fact that most of them go to the Minister and the process between the director general and the Minister is very un-transparent; the fact that the Minister really does not have to issue any reasons for her decision and the fact that there is not a proper public inquiry; and the fact that there are no third party appeal rights—all of those things mean that, while the process leading up to the assessment sign-off is not bad as a process, it then goes into this black hole and who knows what goes on in the black hole before the decision pops out.

That, combined then with a sense of donations, mates and people in the Urban Taskforce and so on, gives rise to everyone saying—I mean, a lot of the decisions made under part 3A have been good decisions.

Frank Sartor did some very good work in making decisions. It is just that he got totally caught by the fact that he was doing it in a black hole, in a political situation where there were donations made here and he was making decisions there. I can assure you that from acting for developers in the State I know that there is a very early decision you have to make as to whether you are going to go through the donation line or whether you are going to go through the front door. I have had a couple of developers and clients who have gone through the front door, taken a long time and various political advisers have said, "Oh mate, you are going about this the wrong way" and other people I have acted for have clearly got access as a result of donations. One of the reasons I no longer act for developers in this State is that I do not want to do that sort of work any more.

I think we should clean it up, not only the donation problem—there are good things about having donations—but we should clean up this black hole and make it transparent, bring it out in the open, allow people to be properly heard, require reasons for decisions and allow third-party appeals to the court.

CHAIR: Following on from the question by Mick Veitch, it would be very good to be able to see, at the push of a button, the controls of a particular block. How do you make that work?

Mr MANT: We nearly did it in Warringah. I did a local environmental plan for Warringah. We divided Warringah into 80 places. We went to all the legislation, all the layers of controls and wherever we found something that applied to that place, we put it in the document and then we tried to have one document, so you would just get Dee Why Town Centre block 54, and out would come the controls. The department hated it and they undermined it and now they have done away with it.

The Hon. CHRISTINE ROBERTSON: Why did they hate it?

Mr MANT: Because it meant that, as in South Australia, if you have a single document, the State Government can only alter that document. They cannot just come in on Monday morning and say, "I think I will save the wallabies and bring in a Wallaby Control Act or policy." They hate it because it would have meant more work for them when they wanted to change controls. They would have had to actually read the existing controls and see what a change of policy would mean by way of changing the controls. They said, "That is too much work for us if we went down that path". To which my answer is, "But everyone has to do that now; look through it all." The Department does not approve of a single document.

CHAIR: Thank you very much for attending this afternoon and for your contribution. Please provide any answers to questions taken on notice within 21 days.

(The witness withdrew)

GAIL SANDERS, Executive Officer, Australian Property Institute (New South Wales Division), Level 3, 60 York Street, Sydney, affirmed and examined, and

JOHN SHEEHAN, Chair, Government Liaison Committee, Australian Property Institute (New South Wales Division), Level 3, 60 York Street, Sydney, sworn and examined:

CHAIR: Are you here in that capacity today?

Ms SANDERS: Yes, I am.

CHAIR: Are you representing those people today?

Mr SHEEHAN: Yes. I chair the Government liaison committee, and I chair the carbon property rights committee of the New South Wales and Queensland divisions of the institute. I am past president of the New South Wales division of the Australian Property Institute.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice today, the Committee would appreciate if the response to those questions could be sent to the Committee secretariat within 21 days of the date on which the questions are forwarded to you. Before the committee begins questions, do you wish to make an opening statement?

Ms SANDERS: For the benefit of the members of the committee, in case you have not heard of the Australian Property Institute, we are a professional association. We have individuals as members. Our members are all professionally qualified in property. We represent the majority of real estate valuers in Australia. As well as plant and machinery valuers, we have people working in development, funds management, property law and advisory. We liaise with government, both Federal, State and local government. We provide submissions to a lot of matters that relate back to property. The institute's position is that, being a professional association with members who work for government, for private sector and all aspects through the industry, when we provide submissions back to government it is not a one view that we are providing back but a professional view of what we see maybe the results of certain decisions.

Mr SHEEHAN: I could just mention a couple of things. In our submission, if you go to—unfortunately it is not paginated; it would be page 4—under the terms of reference there was a reference to or we responded to the duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and the New South Wales planning and environmental legislation. In that submission we foreshadowed that we were putting a submission in to Doctor Alan Hawke who is doing the independent review. Ms Sanders has a copy of that submission because it was subsequent to our submission here. If it accords with your wishes, we have a copy of that letter which has been submitted to Doctor Alan Hawke, and it is for the Committee's information. I can tender it here if you would like me to.

CHAIR: That would be much appreciated.

Mr SHEEHAN: In that submission to the Commonwealth Government—I know the Committee is fully aware that there has been this independent review the Federal Minister established—we made a particular point, and more fulsome than what we said in the submission to the Committee here. We said that we felt an additional trigger under—if possibly the independent review decided to introduce that extra trigger, which would be a greenhouse trigger. We were concerned that the addition of this additional trigger would lead to a significant number of development applications ending up in the hands of the Commonwealth after lodged with either local government in New South Wales or with the Minister, depending on the section of the Act. We were concerned there that obviously that would lead to a great deal of complexity, which I do not think was ever anticipated in 1979 when the Environmental Planning and Assessment Act was passed.

There is also an issue in respect of the carbon pollution reduction scheme because there is an interface between that particular scheme—I know the bill will be released tomorrow, as you probably know—and land use planning because Ross Garnaut indicates that there is something like six of the main sequestration vehicles at least until 2050 will be land based. There needs to be a great deal of complexity put into whatever zoning or whatever system we have in terms of agricultural and rural land in New South Wales to reflect that because at

the moment our committee at the institute is concerned that, under the Conveyancing Act in New South Wales and more particularly out of what we have seen coming out of Queensland, there is not a mandatory requirement for the registration of carbon offsets which are land based. So it is quite possible that someone could buy a parcel of land, make the necessary inquiries of local government and be unaware of a restriction over that parcel of land flowing from a carbon right to be registered.

So I just wanted to mention those things that we have flagged there because, as I said, in the terms of reference there was a particular reference to this issue of duplication of processes. Already we know—and we have mentioned it in another part of that submission to this Committee—that there is an issue already when there are referrals to some places like, say, the Rural Fire Service and others where there is not really that constraint on time that there is upon local government when it is receiving a development application.

CHAIR: The Department of Planning undertook considerable consultation prior to the introduction of the recent planning reforms. What is your view on the process and outcomes of that consultation?

Mr SHEEHAN: We made a submission—I do not have it with me now—because one of the disappointments from the institute's perspective was that—and again we have mentioned it in the submission to this Committee—that there is not an appeal process for rezoning. We stress quite strongly that the case in Queensland, the integrated planning legislation up there, there is an appeal process to the relevant court. In New South Wales the only way in which—well, you cannot in fact have a review of that decision because it is only the Minister or the relevant local government authority that can decide to rezone. Technically speaking, there is no application that can be made under the Environmental Planning and Assessment Act for rezoning. It is something that must be novated by the actual council or the Minister, who in fact instructs the council to do a rezoning. If the council or the Ministers says, "we will not do a rezoning" that is the end of it. In Queensland that is not the case and it has been like that for many, many years. It has been quite successful because the pros and cons of rezonings tend to get explored in the fullness of time in the court. I have been involved in some of those many years ago for developers and they are quite successful.

The Hon. MICHAEL VEITCH: So what you are saying is that in New South Wales you cannot spot rezone.

Mr SHEEHAN: You cannot as a private individual. It is at the volition of the council to accept a letter that you write to them. You cannot as an individual start the process yourself. It has to be done by council deciding to prepare a draft local environmental plan. There is no way in New South Wales that you as a private individual or as a company or anyone can initiate a rezoning. In Queensland, for example, under the integrated planning legislation there is a standard process whereby you apply for a rezoning, and if the council decides not to do it you whip them straight into the court and then it gets explored whether or not it is a good or a bad proposal.

I suppose that is tied up also with the issue that LEPs in any event take so very long to end up in that process. We have made submissions to the Department of Planning here on one particular pilot that we did for our committee, which was the Lane Cove LEP. That began in August 2004, by memory. It still has not come out of the system, and it has gone backwards and forwards between Parliamentary Counsel and the department and local council. To my knowledge, from what we looked at in that particular LEP, it is an inner local government area and I understand there is a significant amount of residential housing to be provided, industrial land that is no longer needed to be converted over. The system is not working.

CHAIR: You argue that time frames for determinations of development applications are not realistic and need to be reconsidered. This view is at odds with that of most stakeholders who advocate a faster process. Why do you hold that view?

Mr SHEEHAN: I have said here that the current time frames are unrealistic. That is a two-edged sword. I feel sorry for local government as it has 40 and 60 days and other extensions possible to them but complex development applications cannot be dealt with anywhere in that time frame. At the same time if it is shunted off to a referral authority, say, in respect of the Water Management Act or in respect of the Rural Fire Service—I have had dealings acting for developers; I am a chartered town planner and a valuer in private practice—sometimes it can be a year before you get a response back from the authority and the applicant is unwilling to start the process because all of sudden you have to bind the council and a referral authority into an appeal and that is a very hard process.

The institute understands that there is a need for time to be spent on examining development applications but at the same time you have to be sympathetic also to the applicant who is seeing a time frame stretching out. One issue we have been concerned about with the independent review the Commonwealth is doing is that it could end up in the bowels of Peter Garrett's department and you might not see it for a couple of years. That is not good because it means—in fact, assuming that for a moment; the Tasmanian dams case some years ago was the first real entry by the Commonwealth Government into land management in Australia and that was really on the grounds of conservation. With this particular legislation, or this may well come out of the independent review, you might see a substantial involvement by the Commonwealth Government in significant development. That may or may not be a good thing. The time frame is the thing that concerns the institute.

The Hon. MELINDA PAVEY: Picking up on the Lane Cove LEP, was it 2004 or 1994?

