

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 5

**INQUIRY INTO THE HUNTER ECONOMIC ZONE AND THE
TOMALPIN WOODLANDS**

At Sydney on Friday 2 July 2004

The Committee met at 10.00 a.m.

PRESENT

Mr Ian Cohen (Chair)

The Hon. A. Catanzariti

The Hon. R. H. Colless

The Hon. A. R. Fazio

Ms S. P. Hale

The Hon. R. M. Parker

The Hon. H. S. Tsang

CHAIR: I welcome everyone to today's hearing, the second of the General Purpose Standing Committee No. 5 inquiry into the Hunter economic zone and the Tomalpin woodlands. The first hearing was held in Kurri on 16 June, and the transcript is available on the Committee's web site. The inquiry is examining the environmental assessment process associated with the Hunter economic zone industrial site in Kurri today. The transcript of today's evidence will be placed on the Committee's web site for public and media access, so anyone who misses something that is said today will be able to read the transcript on the web site. It normally takes about a week before the transcript is available.

As with all parliamentary hearings, I need to remind any members of the media present that the usual broadcasting guidelines apply. Copies of this are available at the table, as are copies of the terms of reference of this inquiry. It is important that the media has regard to the provision of not filming the public gallery during the hearing. You may see an officer of the Committee staff taking some photographs for official Committee records. However, I need to let the rest of the audience, with the exception of the media, know that you are not permitted to take photographs during the hearing. Members of the public are asked to give the Committee's selected witnesses the opportunity to present their evidence without interruption. Only the questions from the Committee and the evidence of the witnesses are recorded on the transcript. You also cannot approach directly the Committee members or witnesses during the hearing but there are Committee officers present who can accept notes. That is what we have done traditionally at this type of hearing.

Evidence given to the Committee today by witnesses is protected by parliamentary privilege. This means that witnesses are given broad protection from any action arising as a result of what they say and that Parliament has the power to protect them from any action that disadvantages them on account of the evidence given before the Committee. I also remind you that the giving of false or misleading evidence to the Committee may constitute a contempt of Parliament. The Committee prefers to conduct its hearings in public. However, the Committee can decide to hear certain evidence in private if there is a need to do so. If such a case arises I will ask for public and the media to leave the room for a short period. Finally, I ask all people in the room to turn off their mobile telephones as they interfere with the equipment used to record the evidence.

I welcome our first witness, Dr Gellatly. I particularly thank you for taking the time from your busy schedule to attend today's hearing. I understand that straight after your evidence here you will be going downstairs to give evidence before another general purpose standing committee, so we will try to ensure that you finish on or close to time. It is quite a day for you.

The Hon. RICK COLLESS: Before we proceed any further are there any agenda items that we need to address, particularly in relation to the email that we received from Gillian Summers?

CHAIR: I was expecting to address that matter later in a deliberative meeting after the hearing.

The Hon. RICK COLLESS: The issue that she raises in that letter will be past if we wait until after the hearing.

The Hon. ROBYN PARKER: Can we have a deliberative meeting at morning tea?

CHAIR: We can do that if it is a concern.

The Hon. RICK COLLESS: Thank you.

COLIN GELLATLY, Director-General, Premier's Department, Governor Macquarie Tower, sworn and examined:

CHAIR: Dr Gellatly, are you conversant with the terms of reference of this inquiry?

Dr GELLATLY: Yes.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. Before we commence with questions from the Committee, would you like to make a short statement?

Dr GELLATLY: No, the points I wanted to raise are in the submission.

CHAIR: Mr Gellatly, on 12 November 2002 you wrote a letter that has been the subject of a significant amount of interest during the inquiry. In it you ask, "Do you seek to ensure this development proceeds?" You also them to ensure "that there was no credible claim to put the industrial estate at risk" because you knew about the swift parrot report establishing the conservation significance of the site. Were you not asking the National Parks and Wildlife Service [NPWS] officers to change their position to encourage and allow this development to proceed?

Dr GELLATLY: No, I was not asking them to go against any of the statutory obligations. Clearly, any role that I and the Premier's Department have is a co-ordination role. We try to work with the agencies to get a result that is both social, economic and environmental. It is important for the region and for an important industrial project that we try to get a balance. Often in these projects there are issues between the agencies. That is probably where we add some value in bringing the agencies together. But it is always done within a framework—and obviously within the general bounds of probity—and we would never attempt to override their statutory obligations. That is clearly their matter and we would not try to override it.

In terms of the issues that were raised by the proponents and by the council, which they considered to be serious issues, I think it was incumbent upon me to raise those issues formally with the director-general of the National Parks and Wildlife Service in an open and transparent manner. That is what I did. In these matters there are often different views, a lack of communication or whatever in trying to get agencies to work together. My role is to try to facilitate and to get outcomes that will benefit the general community. I was not trying to direct the agency in any way; I was merely trying to say, "These are some issues that have been raised. We're positive about the development. Can you have a look at the issues that have been raised?"

CHAIR: Would you agree that the Department of Environment and Conservation [DEC] or NPWS has a certain statutory obligation to review these types of developments dispassionately according to their brief? Your letter states, "I urge you to review your department's position to ensure that there can be no credible claim that a large-scale industrial park is put at risk".

Dr GELLATLY: As I said before, there is no way that we would attempt to override the independence of the National Parks and Wildlife Service. But clearly there were issues raised by the proponents and by the council. They were concerned about the actions of the National Parks and Wildlife Service. That is the issue I was raising: there was no credible claim about the way things were being done. But there was no attempt to override what the National Parks and Wildlife Service decides or what its final advice is. It must clearly be objective and subject to its statutory independence.

CHAIR: Were you aware of the "actions", as you describe it, of the National Parks and Wildlife Service? What were the specific issues of the proponents? Did you consider the NPWS issues to be secondary to the needs of the proponents and of your department?

Dr GELLATLY: I met with the proponents. There was a letter from the council. I asked the proponents to put their issues in writing, which they did in October. On the basis of that and the issues they raised the letter was sent to the National Parks and Wildlife Service.

CHAIR: Your letter says that 2,400 hectares of the 3,300 hectares will be set aside for conservation. You will be aware that 850 hectares of that 2,400 hectares already exist as national park. A further 855 hectares is able to be coal mined and a further 200 hectares is for use by railways. Are you not repeating the developer's position? Perhaps it will not stand up logically that this development is good for the environment.

Dr GELLATLY: There are a number of issues. If you go back to when the process began in 1997-98, the national park had not been established at that time. In part of that area one of the initial jobs was to set up the national park. It is debatable. I think that is genuinely part of the whole area that became part of the conservation zone and national park. As to the issue of whether it has the right balance and so on, a zoning process was gone through and the local environmental plan was prepared. There was public debate about that and people had the chance to make submissions. As with any of these decisions, at the end of the day a balance will be required and some people will not be happy. People have different views about it. But a zoning decision was made that was announced in March 2002, and we have been working on that basis.

CHAIR: On that basis, are you satisfied that your department has exercised balanced judgement in putting this project from day one when the Hunter representative of the Premier's Department, Ben Chard, personally helped choose the location without studying an alternative site? Can you comment on that? Is it not reasonable to say that your representative in the Hunter was focusing specifically on the site?

Dr GELLATLY: Yes, with good reason. He was asked by Cessnock council to get involved. He was not involved in the process of choosing the site. In 1997 the council had identified the site already. I think a committee was set up in the Hunter Valley. Ben Chard was not part of that. The council asked him, and the process started formally in 1998 because there were a lot of agencies involved—even in the process of setting up the national park. I think Forestry had some issues about that. Ben Chard was asked by Cessnock council to get involved and to work on this project. The context in which he is involved is exactly the way in which I would expect the regional co-ordinator to operate: he was asked by the local government body to facilitate and work with the council and other agencies across government.

CHAIR: So this entire development emanated originally from suggestions or recommendations made by Cessnock council.

Dr GELLATLY: That is my understanding. I also understand that a committee was set up in the Hunter Valley. That is my understanding of the situation.

The Hon. RICK COLLESS: Dr Gellatly, you mentioned some issues between the agencies—they happen with all sorts of developments; I understand that. Can you explain for the benefit of the Committee what the role of a co-ordinator general is in sorting out those issues?

Dr GELLATLY: It is not a formal statutory position. It is clearly a role. In some States they have a formal co-ordinator general who has some powers under the legislation. As I said, in New South Wales it is an informal title and role that has no statutory backing. So it is about facilitation, it is about getting the agencies around the table, trying to get people to understand the issues and trying to get the balance. But as I just emphasised it is never trying to overcome the statutory obligations of agencies. Often in these issues a lot of it is miscommunication, not understanding. Also, from a proponent's point of view, it is a lot better to have one point of focus. I normally try to get the agencies around the table so that they can have a discussion. So the proponent has one point of contact, does not have to go to 20 different agencies to sort out issues, but it is usually about cross agencies.

The Hon. RICK COLLESS: Where else has that occurred? When it has occurred, how successful have those developments been from an environmental, economic and social perspective?

Dr GELLATLY: I think there are a couple. The Visy pulp and paper mill at Tumut involved significant co-ordination between all the different agencies. I think that got the balance in terms of the industrial and economic output and the environmental issues. There was an agreement about plantations to be produced and then the social—clearly if you have been down there, it has just made a big difference to that region. I was down there a few weeks ago. That is one.

The Hon. RICK COLLESS: There must have been some huge environmental issues to consider for that Visy development?

Dr GELLATLY: Yes, the technology to be used in the plant and those sorts of issues. So there is that. There is something like the development of the old quarries at Greystanes, which again involved local government, a developer and the agencies. Clearly, again, there were some environmental issues and infrastructure issues with roads and that sort of thing. Some developments do not end up in positive results. We have had some recent steel industry proposals in Newcastle but again that is just part of it, trying to work it through. Often from a proponent's point of view, the thing they are after is certainty and some process that is fairly rigorous and they get a certain time line. They prefer to have a no answer rather than be mucked around for two years. So a lot of it is about getting a decision and finding that one point of contact.

The Hon. RICK COLLESS: You commented a few minutes ago about Cessnock City Council being the driving force behind, the initiator of this whole project and so on. In your view do you see that as a role of local government, to initiate developments such as these and then go to the State government agencies to try to pull all of the potential areas of conflict together?

Dr GELLATLY: Yes. Clearly, because particularly at that time I think the unemployment figures were very high in that area and the general social consequences of that, and I think all local governments are interested in trying to develop jobs that have a balance between environmental and social aspects. Clearly we would support that and we try to work with them.

The Hon. RICK COLLESS: Finally, are you aware of any negligence of any public servant or departmental officer in relation to the discharge of their duties in relation to this project?

Dr GELLATLY: I am not aware of any.

The Hon. AMANDA FAZIO: In your submission to the inquiry you twice used the phrase "it would have been negligent of the Premier's department not to have investigated the matter"—the matter being the concern by the Hunter Economic Zone that there was some confusion about National Parks and Wildlife and the dreaded swift parrot recovery program. Do you feel that you were put in a position that if you had not responded to the concerns of the Hunter Economic Zone they would have been correct in saying that that would have been negligent of the Premier's Department?

Dr GELLATLY: Yes, I think so. As anyone who is a proponent of any type of project, if there are issues they are facing with the public sector or agencies in the public sector, and if they are raised with me in my position, then I feel I am obliged to investigate them or try to get a resolution of them. It would have been negligent not to have done that.

The Hon. AMANDA FAZIO: So basically you were put in a no-win situation. He would have been negligent if you had not intervened but because you did intervene there is now a whole lot of misinformation and conspiracy theories have developed from that.

Dr GELLATLY: I did not feel I was in a no-win situation. These sorts of issues happen almost daily. People raise issues about projects, you attempt to resolve them and that is part of the job. It is not being in a no-win situation; I had to do it.

The Hon. AMANDA FAZIO: Do you think that perhaps it might have improved the process in regard to this development if there was a better community understanding of the role of the co-ordinator general and the way in which certain developments are deemed to be of State significance?

Dr GELLATLY: I am not too sure. For some projects there are people, particularly in the local government area, who are particularly passionate about it from one particular point of view and I think no matter how well the process goes people will still have their strong views and objection to it. Even when a zoning decision is made, and they are not happy, that is their right obviously to do that. I could have helped but I am not sure it would have made a big difference.

The Hon. AMANDA FAZIO: Finally, are you confident that everything that was done by the Premier's Department in relation to this development was above board?

The Hon. TONY CATANZARITI: There have been allegations by some that the National Parks and Wildlife Service was improperly pressured by the Premier's Department into agreeing to the making of the Hunter Economic Zone local environmental plan. What is your response to that?

Dr GELLATLY: I would disagree with that statement. I do not believe that is the case. There was a role taken in whole of government co-ordination but at the end of the day, as I said before, the agency will have its own objective view about its decision and we would not try to change that.

CHAIR: Are you aware that the executive planner for HEZ wrote to the NPWS to say that you were being briefed and therefore the issue was becoming hot. The executive planner then went on to say that he and the developer were expecting a lighter approach from NPWS. What do you think he meant by a "lighter approach"?

Dr GELLATLY: I do not know. I am not aware of that correspondence.

CHAIR: It is correspondence dated 17 from Mr Neil Salman, HEZ executive planner, to Kath Sale, conservation planning officer, National Parks and Wildlife Service.

Dr GELLATLY: I have not seen it.

CHAIR: Do you think there was a lighter approach from the NPWS?

Dr GELLATLY: No. I am not sure what he meant.

CHAIR: Have you or your office given any direction to the NPWS to re-examine the situation in another light?

Dr GELLATLY: It is not a matter of asking them to change their opinion. As I said, it is raising issues that have been raised by the developer and the local council and asking him to have a look at those issues that have been raised as concerns.

CHAIR: But as director of the Premier's Department you would have a great deal of authority in these circumstances. If you said "I think" that would certainly generate some degree of reaction on an issue like this.

Dr GELLATLY: I think that is overstating my position.

CHAIR: Is that right? Do you not think you would have any influence on this by virtue of having an open and honest input, that that would have an impact on various officers in what is now the Department of Environment and Conservation?

Dr GELLATLY: Brian Gilligan, who was director general, and I have worked together for years on these sorts of issues. It was not as if it was a sudden intervention. Projects like this are often in consultation with senior officers of those departments so I do not think it is anything out of the ordinary. Over the years we have tried to work to find resolutions to them. But if national parks has a position that it believes that is its statutory responsibility, then I respect that.

CHAIR: In a letter from Mr Gilligan to you, dated 19 December 2002, he says, being aware of the previous communication, "I am very concerned that not only HEZ Ltd incorrectly attributes this adverse position to NPWS but that other stakeholders involved with HEZ, including the Premier's Department, might also hold this view." Can you comment on that?

Dr GELLATLY: No, other than to say clearly he was responding to my letter.

CHAIR: He said he has made enquiries regarding these claims. Do you have anything to add other than to say that they are unfounded?

Dr GELLATLY: No.

CHAIR: Did you make any other further communication or any other inquiries about these so-called claims?

Dr GELLATLY: No. Once the letter was received I regarded that as the end of the matter at that stage.

CHAIR: So everything was basically very much a co-operative situation in terms of the role of the NPWS, Gilligan's department and also your department.

Dr GELLATLY: Yes. We worked together. The issue that had been raised specifically and was answered in Brian Gilligan's letter was about who prepared the national swift parrot recovery team report and he made it clear that that was the NPWS.

CHAIR: Are you aware that the NPWS changed its mind on that report at a certain point?

Dr GELLATLY: No.

CHAIR: In your letter of 12 November 2002 it says that an "industrial estate of 200 hectares would not support the infrastructure required, given that the RTA would not require a bypass and there would not be a need to construct an additional waste water treatment plant if the estate were 20 hectares instead of 200". Have you ever seen any credible evidence that 200 hectares is not viable, or did you simply accept the developer's word without question?

Dr GELLATLY: It was not a matter of accepting the developer's word. That was the amount that was allowed under the zoning proposal. I think the logic, if you are going to spend \$20 million on infrastructure, clearly the amount of area you have to have industrial development, to have some payback on that, there are economies of scale involved in that but it is not really a matter for me to have a view on in the sense that the rezoning decision allocated that amount of land.

CHAIR: But given the controversy of this land and the obvious, as you said before, there is some quite strong opposition from certain quarters. Did you look at the viability, because you must admit it is a very large development, a large site, with a lot of opposition?

Dr GELLATLY: I think the issue of the amount of land and the developer's attitude, they went through a planning process that weighed up all these sorts of issues. It is not for my department to then go and do another viability study. That is a matter for the developers as they put in their proposals to the council and then the State Government when they make the zoning decisions and all those balances are being looked at in that process. It is not for the Premier's Department to come after the event and then re-examine them.

Ms SYLVIA HALE: As you know, what has prompted this inquiry is a concern that there has been inappropriate pressure applied to other government departments to ensure that the development proceeds. If one puts a plain English interpretation on letters that you have written, can you tell me what other interpretation could be placed upon your words when you say, "I urge you to review your department's position to ensure that there can be no credible claim that the large-scale industrial park will be put at risk"? I cannot see any other interpretation one can place upon that than you are directing the department?

Dr GELLATLY: When that letter was signed that was not the interpretation I was placing on it. Basically, it is saying there were issues raised by HEZ, the company, and the local council. They were concerned about the activities of the National Parks and Wildlife Service in this project, particularly after the zoning and the issue of the infrastructure and the development application for that. I was raising them and asking them to look at their position in the context of those claims, that there was not anything going on in terms of those actions of National Parks officers that could lead to claims that there had been uncertainty. I made it clear before that at no stage would I ever try or want to overturn any decision or position National Parks has that is consistent with its statutory obligations.

Ms SYLVIA HALE: I concede the earlier part of your letter suggests the varying considerations should be taken into account. I just find the wording of this final paragraph somewhat odd. It is really asking someone to ensure that something happens, and I cannot see how you can interpret that any other way but as a direction. But, you have commented on that.

The Hon. HENRY TSANG: If I had read that statement, I would not have the same interpretation as the honourable member.

CHAIR: I appreciate that, Mr Tsang. That is why we have a Committee with different members.

The Hon. HENRY TSANG: That was her view, but not necessarily the Committee's view.

CHAIR: Thank you, Mr Tsang. That is the nature of committee. We have different members representing different parties.

The Hon. HENRY TSANG: Therefore I want to state my position.

CHAIR: Thank you, we have the point. Ms Hale, if you would like to continue.

Ms SYLVIA HALE: On 28 October 2002 HEZ Nominees wrote to you and made quite strong representations about the manner in which National Parks and Wildlife had been, in their view, impeding the development. Subsequently, the wildlife service appears to have changed its advice to Cessnock council and the council subsequently approved the development application for a road. It is my understanding that that approval was in contravention of, specifically, the EP&A Act, that requires in section 5A an eight-part test for developments that affect threatened species, and, if it is deemed that there will be a likely significant impact, an SIS must be prepared. If there is an SIS, the concurrence of the Director-General of National Parks and Wildlife must be sought, and under section 79D (5) (d) the concurrence must take into account any relevant recovery plan. It is my understanding that is a requirement, but none of these requirements have been adhered to, particularly in terms of the recovery plan, that was the swift parrot recovery plan, which was prepared on behalf of the National Parks and Wildlife Service.

The Hon. AMANDA FAZIO: No, it was not.

Ms SYLVIA HALE: It was commissioned by the National Parks and Wildlife Service. Do you have any comment to make on that?

Dr GELLATLY: No.

Ms SYLVIA HALE: But, you would agree if those steps were not followed, any development approval by the council was illegal?

Dr GELLATLY: I was not involved in any of that. I cannot provide any comment on it.

Ms SYLVIA HALE: But would you accept that the swift parrot recovery plan could not be dismissed or put to one side given that it was there as a requirement as part of the SIS process?

Dr GELLATLY: Sorry, but I cannot comment on that. I do not know those specific issues and detail in regard to the planning approvals.

Ms SYLVIA HALE: Fine, we should follow that up with the director-general of National Parks.

CHAIR: On that issue, in terms of the road dimensions, and perhaps this is too detailed for you, but it is an issue that has been raised in the Committee prior to this date. The guidelines in the submission to the Committee clearly state:

Speed controls shall be designed into the HEZ road system through the use of meandering horizontal geometry, minimal road widths and the visually narrow corridors to achieve the desired speeds. Speed humps are prohibited within the HEZ on both public and private land. Combinations of horizontal geometry and narrowings ... are the preferred means of speed control.

