

GENERAL PURPOSE STANDING COMMITTEE No. 4

Friday 10 November 2006

Examination of proposed expenditure for the portfolio area

LOCAL GOVERNMENT

The Committee met at 10.00 a.m.

MEMBERS

The Hon. J. A. Gardiner (Chair)

The Hon. J. C. Burnswoods
The Hon. Dr. A. Chesterfield-Evans
The Hon. G. J. Donnelly

The Hon. K. F. Griffin
The Hon. D. T. Harwin

PRESENT

Department of Local Government

Mr G. Payne, *Director General, Department of Local Government*

Mr R. Woodward, *Deputy Director General, Department of Local Government*

GARRY PAYNE, Director General, Department of Local Government, and

ROSS WOODWARD, Deputy Director General, Department of Local Government, on former oath:

CHAIR: I declare this meeting open to the public. I welcome witnesses to this hearing at which the Committee will examine the proposed expenditure for the Local Government portfolio. Before we commence I will make some comments about procedural matters.

In accordance with the Legislative 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 you must take responsibility for what you publish or what interpretation you place on anything that is said before the Committee. The guidelines for the broadcast of proceedings are available on the table by the door.

Any messages from attendees in the public gallery should be delivered through the Committee Clerks. Witnesses are reminded that they are free to pass notes and refer directly to their advisers while at the table. I remind everyone to turn off their mobile phones.

The Committee has resolved to request that answers to questions on notice be provided by five o'clock on 22 November. The short time frame is necessary due to the Committee's reporting deadline of 23 November. Given this short time frame I ask witnesses to answer as many questions as possible during the hearing rather than taking them on notice. Do you anticipate any difficulties with that, Mr Payne?

Mr PAYNE: I will read an opening statement in relation to that.

CHAIR: I declare the proposed expenditure for the Local Government portfolio open for examination. Thank you, gentlemen, for being here. I believe you have an opening statement, Mr Payne?

Mr PAYNE: Prior to coming here today I endeavoured to ascertain the issues that the Committee may be interested in finding out more about so I would be able to bring the relevant officers with me. I was unsuccessful in finding out the issues of interest to the Committee, so even though Mr Woodward and I will attempt to be as helpful as possible, there may be issues that I will have to take on notice. You will appreciate that the Department of Local Government deals with a wide range of issues including in the order of 10,000 pieces of correspondence each year. It is not possible for me as Director General or Mr Woodward as the Deputy Director General to be across the detail of each and every issue.

In view of the small size of the department and our location in Nowra I decided against bringing officers with me today on the off-chance that they may be needed. As you would be aware, the department is a small organisation with a very high workload. To take officers away from their duties under the circumstances would not be a wise use of resources. I would also like to indicate that while I welcome questions relating to my area of responsibility I will not attempt to answer questions relating to the responsibilities of other departments. For example, questions relating to planning should be directed to the Department of Planning; questions relating to roads should go to the Roads and Traffic Authority; questions relating to country towns, water and supply should go to the Department of Energy, Utilities and Sustainability; questions related to the environment should go to the Department of Environment and Conservation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I note your statement. Were you unaware that someone would ask you questions about Hornsby Council and its quarry?

Mr PAYNE: I am not aware of the nature of any of the questions.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No-one told you what questions you were likely to be asked at all?

Mr PAYNE: I have received nothing.

The Hon. JAN BURNSWOODS: That is the process.

CHAIR: The Committee had not decided to ask particular questions. We are here to look at the entire budget estimates relating to Local Government. So, you may proceed.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are council general managers legally allowed to compulsorily acquire land on delegated authority in relation to the Local Government Act 1993, section 377?

Mr PAYNE: Councils can compulsorily acquire land once they go through a certain process, which has to be endorsed by the Minister and approved by the Governor.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So that has to be a delegated authority; they cannot do it without that delegated authority, is that correct?

Mr PAYNE: I repeat what I said: Councils can acquire land if they go through the process that is set out in the Local Government Act and is ultimately approved by the Governor.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Once they have got the delegation approved they can do it, but not off their own bat?

Mr PAYNE: What is the delegation? They get an approval or they do not get an approval.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Once they have got the approval that is the authority, is it not?

Mr PAYNE: Correct. That is not a delegation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I would have thought so, but that is a semantic. Are council general managers allowed to apply for and arrange large loans?

Mr PAYNE: Councils can approach the department, and sometimes that is in the form of the mayor and/or general manager or both, and they can put up a case for a loan allocation, which, if successful, enables the council then to proceed to borrow money. That is a process that has been in place for years and years.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The department then has to look at the merits of that case and effectively give permission so that—

Mr PAYNE: That is absolutely not right. The department does not look at the merits of the case. I have been on record for 15 years saying that the department does not judge projects proposed by council on their merits. We look at the capacity of the council to meet and service that debt over a period of time. That is our role. I am not there to judge whether a civic centre or anything else is good, bad or indifferent for a community; that is not my role; we are not qualified to do that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So in a sense you are acting to see whether they are going to go broke or not, which, presumably also, looks after the lender?

Mr PAYNE: We look at the capacity of the council to meet their financial obligations over a period of time, if it is a large loan.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The merits of the loan remains with the council?

Mr PAYNE: The decision to seek a loan is one for the council, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The merits of the project rests with the council?

Mr PAYNE: Correct.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are council general managers legally allowed to arrange for a land acquisition notice to appear in a Government Gazette without formal council approval?

Mr PAYNE: It is published in the Government Gazette and it follows the process I mentioned earlier of going through the department, through the Minister to the Executive Council and approved by the Governor.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably the council's general manager has to get approval of his or her council to make the application to the Minister and the Governor, do they not? The council general manager cannot do that without the council's approval?

Mr PAYNE: The general manager would be acting for the council.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Does he have to have a formal resolution of the council to give the imprimatur? He does not have a standard delegated authority to do whatever he likes?

Mr PAYNE: It would be normal to get a resolution of the council.

CHAIR: Members of the gallery should not interrupt the proceedings. Could members of the gallery please remain quiet?

Mr PAYNE: The normal process would be for the council to resolve to compulsorily acquire a site and then the staff, through the general manager, would invoke that resolution and the process would start.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I understand you have described the normal process, but if the process were not normal in the sense that the council had not passed a resolution, then the general manager could not initiate that process himself, is that correct?

Mr PAYNE: I am not sure that is so because it would depend on whether there was a standing resolution. It is complex. I have said to you what would be the normal process. If the council was involved in a series of acquisitions for, say, the north-west sector or whatever, then there may be a standing resolution for the general manager to act on.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So it would depend on the ground rules that the council had established?

Mr PAYNE: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: For example, if they said, "We would like you to pursue this, Mr General Manager", and the general manager pursued it in the general terms, that would be reasonable?

Mr PAYNE: General managers act on the authority of the council in relation to those issues.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There could not be a standing practice in which the general manager did whatever he thought best and then brought it back to the council?

Mr PAYNE: It would be unusual for a senior member of staff to act in that regard without the council's knowledge or resolution.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But it may or may not be illegal; it would depend on the facts of the case?

Mr PAYNE: Correct, and there is quite often a long lead time because before the department will support a compulsory acquisition—and I issued a circular very recently on this—it is quite a complex process; there are checks and balances and we require things like native title to be cleared and so on, so it takes time. It is not a very quick process.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You said a compulsory acquisition. If the council were buying it, that is not necessarily a compulsory acquisition?

Mr PAYNE: No. Any council has the capacity to acquire land or a site by normal means, private treaty.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If land is acquired without council resolution to proceed, can the acquisition be considered lawful, if it was conducted by a person without the authority to do so?

Mr PAYNE: I am not in a position to answer that. It is a legal question. If the contract is executed, I suppose it can be challenged. I cannot answer that question.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: According to widely circulated Department of Local Government guidelines, when applying for the approval of the Minister and/or the Governor for a council to acquire land by compulsory process the application must include a copy of the relevant part of the minutes of the council meeting at which the council approved (a) the land being acquired by compulsory process and (b) the making of the necessary applications to the Minister and/or the Governor. If the council has approved neither, can the application still be considered by the Department of Local Government and/or the Minister?

Mr PAYNE: We would normally ask for the resolution or the endorsement of the council.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are there any circumstances where this could be ignored?

Mr PAYNE: Generally the answer to that would be no.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Who would make that decision?

Mr PAYNE: My staff, who process the application.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If the application were processed without the resolution of the council being appended as per the guidelines, would you say that is a breach of process?

Mr PAYNE: It would be very unusual. I am not aware of any case where that would happen. What we need to know—and this is not necessarily related to a compulsory acquisition but anything—is that what is being sought has the endorsement of the council. We look at the council as a body corporate not as a series of individuals. We need to be assured that what is being sought has the support and endorsement of the council. That may be after a long period of time, particularly with compulsory acquisitions it could be many years, but we would need to be convinced that council is supporting the process.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The allegation has been made that Hornsby Shire Council had not approved several decisions regarding the CSR Quarry acquisition in 2002. With regard to your previous answer, was an exemption made with regard to that acquisition?

Mr PAYNE: Madam Chair, I have a briefing note that I was going to table but it may be better if I had read it because if I table it, you will not be aware of what is in it. It is lengthy but I think it will set out the full history of the Hornsby quarry from my department's perspective.

CHAIR: You may proceed.

Mr PAYNE: On 22 July 1994 the council—this is Hornsby council—new local environment plan was gazetted. The plan zoned the quarry land as Open Space A (Public Recreation—Local). The objectives of this zoning included the enhancement of the environmental quality of the area and the protection and preservation of areas of urban bushland. The local environment plan contained a provision that allowed the owner of the land to request that council—Hornsby council—acquire the land. That is a normal clause. While the clause in the local environment plan referred to a "request", the clause went on to provide "On receipt of the request, the Council must acquire the land"—once again a fairly standard provision.

The Department of Local Government did not have a role in the preparation or adoption of the local environment plan at all. The quarry had commenced operation in the early 1900s. The quarry ceased operations on 30 April 2003. In September 1981 the council recognised that the quarry enjoyed "existing use" rights under the Environmental Planning and Assessment Act. This allowed the quarry to continue operations despite provisions in council's local environment plans that would otherwise prevent its operations—once again a fairly standard approach to this.

In 1960 Farley and Lewers acquired the quarry. Farley and Lewers became a subsidiary of CSR in 1981. On 22 March 2001 CSR wrote to the council requesting that it acquire the land. The council received initial advice that indicated that council was not obliged to acquire the land. This advice was incorrect and was subsequently withdrawn. Later advice confirmed that the council was legally bound to acquire the land. Accordingly, the council had no choice but to acquire that land.

At the time that the advice was corrected the council was involved in court proceedings that had been commenced by CSR. These proceedings sought a declaration that the council was obliged to acquire the land. On 28 February 2002, acting on legal advice provided to it Hornsby council agreed to court orders requiring that the council undertake the processes for acquiring the land—a compulsory acquisition. In effect, the council had been ordered to acquire the land. Advice recently provided to the council by Mr Robson, SC, points out that council's failure to pass a resolution to acquire the land is irrelevant as it was both legally bound to acquire the land and had been ordered to do so by the Land and Environment Court—and I refer to the honourable member's questions about the resolution of the council.

At this time the department had not been involved, nor did it have a role in the process to that stage. Thereafter the council went about the process of formally acquiring the land. On 27 March 2002 the council wrote to the department—my department—seeking approval to give the proposed acquisition notice. The council was required to apply to the department, as all acquisitions require the Governor's consent to effect the acquisition. Parliamentary process requires the Minister provides his or her recommendation to the Governor to approve the publication of the notice in the gazette.

The department's role is to examine the application to establish that the acquisition is in accordance with the relevant legislation and to report to the Minister. On 9 May 2002 the department wrote to the council advising that approval had been granted. On 25 October 2002 the acquisition notice was published in the gazette. The department had now become involved—providing advice to the Minister on this limited basis and communicating the Governor's approval.

Having acknowledged its liability to acquire the land, the council was then bound to pay compensation for the quarry. The Valuer-General has a statutory role to determine the amount of compensation. As part of this process, the Valuer-General was to consider the appropriate zoning for the land, if not zoned Open Space A under the local environment plan—that is, he has to take into account the highest and best use of the land. On 16 August 2002 CSR notified its claim of \$29.5 million. CSR suggested that if the land was not zoned "Open Space A" under the local environment plan, the land had potential for residential development.