Mr SHEEHAN: It was 2004, I think. It was August 2004. For various reasons, we had a member of the institute who was working at Lane Cove at the time, and we followed the path. It got caught up by the LEP template and then it also got caught up when the LEP template finally came out and then someone in the department forgot that they had to have drafting guidelines. So we have been just following it through with Lane Cove council and all of a sudden the department said to the council, "Just use your own guidelines for drafting", because they knew that they had to try to get the thing out. It still has not come out as at today. I could well imagine that there would be significant developments that are waiting on the decision of that particular LEP.

The Hon. MELINDA PAVEY: I picked up from your answer that it was to do with light industrial land that would be more valuable as residential development. Is that the case?

Mr SHEEHAN: Yes. In that LEP there is some land that is industrial being converted over to residential, disused old industrial land. At the same time there is also rezonings to move some of the land from very basic residential zone to a higher density. Lane Cove is one of those inner areas where it is well serviced by transport. You have Artarmon station on one side; you have good access to the river. Yet here we are, we are talking in March 2009.

The Hon. MELINDA PAVEY: Are you able to give an example of your institute members in Queensland who were able to initiate a spot rezoning, for want of a better explanation? What sort of development was able to go on in Queensland that we would not be able to institute or start proceedings here?

Mr SHEEHAN: I am aware of a shopping centre proposal in Caboolturf, north of Brisbane, barely an hour's drive north of Brisbane. There were a number of shopping centres that were old there. A developer proposed to build a brand-new shopping centre, which was needed. The majors were in line.

The council received the development application and because of the local politics involved in local councils, the developers realised that the council was not, I suppose, going to be open and transparent about dealing with it and it went to the relevant court at the time. It is now the planning court up there. Prior to that the Supreme Court dealt with those matters. That development was subsequently approved by way of a rezoning.

The Hon. MELINDA PAVEY: Under the new planning laws in New South Wales, have you been able to identify a speeding up of the development application process or has it remained the same?

Mr SHEEHAN: I can talk to my own experience because obviously we have got people on our committee who have experience in this area. I point out initially that I am not a developer. As Gail said, our people are all individual members of the institute. We act as professional advisers to sometimes government and also to private individuals. I can give you one case, for example, where the Seventh Day Adventists were trying to expand their retirement village up in Cooranbong. There is a desperate need in Lake Macquarie for aged housing. It ended up getting referred to the Department of the Environment—I think it is called, I cannot recall now—because there was an issue in respect of riverine vegetation. It got referred to the same department in respect of the water management Act. It got referred to the Rural Fire Service. At the end of the day it just became so hard that the thing just never proceeded. Consequently, if you go to the statistics you will find that Lake Macquarie has a shortfall in aged housing.

Another example is, again, a retirement village at Alstonville in far northern New South Wales. The Department of Planning's own figures show that in the next 10 years—and the figures came out about three years ago—there will be an increase in people over the age of 65 on the far North Coast of approximately 90,000 people. That is, 90,000 people over the age of 65. There is a retirement village in Alstonville and they

have been trying to extend it into land that is marginal farmland—not valuable farmland, only marginal. It has been impossible to do it because of the referrals to the various authorities: the Department of Primary Industries, the Department of Planning with its farmland project up there. They refuse to take any submissions that are contrary to their own view. Consequently, the project has not gone ahead.

The Hon. CHRISTINE ROBERTSON: Do you know much about this farmland definition issue? I have had one on the North Coast comes to me. Have you or your people had more dealings other than that one nursing home?

Mr SHEEHAN: My particular involvement, the institute asked me to go up a couple of years ago—it would have been 18 months ago, I think—to attend a Department of Planning briefing on the North Coast farmland protection scheme.

The Hon. CHRISTINE ROBERTSON: That is the scheme.

Mr SHEEHAN: The problem with that, as you probably know, is there are two categories. There is State significant farmland and regionally significant farmland. In the documents produced by the department out of the Grafton office, it refers to those categories and then it says that these protocols, this information is not to be used in processing a development application. Of course, in fairness to the local council, like Ballina and Tweed, they have to use something. So they use those documents. If you look a little more closely at that farmland protection scheme, you find it is a very, very broad brush. In a couple of cases I am aware of, one particular case I was involved with, I said to the department, "How can that land be State significant farmland?" They said, "There is a furry edge on the zoning". I heard John Mant a few moments ago and I have some sympathy with John about the zoning. They said to me, "There is a furry edge on the zoning". I said, "That land has got rocks in it. How can you possibly grow macadamias and good quality agriculture produce, like you can down in Griffith and places like that?" They said, "Oh well, that is the flaw in the system". So we wrote to them. The particular developer in this case, it was a charitable body, spent probably $50,000 on a major study by Coffey to show that the land was not agricultural land at all. I should point out that it was zoned or classified as State significant farmland. Absolute silence from the Department in the Grafton office about it! So for 90,000 people, I know just in Alstonville alone that charitable body out there has a waiting list of over 400 couples trying to get into accommodation, and they cannot even extend an existing retirement village.

The Hon. MICHAEL VEITCH: With due respect, you have not answered the question.

Mr SHEEHAN: I am sorry.

The Hon. MICHAEL VEITCH: The question relates to your interpretation of what is valuable.

Mr SHEEHAN: No, no—

The Hon. MICHAEL VEITCH: Hear me out. It is not as simple as you make out. In other communities the interface between valuable farming land and urban sprawl is a fractious issue. A number of times we have asked people to define "valuable" and we have got down to all that it is based on is historical use.

The Hon. MELINDA PAVEY: And soil quality.

The Hon. MICHAEL VEITCH: Your example of the rocky soil is one description, but it could be different in other areas.

Mr SHEEHAN: I was only asked a question about the North Coast study. With great respect, that study focuses solely on the suitability of the land as being either State or regionally significant farmland. It is very, very hard to grow macadamia trees on land that has got big boulders on. There were no other issues.

The Hon. MICHAEL VEITCH: You used the word "valuable".

Mr SHEEHAN: Valuable in the sense that it is agriculturally valuable.

The Hon. MICHAEL VEITCH: Determined how?

Mr SHEEHAN: Determined by the Department of Planning.

The Hon. CHRISTINE ROBERTSON: The Department of Primary Industries.

The Hon. MELINDA PAVEY: It is the Department of Primary Industries soil quality.

The Hon. MATTHEW MASON-COX: I want to pick up on some of the issues you raised. In particular, in that example you said you were not able to take it any further with the relevant council, the rezoning was not approved and there is no appeal mechanism to review that decision.

Mr SHEEHAN: That is right.

The Hon. MATTHEW MASON-COX: What do you propose should have happened in that case as a way of changing the current system to improve outcomes, from your perspective?

Mr SHEEHAN: Based on my perspective and also from the institute's committee perspective, we believe there should be an appeal right created under the Environmental Planning and Assessment Act where rezonings are not accepted by council. As I said at the outset, the problem is that there is no process whereby a private individual or private companies can actually institute the process of rezoning. It is only at the volition of the local government authority or the local government authority directed by the Minister. That is the flaw in the Environmental Planning and Assessment Act at the moment.

The Hon. MATTHEW MASON-COX: In that case could you not have invoked the Minister's discretion as another avenue to overturn the decision by council?

Mr SHEEHAN: The Minister could, and the Minister could say to council, "You should rezone that". But, in fairness, that is a very cumbersome process. A good example coming out of Queensland is that you expose the rezoning application just like you do significant development applications, which is you contest it in the hands of the Land and Environment Court. I point out there have been a lot of rezonings that have not gone ahead in Queensland because the court has said it is not acceptable and there are other ones that have gone ahead. At least you have this independent body that is able to assess the prospect of the rezoning.

The Hon. MATTHEW MASON-COX: One issue that came up in a previous inquiry relating to land development, particularly in rural areas, is that councils do not have the expertise or the resources to develop an LEP.

Mr SHEEHAN: That is right.

The Hon. MATTHEW MASON-COX: They are constrained in dealing with a development application of the sort you mention as a result and the whole thing is gridlocked. Do you have any comments on how we can improve our part of the process?

Mr SHEEHAN: We have not put it in a submission but it is implicit, I suppose, in there, we have got to feel a lot of sympathy particularly for local government authorities that are on peri-urban areas, on the edges of expanding areas or more particularly in western New South Wales. Moulamein is an area, for example, where there is a lot of land which has a particular form of saltbush, lignum, which has been identified as having a botanical value possibly for pharmaceuticals. But the chances of Moulamein being able to go and do a detailed study of the vegetation in their local government area is just not possible. You are dealing with an incredibly valuable natural resource which no-one could possibly map. Just as background, I am appointed director of the Australian Spatial Information Business Association, that is, surveyors, GIS people. I am told there is only about 3 per cent of vegetation in New South Wales that is accurately mapped. When you talk about the carbon offset system that is going to be based on vegetation sequestration, it is meaningless until you have some mapping done and the resources to start there.

The Hon. MATTHEW MASON-COX: It is a resource issue as well for local government?

Mr SHEEHAN: Absolutely it is a resource issue. Everything seems to flow down to local government except the money to do these things.

The Hon. MATTHEW MASON-COX: You give an example regarding the Kiama LEP, particularly in relation to injurious affection. Could you explain that in more detail for the Committee?

Mr SHEEHAN: When the Cumberland Planning Scheme came in, it was proposed that there should be compensation paid when a property was injuriously zoned, in other words, there was an incapacity or reduced capacity of an owner to be able to use his land as he used to before the Cumberland Planning Scheme came in. I think it was Peter Spearritt, in his book *Sydney since the Twenties*, said there was a massive amount of claims for compensation and the government of the day got spooked at the idea of compensation as a result of zoning. Consequently, that was scrapped. However, I should point out that I have just come back from Denmark where I gave a paper on compensation arising from land use planning. The example of Kiama is, I suppose, an excellent example of this. Land is zoned around Kiama that is very visible. It is that idyllic sort of view of the grassy hillsides. It is very attractive. But a lot of it is privately owned, probably most of it is privately owned and no-one wants to see urban sprawl covering all those parcels of land. However, they are privately zoned under what Kiama council did some years ago. It is probably the first council to do it. It introduced a very, very restrictive rural zone, which effectively said that all you can do on the land is beekeeping and that is about it. So the land was really frozen to simply a non-effective use and it meant that you really had public conservation of that land at a private cost.