And:

Road design shall aim to achieve interconnecting tree canopy along and across road corridors with roads and driveways spanned by mature native trees.

If this is not the case—and the Committee has inspected the land—how would your department or you react to that?

Dr GELLATLY: That is an issue for the people who granted the approval and the relevant authorities involved in that.

CHAIR: So, you would have no input into the design of the development—

Dr GELLATLY: No.

CHAIR: —past your promotion of it?

The Hon. AMANDA FAZIO: Promotion of it?

CHAIR: Is it fair to say that you have stepped in to facilitate certain aspects of this?

Dr GELLATLY: Yes.

CHAIR: Apart from that you do not have any interest in the design style of the development or whether it stays within the guidelines as suggested?

Dr GELLATLY: No. Clearly, as I said at the start, any project has to go through the appropriate processes and if certain requirements are put on it by the planning process, they should be adhered to.

CHAIR: If they are not adhered to?

Dr GELLATLY: It is a matter that has to be taken up with the proponent.

CHAIR: But your department does not have any role other than facilitation?

Dr GELLATLY: No, that is the basic role, facilitation and particularly across agencies. That is the main role of the co-ordinator general and the regional co-ordination framework.

The Hon. ROBYN PARKER: In terms of the actions of the government departments and departmental officers, sitting back in the cold light of day reviewing all of this, do you think anybody has acted inappropriately?

Dr GELLATLY: No.

The Hon. ROBYN PARKER: Do you think, particularly in regard to that letter you wrote, that you would have changed the wording of that letter with the benefit of hindsight?

Dr GELLATLY: Probably with the benefit of hindsight I would have spelled out some of the implicit assumptions underlying it, about not overturning National Parks statutory obligations. But the intent of the letter would stay the same.

Ms SYLVIA HALE: Dr Gellatly, I am sorry I missed some of the previous questioning, so you may have already responded to this, but I get the impression that you were approached by HEZ Nominees and it had one site in mind, and throughout the process and despite the apparent the reservations of National Parks and Wildlife you at no stage questioned whether that was the appropriate site, that your role seems to have been merely to facilitate this rather than to investigate in any way the desirability of it as a development?

Dr GELLATLY: You may have been out when I highlighted that our initial involvement in it was through an approach by the local council and it wanted some help through facilitation across agencies. That is our role. So they had chosen the site and the proponent was working on that site, and our job was to facilitate, to try to get the balance right, to try to get the agencies working together and to work within whatever planning approvals were given. It is not our role to make a judgment or to investigate in detail. There are processes for that. With National Parks, we work with them over the years I have been involved on many projects, and clearly

they have a responsibility to bring forward the environmental and conservation issues, which they do very well. It is always a matter of trying to get the balance, and any of these projects involve some balance.

Ms SYLVIA HALE: You do not think it would have been appropriate, given that you had one government department whose officers seem to have considerable reservations, particularly that there were supposedly 29 threatened species on the site and only nine of them would be in any way protected, do not think in view of these reservations that it would have been preferable to have a lighter touch, as it were?

Dr GELLATLY: As I say, this was not any different to the way we do a lot of projects. The National Parks people are very able to professionally raise issues of concerns. Most big projects always have some trade-off issues and some balance issues. It is nothing unusual.

Ms SYLVIA HALE: But would you agree if it is subsequently shown—I appreciate you said you had no knowledge of these issues—that the development process has skirted around very specific legal requirements, do you think it is unfortunate and that you should have attempted to facilitate a project that did not necessarily comply with the law or whose approval did not comply with the law?

Dr GELLATLY: You are making assumptions there about things I cannot comment on. As I said right at the start of this evidence, we operate in facilitation within the general probity framework that we operate in and also the statutory framework. Clearly we do not want to do anything that is outside the law.

Ms SYLVIA HALE: You would find it regrettable if that had happened? If it was subsequently shown that processes that should have been followed were not followed, you would find that a matter of regret?

Dr GELLATLY: Obviously in a generic sense I would not agree with anything that is outside the law. That is self-evidence.

The Hon. AMANDA FAZIO: In relation to other projects of statewide significance—you mentioned the Visy project—comparing this Tomalpin project to the Visy one, have both these projects been subject to a huge amount of environmental scrutiny?

Dr GELLATLY: Yes. They have been through the planning process, yes.

The Hon. AMANDA FAZIO: Do you think that these sorts of projects, once they are made of statewide significance, that would tend to flush out a whole lot of other people with general and environmental concerns who do not come from the local areas?

Dr GELLATLY: I think that is part of the broader environment in which we operate. There is always local interest that is strong, but statewide environmental groups get involved at different stages, depending on the project.

The Hon. AMANDA FAZIO: I know you have been reluctant to respond to hypothetical questions, but if this project were not to go ahead what would be the economic future of that part of the Hunter Valley?

Dr GELLATLY: I think any project with the potential to generate the jobs that this project has, the investment it has attracted, is a major benefit to the region, just with the jobs created and the investment it brings and the other economic impacts. So, it would be a loss for the region.

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CHAIR: Earlier you mentioned that you were not involved in minutiae of other departments, particularly the role of what is now the Department of Environment and Conservation. I appreciate your position as a facilitator in getting various departments to work together in this respect. In your letter to Mr Gilligan you stated:

I was surprised by HEZ's claim that NPWS has raised a number of objections to the lodgement of the Development Application for the infrastructure for the zone.

So, why were you surprised, if you had an understanding of those specific issues and objections? What were the issues that surprised you about the HEZ objections to the NPWS position on a number of matters?

Dr GELLATLY: In the letter I was referring to the claims being made by HEZ, because I had met with them in August and they had raised issues. I asked them to put the issues in writing, which they subsequently did. The surprise was about the planning process for the LEP approval, and that is when all the environmental issues should have been raised, and they were as far as I understand. The issue that HEZ was facing was what it saw as a changing position; with the road infrastructure DA being considered, new environmental issues were being raised. In one sense that was the surprise aspect. Given that there was a full public process including an exhibition, and people had the opportunity to raise issues about the zoning of the area for industry, when the infrastructure for the roads was about to start the company's concern was that that was a separate environmental issue. I was reflecting the view that had been brought to my attention by the company.

CHAIR: Did you act on the surprise? Did you become involved in the details?

Dr GELLATLY: No, but I did write that letter.

CHAIR: Have you been involved in any details, given that concern had been raised by the company?

Dr GELLATLY: No, I asked it to put the concerns in writing, which it did. On receipt of that I sent a letter to the Director General of the National Parks and Wildlife Service, who then responded to me. That seemed to resolve the issues at that stage and that was the end of the matter from my point of view.

Ms SYLVIA HALE: Dr Gellatly, when you answered Ms Fazio's hypothetical question about what would happen if the development did not proceed, there seemed to be an assumption that if it went ahead it would produce jobs. Are you aware of research in the area that suggests that it is not so much the shortage of jobs within the Hunter region that is the problem, but rather the relatively low educational base, the lack of skills, within the area to meet the demands of jobs? In your correspondence you refer to the potential for it to produce 10,000 jobs. On what basis did you reach the conclusion that the project would create 10,000 jobs?

Dr GELLATLY: That was the potential. Minister Refshauge's press release of 21 March 2002 refers to up to \$2 billion in investment and 10,000 jobs and protection of 2,000 hectares of environmentally important vegetation and habitat areas. Clearly, in any projects there are potentials that can be realised. The proponents would be trying to maximise that. Education might be an issue, but surely when you have an industrial development that brings new investment into the region, and that brings with it jobs, that is important in relieving unemployment and creating a stronger regional economy. It is self-evident that in attracting investment, up to a billion dollars or so, the number of jobs is obviously dependent on the mix of industries that are attracted. That potential depends on whether it is realised down the track. It is self-evident that attracting that sort of investment must improve the strength of the regional economy.

Ms SYLVIA HALE: Presumably a lot of the industry that might be attracted will be highly automated. That is the way in which modern industry and technology is proceeding.

Dr GELLATLY: Yes.

The Hon. HENRY TSANG: Earlier in your evidence it seemed to me that your department has favoured this project and never looked at an alternative site. If an alternative site for development had the support of the local council and would bring in jobs and investment, would you look at it as you have this development?

Dr GELLATLY: Most definitely, we would be very involved.

The Hon. RICK COLLESS: Dr Gellatly, at the hearing held in Kurri Kurri the Committee heard evidence that suggested that this development was an environmental calamity waiting to happen. Does that impression concern you? Has there been a proper and absolute assessment of the project by the National Parks and Wildlife Service?

Dr GELLATLY: The process for the zoning, particularly the LEP and the creation of the national park, seems to have come up with a really good balance between the social, economic and environmental issues. Clearly, there would be local people with particularly strong views who would object and will not agree. They might say that that is the perception of it, but from what I have seen this has gone through a thorough process. The service has had a say and at the end there is a balanced result.

(The witness withdrew)

(Short adjournment)

CHAIR: Before we commence, I would like to let everyone know that the Committee has had some discussions regarding further submissions to the inquiry. The Committee will be prepared to take further submissions. The transcript will be available in approximately a week. The Committee is prepared to allow further submissions in writing for a 14-day period subsequent to the transcript being made publicly available.

The Hon. TONY CATANZARITI: In response?

CHAIR: In response to any issues that are raised today in the hearing.

The Hon. ROBYN PARKER: Could you clarify as well that that also applies to people who have already made a submission—that they will be able to further submit and respond.

CHAIR: That is a good point. That is appropriate. If anything should arise out of today's hearing, the people who have already made submissions will have an opportunity to make further submissions.

KATHARINE SALE, Conservation Planning Officer, Department of Environment and Conservation, Post Office Box 733, Queanbeyan, 2620, and

SIMON ARTHUR YARWOOD SMITH, Deputy Director-General, Department of Environment and Conservation 59 Goulburn Street, Sydney, and

DEBORAH ANNE STEVENSON, Senior Threatened Species Officer, Department of Environment and Conservation, 42 Bridge Street, Hurstville, affirmed and examined:

CHAIR: Addresses can be deleted from the transcript, if requested. Are you conversant with the terms of reference of the inquiry?

ALL WITNESSES: Yes.

CHAIR: In what capacity are you appearing before this Committee—as a an individual or as a representative of an organisation?

Ms SALE: As a representative of an organisation.

Mr SMITH: As a representative of the department.

Ms STEVENSON: As a representative of the Department of Environment and Conservation.

CHAIR: If you should consider at any stage that certain evidence you may wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request.

ALL WITNESSES: I will.

CHAIR: Would any of you like to make a short statement before taking questions from the Committee?

Mr SMITH: I draw the attention of the Committee to our submission which we believe summarises the information we will be able to provide today. I would just like to comment that, first and foremost, we say that the National Parks and Wildlife Service has never been improperly asked to do anything other than what we would normally do in assessing land use change, as in this process. We say that without reservation. We acknowledge that it has been a very long process and it has been reasonably contentious both because of the complexity of the conservation issues on the site and the presence of many threatened species, which makes it a complicated job in the first place. But we also think that some of the heat, essentially, that has come out of this process historically has reflected the complexity of the laws under which we operate and to a degree a less than perfect understanding of the responsibilities that some of the participants have had in the process. That has led to frustration and delay, which is perhaps one of the reasons why the Committee is having this hearing today. Our bottom line is that we are very confident that the conservation outcomes that have been achieved through this protracted process are outstanding. We look forward to giving the Committee a bit more information about that, if that is of interest. The bottom line for us is the protection of native plants and animals. That is my opening statement. I am now ready to answer any questions.

CHAIR: Good. You have been quoted in newspaper articles and you have written in departmental submissions that the department views the Hunter Economic Zone [HEZ] as an excellent conservation outcome. Do you feel that there has been sufficient attention given in terms of adequate coverage of threatened species and in terms of the area's protection—that this is actually adding to conservation protection?

Mr SMITH: Yes. I guess we are talking about an area of about 3,200 hectares that has been put forward for consideration under this new local environmental plan [LEP], and previously that was zoned for rural use and for forestry purposes. As a result of the final process we have reached an outcome where 70 per cent of that land will be permanently allocated to conservation purposes, which is a very large quantity of land out of the available portion, with 1,273 hectares going into new national park and 854 hectares going into habitat

protection. The result of the conservation outcomes are that the representative samples of the three vegetation communities present at the site have been included in the conservation areas, including the Kurri Sand Swamp Woodland endangered community and some vulnerable plants that are present on the site, a eucalypt species and a grevillea species that have been included in those areas, and most of the Hunter lowland red gum forest has been included. The land along the creek corridor will also protect mature hollow-bearing trees which are likely to be used for roosting, breeding and/or feeding by yellow-bellied gliders, squirrel gliders, koalas, powerful owls and the majority of the micro bat species that are present on the site.

CHAIR: If one considers that the lowland and wetter areas are protected, is it not the case that a lot of the drier types of forest are even more valuable habitat in terms of some of those threatened species?

Mr SMITH: Our experts have been involved in assessing the information that has been provided in terms of the assessment of the presence of various species and ecological communities over a number of years. It is fair to say that information has come over time through the process, rather than as I guess we would have preferred it to be done, of being based on an initial comprehensive assessment. But notwithstanding that, we are confident that we have ensured that representative samples of flora and fauna are going to be protected in 70 per cent of the land that has been set aside for conservation.

You will see from our submission that the LEP itself was approved prior to the completion of every level of detail of flora and fauna assessment that we would have preferred. As a consequence, additional information has come to light as the more detailed level of assessment has taken place on the site. But we are quite confident that we are going to see the additional protections that are necessary to protect those species to protect those species that have come to light subsequent to the LEP's approval being worked into the development assessment process.

CHAIR: Will there be guarantees on that? Please correct me if I am wrong, but I understand that the Department of Environment and Conservation [DEC] submission identifies the habitat for nine threatened species that are adequately represented in the 7B lands or national park. Could you perhaps indicate which species are not represented?

Mr SMITH: We will take that on notice.

CHAIR: Ms Sale, would you have any comment on that?

Ms SALE: I have not been working on the development for about two years now, so Deb Stevenson would be in a better position.

Ms STEVENSON: I can take that question on notice and provide you with that information in written form at a later date.

Mr SMITH: Probably a good example to discuss is the information that came to light in relation to the habitat of the swift parrot. After the LEP had been approved, more information became available that the swift parrot used some of the mature trees in the areas that were not in the initial conservation zones as a food source in particular times of the year. They fly across the eastern seaboard but would visit there for food, and we have been working with the developer to identify additional protection areas that need to be provided in order to ensure that there is a sufficient continuing availability of food source for those birds, so we are very pleased. So we are very pleased with the process. The LEP achieved a huge outcome and now we can continue to work at the level of individual, smaller development assessments, as the law provides, to ensure that all species are taken into account.

CHAIR: Could you indicate why NPWS officers changed their advice, at a meeting on 21 October 2002, from needing the ecological constraint mapping to be completed before proceeding further, to having no objections on 1 November? Did you or another officer of the NPWS direct the staff who were dealing with HEZ to change their advice on the road DA for HEZ, for example?

Mr SMITH: I was not involved at that time. As you know, I was working for the Environment Protection Authority at the time. The director-general of the department I believe is appearing this afternoon, or the former director-general, Brian Gilligan, is appearing this afternoon, so you might want to ask him about that. But I am happy to take that question on notice and go back and review the notes of what took place at that time.

CHAIR: Do you have any understanding of the original design of the road and the reality of the access road? Could you enlighten the Committee on what the expectation was?

Mr SMITH: No, I cannot help with that, I am sorry.

CHAIR: Have you covered that in terms of the impact on certain species in the area?

Mr SMITH: Perhaps for committee members who may not be familiar with the way the laws operate in this case, there is a statutory duty for the council, which is the body responsible for preparing a draft local environmental plan, to seek the views and the support of the Director-General of the National Parks and Wildlife Service. But, in general terms, when assessing development applications it is the responsibility of the local council to assess the impact on threatened species. So the council decides whether a particular DA before it is likely to have a significant impact on threatened species and if it decides that it is, then it is council's job to seek the proponent to prepare a species impact statement [SIS], and in preparing a species impact statement the council is to seek the views of the director-general who will help shape up the request and design the questions that need to be answered by the species impact statement. Then again, it is the council's job to manage that process to see that the study is done adequately, and then to make a decision.

If the council believes the statement shows that a particular DA would have a significant impact on threatened species, then the council is bound to seek the concurrence of the Director-General of the National Parks and Wildlife Service in making its decision if it is going to approve something. I think one of the issues that has occurred at this site is, without wishing to be unkind, that Cessnock council has not had within its capability the resources to fully deal with its responsibilities as the decision maker. So sometimes it has appeared as if it has really been the National Parks and Wildlife Service's job to get involved in decision making on the individual DAs, but the legislation makes clear that that is the council's function.

CHAIR: Ms Sale, I think I am directing this question appropriately to you, Neil Selman made a comment to you dated 2/5/02 which says:

... a decision that council has reached today, that is that legally we cannot accept the Stage 1 infrastructure DA without an SIS.

Is that the situation and has that situation continued? What is the current state of play with that?

Ms SALE: I am not able to comment on that. I would need to take that question on notice.

CHAIR: It is a letter to you.

Ms SALE: Yes, and I also have not been dealing with that issue. I have been working in another position for the past two years, so I would need to take the detail of that question on notice. In terms of the legislative role around dealing with threatened species issues, could I suggest Deb Stevenson may be better placed to answer that. She has a more conversant knowledge of threatened species legislation.

CHAIR: Would you like to comment on this?

Ms STEVENSON: Just in relation to the need for an SIS, made a decision that there would be a significant impact on threatened species as a result of that road, and therefore it has referred it to the Director-General of the National Parks and Wildlife Service for the Director-General's requirements, and we have provided those in relation to that particular development.

CHAIR: So you have provided information about the design of the road: size, impact, that type of thing?

Ms STEVENSON: We provided the director-general's requirements, which is survey requirements for threatened species that would occur within the vicinity of that proposed development.

CHAIR: Did you find specific threatened species in that area of the development?

Ms STEVENSON: What we normally do is a search of the Wildlife Act to see what threatened species occur within 10 kilometres of the proposed development and we put those species in the director-general's

requirements for the species impact statement as the subject species for which the impacts of the development need to be investigated. We include that information in the director-general's requirements.

Mr SMITH: The director-general's requirements are essentially the spelling out of the work that is to be done in order to ensure that the council has proper information upon which to base its decisions, and then the work gets done, essentially, by the proponent and the people who he or she employs to assist them in developing the impact statement.

CHAIR: Ms Sale, could you enlighten the Committee, because I think there has been a little bit of confusion, and I understand you have been involved with the HEZ project on behalf of the NPWS for a long time, you were aware that part of the area was gazetted national park prior to the HEZ being rezoned. Could you perhaps explain to the Committee what the situation is with national park, how it came about that the relative size of the area was committed to national park and protection?

Ms SALE: Cessnock council referred the LEP rezoning proposal to us, I think in April 1999. Prior to that time part of the area, which was enclosed within the boundaries being proposed for rezoning, had been transferred to national parks. That was the outcome of the regional forests agreement comprehensive regional assessments [CRA] process. I was not party to that process so I am not able to comment specifically on why those decisions were made, but when the rezoning was proposed it was put before us; we were aware that that area of land was already national park, so any rezoning would need to adequately reflect in the zoning provisions that that area was, in fact, national park.

Mr SMITH: It might be worthwhile commenting that that decision to create part of the land as a national park related to only a portion of what subsequently became a national park area.

CHAIR: What area are we talking about in terms of hectares?

Mr SMITH: I think we should take that on notice to give to you, but it was a significant extension of land that the regional forest assessment [RFA] process had said would be State forest. As a result of the rezoning process it became an addition to the national park.

The Hon. RICK COLLESS: There are a few questions in relation to that issue that precipitate out of your answer there. You were saying that part of the national park was gazetted prior to all this commencing, which was a result of the RFA process, and it was previously State Forest?

Mr SMITH: Yes, previously zoned for forestry.

The Hon. RICK COLLESS: And you do not have any idea what the area of that was? I think this is pretty important to this whole discussion. The questions that I had written down here to ask in relation to that was what was the area of the national park prior to the rezoning which would have been the RFA proposal, or the result that you talk about, and the 1,273 hectares that was included in the rezoning? Did that include the former area of national park or is it additional to what was there?

Mr SMITH: My understanding is that 1,273 comprises a portion that was already to be included or had been included in a new national park.

The Hon. RICK COLLESS: As a result of the RFA process?