On 29 August 2002 the council's valuer provided a valuation of \$2.3 million—compared to the claim by CSR of \$29.5 million. The council had also obtained a planning report that suggested that there were a number of constraints to developments of the land and that it had limited development potential. Council's valuer suggested that the alternative appropriate zoning was "Environmental Protection B"; as such the land's development potential was limited. The council provide its valuation, planning report and a report on the geotechnical aspects of the quarry to the Valuer-General.

Ultimately the Valuer-General adopted a recommendation from an independent valuer retained by it, in an amount of just over \$25 million. The Valuer-General accepted that the land had development potential for residential use and that the alternative zoning was residential. On 21 February 2003 the Valuer-General advised the council of his determination. A month later CSR wrote to the council requesting payment of compensation—of just over \$25 million. The council sought legal advice whether it could challenge the valuation. Advice suggests that any challenge would not be successful.

At this stage the council had no alternative but to pay the amount of compensation that had been determined by the Valuer-General. In November 2003 the council accepted its fate and withdrew a challenge to the determination, accepting court orders that it pay the amount determined by the Valuer-General. My department had no role in this process or in the determination of the value of the land obviously. The council had to borrow money to pay the compensation.

On 5 March 2003 council representatives met with departmental representatives. By then CSR's valuer had provided a value of \$29.5 million for the quarry, council's valuer had valued the quarry at \$2.3 million and the Valuer-General had determined the value at just over \$25 million. At 5 March 2003 it was clear that if CSR accepted the Valuer-General's valuation, the council would have no choice but to pay an amount of over 10 times greater than its valuer had advised. In order to make the payment, the council would need to borrow funds. This would necessarily involve the Minister's approval and, in turn, the department's involvement. Council representatives provided a briefing on the matter. The council was, in effect, warning the department that it might have to seek ministerial approval to borrow funds to meet the compensation due to CSR.

The department had no role at this time, as any role would await CSR's determination whether it would accept the Valuer-General's determination. On 3 December 2003 the council wrote to the department advising of its liability to acquire the quarry land and that it would soon need to pay compensation of approximately \$25 million. The council wrote that it was "currently considering a number of loan options", adding "assuming council approves some limited development of the site the loan would be fully or partially repaid from these developments and possibly by interim interest-only repayments". The letter advised that the council was considering a number of repayment options. It did not provide details of its approaches to financiers. The letter concluded, "consequently council herein formally applies to the department for an increase in the 2003-04 new money approved borrowing limit from \$1 million"—which it had sought previously—"to \$27 million."

The letter attached a copy of CSR's letter of 21 March, referred to earlier, and some business papers suggesting processes to explore the development potential of the land. In reviewing the application the department had regard to the council's capacity to repay the debt and recommended ministerial approval. On 12 February 2004 the council wrote to the department advising that it had arranged for and drawn down the funding. The department does not have any role in the council's loan application for the actual funds. After acquiring the quarry the council explored the land capability and the feasibility of carrying out development on those parts identified as being able to be developed. The feasibility study suggests that little of the land can be developed and, if developed, "the cost of infrastructure works is too great to be recovered from development site sales."

In May 2005 the department received an application from the council for a special rate variation of 5.3 per cent for 10 years, or about \$42 per annum to the average residential ratepayer. The application stated that all income would be applied to reduce the debt. Its purpose was to repay the \$26 million the council had borrowed to pay the compensation assessed by the Valuer-General. The application indicated that council's previous expectation that it could recoup all or some of the acquisition costs was incorrect and that the contemplated development was unviable. The council was seeking to avoid a financial crisis.

In June 2005 the department notified the Minister's approval. The local community has expressed concern over the acquisition process. In part, these concerns have extended to the department's involvement. The department has had limited involvement in this matter. The role of the department is neither directory or supervisory. The department exercised a limited function advising the Minister that there was a proper underlying legal basis for the acquisition of the land. Subsequently it reviewed council's borrowing application to determine whether the council had the

capacity to repay the loan and to ensure that the overall borrowings of all councils did not exceed the overall figure adopted by the Government.

There is substantial community concern over the amount of compensation that was determined by the Valuer-General. This has been heightened by an inability to develop the land and to recover some of the costs through that process. Local ratepayers, we recognise, are paying increased rates to repay the loan. Concerns have been highlighted by suggestions that in 1966 the council may have accepted an offer by Farley and Lewers to dedicate the land to council when mining ceased. The council has obtained advice from Mr Robertson, SC, regarding this issue. The advice is published on the council's web site. That advice records much of the material that passed between the council and Farley and Lewers and of council's subsequent attempts to ascertain whether an agreement existed.

Ultimately Mr Robertson, SC, concluded that it is "highly unlikely" that correspondence and a subsequent council resolution amounted to anything more than an "agreement in principle" and that no final or legally binding contract had been reached. Much of what is contained in this submission is in the public domain. In this regard the council has consulted closely with its community in an endeavour to explain its position. It has held workshops, provided written responses to 186 questions put by ratepayers, and made legal, valuation and other expert advice available to the public.

Sections of the community do not accept that the council was legally bound to acquire the land under its planning instrument adopted in 1994. Their view proceeds on the basis that the council could refuse to acquire the land, but chose otherwise. Their view also rests on assumptions that the council failed to adequately pursue its legal remedies, that it failed to provide evidence that the value of the quarry was substantially less than determined by the Valuer-General or that it was complicit with CSR. The department has recently undertaken a review of council's processes, following a recent request by the mayor. The review suggests that the value determined by the Valuer-General was excessive and that the anticipated development potential of the land cannot be realised. The review does not indicate a failure in council's processes.

The Hon. KAYEE GRIFFIN: Mr Payne, at the beginning of the hearing questions were asked about financial issues relating to councils and the department's involvement. Could you give details about financial issues where there is a concern about a council's ability to service loans and the financial situation of councils?

Mr PAYNE: Mr Woodward will also provide some advice on this question. The department receives annually the annual reports of 152 councils. We tend to monitor the financial viability, if you like, of councils. A number of councils, particularly those in the rural sector, are doing it tough, and we recognise that. We look at the loan allocations that have been approved and the debt service ratio for councils. Generally we work with them. At any one point in time we would have probably 21 councils that we work very closely with to help them through a particular process or problem and we put strategies in place to do that.

One of those strategies is a special rate variation for an unlimited period, a particular project or a particular time. We help them restructure their financial arrangements in terms of the type of work they undertake. We also go to the extent of getting them assistance from other councils, if that is required. There is no one program that we adopt for all councils. A council can run into an unexpected problem, such as Hornsby, which is a classic example, where they were forced to find a large sum of money. So we are fairly active in that regard.

Mr WOODWARD: We are also looking across the whole system of local government to see what needs to be done to help councils address any issues around their financial sustainability. One of the things we have identified through promoting credit practice reviews is a lack of broadly—not in every case—detailed planning around asset management, which is where a lot of the financial risk to councils is. We have been working very hard this year to address that issue. The Minister held a round table in Parliament House here in May this year with his colleagues from other States and Territories to address the issue of financial sustainability for rural and remote councils in particular.

Coming out of that round table was a recommendation from Ministers across Australia to the Commonwealth Government through the Local Government and Planning Ministers Council to adopt a nationally consistent approach to asset management and financial reporting. One of the issues is that

across the nation there are different systems of asset management and throughout New South Wales there are also different systems. So you cannot compare apples with apples and councils cannot clearly understand where their risk areas are in relation to asset management and financial sustainability.

The outcome of that has been an adoption of a nationally consistent approach. Last month the Local Government and Planning Ministers Council adopted a national framework for a nationally consistent approach to asset management and financial reporting, which links them with the work we are doing in New South Wales. We have an infrastructure task force, which I chair, which has representatives from a wide range of people across the sector, including the Local Government Association and Local Government and Shires Association. We are currently working on an asset management system and financial reporting system for councils in New South Wales to assist them to have a better system of asset management and financial reporting. In that way they can identify where their risks and gaps are and we can work across the sector together on an issue that has high significance to local government sustainability.

The Hon. KAYEE GRIFFIN: I understand recently the Minister announced a section 430 inquiry—and I stand to be corrected as to the section—in relation to Port Macquarie-Hastings Council in relation to the costs of a civic centre development. Mr Payne, could you give the Committee more information on that?

Mr PAYNE: I authorised a section 430 investigation, as distinct from a section 740 public inquiry—an investigation is an internal operation—into the financial arrangements of the Port Macquarie cultural or convention centre. This has been on the books of the council for some time. It started off with estimates of about \$15 million. At last count it was up to about \$30 million. I was on the public record some months ago expressing concern that I did not think the council had followed proper process, in other words, there was no business case established to head off into this project. There have been concerns expressed by some of the residents that the costs are higher than the \$30 million-odd that is accepted by the council and how those costs were arrived at. For instance, I understand the council is about to develop a car park, which it has not included in the costs but the initiative for the car park is coming from the development of the convention centre.

So we have announced an investigation into that process. That is already under way. I would expect our work to be completed by Christmas. I wrote to the council a couple of weeks ago and asked them to not enter into any legal commitments until we had completed that process. Unfortunately, the council did not do that. I understand the council is prepared to sign the contracts for the centre. They offered to defer construction of the centre. I hardly think that is what we were seeking. Nevertheless, I have no power to force them not to sign the contracts. But we have expressed some concern about it. I do stress it is not about the council's capacity to repay or to meet the costs of the centre because I think that the council would have that capacity. It is about the process that was adopted prior to the tenders being called.

The Hon. KAYEE GRIFFIN: I refer back to similar questions put by the Hon. Dr Arthur Chesterfield-Evans at the beginning of the hearing about the delegated authority of general managers and decisions of council to acquire property and so on. Is it unusual where a decision has been taken by a council to acquire property for that decision to stay on the books, for want of a better phrase, for a number of terms of council before the property is acquired? Further, if the current council wishes to adopt a different decision, does the previous recommendation remain on the books?

Mr PAYNE: It would remain on the books, that is correct. That is why I issued a caution about having a resolution in all instances. In the Hornsby case, their legal advice was that they had a legal obligation. A resolution was not actually required. If a council has a legal obligation to do something it does not matter whether the council resolves or not. But it is not uncommon for a resolution of council to stay on the books, as you put it, over a period of time, particularly in relation to development issues. I know from my experience at Tweed that decisions that were taken in the late 1980s were still current. It is not uncommon.

The Hon. KAYEE GRIFFIN: In relation to delegated authority, which was also referred to, could you advise the Committee the delegation authority of general managers under the terms of the Act and the areas that councils may delegate to them?

Mr PAYNE: I would have to take the detail on that because, as contained in the Act, the general manager has certain powers directly granted to him or her through the Act. The best example of that is the engagement of senior staff. That does not require a resolution or endorsement by the council. The only obligation on a general manager in relation to the appointment or removal of senior staff is to consult with the council. That does not mean approve; it means consult. In other cases, say, the acquisition of land or to go to an auction to bid for a property, the general manager would normally—in fact, probably in most cases—be given delegated authority or approval by the council to make that bid. We had a case the other day where a council wished to acquire property and they sent it to the general manager by resolution, "You are authorised to bid up to a certain figure"—I think it was \$1.5 million. So the general manager has the endorsement of council to do that.

There is a variety of ways to operate. A general manager has, mainly in the administrative and staffing areas, his or her own grant of power. Other operational aspects of the council are normally delegated to the general manager. The delegations can take two forms. They can take a specific delegation such as the example I used to bid at an auction for a property, or it can be a standing delegation to do certain things. Normally you would not have a standing delegation for acquisition but you may for other items such as expenditure of funds for works and so on. Delegations is a very complex area.

CHAIR: Mr Payne, would you mind tabling that document so that it can be distributed to members?

Mr PAYNE: Certainly.

The Hon. JAN BURNSWOODS: I wonder whether Mr Payne did read the statement as he had it or whether he added or subtracted anything, in which case we should have the statement as he read it?

CHAIR: Was it as you read it?

Mr PAYNE: There might have been the odd word but what I read is—

CHAIR: Substantially the same.

Mr PAYNE: —what I have handed in.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You are very well briefed for a man who was not expecting questions on any particular area.

Mr PAYNE: We are well briefed on everything.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Could I ask similar questions about any council and you would pull out a briefing paper?

Mr PAYNE: Most councils.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am amazed. Who wrote the briefing?