What the institute said a number of times in submissions over the years at various times is that we believe that the process of compensation should be expanded to look carefully at when land is zoned for what is really a public purpose but has a little bit of private use in it which enables the government agencies to avoid acquiring that land. That is a very significant issue because you can have large tracts of land which people are obliged to maintain and which they cannot force the government under the inverse compulsory acquisition provisions to acquire. The institute has written substantially about that.

The Hon. MICHAEL VEITCH: Were you present for part of Mr Mant's evidence?

Mr SHEEHAN: At the very end.

The Hon. MICHAEL VEITCH: He made the suggestion about electronic capacity where people could type in a parcel of land number.

Mr SHEEHAN: I heard John say that.

The Hon. MICHAEL VEITCH: What are the institute's views about that?

Mr SHEEHAN: I wish you had not asked me that. I said to Gail when we heard him say that, it just will not happen simply because the resources are not there in councils and you will have so much fracturing now of information trying to pull it back together, particularly with the Commonwealth Government's increasing involvement through the registers and the Commonwealth Environment Protection and Biodiversity Conservation Act, for example. When the Native Title Act came in in 1993, it introduced substantive involvement by the Commonwealth Government in land management which, of course, had come out of the Mabo case and was part of the Commonwealth's constitutional capacity. You cannot do a search of a rural property in New South Wales and find out whether there is a native title claim over it. You have to go to another body, the National Native Title Tribunal. There is no interlocking, no interface between the States' land use controls.

I also suggest to you that there is a problem even within local government because in lectures that I give at the University of Technology Sydney [UTS] you have State environmental planning policy, old regional plans, LEPs, DCPs, codes from the council, resolutions by the council. About six months ago I had to give an opinion to a commercial client who said to me, "What is the potential permissibility of uses on this land?" Seven pages later my client rang me up and said, "Look, John, thanks very much, the cheque is in the mail. Gee whiz, I am glad you can write this sort of stuff because I could never get the time to sort that out." It is not user-friendly and it is not getting easier. That is the problem. I feel very sorry for people going along to council chambers where councils are concerned about their liability and asking, "What is the zoning?" Someone points you to a map on the wall and walks away from you because they are so worried about their liability of giving bad advice or giving advice that would end up placing the council in a difficult position.

For the person who is trying to find out that information it is very difficult. The same for 149 certificates which every lawyer will tell you are only as good as the moment they are issued. A moment later it might as well not be in your hands. The resources are not there which the previous question said.

The Hon. MICHAEL VEITCH: In the submission you talk about the inadequacies of planning development controls to provide protection of carbon property rights.

Mr SHEEHAN: Yes.

The Hon. MICHAEL VEITCH: How is it overcome? Is it a simple process to overcome?

Mr SHEEHAN: I have been concerned for many years and the institute has written again in various submissions about this. In the bad old days of planning prior to the Environmental Planning and Assessment Act where land was simply non-urban or village in the rural areas, we really have not advanced much beyond that. You look at a major rural town planning scheme or LEP and it is just about the same. There is this big colourless wash which covers anything that is rural. I point out to you that if you go to an area like west of Hay, that I know the chairman is aware of, on the river the controls are riverine vegetation, salinity, Aboriginal cultural heritage. There are great big mounds of middens out in that area. There are native title claims. There are areas involved with European cultural heritage. There might be native vegetation controls. I have not even got to the land use planning yet, so the complexity is so great. On top of that you have got the old scaling system for agricultural land by the Department of Agriculture which even the people in the Department of Primary Industries will tell you is so out of date it is not funny.

High-quality agricultural land—I mean that sort of subtlety that I mentioned to you in Alstonville where you have got land which has got rocks on it which is still zoned as State significant land. The reality of that was, and maybe you did not agree with me, but the process in that farmland study that the DOP did on the far north coast was to identify valuable agricultural land. Now stuff that has got rocks on it is not what I call valuable agricultural land or it is a pretty interesting tree that can grow—

Ms SANDERS: carbon adds to complexity—

Mr SHEEHAN: And carbon adds the extra complexity to that because if you have not got those sorts of controls on that one-stop shop that John Mant was talking about, add in the issue of land-based carbon offsets how are you going to introduce that? I do not think anyone has even thought about that.

The Hon. MICHAEL VEITCH: Throughout your testimony you have spoken a lot about various government departments involved in the assessment, not so much the approval, process. In your view are there too many government departments involved or do you suggest there should be a streamlining of government departments that are involved in the assessment process?

Mr SHEEHAN: I was acting commissioner in the Land and Environment Court until the start of this year. I had two one-year terms there. My heart went out to looking at what the developers were encountering at different times. These developers sometimes are people trying to put up a large garage at the back of a small complex. There are too many government bodies involved. Again my sympathy also goes to councils because I have dealt a lot with council officers and for them trying to get information out of the Rural Fire Service or the water people in the Department of Environment is nearly impossible. It is hard for me as a practising planner and it is even harder for them, amazingly, because they cannot just get in the car like I can and go out to Blacktown and see the Roads and Traffic Authority because I happen to know a guy out there who says to me "Hello John, How are you?" and "Yes, this is where we are going with this road widening." People in councils have not got the resources to do that. There has to be more information flowing into local government. Really local government is the spot where you should go to for this one-stop shop. But they have got to get the flow of information in from the other bodies and also they have to have the resources to be able to put that in a form that people can access.

CHAIR: Have bodies other than government bodies have ever tried to put something together to say "This is a one-stop shop. This is how it should be done."?

Mr SHEEHAN: Not to my knowledge, no.

CHAIR: Is there likely to be?

Mr SHEEHAN: Not to my knowledge. Case law in the Land and Environment Court is a good source. You can often find out planning principles and things like that but beyond that it is obviously local government because it is accessible to the broader community and that is where the information should be. It is surprising

that, particularly going back to rural and regional councils, the lack of information they have is really scary. I am just mentioning Swan Hill, for example, Moulamein shire. The building inspector is the local shire planner and I think he probably has some other role. This one man does all these things and he has one secretary who comes in every now and then. He covers an area that is probably twice the size of Belgium.

The Hon. MATTHEW MASON-COX: I want to pick up the concerns of a lot of local government in relation to getting back information from a broad spectrum of government departments. You have suggested a one-stop shop, which is practically the way these things need to occur rather than all these authorities perhaps having too much independence. What do you think about reversing the onus so that once notice is given to the relevant authorities that have consent authority that the onus is on them to respond within 30 days, or some prescribed time limit, so that these processes are not locked up at the whim of some bureaucrat somewhere else?

Mr SHEEHAN: I think that is an excellent suggestion. A lot of us in the professional area in property would see that as being the way to go. When you receive a development application you know who the people are who have a referral responsibility. You send it out to them. If we have not heard from you in, say, for arguments sake 60 days—give them a fair time—we assume you have no response. That seems attractive to me and to a lot of people but my own experience in seeing the way that referral bodies operate is that you could nearly guarantee that there will be a let out clause somewhere there, "Oh yes, but, if we seek further information it then blows out the timeframe." They would use something like that. I could well imagine they would say "We can't possibly operate in all circumstances under that time constraint."

The Hon. MATTHEW MASON-COX: It is about introducing some accountability in the system and there is no accountability whatsoever in the system at the moment.

Mr SHEEHAN: Absolutely.

The Hon. MATTHEW MASON-COX: Until you are willing to break with the paradigm that does not work, outcomes are not achieved.

Mr SHEEHAN: Absolutely. Can I just give you a short answer, Mr Chairman, to further that example? On the northern part of Lake Macquarie I was involved in looking at a development, which was impacted upon by the Water Management Act. It adjoined Dora Creek, as I recall, which flows into Lake Macquarie. However, the way that the Water Management Act is written there are also catchments associated with a creek. If you are really innovative as a surveyor you could just about draw lines over any parcel of land to say that that is a catchment because water flows downhill from here to there, to here. Of course, at the end of the day here was a large parcel of land which was effectively incapable of being used because there was a really blunt way to describe what was a catchment. We need to have very careful descriptions of just where the referral responsibilities lie. Anything basically is in a catchment area. So you really have to say it has to be a catchment area of certain maybe megalitres of catchment or something like that. It needs careful attention.

CHAIR: I thank you for your contributions. The committee will probably have further questions put in writing. Would you please respond to them within 21 days of receipt of them?

Mr SHEEHAN: It will be our pleasure.

(The witnesses withdrew)

(Short adjournment)

JULIE MARIE BINDON, President, Planning Institute of Australia, Post Office Box 484, North Sydney, and

PETER ROLF JENSEN, Planning Institute of Australia, planning law chapter, Post Office Box 484, North Sydney, sworn and examined:

CHAIR: In what capacity do you appear before the committee?

Ms BINDON: As president of the institute.

Dr JENSEN: Involved in the planning law chapter.

CHAIR: Do you want to make an opening statement?

Ms BINDON: Very briefly. I am assuming that our submission is taken as read?

CHAIR: Yes.

Ms BINDON: The main point that we wish to make is that the planning institute firmly believes that we need fairly significant legislative reform. We believe we need to replace the Environmental Planning and Assessment Act 1979. We have held this position for quite a long period of time when we have been calling for a new Act. As our submission says we essentially believe that there needs to be two separate pieces of legislation to replace it.

One piece of legislation dealing principally with the whole issue of strategic planning—we have dubbed that the Strategic and Integrated Planning Act—and the second piece of legislation dealing with the development assessment. This is based on our position that currently the Act has become unwieldy, overly complicated, very difficult to navigate, very time-consuming, inefficient and costly. It has become very heavily oriented towards development assessment, at the expense of good forward or strategic planning, that sets the framework first and foremost. In a nutshell, I think that is our submission. Would you like to add anything Peter?