Mr SMITH: Yes, and probably a portion I think about the same size—it is about 50/50 within that area, but we will take that on notice—that was not going to be part of national park but which, as a result of the LEP process, it became one.

The Hon. RICK COLLESS: So if what you are saying is correct there would be at least 600 hectares that were converted to national park as a result of this development process?

Mr SMITH: In that order, and will confirm that. But it was a significant addition.

The Hon. AMANDA FAZIO: I would like to ask not about an issue that is concerned so much with the work that you have done within the boundaries of the Hunter economic zone site but about an issue that came up

later and has caused a lot of concern to residents in the village of Pelaw Main. It relates to the siting of the link road. You will be aware that two roads are to be constructed in conjunction with this project: the access road into the Hunter economic zone site and a bypass, or link road, to stop traffic flows generated by the HEZ site going through the township. A lot of local residents are concerned because the National Parks and Wildlife Service decided to declare a certain area where the original link road was to go—some sort of Kurri sandy swamp land; I forget the terminology but I am sure that one of you will know what I am talking about—which has forced the link road to go a lot closer to the village of Pelaw Main than would otherwise have been the case. Can you explain how that process came about? How was that bit of forest determined to be of such value that the link road had to be re-routed?

Ms STEVENSON: You are talking about the proposal for a link road between the economic zone and John Renshaw Drive. The area that it is proposed to go through is endangered ecological community—Kurri sand swamp woodland. The National Parks and Wildlife Service has had some discussion with the council about the proposed route of that road. As far as we know, it is the council's decision. It is discussing that with the Roads and Traffic Authority so you will need to refer that to the RTA and to Cessnock council.

The Hon. AMANDA FAZIO: Is the Kurri sand swamp woodland widespread throughout the area or is it very isolated?

Ms STEVENSON: It is a restricted community that has been listed because it is so highly restricted. It occurs mainly around Kurri Kurri and only within the Cessnock local government area. More than 60 per cent of it has been cleared already and the other 40 per cent is under threat because of its location and clearing for agriculture, urban development and so on. That is why it was listed as an endangered community.

Mr SMITH: For members who might not be familiar with the process it is probably worth explaining that there is an independent scientific community that assesses nominations for the declaration and determination of that—whether a species or an ecological community of species meets the criteria in the legislation that means that it should have special protection. Our job within the department is to receive the list and then seek in the processes in which we are engaged to ensure that appropriate consideration is given to the protection of those things that are listed as being under threat.

The Hon. AMANDA FAZIO: So the scientific community identified this as being a threatened ecological community. You found that one of the areas you are looking at has this in it so you have placed this protection on it.

Mr SMITH: That is right. We are not the decision maker—it would be either a council or the Minister for Planning. But we would be saying, "This is an important thing that needs to be taken into account in making the decision".

The Hon. AMANDA FAZIO: Who owns the land where that ecological community is located? Is it State government land? Do you know offhand?

Ms STEVENSON: As far as I am aware it is a mixture of tenures.

The Hon. TONY CATANZARITI: Mr Smith, was the National Parks and Wildlife Service improperly pressured in any way to agree to the making of the Hunter economic zone LEP?

Mr SMITH: The simple answer is no. I have spoken to all the staff I could who are still with the department to ask them whether they believed they had been improperly pressured, and everyone said no. As I said in my introductory statement, it has nevertheless been an extended and complicated process and various participants in the process have been frustrated by how long it has taken. In my experience, the role of the Premier's Department is generally when people in the community say, "We are getting frustrated about various agencies taking a long time to do things" and the department will say, "Let's get with on it". They will want us to expedite processes to make sure that people get decisions within reasonable time frames. That is their job. That is fine as far as we are concerned. In this case—I am not aware of any others—did they say, "I want you to compromise on the processes that you need to achieve"? No. They just wanted us to get on with the job.

As I mentioned, it is our view that we have acted in a very professional way because we are committed to ensuring that the threatened species laws that are implemented and species that are endangered are protected. I

guess we would have wished that a comprehensive survey could have been done from the start but we were unable to have that occur. If a comprehensive survey had been done we would have had all the information on the table we needed in order to get a single outcome agreed for the whole site fairly quickly. Then it would have been over and done with and we would not have these continuous other little bushfire issues that are complicated and that cause delay. Nevertheless there is no doubt that we have done our job of protecting the threatened species within the law as provided. But the process has taken a long time.

The Hon. TONY CATANZARITI: Can you describe in some detail the conservation outcomes achieved as part of this new LEP?

Mr SMITH: Sure. As I said, we were looking at 3,200 hectares zoned for rural and forestry before. About 70 per cent of that will be entered into permanent conservation either in the national park or as zoned for habitat protection. As I also said, we are still discussing with the developer some additional protection areas that would be necessary to protect those species that were identified in subsequent survey work but which were not known about at the time that the LEP was being progressed.

CHAIR: On that point, I understand that part of the protection zone—some 855 hectares—is able to be coal mined and a further 200 hectares is used for railways. Therefore, is it not reasonable to say that some 1,900 hectares are not set aside for conservation and have potential other major users? Do you agree with that?

Mr SMITH: No, I would not agree with that. I think habitat protection zoning means that activities that can take place within the zone must be consistent with the objectives of the zone.

CHAIR: Are you aware of the potential for coal mining to occur on that site?

Mr SMITH: Yes. Some of the best conservation areas we have got have been where coalmining has prevented other land uses on the surface.

CHAIR: But would you not agree that that is only temporary protection? Mining in an area such as this would be most likely open cut. Therefore, adding those areas for protection is potentially a temporary measure.

Mr SMITH: The LEP deals with land-use zoning and the zoning that has come out of the process says that that area is to be for habitat protection.

CHAIR: Does that include open-cut coalmining?

Mr SMITH: I do not think so, but we will confirm the answer on notice.

The Hon. TONY CATANZARITI: Does the Department of Environment and Conservation believe this outcome will effectively balance the need for conservation with the need for job-generating development in the Hunter Valley?

Mr SMITH: Yes, we do. We are one agency of government and of course the Government has multiple objectives for the community. We believe the outcome of seeing 70 per cent of the land protected for conservation is a very good one. It will provide protection for threatened species of plants and animals and also a valuable asset for the Lower Hunter community in the years ahead as development occurs. But it also provides the other objective the Government has: to ensure that there is adequate land available for job-creation development. So we think it is a very good outcome in that sense.

The Hon. TONY CATANZARITI: Will threatened species found on land that is the subject of a future development application be harmed automatically?

Mr SMITH: That is a good point. As I have said, 70 per cent is protected through the zoning mechanisms. But no-one should think that that means 30 per cent will be bulldozed and covered in concrete. What happens is that we move through the LEP process, which defines what activities are permissible within various zones. But those zones must be assessed individually and within that assessment threatened species conservation must be considered. That is the basis upon which we are continuing discussions with the developer about additional conservation areas to be included in the developable lands. The LEP is the big-picture decision making about a good outcome for different areas and the second stage is moving into the little-picture detail of

the assessment. Within that process a whole range of options are available for protection, which the decision maker—the council—will take into account.

The Hon. TONY CATANZARITI: Is there not almost always an effective way of protecting a threatened species and allowing development to proceed?

Mr SMITH: Yes, we generally find that. Sometimes it takes quite a long time, but often, when it gets down to a level of detail, it can turn out to be a question of where a particular building is located within a lot, in what way it is constructed or, if the loss of particular habitat is unavoidable, what other mechanisms are available. For example, in some areas we might have a single record of a particular species being present on a particular development site. It might be thought that that is the only information available and the destruction of habitat would imply the loss of that species. But once we get down to it and do more survey work we often find that that species is present in other places nearby and, if we are confident that a sufficient number of those areas are secure, it might be possible for development to go ahead on that site without the loss of the species. It is important to clarify that we are not in the business of protecting every single plant and every single animal. Everything that is alive dies—us included. The important point is whether the communities and the species will be viable for the future. That is the work we try to do.

Ms SYLVIA HALE: So you have particular concern not just with individual plants but with communities. When those communities are under threat do you feel a particular responsibility to make the department's concerns known?

Mr SMITH: We are interested in the ongoing viability of the populations of all plants and animals and the communities within which they combine.

Ms SYLVIA HALE: On which date did the department become aware of the importance of that particular location to the swift parrot?

Ms STEVENSON: I understand that some records dating back 15 years of swift parrot sites came to our attention at the end of 2001.

Ms SYLVIA HALE: Was that before or after the LEP was put in place?

Ms STEVENSON: It was before the LEP was put in place.

Ms SYLVIA HALE: So contrary to what Mr Smith said earlier—that the LEP was approved prior to the completion of investigations and then the fact that the swift parrots used the trees came to light; I think they were his words—you are saying that this was known before the rezoning process took place?

Ms STEVENSON: Once we had learned about those records we informed the swift parrot recovery project officer and the swift parrot recovery team and they investigated those records that had come to light. That took a couple of months during which time the LEP was finalised.

Ms SYLVIA HALE: Did the National Parks and Wildlife Service commission the preparation of the swift parrot report?

Ms STEVENSON: No, we informed the swift parrot recovery team of those records and we facilitated its coming onto the site and undertaking some further survey work to ascertain whether those records were likely to be accurate.

Ms SYLVIA HALE: Did it prepare a report as a result of that work?

Ms STEVENSON: Yes.

Ms SYLVIA HALE: Did it mention the swift parrot recovery plan in that report?

Ms STEVENSON: They referred to the swift parrot, yes.

Mr SMITH: We should clarify that the swift parrot is a species that is listed on the National Register of Endangered Species and the team that was established to prepare the recovery plan was a Commonwealth-funded exercise across multiple jurisdictions.

Ms SYLVIA HALE: As I understand it, the Commonwealth viewed these woodlands as the major source of trees that were maintaining a threatened species—they were critical to the maintenance of the swift parrot.

Mr SMITH: The information we have—the team has told us—is that the trees in that area are significant as a food source at particular times or seasons, which is very important to the swift parrot.

Ms SYLVIA HALE: Do you think this should have been an extraordinary important factor to take into account when assessing whether the area should be rezoned and subsequently developed?

Mr SMITH: We would have preferred that the rezoning exercise was based on a comprehensive flora and fauna assessment before the decisions were made. The decisions were made based on the information that had been made available to us, and more information became available after that about the swift parrot habitat. That is the reason that we have been involved in subsequent negotiations to identify additional areas that should be protected.

I wanted to mention that we have done some further work and in looking at the areas that have been zoned for industrial purposes or for habitat protection we know that the trees that are most important are forest red gum and spotted gums. In fact, the survey work is so detailed that we know that, for example, there are 493 forest red gum trees in those areas that are over 50 centimetres in diameter at waist height and 434 spotted gums so it is a very precise level of survey that has been done. In working with the developer, we believe they will be able to agree to add an additional 60 hectares that will ensure the significant proportion of those trees remain available to the swift parrot.

Ms SYLVIA HALE: What proportion is significant?

CHAIR: Particularly in terms of the spotted gum, which I understand does not achieve the same level of protection as the trees in the more low land areas. Can you comment on that?

Mr SMITH: I will take that on notice and give you the information we have about where we think it is heading at the moment, but I wanted to emphasise that we are still in negotiation with the developer so the outcome is not yet determined.

Ms SYLVIA HALE: In terms of the process as a whole, I think the phrase you used earlier was that some of the participants had "less than a perfect understanding of the processes involved". Would you agree that it would be fair to say that on one hand there was the developer who was very keen to progress the development, there was the council, which also seems to have been very keen for the development to proceed but neither of those really understood the requirements of the Threatened Species Act or the requirements of the varying departments yet they pushed very hard and complained, particularly the developer, in the letter to Dr Gellatly that in fact their efforts were being impeded by the department? Do you think the appropriate response of Dr Gellatly should have been to tell these people or groups that they are not abiding by the appropriate processes, that they are trying to steamroll something through that has not been adequately investigated, and that everything should be put on hold until those investigations are complete?

Mr SMITH: I guess I would not want to express a view on what Dr Gellatly should have done. What we experienced, there was a letter came which essentially was saying "Come on, are you guys doing what you are supposed to do properly and efficiently?". You probably best ask Brian Gilligan this afternoon, but my understanding was that he investigated whether we were doing things properly and we did have a stuff up. At one point the officer who had been involved in the swift parrot recovery process prepared a letter that went to council setting out aspirations for protection of swift parrot habitat, which was received by council as if it was a communication from the National Parks and Wildlife Service, which it was not because it was coming from the national swift parrot recovery team. Council saw that and saw the inconsistency between the two letters and thought, "What is Parks doing? We are getting two different messages at this point".

The action of the department at that stage was to ring up and say, "This was not an authorised communication from our department. It was information that is coming to you from the national process and you should speak to the national people about what they have in mind for the process." At every stage there was frustration but the pressure was all about just getting on with it. But as you have pointed out, our view was that the council had not fully understood that it was the decision maker in many of these cases and while we had tried to be a helpful it was not our role to take on their decision-making function.

Ms SYLVIA HALE: I take it from that that council was acting from a position of ignorance in many ways or lack of knowledge of both the appropriate processes and how it could—

The Hon. HENRY TSANG: Would it be more appropriate to ask the council than to keep asking the witness to comment on someone else's opinion?

CHAIR: We have a former council member appearing. Perhaps you could ask questions of the witness at the appropriate time.

Mr SMITH: I am happy to say that we were involved in business transactions or approval transactions with the council, and our view was that not at all times was the council fully aware of everything it had to do.

Ms SYLVIA HALE: Would you agree that we have a site where there seemed to be 28 or 29 threatened species and at least one of those species, namely the swift parrot, this was prime essential habitat if that species were to continue to survive? Do you agree that that in itself was sufficient to have said, "This process should be stopped until these concerns have been addressed."?

Mr SMITH: No, I would not agree with that.

Ms SYLVIA HALE: Why would you not agree with that?

Mr SMITH: Because we were involved in the LEP process based on information that had been provided. Our functions had been discharged.

Ms SYLVIA HALE: But if you were involved in the LEP process you knew that the department had been informed about the importance of the site to the swift parrot. You do not think that was sufficient for you to have said, "We need to slow down and go back and look at some of the fundamental assumptions on which this development is based, namely that it could proceed without harming the threatened species that were on the site"?

Mr SMITH: No, we did not think so because we were confident, as has been demonstrated subsequently, that there would still be more information to come as we moved into a more detailed level of assessment for individual sites.

Ms SYLVIA HALE: I think in your testimony earlier you said that you were under pressure. Where was that pressure coming from?

Mr SMITH: We are always under pressure to get decisions quickly because people want to get on with their lives.

Ms SYLVIA HALE: Given that your primary role as a department is to prevent inappropriate decisions being made in the absence of adequate information and—

Mr SMITH: I am not sure I see our role as to prevent inappropriate decisions being made. We have specific statutory duties to provide information to perform certain functions and that is what we did.

Ms SYLVIA HALE: But would you agree that you could not comply with your statutory function to provide that information if you had not had the opportunity at the time to carry out the studies? I took it from your earlier evidence that you said the LEP was approved prior to the completion of investigations.

Mr SMITH: Then I think we fulfilled our functions under the law as it stands. I guess I have explained it in so much detail because this experience shows that the laws as they stand are too complicated for people who

are involved with them. We need a system that will provide a higher level of certainty for conservation and for developers, and have that be done on the basis of a comprehensive information days in a transparent way, essentially up front. The complexity is in the process. It is not intended as a criticism of participants but it is very complicated and it is not serving the community in its current form and that is one of the reasons that we need some different approaches.

The Hon. HENRY TSANG: That is the reason there is a co-ordinator general, to have them to co-ordinate the different departments' views so that it can be achieved.

Ms SYLVIA HALE: Surely if your investigations have not been completed and in fact there is set in train a whole series of events, the outcome may have been different had those initial investigations being adequately completed. You would not suggest that is an appropriate way to proceed, would you?

Mr SMITH: The thing is that the decisions about what changes will occur on the ground can be dealt with through the strategic planning process or they can be dealt with through the development assessment process.

The Hon. AMANDA FAZIO: Mr Smith—

CHAIR: Excuse me, could we have one at a time? If you do not like the questions you have adequate—

The Hon. AMANDA FAZIO: No, she has been asking questions for 15 minutes.

CHAIR: And you will get adequate time as well.

The Hon. AMANDA FAZIO: They are not intelligent questions either. It is a waste of time.

CHAIR: That is your opinion. Can we just go through the questions and you will get adequate time to ask your questions as well?

Ms SYLVIA HALE: I will finish. Because of the failure to complete the investigations, steps may have been approved that in fact totally thwart an appropriate decision being made. For example, if you make a decision to completely wipe out a stand of trees and then you subsequently decide that your information indicates that those trees should have been saved, you do not think that that is not a desirable way to proceed?

Mr SMITH: No. As I have mentioned, the strategic planning process does not lead to trees being chopped down because it is at the stage of when someone wishes to take an action on the ground there is assessment at that point. So we know that that is the process under which we operate.

The Hon. RICK COLLESS: Can I go back for more detail on the gazettal of the national parks? You may have to take these on notice, given your previous answers. But I think it is important for the Committee to have this clarified. Can you tell us when the national park was gazetted, when both portions of the national park were gazetted, the dates that that gazettal occurred for the section that came from the RFA process and the section that precipitated out of the HEZ process?

Mr SMITH: We will take that on notice.

The Hon. RICK COLLESS: Are you aware of when LEP amendment No. 60 was gazetted? You may need to take that on notice too.

Ms STEVENSON: It was early 2002.

The Hon. RICK COLLESS: So would I be correct in assuming that the second part of the national park would have been gazetted post the LEP process or prior to the LEP gazettal?

Ms STEVENSON: Post the LEP process.

Mr SMITH: We would be happy to provide a chronology if you wish.

The Hon. RICK COLLESS: That would be fantastic.

Mr SMITH: That will give you the dates of gazettal of the park portions, the date of the LEP and also the amounts of land involved.

The Hon. RICK COLLESS: Thank you. In relation to the swift parrot, at the previous hearing we had in Currie we were given evidence that the spotted gum ironbark communities are the food source of the swift parrot in that area, that is what they move in there for at certain times of the year, is that correct?

Mr SMITH: We know that the forest red gum and the spotted gum trees are the food sources. We have records of sightings both within the HEZ area and in other areas, State forests and national parks that are nearby.

The Hon. RICK COLLESS: So of that 870 hectares that has been zoned industrial 4H in the HEZ proposal, what is that predominantly made up of? Is it predominantly spotted gum ironbark or are there red gum communities in there too?

Mr SMITH: There is a mix and I think we should give you a map with some statistics on the breakdown of the vegetation communities and the types, if you wish.

The Hon. RICK COLLESS: That would be good. Can you also tell me what area of the spotted gum ironbark communities—I know there are two or three very similar types in that general lower Hunter area but I understand the swift parrot feeds on other very similar types as well as the one that you find in the HEZ area. Is that correct?

Mr SMITH: As I mentioned, we have records of sightings of swift parrots in the area within the HEZ but in other areas as well. In fact, we could provide that information.

The Hon. RICK COLLESS: Again, we were given evidence at the last hearing that there were some 32,000 hectares in total of the three slightly different but very similar spotted gum ironbark communities which the swift parrot feeds on. In your view the 870 hectares which have been zoned industrial 4H, given that there are 32,000 hectares of potential food source just in the spotted gum ironbark communities in that area, what sort of deleterious impact will that 870 hectares, which we have already agreed will not be clear felled and put down to concrete—there will still be a lot of suitable trees in there for the swift parrot—have on the survival or otherwise of the swift parrot?

Mr SMITH: We think it is important that we ensure that some of the vegetation in that area is protected for the swift parrot, but I think we do not know enough to exactly answer your question. The information we go on is the sighting records of where the birds have been seen, but that does not necessarily reflect a systematic survey of all the places they might go. So I think within the scientists there is a mix of views about whether particular areas are more important than others, even if spotted gums are spread widely, whether there are particular associations of other species in areas that make one area more or less significant.

CHAIR: So there is cause for concern?

The Hon. RICK COLLESS: I think that is drawing a long bow, Mr Chairman.

CHAIR: I am just asking. I would really appreciate it if we could ask questions without interference, if you do not mind. Is there cause for concern?

Mr SMITH: Because we think it is important is the reason we have been continuing negotiations with the developer about how to manage the land within the industrially zoned area.

CHAIR: How long do you project, on a balanced view of the available habitat, that we are looking at in the impact on the HEZ zone and other impacts on the area before it may have an adverse effect on a species like that?