Mr PAYNE: Briefings are put together by staff of the department.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The department in Nowra?

Mr PAYNE: I have an office in Sydney as well but, yes, departmental staff, as all briefings are.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You said that Farley and Lewers had made some offer to transfer the ownership in 1966. Did I get that in your statement, as part of your statement, as I recall?

Mr PAYNE: I recall that somewhere. Farley and Lewers acquired it in 1960.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You made some remark about them transferring—sorry, I do not have it in front of me—the quarry back to the council at some future date. Mr Robertson, SC, commented that they were only treating it, that there was no formal agreement reached, I think that was the essence of your briefing.

Mr PAYNE: Correct. I just read from the briefing again, "Concerns have been highlighted by suggestions that in 1966 the council may have accepted an offer by Farley and Lewers to dedicate the land to council when mining ceased." Is that when you are referring to?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes.

Mr PAYNE: "The council has obtained advice from Mr Robertson SC regarding this issue ... The advice records much of the material that passed between the council and Farley and Lewers ... The legal advice was that it was highly unlikely that the correspondence and a subsequent council resolution amounted to anything more than an agreement in principle and that no final or legally binding contract had been reached."

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So they were merely treating but they did not come to a conclusion. Is that the legal term when you are just negotiating, as it were?

Mr PAYNE: I read this into the record to outline my department's role. I cannot be sitting in the council deciding what went on there. I do not have in front of me council's legal advice.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: When the quarry was set up in 1900 or whenever it was, the assumption was that it would be handed back. Are there any records along that line?

Mr PAYNE: Did I say that?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No, you did not. I am asking you.

Mr PAYNE: I do not know.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are council recordkeeping procedures such that title of land and agreements relating to title should be retained?

Mr PAYNE: You would have to ask the council.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There is a policy presumably because land title goes for hundreds of years, more or less indefinitely, and anything relating to land title should be retained by the council, should it not, as to the purposes of use and disposal of land?

Mr PAYNE: I assume councils would retain title if they have title.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There may be an agreement with that title that you may mine this and when you have finished taking out what you need for the quarry it will be handed back.

Mr PAYNE: Is that a statement or a question?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There may have been such an agreement.

Mr PAYNE: I do not know.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You do not know if there was but there may have been. If there were such an agreement—

The Hon. GREG DONNELLY: Point of order: I do not understand the line of questioning. Mr Payne has explained that he does not have that first-hand knowledge to answer the question. So what is now being posed by the Hon. Dr Arthur Chesterfield-Evans is a series of hypothetical questions.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No, I am looking at the procedures of document retention in councils in general so that I can ascertain whether Hornsby—

The Hon. GREG DONNELLY: That is not where the questions were going.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Hang on, you do not know where the questions are going. I think it is perfectly obvious to anyone in the audience where the questions were going. The fact that I have not got there yet is because you interrupted me.

CHAIR: Order! There is no point of order.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: As I said, if there were documents the standard practice would be to retain them, would it not?

Mr PAYNE: That is normal administrative procedures, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So if Farley and Lewers were writing in 1966 about this land hand back they may have been aware of such a document or agreement dating from perhaps 50 years before?

Mr PAYNE: They could have been. I do not know.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is possible. Why else would they offer to hand land back?

Mr PAYNE: You are telling me. I do not know.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And neither do I. It would seem that the records have been—

Mr PAYNE: I do not think it is my role to know.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No, but your role here is to inform us what the correct procedures would be. You have answered that the correct procedures would be to retain such documents.

The Hon. DON HARWIN: Perhaps I could assist. Mr Payne, earlier you mentioned that it was the Minister's role to give certain advice to the Government. Is that not on the very point that the Hon. Dr Arthur Chesterfield-Evans is pursuing?

Mr PAYNE: The Ministers role in relation to this quarry comes under two things. One is the compulsory acquisition, which I have covered, and the other is the loan allocation, which I have covered. That is it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: This was not a compulsory acquisition, was it? It was an acquisition that was compulsory in the sense that the council was required to do it. So the council was not compulsorily acquiring it from CSR?

Mr PAYNE: Although there is a legal obligation to acquire it, it is usually done through the compulsory acquisition process.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you understand that Farley and Lewers offered to transfer the land and council accepted that offer?

Mr PAYNE: I do not know.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You do not know what council did with regard to the Farley and Lewers offer?

Mr PAYNE: My knowledge—and that is why I read it into the statement—and the department's knowledge of this issue is as contained in this statement. That is our role. My role is not the determination of valuation, nor where the loan funds come from or anything. Our role is in relation to the compulsory acquisition and the approval for a loan application.

The Hon. DON HARWIN: And in particular whether the council was obliged to compulsorily acquire the land.

Mr PAYNE: Yes, that would be part of what they would have put to us, that there was no option. Obviously, if you come to the department to compulsorily acquire, we would require that the council proves that it is for a public purpose. I am generalising now. In this case they would have provided legal advice that it was compulsory that they acquire that land.

The Hon. DON HARWIN: Did the department confirm that that advice was correct?

Mr PAYNE: I can assume that because the application was supported.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Did council have any legal advice that it did not have to acquire the land?

Mr PAYNE: I am not sure what advice the council had but the final advice was that the council had to acquire the land and I think that was read into the statement.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And presumably that is why the general manager may have acted without a council resolution in the sense that there was a force majeure where the court was telling the council what to do.

Mr PAYNE: And I am positive that the council or councillors would have been aware that that was the process. This could not go on in isolation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are councils legally allowed to lease out public parkland for quarrying operations in a zone classified as open space A for local recreational use?

Mr PAYNE: Can you repeat that?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are councillors legally allowed to lease out public parkland for quarrying operations in a zone classified as open space A for local public recreational use?

Mr PAYNE: Let me answer it this way. Land is classified two ways in a local government area. One is community land and one is operational land. Parkland would normally be classified as community land. Community land must have a plan of management and whatever happened to that land would have to be in accordance with that plan of management.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Has the investigations and review branch of the Department of Local Government been downsized in the past 10 years? If so, by what percentage?

Mr PAYNE: The investigations branch would now have about the same level of resources as it had 10 years ago. We are structured differently. For instance, 10 years ago the only investigations that were conducted were by people in the investigations branch. What we do now is we often supplement an investigation by people from other branches, for a number of reasons but largely to give them the development experience as well. So the resource thing, it is very hard to compare 10

years ago with today, but I am comfortable that the level of resources I have for investigations would be equivalent to what I had when I came in in 1991.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So you believe the department has the ability to carry out the workload of those investigation functions?

Mr PAYNE: We have the capacity to meet the workload that we take on. There are 152 councils. There is probably a community group in every council that wants us to investigate something. How long is a piece of string? We look through our intelligence database, we look at the information that comes to us, and I am comfortable that we can handle most or all of the major issues.

The Committee resolved to publish Mr Payne's briefing note.

(Short adjournment)

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: With regard to complaints to your department, are the majority of complaints to the branch initially handled over the telephone? And who is the main point of contact with the council concerned?

Mr PAYNE: Let me answer this way: Complaints come to us in two ways, either written or in a telephone call. If someone rings in he or she would normally be directed to an officer in the Investigations and Review Branch and that complaint would be noted. A large number of complaints we would not proceed with, because there is no substantiating evidence. If we believe there is a need to go to a preliminary inquiry, and that is purely the first stage, the officer concerned would ring the council involved to find out what was going on.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So the general manager is presumably the initial point of response is that the investigations branch contacts a council?

Mr PAYNE: Not always. In a smaller council, such as a rural council, it would normally be the general manager, because there are very few senior staff. If you go to a large city council, it may be that you contact the relevant director. We know our way around councils fairly well and if it was a planning issue relating to the Council of the City of Sydney, depending on the issue and how serious it was, we may approach the director of planning, the deputy general manager or general manager. It depends. There is no hard and fast rule.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There would be a working relationship, presumably, between the investigations branch and the general managers.

Mr PAYNE: There is a relationship between the investigations branch and councils, which is part of our role.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes. Did Mr Ball have any input into the statement you have tabled here today?

Mr PAYNE: The answer to that is "no", other than that he would have provided some of the background documents that were referred to. I mean we actually have to get those documents out of the council because there is no other way.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Sure. Does the Department of Local Government have an unofficial list—

Mr PAYNE: If you are suggesting that the council wrote that briefing paper, I resent that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am just asking—

Mr PAYNE: Madam Chair, I cannot hear the question with people talking behind me.

CHAIR: Please. We want a clear exchange between the member asking the question and the witness.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There was obviously some input from council. The question really is: To what degree? That is all.

Mr PAYNE: The department cannot operate in isolation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am not suggesting that. Obviously you would have to get some information from him and it is a question of his degree of involvement.

Mr PAYNE: That is all we did.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Does the Department of Local Government have an unofficial list of troublemakers? Do some people make a lot of complaints that you think are unjustified?

Mr PAYNE: Yes. We have vexatious, complainants.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: A list?

Mr PAYNE: We do not have a list but we know. Obviously, we know because they are usually writing weekly on any range of issues. I think most agencies would probably give you the same response.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You said that the department has to determine the financial viability of the councils, in terms of their ability to pay back the loans they take out.

Mr PAYNE: Their capacity to repay, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If we take something like this quarry, which was \$26 million, would the department take into account site rehabilitation costs, the cost of maintaining the land and other costs that might be in addition to the \$26 million purchase price?

Mr PAYNE: The answer to that is "yes". We would look at the council's other commitments.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: With regard to that site?

Mr PAYNE: Well, not necessarily. If you are talking about a large city council, such as Hornsby, and talking \$26 million, our assessment would be based on the economic base of the council to repay that amount of money—and taking into account any other major commitments that it might face.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If there were, say, a geological situation whereby the quarry was not sustainable in safety terms because the sides are to straight and it needs to be a hollowed out, if you like, so that it does not crumble; and there are other costs associated with remediation, would you have taken those into account when council said, "We want to borrow \$26 million?" Would you have said, "Hey, you might need \$50 million to fix this or \$60 million?"

Mr PAYNE: No. We have to rely, obviously, on the case put by the council.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So that if the council did not give you those facts, you would simply think: Well, it is \$26 million we are talking about.

Mr PAYNE: Generally, yes. I mean we do not have the capacity or expertise to undertake any type of assessment of the quarry or any other site.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You said this was done by court order, the compulsory acquisition of the quarry; and that it was compulsory because of the court. If there is a court order that is agreed out of court, the court is merely rubber stamping an agreement between two parties, is it not?

Mr PAYNE: That is what you are telling me.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes. If that is the case then it effectively the council or its officers could brief its lawyer, saying anything they liked, make a deal with CSR and have it rubber stamped by a court, In that event, effectively the council would have been master of its fate, not the court. Would that not be the case?

Mr PAYNE: If you are in a conspiracy theory, I suppose you could come up with that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Well, it is not a conspiracy. People may make a bad deal.

Mr PAYNE: I have already said my understanding is, from the legal advice, that council had no option but to acquire this site.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But if one puts oneself in a position where an agreement is endorsed by the court, that might be the situation, but if one made a deal and then asked the court to endorse it, effectively one put oneself into that situation, did one not?

Mr PAYNE: I think you will find the council acted on legal advice.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But it was, presumably, able to brief the lawyer to get that legal advice?

Mr PAYNE: You would have to brief the lawyer in order to get the advice; I do not think they would normally offer it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But lawyers often give advice that is what the client wants to hear, do they not?

Mr PAYNE: I am not going to comment on the legal profession.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Did the council have any legal advice that it did not have to acquire the quarry?

Mr PAYNE: I do not know that. I know that the final and the senior legal advice was that it had to acquire the quarry. That is my understanding.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If someone in the council felt it would be a good development opportunity, the council could, perhaps, go lawyer shopping until a found lawyer who said, "You have to acquire the quarry." is that not so?

Mr PAYNE: How can I answer that? You are putting this to me. You are making statements; I am listening.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes, but you could acknowledge that the answer is obviously "yes", is it not? The question is almost rhetorical. That is what you are protesting about.

Mr PAYNE: I will not acknowledge anything.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You will not acknowledge that the answer is "yes"?

Mr PAYNE: No.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You do not think there is such a thing as lawyer shopping?

Mr PAYNE: Are we talking about a particular development here or a particular instance? I suppose you could go around the medical profession and get a variety of health opinions as well. What we are satisfied with—and I think this is the important thing—what we are satisfied with it that the council got proper legal advice and acted on it. And that is what I have read into the statement.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you said you were not sure if the council had other legal advice. You said it had some legal advice at the end that said it had to acquire the quarry, but you said you did not know if it had other legal advice to the effect that it did not have to acquire it.