Dr JENSEN: Back in 1983 I was invited to present a paper on the Environmental Planning and Assessment Act and I entitled it, "A thousand days of the Act". In a nutshell, the conclusions were that it was more complicated than the previous legislation, which was made under the old Local Government Act and I have to say to you as a practitioner—I am an architect and a planner from Local Government and latterly from the court—the situation has got progressively worse over the intervening period. I find it extraordinarily hard to understand how contemporary practitioners really operate in the context of planning these days.

I have come back to being a practising consultant and, in my opinion, it is an absolute minefield. It has become so complicated that most local authorities are not prepared to give you any sort of a coherent answer about development. They have been forced into being incredibly timid because if they do not get their answers right they finish up in court and they get lambasted, by their own people, for spending money on things that they ought to fix up and, on the other side of the coin, they get lambasted by the development industry for not dealing with things expeditiously. I believe this is all very much a fault of the framework of planning controls that have been developed over a long period.

We have created a rod for our own backs and my perception, which is very much embedded in the material that the Planning Institute of Australia [PIA] has produced, is that it is no longer possible to cure this simply by adding more changes. In the most recent round of changes, in my opinion, what has been produced is another attempt to try and embrace important issues of strategies by further amendments. The net result is going to be something which I think is going to be totally unworkable for most people in the future, with every sort of implication of cost and delay and all the things that have really precipitated the changes that have been made, in my opinion, are misdirected.

To that extent, as the president has already said to you, the PIA's position is that it has got to the stage where the only solution really is to chop the Gordian Knot in half and make two pieces of legislation from those two halves: one to deal with strategy—which has got a political complexion—and the other half to deal with simple development control—a simple system where the local authorities know what they are supposed to be doing, in terms of the use of land. Because all of the departments that have been involved in deciding how

things should develop have had their arguments before the event, not after the event, as happens now. So one finishes up with a development control system where Local Government authorities are able to confidently set up a framework and to administer it without it being always problematic and always likely to lead into court.

That is very much the position I would take, and I hope it is reflected in PIA's paper—I believe it is. We have given you a lot of good reasons why there needs to be a change to bring about a strategic position far better than happens at the moment. We have given you some examples of where it is happening overseas. I hesitated to use the British example because that is well-known, but it seems that the Irish have managed to discover strategic thinking and they have even applied it down to the level of cities like Cork. If you read attachment number one you will find what is going on there. That derives from European advice as to how to go about doing strategic planning which embraces the natural environment, sustainability and all of those other issues that have an economic inclination which at the moment in New South Wales seem to merely lead to confusion, complexity, expense and fights in courts. I speak about the last issue with feeling because I have had to oversee fights that really should never have happened, because the issues could have been dealt with long before ever there was a development control, local environmental plan sort of basis to resolve them.

CHAIR: Just before questions there are a couple of things I should point out to you. If you should consider at any stage that certain evidence you wish to give or documentation you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you do take any questions on notice, the Committee would appreciate it if your response to those questions could be submitted to the secretariat within 21 days of the date on which the questions are forwarded to you.

The Department of Planning undertook considerable consultation prior to the introduction of the recent planning reforms. What is your view on the process and the outcomes of that particular consultation?

Dr JENSEN: Am I allowed to be blunt? It was done too quickly and superficially. It looked good but the net result was some of the best advice the department received from its own consultants was dealt with in three weeks and the topic was enormous.

The Hon. MATTHEW MASON-COX: Why do you think that happened?

Dr JENSEN: Someone was in a hurry.

The Hon. MATTHEW MASON-COX: Why do you think they were in a hurry?

Dr JENSEN: No doubt because there was pressures to relieve some of the perceived logjam that was stopping development and stopping job creation.

The Hon. MATTHEW MASON-COX: Did they achieve that?

Dr JENSEN: Well, I think—perhaps, Julie, your perception is better than mine as another practitioner with a big firm—the jury is out at the moment.

Ms BINDON: I think from the Planning Institute's perception—and I was quite involved in the process of the 2008 reforms—the consultation was very quick and there was a lot of pressure to respond to papers in a very short timeframe. Why that was, I am not sure. We were not driving that. We were constantly trying to say, "Let's slow this down. Let's better understand it. Let's understand particularly what is a lot of the detail that will flow from this legislation." We had concerns about the devil being in the detail that was not then available. That was to come out later, and it is still emerging with things like the housing codes, the regulations such as for the delegations of consent powers to the Planning Assessment Commission [PAC] and the joint regional planning panels [JRPPs]. We had no idea how that was going to work.

When we said we believed we needed fundamental legislative change we were told that was not going to happen and we needed to make some reforms to improve the efficiency of the system, which is something the Planning Institute strongly supported. We agreed that the system was inefficient. We supported some of the proposals in the reforms; there is no doubt about that. I think there is good intention in those reforms and some of the measures are very sound but we have not yet seen the benefits of them following through. We have not really yet seen the outcome of, for example, the PACs and the JRPPs and we have not yet seen the effects of the housing codes because they only came into force at the very end of February. So I guess the jury is out.

There is also a lot of work to be done through the Implementation Advisory Committee, which was something that the Planning Institute—I think it is fair to say—was pretty much at the forefront in requesting that there be an Implementation Advisory Committee, because we were concerned that the detailed work had not been done in the legislation as presented and we wanted to make sure that things were being addressed thoroughly and properly as the rollout occurred. That is still happening to varying degrees of success.

CHAIR: Is that committee well represented by a broad base?

Ms BINDON: Yes, there is a broad group of organisations. The Planning Institute is one of the organisations represented. It meets monthly. But we have already mentioned to Minister Keneally that there are certain aspects of it that we are not particularly happy with in how it is working. We are talking about how we might improve that still.

CHAIR: What timeframe would you like to see as to indications of how it is working?

Ms BINDON: A lot of the reforms were on the basis of reducing the sheer volume of development applications in the system, because the small development applications had been clogging the system. Minister Sartor pointed out that there were about 120,000 development applications in New South Wales compared with approximately 60,000—half that—in Victoria; a similar sized State with a similar size amount of activity going on. The idea was to cut out the small applications that were clogging the system so that more work could be done on the larger, more complex applications—appropriately so—and more work could be done on the strategic planning issue of getting the plans right because all the resources have been going into small-scale development assessment. Those promises of—I cannot remember exactly the number that it was suggested to us these development applications would be cut by—quantifiable measures, such as the reduction in the development application numbers, were promised to us within a period of 12 to 18 months, I think it was. What we would be looking for is going back to see what was said would be the achievements when the legislation was going through Parliament and what has exactly happened. It is too early at this point to do so, even though we are nearly three-quarters of the year through those reforms being enacted. We would hope to see some noticeable shift in these numbers by the end of the year.

Anecdotally, the information we are getting back from our members is that development application numbers are down anyway because of the economy. I do not think we therefore need to confuse that it has been the reforms that have achieve that outcome; it could just be the economy.

CHAIR: You would know that by the amount of applications anyway, would you not?

Ms BINDON: That is anecdotally what the councils are reporting, yes.

The Hon. CHRISTINE ROBERTSON: To pick up on the question by the Chair as to the representation on the consultative committee, already I have picked up a problem with the new housing approval processes. There is some criteria that floodplain development requires a development application and in western New South Wales we have several towns that are up to 90 per cent flood prone. That means that the processes have removed the structure already in place. Do you know who was representing rural planning?

Ms BINDON: I am sorry, I do not know. I am not actually sitting on the Implementation Advisory Committee.

The Hon. CHRISTINE ROBERTSON: I am trying to pick up where this huge deficit has appeared? I am sure it is fixable—

Ms BINDON: Do you know the answer to that?

Dr JENSEN: I think you have put your finger very firmly on a very major issue as between planning and natural resource management in this State. At the behest of PIA I sit on the Natural Resources Advisory Committee and it is quite noticeable that there is great concern amongst people who are involved in the environment and natural resources that there has developed a duality of development processing which has no doubt lead to the sort of situation that you have just asked about. Sorting out the problem of where you should be able to build because of flooding, in my opinion and based on the approach the PIA has taken, should be done long before an LEP is produced that lays down how you are able to build on land.

The Hon. CHRISTINE ROBERTSON: So we actually remove Cobar, Coonamble and Narrabri, which are 90 per cent flood prone.

Dr JENSEN: It is not a case of removing them, is it? It is a case of reviewing what you should do given the circumstances you have just described.

Ms BINDON: I think the question is how you manage development in those floodplains. I am not quite sure what you—

The Hon. CHRISTINE ROBERTSON: The changes mean that rather than having a structure where there was a condition of building in the floodplain that was understood and people were notified they were on flood-prone land the new process says that everybody on flood-prone land has to have a DA. Suddenly 90 per cent of development in those places requires a full DA. That is the opposite of what you said we were trying to do.

Ms BINDON: To try to streamline and reduce the number of applications. That is right.

The Hon. CHRISTINE ROBERTSON: You were talking about the committee and I wondered what the representation was when this issue has come up so quickly.

The Hon. MATTHEW MASON-COX: Christine, is that not complicated by the fact that in a lot of those areas they cannot get an LEP up, so therefore you have a DA that you cannot get up locally.

The Hon. CHRISTINE ROBERTSON: They mostly have LEPs but the new process actually has a phrase about flood-prone land requiring a DA. I understand why that proviso has been put in but the fact that these places are built on a floodplain has been forgotten.

Ms BINDON: I think it is simply saying that if you wish to build in the floodplain you now have to make an application whereas previously you did not. That is a checking mechanism. The same applies with bushfire-prone land and other types of land that are considered to have certain risks.

The Hon. CHRISTINE ROBERTSON: Thank you. You talk a lot about the word "strategic", and quite a few submissions have done so, in relation to planning. What do you mean? Strategic for whom?

Dr JENSEN: It has the same meaning as in warfare. You can respond by thinking forward, anticipating problems and working out ways to meet the problems that will emerge as a matter of strategy. I suppose LEPs represent the tactics of what you do. When we refer to "strategy" we are trying to anticipate a situation that is developing, look at a number of different ways it may develop and come up with solutions that can lead into a process that is expressed in a local environment plan designed to make work the strategy that has been adopted.