Mr SMITH: I am not sure I understand the question.

CHAIR: Are we projecting into the future in terms of guaranteeing the food source of the species?

Mr SMITH: That is why we are having the discussions, the negotiations, with the developer.

CHAIR: So it gives a guarantee that there will be adequate habitat left?

Mr SMITH: That is what we are seeking to achieve.

CHAIR: You feel confident in the end result, with the HEZ going ahead, that there will be adequate habitat left?

Mr SMITH: Yes.

The Hon. RICK COLLESS: What is the annual range of the swift parrot and at what times of the year does it feed in that lower Hunter area?

Ms STEVENSON: I think we would have to take that question on notice, because it is a rather complex issue.

The Hon. AMANDA FAZIO: We have heard a lot in evidence before this inquiry about 31 protected species that have been identified in the Hunter economic zone. If the proposal to develop the zone had not happened, how would those species have been identified? I understand a lot of them have been identified through the environmental impact and species impact statements that have been conducted?

Mr SMITH: Yes, that is correct. The process of the detailed assessments that have been done have brought to light the existence of additional species we did not know about.

The Hon. AMANDA FAZIO: So, it would be fair to say if you conducted that level of inquiry into other areas in the floor of the Hunter Valley, you would be likely to come up with a fair number of protected species as well?

Mr SMITH: Yes, that is probable. It does require someone getting out there, a skilled person, to undertake the survey work. It is clear that our knowledge about the presence of individuals species is very incomplete. I mean that in the sense of referring across the landscape.

The Hon. AMANDA FAZIO: We went on a site inspection of the Hunter economic zone, and I wanted to ask you about the riparian zone. As you probably know, it is a dry creek bed that runs almost through the middle of the site. We heard that in most cases there is a requirement to have a 40-metre buffer zone when you have that sort of creek, and I understand this one has a 100-metre buffer zone. Do any other developments where you do an environmental assessment increase the buffer zones to that extent?

Mr SMITH: We do not often have the opportunity to be dealing at such a large scale which provides the flexibility to provide better protection.

The Hon. AMANDA FAZIO: What is the benefit of having a buffer zone when you have that riparian creek bed running through the middle of the site?

Mr SMITH: It protects the species that use that habitat and the plants and animals in that habitat, and also reduces the potential for water pollution.

The Hon. AMANDA FAZIO: With that site in general—we looked through all different parts of it—apart from a cleared area in the middle where there had been an old farm, and around some brick buildings that were still being used in association with the mining that took place on the site, a lot of the areas looked as if they had been not heavily logged but as if they had a lot of trees cut down in them. How would you generally describe the state of the land that is going to be developed on that site?

Ms STEVENSON: The land around Cessnock that is still forested has been very heavily logged. The land in the Aberdare State Forest and the existing national park, the land that is further north, is in a better condition, it does not seem to have been logged to the same extent. But you will not find much vegetation that has not been affected in some way by logging.

The Hon. AMANDA FAZIO: I do not know the veracity of these comments, but we have heard that a lot of input was put into the design of the access road into the site to ensure that gliders and things that hop across the canopy, that move from area to area through the tree canopy, would still be able to do so, and some comments have been made that that will not be possible given the way in which the road has been put in. I do not know if you have had a chance to look at the site, but was a lot of thought put into the safeguards attached to the consent of the access road going in?

Ms STEVENSON: We were not involved in designing the road. Council gave consent to that.

The Hon. AMANDA FAZIO: Is it normal, though, to try to maintain touching tree canopies and things like that so that animals can get across that way?

Ms STEVENSON: Where we are involved, we try to facilitate movement across roads, yes.

The Hon. AMANDA FAZIO: We have concentrated an awful lot in this hearing and in other hearings on the swift parrots, but we have heard there are other endangered birds that use this site as well. Are you confident that the planning that is in place will not have an adverse effect on those birds as well?

Mr SMITH: Yes. That is why we are continuing to work with the council as individual development applications are accessed. We come at this at various levels. The big picture is about what happens to the 70 per cent that is protected. Then we say that is going to provide long-term protection of representative samples. Then we look at the other 30 per cent and people come forward with individual develop applications and we now have the benefit of very good peak time information about the presence of species in those areas. So we say what steps can we take as extras to ensure their protection?

The Hon. AMANDA FAZIO: So that within the area that is subject to development, an individual development application has to go in for basically each business that will be located there, and the environmental impact of that will be assessed again? Will that just be assessed by the council or will you have a role in that as well?

Mr SMITH: Under the current law the council is the decision-making body. If the council forms the view that an significant impact on threatened species is likely to occur, it triggers the need for a species impact statement and concurrence from the National Parks and Wildlife Service.

The Hon. ROBYN PARKER: I wonder if there is a comparable site or similar development that you have been involved with in New South Wales anywhere that has the same sorts of issues?

Mr SMITH: Not exactly the same.

The Hon. ROBYN PARKER: Or similar issues?

Ms SALE: One of the developments we have recently had dealings with is North Wallarah Peninsular in Lake Macquarie. I cannot recall the exact size of the land but it is an area of land that lies between the sea and the lake system. Again, it was being proposed for residential development not industrial development. In that case, again, we worked with the developer and council upfront in the planning process to identify land use constraints. Outcomes from that were again the setting aside of areas for environmental protection and the transfer of a significant portion of land to National Parks, so a national park has been formed out of that. It would be fair to say it did not have quite the range of threatened species that the industrial land does that we are dealing with now but it was certainly a larger area of land and we went through a similar sort of process with council.

The Hon. ROBYN PARKER: So that was a whole-of-government approach to that development as well?

Ms SALE: It did not trigger the same level of involvement of other government agencies, partly because some of the issues that were being dealt with were different. There were not mining issues, for example. But certainly we worked closely with some of the other government agencies. We had key concerns there.

The Hon. ROBYN PARKER: There could be minor subsidence there, though, could there not? Would that be undermined there?

Ms SALE: I do not think it was, no.

The Hon. ROBYN PARKER: So that process went smoother then than this process?

Ms SALE: Yes, it did go somewhat smoother. It was a different kind of process again. There were not so many different government agencies with interests in that area of land. Some of the survey work that was needed was probably done upfront in the process and there were not so many constraints in the process.

Ms STEVENSON: I think the council involved had a much better understanding how the legislation works, and that facilitated the whole process.

The Hon. ROBYN PARKER: That would be Lake Macquarie council?

Ms STEVENSON: Yes.

The Hon. ROBYN PARKER: It is not noted for its speedy development application process, normally.

Ms STEVENSON: I did not say it was speedy.

The Hon. ROBYN PARKER: Mr Smith, you talked about the process being too complex and people, particularly councils, not understanding their role in that process and the requirements. What have you done about that and what are you planning to do to make that situation better for all concerned?

Mr SMITH: The Government has indicated it intends to bring forward legislation to fundamentally reform threatened species legislation. The approach that is to be taken is that it would provide for, in areas like HEZ or in other areas where there are a lot of biodiversity values that are coming up against development pressure, a proper forum for a survey to be done at the early stage of consideration about what land use would be appropriate for the future. It would have all the information on the table in a public process so everyone could participate and see what the options were and what the values were on the site. Then, if the Minister for the Environment finds that the conservation proposals within the proposed local environment plan are sufficient to ensure protection of threatened species and biodiversity more generally, he could grant certification to that local environment plan, and that would be the basis for the protection that would be provided.

The Hon. ROBYN PARKER: So, you would recommend in the future a comprehensive survey upfront and very early in the process?

Mr SMITH: All of the participants in the process, in our experience, want to see certainty about what the outcomes will be. That means the developers want certainty so they do not go down that path of investing in building expectations that cannot be met, and from the environmental perspective certainty is just as important, because once a piece of land is developed it does not come back for conservation purposes in general. So we need to achieve certainty on that side as well. So, it is a matter of saying if this area in question is of such importance that we want to make significant changes to it, it deserves to have proper survey processes put in place and sound decision-making and then outcomes so that everyone can accept that decisions have been made and this is the way it is going to be.

The Hon. TONY CATANZARITI: Can I follow-up one point on that? With the balance of the environmental part and the development side of it, how do you see that being married in a proper way so we all can get a win-win situation? You would be looking at the benefit to all parts—with jobs in mind as well as good for the community.

Mr SMITH: The way it is proposed is that this process of assessment would go hand in hand with the planning department and the Planning Minister's approval of the local environment plan. So, all factors, social, economic and environmental, would all be considered in the one process and there would be an open public process of putting a draft on the table and the public being able to make comment, participate, review and then a final decision being made by the planning Minister, with the concurrence or certification from the environment Minister.

The Hon. ROBYN PARKER: At the end of today's hearing the Committee will formulate a report and make some recommendations about this project. I hope the recommendations can be used in other examples. What do you consider to be a good and appropriate outcome from this inquiry?

Mr SMITH: My summary of the whole process is that nothing improper was going on, no influence from Premier's Department or elsewhere, but the process shows all the signs of frustration as a result of complexity and an unclear framework that did not require a proper information base to be established at the beginning of the process.

CHAIR: Ms Stevenson, your comments to Cessnock City Council noted that not enough information was available in the SIS to judge if there will be a significant impact on some species, such as the green-thighed frog. Then you wrote that there is not likely to be a significant impact on threatened species. Those two statements are contradictory, are they not? Was there a sense of pressure to get the HEZ moving?

Ms STEVENSON: In relation to that SIS in my comments about the green-thighed frog and other species, I referred to the ecological constraints master plan. I said that we would have to wait until that was finished and finalised. I was talking about the cumulative impacts. I was trying to make a point that although the road itself would not have a significant impact on those species, they had not really been surveyed to the extent that they could have been. Subsequent development would rely very heavily on an ecological constraints master plan and a much more detailed survey.

CHAIR: Would that adequately cover the issue about which I was mocked earlier? Does that adequately cover total protection of the endangered species?

Ms STEVENSON: What do you mean?

CHAIR: The process that you are describing, you are saying it should take into account the road development. Does the process adequately cover the threatened species on the entire site?

Ms STEVENSON: Do you mean the initial DA process and the SIS process?

CHAIR: Yes.

Ms STEVENSON: I think that a strategic approach is preferable. I would like to see some up-front survey work so that you do not get down to that individual DA level where cumulative impacts may impact on threatened species.

CHAIR: Do you say that that requirement was not undertaken because of the developer's time frame in which to lodge DA? Did you feel under pressure with the process of getting the DA in as quickly as possible?

Ms STEVENSON: No, I think we were just making a point at that stage that the cumulative impacts would be better handled if there was a detailed ecological constraints master plan in place for future DAs so that we have a clearer idea of what the constraints were on the site.

CHAIR: In your opinion did Cessnock City Council go through an inappropriate process by approving the first access road without seeking concurrence from the NPWS?

Ms STEVENSON: They clearly made a decision that the impact was not—

CHAIR: I am asking whether in your point of view it was not appropriate? Given the importance of the species and the route that the road was taking, would it have been appropriate to have sought concurrence from the NPWS?

Ms STEVENSON: For individual development it may have been difficult to indicate significance.

CHAIR: For the actual road?

Mr SMITH: That highlights the tyranny of marginal decision making. When asking a little question the consequence can only be little—positive or negative. It is not the right framework in which to ask the question. You need to ask the question about the whole site.

CHAIR: The position of all the species on the whole site?

Mr SMITH: That is the only way. Plants and animals are not divisible into little units of land and that is the reason for the new approach of seeking to look at the whole area in more detail at once.

Ms SYLVIA HALE: Following on from that, we have a large site but it seems that a portion will be used for railways, a portion for open-cut mining, a portion for industrial development and other sites set aside for conservation purposes. Would you care to comment on the impact on species of fragmenting a large site into smaller areas for development, breaking up that site? Does that have an adverse effect on the species that you are trying to maintain?

Mr SMITH: As a general rule you do not want fragmentation of habitat. If you look at the map of what is proposed, that is the benefit, the strength, of what has been agreed. You do not have 3,000 hectares with individual land-holders saying that they will deal with a little bit here and a little bit there. The industrial activity is not scattered across the whole site. Significant whole areas are put aside for conservation purposes.

CHAIR: You have taken a few questions on notice. The general process is that the secretariat will identify the questions and you will have 14 days in which to supply answers.

The Hon. ROBYN PARKER: There was some discussion about information that the department wanted to present.

Ms STEVENSON: You may be referring to the recovery plans. The Department of Environment and Heritage can provide that, I do not have it with me today.

(The witnesses withdrew)

CLAIRE MERIE COSH, Student, 165 Hopetoun Street, Kurri Kurri, affirmed and examined:

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

Ms COSH: I appear today as an individual. At the time the rezoning and the matters about which the Committee is inquiring took place, I was an elected member of Cessnock City Council.

CHAIR: Are you conversant with the terms of reference of the inquiry?

Ms COSH: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee, please indicated that and the Committee will consider your request. Would you like to give a short statement before questions commence?

Ms COSH: Today I am appearing before the Committee as an individual. I am no longer a member of Cessnock City Council, although I was at the time that these events took place. I am a member of the New South Wales Greens and was elected to Cessnock council as a member of that party. I am not, and never have been, a member of the Friends of Tumblebee community group, which has been quite active within this process. Prior to the Committee's hearing at Kurri Kurri, I applied to appear before the Committee. Unfortunately there was no room on the agenda for me to appear and I was unable to appear at that time. I thank the Committee for taking my evidence today. To review my submission to the Committee, I state that I am not in any way an anti-development person, nor during my time on council did I put forward that particular point of view.

I do not believe the present format of development taking place at Mount Tomalpin will give the community or the environment an ESD outcome. When I was elected to council, which was 1999, there already existed within Cessnock council a mind-set that this rezoning would take place and that following that development would take place no matter what was discovered or put forward to the council. That closed mind-set was an unhealthy one and it manifested in a number of ways which meant that the council was not fully informed about issues that were happening. The general manager took certain steps, whether intentionally or not, and he held information back. That information has come to light, even since the last hearing, that elected members of council who were making the decisions were not aware of it. That is unfortunate.

On the issue of unemployment within the Cessnock local government area, the area has high unemployment and extremely high youth unemployment. That is not an argument. We need jobs to be created within the area and I do not argue with that. I think that the issue about unemployment is something that is not just about creating jobs and that has been outlined by the Hunter Valley Research Foundation. The issue affecting unemployment statistics in the Cessnock local government area is about education; that is quite clear in the surveys and information that has been provided. Unfortunately a lot of misinformation has been put out to the community and there have been claims that between 10,000 and 15,000 jobs will possibly come out of this development. Who knows how many jobs will come out of that?

That should not be an issue, because if you are really worried about the future it would be about the environment as much as jobs. Basically, there is no use having a job if you cannot breathe the air. That is how deeply I feel about this issue. This issue needs to be put into context. If this particular development, by some amazing effort, did produce 15,000 jobs, that would solve the entire unemployment problem in the Hunter Valley. I think that is something that you really need to put in context. How is that a feasible outcome, when one development can solve unemployment numbers across the whole Hunter Valley?

The other point I want to bring out concerns something that was said this morning. There is a big issue about a segment of the community, unhappy residents. I appeared before you today not because of a small section of the community that is unhappy with this but because I believe that there was inappropriate process that took place and that there was not adequate assessment of the environment. That is clearly within the guidelines of this hearing. Another thing that has not yet been brought to the attention of the Committee I think is that the Newcastle City Council was not favourably on side when this particular rezoning was open to submission. In fact they put a submission forward that showed there were concerns about the siting and also that there was no regional planning context adhered to in the process of selecting the site. There were also objections from other local government authorities [LGAs]. There are other issues that I would like to bring forward, but

perhaps questioning will do that. Will I have an opportunity to make a short statement at the end in summary? Is that in order?

CHAIR: No. Generally the time to make the statement is now and then you will respond to questions.

Ms COSH: Yes. I am happy. You will have my submission, and I am happy to take questions.

CHAIR: Given that we heard at the Kurri Kurri meeting that Matt Somers project managed this rezoning for the Cessnock City Council while also acting for Hardie Holdings, do you have any concern about the level of balance of the information that this project delivered from the beginning?

Ms COSH: I think, as I have already stated, when I was elected to council there was already obviously a mind-set within the council that this rezoning was going to take place, and I think that it is totally inappropriate for the elected members of the community who really should not be putting forward—they should be listening to everything and weighing up the information before them. My concern was that the information that was coming to council was not balanced. There are several instances that I can use to show that as an example, one being that the wine country development team issued an invitation for a member of the public to take a seat on that and also to represent the environment. Subsequent to issues being raised by that particular member, they were voted off the team.

Further on, there was community consultation—the community consultative committee that was put forward to consult on this rezoning. Once issues were brought up concerning environmental issues, that community consultative committee no longer met. Basically those two instances showed that when there was any opposition to the rezoning—or not even opposition but questions raised about the environmental integrity of this rezoning—those particular people or voices were silenced straightaway. With regard directly to your question about Mr Somers, I think that he was in a position where he was employed by Hardie Holdings, I understand, at that time, and he was also acting as a project manager to the Cessnock council. I think that was his evidence at your last hearing. I would have to question—and I did at the time with council—how somebody who is employed by a developer can give an unbiased and balanced analysis of the information coming forward to council.

The Hon. AMANDA FAZIO: I have a few questions for Ms Cosh. First, you stated that Newcastle council and some other local government bodies in the area were opposed to the site. Did it ever occur to you that that might have been because they would have preferred to attract such development into their area?

Ms COSH: Yes, that may well have been their reason.

The Hon. AMANDA FAZIO: But you still think that that is a good reason to use to argue against the site going ahead—the fact that another competing council says that it was not an appropriate thing to go in at Tomalpin?

Ms COSH: No, I would think that something that has supposedly been put up there as State significant and attracting State significant development to the area should be something that is considered on a regional basis, and for the benefit of the whole Hunter, not just something that is selected by one council. It might be that there were siting problems and that they were flagged right from the beginning by those two councils.

The Hon. AMANDA FAZIO: Did you contest the last council elections?

Ms COSH: I did.

The Hon. AMANDA FAZIO: Did you run on this issue as part of your platform as part of those council elections?

Ms COSH: Look, it was part of my platform: how could not be? It was out there in the media, quite highly.

The Hon. AMANDA FAZIO: Yet the local community, in their assessment of your period on the Cessnock council, and taking into account the platform you were running on, decided not to support you and you were not re-elected.

Ms COSH: As a politician yourself, you would understand that every election is different; that the issues that affect the election of somebody are wide, various, and that it all depends on—even the number of candidates will affect it. I think what you need to consider is that within the ward in Cessnock City Council which would be most likely affected by this development, a member of the Greens who was particularly vocal about this rezoning, and always has been, knocked off an individual who had been a member of the council for three terms. I think that is a significant outcome—that a member who was so vocal against—that it was the community that was most going to be most affected that spoke loud and hard.

The Hon. AMANDA FAZIO: It still means that there is only one person on the Cessnock council who is opposed to the development, does it not?

Ms COSH: Yes.

The Hon. AMANDA FAZIO: So would it not be a reasonable conclusion to draw from that that you previously and now James Ryan are out of step with the views of the majority of the community in the local area in regard to this development?

CHAIR: I think we are stepping outside the reference for this inquiry. They are very political statements that you are making.

The Hon. AMANDA FAZIO: Well, they are questions.

CHAIR: You have made your point in terms of the numbers and the representation.

The Hon. ROBYN PARKER: She is here is a former councillor though.

The Hon. AMANDA FAZIO: That is why I thought it was appropriate to ask about council representation. But in that case, I will turn to another issue that you raised earlier, which was the executive planner that you referred to that was employed by the council. We had evidence at our last hearing—I am not sure whether you were in attendance in the audience?

Ms COSH: I was in attendance for a large part of that hearing.

The Hon. AMANDA FAZIO: We had evidence from Mr Cowan from the Cessnock council in terms of the executive planner. He was asked a direct question by the chair, "Could you indicate to the Committee who provided money to engage the executive planner?" Mr Cowan said, "The council provided the money. We paid the executive planner." Is it not a bit rich for you to come here today and say that that person was employed by Hardie Industries when they were employed as the executive planner and when we have heard evidence from the council to say that they paid him?

Ms COSH: I do not believe that I have said that to you today.

The Hon. AMANDA FAZIO: Well—

Ms COSH: I was talking about the project manager, Mr Matt Somers. He is not the executive planner: never was.