Mr PAYNE: With respect, I cannot go into a council and go through years and years of legal advice.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: As long as council comes up with one bit of legal advice and acts on it, that is okay by you?

Mr PAYNE: We have to be satisfied. We have also a legal branch. We have to be satisfied that the advice that the council has received—and this is a general response—is reasonable. If my lawyers believe that the case that is put by the council's legal advice is reasonable and possible, then we will do that. At the end of the day the only person that can test legal advice is the court.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Certainly, but in essence your position is that the council has quite a wide discretion to get legal advice. It may have got a variety of legal advice but you only saw one legal advice, and the legal advice that you saw was reasonable. That is the end of your role in the matter. Is that your position?

Mr PAYNE: I do not know what legal advice the department saw. I do not personally see it. We quite often ask councils to get their own legal advice. We do not tell them where to go to get that legal advice, obviously. I am satisfied that most councils—not most councils; all councils—act appropriately in that regard.

The Hon. DON HARWIN: Dr Chesterfield-Evans, could I just ask a question related to that aspect?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Of course, go ahead.

The Hon. DON HARWIN: Mr Payne, your statement, which was a reading of the briefing note, contained the following statement:

The department has recently undertaken a review of council's processes following a recent request by the Mayor.

It went on to state:

The review does not indicate failures in council's processes.

Are you saying that the department did not consider all the legal advice that the council had been given on this matter?

Mr PAYNE: No, I am not saying that at all. My understanding, and Ross might be able to help me here, is that we had review of the council's general administration, where this type of issue was raised. There was pressure to have a public inquiry into this particular issue. We looked at it and my very firm view is that that is not supported at all. I believe—

The Hon. DON HARWIN: We will come to the findings, but I asked you a specific question: Are you able to tell me whether the department's staff considered all the legal advice?

Mr PAYNE: I cannot give you a guarantee that we saw all legal advice, no. I have said that. Madam Chair, I really have to protest. I cannot hear properly with people talking behind me.

CHAIR: Mr Payne has to be able to hear the questions.

The Hon. DON HARWIN: If you cannot guarantee that the department has seen all of the legal advice, how can you make this statement to the Committee that the review does not indicate failures in council's processes?

Mr PAYNE: It is not just about the legal processes; it is about the entire process that the council has adopted, in terms of the way I have outlined the briefing note.

The Hon. DON HARWIN: With respect, in terms of the process, Mr Payne, how can you be confident about the process if you cannot be sure that council has always acted on the legal advice it has been given? And how can you be sure about that if you have not considered all the legal advice it has been given?

Mr PAYNE: We saw, and I have quoted, the legal advice from Senior Counsel. That is sufficient for us.

The Hon. DON HARWIN: That may well be so, and I am not disputing that. I am asking you about your department's review and your processes.

Mr PAYNE: Okay. No, obviously we do not go in and trawl through every piece of correspondence on the issue. We have to make a judgement at the end of the day that we are satisfied that due process has been followed, and I am happy that due process has been followed with this and that council acted on senior legal advice.

The Hon. DON HARWIN: I have some other questions but I will let the Hon. Dr Arthur Chesterfield-Evans continue so that he can complete all of his questions. It wanted to clarify just that one point.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you know what the Hornsby Councils' arrangements were to keep Hornsby quarry operational after 25 October 2002?

Mr PAYNE: No.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you know what revenue was collected for the use of community land after that date?

Mr PAYNE: No. I stress I am from the department, not the council.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes. On 11 September 2006, nine residents wrote a formal complaint for the direct attention of the Minister for Local Government, requesting that the Minister send them a copy of the code of conduct and posing following question: Did he decide on a review rather than an investigation so that Hornsby Council would avoid being investigated.

Mr PAYNE: What is the question?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The Minister decided on a review rather than an investigation of Hornsby Council, is that correct?

Mr PAYNE: Yes, correct.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: What was the process of that review by the department?

Mr PAYNE: That is a judgement made by me on whether we are prepared to commit to a public inquiry, an investigation or a review. It—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Right. Now, if you went to a review rather than an investigation, what would that have involved?

The Hon. DON HARWIN: Please let the witness finish his answer.

Mr PAYNE: In descending order, a public inquiry is a very formal process, an investigation is less formal but is undertaken under the provisions of the Act, and a review is a more informal process. It depends on our value judgment as to the gravity of the issues. Obviously we have to make that call on the information we have available to us. It seemed to me that in this particular case—which we had been involved in for some time and knew about—there was no need for me to go to a formal investigation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you went through this review rather than a formal investigation, what process was involved in that?

Mr PAYNE: In the review?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes.

Mr PAYNE: The review would be looking at the documentation and questions. Largely, a lot of the background information we collected for the briefing would have come out of the review.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: How transparent is that review from the public's point of view?

Mr PAYNE: When you say "transparent", at the end of the day we make the decision. It is not a call that we have to respond. The fact that somebody makes complaints does not mean that we have to react. You made the comment that I think it was nine people. There are a lot more people in Hornsby than nine.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes, but there have been petitions containing 2,000 signatures about this issue more recently. Admittedly that was in September 2006, but there have been petitions tabled about this matter. This is not a trivial issue.

Mr PAYNE: It is not a trivial issue but, at the end of the day, I have got to have some justification other than innuendo and suspicion to act. I have nothing concrete in front of me to authorise an investigation or inquiry. That is my call and I am prepared to accept it. That is where I stand today.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Fair enough. But if you are for transparent process, can I or a Hornsby citizen go to your office and look through the review process and the documents on which it is based and then look at the conclusion in light of that?

Mr PAYNE: A review, as I said earlier, is not a formal process. With an investigation there is a document produced—a report. That is also obviously what happens with a public inquiry. A review is a review. We look at the documents and we make an assessment as to whether something deserves to go to the next level. In this case we decided no, it does not. There is nothing magical about it; it is not rocket science.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So effectively you say that this does not need further investigation and you do a review that is not transparent. Is that the essence of the matter?

Mr PAYNE: No, I did not say that at all.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Hang on, you said that I could not look at the documents because it is not that sort of process.

Mr PAYNE: At the end of the day, I make a decision. That decision is often taken here.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes. So it is in your head; it is not written anywhere—the basis of the decision.

Mr PAYNE: Sorry, you have an echo.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You pointed to your head. I have to put that on the record because Hansard does not record head pointing.

Mr PAYNE: We do a review of the documents that we have. That is how we undertake a review. We do it daily on a range of issues. We make a judgment call as to whether we will proceed to further investigations. You asked me a question earlier about how we act. We make some preliminary inquiries, we look at the documentation and then come to a decision as to what we will do. That decision—that review—will probably be put to me in writing and I will make the call.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Right. But how much of the process of review is transparently available to the public? You have been asked for an investigation. You have not done an investigation; you have done a review on your own judgment. How much can the public see about this process?

Mr PAYNE: The best way to do that is to exercise freedom of information [FOI] and then you will find out.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Would all those documents be available under FOI?

Mr PAYNE: I do not know. You have to make the application.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So FOI may or may not release all of them.

Mr PAYNE: You are putting hypotheticals to me. I do not know.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Many people who have used FOI would say that it costs a fortune and you do not get much out of it.

The Hon. DON HARWIN: If I may intervene before you give your open government speech again, Arthur—merit worthy though that issue is. Mr Payne, given the public interest in this matter, are you prepared to release the written advice that was given to you by the investigations branch in relation to this review?

Mr PAYNE: I cannot answer that question because I cannot recall it. I will have to look at it and see what else is attached to it. For example, under the FOI legislation I cannot release things generally unless I have the author's consent. But I am happy to take that question on notice. There is nothing sinister about this. Even though the honourable member is suggesting that there is some conspiracy, there is not.

The Hon. DON HARWIN: I am not; I am just asking a question.

Mr PAYNE: No, you are not. I was not referring to you.

CHAIR: Will you take that question on notice?

Mr PAYNE: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My general principle is that things should be transparent. It is a question of a general principle. The fact that, yes, sometimes things are not good is true. If they were transparent then it would not be a problem, would it?

Mr PAYNE: This line has been run before—obviously you have been given the questions by people behind me. You either believe that there is something underhand going on or you do not. I am telling you that there is nothing here. This is a normal day in the office for us. We make these value judgments, we make these calls, we assess things, sometimes there is a phone call, there are discussions, there is a group discussion by the investigators, we talk to our legal people and at the end of the day we make a decision. We have made that decision. It might not suit some of you but—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You suggest that I am some sort of conspiracy theorist looking for something rotten. Many people who make decisions are less than competent in their normal job and that has financial consequences. One would hope that the accountability process in government allows residents to see what has happened and to see where their money is going. I am merely asking that that process, such as you have done it—in the absence of an investigation—be as transparent as possible. I confess that I was disappointed by your response to the question from the Hon. Don Harwin, when you said, "Well, I couldn't guarantee to make those documents available; we'll have to look at them in view of possible FOI." Can you give a guarantee that as many documents as possible will be made available?

Mr PAYNE: The documents related to the review? Is that what you are talking about?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes.

Mr PAYNE: I said that I will take the question on notice and have a look at it. I cannot recall. Ten thousand pieces of correspondence come to the department annually. Unfortunately, I cannot recall all 10,000—I apologise for that. I said that I will have a look at what we can make available. Somebody can come down and sit in the office if they like. The fact is that there are some people here who do not like the decision so they then go to a conspiracy. I am happy to make what I can legally available. But I have to respect other people in this.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I understand that there is always a reason for not making documents available.

Mr PAYNE: Legal advice is sometimes privileged and I cannot make that available either. A lot of your questions, with respect, should be directed to the council. I have said to you time and time again—despite the interference from behind me—that our role here was related to two things. I will not go through those two things again, but it was related to two things and that is all.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Sure. I would be more than happy to ask questions of the council. I do not understand that I have a procedural way of doing that unless there is an investigation. But that is a separate issue.

Mr PAYNE: That is not right.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Surely you have a file that is marked "Review of Gosford council quarry" and that file could be looked at.

The Hon. JAN BURNSWOODS: It is not Gosford.

CHAIR: You mean Hornsby.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Sorry. I drive past Gosford quarry all the time and see the sign.

The Hon. KAYEE GRIFFIN: Point of order: Mr Payne has said that he will take the question on notice. With due respect to my colleague, the Hon. Dr Arthur Chesterfield-Evans, I think he is debating with the witness.

CHAIR: I think that is right. The Director General has said that he will provide the information. We can obviously examine it at that time and consider it further if needs be.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes, I appreciate his undertaking to give as many documents as he can regarding that review.

The Hon. DON HARWIN: Director General, I want to take you to one of the issues in your briefing note that I was not quite clear on and want to clarify in relation to the compulsory acquisition. What process does the department go through in order to advise the Minister so that he can make a

recommendation to the Governor on the issue of the acquisition? Could you describe the process to me?

Mr PAYNE: I cannot describe the process in legal detail because it is contained in the legislation. But in terms of—

The Hon. DON HARWIN: No, I was not asking you to describe the compulsory acquisition process, just the internal processes your department goes through to give the Minister a recommendation.

Mr PAYNE: We would receive an application for a compulsory acquisition—I am talking generally; not just about Hornsby. There are a number of things we would look for but the prime one for a compulsory acquisition—because it is a fairly serious step—is: Does the council want that land for a public purpose and is that public purpose sufficient that it deserves that the council can acquire it against the owner's wishes? Sometimes the owner consents—because I understand there are tax advantages to an owner in that regard, which I do not understand—but when an owner does not consent we regard it fairly seriously and we would have to be convinced that in fact it was for a public purpose. We would also have to be convinced that the council had done everything possible to acquire it by other means. Generally, we would find that the owner often sees, when a council was known to want land, the price escalate dramatically.

We check those things out. We would have a look at whether there were any other titles over the land—native title and so on. On my web site there are some circulars about what councils must do to go through the process. It is a waste of my time going back to councils all the time asking questions. We would rather them come to us with a complete package. In some cases with compulsory acquisitions where it is an open space—and you have some of this now in the north-west sector, where the council zoned for open space, the owners have come in and said, "Yes, we want to sell now" and there is a compulsory acquisition process—the level of checking there for public purpose is not as high, obviously. We then make the recommendation to the Minister. That recommendation goes to the executive council and is endorsed by the Governor and then the notice is placed in the *Government Gazette*. It is a time-consuming process I expect at the council end, but definitely for us because it involves a lot of details.