The Hon. CHRISTINE ROBERTSON: These are solutions in relation to society, community, business—

Dr JENSEN: Precisely.

Ms BINDON: Strategic planning when applied to spatial planning, as we call it, or a land use dimension when we are planning things on the ground, is really about looking to the future and it tends to be medium and longer-term. There is a process to determine what that future would look like. It incorporates and integrates all the future end requirements of the various agencies and looks at anything that will affect the use, development and management of land. It would look at integrating natural resource management, housing and housing affordability, access—transport systems and routes, major infrastructure such as where water and sewers go, and natural systems. It looks at where the population will be located and where jobs will be located, and how these are connected through transport. All the agencies contribute to this process so the whole community knows the direction in which we are headed and how we are going to get there and it resolves a lot of these issues at the strategic level rather than at the project level, which is often happening now. We are seeing people putting in development applications—the larger ones under part 3A—where many of these issues are not resolved between the agencies. That is very inefficient and often litigious because it has not been sorted out firsthand. Sometimes an approval is given—we have seen this in a number of cases—and then there will be a challenge on the basis of climate change, for example, against an approval already granted. We want these

things resolved as best we can at a strategic level first and then the councils can make their plans with the directional framework having been set.

The Hon. CHRISTINE ROBERTSON: So it is more than a statement of intent?

Ms BINDON: It is.

The Hon. CHRISTINE ROBERTSON: It is actually a statement of intent and implementation.

Ms BINDON: A statement of intent translated through a structure plan to where things are located on the ground. It starts at the State level. As we all know there is a State Plan, which is a fairly broad thing. It does not really go down to the next level and into the detail. It is not plotted strategically on the ground, even in general State terms of where key infrastructure is going to go.

Dr JENSEN: The position of PIA is quite substantially different from that of your previous witness, Mr John Sheehan, who when asked questions about this sort of process in my terms rather threw up his hands and said, "It's all too hard and it's all too difficult and it's all too late." I take a much more optimistic position. I believe it is not too late. This Committee has the power to influence the State Government in relation to the Federal Government. The Federal Government may very well have a big influence on the way strategic planning and development control planning is done in the future. This is a point in time where a suggestion that there be a change might be highly influential and produce something that is very useful. That is the position the PIA has taken in its presentation. The invitation was much more constrained, I have to say. It was very much "What we have now in the 2008 LEP is this. What do we do to make it better?" We have taken the position that we have finished up with a dog's breakfast, to put it bluntly. It needs to be fixed very radically. You have an opportunity to push some buttons and get things to happen that has not existed previously because you are in the Council of Australian Governments umbra and you are able to influence at the Federal level.

CHAIR: We will give it a good shot anyway.

The Hon. MICHAEL VEITCH: I was interested in your comments earlier about natural resource management. In your submission you talk about inappropriate local government boundaries and the influence they are having on the creation of LEPs or the effect on LEPs. Do you have a view about the planning that should be developed around catchment areas as opposed to local government boundaries?

Dr JENSEN: I think that is an issue that really needs to be looked at in a strategic way. Administrative lines of demarcation may be appropriate but also they may not. Very often catchments run right across administrative lines and probably you need to sort out how they work. I believe very strongly that catchment management and local planning management need somehow to be reconciled. At the moment there tends to be a parallel universe, which in the worst-case scenario finishes up, after a project has been lodged, as a fight that can only be sorted out at the Land and Environment Court. I think that is a ridiculous waste of energy. The departments should be able to sort out their advice to local authorities long before that happens.

The Hon. MICHAEL VEITCH: What sort of role are you advocating for the government departments in this process? Previous witnesses gave testimony that said basically they are slowing the process down too much and should not be involved. On the other hand the advice they give could well finish up in court if something goes wrong, such as a house is flooded or burnt.

Ms BINDON: We are advocating that all government agencies be involved in strategic forward planning in the earliest stages so that they help set the policy agenda and the planning framework and translate that onto the ground. There is a planning function in each of those agencies and that function needs to be integrated with the planning proposals from the other agencies. Once that is done the LEPs can be created on the basis of what people can and cannot do. There should be no further role for the agencies. They will have done what they said they would do. For example, we are involved in some projects in Queensland. That is pretty much how a lot of it happens there. Once the plan making is set and everybody knows what goes where and how —it is a public document—applications come in. Often they are not even advertised. If they are consistent with the plan they are checked and approved. That does not happen in this State.

The Hon. CHRISTINE ROBERTSON: Because the LEP has been advertised.

Ms BINDON: That is right, and the community is very involved in the preparation of those plans as well. It is important that they are involved.

Dr JENSEN: Part of the problem with the departments at the moment is that they have been placed in a position where they are in effect administratively checking whether something that has already been set in stone is not going to cause them problems in terms of their responsibilities. They have not been involved in the design of the policy that would be reflected in the LEP so they only get the opportunity to look at the policy implications when it is almost too late to deal with them. Very often they either delay or give an inadequate answer, or some other group steps into the breach and stops the development dead and it goes to court. What Julie has just said seems to me to be the right approach. If you bring those sorts of organisations into a policy debate right up front and get them to sort out the things they see as absolutely critical to a particular locality that can then be translated into advice that becomes the front end to an LEP, so you have some hope of avoiding disputes down the track. That is why we think that some other legislative structure that brings that process forward and allows things to be sorted out, which at the moment seems to occur much too late, would be a very good thing.

The Hon. CHRISTINE ROBERTSON: Would this work if the groups of departments were heavily involved in that regional LEP or catchment management area LEP, or whatever—probably not an LEP, because that is local, but the strategy at the regional level? Then local LEPs would have more resources to be developed because there would be more input into the regional plan. Is that a feasible thought?

Dr JENSEN: If you assume that the Federal Government, its money and its policies about regional development and borders and so on are integrated with what the State does, and they in turn are integrated with what local government does, the process becomes a front end to the development control LEP process and there is some hope that we will get a system that works. At the moment it is all done by referrals and it is all after the event. People are placed in a defensive position and they have to protect their patch. There is a good deal of silo-type thinking in any case, we notice. You probably are very familiar with it.

Ms BINDON: There has also been a terrible problem in that a lot of the plans are very outdated. The LEPs, the statutory plans we all have to work with, are very old.

The Hon. CHRISTINE ROBERTSON: At local government level?

Ms BINDON: At local government level. One of the reforms to the Planning Act—not the 2008 reforms but the major one before that—introduced a requirement that councils must review their plans every five years. That kind of five-yearly mandatory review mechanism has been in most plan-making legislation around the world for a long time. It did not exist in this State. As a result a lot of our plans are very old and a lot of the local councils that make those plans are very reactionary. They are opposed to change. Unfortunately, particularly in high growth areas like the Sydney metropolitan area, we have to deal with growth and we have to deal with how we manage that change. To simply sit on an old plan because it was conveniently quite restricted has also led to these project-by-project attempts to push back against what are very often restricted and outdated instruments.

CHAIR: Who would be best equipped to put together the type of planning you are talking about?

Ms BINDON: That is an interesting question. I think it will have to come from State Government. We have not really gone into the administrative side of this. There are a couple of good examples. One is the South East Queensland Strategic Plan, or SEQ Plan 2030, which has brought together all of those agencies at a regional level, that whole growth area of southeast Queensland, by the State Government involving all the agencies at the very highest level. I think it is almost director general-type level, getting together and working these through. Another example is in Western Australia. They have the Planning Commission over there. The State Government has this planning agency that involves all the agencies in producing these plans. I do not know enough about the administration or the structure to see who they report to. I am assuming it is to Cabinet, but I am not sure.

Reverend the Hon. FRED NILE: Following up on the proposal of two separate Acts, the Planning Institute of New South Wales played a major role in the passage of the legislation last year. You helped to coordinate the coalition of a number of organisations.

Ms BINDON: Yes. We were a member of what is called the Coalition for Planning Reform, which was a group of industry and professional bodies.

Reverend the Hon. FRED NILE: Which I think was a positive move in helping that legislation to move forward. Did you put up the proposal of two separate Acts at that time?

Ms BINDON: No, we did not. In the submissions we put in we did say that we needed a new Act. But, as I said in my introductory remarks, we were clearly advised by the Government and the Minister that we were not looking at a new Act, that that would take some time to do, with which we quite agree. We will have to go through green papers and white papers, and do this all thoroughly and properly. What was needed was to move things quickly to unclog the system. On that premise, as we said in our submission, we believe we need a new Act; however, on the premise of what you are saying, these are the things we support and these are the things we do not support.

Reverend the Hon. FRED NILE: Because of the major reforms that were in that 2008 legislation, some of the witnesses we have heard from already have said let us have a settling down period and no major changes for two to five years. You are proposing a major change in the immediate future?

Ms BINDON: What we are proposing would be consistent with that timeframe. I think it is really going to take at least two years to seriously think these things through, get the white papers and green papers out there, get the consultation happening, and also taking on board some of the work that the Development Assessment Forum is doing at the Federal level. We would like it to be integrated. What we are suggesting is integrating legislation at the Federal level as well. We know that we are caught by Federal legislation on threatened species, for example. That needs to be rationalised, so we have to work with the Feds. I think that realistically it is not going to happen within two years; it is the two to five-year timeframe that we should be looking to have some really good, robust, well-thought through alternative legislation ready to roll.

Reverend the Hon. FRED NILE: You are speaking as if there seems to have been no strategic planning. Do you feel that it has not been met by, say, documents such as the State Plan? Do you not see that as strategic planning?

Ms BINDON: No. It is too cursory—

The Hon. MATTHEW MASON-COX: It is a political document.

The Hon. CHRISTINE ROBERTSON: There is no need for that. Ms Bindon explained earlier that, as well as the strategic statement, we need to have implementation statements.

Ms BINDON: It needs a lot of fleshing out.