The Hon. AMANDA FAZIO: The other thing I wanted to raise with you was that during this time you had such concerns, I think you said in your statement that "Since that time I have developed a view that due diligence has not been followed with regard to the assessment of the development." Can you give us some specific examples of where due diligence was not followed?

Ms COSH: I just think there is an accumulation of events that have happened that flag to me that due diligence did not take place. I do not think that Cessnock council was professionally equipped to look at and undertake the assessments that it claims to have done, and there has been this huge conflict between who is the consent authority and who is doing the assessments. Cessnock council claims not to have been the consent authority and is not the consent authority on the rezoning. However, they are the only people who are even

saying that they have assessed the submissions that came from the public on this issue. I have grave concerns whether those submissions were in fact assessed anywhere else.

The Hon. AMANDA FAZIO: Did you have these grave concerns while you were a member of the Cessnock council?

Ms COSH: Absolutely.

The Hon. AMANDA FAZIO: Why did you not do something about it? Why did you not approach the Department of Local Government or, if you believed that something really untoward was going on, why did you not refer the matter to the Independent Commission Against Corruption [ICAC]? Was that because you had no evidence to justify your concerns?

Ms COSH: No, that is not it.

The Hon. AMANDA FAZIO: Or were your concerns purely politically motivated rather than based on fact?

Ms COSH: My concerns are as a member of the community and that I needed to represent community concerns to council. I brought up these issues in the council many times. I actually asked for the whole rezoning to be referred to the department and to be put out of the hands of council because of the fact that (a) they were not professionally equipped and (b) because I did not think there needed to be any apparent conflict of interest.

The Hon. AMANDA FAZIO: But you did not actually refer these matters to any of the bodies that have a statutory role to investigate where there is a conflict of interest?

Ms COSH: I brought these matters up with my general manager and with other councillors, and I did not feel at the time that I needed to do anything else.

Ms SYLVIA HALE: The general manager of the council told the inquiry in Kurri Kurri that the executive planner for the industrial estate did not assess submissions objecting to the rezoning. Is that your understanding?

Ms COSH: No, it is not.

Ms SYLVIA HALE: What is your understanding?

Ms COSH: My understanding and what I observed during the rezoning process was that the executive planner, Mr Selmon, was very much involved with the assessment of the submissions and in fact the only one who communicated with council about those submissions. He verbally reported to council and also in written report reported to council. I think it is really unfortunate that he has not—that he has declined to appear today to straighten out some of these issues.

The Hon. AMANDA FAZIO: That is rubbish.

The Hon. RICK COLLESS: Was he invited, Mr Chairman?

Ms COSH: My understanding was that he was invited.

The Hon. RICK COLLESS: Was Mr Cowan invited to come back today?

Ms COSH: No, not Mr Cowan. Neil Selmon I am talking about.

Ms SYLVIA HALE: The executive planner.

The Hon. RICK COLLESS: Regardless, was Mr Selmon invited?

CHAIR: No.

The Hon. AMANDA FAZIO: That is all right. If he feels that he has had adverse comments made about him in Ms Cosh's evidence, he can put in a formal right of reply.

Ms COSH: Absolutely.

The Hon. AMANDA FAZIO: Yes, but it would be helpful if you did not make those sorts of comments.

Ms SYLVIA HALE: If she believes them to be true, I think it is extraordinarily helpful.

The Hon. AMANDA FAZIO: What, coming in here and defaming people under parliamentary privilege? Thanks very much.

Ms COSH: I just said that it was unfortunate that he had not appear to clarify these issues. I do not think that is defamatory.

The Hon. ROBYN PARKER: Mr Chairman, could you clarify the position in relation to Mr Selmon?

CHAIR: I understand that Mr Selmon was invited to give further evidence. He has not at this particular point declined but he is at this point unavailable to reappear, but he has been invited to reappear.

The Hon. ROBYN PARKER: Mr Chairman, I would have thought that that information—I am a Committee member and I was unaware of that. I would have thought that other people, particularly people presenting to this Committee, should not be privy to that information. Therefore I would like that information struck off the record in relation to Ms Cosh because I cannot understand how she would have any of that knowledge.

CHAIR: I do not think—

The Hon. AMANDA FAZIO: Further to that, Mr Chairman, I think it is very inappropriate for members of the Committee to have provided evidence to witnesses about matters that other Committee members are not aware of. I think that is quite improper.

CHAIR: I am not aware of this situation prior to this at this point.

The Hon. AMANDA FAZIO: It must have been Sylvia.

CHAIR: I suggest that we deliberate on this subsequent to this hearing.

The Hon. ROBYN PARKER: Mr Chairman, I have made a request. Would you like to give a ruling on that?

CHAIR: I do not think that we can strike off evidence at this point.

The Hon. ROBYN PARKER: Okay. Could I have that noted in *Hansard*?

CHAIR: I am quite happy to have that noted.

Ms SYLVIA HALE: Ms Cosh, were you ever made aware of the details of the executive planner's contract with council?

Ms COSH: Not by council, no, not by the general manager.

Ms SYLVIA HALE: Did you subsequently become aware of them?

Ms COSH: Yes, when I was first elected I assumed that Mr Selman was a member of staff and that it was necessary for him to abide by the rules of the Local Government Act in giving balanced and clear advice to the council. I then became aware that he was engaged as a consultant but still felt that there was no reason for concern at that point because the information he was bound to give was that that would be balanced. However, once I became aware of his contract I felt that the wording of it was suspect and that if he was going to at

anytime give a report to council that was anything other than positive and supportive of the rezoning, then he would have been breaking his contract.

Ms SYLVIA HALE: So you believed, or from your subsequent knowledge of the contract, that there was a clear implication within it that he was to see the development application approved?

Ms COSH: It quite clearly states in his contract that not only will he see that the rezoning takes place but also that he will see that the development control plans [DCPs] and the initial DAs also take place, and this should all happen within a clear time line set by council. That is clearly within his contract, which I understand is already in evidence with the hearing.

Ms SYLVIA HALE: Do you believe that the nature of the contract was such that it contributed to Cessnock council approving the road and bypassing the need to obtain concurrence from the National Parks and Wildlife Service?

Ms COSH: I think you need to be really clear here that there are two processes that have taken place, and listening to the evidence I feel that there is a little bit of confusion here. There was the rezoning that took place and the initial LEP, and then the very first DA that was looked at by Cessnock council. I have no doubt that Mr Selman was involved in that process and I think it is quite clear that because council recognised there were threatened species and recognised that there was a requirement for an SIS, then, according to the Act, they should have had the concurrence of the director-general.

The Hon. AMANDA FAZIO: You say "no doubt", but have you got any evidence?

Ms COSH: In what way? That that occurred?

The Hon. AMANDA FAZIO: You said that you have no doubt that Mr Selman did something, but have you got any evidence to say that, or is this just your feeling, your intuition?

Ms COSH: The fact that council required an SIS is not in issue, and that is what I base my understanding on, that if the council requires an SIS that has been triggered by an eight-part test and therefore it needs to meet the legislation, and that requires the concurrence of the director-general. That is evidence, it is not intuition.

The Hon. AMANDA FAZIO: Why did you not say that in the first place?

Ms COSH: I apologise. I have never actually appeared at a committee hearing like this before. I am sorry if I do not use the right terminology.

Ms SYLVIA HALE: In your opinion what processes do you believe should have been followed for the outcomes to be accepted by the community as aboveboard and reasonable and not tainted in any way?

Ms COSH: As I suggested to council during my term, I think that the assessment process should have taken place outside of council.

Ms SYLVIA HALE: By a party at arms length from council?

Ms COSH: Absolutely.

Ms SYLVIA HALE: And that is quite common among councils, I believe, to employ or to have contentious development applications assessed and reported on to council by an independent third party?

Ms COSH: I understand through my networking at local government levels that, yes, that does take place, but it has never taken place at Cessnock council.

The Hon. RICK COLLESS: Just going back to Mr Selman's contract, and following on from Ms Hale's question about outside organisations doing these sorts of things for council, if a third party or an independent operation was to do such an assessment would they not have a written contract to do that?

Ms COSH: I am not a contract lawyer but I would expect that they would have a contract to take an assessment role, not a contract to make sure something happened.

The Hon. RICK COLLESS: What I am trying to get to is that with any contract there are always specifications in the contract as to what the contract is supposed to achieve between the contractor and the council, correct?

Ms COSH: Yes.

The Hon. RICK COLLESS: So you are expressing concern about what was actually in Mr Selman's contract?

Ms COSH: Yes.

The Hon. RICK COLLESS: Not the fact that he was a contractor?

Ms COSH: No.

The Hon. RICK COLLESS: So if you were in control of this process how would you have written Mr Selman's contract? I understand his contract points out that he used to see through the approval of the LEP rezoning and then the approval of the property development, is that correct? Is that what you understand is in Mr Selman's contract?

Ms COSH: It is more than see it through, it is make sure it happens.

The Hon. RICK COLLESS: Before I came into Parliament I was a private consultant and I regularly did contract-type work and the terms of my contract were always clearly enunciated as to what the person I was working for expected of me. So if Cessnock City Council had the expectation that Mr Selman was to see through this process and gain that approval, why would it not be written in his contract?

Ms COSH: Cessnock council at that time had never voted for the rezoning to take place, so the contract, I would have thought, should have been one that allowed the consultant to assess the issues independently and unbiasedly, and give a report back to council.

The Hon. RICK COLLESS: We have just heard from the Department of Environment and Conservation and the Director-General of the Premier's Department that those processes were followed and that the approval was subsequently given.

Ms COSH: That what processes were followed, sorry?

The Hon. RICK COLLESS: That the processes that were expected of various people, the way the whole thing was structured was to put together various government agencies sitting down together to sort out their differences to allow the proposal to proceed, is that not a logical process to occur?

Ms COSH: That has got nothing to do with Mr Selman's contract.

The Hon. RICK COLLESS: I have not seen Mr Selman's contract so I do not know what is in it, but from what the discussion has been revolving around, Mr Selman's contract was basically to make sure that all those different agencies were pulled together and that the thing was given approval at the end of the day.

Ms COSH: Well, it was to make sure it had happened. It did not state how he was supposed to do it.

The Hon. RICK COLLESS: How would you have written Mr Selman's contract if it was not to be in those terms?

Ms COSH: As I just said before, at the time that Mr Selman's contract was written, Cessnock council, the elected body, had never voted for that rezoning to take place. So why was the contract written that said that that rezoning should take place?

The Hon. RICK COLLESS: I do not know other than what was in Mr Selman's contract. It would seem perfectly logical to me that if the contract were to be written then there would be certain specifications in it which would set out what he should be achieving.

Ms COSH: Yes, that he should assess it, that he should take part in the process and that he should guide council, not that he should make sure that something happened when council had not agreed on it.

The Hon. RICK COLLESS: I will have to have a look at the contract.

Ms COSH: Could I just clarify, the contract is in evidence, is it?

The Hon. AMANDA FAZIO: Yes.

Ms COSH: It has been tabled? So there is no need for me to table it again?

The Hon. AMANDA FAZIO: Yes, we dealt with it at the last meeting, on page 43 of the transcript.

The Hon. ROBYN PARKER: I just wanted to clarify one thing. What did you see Mr Somers' role in this process to be?

Ms COSH: I understand he had a dual role at the stage I referred to earlier. One was to be the project manager for Cessnock council, and he clearly stated that, I understand, from his evidence last week or the week before.

The Hon. ROBYN PARKER: He was employed by Cessnock council?

Ms COSH: He was not paid by Cessnock council but he was the project manager.

The Hon. ROBYN PARKER: So who was paying him? What was your understanding of that? You have mentioned it before.

Ms COSH: He was in the employ of Hardie Holdings at that time, I understand.

The Hon. ROBYN PARKER: And not contracted by the Cessnock council?

Ms COSH: I do not think there was any formal contract. I am not sure, and it is something that was never made available to me as a member of council. But whenever Mr Somers came at that stage to brief counsel he was introduced as the council co-project manager. There were two project managers.

The Hon. ROBYN PARKER: I am not quite sure why it is that you have Mr Selman's contract very clearly in your mind and have a copy of that and yet you have made some statements about Mr Somers but you do not seem to be aware of his contractual arrangements? You did mention earlier that he was employed by Cessnock council and by Hardie Holdings at the same time, I think you said. Is that your understanding?

Ms COSH: I understand he was appointed, let us perhaps use that word instead of "employed", as a project manager for Cessnock council.

The Hon. ROBYN PARKER: And you think he was still at the same time employed by Hardie Holdings?

Ms COSH: Yes.

The Hon. ROBYN PARKER: To do what? Did you query that apparent conflict of interest?

Ms COSH: At the time?

The Hon. ROBYN PARKER: Yes.

Ms COSH: No.

The Hon. ROBYN PARKER: So it was okay with you at that time then?

Ms COSH: No, I do not think I was aware of it at the time.

The Hon. TONY CATANZARITI: What are your environmental qualifications, if any?

Ms COSH: I have no formal academic, environmental qualifications, if that is what you are asking.

Ms SYLVIA HALE: Just to summarise, and correct me if I am wrong, what you are suggesting in relation to the executive council is that his contract obliged him, in effect, to pre-empt a council decision on a matter by requiring him to not just assess a development but also to ensure that the development processes were approved? Do you think that would be a fair summary?

Ms COSH: Yes, and, as I said before, if I can just restate it, if he had given any information contrary to that to council he would have in fact been breaking his contract.

Ms SYLVIA HALE: And therefore you think it was inappropriate for him, since he was contractually committed to determine a particular outcome, to be the person who was assessing and reporting to council on any submissions that were received?

Ms COSH: Yes.

Ms SYLVIA HALE: Is there any evidence that the content of those submissions that you are aware of were ever passed on to PlanningNSW or the Minister prior to the rezoning application being approved?

Ms COSH: My understanding is, from what my general manager has told me, that those submissions were handed on to the department. I am not aware of anybody else who assessed those submissions.

The Hon. AMANDA FAZIO: We had evidence at our last hearing from Mr Cowan to say that they were assessed internally by another planner. He said, "I am not proposing to mention people by name because they are not party to this inquiry. However, it was a senior strategic planner, well-respected in local government who was not attached, directed or controlled by the executive planner".

Ms COSH: Your question is?

The Hon. AMANDA FAZIO: If you were at the last hearing you should have been aware of that and my question is why do you keep coming here and passing on this misinformation?

CHAIR: I do not think it is incumbent on people who are in the public gallery to be aware of anything that goes on in the Committee. I think it is fair to say we are taking evidence specifically on what has happened to date. I do not think it is fair to verbalise the witness that way. She does not have to listen to all aspects of the Committee from the public gallery.

(The witness withdrew)

(Luncheon adjournment)

BRIAN JOHN GILLIGAN, Former Director-General, National Parks and Wildlife Service, PO Box 100, Raymond Terrace, affirmed and examined:

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mr GILLIGAN: Yes, I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, could you please indicate that fact and the Committee will consider your request? Would you like to make a short opening statement before questioning by the Committee commences?

Mr GILLIGAN: I do not think so. I am here at the request of the Committee, I presume to clarify matters relating to the Committee's deliberations. I am happy to respond to those questions and to do everything I can to assist the Committee.

CHAIR: Thank you. Do you think it is inappropriate for the Premier's Department to ask NPWS to ensure that there is no credible claim to get in the way of the industrial park? Can you indicate to the Committee how letters, particularly one from Dr Gellatly, reflect on the objectivity of the National Parks and Wildlife Service in assessing an issue such as this?

Mr GILLIGAN: The short answer is, no, I do not consider it is inappropriate once it is in the context it was in when there had been previous extensive negotiations and discussions about the environment and environmental issues associated with the Hunter employment zone and when those issues had been resolved to everyone's satisfaction. I think then the context of Col's letter to me, as I recall it, was simply to confirm that there had not been any change in position by the National Parks and Wildlife Service and that we were comfortable with the outcome that had been agreed previously. It was the sort of letter that would come periodically as an exchange of letters between the head of the Premier's Department and the head of the National Parks and Wildlife Service or another agency. I do not consider that there was anything inappropriate in it at all.

CHAIR: Were you kept abreast of the swift parrot recovery team and the approach in relation to NPWS officers in terms of determining the outcomes of that with regard to the HEZ site?

Mr GILLIGAN: Not in detail, no. But I know that the swift parrot habitat issues were part of the consideration only on and that the specialist staff of the National Parks and Wildlife Service were entirely comfortable with the outcome that had been negotiated at the LEP stage for the Hunter employment zone. I was aware that there was a very unfortunate mix-up in terms of some communications out of the swift parrot recovery team system, which I think confused the issue as to the National Parks and Wildlife Service position compared with the position of either the recovery team or Environment Australia. I do not know how familiar the Committee is with some of that, but the essence is that the Commonwealth appointed a co-ordinator for that recovery team and, for administrative convenience, that person—a relatively junior officer—happened to be located in the National Parks and Wildlife Service Queanbeyan office. That officer used National Parks letterhead paper quite inappropriately to distribute some draft material, which gave the understandable impression that it was a National Parks position being presented. We were very quick to clarify that that was not the case, but I think at the time it served some people's purposes to leave that perception in the arena and to have a bit of a go at National Parks. It was simply an unfortunate error that we corrected as quickly as possible.

CHAIR: Was the National Parks position consistent? Did that position change at all?

Mr GILLIGAN: No, there was no change at all—none that I am aware of. I am conscious, without having checked any of the details, that the couple of people from National Parks who were involved in this exercise and who advised me were among the most highly experienced and most professional people that I had dealt with in my time with National Parks. They had a reputation for being very strong advocates on conservation issues and they assured me that they were entirely comfortable with what had been negotiated at the time of the LEP.

CHAIR: Did National Parks have a report or recovery plan on the swift parrot? Was that within National Parks purview?

Mr GILLIGAN: Not as I recall because I do not think we had taken any action on it at State level under the State legislation because a recovery plan was being prepared nationally as the species was listed under the Commonwealth legislation. Therefore, we were co-operating with that process rather than duplicating it at the State level.

CHAIR: I understand that you wrote two replies to Dr Gellatly. In a reply that you did not send you asked the Premier's Department for active support of the threatened species Act. Did you feel that the Act was under pressure and was not been properly adhered to by the Premier's Department?

Mr GILLIGAN: I do not recall two letters—one that was not sent. If there was an earlier draft that you are aware of I am not aware of it and I do not recall it. I received lots of draft correspondence and amended some letters before I was prepared to sign them. I do not recall any of the correspondence on this as being particularly subject to amendment by me but it may well have been amended by someone else in the chain before it got to me. I cannot comment on the draft correspondence that might have made that point. But as a general rule no is the short answer to your question about whether I had particular concerns about the Premier's Department's support. I periodically had the opportunity to discuss with Dr Gellatly issues related to threatened species as they interacted with major developments across the State and I always felt that he was particularly sensitive to the need to address those issues. We always worked them through collaboratively. I had no reason to doubt his commitment to doing that.

CHAIR: Are you aware of the development to the point of view of the detail of the access roads?

Mr GILLIGAN: No.

CHAIR: Were you involved in any way with overseeing that process?

Mr GILLIGAN: At that level of detail, no.

The Hon. AMANDA FAZIO: Are you aware of any other large development proposals like the Hunter Economic Zone that have had to go through so many environmental hoops like this one has?

Mr GILLIGAN: I do not recall this one particularly having to go through more hoops than others, but I think it is fair to say that this particular development tended to highlight the hesitation, particularly on the part of local government, to deal with the threatened species issues as was originally intended in the legislation. I think there has been a lot of discussion, including in my time—obviously it is continuing discussion, from what I understand—to try to improve things on that score so that there are not multiple hoops involved. However, I can recall feeling quite a deal frustrated, when this issue was current some time ago, that we could not manage to get Cessnock council to get on with making the determinations and making the decisions that as far as we were concerned were in its court at the DA stage and that we were entirely comfortable with because we had signed off on the LEP stage. I think there is an indication that when a council does not feel comfortable, and especially if an environment group, or anyone else for that matter, is putting pressure on the local government authority at that DA stage, there is a tendency perhaps to make another hoop of it that is unnecessary. I think to the extent to which it might be possible to streamline that and tidy it up, it would be to everyone's benefit.

The Hon. AMANDA FAZIO: Are you aware that an ecological constraints master plan has been developed for this site?

Mr GILLIGAN: Not specifically, no. I can only assume that probably the ecological constraints master plan was associated with the LEP stage and was the overview document.

The Hon. AMANDA FAZIO: Yes.