The Hon. DON HARWIN: On occasion I would imagine it would require legal advice.

Mr PAYNE: Yes, legal advice from council.

The Hon. DON HARWIN: From council?

Mr PAYNE: Yes.

The Hon. DON HARWIN: Would you ordinarily get your own independent legal advice either from a legal officer in the department or the Crown Solicitor?

Mr PAYNE: We could. That would be unusual. I was talking about normal acquisitions. Legal advice is not that important because the public purpose test is paramount and that often does not require legal advice. Quite a few of these compulsory acquisitions are fairly minor—it might be the edge of a road or whatever. The Roads and Traffic Authority, for instance, and many government agencies prefer the compulsory acquisition process to proceed by consent and by agreement rather than by any other form. It suits them. As to legal advice, it depends what the issue is. If a council must acquire it, we would look for evidence that that claim was right through the LEP or the legal advice or both.

The Hon. DON HARWIN: Thank you. I will turn now to the specific instance of Hornsby quarry. Was it necessary to obtain legal advice on that compulsory acquisition?

Mr PAYNE: Did I obtain legal advice?

The Hon. DON HARWIN: Yes, other than the council's legal advice.

Mr PAYNE: Not to my knowledge, but I will take that question on notice. I am not too sure. We definitely did not seek the Crown Solicitor's advice but we may have run it through the legal branch of the department.

The Hon. DON HARWIN: Thank you. Finally on that issue, given the public interest in this matter, are you prepared to table the advice that was given to the Minister on the compulsory acquisition?

Mr PAYNE: It is up to the Minister. I will take the question on notice but I indicate that I do not have a great problem with that.

The Hon. DON HARWIN: In relation to that valuation, obviously there was a significant dispute between CSR and the council on how the land should be valued. That had major financial implications for the council. Clearly it is the valuation issue in particular—although there are other issues—which is potentially causing hardship for a large number of residents of the Hornsby council area.

Mr PAYNE: I would agree with that.

The Hon. DON HARWIN: That is probably the principal catalyst, not the only, for community concern. Are you satisfied with the current process that we have, whereby the Valuer-General makes this decision? Do you think it is satisfactory that council has been landed with such an enormous financial impost by the Valuer-General? Are the arrangements appropriate?

Mr PAYNE: I cannot answer that, it is outside my portfolio. We have nothing to do with the valuation, and I made that clear. My personal view of valuations is irrelevant. You would have to ask the Valuer-General.

The Hon. DON HARWIN: In other words, you are not prepared to take any questions on the issue of valuation?

Mr PAYNE: Not on valuation, no. I do a lot of things, but valuing is not one of them.

The Hon. DON HARWIN: I was not suggesting that. I was asking that given there was such a serious dispute over how it should be zoned, which obviously had major financial implications, is it satisfactory that council has ended up with this sort of financial impost?

Mr PAYNE: In what I tabled I have outlined the process leading to the valuation, the difference in views of the two valuers. At the end of the day the Valuer-General's valuation prevailed. I cannot comment on that.

The Hon. DON HARWIN: That is not very helpful.

Mr PAYNE: I am not the Valuer-General. I am the director general of the department.

CHAIR: Mr Payne, in administering the Department of Local Government, no doubt you have regular meetings scheduled with the Minister for Local Government?

Mr PAYNE: Yes, well, regular and as required.

CHAIR: Sure. Generally you meet once a month or once a fortnight? Obviously you would have meetings as required, but is there a regular monthly meeting?

Mr PAYNE: We do not meet every day, but there would be daily contact one way or another. The department and myself are in constant contact with the Minister and his office.

CHAIR: Would you have a lot of those meetings in person?

Mr PAYNE: Yes.

CHAIR: Does the Minister go to the office at Nowra from time to time?

Mr PAYNE: He has been to Nowra.

CHAIR: How does he get there, given his current circumstances?

Mr PAYNE: I suppose by train, I do not know if he could get there by train.

CHAIR: Yes, he could get there by train. Does the Department of Local Government assist the Minister in any way in travelling to his Local Government appointments?

The Hon. JAN BURNSWOODS: Point of order: This line of questioning is not relevant to the director general. The Committee made a specific decision in relation to supplementary estimates hearings, as you know, that questions are to relate to public servants, not to the Minister. The questions you are asking are within the Minister's personal arrangements, and are not relevant to the performance of his public duty. Nor are they within the purview of the people whom this Committee asked to come here, the departmental public servants, I suggest the questions you are asking are out of order.

CHAIR: I am in the luxurious position of being able to rule on that point of order. Obviously, I do not believe they are out of order. I asked specifically about the role of the department in relation to this matter, I was not—

The Hon. JAN BURNSWOODS: No. I do not think you actually did.

CHAIR: I did.

The Hon. JAN BURNSWOODS: You asked about the arrangements that the Minister was making. Those arrangements are the Minister's private business. I am sure you do not intend going around the room and asking people how they got here this morning, for instance, or how they intend to go home this afternoon. I suggest that your questions are out of order. It may be that you will rule in your favour, but I certainly suggest to the people whom you are asking these questions of, that they point out to you that the questions are not within their purview.

The Hon. DON HARWIN: I am sure that the witnesses do not need coaching.

CHAIR: I specifically asked whether the Department of Local Government was assisting the Minister in any way to get to his appointments as Minister for Local Government; that is, his meetings and his local government events?

Mr PAYNE: No.

CHAIR: So, he is getting there some other way?

The Hon. JAN BURNSWOODS: Point of order: Your first question may have been in order, Madam Chair, but I will take another point of order. Having received the answer from the director general, for you then to ask a follow-up question about "in any way", is out of order. It is not within the powers and role of estimates committees in general, and certainly not this particular Committee, given the decisions made in relation to supplementary estimates hearings, as you well know.

CHAIR: I take the point that we can assume that the Minister for Local Government is not hitching a ride with local government officers.

The Hon. JAN BURNSWOODS: Madam Chair, as we all know, and as has been placed on the record on numerous occasions, you are the worst Chairperson of any committee of this Parliament of New South Wales. I realise that if I move dissent from your ruling, it will just mean that the room will be cleared for a while and you will use your numbers, as you usually do, to uphold whatever game you think you are playing. I remind you, and everyone else present, that your questions are not within the standing orders. I have noticed that on any of those occasions you, of course, never take

advice from the Clerks, because you do not care about doing the right thing, or the correct thing. You just care about the games you play. As I said, it is on the record on numerous occasions that you are the worst Chair of a committee of this Parliament.

CHAIR: Thank you, I am glad we got that on the record, one last time before Christmas. Mr Payne, has the Department of Local Government ever given the current Minister for Local Government any advice relating to the condition of council's roads, or the speed limits; whether it should be advised to the Roads and Traffic Authority or the police whether the speed limits should be reduced because they are dangerous?

Mr PAYNE: I have absolutely no role in assessing roads.

CHAIR: You have not given any advice about that?

Mr PAYNE: I have worked with seven Ministers and have never given any Minister advice on the condition of a road. I am not competent to do so.

The Hon. DON HARWIN: Mr Payne, my question is about one of the answers given to questions taken on notice in relation to the original estimates hearing. For the record, that was the original estimates hearing of 28 August 2006 in relation to question No. 116, which stated:

It is noted from the budget documents that there is provision for an education program to educate children about behaviour around dogs. Further, from press statements it appears that you intend to introduce the education program in schools next year. Why have you delayed the implementation of that program until next year when there has been a significant number of dog attacks in recent times?

There was an answer given to that. Question No. 117 related to that and stated:

What have been the ages of children who have been attacked by dogs for the past 12 months? As your education program specifically refers to education in schools, is your program for the education of children deficient in that it is not going towards those children obviously most vulnerable, that is preschool children? How will you educate those children in relation to the education program?

It was a specific question about the education program, particularly focusing on young children, an issue on which there is a great deal of community concern. The rather contemptuous answer received by the Committee from the Minister, presumably with the assistance of the department, which I want to take you to, was:

The dog attack statistics reports available to the department indicate that children who are bitten by dogs and treated fall into the 1-4 and 5-9 age brackets.

That was it. I specifically asked: What is intended in terms of education of parents in relation to young children and of young children in terms of their vulnerability and exposure to dog attacks? Will you answer that question, which was not adequately covered in the response that was provided to question No. 117?

Mr PAYNE: Yes, I will, I think it is an excellent question. We have announced the planning, and it is already underway, although it has not been delivered yet. You asked why the delay. The preparatory work has been done. We have allocated \$1.863 million over three years for what we call SPOT, that is Safe Pets Out There, an education program for five- to seven-year-olds. That is being done in conjunction with a number of interest groups, the RSPCA, the Animal Welfare League, the Delta Society, the Australian Veterinary Association, and so on. The program is targeted specifically at the junior primary school, the five- to seven-year-olds. It is a three-year program and will have four main components: pets in the community, a knowledge of why there are pets in the community and so on, by the Animal Welfare League; safe behaviour around dogs, which is by Delta Dog Safe; basic care of pets; and kindness and cruelty.

In terms of the one-to-four-year-olds, we are at this very moment putting together another program that will complement the SPOT program, and obviously its focus will be different for the one-to-fours than for the five-to-sevens. I would expect, and legislation is being developed to help with this, that program will run for three years and probably will have a similar allocation. It will be about \$600,000 a year. We will approach this in two phases: the one-to-fours and the five-to-sevens through schools. Essentially we will ensure that we work very closely with various interest groups. It

is the various interest groups such as the RSPCA, the Delta Society and the Animal Welfare League that will deliver the programs for us.

The Companion Animals Act, in 1996 I think, has heightened the awareness of dog behaviour. I do not know whether the numbers of attacks are greater today than they were yesterday. We do know that the level of reporting is much better. There is a lot of room for improvement and we will approach the problem. The main people who are exposed to dog attacks, of course, are children.

The Hon. DON HARWIN: How long has that project targeting preschool children, those between the ages of one and four, been in preparation?

Mr PAYNE: Some months.

The Hon. DON HARWIN: It would have been in preparation in August 2006?

Mr PAYNE: No, nothing formal. We were putting in place the SPOT program and having it developed and committed, which we have done. We have made the first payment on that. We then turned our attention to children aged from one year to four years. I can recall people from Victoria, which has a program for junior people, coming up here after the estimates committee and talking about it.

The Hon. KAYEE GRIFFIN: Mr Payne, you mentioned previously about operational community land and that community land has to have a plan of management in relation to it. When did that come in in terms of how councils determined whether land was operational community land? Was that in the change in the 1993 Act?

Mr PAYNE: It was.

The Hon. KAYEE GRIFFIN: Could you explain a bit more in relation to what happens with the plan of management for community land?

Mr PAYNE: Before 1993 the management of land was really problematic in councils. In fact, it would be reasonable to say that some councils did not know what the use of a particular piece of land was. In 1993 councils were required to classify land as either operational or community. If they failed to so designate, the default position was that it became community. So now, hopefully, we have just the two classifications. As I said earlier, you need a plan of management for community land. There are restrictions on community land in terms of leasing: you need the Minister's consent for a period of time; you obviously cannot sell community land, et cetera, et cetera. To sell community land, for instance, you would need to reclassify the land and go through the normal public process in that regard.

The plans of management for community land are a reasonable imposition on councils. Councils have a very large land stock, as you would appreciate. The number of plans of management that are in place now, it is not 100 per cent but councils are working very hard to get there. There are generic plans of management for certain sites. By and large, since 1993, when management of land was a major issue, this particular regime of classification seems to have resolved a number of issues. We are looking at the process again to see whether there are any improvements that need to be made to the process of classification.

The Hon. KAYEE GRIFFIN: If a piece of land is deemed to be community land under a council plan of management, what is the process of changing that, or vice versa?

Mr PAYNE: The short answer is basically you have to go through an LEP-type process: it would have to be advertised and rezoned. It is quite onerous to get something from community to operational.

Mr WOODWARD: It is under the Environmental Planning and Assessment Act.

The Hon. KAYEE GRIFFIN: And also, I suppose, under the changes that occurred in 1993 with what is no longer probably the new Local Government Act but was deemed to be that for some

time, it was up to councils at that point in time to make decisions about what they deemed to be operational as opposed to community?