Dr JENSEN: One of the things you very frequently see in good strategic plans is an assessment of various scenarios—different directions to go and an assessment that is done in a very coherent and organised sort of fashion that says, "Of this array of things that we might do, one of them being do nothing, this is the best direction to go." That testing process is the thing that is conspicuous by its absence in most things that you might think were strategic planning. There is almost no establishment of alternatives, certainly very little exposure of alternatives to the public. Maybe behind the scenes a discussion goes on about what might happen, but it does not come out. That is part of the process that we think is in strategic planning. It is involvement of the public in what you are thinking about doing as well; not doing it behind closed doors. Doing planning behind closed doors is an absolute prescription for opposition. People who are not involved in planning as a matter of course tend to oppose it, whereas people who are involved and understand the process, even if it does not necessarily advantage them, will usually support what comes out of the exercise.

The Hon. CHRISTINE ROBERTSON: Each department has done a detailed implementation plan for their components of the State Plan, but to get it out you have to go to the website and have a look.

Reverend the Hon. FRED NILE: There is also strategic planning with the growth centres legislation. You do not see that as meeting any of this need?

Dr JENSEN: The growth centres are really another expression of how to cope with Sydney. We have a parallel exercise going on that the president might have mentioned. We decided to have a look at a British

concept Eco-towns recently—and we produced a paper about this—which goes well beyond the bounds of the Cumberland Plain to look at New South Wales as a place where you have to think about where people are going to be in the future, over a 30 to 50-year time horizon. My response is that once you start thinking on a longer-time framework to 2030, then you have to look in a different way at Sydney. The growth centres are really, I think, a mechanism for dealing with an immediate problem and coming up with a sort of solution. But it seems to be like a cliff: you get to 2030 and that is the end of the process, instead of thinking to 2050 and 2100, where we have a growing population, we have a reducing water supply, there is a constraint on the total capacity of the Cumberland Plain to accommodate people. Instead of saying we will just solve those problems by the growth centres, we have to think about where the whole State is going over a long time period.

Ms BINDON: The Growth Centres Commission strikes me as being a pretty effective organisation at doing what it was set up to do, which was basically a delivery agency for land in those particular two nominated growth centres in the northwest and southwest. I think they are doing a good job at what they do. But they are, if you like, about delivering projects, albeit very large projects, in those two sectors to house a lot of people. We are talking about strategic planning coming from the biggest level down, from the Federal level, such as climate change, water resources, population, major infrastructure requirements for that population, down through the regional level, down to the metropolitan level. Then you determine: Yes, we are going to grow in the northwest and in the southwest, and we are going to connect those two places with good public transport and then we are going to do all these other things that that requires. We are going to service it properly with water supply, sewerage treatment, and so on. Then you get Growth Centres Commission people who implement that strategy.

I think they do quite a good job actually, because in those particular confined areas—and frankly, it is quite easy areas because it is greenfields—they are able to coordinate all the supply agencies, such as Sydney Water, and make sure that things are coordinated and built in as timely a fashion as possible.

Dr JENSEN: They might have a bit of an administrative problem at the moment, because they have now been transferred inside the Department of Planning. What their fate is likely to be under that circumstance is an open question in my view.

Reverend the Hon. FRED NILE: I am troubled by the idea of the two Acts of Parliament. In view of all the work that has been done on the reforms last year, would it be possible to have another Act of Parliament that just dealt with the strategy? You do not have to throw the baby out with the bathwater?

Ms BINDON: What we are saying is: throw out the baby and the bathwater and the whole caboodle as far as the Environmental Planning and Assessment Act is concerned, because it is so complicated. You could look at completely revamping, and paring it back and simplifying it, if you wanted to. That is an option. What we are saying by having new legislation is that it is as much about signalling to everybody in the State that this is serious fundamental reform; it is no longer another tweaking or a fix-up of the legislation. It is about therefore signalling that there will be cultural changes. We need to think differently and behave differently to get the whole system to respond differently. I think brand new legislation will be a bit of a wake-up call in terms of cultural change.

Dr JENSEN: We did look at the possibility of scissoring the existing Act, splitting it into two parts and collecting together all the bits that dealt with policy and strategy in the front end and trying to simplify the back end into development control. But the reality is that the Act now is 420 pages long and there is so much mixing up of policy and strategy-type stuff with development control administrative processes that in the end we came to the conclusion that this is impossible. The department just could not handle another round of manipulating the existing legislation, and it would be better to give them a clean run at thinking about how you do a strategic system and how you would do a simple development control.

I imagine that John Mant, who preceded us I understand, has hammered you about development control processes. I think his system of development control is quite interesting, and it works together with our approach of two steps quite well, I believe.

Ms BINDON: Also, there has been a lot of work done on development control through the Development Assessment Form. That is what DAF is about. That has been a lengthy process that has covered the entire country. DAF is run through COAG, and it has been involved with a whole lot of different professional and industry associations and has largely reached consensus on a lot of fundamentals. What we are saying is: Do not reinvent that wheel; build on that we wheel. That wheel is quite different to the Environmental

Planning and Assessment Act in terms of how it manages development assessment. It is much more modern, I think much more logical, and also more straightforward.

The Hon. MATTHEW MASON-COX: I want to ask you about part 3A in particular. You mentioned that one of the imperatives as seen by government is to unclog the system: rather than starting again, let us unclog the system and get on with it. One of the other imperatives that seem to be at the heart of this is confidence in the existing system, particularly under part 3A, and a need to review that in relation to the donations for decisions culture, if you like, that has been seen to be promulgated by that type of system. Do you think the new part 3A addresses issues of transparency sufficiently?

Dr JENSEN: I think part 3A reflects the fundamental problem with the existing Act. It has been invented to overcome the problems with the Act, which is an accumulation of amendments which have been designed to try to make it easier to develop. Instead of curing those fundamental issues that have been built into an amended Act, they have come up with another process which goes completely around—

Reverend the Hon. FRED NILE: It has streamlined it?

Dr JENSEN: It has streamlined it, but it has done it in a way which I think is philosophically quite different to the original Environmental Planning and Assessment Act. A lot of the protected processes, public participation and so on, have been struck out by that process. I think it is a very unfortunate step, which, if you embraced a strategic process, would not have to happen because you would have a framework set up that could be administered through government departments or the Planning Assessment Commission [PAC], which is designed to implement the strategy and local government working under a framework that comes out of that process. Part 3A is really very reactive. It is an attempt to try to solve some really serious fundamental problems about the existing Act and I think it has created something else. It is an absolute monster. Whichever way you look at it, the person implementing it is likely to be criticised because it looks like it is being used for something that cuts across the general thrust of the Environmental Planning and Assessment Act as it was in the first instance.

The Hon. MATTHEW MASON-COX: Given that the Government has indicated that it is not going to start from first principles and we have part 3A whether we like it or not, can I get your views on the submission from John Mant in relation to changing the decision-making process to ensure that all critical infrastructure and major project developments are dealt with by the Planning Assessment Commission rather than having ministerial discretion, as is currently the case?

Ms BINDON: When these reforms were coming in that introduced the Planning Assessment Commission and the JRPPs, it was suggested that approximately, from memory I think it was 80 per cent of the major projects would go through the PAC for decision making, and the delegations to the PAC, that is, what projects would be dealt with by the PAC and which by the Minister, were to be dealt with by regulation. Since those reforms went through the middle of last year, the delegations have come out and the delegations have been based on, largely the criteria is about donations; it is not about project type or project location other than for projects within the Minister's electorate or where the Minister has a direct conflict of interest, which I should imagine would not be very often.

We would support the original intention as presented, I believe, when the legislation was brought in that the vast majority should go through the PAC and it should be determined by project type or criteria rather than donation-based criteria. The donation-based criteria seem to be a uniquely New South Wales thing and I do not think it reflects terribly well on New South Wales. Other places in Australia have a similar panel system. South Australia, for example, is probably the most advanced in that regard and they just use project-based criteria for what goes to which decision maker.

CHAIR: Thank you very much for coming this afternoon and for your contribution. I ask that you provide the answers to any questions sent to you in writing within 21 days.

Ms BINDON: We would be happy to and thank you for hearing us.

(The witnesses withdrew)

(Short adjournment)

MICHAEL EUGENE NEUSTEIN, Committee Chairman, Australian Institute of Architects (New South Wales Chapter), 3 Manning Street, Potts Point, sworn and examined,

BRIAN ZULAIKHA, President-elect, Australian Institute of Architects (New South Wales Chapter), 3 Manning Street, Potts Point, and

MURRAY CHALMERS BROWN, Policy and Advocacy Manager, Australian Institute of Architects (New South Wales Chapter), 3 Manning Street, Potts Point, affirmed and examined:

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard and seen only by the Committee, please indicate that fact and the Committee will consider your request. If you do take any questions on notice today the Committee would appreciate if the response to those questions could be sent to the Committee secretariat within 21 days of the date on which those questions are forwarded to you. Would any of you like to make a brief opening statement?

Mr ZULAIKHA: Perhaps I should do that. The Australian Institute of Architects has approximately 10,000 members. It is a national organisation. New South Wales receives about 30 per cent of the members. The institute administers codes of conduct, professional responsibilities and professional accreditation through the tertiary education system and after graduation we also have a continuing education policy as well, which is administered. Every member has to, every year, affirm to us their continuing education. This is in order to create a disciplined organisation where members are responsible for their work.

I suppose what sets us slightly apart from other people you will be seeing today is that we see ourselves as the guardian, if you like, of good design, responsible design, environmentally responsible design and slightly outside that planning system. Now I will introduce Mr Neustein, who has been for over 10 years now advising the institute on planning procedures, planning instruments, that have affected us and so on. He and Murray have co-authored the submission that has been put to you. But I think you should direct most of your questions to Mr Neustein and he will project them to us as he sees fit, if he needs to.

CHAIR: The Department of Planning undertook considerable consultation prior to the introduction of the recent planning reforms. What is your view on the process and outcome of that consultation?