Mr GILLIGAN: Certainly my knowledge of it and my recollection is not so detailed that I can give you the tags or respond to the titles of the documents, but certainly I was aware that there was a very comprehensive overall master planning process that had addressed the issues pretty thoroughly.

The Hon. AMANDA FAZIO: Do you think that that is a good way for a development to go, to have a master plan like that?

Mr GILLIGAN: Absolutely. It is obviously the most sensible way to deal with issues such as threatened species but also I think a lot of others as well with work that was being done in the Hunter on Aboriginal cultural heritage. For example, there has been a growing recognition that we needed to get an overarching region-wide strategy in place, rather than dealing with developments on a sort of one-off or piecemeal basis. I think the approach that was being taken here in terms of trying to deal with these things up front and get them into a comprehensive master planning exercise was a worthwhile initiative and the way to go. It is a shame that it has turned out to have been dragged through a fairly protracted process when the intent was so sound in the beginning.

The Hon. AMANDA FAZIO: In terms of the need for any development to balance the issues of environmental protection and, in this case, job development or job creation, do you think that this particular development has balanced those adequately?

Mr GILLIGAN: Yes, I believe it has.

The Hon. RICK COLLESS: Were you surprised to get that letter from Dr Gellatly on 12 November 2002?

Mr GILLIGAN: Not particularly surprised. I was a little disappointed because it just indicated to me that the processing of these matters by Cessnock council was still going through a tortuous process. Not long before that I had sat down with the general manager of Cessnock council and tried to sort all this out and tried to say, "We have done our bit. Now you guys just get on with the next bit." So when this came it was not a surprise but it was disappointing.

The Hon. RICK COLLESS: In your time as the chief executive of National Parks were you concerned about the processes that developments had to go through to meet the threatened species guidelines that were current at the time?

Mr GILLIGAN: Yes I was, and not just threatened species but the whole exercise of trying to achieve a streamlined integrated development. I was also concerned about the way in which the regulation of Aboriginal cultural heritage management was working as well. I did not think it was particularly serving its purpose effectively. As I have already indicated, I was exploring ways and means of trying to get a process that had one-stop consideration of these things early in the exercise that then sorted them out once and for all, rather than having them being recurrent issues as things went through the DA stage. I just thought it was inefficient to have it happening that way, and we did what we could within the existing legislation to try to streamline the process, hence the National Parks' involvement in the LEP process and the sign off on the outcome for that. We were also having discussions about what sort of propositions we might be able to put to government that government might be prepared to take into the Parliament to try to amend the legislation to streamline the process. As I have indicated, I think that process is continuing and hopefully will come to some fruition before too long.

The Hon. RICK COLLESS: During your period with National Parks, was it a common occurrence to work on a co-ordinated whole-of-government process such as happened with the HEZ proposal?

Mr GILLIGAN: Absolutely. That was standard practice. It was recognition of the fact that basically we were absolutely committed to protecting and managing threatened species habitat and protecting and managing Aboriginal cultural heritage habitat and, in a previous life when I was in the EPA, trying to protect and manage clean water and clean air but trying to do it in a way that would not break New South Wales. So the balance that had to be struck was always going to be a dynamic one and was always something that had to be the basis of sometimes quite intensive discussions at government level and then adopting a position that seemed to be a balanced one and then going out with a coherent position that would hopefully give all parties involved some certainty. That was the goal.

The Hon. RICK COLLESS: Who does the swift parrot recovery team report to?

Mr GILLIGAN: My understanding is that that one is co-ordinated. Because it is a national recovery team it will be co-ordinated by what was then Environment Australia, what is now the Department of Environment and Heritage in the Commonwealth Government. The recovery team will include representatives of the various State agencies that have conservation responsibilities where those State agencies have habitat of

that particular species. It would also have academic specialists, researchers and so on from academic institutions but it would report through to the Commonwealth Government under its legislation. But my recollection is that sometimes the Commonwealth delegated various components of that work to the other jurisdictions but it still needed to get back into their system ultimately.

The Hon. RICK COLLESS: So who was the officer you referred to, who was the author of the letter that was sent about the swift parrot, employed by?

Mr GILLIGAN: My recollection was that they were employed by the Commonwealth, but it may be that they were employed by New South Wales National Parks under contract to the Commonwealth. So it becomes a slightly blurred jurisdiction but you are testing my recollection and it is something—

The Hon. RICK COLLESS: So if that was the case they would be reporting back to the Commonwealth but located in one of your officers and dealing with those things on a local New South Wales basis.

Mr GILLIGAN: Yes, that is right. Dealing with them nationally but obviously—

The Hon. RICK COLLESS: The input coming in from this component.

Mr GILLIGAN: Yes.

The Hon. RICK COLLESS: That being the case, the person who wrote to the Cessnock City Council probably should have written the letter on a national swift parrot letterhead or the Department of Environment and Heritage—

Mr GILLIGAN: Or blank paper or something but not New South Wales National Parks letterhead. I made that point very clear once I found out.

The Hon. AMANDA FAZIO: Was that person reprimanded for those actions or disciplined in any way for doing that?

Mr GILLIGAN: I do not recall any particular discipline but certainly the horror of all concerned was transmitted to the person and it was explained that it was an inappropriate thing to do and why it was. But, as I say, my recollection was no-one tried to crucify the person because it was a relatively junior officer and it was an honest mistake from her point of view. We could not get too carried away but it certainly caused some problems for us, and we explained it.

The Hon. AMANDA FAZIO: You said earlier you were disappointed when you received a letter from Col Gellatly?

Mr GILLIGAN: Yes.

The Hon. AMANDA FAZIO: Because you realised it meant more problems were occurring at the local level. We have heard a lot of evidence from people and a lot of assertions have been made, both in submissions to this inquiry and in the community, that that letter intimidated you so you did not fulfil your statutory obligations as head of the National Parks and Wildlife Service, and it even has been put to people here today that, therefore, illegal and unlawful decisions were made on the basis of your being so intimidated by that letter. Could you give us your version of events?

Mr GILLIGAN: There is no way I felt intimidated by the letter. The letter was not substantially different from any number of other letters that may have come. If there was some question about the service's positioning on a particular issue, often what would happen would be that the Premier's Department co-ordinator in a region would receive some representations or transmit to Dr Gellatly that some concern seemed to be expressed by people in the development community or elsewhere about some positioning. Most often that would have been the subject of a face-to-face or telephone discussion between Dr Gellatly and me. But as a matter of putting something on the record that sought to get a response from me that the Premier's Department co-ordinator could then pass on to the people concerned that gave a definitive National Parks position, just to try to clarify any confusion at the local level, that was the purpose of that sort of exchange of letters. It put something

on the record and gave the Premier's Department co-ordinator something to put in front of someone who might have been expressing concern at Cessnock or Kurri Kurri. But no, I was not intimidated and it did not change anything I was doing in exercising my responsibility under the relevant legislation.

The Hon. ROBYN PARKER: Were you surprised that this parliamentary inquiry was established?

Mr GILLIGAN: A little, but not a lot.

The Hon. ROBYN PARKER: The way this project was going, did you think it was so fraught with complications and issues that it was destined for this sort of outcome or did you think it would be sorted out?

Mr GILLIGAN: I dearly hoped it would be sorted out because I thought the kind of approach that was taken on this project from the outset was getting close to precisely the kind of approach I had been working to achieve for some time. When that approach was starting to hit obstacles, it was a bit frustrating and disappointing. So, I dearly hoped it was not going to come to anything quite like this.

The Hon. ROBYN PARKER: So, learning from the experience of this process, what recommendations would you have for the future in making that a better process for all concerned?

Mr GILLIGAN: I suppose a fundamental one is that it just highlights the importance of trying to get a clear, agreed outcome upfront on an integrated basis when something like this is dealt with, and it is dealt with in a very comprehensive, overarching way. Then there is a minimum of obstacles from then on. I think where some of the confusion came, and in this I suspect when council was confronted with people objecting on environmental grounds and, in this case, threatened species grounds, council panicked a bit and in panicking looked for someone else to cop the threatened species issue and deal with it.

I can only assume, without having detailed knowledge of all the meetings and discussions that happened, we were saying we had the big picture that we were comfortable with, you work it through at the development application level. By that we meant if you can adjust the configuration of something on the site somewhere and save a little bit of remnant habitat here and there without causing a particular development any great pain, by all means make whatever little games you can for threatened species along the way in your development application process, but you do not have to do a deal stopper of any sort. As soon as those little issues came up we assumed that council would deal with them itself and need not come anywhere near National Parks. When council was nervous and tended to come to National Parks, I can just imagine the conversations that would have happened with some of the enthusiastic National Park people who would have suggested a few things such as moving a shed from one side of the other, and it does not make any difference to them and it allows you to keep that bit of habitat, that would be good. It was in that spirit that a lot of these suggestions might well have been made.

Of course, they then got translated into edicts from National Parks that it once again wanted to dive in at the development application stage, which clearly was not the case. That part of it would not have happened if we had more confidence at the council level to deal with those issues comfortably. So, in a two-part answer to your question, the first thing is to get that big picture stuff happening and to get it very much upfront. The second thing is to get a greater level of confidence at the local government level so people can deal comfortably with the relatively minor issues that are left at the development application stages and just do a little bit of tidying up and make a few improvements here and there where you can, but not present it in any way as a deal stopper.

The Hon. ROBYN PARKER: That sounds like commonsense.

Mr GILLIGAN: Sorry.

The Hon. ROBYN PARKER: Did your department ever do any sort of training or information with local government? I am sure Cessnock council would not have it on their own in having difficulties dealing with this complexity.

Mr GILLIGAN: Yes, we did, and that was one of the frustrations as well. One of the biggest frustrations was that National Parks had taken the initiative and produced a document, the title of which I forget, but it was something like *Guidelines for the protection of biodiversity in local planning arrangements*. It said to council, if you want to look after biodiversity and threatened species, these are the sorts of things you might

consider at an LEP stage. These are the sorts of conditions you might want to consider imposing as they development application or building approval stage, or whatever. We gave a template of possible draft conditions that could be considered. That document won planning awards, for being a wonderful initiative and a helpful document for local government. It was out there and it was used routinely as a field manual for service officers going out and sitting down with local councils and trying to work through these issues. So, yes, when these sorts of things came up it was frustrating because the service had put a good deal of effort into trying to sort that stuff out.

The Hon. ROBYN PARKER: Have you spoken with anyone about the inquiry and your presentation of evidence today before coming here?

Mr GILLIGAN: I contacted the Department of Environment and Conservation, National Parks people who were previously involved in this, and got them to fax me to my home copies of the correspondence from Dr Gellatly and my responses, just so I could familiarise myself with what had been said at the time because it is a good while ago now, and I have been in retirement mode.

The Hon. ROBYN PARKER: Have you spoken to Dr Gellatly about coming today?

Mr GILLIGAN: No. I have not spoken to Dr Gellatly. I did ring his office when the Committee initially contacted me, just to do his office the courtesy of letting them know that I had been contacted and that I would be appearing.

The Hon. ROBYN PARKER: And the Minister? Have you spoken to the Minister at all?

Mr GILLIGAN: No, I have not.

The Hon. ROBYN PARKER: At the end of the day we have to make some recommendations. I wonder what you would be hoping we might gain out of this inquiry in recommendations. I just want you to do the job for us.

Mr GILLIGAN: I do not know that I can add to what I have already said, but to try to further the process of trying to get things streamlined so there is a one-stop addressing of the threatened species issues, along with some other issues, I might say, early in the planning process and then trying to see if there are not some ways of building the confidence of local councils to deal with the minor issues in a way that gets gains where they can be had without threatening the outcome of a development process which has already gone through a lot of hoops, but just tweaking the margins were you can.

Ms SYLVIA HALE: I think I heard you correctly when you said you thought the ecological constraints master plan should provide an overview and preferably be prepared prior to, say, the passage of any local environment plan?

Mr GILLIGAN: Yes. At that stage, yes

Ms SYLVIA HALE: Are you aware that the National Parks and Wildlife Service signed off on the Cessnock local environment plan, amendment No. 60, in July? That was originally exhibited in July 2001 and gazetted in March 2002. Prior to that date, we have had evidence today, that the National Parks and Wildlife Service knew about the importance of the swift parrot, had a copy, I believe, of the report on the swift parrot, and that report made reference to the recovery plan. Again, I am getting these dates from material supplied by Mr Stephen Smith. In fact, the ecological constraints master plan for the Hunter economic zone was not finalised until February 2003, that is 12 months later.

Mr GILLIGAN: Right.

Ms SYLVIA HALE: Do you think that is really not the way to approach a major development that has obviously great implications not only for economic development of the region but also for an area where you have a threatened species such as the swift parrot and, as it turns out, at least another 30 threatened species?

Mr GILLIGAN: Well, no, I do not think it is an inappropriate way to go. I have already said I think the way this was handled was an important step forward. I think sometimes there is a lot of confusion or surprise

when threatened species are encountered in locations such as this. It never ceased to amaze me the surprise that people expressed when threatened species were found on the Cumberland Plain, for example, or anywhere on the lower Hunter. When you have landscapes that have been altered as those, there is a pretty fair chance that just about anything that is going to be left will have a threatened species tag on it. So, I do not think we should go into apoplexy when we see a threatened species tag.

CHAIR: Well, why have a threatened species tag? Where do you draw the line where threatened species becomes an issue for you as director-general of the department that is vested with the responsibility for maintenance, given that we have one of the highest rates of species extinction in the world?

Ms SYLVIA HALE: How is it a surprise when you new before the LEP that you had a problem with the swift parrot? Your department was well aware of it.

Mr GILLIGAN: The point I am making is that the department's response should be well short of apoplexy. It does not mean that we are not going to properly consider the issues that are raised and make sure that the threatened species requirements are appropriately considered as you move forward. I had assurances at the time, but I cannot recall all the detail about the dates you have mentioned. I had assurances from people in whom I had the highest confidence and who I knew as incredibly strong advocates on conservation issues that they were satisfied that threatened species, such as the swift parrot, and all the other biodiversity considerations, were adequately considered in the LEP. That was the advice I had from very experienced and competent people. That is the position we took.

Ms SYLVIA HALE: Surely the whole point of doing an ecological constraints master plan is to go out and identify the potential problems and in the light of that information to assess whether proposed zonings—for example, industrial development—are appropriate or inappropriate. Trying to do it the other way round puts the onus on the people who are attempting to protect threatened species to prove why development should not go ahead; rather than doing it the other way round, the onus would be on the developers to show why it should proceed.

Mr GILLIGAN: In my experience you always have to operate with an imperfect knowledge base, you never have as much information as you would like to have.

Ms SYLVIA HALE: When you have a knowledge base before the LEP goes ahead that indicates a prime habitat area is potentially at risk, do you think it appropriate for your department to have signed off on that LEP process?

Mr GILLIGAN: Yes. They signed off on it because they were satisfied that the swift parrot and other threatened species habitat considerations were adequately addressed. And that is the statutory responsibility.

Ms SYLVIA HALE: But they also knew, and this is from correspondence by officers from your department, that no species impact survey had been done, for example of the green-thighed frog. And, it turned out, quite a few other species. I cannot understand the reasoning that says you can go and do something that has such major ramifications as endorsing the local environment plan when you had knowledge that a species was threatened and you know that the species impact investigations had not been undertaken.

Mr GILLIGAN: You are saying that species impact investigations had not been undertaken. The mapping of the ecological communities and vegetation communities had been undertaken. The overlay between the habitat requirements of the threatened species and those ecological communities was well enough established. The advice of the specialists in the National Parks and Wildlife Service was that significant areas of habitat for all those threatened species were covered in the outcome that was signed off.

CHAIR: Ms Hale mentioned the green-thighed frog. I understand there was a requirement from you to survey that. I understand further that the surveys were not undertaken across the HEZ site; in part because of a very tight time frame by the developers lodging their DA. Can you substantiate whether that is a threatened species and was there a specific survey requirement of the site?

Mr GILLIGAN: I do not recall that detail.

CHAIR: Perhaps you could take the question on notice.

Mr GILLIGAN: I was never involved to that level of detail. My point is that the assessment that was made was that the ecological communities that were in that area were appropriately represented in the area that was reserved for conservation, in this case the national park. That gave the specialists a level of confidence that the green-thighed frog and the swift parrot, and the other threatened species, would be adequately protected. The fact that a survey might still need to be done, and should be ongoing, is not unusual. You often have a limited amount of information when making a decision and you put a condition of requiring some further survey work as part of the development which ensures that the knowledge that is gleaned is fed back into the system for the future.

Ms SYLVIA HALE: Would you agree that Cessnock council, when it approved the development application for the road, failed to abide by section 5A of the Environmental Planning and Assessment Act that it had to comply with an eight-part test? Council's failure to do so was at least regrettable and really council was derelict in its duty in failing to abide by that process. The section states that if it is deemed there will be a likely significant impact then it must do a species impact survey. If that is done, it requires the concurrence of the director-general to be sought. I understand the concurrence of the department was not sought.

Mr GILLIGAN: Because I am not familiar with the detail, I am getting lost about your question to me. I understand that Cessnock council in that case approved it, presumably they would argue they had done the eight-part test and reached a conclusion that there was not a significant impact on threatened species and, therefore, they did not have to bring it to the Director General of the NPWS. If they reached a conclusion that is in accord with the provisions of the legislation. Whether you or I might agree with the conclusion they reached is immaterial as to whether they followed due process.

Ms SYLVIA HALE: It is my understanding that they were advised that the species impact statement was required.

Mr GILLIGAN: Advised by whom? It is in their court to consider it and to make a decision without reference to anyone at that stage.

CHAIR: In an email to Katherine Sale, Neil Selman stated that large numbers may have something to do with the decision that council has reached; that is, legally they could not accept the stage one infrastructure DA without an SIS.

Mr GILLIGAN: Where is that coming from? Is it from NPWS?

CHAIR: Yes.

Ms SYLVIA HALE: It is from the executive planner, who was employed by the council to make sure that the development was approved.

Mr GILLIGAN: I am sorry, but I am still lost on the significance of this. If this is a dialogue between someone at council and someone in NPWS, they are having a discussion about council having reached a particular decision.

The Hon. RICK COLLESS: It is fair to say that that is part of a negotiation of a co-ordination process that people would normally work through to get an end point.

CHAIR: The end point is that there was no SIS.

Mr GILLIGAN: I am not saying anything that tells me that council had done anything in breach of the Act, if council had reached a conclusion that notwithstanding the opinion of maybe someone in the community or someone in council that if at the end of the day council made a decision that there was not a significant impact on threatened species, and no SIS was necessary. Whether there was a string of emails floating around the place with people expressing counter views, it is all grist to the mill in terms of whatever process was going on.

The Hon. AMANDA FAZIO: People have been talking about the green-thighed frog. My understanding is that it was found on the site after the rezoning had taken place. It was found on the site by the ecologist

employed by the Hunter Economic Zone. When it was found, an article appeared in the *Newcastle Herald* on 6 June 2002 which said that the discovery of a threatened frog species caused the developers to reassess their application. They actually withdrew their first DA until an environment plan was adopted for the site. Do you think that is an appropriate response, once a threatened species is found, that they did not proceed with the DA and waited until they got an environment plan adopted?

Mr GILLIGAN: It sounds like the sort of thing you would expect to happen. People would pause and consider the impacts and then follow through due process under the Environmental Planning and Assessment Act. I am sorry, but we are operating at a level of detail here in terms of specific emails that I am not familiar with. There were lots of times when we in NPWS might have wished that a council would do something slightly differently from what they do. But, we acknowledge that it was really good that they were exercising their role as spelled out under the Threatened Species Conservation Act and the Environmental Planning and Assessment Act. If they were doing that we would let them get on with it, because we had been involved. The idea of the Threatened Species Conservation Act was always that NPWS would get involved with the big and significant decisions and the relatively more minor decisions would be left at the local government level.

Ms SYLVIA HALE: I want to put a number of things to you. We have an email, which you have been shown, from the executive planner employed by the council to get the HEZ development application approved. He wrote that the council wanted the NPWS to think about the requirements for any SIS in light of all the matters he listed. Obviously the implication is that they wanted the NPWS to dispense with that requirement. That indicates to me that there was a feeling within NPWS that a species impact statement should be prepared, but that seems not to have been followed up. The wording of the letter received from Dr Gellatly is quite critical. He wrote about proposals put forward by the NPWS and said, however, that HEZ's concerns that some of the proposals put forward by the NPWS may impact to restrict the zone to little more than 200 hectares and that appears to HEZ to be untenable. He wrote that that area of industrial land would not support the type and scale of investment infrastructure required by an industrial estate. He is advancing the arguments of HEZ. The concern of this Committee has been as to whether—

The Hon. AMANDA FAZIO: Speak for yourself.