Mr PAYNE: Pre 1993?

The Hon. KAYEE GRIFFIN: Yes.

Mr PAYNE: Yes, that is my understanding.

The Hon. KAYEE GRIFFIN: So it is purely a council decision?

Mr PAYNE: I think the best that could be said about the pre-1993 process was that it was fairly haphazard.

The Hon. KAYEE GRIFFIN: In terms of councils deeming land operational or once it makes a decision about community land, does the department have a process of actually looking at whether councils have a plan of management for all the land that they deem community land?

Mr PAYNE: Ross might be better placed to answer that, but we do not call in the plans of management; we do not actually physically sight them, but it is a requirement on councils.

Mr WOODWARD: We generally go into promoting a review of councils; it is not a regular process. But whenever we visit a council to do a thorough examination, in the overall process that is one of the issues that we look at to make sure they do have it—because they are required to have it.

The Hon. KAYEE GRIFFIN: What is the time frame you have for visiting councils?

Mr PAYNE: We have what we call the better practice reviews, and we have completed 34. We have, I think, the resources to probably do, say, about 25 a year. We are contracting some of that out to the Internal Audit Bureau. We are finding that overall it has been a very satisfactory process. The councils can either ask for a review or we decide we will go there. We do it on a regional basis. Apart from providing a council with an external health check, if you like, the benefit to us is that we are actually now getting a good idea of what councils do well and what councils do not do well generally.

Where it falls into the latter category we can then provide some assistance. For instance, we have found after the reviews we have done—the 30-odd—that there are some areas that we believe councils generally need to improve. I will just quickly go through those: The strategic management, the role of councillors, community engagement, code of conduct implementation, complaints handling, meeting practice, risk management, integration of social and land use planning, asset and infrastructure planning and management, service standards and workforce planning. That is not to say that every council is deficient in that regard; some do excellent jobs. But there is a group of things for which we need to probably provide some advice and assistance. For instance, complaints handling: if it is not done well at the front counter it can cause work and problems further down. We would use that intelligence to structure some policies and guidelines to assist councils.

The benefit of the performance reviews is two-fold: one to the council, in terms of this independent health check, and, secondly, we are getting some information on what they do well and what they do not do well. The next stage of that is to see whether those two items fall into regions. In other words, do the metropolitan councils do some things better than country councils and vice versa. This is all a very open process. On Wednesday I spoke at a joint meeting in Jerilderie of the Riverina and Murray Regional Organisations of Councils and I took them through that. A number of those councils have been involved in this process as well. We find that, for instance, councils have certain problems. I can recall a case where the council was insisting on still receiving the check warrant, which you may or may not recall. That is no longer required. We built it into the review; that is the end of the matter and everybody moves on. It has been very successful; I am really pleased with it.

The Hon. KAYEE GRIFFIN: There has been some debate in recent years about issues of support for elected members in terms of educational processes, and given some of the questions today

in relation to, say, financial management and so on, what is happening with educational processes for newly elected councillors?

Mr PAYNE: Come 2008 we will have councillor development—or there might be other words put around it at that stage—that will be compulsory for all councillors. Ross might be able to answer this, but we are working with the Local Government and Shires Association to also look at helping people assess whether they have got the capacity and the desire to be a councillor. We put out a publication here not long ago—I think it was called "So you want to be a Councillor"—to outline what you can expect if you were elected. So we were very aware of it. The Minister is about to release today or Monday two papers: one on integrated planning and reporting, and the other on a new direction for local government. Part of that new direction for local government includes a substantial focus on education and training for councillors.

The other thing I might mention is that we are also offering, in terms of development of councillors and staff, scholarships to improve the skill base in councils. A number of councils are facing, I think, a fairly serious shortage of specific professional groups, particularly planners. We are trying to address that problem as well. There is a fair bit of work going on, but it is the type of work that has to be done in conjunction with the industry itself to be successful.

The Hon. JAN BURNSWOODS: Some time ago in one of your answers you mentioned rate pegging in New South Wales. I think rate pegging is probably very popular with most ratepayers in most council areas but I wanted to ask you if you have any statistics and information on the range of requests that come in and how they go. I notice the issue was also discussed at the Local Government Association conference earlier in the week and that, for instance, the mayor of Ryde, Councillor Petch, was very strongly pitching for an end to rate pegging, which I am sure will be interesting news to the ratepayers of Ryde. Could you give us some comments on the system and how the department operates it?

Mr PAYNE: I can. My personal view is that rate pegging has not impeded councils. As I said, on Wednesday I was in the south-west and it is very evident there that if you remove rate pegging it would not do anything because the community does not have a capacity to pay more.

The Hon. JAN BURNSWOODS: When you say "south-west" you mean rural areas?

Mr PAYNE: Jerilderie, down that way, south-west of the State. In fact, it was put to me by a mayor, which I had not thought of, that rate pegging has been very good because it forces the council to take an increase whereas before some councils forewent an increase. All those councils that forewent an increase years ago are paying a significant penalty now because it compounds. I do not have the figures with me but we have been assisting councils to recover from those situations. I can recall one council in the Southern Highlands that was something like \$12 million to \$18 million behind its neighbours because of decisions taken back in the early 90s and late 80s not to take an increase. So we are working with them.

The other thing that is often misunderstood or not recognised is that the claim is often made that because of rate pegging there is an infrastructure run-down. Other States do not have rate pegging and yet they have a similar level of run-down of infrastructure. I suspect that the level of run-down of infrastructure affects all governments at all levels all throughout the world. I do not think rate pegging is the issue that, in fact, a lot of people think it is. I think it is a political issue and it makes good sense, I suppose, to stand up at a conference and use that as a political weapon, but, in reality, I think that rate pegging is really not a major concern, or should not be a major concern for councils.

The Minister approves about 40 special rate variations a year. So, in theory, one council every four years is getting a special rate variation above the limit. Special variations are approved for either specific projects or a specific problem or issue, and the special variation can be indefinite—it is built into the rate base—or it can be limited by time or it can be limited to a specific project. So, it is a very flexible system. Under the Local Government Act now, apart from a single increase, you can also apply for what we call a structured increase, which is a series of increases over a period of up to seven years, that allows councils to plan for the future. To answer your question: I do not think rate pegging is the issue that it is often made out to be.

The Hon. GREG DONNELLY: Mr Payne, you mentioned earlier about the skills shortages, particularly in regional and rural New South Wales and how that is having an impact on local councils. Could you inform the Committee about whether the State Government is encouraging councils to look at ways and means of perhaps providing incentives to professionals to move to, for example, regional New South Wales, and establish themselves so they can become employees of councils?

Mr PAYNE: I might ask Ross to answer that because he is dedicated to the skills shortage.

Mr WOODWARD: Two years ago the sector was screaming out, saying that particularly in planning but in other professions there is a great lack of skills, particularly in rural areas. We set up the skills shortage task force and that has representatives from unions, councils and the Local Government and Shires Associations to actually address that issue. We found that it was more complicated than simply saying there needs to be more scholarships or more intakes of people into various universities, although we did canvass that.

First, we did a survey of councils to find out exactly the nature of the problem, where the skills shortages were mostly being felt and what councils were doing about it. We found a mixed bag of responses. Some councils were actively involved in encouraging people to move from Sydney. They also had programs in place for scholarships and cadetships. Following the survey the task force focused on four areas. One was around a scholarship program and the Minister announced the scholarship program in September this year, where the Department of Local Government and the Department of Planning were putting in money on a dollar-for-dollar basis for councils to apply for scholarships for final year students. The commitment is to the council, which then sponsors a student, the intention being that council has somebody who is already in the community. It is a policy of growing your own, I guess, supporting local people who have a desire to progress in their careers rather than feeling they have to move out of town to find employment or education.

We also looked at training needs because we found there was a lack of information around local government as a place for professional development. We work with people like the universities and TAFE. We have been successful in getting additional courses and in arranging, through TAFE, to bring courses out into rural areas so students do not have to go elsewhere for training. We have been developing new training opportunities for advertising what education institutions currently have. We found that people, particularly young people, were not always aware of training opportunities, and we developed the scholarship program, as I said.

We then realised there was an issue around marketing local government as an employer of choice in that a lot of the young people did not automatically think about local government when leaving school. We developed some tools for that and encouraged councils to talk with local schools about local government as a place to work. We encouraged councils to go to careers expos to promote local government as a good place for young people to work. We developed brochures in consultation with young people so that the language and the colours would show local government as a good place to work with exciting career opportunities.

We found that has been successful and the take-up rate by young people in local government has increased. The final area we have been working on is around council work force planning. Through our survey we found that councils were not always preparing for this issue. In local government, as in other areas of government, many employers will retire in the next five to 10 years and some councils either had not addressed the issue or were not sure how to address work force planning. They had to start to think through the implications of their work force retiring and what they needed to do to put in place policies to encourage replacements. We are currently working with the sector to develop tools to help council promote local government and plan for skills shortages. It has been a very successful program.

The Hon. GREG DONNELLY: Is another manifestation of dealing with the skills shortage the propensity of some neighbouring councils to share resources and perhaps manpower across boundaries to deal with particular pinch points with their shortages?

Mr WOODWARD: Yes, definitely. It fits in with another area of local government reform, which is around reasonable sharing. We are saying that, not only where there is a skills shortage, it

makes sense for councils to work together. For instance, on planning, if councils in a region get together and decide to do some economic planning, land-use planning or a variety of planning, it actually makes more sense to do it on a regional basis. That encourages and attracts more professional skills because people coming out of university do not necessarily want to go and work with a small council with fairly mundane planning issues, but if they go work for a group of councils on regional issues, that is certainly more attractive. It deals with two issues: one is around more sensible resource use by councils and the other is around attracting professional skills to a sector.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Mr Payne, you said you could not say anything about valuations. The valuation is very much dependent upon the zoning, is it not? Do you look at the zoning question when you agree to a valuation or approve a loan for a valuation?

Mr PAYNE: I am not sure of the question.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I think you made the point that once the thing had been valued as open land, it then had to be compulsorily acquired. In other words, the council in Hornsby changed the zoning to open land and that made it liable for the compulsory acquisition, or that it is a view. Could you have looked at the zoning? I understand that at Ballast Point the zoning was of one value if it was industrial land and another if it was high-rise residential and the difference was huge, so that you would look at the zoning in terms of the valuation.

Mr PAYNE: That would have all been resolved before it got to us.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So you do not look again at the zoning?

Mr PAYNE: No.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you look at any geotechnical reports because the Hornsby quarry had the Gerard report, which said that geotechnically the sides of the quarry were unstable and there were huge remediation costs?

Mr PAYNE: We would only look at it in the sense of the question you asked earlier, whether that was going to impose another cost and whether the council was likely to face a major cost later on. No, the merit of the acquisition is not my call at all.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Did you look at the Gerard report, which said there were likely to be large remediation costs because of the geotechnical problems?

Mr PAYNE: I cannot recall.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If that increased the cost to the council of \$19 million, which I understand was one estimate, would you have been aware of that or taken that into account?

Mr PAYNE: I would have to go back to the papers that the council submitted. I can assume that the answer to that was no because the council asked for and was granted, I think, \$26 million or whatever the figure was.

The Hon. DON HARWIN: Will you take both of those questions on notice and provide answers to them?

Mr PAYNE: I can, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Obviously, if the local government review of the decisions was unaware of the extra \$19 million or did not take it into account, that would impinge on the excellence of the decision, would it not?

Mr PAYNE: I can only assume that if the council were looking at another \$19 million for remediation, which is what a report is suggesting, then the council would have sought the additional

money via loans, unless they decided that the remediation would be some time in the future and that they could actually fund it internally. If council can fund something internally, it does not have to come to us.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If council thought, "We can slip \$19 million in over the next few years, it will be okay", it would not even come to your attention, is that right?

Mr PAYNE: No, I will stick to my statement; unless they ask for a loan allocation, we do not have any role.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There has been—and perhaps you dispute it—some considerable fuss about Hornsby council and the way it has been administered and you have chosen not to do an investigation. What criteria do you have for an investigation? How severe does the public cacophony or procedural mistakes have to be for you to say there would be an investigation?

Mr PAYNE: That is a very difficult question to answer because it is one of those cases that you know when you get there whether you have reached that point. Basically, if we recommended a public inquiry we would be looking at some type of systemic breakdown in the operation of the council, and I can instance of few of those in the past. For an investigation we would have to have some serious concerns about process and those serious concerns would have to be fairly major and deliberate.