Mr NEUSTEIN: In a sense that we were involved with the department, we were involved at a point where the department had already taken its own internal advice that it was not feasible in the short run to amend the Act greatly, and certainly not to do a new Act but what was tried to be kept was a super structure of the Act that was there, the Environmental Planning and Assessment Act. So the Minister then said, "What do we need to do to this to actually undo the logjam of planning in New South Wales?" So we have very much the same discussions, though not together initially, but ultimately in concert with the Planning Institute. The Minister did not see us at the same time but we think we pretty much were told the same thing and responded in much the same way.

CHAIR: Do you think there was open consultation or do you think it was not enough?

Mr NEUSTEIN: With the professions, having regard to the limited objective sought, I thought there was pretty open consultation. We made some suggestions, including some key suggestions, that the Minister took up, and we were grateful for that. So we were pleased with what was done, but because of the urgency and subject to the limitation, we are not turning the Act over. Our submission says, like the Planning Institute, two Acts. We do not think chuck out the Environmental Planning and Assessment Act. We think maybe rename it Development Assessment Act, keep a fair bit of it applicable, no problem, and move the plan-making functions out of that Act into a new Act. So that becomes the Act that deals with strategic planning. It is the same basic approach as the Planning Institute.

CHAIR: In your view, this particular Act, whatever it may be, whatever might come out of it, how long do you think would be the life of that? Is it something that we should be looking for for 10 years, 15 years, 20 years, or do you think there should be an ongoing process to have it amended?

Mr NEUSTEIN: I cannot imagine an Act of Parliament that does not get periodically reviewed and changed. With all due respect to parliamentarians, part of your function here is continuous review and improvement. The Environmental Planning and Assessment Act is subject to that too, but it has become unduly

complex. It is almost like the tax Act. It is almost 100 millimetres thick and impenetrable by all but who are specialist practitioners. And it does not need to be that. It has done that to fix up some of the problems. A large number of those problems are plan making, and if they were hived off into a much shorter and specialist Act that dealt with plan making as opposed to development assessment I think it would simplify it.

What its life might be might be quite long. If it was simple enough it would just really be only prescribing a process of somewhat commonsense in the making of plans. So it might have quite a reasonable life without being tinkered with. On the other hand the development assessment part of the Act—that is what the Environmental Planning and Assessment Act is now—has been tinkered with to fix certain problems. The latest reforms that the Minister brought in, which we have strongly supported—let me make that quite clear—set out to fix some immediate difficulties. It was seen to fix those difficulties. Waiting for a new Act up to five years was just, frankly, impossible and would make development in New South Wales over the next five years next to impossible. So it set out to do the right things. It is heading for that. It has not achieved it yet, but it is heading for that. But we would hope that in a time frame in which that gets going to revolutionise how we deal with development applications we will implement a new plan-making Act to sit with it.

CHAIR: You argue that an efficient planning framework is more than just land use planning and its related legislation; it needs to encompass a strategic assessment analysis leading to a plan or vision of what we want to achieve for a locality or region. In your opinion has the State Plan and the metropolitan strategy achieved this?

Mr NEUSTEIN: No, they have not, and we say that in our submission. We feel that they are capacity assessment tasks. Not so much the State Plan—that is a more generalised document of strategic intent which would need to be fleshed out—but the metropolitan plan is in many respects just looking at the metropolitan area and saying, "Here is a finite amount of land. Within that finite amount of land over the next few years we will have population"—I might add that in the metropolitan plan the population was underestimated from what it is currently thought to be; the Minister released new population figures in October-November last year—"This is how many people we have to fit in. This is the amount of land we have. Here is how we have achieved it so far. Where do we have to extend the higher densities in the metropolitan area to achieve it?" We say that that is not the right way to do planning. You need to be informed by anticipated population growth, but you also need to have a vision for what sort of city you want or what sort of regional centres you want. What will they look like? How will they work? To what extent will you provide employment in them for the people who live around them? How will people move through them? Those and transport infrastructure are terribly vexed problems.

To use that plan as the means for resolving some of those ideas so that everyone is moving towards a planned vision for either the whole metropolitan area or the individual components within it, that is what is lacking. It is the whole idea of a vision. It is not simply just an exercise in testing the maximum capacity based on the present ways we do things, because we will have to revolutionise how we do things. Let me give you an example. A couple of years ago I did a project for Burwood Council, looking at how they would accommodate more development in the core of that centre. They had in mind what was a pretty radical idea of 15-storey buildings in Burwood centre—maybe a couple of them at 25. One of the first things we suggested to them was to look at the question of how much land was held in strata title development, because we do not have an effective mechanism for making obsolete strata titles, in other words extinguishing them.

You will be stunned to hear that the amount of the centre part of Burwood that is subject already to strata plans—that is not just a couple of lots but over three or four lots, and getting up to a couple of hundred—was 30 per cent to 40 per cent of the centre. In other words, when they were planning for it, you could take out 30 per cent to 40 per cent of the area and just say, "We can't touch it". That is the sort of fundamental rethink that you have to do for a strategic plan, and it may have echoes into other areas. It would have echoes, for example—and the Minister tried to do that in these planning reforms, to look at what we could do with the strata titles Act, whether we could begin to think of some mechanisms to allow obsolete strata titles to be extinguished in a fair way. Of course one only has to think of an average block of flats and an older woman—usually they are older women, because they survive men by so many more years—on a low fixed income, maybe a pension, cannot afford to go. If everyone else agreed to sell out and she does not have the money, what do you do?

It is the sort of problem that is often quoted. We have to think of new ways of doing that as a stepping stone towards looking at how we look at our cities, what we want them to look like. In Burwood's case, when they did the mathematics they upped the height of the building. Simply, it is the only way to accommodate the extra population they wanted within the centre, having taken out 30 per cent to 40 per cent. So there are a whole

lot of ideas that have to bubble around and visions that have to be taken before we can get to a planning consensus of where we want to go and some mechanisms on how we will get there.

The Hon. MELINDA PAVEY: On the strata issue, that was one thing that was fixed or changed, was it not?

Mr NEUSTEIN: No. There were some changes with the administration of them. There were some issues about developers still having more than reasonable power in determining contracts are set for maintenance and stuff for 10 years forwards. Those sorts of problems were fixed, but the extinguishment of strata titles was not touched—called too hard I believe by Fair Trading.

The Hon. MELINDA PAVEY: As you work in New South Wales and other parts of Australia, what are your experiences in Australia and internationally in terms of good planning laws and commonsense?

Mr NEUSTEIN: One of the good planning approaches we have—we were very lucky; we called a meeting of a number of people who are associated with the profession, some of whom are members, and managed to get four former heads of State planning authorities to come and talk to us about where we should be going from now. Mr Mant, from whom you heard earlier, was one of those people, and there were three others. Perhaps the most useful information we got was from a man called Jeremy Dawkins, who has just retired after five years as chairman of the planning commission in Western Australia. It was very interesting because he had a good model, the model used in Western Australia, for achieving some of these things, particularly the integration of all government departments together because one does not want to stifle government department views. They are often useful, they can help you avoid obvious pitfalls that experts do not know about, they are intelligent people usually, even if they have sometimes more fixed views than not. His view was a commission in which all these necessary government departments were represented and they tossed around how development was done for instance for greater Perth, worked out what should be done jointly, argued it out on papers presented by their own departments and managed by the Department of Planning, and made recommendations to Government or, in some cases, for lower level functions actually just implemented them to make possible coordinated planning for Perth.

That seemed to be a pretty good model. We do not have anything like it in New South Wales. That was a model from another State that does work. Another part of a model that also helps a bit is the model for the housing code, and some of the other associated reforms introduced by Minister Sartor, was Victoria, where they have many fewer development applications, as I think Ms Bindon spoke about minutes ago, and that was a good model for part of that. There are good bits around the place. I have having a bit of a struggle thinking what good bits we might have from our legislation. The president correctly points out one good thing we have, which is better than the other States, is a thing called SEPP 65 which regulates the design quality of residential flat buildings. That has been, since introduced by Premier Carr in 2003, an outstanding success. So I modify my comments; there is one thing that we could show the others. But we can take some of those things and throw them into the mix of a COAG idea, which is the harmonisation of planning regimes in Australia.

I do not know that it would ever get to one Act, a common Act in Australia. That is probably asking for far too much. But it is possible to harmonise some of this stuff more than we have. We do not have to have in every State its own rail gauge. So there are some possibilities for what this Committee could do and report on, and what could be achieved with the Federal Government. I think that is what Mr Jensen said only a few minutes ago. He and Ms Bindon and I have talked some of these things over many times, and some of the commonalities of what we say is because we have thrown around these discussions frequently in the past.

The Hon. MATTHEW MASON-COX: Can you identify some of those areas that you think could be standardised quite readily?

Mr NEUSTEIN: One of the things that could be standardised is an approach to design quality. Former Minister Sartor quite clearly said to us that he was not in a position to really tackle design quality at this stage. He really needed to undo the logjam of development approvals and the councils. He said at some future stage, although he is not around to do it, design quality would become one of the issues. We would like to put that on the table as our principal concern.

The Hon. MELINDA PAVEY: Does that encompass environmental quality?

Mr NEUSTEIN: Yes, indeed.

Mr ZULAIKHA: And urban design?

Mr NEUSTEIN: And sustainability and essentially liveability too. There are a whole lot of ideas buzzing around, including a paper prepared by the PIA, the Planning Institute of Australia, about three years ago on liveability in Australian cities and some new ideas. There is a whole lot of information out there that needs to find a forum to be brought together to be discussed and the good bits adopted.

Reverend the Hon. FRED NILE: Do you think the new NSW housing code will have a positive or negative effect on encouraging good design? How have you found that to operate?

Mr NEUSTEIN: I do not think there has been enough of it. I think it will not have a huge impact on design because there are very few design issues that are covered by it. Essentially it creates an "as a right" development, although it is never described as this, on any lot that it applies to. So if you buy an allotment in a suburb of, say, 600 square metres, you know without going through a rigorous approval process what you can do. That is a big step forward, I think, because it modifies expectations. If you want to break that code, if you do not want to follow the rules, you go back to an assessment based on the merits of the proposal. If you are going to do that, then you should apply to the State environmental planning policy [SEPP] 65 approach of having a bunch of 10 in that case design quality issues that must be addressed by the proposal. If it successfully does those, it is going to pass the test and will be approved. It provides a better framework than the multiplicity of individual council ones currently used, many of which are different one from the other only by two or three words. But you have to read them all and interpret them all slightly differently and it is unnecessary. SEPP 65 did it for flat buildings. I think we can do it for all buildings. It is not hard to do.