Ms SYLVIA HALE: Some members of this Committee are concerned about undue pressure. His letter urged NPWS to review its department's position and the next words are critical, he wrote "to ensure that there can be no credible claim that a large-scale industrial park in close proximity is a risk".

The Hon. RICK COLLESS: Point of order: Mr Chairman—

CHAIR: Allow the question to be completed.

The Hon. RICK COLLESS: My point of order is that we are well over time. If Ms Hale has a question to ask, it should not be preceded by about 15 minutes of statements.

Ms SYLVIA HALE: I am trying to put the question in context. The question cannot be understood unless it is asked in context. We had Mr Gilligan's response to the letter and also a draft of his response to the letter.

The Hon. RICK COLLESS: Was it signed?

Ms SYLVIA HALE: Yes, it states, "Yours sincerely, Brian Gilligan, Director General".

The Hon. RICK COLLESS: Is his signature on it?

Ms SYLVIA HALE: No, because it is a draft. The significant difference is that the draft states, "finally I would seek your department's support for the Threatened Species Conservation Act as recently confirmed by Parliament ... the legislation is workable." That key statement back to Dr Gellatly is dropped from your final letter. Do you not think that it is possible to construe those sorts of actions as implying that your department has caved in to pressure from the Premier's Department?

Mr GILLIGAN: I am not going to speculate on how others might construe something but let me just reassure you that I am totally comfortable with the way I handled this and the way that Dr Gellatly handled this.

My interpretation of the reference that is in Dr Gellatly's letter about the HEZ concern about requirements by national parks is in fact the point that I was making earlier: that things that were not requirements of national parks, that were casual discussions and suggestions to council about how minor things might have been included as conditions in development application [DA] approvals that might enhance threatened species' habitat could be included, they were in that spirit: But they were being represented in some quarters as requirements.

Dr Gellatly, as I understand it, was writing, as I have said before, looking for an exchange of letters that would put on the record very clearly that national parks position, and that national parks position was one where, after we had passed the LEP stage, all of the DA considerations were in the council's court. In an ideal world, council would not have needed to come anywhere near national parks on any of those issues. To the extent to which Cessnock council and lots of other councils did come to national parks, national parks has always tried to be helpful and make some constructive suggestions. Often those suggestions were misrepresented as absolute requirements, and that is what I think is being referred to here.

CHAIR: Time is well and truly up. I thank you for your attendance, forbearance and participation in the inquiry today.

(The witness withdrew)

SAM HADDAD, Deputy Director General. Department of Infrastructure, Planning and Natural Resources, 30 Lee Street, Sydney, and

SHANE KEMPNIICH, Acting Team Leader—Local Planning for the Hunter Region, Department of Infrastructure, Planning and Natural Resources, 251 Wharf Road, Newcastle, affirmed and examined:

CHAIR: In what capacity are you appearing before the Committee—as an individual or representative of an organisation?

Dr HADDAD: On behalf of the Department of Infrastructure, Planning and Natural Resources.

Mr KEMPNIICH: As representing the Department of Infrastructure, Planning and Natural Resources.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Dr HADDAD: Yes, I am.

Mr KEMPNIICH: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or document you may wish to tender should be heard or seen only by the Committee, please indicate that and the Committee will consider your request.

Dr HADDAD: I will.

CHAIR: Would either of you like to make a short statement before questioning by the Committee commences?

Dr HADDAD: No. I do not want to take up the time of the Committee. I have a submission which I am happy to table.

CHAIR: This has not been brought before the Committee before?

Dr HADDAD: No, it has not. I was going to read from it, but it may be easier if I table it.

Motion by the Hon. Rick Colless agreed to:

That the document be tabled.

Dr HADDAD: If I may, I will just highlight some points from this written submission briefly, and I will be happy to take questions. I think that would be more efficient. I presume that Committee members will be broadly familiar with the process of local environmental planning [LEP] under the Environmental Planning and Assessment Act. In terms of this particular rezoning and LEP, it may be useful to highlight some particular differences from what normally is followed by way of analytical process. Firstly I think that this particular rezoning was the subject of a number of strategic studies in a number of areas. There have been over a period of several years studies into habitats and into a number of other factors. I think that is an important consideration because essentially up-front strategic investigation at an early stage make subsequent decisions at the individual development application level much more credible and effective. I just want to highlight that.

Secondly I notice that this plan has been exhibited twice, on the advice that I have—the first time during October–November 2000—and we received, or the council received, 382 submissions with 348, or 94 per cent of submissions, objecting to the plan, and 22, or six per cent, supporting the plan. Then the plan was re-exhibited from September to October 2001 and council received 961 submissions, with 131, or 13.6 per cent of submissions objecting, so from 94 per cent to almost 14 per cent objecting, which is a drop, then support from 6 per cent up to about 86.4 per cent of submissions. This indicates that there must have been some changes to the plan between the period when it was first exhibited and the second period which may have accommodated some of the concerns that had been expressed. I am just making this point in terms of the public participation processes. That is the point I am making here.

Thirdly I think, from the advice that I have had, that there has been a comprehensive whole-of-government approach to the formulation of the plan. I suppose in terms of the whole-of-government approach, obviously a number of different government agencies will have different roles in government. If at the end of the day we are after the formulation of a balanced sort of system that can accommodate presumably employment and economic development as well as credibly an environmental protection and amenity considerations, a whole-of-government approach is usually, from experience, an appropriate approach to deliver. Fourthly—and this is something of particular relevance and it is something that we would like in the department to promote more—there is an environmental management system. A number of environmental management plans, we may argue, may not be perfect, but conceptually they are more relevant living tools that will enable the ongoing monitoring and ongoing proper implementation and adaptation of different aspects of that plan.

These are differences that we do not I suppose follow, or that councils do not follow in many other plans, or in most plans, and they are good differences in the sense that they may not have been followed to 100 per cent perfection but, in a sense, as a model they are relevant to the discussion. I just wanted to briefly highlight those differences. The implementation of the plan when the individual development applications will come into the employment zone or in the zone that has been marked for future development will still be subject to the appropriate environmental impact assessments and development approval processes, as applicable. The fact that there is a framework and environmental management systems will facilitate appropriate decision making for each of these individual development applications later on. That is all that I wanted to say.

CHAIR: Mr Kempnich, I understand you wrote the final advice for the Minister recommending the approval of the Tomalpin industrial estate. Is that correct?

Mr KEMPNICH: It was sourced originally from me.

CHAIR: Was that the first or second round when there was such a change in public support for it?

Mr KEMPNICH: There was only ever one report to the Minister. The two exhibitions that were being referred to did not require reports to the Minister. The final report gave the story of the two exhibitions but there was only ever one report to the Minister.

CHAIR: So the final report came after the second round of exhibitions?

Mr KEMPNICH: Yes.

CHAIR: You worked with Mr Selmon, the executive planner, on that report?

Mr KEMPNICH: Not when Mr Selmon worked for the council. I worked with Mr Selmon in the process. I did not work with him on a submission to the Minister, no.

CHAIR: No, but in general, on the process. You are satisfied that there was a good job of pulling together what was an extremely complex level of considerations in the overall industrial estate and the development?

Mr KEMPNICH: Yes, I am.

CHAIR: Were you aware at about that time that the terms of the executive plan required him to get the land rezoned and development occurring by a certain time?

Mr KEMPNICH: No.

CHAIR: What was your understanding of his role and the brief that he had, and where he was coming from?

Mr KEMPNICH: My understanding was that he was simply a contract planner to the council, which is a fairly common situation in an instance where it was a fairly big task ahead and the resources available to Cessnock council were not sufficient to do the job properly, so they contracted another planner to do that work. That is my understanding of his role.

Ms SYLVIA HALE: Dr Haddad, I am looking at your submission, and on page 2 you mention the Hassell Pty Ltd report commissioned by council and the Hunter Economic Development Council which looked at the broad potential for industrial land and industry requirements around Cessnock and across the State. That report contains no comparisons with other sites. It was purely focused on the opportunities that were presented by that particular site, namely to develop some large industries there in isolation from residential areas. If it was an opportunity appraisal, I just wonder how you can say that it looked at broad potential around Cessnock and across New South Wales. It seems to suggest that there was a comparison done between this site and other sites.

Dr HADDAD: I have not myself seen that report. Maybe Shane can answer this. But in terms of the context of that report, obviously if some site comparison had been made, eventually, I suppose, the examination and the assessment would have had to be carried out on what council had put forward for the purpose of the rezoning.

Ms SYLVIA HALE: But I believe one of the concerns of the community there is that there was never any other site looked at and that this site was selected and focused upon even though no environmental examination has been undertaken of it at all. Mr Kempnich, I believe you were quite involved with it?

Mr KEMPNIICH: My understanding of the Hassell report was that it made a broad assessment of a number of sites in the Cessnock local government area. There was by no means any expectation that could go to the nth level of detail that the investigations went to on the HEZ site, but as a strategic assessment that study did do that and it certainly looked at not other alternative sites throughout the State but at sites around the State that provided for a similar kind of opportunity for industrial development—and I think that included some areas down towards Wagga Wagga and in the greater metropolitan area—to show that in fact there were very limited opportunities to be able to provide this outcome.

Ms SYLVIA HALE: But in fact it looked at no other alternative locations within the Hunter Valley, is that right?

Mr KEMPNIICH: My understanding is that it did, it just did not do it to the nth degree of detail that was done for the particular HEZ site.

Ms SYLVIA HALE: I understand the Premier's Department became involved in the whole process fairly early on. In December 1998 they convened a meeting of government agencies to adopt the whole-of-government approach. Could you explain why there was not a recommendation to the Minister for Planning that a section 57 direction be issued?

Mr KEMPNIICH: You are talking about a formal environmental study. Under the Act, because it was an amending LEP, there was no requirement for the council to have to do an environmental study. Section 74 of the Act for an amending LEP says the director-general of the department has to specify or has to direct the council to prepare one, and that is based on the information that council provides; when they resolve to prepare a plan, they would advise the department of such and in the council's opinion whether or not they think a formal environmental study is required. From my recollection they did not think that that was required on the basis that the rezoning submission had been put to council before they resolved to prepare the plan. So there were a whole lot of studies done to support the rezoning and the decision was taken that there was no need for an informal environmental study because sufficient studies had already been undertaken.

Ms SYLVIA HALE: Yes, but the only people who would undertake the studies were the developers at that stage?

Mr KEMPNIICH: Yes, the proponents put the studies together.

Ms SYLVIA HALE: So you are saying because the proponents put the studies together therefore there was no need for any analysis other than what they came up with?

Mr KEMPNIICH: No, I am not saying that.

Ms SYLVIA HALE: Surely, if we have got what people considered to be quite an important area, do you not think it would have been important in the public interest to have instigated a process of investigation of the environmental impact rather than rely solely upon the developers' studies?

Mr KEMPENICH: That is what they did. Their studies assessed what the study needed to do. If the department felt that there was something lacking or the studies were not sufficient enough, our department or others would have requested more work to be done. In the end that is what happened.

Ms SYLVIA HALE: But most people are of the opinion that, particularly on sensitive issues such as environmental impacts, that the information that is supplied to you by a proponent you need to take with a grain of salt and to check against other sources or other studies?

Dr HADDAD: That is exactly the process that is usually undertaken. Studies are submitted by proponents, or on their behalf, and then there is an examination of those studies by the council or by departmental people in different agencies, and then there is an outcome out of this assessment. So there is a difference between the submissions by proponents or by councils and the assessments of those and the community, the public, is involved in the process throughout the exhibition process. So there are also submissions coming in questioning other studies or provisions in plans and the like, and then there is a process of assessments.

Ms SYLVIA HALE: One of the concerns that came through earlier in this inquiry was that people felt that there was never any examination at any time of alternative uses for the Tomalpin site or an examination of alternative sites and that therefore they feel the process has been lacking because of this very blinkered approach.

The Hon. Rick Colless: Point of order: Ms Hale is outside the terms of reference. She knows it.

The Hon. Henry Tsang: She asked the same question three different ways and she got the same answer.

CHAIR: Ms Hale, could I ask you to target your questions appropriately.

The Hon. RICK COLLESS: In your time line that you have provided us, which I find extremely useful, in June 1998 the Hassell report was submitted to the council and recommends the Tomalpin land as a potential location for industrial activities, subject to further focused investigations, and in August 1998 the Cessnock City Council adopts the Hassell report and recommendation. Is it unusual for that sort of thing to occur from a planning perspective and would that resolution of the Cessnock City Council legitimise other activities that occur further down that time line?

Dr HADDAD: I am not sure that it is unusual. If there is a case where there is a decision to be made as to whether we want to proceed further with this particular site in terms of investigations it is appropriate that there is some basic information that can assist in reaching that resolution to be put before the council so that the council can resolve to start the process of an LEP. It does not mean in any way that this is pre-empting the outcome of that LEP process. So it is not unusual. In fact, it is only councils in general who can initiate an LEP rezoning process. They will have to pass a resolution that says, "We want to start that process", and in many cases that process may end up by rezoning not being granted or granted in a different form. That is basically only a resolution, not adopting an outcome, but it is starting a process.

The Hon. RICK COLLESS: From that perspective are you comfortable that that recommendation or that resolution that the council adopt it on that day legitimises the rest of the activities that occur from then on in terms of the planning process?

Dr HADDAD: Yes, I am.

The Hon. RICK COLLESS: Could I just go down that list a little bit to June 1999 when you note that there was a planning focus meeting held with council and State Government agencies. What was the purpose of those meetings, who was involved and what was the outcome of them?

Dr HADDAD: Planning focus meetings are held usually for most developments but particularly those associated with potentially significant impacts. They involve all relevant government agencies and their main

purpose is to make sure that firstly the requirements of the various government agencies are clearly articulated to proponents, to those who are proposing to do the thing. So instead of having requirements that are inconsistent or are unclear, it is a form whereby those government agencies—mostly government agencies—are around the table specifying their requirements, specifying their criteria and identifying the key issues that they would be interested in in terms of subsequent analyses and decision-making. It is currently used almost as a good practice for all major development proposals throughout the States and it is being encouraged, so that there is a clear set of requirements, a criteria, articulated to proponents, upfront and early in the process.

The Hon. RICK COLLESS: In December 2000 you have noted here that the Department of Urban Affairs and Planning [DUAP] convenes a whole-of-government agency meeting to further discuss new issues. What is the difference between that whole-of-government agency meeting and a planning focus meeting?

Dr HADDAD: Shane can help me here. Normally the planning focus meeting is held early in the process for requirements to be articulated. During the course of investigations it is not unusual for the department to convene meetings with various government agencies to understand the progress that has been done, to highlight for us to be briefed on different emerging issues or the like, and, again, to improve the focusing on key issues as part of that process.

The Hon. RICK COLLESS: So it is likely in the process up to that point that there would be some, perhaps not conflict, but areas of understanding that need to be discussed and sorted out, different appreciation of different problems and that sort of thing? Is it the Department of Planning's role to assist with the working through of those issues?

Dr HADDAD: It is the department's role to particularly understand those issues, to understand the different constraints throughout the process. It is not efficient to start the process through this planning focus meeting, then to go away and have the answer at the end and then having issues still to be revisited. So it is usually important, particularly for cases like these, to have almost an ongoing process, co-ordinated by the department, for those different issues to be highlighted, for us to understand the constraints, because at the end of the day we will have to deliver or advise on a credible but balanced outcome. So that does not imply any interference or unnecessary intervention in what the different government agencies do—and I can assure you they are going to present themselves very actively and aggressively in many cases—but to try to understand these different constraints, and that assists us, at the end of the day, to present this balanced view to government. That is the purpose.

The Hon. AMANDA FAZIO: Could I just ask a couple of questions about information you have put in your submission? In November 1999 there is a reference to "DUAP meets with local groups including Pelaw Main residents group, to discuss their concerns" I was wondering, maybe Mr Kempnich, if you could tell us if you were involved in that meeting and what the issues were that were raised?

Mr KEMPNICH: Yes, I was involved in that meeting. I do not know whether I would be doing those groups justice trying to recall it off the top of my head but, primarily, the issues that have been raised of the process generally, the site, the environmental values of the land, the justification for the whole proposal, I think in general are the issues, but I would not try to make an exhaustive list.

CHAIR: Do you have a written report on that meeting?

Mr KEMPNICH: Not with me.

CHAIR: Perhaps you could take it on notice. Could you provide the Committee with the issues that, from your perspective, were raised by that type of meeting?

Mr KEMPNICH: Yes.

Dr HADDAD: We will take it on notice.

The Hon. AMANDA FAZIO: Do you recall were any issues raised about loss of amenity in the village of Pelaw Main itself, or traffic impacts?

Mr KEMPNICH: I believe that would have been an issue, yes.

The Hon. AMANDA FAZIO: In January 2001 you say that a meeting was held between agencies and Cessnock City Council to discuss a whole range of issues. It says, "Need recognised for new specific conservation zone and increase in buffers to urban areas". We went on a site inspection where we were shown the crest of a hill and told that open-cut coalmining could occur there—it was within a few hundred metres of houses in Pelaw Main. I understand that the possibility of coalmining comes down to the fact that the Department of Mineral Resources did not want to be locked out of the area, where in the past there has been very extensive underground mining. From a planning point of view, is there any possibility that open-cut coalmining could occur in one of those conservation buffer zones up against people's back fences? Is that a possibility given New South Wales planning laws?

Dr HADDAD: I must be careful as I am not familiar with all the details. From the description you have given it would be very difficult to pass the test, but obviously that would depend on the size of the operation. Usually mining, particularly open-cut but also underground mining, is subject to quite extensive amenity criteria and rules and regulations in relation to dust, noise, water, visuals and all the rest of it. Most of the coalmines that I am aware of that went through the department's assessment involved residual risks outside the boundaries, which may involve the acquisition of properties as a way of managing impacts.

CHAIR: Were you involved in your department's deliberations about the mine near Rosemount wineries?

Dr HADDAD: The Bengarra mine.

CHAIR: That went ahead and it was in close proximity to viticulturalists. Given the priorities of the Department of Mineral Resources, do you agree that mining could go ahead on that site?

Dr HADDAD: I am not sure whether I can agree entirely without knowing all the facts. The Department of Mineral Resources would obviously put forward very early proposals for mining resources throughout the State, many of which might not progress further in that form.

CHAIR: But they still have the potential.

Dr HADDAD: They have the potential but they have to pass tests.

CHAIR: And they have priority over many other land uses.

Dr HADDAD: Not in all cases. At the end of the day we must balance the benefits and the disadvantages of a mine, such as whether a mine would cause huge sterilisation of land. In the case of Bengarra, a judgement had to be made as to the benefit of that mine.

CHAIR: And it went ahead.

Dr HADDAD: Yes.

The Hon. AMANDA FAZIO: You also mentioned in that time line the issue of the Kurri sand swamp woodland. The main impact that its discovery has had on this development is that it has caused the Pelaw Main bypass road to be relocated so that it does not go through this area but is now closer to town. In an ideal world would it be preferable for the link road to be built where it was proposed originally?

Mr KEMPENICH: There is no argument that the link road is needed. It is an issue of detail. I think it is a consent matter for Cessnock council to make judgements about the impact on threatened species versus the impact on local residents. That is one of those fundamental planning decisions that must be made whereby you are balancing one competing need against the other.

The Hon. AMANDA FAZIO: On page 4 of your submission you say that the department believes all necessary legislative requirements were followed and that the plan is a balanced response to the sometimes diverse need for economic growth whilst managing the acknowledgement of environmental values. The Committee has heard a lot of evidence about a letter written by the head of the Premier's Department to the former head of the National Parks and Wildlife Service. According to the rumour mill it indicated that undue

pressure was put on other government departments to come up with a favourable outcome in terms of this proposal. Have you any comments to make on that from your departmental perspective?

Dr HADDAD: I will let Shane discuss it also, but I have examined all the files associated with the matter and we believe that the plans have been done in full compliance with the code of practice and the requirements of the legislation. I emphasise again that it has been re-exhibited. There is nothing unusual about taking a whole-of-government approach in terms of reaching the different outcomes. There is nothing unusual about having the Premier's Department co-ordinating some of those discussions about issues that are important to the State or to the region. That does not imply in any way any outcome in a particular area. That is my view from my examination of the files. I was not involved in the process myself.