Other than that, at the end of the day there are mistakes made. Sometimes a particular project could have been handled better. That may warrant a letter from the department suggesting that if they do it again, they should adopt a different approach. To answer your question, before we would act in a major way there would have to be some type of systemic breakdown or deception.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are you aware of problems over an equestrian facility, an aquatic centre and pool, and treatment of sullage in the Hornsby area?

Mr PAYNE: Sullage. I do not know about the other two.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You said that if there were a systemic breakdown in process or management you would look at it. Would each of these be another consideration in your decision to carry out or not carry out an investigation?

Mr PAYNE: It could be, but bear in mind in the real world there are 152 councils. There are always some interest groups or community groups that have concerns about a particular project. Every time a council does anything out of the normal, there is usually a level of reaction. There is nothing sinister about it. It is just that some people do not particularly like a project. I made the point earlier on that it is not my role to judge the merits of a project, whether the council wants an equestrian centre, an aquatic centre or whatever. It is their call. They are autonomous.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But the fact that every time someone makes a complaint does not mean you do an investigation does not mean that every time lots of people make a complaint you never do an investigation either?

Mr PAYNE: That is right.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is a matter of judgment, is it not?

Mr PAYNE: Correct.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you ensure that councils appropriately apply their section 94 funds?

Mr PAYNE: No.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There is no monitoring of that?

Mr PAYNE: Not from my department.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So councils have a fair bit of leeway before that they trip this process.

Mr PAYNE: The Department of Planning would have a role in relation to the section 94 funds and I assume the auditor. I do not get to that level. My role, the department's role and the Minister's role are basically to establish and operate the regulatory framework for local government in this State. That does not mean getting down into the minds and bodies of the councils in terms of their operational aspects. They are elected to do what they are elected to do.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Obviously it is a matter of judgment whether there is an investigation if someone is performing unsatisfactorily but is there a series of guidelines or criteria that kicks off an investigation that have to be met or not met, or is it all handled on a case-by-case basis, in your head, as it were?

Mr PAYNE: It has to be a case-by-case basis because there are 152 councils, they are all different and every issue is different. There is nothing common about it. We have built up, as a department, over a long period of time, a very high level of expertise in judging what are issues that are worthy of a more formal look. We have a track record for that. Equally, sometimes when we are displeased with a particular project we will raise it with the council. Sometimes we raise it formally by letter and sometimes informally with the management and perhaps the mayor. I can recall a number of cases calling in a general manager and a mayor over a particular issue, but mistakes do happen and we recognise that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There are all different sorts and conditions of men but we have laws that are guidelines as to when they are sanctioned or not sanctioned. That is what the judicial process is about. Surely when one is looking at the behaviour of councils there must be some sort of written guidelines as to when they are investigated or not and what is acceptable and not acceptable behaviour parameters?

Mr PAYNE: If you look at the Local Government Act, which we work with, that does not set the guidelines. It would be impossible to write those types of guidelines.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There is a law for every other human behaviour, surely?

Mr PAYNE: There is a code of conduct for the behaviour of councillors but there is no regulation, if you like, as to when I have to or do not have to conduct an investigation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That would seem to be a rather interesting omission, would it not?

Mr PAYNE: I do not think it is an omission. I do not know how you would determine that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You are happy that Hornsby council did obey the Local Government Act at all times?

Mr PAYNE: I am happy to table what I have tabled. How can I say that anybody has obeyed the law at all times?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you are supervising that and you are getting a string of complaints, surely you have to put the two together?

Mr PAYNE: I thought I said earlier, we are there for the legal and regulatory framework for local government. I am not there supervising. What do you think we do—stand around the corner of the council chambers every day? That is not our role.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You are in charge of the regulatory framework. You get complaints and you measure them, presumably, against the Local Government Act for a regulatory framework.

The Hon. JAN BURNSWOODS: That is not what you asked. You asked him whether he was supervising, in effect, 152 councils in New South Wales. It is a ludicrous question.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The interjection is that there is no supervision.

The Hon. JAN BURNSWOODS: I am not answering your question. You have changed the question. You asked him about supervising every act of council to see if they were according to the law. When you get the answer you object and rephrase the question. The way you are trying to verbal the witness is not fair.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I dispute that. It seems to me there should be a regulatory framework. You say that there is not a regulatory framework and the Local Government Act does not provide sufficient detail in a regulatory framework as far as investigations are concerned?

Mr PAYNE: I did not say that at all. I said there is a regulatory framework for local government. There is no regulation prescribing when I am to act or not in relation to an issue. Under the Local Government Act we only have basically two formal powers. One is to recommend a public inquiry and the other is to conduct a section 430 investigation. There are certain processes that have to be observed in relation to both. It does not thankfully tell me when I have to or do not have to conduct an investigation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There is nothing that citizens can do, there is no mechanism to trigger an investigation? Is that the bottom line?

Mr PAYNE: The usual opportunities are there. They can lobby for an investigation. At the end of the day, a public inquiry has to be authorised by the Minister and a section 430 investigation by me. Like everything else in life, both the Minister and I have to make a decision based on what we have in front of us at any point in time. The decision in relation to Hornsby has been made on the basis of the information we have now. I cannot talk to the future. Residents groups do write. We act on complaints that come in from residents. If you look at our annual report, it will provide the statistics on those.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You said you were not aware of the situation relating to complaints about the equestrian facility or swimming pool and there is no noise meter to trigger an investigation crash?

Mr PAYNE: Yes, there is a noise meter. I said we have developed a lot of expertise over the years, and we have. One of the things that we have developed is a fairly good radar for when there is a campaign going on. What I would normally look for in terms of a council that has fallen into a state of disrepair are views from a broad range of people. You are very very sensitive to the fact if you are being used by some particular campaign. If there is a systemic breakdown of council that requires a public inquiry, I have to recommend that to the Minister. I would have to be able to justify that the breakdown is there and is fairly major, it requires the commitment of State resources to identify and resolve and there is broad community concern over it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You have suggested almost a conspiracy theory in terms of citizenry—

Mr PAYNE: I did not say that at all.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: —and if I suggest that the system is not good you suggest it is a conspiracy theory to attack you or the administrative system?

The Hon. JAN BURNSWOODS: The witness did not say either of those things.

The Hon. GREG DONNELLY: The Hon. Dr Arthur Chesterfield-Evans is verballing the witness.

Mr PAYNE: I did not say that at all. The community are a great source of information. There are a lot more people in Hornsby than a dozen! What we get from the community is some very good intelligence on how council is operating. What people do not seem to understand, and I keep labouring this point, it is not my role to say whether there should be an equestrian centre, an aquatic centre or whatever. I know that some communities, and I as a member of the community, do not like everything that council does, but it is not my role to pass judgement on those things.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The increments in dissatisfaction with council or lack of process must surely weigh on balance, such as, the symbols of justice, a set of scales?

Mr PAYNE: Dissatisfaction with council is one thing; a breakdown of council is another. I am concerned with the latter.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: What are the criteria for a breakdown of council? Are there guidelines for that or again is it a matter of judgement?

Mr PAYNE: No. If you look at our web site and the public inquiries and investigations we have conducted, it will give you a view.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You are asking me to deduce it backwards. I am asking whether there are prospective guidelines, such as, in law, a standard of conduct or criteria from which the public would see that you are judging council behaviour and process?

Mr PAYNE: No, it is not a precise science. Of course it is not a precise science. You are dealing with human behaviour, for a start.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: All human behaviour is not a precise science. We have laws to regulate it. Surely the same could apply to councils.

Mr PAYNE: As I said earlier, when we intervene is a matter for the record, if you look at our web site. There are councils recently that had a problem with a major project, such as Liverpool, sometimes with development issues. There is generally not one issue, there are generally more.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you keep a record of the number of complaints, for example? If we talk about a noise meter, do you say this council has had X number of complaints and this council has had Y, you have them all on a database and you can look them up?

Mr PAYNE: That is an excellent question. If you look at my annual report you will see them all logged there.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you get more complaints, does that make you more likely to undertake an inquiry?

Mr PAYNE: No.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: What is the use of logging them then?

Mr PAYNE: If you organise a campaign and get 200 people to write in, that does not mean that the issue—

The Hon. JAN BURNSWOODS: Madam Chair, would you remind the public gallery that the questions are to the witness? It is very difficult for any of us to hear and it would be difficult for the witness to concentrate.

CHAIR: Yes, I ask the members of the public gallery to remain silent.

Mr PAYNE: You seem to be suggesting that we should be acting or should move when the level of complaints hits a certain number. You might tell me what that number is.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is not easy to organise huge numbers of people to do things.

The Hon. JAN BURNSWOODS: You do it all the time. Look at all the petitions you bring into the upper House.

The Hon. DON HARWIN: Point of order: Firstly, the Hon. Jan Burnswoods is interjecting across the table and making it difficult to hear either the questioner or the questioned. Secondly, the Director-General is basically asking the questioner questions. I will not make any comment on the questioner.

CHAIR: I ask that we do not have cross-border issues and that the Hon. Dr Arthur Chesterfield-Evans not give answers.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am trying to be helpful because he appears to have difficulty knowing when he might respond.

The Hon. DON HARWIN: It is not a debate.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Effectively you say that the number of complaints is irrelevant in the decision to investigate or not investigate a council?

The Hon. JAN BURNSWOODS: He did not say that.

Mr PAYNE: I did not say that at all.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There is no number that makes a difference to you?

The Hon. JAN BURNSWOODS: It is not the same as saying it is not relevant. You keep trying to get the answer that you want, apparently.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Please let the witness answer.

The Hon. JAN BURNSWOODS: He did.

Mr PAYNE: I have said repeatedly that there is a range of factors that we take into account. One of them is the level of community concern, or whatever the word is, in relation to this. What we have to be very careful of is that we do not react to a level of concern about whether a council should or should not do something, such as, build an aquatic centre. My concern is with the regulatory framework and the process. I was asked a question about Port Macquarie earlier. It does not matter what I think about a cultural centre. There are a number of community people up there who do not want a community centre. That is not my concern, and it should not be my concern sitting in Sydney whether Port Macquarie needs one. I am concerned about the process. If I believe there has been a fundamental breakdown in the process and it is fairly serious, not a minor breach, I will authorise a section 430 investigation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If the merits of the complaints, be they few or many, relate to process, then you are more likely to initiate an investigation?

Mr PAYNE: Yes, that is right, I am more concerned with process.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The complaints may be about an issue that people do not agree with and they would be discarded as such. So the merits of the complaints are of greater moment than the number?

Mr PAYNE: I talk about merit as being whether you should or should not have a particular development, but, yes, I take the point. We are concerned whether the council has acted in a fairly serious way incorrectly.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: These guidelines and factors are not in any way quantified or written down? That is the key question, is it not?

Mr PAYNE: I have said before, I do not know how you would quantify these types of things because each one, even within the same local government area, is different.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Someone might have a go at quantifying the guidelines? It is obviously not your job, but someone might?

Mr PAYNE: When we developed the private-public partnership legislation, we were very careful to make sure that a project in Sydney that is worth, say, \$20 million may not have a major impact on council, but a project of \$2 million in a rural area would be major. So it is horses for courses. It depends on the impact on the council area.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You could write that into a guideline that it depended on the impact, not the money?

Mr PAYNE: I do not know how you would write a guideline. I could write a guideline but it would be meaningless. We are paid to make these judgements. That is what we are there for.

CHAIR: You said you have undertaken a section 430 investigation into the Port Macquarie cultural centre. Do you believe there has been a fundamental breakdown in the processes prior to the tender being let?

Mr PAYNE: As I said earlier, I think, we became concerned early on that normal planning processes—I do not mean land use planning but normal business planning processes—had not been adopted. There was not a business case. It went back also to the fact that the council—and these figures may be a little incorrect—undertook a community survey and, from memory, a cultural centre rated about number 43. It was way down the list. Once again, that is not my call, but that was the first indication that there was an issue. We then looked at whether there had been a business case. There was not a business case.

We raised our concerns when we had a performance review up there. We received complaints—and this was part of the question—from a number of community groups, not just one community group, expressing concern about the cost. We had difficulty getting answers out of the council about the cost of the project and what was actually included in the cost. So I decided to do it formally through a section 430 investigation. At the end of the day, those concerns may be unfounded and everything may be fine, but we will see.