Mr BROWN: The thing about the housing code is that it sets the minimum standards. It does not mean to say that every house that conforms to the housing code is going to be brilliantly designed.

Reverend the Hon. FRED NILE: They can still be square boxes.

Mr BROWN: It should certainly minimise the negative impact on neighbours and/or the environment.

Mr NEUSTEIN: There are a couple of issues in the housing code that do make it so that they will not just be boxes. There is an encouragement of some features in the front zone of the houses like porticos or entranceways or pergolas that will improve the complexity of the design, which will give it better character. That is encouraged in that code because you get not a dispensation but you are allowed to intrude closer to the street if you do those things. Hopefully we will get fewer square horrible boxes.

CHAIR: Would SEPP 65 include climate change?

Mr NEUSTEIN: SEPP 65 could include all of the things that we consider important in the design of buildings, a SEPP 65 extension. It might come by another name, but it could deal with environmental sustainability.

Mr ZULAIKHA: Currently it does not, but the issues of environmental sustainability are actually addressed with every application that is made to a council by BASIX anyway. Everybody has to put in a BASIX report with every building. So that is really covered already. SEPP 65 says that one must achieve a certain amount of sunlight in any habitable space or in certain habitable spaces within any apartment. Any development will be considered in terms of that. For example, if you are building on the north side of a building and you are shadowing every window on the north, you still have to demonstrate that you are giving, I think, 60 or 70 per cent, I cannot quite remember, of every habitable space or every living room space or something like that two or three hours of sunshine between nine and three in the middle of winter. It is quite measurable. Each development will be able to be measured. You can measure that. It is completely easy to work that out on a computer. An extension of it into buildings that are other buildings would be not impossible to work out. I suppose we are encouraging the idea that it has been successful and that it need not be limited to multiunit apartments. It could apply to a lot of buildings. It may not have the same rules, but with modification. One would have to agree that apartments in Sydney since 2003 are much better than they were prior to that.

Reverend the Hon. FRED NILE: In your submission you have recommended the establishment of an independent State planning commission with statutory powers to make strategic plans that bind State agencies which are involved in planning and infrastructure development. Could you explain your recommendation?

Mr NEUSTEIN: We saw that as an essential component, if necessary, to bring reluctant, hopefully not reluctant, departments together to talk and to nut out amongst themselves how to plan for the State, its regions and, in particular, areas such as metropolitan Sydney. We see at present that the planning is done by the Department of Planning and independently of them, it seems to us and maybe to you—if it is not, I am interested to hear—the transport infrastructure is planned by someone quite separate, without necessarily much discussion much with the Department of Planning in a useful fashion. Of course, there are many other government departments that need to have input in the planning of, for example, metropolitan Sydney. Maybe in some areas fewer government departments need to be involved where it is much less populated. Certainly in the city it is almost every department. The idea is to have a commission that can bring all of these views together, come to a conclusion on what should be done and how it should be done, guide a vision for the city and advise Government on how to do this and what should be done.

That is more than the Department of Planning could do. The Department of Planning should support such a commission but the Department of Planning would not be the commission, as it was originally by its name in the early 1960s. It was called the State Planning Commission, I think, or something like that at the time. So it is not the department, it is a body of all public servants. Whether or not it had representation from the professional bodies is another matter. But more particularly it would need to bring coordination and some sort of shared vision to the planning of the areas in the State.

Reverend the Hon. FRED NILE: That is housing and transport?

Mr NEUSTEIN: Housing, transport, water, power. One could write a long list. It would also include some social services. You cannot leave the social planning aspects out of any consideration of urban planning.

Reverend the Hon. FRED NILE: How would that commission be appointed? Who would be on the commission?

Mr NEUSTEIN: The model we suggest is the Western Australian model, which is the department heads. The legislation appoints the department heads, whoever they are at that time.

Reverend the Hon. FRED NILE: It is a coordination commission then?

Mr NEUSTEIN: It is, supported by the Department of Planning, if necessary with a secretariat provided by the Department of Planning. With the issues that need to be there, it might be the subject of multiple papers. You could imagine talk of expansion to the north-west being the subject of technical papers from people in charge of water resources, electricity supply, transport infrastructure, actual urban planning of the area, social services. They might throw all those things in the mix and this body would have to make decisions on how it is going to deal with all these issues as a co-ordinated whole. In the same sense, it will also bind those departments to implement that. So the department would not walk away and say, "We did not like that decision. We are going to do something different." You cannot have that bloody-minded approach.

Reverend the Hon. FRED NILE: Would there have been some coordinating bodies? You speak as though each department has been operating in isolation?

Mr ZULAIKHA: I think you are right. I sat on a body like that back in the mid 1980s for the revamp of Circular Quay for the bicentenary, which was a major project that involved an enormous number of different departments. In order to set up a framework for revitalisation of the various parts of the Quay there were three different committees, three different set ups: east Circular Quay, central Circular Quay, west Circular Quay. It was shared and administered by the Department of Planning which was appropriate. I sat on as the Government Architect representative at the time. It was very effective but we had the imprimatur for the then Premier to devise a scheme and the money to do so. You really know the strength of Government over the top of the committee members if you like. Obviously there are more senior people from the various departments the more effective such a thing is.

Even after they had accepted the recommendations of some of those committees I remember quite clearly that Rail, for example, would not accept. They said "Our money is not to be spent on cafes and restaurants. It is to be spent on railways only." They jacked up and said they would not do that at Circular Quay station, and that had to be imposed on them by the then Premier. It is very difficult to get everybody to agree but one has to have those sorts of committees. They are sort of exactly what you are talking about, I think. It may

not be possible to have one committee which looks after the whole State but it starts off at departmental level, I would have thought. It is a new body, I think.

Mr NEUSTEIN: I think you have to have a culture of that too. In Western Australia the commission has gone for 50 years now and they understand the concept they have to work together. If you have a situation where they do not understand that concept of working together it might have to be imposed at first until it becomes the culture.

Reverend the Hon. FRED NILE: It has to be a Government plan that goes through Cabinet realistically.

Mr NEUSTEIN: Yes. It must go through Cabinet.

Reverend the Hon. FRED NILE: That must be the umbrella of Government policy?

Mr NEUSTEIN: It does.

The Hon. MICHAEL VEITCH: I congratulate you on your submission. It is easy to read and for those of us who are non practitioners in the complex planning area it is quite good. My question relates to your comments around climate change. You say on page 10 of your submission:

> Developers and communities want certainty. While climate change is characterised by scientific uncertainty and extreme unpredictability, standards of measurement, analysis and projections are still in very early development.

In light of those statements, how will planning instruments accommodate climate change and resource issues?

Mr NEUSTEIN: The first way to do it very simply is by essentially a risk analysis. You can take all the forecasts that are around, for example, and say "The highest forecast of, for instance, sea level rise is likely to be the less certain." As you go down it becomes more certain in terms of scientific view. You might take a view then and say "We don't want any of those risks. We are just going to say that if it is within a certain area near the coast, and that area is within a certain height of the current sea level, we don't want to accept any risk, or very little risk, and we will set a parameter at the highest level we know or whatever after discussion with the community and with the Government." All of those decisions are always complicated by the fact there is always something already there and the question is "How do you deal with what is there?" People say "That is already there, why can't I do that? It has been there 100 years and it has not yet flooded."

It is a combination of political and scientific decision-making but you can make it on the basis of the best known information at the time. All you have to do is review it every few years to see how it is going to maintain the best level of information. When the Environmental Planning and Assessment Act was first promulgated I was involved in some discussions at a very early stage in about 1978 with the Act. It was the hope of its originators at the time that local government would seize upon this Act. It supposedly simplified plan making and they would make a few plan within a few years of Act coming into being, and then review it every five or 10 years. Well, some local governments took 30 years to do the first version of it. Some councils, and I will not name them, had what are called interim development orders or planning scheme ordinances right out there 25 years from the inception of the Act which was nothing but ridiculous.

As for the suggestion that they should review it, well strategic reviews are as rare as hen's teeth, as they say. They did not seize the opportunity to see it as a continuous process. One of the reasons, going back to the reforms that poor Minister Sartor brought in, was that if you look at most councils, where there actual resources are concentrated is on development application processing. Recently I had to amend—this will appal you—a condition of a development application for a house in the Woollahra municipality. They wanted to change the louvres on the house from horizontal to vertical. It took three months. It required ultimately in the council's business paper a 12-closely typed page report—can you believe this? This is, like, insane.

The Hon. CHRISTINE ROBERTSON: Internal or external louvres?

Mr NEUSTEIN: External louvres. It was followed by a report of 25 pages for some person who wanted to relocate the air conditioner in their Paddington terrace. If there could be a more monumental example of the system not working well to require this level of investigation of what are essentially incredibly minor differences, that was it. Former Minister Sartor saw the resources being put into that. They were fantastic resources. Twenty-five pages on where an air conditioner goes! He saw that and he wanted to cure that quickly

and that is why we have the changes we have. But that was not the long-term vision. I do not believe it was his long-term vision, or is, as maybe, and it certainly was not the long-term vision of all the organisations that supported it. That is immediate: we need it now, and the longer term vision is to try to simplify the planning system.

CHAIR: Do you want to add anything further?

Mr NEUSTEIN: Only to thank you for hearing us. I hope I have not too much proved the old point that when someone asks me a question they get a lecture in return, so I apologise if it was.

CHAIR: I thank you for attending. Your contributions will help the committee very much. Some further question will be sent to you in writing. Would you reply to them within 21 days?

Mr NEUSTEIN: We would be pleased to.

(The witnesses withdrew)

(The Committee adjourned at 4.18 p.m.)