Mr KEMPNIH: I was involved in the process and I can say categorically that there was never any direction—for want of a better word—from the Premier's Department that there had to be a certain outcome. I think it is there to describe its role as co-ordination and facilitation. To a degree, I suppose it is almost about the relationship between external stakeholders and government. It is seen to be the one stop shop or the first contact with government. If people are going to have issues with government—State government, surprisingly enough, is not an homogenous animal—I think that is a positive thing that needs to happen.

CHAIR: Thank you both for your presence here today and for your written submission. I think you have taken several questions on notice. We will work on the basis that you will get back to us within 14 days of receiving notification of those questions.

Dr HADDAD: Thank you.

(The witnesses withdrew)

RICK GRIFFITHS, East Zone Commissioner, New South Wales, Aboriginal and Torres Strait Islander Commission, Unit 1, 14 Garner Street, East Maitland, and

GORDON GRIFFITHS, Manager, Mindaribba Local Aboriginal Land Council, PO Box 401, East Maitland, sworn and examined:

TAMARA BERNADETTE McDONALD, Secretary, Mindaribba Local Aboriginal Land Council, PO Box 401, East Maitland, affirmed and examined:

Mr RICK GRIFFITHS: I acknowledge the traditional owners of country we are visiting today. I am here to support the manager and the secretary of Mindaribba land council.

Mr GORDON GRIFFITHS: I also acknowledge the traditional owners of the country.

Ms McDONALD: I acknowledge the people of this land.

CHAIR: Mr Griffiths, are you conversant with the terms of reference of this inquiry?

Mr RICK GRIFFITHS: I have read the terms of reference but we received them quite late. We would like to apologise for not making a submission. We may be able to make a submission to the inquiry within 10 to 14 days.

CHAIR: You do not need to apologise. We appreciate that you are here and that you have not had much forewarning of your appearance today. When you receive the transcript of your evidence today you have 14 days in which to add information. In the same vein, if you want to make a written submission subsequent to today's hearing the closing date for submissions is in approximately three weeks.

Mr RICK GRIFFITHS: I think it is imperative that the land council makes a submission—that is easy for me to say because I am not there—as the major stakeholder in the area.

CHAIR: We appreciate that. Mr Gordon Griffiths, are you conversant with the terms of reference of this inquiry?

Mr GORDON GRIFFITHS: No, like Commissioner Griffiths said, we received them late and did not have time to go through them.

CHAIR: Do you need copies of the terms of reference?

Mr GORDON GRIFFITHS: No, we are here to talk on behalf of our organisation and our members.

CHAIR: If any of you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee please indicate that and the Committee will consider your request. Ms McDonald, are you conversant with the terms of reference of the inquiry?

Ms McDONALD: I have read them.

CHAIR: Before questioning by the Committee, would you like to make a statement?

Mr RICK GRIFFITHS: We have felt somewhat left out of the process. We understood it was going on, that the Committee hearing, and then when you read the documentation we realised it was up to us to nominate ourselves and also by submission put in to either be heard or documented evidence to this particular Committee. I do not know a great deal about the letter that is supposed to have placed undue pressure on Mr Gilligan by Mr Gellatly. I read something about it in the papers but it was not quite clear. Right throughout this process I think that the land council, in my capacity previously as the general manager and now as an ATSIC representative, we have been wedged through this whole process.

I hear quite often about the flora and fauna, the ecological studies and the threatened species. Mindaribba Land Council went into this with its eyes wide open. We had approaches from various people in terms of

development with Hardy Holdings, now the Hunter Economic Zone, through its various stages and names. We also had approaches from environmental lobby groups saying that they would come back with a plan to ensure that we could develop the area into an ecotourism resort, which never happened. We have provided opportunities for different developers to come and talk to us, and quite often they come in and spin us bullshit and then go out. So we just spray the room after they leave.

Duncan Hardy continued to come back, and there have been assertions and assumptions that we have sold our land to Duncan. That has never been the case. We are in this with our eyes wide open. We have contributed a certain section of the land for the link road to go, also for the entry and exit into the Hunter Economic Zone. The point I would like to make about the threatened species, to build the capacity of our people, to ensure longevity, to reduce the infant mortality from four times higher than mainstream Australia to our people, to ensure our people get access to appropriate and proper education, to ensure that we can compete alongside mainstream Australia in terms of the economy, also transfer those to other communities, our council and our community need to be involved in this project. We are threatened, our people, our race.

This is one opportunity for the members of our council, the members of other community organisations and members of the Aboriginal community in the Cessnock local government area, the Maitland local government area and further afield to be able to ensure that we are economically independent, to make decisions about our own life and to educate our kids to a standard above and beyond what I was able to achieve because of the overt and covert racism that existed during my lifetime. We have never been coerced into supporting this. As I said, our members believe this is the one opportunity for us to be able to provide the types of services for our people that State and Federal governments do not provide for them. We feel marginalised by the governments. We are at the whim of governments. As you well know, at the Federal level ATSIC has been abolished; at the State level we have an administrator into the State review of the Aboriginal land council. While ever black communities are dependent upon signing agreements, contracts or arrangements with State or Federal governments we are always going to be marginalised.

Mr GORDON GRIFFITHS: My belief is just carrying on what Commissioner Griffiths said. Our community wants to be self-sufficient and independent, away from government departments. We as a race are the most scrutinised people in this country—in the world I think it is, if I can go so far as to say that. When the commissioner was talking about the abolition of ATSIC, like with the administrator of the State land council, we do not know what the future holds for us in our organisation or any indigenous organisation across this country until we try to work out something with developments or try to become independent. I am looking for something for my grandkids, for their grandkids, within our community, for education, health, training, everything that we depend on. As Commissioner Griffiths said, we are the most scrutinised people around.

Ms McDONALD: I simply want to add that we are going into this with our eyes wide open. We have a membership of over 250 people. We meet on a monthly basis and things are discussed around the table with our membership to know what our members want to do with the land that we have. We are directed by them, and we hear what the community needs, and that is education, health, housing, training. We need things for our young parents and our elders, and these things come across the table to us. That is why we know as Aboriginal people what we need for our people. Government do not know but we do. We live in the community and we survive in the community. This is our way that we know that we will be able to direct our own path, not be told which way to go.

CHAIR: In terms of protection of representative samples of Aboriginal occupation interest in the sites in that area, do you feel that there has been proper identification and understanding by the various agencies of past usage and the need to protect any sites in that area? Has that been adequately covered by various government agencies, developers, local government and others?

Mr RICK GRIFFITHS: I think that our people in the community have ensured that that has happened. We find that there are different agendas by different people and I say different government departments. They have good intentions about being able to co-ordinate the whole-of-government approach that you talk about but I never ever see it happen. You can see there is a mix between some people who want to work together to ensure there is an outcome at the end of the process but in terms of National Parks and Wildlife and the archaeological studies we ensure that that process is correctly undertaken.

We have involvement in the development of what form it will happen and we also write responses to the archaeologist's report that is usually submitted to council for executive members to analyse and then pass on the

recommendations to our members. The thing that I would say is that quite often different groups use or try to use our heritage to stall the processes and sometimes that happens within departments also where the agenda changes from one visit to another. That is insulting to the integrity of our people. We see that happen quite often. In fact I had spoken to the previous director general from National Parks and Wildlife. I do not think we were well served in some areas in that respect. I did raise that with him at a meeting in 2002, and he took that on board.

In terms of the history, one of our members is a traditional owner from the country and he has no knowledge and there are no stories, no song lines to that particular area so he cannot see any restrictions to any development there. It is with his visit there and talking to his ancestors that we were quite sure that that development could go ahead unhindered and would not have any impact on his ancestors, whether there were secret or sacred sites. That is why we want a minimal amount of work to be done there in terms of archaeological work. It is an uninspiring sort of site for our people by today's standards. It is something similar where you would have been a lot closer to natural water that was there most of the time but not just dependent on seasonal rain, et cetera. We are happy with the outcome of the archaeological work but we are just not happy with the process that got to get to that stage because, as I said, we were used by certain people within the bureaucracies. I found that hard to cope with at times or hard to accept.

CHAIR: Just to clarify for the Committee, Mindaribba has a land council, is that correct?

Mr RICK GRIFFITHS: The local Aboriginal land council was established in January 1985. It was gazetted in June or July 1985.

CHAIR: You mentioned that there was one person who was a member of the land council who is a custodian.

Mr RICK GRIFFITHS: No, I should correct that. There is one senior member who is an elder of the community from the Wanaruah nation. There are other members of our council who are also members of traditional owner groups and the Wanaruah nation. They have involvement and input into this process also but I only mentioned the one elder purely and simply because he is the oldest in that line and he was the former chairman of the Mindaribba Land Council. We asked that man specifically to visit that area with us and asked him about his connection with the area and the Wanaruah people, whether there were ceremonies conducted there, et cetera, and he said no. Being a person who has no formal connection other than the fact that I have lived there for 40 years, no traditional connections but a historical connection, I thought it is only appropriate that we seek council from those people who are traditional owners. Can I ask a question?

CHAIR: Certainly, but there is no guarantee I can answer you.

Mr RICK GRIFFITHS: Over this process, as I said, we have been wedged. We had large areas of land that we claimed in there that is now sterilised. Who will pay the rates on those for us? Our council has a massive rate debt. When that land is rezoned and starts to get developed those rates will escalate. We want to know, because the land is sterilised and cannot be developed, who will pay our rates. I do not know whether that is in the terms of reference, but I will always ask the question. The other thing is that there is Crown land in there which Mindaribba Local Aboriginal land council—there is 240 acres or hectares, I am not too sure—has had a claim on for quite some time. Cessnock council actually wrote to the head of the Department of Land and Water Conservation at the time saying they had no interest in that land, that that land was not set aside for specific community purposes. Why can that process not be expedited and our land council be granted that land, and that perhaps some of the things that this Committee could consider?

CHAIR: I suggest that it is somewhat outside the terms of reference of what we are working on. Let me just say that I will discuss this with the Committee staff and perhaps, given the fact that it is on the record, we will send a letter to the relevant Ministers to ask the questions you have raised.

Mr RICK GRIFFITHS: When we employ all our own people we will make sure they all get paid their correct wages.

The Hon. AMANDA FAZIO: In relation to the environmental assessment of the site, and the safeguards and the planning that have been put in place is your land council satisfied with what has been done in that regard?

Mr GORDON GRIFFITHS: I believe that our land council is satisfied because any decisions that we have to make in regard to whether it is the Hunter Economic Zone has to go through our membership. We meet every month, but every decision or every zoning or anything that comes to our land council has to come through our members. They are the only ones who can pass anything. We cannot sit here as a group and make decisions on behalf of the land council. It is all our members who have to make that decision.

Mr RICK GRIFFITHS: The only thing I could add to that is that we read the environmental reports that come through and some of the other reports, but I need to say that I do not have any qualifications.

The Hon. AMANDA FAZIO: That does not stop a lot of other people from commenting.

Mr GORDON GRIFFITHS: And our people in the land council find some of those reports really tough going because they are not written for Aboriginal people.

CHAIR: They are not written for many people.

The Hon. AMANDA FAZIO: You said that you had discussions about developing the site with other developers, and those discussions came to nothing. Eventually, you established a relationship with Hardie Holdings and you have gone in with them on this Hunter economic site. Are you satisfied that your participation has been as equal partners? You might not be equal partners financially or in terms of land ownership, but in terms of being treated fairly in the process in your dealings with the developers are you satisfied with that?

Mr GORDON GRIFFITHS: Not many people get one up on me and our council. We are quite tough to deal with, too. Even though we do not have a lot of leverage with, we seem to think that we have done okay out of the process and we will do even better as time goes on. Obviously, I cannot make statements about the economies and what is coming to the land council because the deal has not been signed as yet. When it is signed I will not sign, the executives do. Most of that stuff will be commercial in confidence. What is commercial in confidence, or what is in confidence? We have to take it back to our members. If 250 black fellas know, they will all know in New South Wales the next day what it was that we got and how we got it.

Mr RICK GRIFFITHS: They will get it on the Koori grapevine very fast.

Mr GORDON GRIFFITHS: That is the beauty of that whole process about the Land Rights Act: you have to go back and say that we are getting whatever the amount is to be involved in this joint venture with whoever it may be, but we are not allowed to tell anyone. If you go to the meeting and do that, it does not matter how many turn up there, the 250 members know the next day what it is. We have relatives all over New South Wales and further afield. Within two days the grapevine is that good that every black fella knows what the outcome of the deal was. But that is openness and transparency. That ensures that members know what is happening all the time.

Mr RICK GRIFFITHS: Under the Land Rights Act you cannot sign off anything unless it goes through members and goes to the State Lands Council. It has to be of benefit for your community. It is all set in place.

The Hon. ROBYN PARKER: You do not have to disclose negotiations in terms of the deal with your land. I appreciate your comments about self-sustainability. Are you hoping that out of this arrangement with Hardie Holdings and the Hunter Economic Zone you will achieve an ongoing income and ongoing employment for your people? Is that the objective for you, or is it an objective of getting an immediate financial benefit and then handing over responsibility for that to HEZ?

Ms McDONALD: What we have to do is exactly what you said: we hope to be able to employ our people at a proper wage, house them, educate them, give them the proper medical services that they need out of this deal.

The Hon. ROBYN PARKER: Will you retain ownership of the land that you have?

Ms McDONALD: Yes.

The Hon. ROBYN PARKER: Or lease some of that to HEZ or something like that?

Ms McDONALD: We are not too sure about how we are going to go, which way we are going to go, whether to lease or sell. That is a decision that has to be made.

The Hon. HENRY TSANG: I understand that you are a partner with the developer. Early on the developer appreciated that it was a whole-of-government approach to try to resolve the different interests within government departments. In your view is that approach carried out properly? Did you find that anything was done improperly?

Mr GORDON GRIFFITHS: In terms of the whole-of-government approach, it is an issue that the Commonwealth Government is striving for now also, but it is something that has been around for quite sometime. It has just been recycled. In 1982 they used to do it. I think the only thing that deters me from jumping in and saying that it is a wonderful approach is the fact that they all sit down, then they go back to where their departments are and then between the meeting and when they get back to their office or their particular department something happens because they sit down and reach agreement when they are all in the room about the processes and what needs to happen to get to the stage where people can start construction and there is always something that comes up, that runs blocker to it. If they left the room with the same sort of commitment to say, "These are the outcomes that we need. This is the information that we need. Let's all go back and put pressure on people to supply. If it stacks up we approve it. If it doesn't we reject it." But somewhere in between—

The Hon. HENRY TSANG: Therefore there is a role for the Premier's Department to co-ordinate, to ensure that there these discussions have some kind of follow up. There is a proper role for the Premier's Department to co-ordinate those meetings and make sure that they all talk to each other and get some follow up from the discussions?

Mr GORDON GRIFFITHS: I believe that is essential, but I also believe that the New South Wales Aboriginal Lands Council at Parramatta should also be present through that whole-of-government approach with local Aboriginal land councils because they are far better resourced than we are in terms of dollars and access to professional expertise. That is something that we should put in our submission. It is something that we have discussed. One department should have the function of driving it and co-ordinating it. I do not think that is inappropriate for Premier's at all. In fact, I would say it would be the most appropriate department for it. But there needs to be the consistent message all the way through. They should not change the rules half way through the process.

Ms SYLVIA HALE: I appreciate your concern that what goes ahead will be of ongoing benefit to your community in terms of employment, housing, education and whatever. I understand that you were disappointed that the amount of land that was zoned industrial was reduced when the local environment plan went out for public exhibition, and ultimately the decision was made to reduce the amount of industrial land. Mr Selman from Cessnock council wrote to you on 7 March 2002 and said that that may be the case, but you have bigger opportunities to develop the land that is zoned 7B, the habitat protection zone, because now you need only 25 hectares per dwelling rather than the previous requirement of some 40 hectares. The inquiry has been given evidence, I think it was by HEZ Nominees but I stand to be corrected on that, that the maximum number of houses that you will be able to construct in that 7B zone is six because they will be able to construct only along the zone or boundary, and you have this 25-hectare provision. Were you aware of the restriction on the number of houses that you would be able to build?

Mr GORDON GRIFFITHS: To say that we were disappointed with the area of land that was rezoned for heavy industry is an understatement. I believe that we were done in by that process. I met with the then Minister and one of the senior public servants to ask about why we were so poorly treated. I also believe that when you look through that whole zoning process you find that our land, Mindaribba Local Aboriginal Land Council—I say "our" because I am here—we are the ones who have been penalised most of all. I have made that obvious before. I was not quite sure of that because I was not there when the letter arrived about the number of houses. I am not sure about the process in the Cessnock local government area, whether it is still 100 hectares of land for 100 acres of land to one house. I was not sure of the number of dwellings you could build on the 25 hectares.

Ms SYLVIA HALE: Some concern was expressed at the last Committee hearing that the conservation zone would be open for residential development, and we were assured, I think by HEZ, that a maximum of six

houses could be built on that area. If you cannot realistically develop that for residential accommodation, you must be pinning your hopes for income on the development of the industrial land?

Mr GORDON GRIFFITHS: That is where we thought we would be able to look at economic independence.

Ms SYLVIA HALE: But if that amount of land is now being restricted to something like just under 200 hectares, it is not going to provide you with a huge income. I am guessing here.

Mr GORDON GRIFFITHS: It probably will not be a huge income, but it will be an income for perpetuity, forever and a day.

Ms SYLVIA HALE: That is if you do not sell the land?

Mr GORDON GRIFFITHS: I could not see us selling all of that land in there.

Ms SYLVIA HALE: In terms of development of your plans for the land, have you been advised by Harper Somers at all? Have you received managerial advice from Harper Somers as to what you might do with your land?

Mr GORDON GRIFFITHS: We have a list of consultants who sit together and advise Mindaribba Local Aboriginal Land Council on our land-based holdings and what should happen.

Ms SYLVIA HALE: Has Mindaribba ever been given advice by Harper Somers?

Mr GORDON GRIFFITHS: To my knowledge I cannot remember Harper Somers giving us advice.

Ms SYLVIA HALE: Ms McDonald?

Ms McDONALD: No, not that I can recall.

Mr GORDON GRIFFITHS: There may have been something there.

Ms SYLVIA HALE: Has anyone from HEZ or Hardie Nominees ever given you advice?

Mr GORDON GRIFFITHS: They actually wrote to ask once in relation to establishing a committee to have a look at our land base, et cetera, the same as what they do with the Catholic churches. It was a committee that we wanted to establish. It was set up with no charge and a range of people of different skills and expertise are able to give us advice about what is the best way to move our council forward.

Ms SYLVIA HALE: When the land council considers the future potential users of the site, the land council will obtain advice from consultants who have no direct connection with the site in any way?

Mr GORDON GRIFFITHS: That would be a conflict of interest.

Ms SYLVIA HALE: The land council would do everything to avoid there being any conflict of interest?

Mr GORDON GRIFFITHS: Yes.

Ms SYLVIA HALE: We have that undertaking.

The Hon. HENRY TSANG: This site is now being rezoned. If the process is completely reversed for environmental reasons, would you consider that you were being done over again?

Mr RICK GRIFFITHS: I think that is an understatement, seriously. In 1994 we went out to the area and had a look at some of the area towards where the HEZ is now. We did not have all the land then but we had land claims in. Cessnock council provided us with a worker, and he said to us, "You are never going to get much of a return for the land you have acquired here." Three years later there happened to be approaches from Duncan Hardie—it was not Hardie Holdings, and I cannot remember what the company was. People were saying, should

we continue to retain that land or give it back to the Crown, because there was a lot of mining subsidence in the area, and we thought, like other local Aboriginal land councils that had been granted land that was of no use to anyone else. We just kept mulling over it and thought that we cannot do a real lot with it and kept paying the rates on it. At the end of the day we believe we are going to achieve wonderful things for our people in that part of the world. If it does not go ahead, we would be done over, big time.

The Hon. HENRY TSANG: For 200 years you have been done over. I hope this time you will be all right.

Mr RICK GRIFFITHS: Two hundred and sixteen.

The Hon. AMANDA FAZIO: One of the main organisations that has been garnering opposition to the Hunter economics is Friends of Tumblebee. Do you know if any members of the Mindaribba River Local Aboriginal Land Council also members of the Friends of Tumblebee?

Mr RICK GRIFFITHS: Not off the top of my head, but if they are, that would not worry me. Our people have a right to join whatever they want to join. That does not make any difference to me.

(The witnesses withdrew)

(The Committee adjourned at 4.18 p.m.)