CHAIR: You said you had representations from a number of community groups. Do you know how many?

Mr PAYNE: No, I could not quantify it. We also had our own intelligence, our own information that we had as part of our performance review.

CHAIR: You said there had to be a cross-section, a broad range of people expressing concern for you to instigate a public inquiry. Are you of the opinion there was a broad range?

The Hon. JAN BURNSWOODS: I do not believe the witness actually said that.

Mr PAYNE: I do not think I said that at all. It could be one person.

CHAIR: You did earlier in answer to a question by the Hon. Dr Arthur Chesterfield-Evans.

Mr PAYNE: What I was trying to convey was the fact that we have to be very careful that we are not set up by a particular group for political purposes and get involved in the campaign. So numbers by themselves mean nothing. We look behind that to see if there is a fundamental problem in the council.

CHAIR: I think you also said that there might be multiple issues which leads you to the view that there is a systemic or fundamental problem. Is that part of the problem at Port Macquarie, as you said?

Mr PAYNE: We are in Port Macquarie at the moment. I cannot provide any advice on Port Macquarie until we get the report. But what I can say after a number of years of experience is that generally you find that if there is a breakdown within council on a particular issue there are others; it generally tends to be not the one thing. When you look at where we have been involved over the past 10 years there is usually—and I am talking about the Warringahs, the Tweeds, the Liverpools and Walgetts—there has usually been a range of issues that have caused concern, not a single issue.

CHAIR: Can you provide on notice a list of the community groups that made representations on the cultural centre?

Mr PAYNE: I would have to take advice on that because sometimes people approach us and seek confidentiality.

CHAIR: If you could take advice on that, it would be appreciated, and let us have the information if your advice is that that would be appropriate. Did the member for Port Macquarie make representations in relation to that matter?

Mr PAYNE: I cannot answer that. I do not know.

CHAIR: Can you find that out, too?

Mr PAYNE: Yes.

CHAIR: I think you said you are expecting that inquiry to be wrapped up by Christmas.

Mr PAYNE: Hopefully. Do not hold me to that but it is my expectation that it will be completed by Christmas. Under section 430, we then have to produce a report and the council has 40 days to respond to that report. Obviously, it can respond earlier. So the wash up of the report probably will not happen until mid February.

CHAIR: Sorry, I was interrupted. The report will come out before Christmas?

Mr PAYNE: We produce a report. That report must be tabled at the next council meeting, whenever that is, and bearing in mind that that will probably be January. Then the council has up to 40 days to respond to the Minister as to what they will do about the recommendations. That will probably take us through until February or March.

The Hon. JAN BURNSWOODS: In relation to Port Macquarie, you mentioned before about a community survey they carried out. Can you tell me what the procedure or rules in the department are in relation to community surveys undertaken by council? I think—and correct me if I am wrong—that they are one of a number of mechanisms to ensure accountability and to get feedback from residents, and they can be done online, in writing, by telephone and so on. Do you have guidelines or processes, and do you check on what councils do in that respect?

Mr PAYNE: Under the Local Government Act, councils can survey community opinion in two ways. One is that they can have a referendum, and from memory there are four issues where you must have a referendum: If you want to change councillor numbers, if you want to have a popularly elected mayor, if you want to change wards, and there is one other. That referendum is conducted by the State Electoral Commissioner under the formal rules and the decision is binding on the council.

Councils however can conduct a poll on any issue and there are no rules on the poll, and it is not binding. An example is not so much now but years ago we were getting a number of applications for towns to become cities. Over the years there have been various rules about how you can go from a town to a city. It seemed to me that the best way for us to decide whether or not to support that was to see whether there was general widespread community support and councils conducted polls. Not being compulsory, you did not get a 100 per cent response rate.

Quite often we would ask the council whether it would like us to have a look at the question as somebody sitting outside the council area and we will help the council that way to make sure that the questions are reasonable. But we have no formal role in that. A community survey is really just an extension of the poll. It is an indicator. Before we moved in we would probably have a look at how that survey was conducted and see if it was reasonable or whether it was just a sample, was it statistically significant or not. I stress that it is only an indicator for us. With Port Macquarie, if in fact the cultural centre was way down on the list, it seemed strange that they proceeded with what is, at \$30 million, a fairly high-priced project.

The Hon. JAN BURNSWOODS: I suppose the other side of my question is that there are certain obligations, legal or perhaps somewhat broader, on councils to get to know what their residents and ratepayers think about things. For instance, I think it is quite common for a council to include surveys with a rates notice because it is an easy way and obviously it is cost efficient with things going out in the mail anyway. Does the department play any role in judging whether councils are doing enough to inform themselves of community opinion and whether or not, for instance, a survey that might have several pages that goes out with a rates notice perhaps every quarter or once a year—in other words, do you try to get a sense of how efficiently and successfully councils are informing themselves about ratepayer opinion?

Mr PAYNE: The short answer to that is yes. Councils are required to do management plans and they have community and social plans. We will have a look at those—there is a lot of paper involved—and work with councils to make sure councils generally are connected with the community and know their community, know the age profile and the needs. They stand in a lot better stead when they come in, say, for a special rate variation if they have a better handle on what the community needs, what the community profile is and so on. Obviously, as you would know, the area is very significant and the needs are very significant. The idea of the plans is not for me to prejudge the plans or the outcome but to make sure that the council has drilled down into the community to make sure that it has a good understanding of its local government area. So in that way we play an active role but more at a policy level.

The Hon. JAN BURNSWOODS: If, for instance, you received a complaint that a council was in effect push polling and perhaps had some ulterior motives for the questions it was asking, would you be concerned about that, just about the survey? Would you want to take it into account in evaluating the council's management plans and so on?

Mr PAYNE: We would do that but if we came across that type of information—and it happened recently; I rang the council, I rang the mayor to say that I thought the questions were biased. I think we provided a letter about this particular referendum question. So, yes, we will become involved and express our concern.

The Hon. JAN BURNSWOODS: There is an example I am aware of at the moment coming back to Ryde council, which perhaps is not a surprise, where the council has put out two surveys; probably the main one, which contains lots of council questions spread over four pages, could be criticised on some grounds. Once you submit that one you are invited to do another one which could only be described as push polling. Would that be the council you have written to or is that one you have not heard of?

Mr PAYNE: No, I was not aware of that one. It is another one. If there are concerns, if somebody came to us with a level of concern like that, we would probably in the first instance speak to the council to find out what is going on and suggest a better way to do it. We often say to councils, "If you are going to develop a question or a survey or questionnaire, get somebody external to check it", because we have had instances where the council has asked two questions and they have both contradicted each other. We had a case recently up the North Coast where the response was incapable

of being implemented because the questions were wrong. You have to be very careful. The other thing, too, with questions is that you have to make sure that the general population understands, and it is not full of jargon and so on, and know the implications. It is an art form in itself, I think, developing questions and surveys.

The Hon. JAN BURNSWOODS: So fault, for instance, could be accidental when it is just poorly designed, or if you described a survey as push polling, which I have done, you might suspect that the fault may not have been accidental—

Mr PAYNE: They wanted a particular response.

The Hon. JAN BURNSWOODS: In the case I am mentioning the questions were actually written by Anthony Roberts, the member for Lane Cove, so it is very strange—

The Hon. DON HARWIN: Point of order: The Hon. Jan Burnswoods is now engaging in the sort of conduct that she was so loudly complaining about from the Hon. Dr Arthur Chesterfield-Evans in terms of having a dialogue with the Director General and not asking questions. I simply ask you to call her back to order so that she asks questions, rather than supplies answers.

CHAIR: Do you have any further questions?

The Hon. JAN BURNSWOODS: No.

The Hon. GREG DONNELLY: I have been listening very carefully to Mr Payne and Mr Woodward this morning answering a series of questions on a range of issues. I want to put this to you to clarify it for me. You said on various occasions I think over the course of questions this morning that it is not the role—these are my words, not your words—of the Director General, the department or indeed the Minister to run councils. The running of councils is essentially council business.

With respect to your role as director general and the role of officers of your department and the Minister, the role comes in where there is an identification of, if I can use the phrase, systemic and fundamental breakdown in practice and procedure and operation of the councils and it is not for you and the department and the Minister to be double guessing decisions that are properly in the purview of councils. Is that a fair assessment of trying to sum up the point I think you have been trying to make this morning with regard to a range of questions with respect to various councils?

Mr PAYNE: That is exactly it. You are exactly right. It is often a situation that is difficult for people to understand because I know that if they are dissatisfied with the council where do they go? We always suggest that people go back to their local councillor or councillors generally. Not all decisions that are taken by governments generally are popular and we recognise that. But we are there basically to act as I suppose the corporate regulator of the councils as a body corporate, not so much the individuals.

The Hon. GREG DONNELLY: And in the end there are local government elections and if ratepayers are not satisfied with their council, the council laws or the mayor they should make their decision accordingly?

Mr PAYNE: That is the mechanism. At the end of the day we must recognise that councillors are elected by their communities. Every four years you get an opportunity to change that if you wish.

The Hon. KAYEE GRIFFIN: I have a question in relation to management plans. My understanding of management plans is that—

The Hon. DON HARWIN: Is that a question or a statement?

The Hon. KAYEE GRIFFIN: It is a question. Councils adopt a yearly budget through the three-year management plan. Does the department determine how those management plans should be put out to the public? What sort of framework is involvement in the management plan so that they are easy to understand out in the community?

Mr PAYNE: I might ask Mr Woodward to answer that because right at this very moment we are about to issue a paper on integrated planning, and management planning is part of that process. The need for it to be understood is part of that process. It is important. We do not prescribe the format, so to speak, but we will provide advice if we think that it is unreadable. Funnily enough, we often get complaints from councillors, rather than the public, that they have trouble understanding it.

Mr WOODWARD: The Integrated Planning and Reporting Project—a paper is being released today, in fact—addresses that issue in part. It will answer to your question at the moment is "no, it is not prescribed". What we are saying, though, is that the whole planning system needs a fundamental rethink, I guess, to make sure that they are all integrated. At the moment there are a number of plans and reporting that councils do for various reasons. They are not well integrated, therefore, they are not always reflected in the Management Plan and that is all the community sees.

This project is actually about working with the sector to come to a better way of making sure that all the policies are transparent, worked through with the community and then reflected in the Management Plan. I can give you an example. The Social Plan is a requirement under legislation. It is provided to the department for review but there is no mechanism at the moment to make sure that the issues addressed through the Social Plan, which has come from community consultation, is embedded in the Management Plan with the necessary budgets that go with it. This process we are looking at is a fundamental rethink of that whole planning process to improve it and to make it more transparent.

CHAIR: You may need to take this question on notice. What is the budget in relation to inquiries conducted by the department, breaking it down into reviews, public inquiries and investigations? Could you also give the Committee the budget for 2006-07?

Mr PAYNE: We can do that in the expenditure.

CHAIR: That would be good. Also, could you advise the Committee—again, you may need to take this question on notice—of the estimate of cost to do the Port Macquarie inquiry?

Mr PAYNE: I issued a statement the other day. I have engaged I think two people from the Internal Audit Bureau. My estimate at this stage would be \$40,000 to \$50,000 as the fees for those people, plus travel and accommodation. I think about \$40,000 to \$50,000. Could I just say, in relation to the question about investigations, that we would have a budget for public inquiries. A number of the other costs are part of the overall departmental operating budget. You will recall I said that we have an investigation branch, but we often use people from other branches as well, so the figure we give you will be in that regard an estimate of what we are likely to spend.

The Hon. DON HARWIN: In relation to public inquiries, obviously councils themselves have considerable costs. Is it the policy of the department to reimburse councils for their costs?

Mr PAYNE: No.

The Hon. DON HARWIN: Finally, I want to briefly return to Hornsby quarry. In relation to community lands, you referred to those earlier and talked about the requirement that councils have a management plan in place for community lands.

Mr PAYNE: A plan of management, yes.

The Hon. DON HARWIN: During your recent review at the request of the Mayor of Hornsby Council of its handling of the Hornsby quarry issue, did you find whether they had a plan of management in place for the quarry?

Mr PAYNE: I would have to take that question on notice. I cannot answer it here today.

CHAIR: That brings us to the conclusion of the hearing. I thank both Mr Payne and Mr Woodward for their time here today and their assistance to the Committee.

(The witnesses withdrew)

The Committee proceeded to deliberate.

